

Below is an unannotated, or clean, version of relevant text from Subtitles B and C. For brevity, where the proposed text amendment is only to either add the term “or rooftop structure” after the word penthouse, or to amend numbering, that text has generally not been included in this “clean” version of the proposed text.

Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

...

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

...

Antenna, Building-mounted: Any antenna and its necessary support structure, not including an antenna tower or monopole, that is attached to the walls of, or integrated into, a building, church steeple, cooling tower, elevator bulkhead, parapet, penthouse or rooftop structure, fire tower, tank, water tower, or other similar structure.

...

Nonconforming Structure: A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse or rooftop structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreation space requirements.

...

Parapet: A vertical extension of a wall of a building above the roof.

Penthouse: A structure that has a roof and is partly to fully enclosed on all sides and is located on or above the roof of any part of a building.

Penthouse Habitable Space: A space within a penthouse devoted to any residential or non-residential use permitted in the zone, unless otherwise restricted, other than penthouse mechanical space. The term penthouse habitable space shall include, but not be limited to, residential living space, recreation or amenity space, office, commercial, retail, service, eating or drinking establishment, or other commercial use, and associated facilities such as storage, hallways, stairwells, kitchen space, change rooms, and lavatories.

Penthouse Mechanical Space: A space within a penthouse not devoted to habitable space, including but not limited to mechanical equipment for the building, elevator over-rides, or stair towers.

...

Story: The space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing as measured

in accordance with § 310 of this subtitle. For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, ~~or~~ penthouses, or rooftop structures.

Story, Top: The uppermost portion of any building or structure that is used for purposes other than penthouses or rooftop structures. The term "top story" shall exclude architectural embellishment, penthouse, or rooftop structure.

...

Structure, Rooftop: An unenclosed or partly enclosed structure with no roof that is located on or above the roof of any part of a building, including but not limited to, unenclosed mechanical equipment including screening, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, solar panels, skylights, roof hatches, trellises with beams with spacing of greater than 24 inches on center and unenclosed sides, trash chutes, plumbing vent stacks, rooftop platforms for swimming pools, roof decks, temporary enclosures, and guard rails.

306 HEIGHT

306.1 In addition to the height limitations ...

...

306.5 Architectural embellishments including, but not limited to, spires, towers, domes, minarets, parapets, and pinnacles may be erected to a greater height than any limit prescribed by these regulations or the Height Act, provided the architectural embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of each the wall on which the architectural embellishment is located.

306.6 A chimney, smokestack, or flagpole may be erected to a height in excess of that authorized in the district in which it is located when required by other municipal law or regulation.

306.7 Green roofs and their membranes shall not be included in the calculation of height.

306.8 The height of a penthouse or rooftop structure shall be as measured from the building roof upon which it sits to the top of the roof or parapet of the penthouse or rooftop structure, whichever is higher. Where the building roof is not a flat roof, the height of a penthouse or rooftop structure shall be measured from the midpoint of the base of the wall of the penthouse or rooftop structure at the lowest elevation to the highest point of the roof or parapet of the penthouse or rooftop structure.

306.9 Roof hatches and skylights shall be evaluated in a closed state for measuring height and setback requirements.

Subtitle C, GENERAL RULES**Chapter 15, PENTHOUSES AND ROOFTOP STRUCTURES****1500 INTRODUCTION**

- 1500.1 A penthouse or rooftop structure, when not in conflict with the Height Act or otherwise restricted, may be erected to a height in excess of the building height authorized by the zone district, in accordance with the conditions specified in this section.
- 1500.2 The requirements of this chapter shall apply to:
- (a) Penthouses, and
 - (b) Rooftop structures that are four feet (4 ft.) or more in height above the roof upon which they sit.
- 1500.3 A rooftop structure that is less than four feet (4 ft.) in height above the roof upon which it sits shall not be subject to the requirements of this chapter, except it must comply with the setback requirements of Subtitle C § 1504.
- 1500.4 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, electronic equipment of a type not necessary to the operation of the building or structure, or solar canopies on top of a parking garage. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Subtitle C, Chapter 13.

1501 USES

- 1501.1 A penthouse or rooftop structure may house mechanical equipment or any use permitted within the zone, except that penthouse habitable space shall be restricted as follows:
- (a) Penthouse habitable space may be permitted on the roof of a single household dwelling, flat, or accessory building in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, if it:
 - (1) Is located entirely within the matter of right permitted height for the building;
 - (2) Is a maximum of nine feet (9 ft.) in height and one (1) story; and
 - (3) Contains only stair or elevator access to the roof plus a maximum of thirty square feet (30 sq. ft.) of space ancillary to a rooftop deck or terrace.
 - (b) Penthouse habitable space on the roof of a single household dwelling, flat, or accessory building in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, that does not meet the requirements of paragraph (a) of this section shall only be permitted if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to Subtitle C § 1506;

- (c) An eating and drinking establishment located within a penthouse habitable space, or on a rooftop deck on the highest roof of the building, shall only be permitted if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9; or
- (d) On any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east, penthouse habitable space or publicly accessible rooftop deck on the highest roof of the building, shall be permitted only if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and with written approval by the US Secret Service.

1502 HEIGHT

- 1502.1 Except as otherwise limited in this Chapter, height and number of stories permitted for a penthouse or rooftop structure shall be as prescribed in the development standards for the applicable zone.
- 1502.2 The height and number of stories permitted for a penthouse or rooftop structure for a building constructed pursuant to a planned unit development (PUD) shall be as prescribed for the PUD standards for the applicable zone, pursuant to Subtitle X, Chapter 3.
- 1502.3 Pursuant to § 5 of the Height Act, a penthouse or rooftop structure may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback and other restrictions stated in the Act.

1503 ENCLOSING WALLS

- 1503.1 All penthouses and mechanical equipment shall be in one (1) enclosure, except that the following may be contained within a separate enclosure
 - (a) Penthouse and mechanical equipment located on the roof of a public school, public recreation center, or public library; or
 - (b) A rooftop egress stairwell or elevator enclosure not containing any other form of habitable or mechanical space that harmonizes with the main penthouse in architectural character, material, and color.
- 1503.2 When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.
- 1503.3 When consisting solely of mechanical equipment, the equipment shall be enclosed fully as prescribed in Subtitle C §§ 1503.1 and 1503.2 except that louvers may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.
- 1503.4 Walls enclosing a penthouse or rooftop structure, or screening around uncovered mechanical equipment, shall comply with the following height requirements, as measured from the roof upon which the penthouse or rooftop structure, or the screening, sits, and shall be provided as follows:

- (a) Walls enclosing penthouse habitable space shall be of a single, uniform height;
- (b) Walls enclosing penthouse mechanical space shall be of a single, uniform height; except that walls enclosing an elevator override may be of a different single, uniform height;
- (c) Required screening around uncovered mechanical equipment ~~may~~ shall be of a single uniform height; and
- (d) Walls enclosing a stairwell penthouse need not be of a single, uniform height.

1504 SETBACKS

- 1504.1 Except as exempted by Subtitle C §§ 1504.2 to 1504.4, a penthouse or rooftop structure shall be set back from the edge of the roof upon which it is located, measured from a point where a line extending from the top of the roof intersects with the outside face of the building enclosing wall, as follows:
- (a) A distance equal to its height from the front building wall of the roof upon which it is located;
 - (b) A distance equal to its height from the rear building wall of the roof upon which it is located;
 - (c) A distance equal to its height from a side building wall of the roof upon which it is located if:
 - (1) The side building wall is not located on a property line;
 - (2) The side building wall faces a public or private street or alley right-of way, or a public park;
 - (3) The adjacent property along the shared side lot line has a lower permitted matter-of-right building height; or
 - (4) The adjacent property along the shared side lot line is improved with a building that is a designated landmark or contributing structure to a historic district with a height at least ten feet (10 ft.) below the maximum height permitted in its zone;
 - (d) A distance equal to its height from building walls that border all sides of an open court on the property; or
 - (e) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street, N.W and 15th Street, N.W., subject to any constraints on penthouses or rooftop structures contained within adopted PADDC Guideline documents.
- 1504.2 The front, rear, side, and open court setback requirements of Subtitle C §§ 1504.1(a)-(d) shall not apply to features meeting the following conditions:

- (a) Parapets;
- (b) Roof membranes, and green roof mediums that do not exceed a height of two feet, measured from the surface of the roof upon which they sit;
- (c) Roof decks, platforms, or other rooftop features that do not exceed a height of twelve inches (12 in.) maximum above the roof, measured from the surface of the roof upon which they sit;
- (d) On the roof of a one family dwelling or flat, or an accessory building to those uses, solar panels not attached to or hanging down from the side of a penthouse, rooftop structure, or parapet, that do not exceed a height of either:
 - (1) For rooftop mounted panels, two feet (2 ft.) maximum above the roof, measured from the surface of the roof upon which they sit; or
 - (2) For parapet mounted panels, one foot (1 ft.) maximum above the top of the side wall parapet;
- (e) On the roof of any other building or structure, solar panels not attached to or hanging down from the side of a penthouse, rooftop structure, or parapet, that do not exceed a height of four feet (4 ft.) maximum above the roof, measured from the surface of the roof upon which they sit;
- (f) Guardrails required by the building code, for a balcony that does not exceed a depth of ten feet (10 ft.) from the façade of the building, or for a deck not located on the highest roof of a building and which does not exceed a depth of ten feet (10 ft.) from the façade of the building;
- (g) Guardrails or privacy fences on the top of a one story accessory building, provided the total height of the building including the guardrail or privacy fence does not exceed the height permitted for an accessory building in the zone; or
- (h) Mechanical equipment or screening for mechanical equipment on the roof of a public school, recreation center, or library.

1504.3 The rear, side, and open court setback requirements of Subtitle C §§ 1504.1(b)-(d) shall further not apply to features meeting the following conditions:

- (a) For a rooftop deck other than as addressed in Subtitle C § 1504.2(f), guardrails required by the building code which do not exceed a height of three feet, six inches maximum (3'-6" max.), when the façade is not facing a public or private street or public park;
- (b) Gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, trash chutes, plumbing vent stacks, HVAC compressors, or other similar mechanical equipment;
- (c) Roof hatches that do not exceed a height of four feet (4 ft.), measured from the surface of the roof upon which they sit; or

- (d) Skylights that do not exceed a height of two feet (2 ft.), measured from the surface of the roof upon which they sit.

1504.4 The open court setback requirements of Subtitle C § 1504.1(d) shall further not apply to a rooftop access stairwell or elevator.

1505 ENCLOSED AREA

1505.1 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all levels or stories of a penthouse measuring six and one-half feet (6.5 ft.) or more in height shall be included in the gross floor area contributing to the total floor area ratio permitted for the building, with the following exceptions:

- (a) Penthouse mechanical space;
- (b) Communal recreation or amenity space for residents or non-residential tenants of the building;
- (c) Penthouse habitable space, other than as exempted in Subtitle C § 1505.1(b), with a floor area ratio of less than four-tenths (0.4); and
- (d) Mechanical equipment owned and operated as a penthouse-by a fixed right-of-way public mass transit system.

1505.2 Penthouses or rooftop structure, including any combination of mechanical or habitable space, shall not exceed one-third (1/3) of the total roof area upon which the penthouse or rooftop structure sits for any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

1505.3 Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with Subtitle C § 1505.2.

1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE REQUIREMENTS

1506.1 Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment subject to:

- (a) The special exception requirements of Subtitle X, Chapter 9;
- (b) The applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and
- (c) The applicant's demonstration of at least one (1) of the following:
 - (1) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;
 - (2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;

- (3) The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; and
 - (4) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C-115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;
- 1506.2 Relief shall not be granted to the setback requirements of Subtitle C § 1504 for a penthouse or rooftop structure located on a building constructed to the maximum height allowed by the Height Act.
- 1506.3 A request to add penthouse habitable space to a building approved by the Zoning Commission prior to January 8, 2016, as a planned unit development or through the design review process, may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to Subtitle Z § 703, provided:
- (a) The penthouse does not require relief from any other penthouse regulation;
 - (b) The item shall not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and
 - (c) The Office of Planning shall submit a report with a recommendation a minimum of seven (7) days in advance of the meeting.
- 1506.4 In addition to meeting the special exception requirements of Subtitle X § 901, an application made pursuant to Subtitle C § 1506.3, shall include:
- (a) A fully dimensioned copy of the approved and proposed roof-plan and elevations as necessary to show the changes;
 - (b) A written comparison of the proposal to the Zoning Regulations; and
 - (a) Verification that the affected Advisory Neighborhood Commission has been notified of the request.

**1507 AFFORDABLE HOUSING PRODUCTION REQUIREMENT
GENERATED BY CONSTRUCTION OF PENTHOUSE HABITABLE
SPACE**

- 1507.1 The construction of penthouse habitable space on a building that is devoted to entirely non-residential or lodging use shall contribute funds to the Housing Trust Fund in accordance with the procedures and requirements of Subtitle C §§ 1507.6 to 1507.10.
- 1507.2 The construction of penthouse habitable space on a building that is partially or entirely devoted to residential use is subject to the Inclusionary Zoning set-aside provisions of Subtitle C, Chapter 10, Inclusionary Zoning, at 50% MFI in accordance with Subtitle C §§ 1003.7 and 1507.5, except for:

- (a) Penthouse space on a multi-family building devoted exclusively to communal rooftop recreation or communal amenity space for the primary use of residents of the building; or
 - (b) Penthouse space on the roof of single household dwelling or flat.
- 1507.3 The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.
- 1507.4 The penthouse habitable space set-aside shall be calculated as gross floor area but shall mean “net residential floor area” for purposes of Subtitle C § 1003.
- 1507.5 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1507.2 shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to the Housing Production Trust Fund, consistent with the provisions of Subtitle C §§ 1507.6 through 1507.10, provided that the calculation of the contribution shall be based on the maximum permitted residential FAR, when:
 - (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
 - (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
 - (c) The building is not otherwise required to provide Inclusionary Units for eligible households earning equal to or less than fifty percent (50%) of the MFI if the amount of penthouse habitable space would result in a net floor area set-aside less than the net floor area of the smallest dwelling unit within the building.
- 1507.6 When the construction of penthouse habitable space results in a contribution to the Housing Trust Fund, the contribution amount and timing shall be in accordance with the provisions of Subtitle C §§ 1507.7 through 1507.10.
- 1507.7 The required amount of the Housing Trust Fund contribution shall be determined as follows:
 - (a) First multiply the land area upon which the building is or will be located by the maximum by-right permitted FAR for the proposed use of the building to determine the maximum permitted gross square feet of development on the site;
 - (b) Second, divide the assessed value of land upon which the building is or will be located by the maximum permitted gross square feet of development to determine a value per square foot;
 - (c) Third, multiply the value per square foot by the total gross floor area of the penthouse habitable space to be constructed; and

- (d) Finally, multiply this sum by fifty percent (50%) to determine the contribution.

1507.8 For the purposes of the calculation of Subtitle C § 1507.7:

- (a) The land area upon which the building is or will be located shall include the entire record lot or combination of all tax and air lots comprising the entire record lot regardless of ownership;
- (b) The maximum permitted by-right FAR shall be based on the existing or, when applicable, the approved zoning designations, and shall not include any bonuses, credits, zoning relief or flexibility granted, planned unit development density increases, or grandfathered conditions, and shall be determined as follows:
 - (1) For an entirely non-residential or lodging building, the maximum permitted non-residential FAR shall be used, regardless of the use of the habitable space;
 - (2) For buildings that are partially or entirely devoted to residential use, the maximum permitted residential FAR shall be used, regardless of the use of the habitable space;
 - (3) For the Downtown (D) zones, if not otherwise specified, the maximum permitted residential FAR permitted shall be 10 FAR; and
 - (4) In R and RF zones, projects with a maximum permitted lot occupancy of 40% or less shall use an equivalent of 1.2 FAR, and projects with a maximum permitted lot occupancy of 60% shall use an equivalent of 1.8 FAR.
- (c) The assessed value of land shall be the fair market value of the land as indicated in the property tax assessment records of the Office of Tax and Revenue (OTR), at the time the payment is due to be submitted pursuant to Subtitle C §§ 1507.9 and 1507.10.
- (d) The total gross floor area of the penthouse habitable space shall be determined as follows:
 - (1) For entirely non-residential or lodging buildings, all forms of habitable space shall be included in the total gross floor area of the penthouse habitable space;
 - (2) For buildings that are partially or entirely devoted to residential use, all forms of habitable space, except space devoted exclusively to communal rooftop recreation or amenity space for the primary use of residents of the building, shall be included in the total gross floor area of the penthouse habitable space; and
 - (3) For purposes of (i) and (ii), total gross floor area of the penthouse habitable space includes enclosed hallways, vestibules, washrooms,

and other service space serving any habitable or non-habitable space.

1507.9 Except as described in Subtitle C § 1507.10, not less than one-half (0.5) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's penthouse habitable space.

1507.10 Where the proposed penthouse habitable space or the building on which it is located is subject to a Planned Unit Development, or is located on property for which the Zoning Commission approved a Map Amendment no more than five (5) years prior to the filing of the building permit application to construct the penthouse or building, the Housing Production Trust Fund payment required pursuant to Subtitle C §§ 1507.6 through 1507.8, shall be as follows:

- (a) Prior to the issuance of a building permit for any penthouse space, not less than one-half (1/2) of the required total Housing Production Trust Fund contribution shall be made in accordance with the calculation of Subtitle C § 1507.7, based on the fair market value of the land as indicated in the property tax assessment records of the OTR at the time that the building permit application is accepted as complete by the Department of Consumer and Regulatory Affairs; and
- (b) Prior to the issuance of a certificate of occupancy for any penthouse space, the calculations of Subtitle C § 1507.7 shall be repeated based on the fair market value of the land as indicated in the property tax assessment records of the OTR at the time of certificate of occupancy issuance; and the balance of the required total contribution, minus the amount paid pursuant to the contribution of Subtitle C § 1507.7(a), shall be made.