

**ATTACHMENT I**

**Draft Text for Setdown Report**

Proposed new text is shown **underline / bold**; existing text proposed to be deleted is shown ~~**bold / strike-through**~~.

**Subtitle A – Authority and Applicability**

...

**301 BUILDING PERMITS**

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301.5 If an application for a type of building permit enumerated in Subtitle A § 301.6 is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone classification of the site of the proposed construction, the processing of the application and the completion of work pursuant to the permit shall be governed as follows:

...

(2) Be sufficiently complete to permit processing without changing the proposed use or increasing the intensity of the use, and without deviations from submitted plans, except for plan deviations that:

(A) Address the requirements of the Construction Codes (12 DCMR); or

(B) Increase the extent to which the proposed structure complies with matter of right standards under the existing zone designation, such as by:

(i) Reducing lot occupancy, gross floor area, building height, penthouse **or roof structure** height, the number of stories or number of units; or

...

301.13 Notwithstanding Subtitle A § 301.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse **or roof structure** other than as restricted in Subtitle C § 1500.4 may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015, if the Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs, and had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date.

**Subtitle B Definitions:**

**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. ~~The term includes all structures previously regulated as “roof structures” prior to January 8, 2016 by § 411 of the 1958 Regulations. Skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, and plumbing vent stacks shall not be considered as penthouses.~~

**Penthouse Habitable Space:** ~~An enclosed~~ 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, communal recreation or amenity space, office, commercial, retail, service, eating or drinking establishment, or other commercial use, and associated facilities such as storage, hallways, kitchen space, change rooms, ~~or~~ and lavatories.

**Penthouse Mechanical Space:** ~~An enclosed~~ A space within a penthouse devoted to mechanical equipment for the building, elevator over-rides, or stair towers.

**Parapet: a vertical extension of one or more walls of the building below, above the roof level.**

**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. 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, screening for mechanical equipment, 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.**

**Subtitle B Chapter 3 – RULES OF MEASUREMENT****306 HEIGHT**

306.1 In addition to the height limitations of the Zoning Regulations, all buildings are also subject to and shall conform to the limitations of the Height Act.

306.2 Where the maximum height permitted within a zone differs from the maximum height permitted by the Height Act, the more restrictive maximum height shall apply.

306.3 Zone height limits shall be stated in terms of feet.

306.4 The height limits in each zone apply to structures located in the public space included within the zone's boundary.

~~C § 1501.3~~ **306.5 Architectural embellishments including, but not limited to, spires, towers, domes, minarets, 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.**

~~C § 1501.5~~ **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 Roof membranes and green roofs may be erected to a greater height than any limit prescribed by these regulations or the Height Act.**

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

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

**310 RULES OF MEASUREMENT FOR NUMBER OF STORIES**

310.1 The number of stories shall be counted at the point from which the height of the building is measured.

310.2 For the purposes of determining the maximum number of permitted stories, the term "story" shall not include cellars, ~~or~~ penthouses, or rooftop structures.

**Subtitle C GENERAL RULES**

**CHAPTER 10, INCLUSIONARY ZONING**

**1001 APPLICABILITY**

...

1001.2 Except as provided in Subtitle C § 1001.5, the requirements and modifications of this chapter shall apply to developments meeting the following criteria:

...

(a) A “Mandatory Inclusionary Development” – a development that meets one or more of the following criteria:

...

(3) Consists of a residential building, other than a single dwelling unit or flat, that has penthouse habitable space pursuant to Subtitle C § ~~1500.11~~ 1507; or

...

1001.5 Except for new penthouse habitable space as described in Subtitle C § ~~1500.11~~1507, the requirements of this chapter shall not apply to hotels, motels, ~~or~~ inns, **Boarding Houses, Continuing Care Retirement facility, or single room occupancy projects within a single building.**

**1001.6 IZ requirements of this chapter shall not apply to:**

...

(b) ~~Boarding houses, Assisted living facilities~~ Community residence facilities, youth residential care homes, substance abusers’ homes, or community based institutional facilities; ~~or single room occupancy projects within a single building;~~

...

**1003 SET-ASIDE REQUIREMENTS**

1003.1 An Inclusionary Development which does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit, exclusive of any bonus height, of fifty feet (50 ft.) or less shall set aside for Inclusionary Units the sum of the following:

...

(b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § ~~1500.11~~ 1507.

....

1003.2 An Inclusionary Development which employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than fifty feet (50 ft.), shall set aside for Inclusionary Units the sum of the following:

...

(b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § ~~1500.11~~ 1507.

...

#### 1006 OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING

...

~~1006.10 Inclusionary Units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1500.11 shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of Subtitle C §§ 1505.13 through 1505.16, except that the calculation of Subtitle C § 1505.15 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 and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.~~

## Subtitle C Chapter 13 - Antennas

### ...1307 EXEMPTED ANTENNAS

1307.1 The requirements of Subtitle C §§ 1303 through 1306 shall not apply to any antenna that is:

- (a) Entirely enclosed within a building, but is not the primary use within the building;
- (b) Entirely enclosed on all sides by a penthouse **or rooftop structure**, or an extension of penthouse walls **or screening**; this subsection shall not be interpreted to permit **a** penthouses **or roof structure** in excess of the height limitations **for roof structures**;

1307.2 For the purposes of Subtitle C § 1307.1, penthouse, **rooftop structure**, and parapet walls may include an opaque membrane covering a port in front of the antenna that screens the antenna, blends with the wall and allows the antenna to operate.

...

## Subtitle C CHAPTER 15 PENTHOUSES AND ROOFTOP STRUCTURES

### 1500 INTRODUCTION ~~PENTHOUSE GENERAL REVISIONS~~

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 Except for compliance with the setbacks required by Subtitle C § 1502 and as otherwise noted in this section, a penthouse that is less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of 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.

*Former 1500.3 is moved and replaced by revised 1501 USES § 1501.1(b)*

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;

*Delete former 1500.4 and replace by revised 1501 Uses § 1501.1(a)*

~~1500.4 Notwithstanding Subtitle C § 1500.3, a penthouse, other than screening for rooftop mechanical equipment or a guard rail required by Title 12 of the DCMR, D.C. Construction Code for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse:~~

~~(a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and~~

~~(b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.~~

~~1500.5~~ **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.

*Former 1500.6 - 1500.10 moved to new 1503 ENCLOSING WALLS § 1503.1 – 1503.4*

***Former 1500.11 and 1500.12 deleted and replaced by new 1507.1***

~~1500.11 For residential buildings, the construction of penthouse habitable space, except penthouse habitable space devoted exclusively to communal rooftop recreation or amenity space for the primary use of residents of the residential building, is subject to the Inclusionary Zoning set-aside provisions of Subtitle C, Chapter 10 Inclusionary Zoning.~~

~~1500.12 For non-residential buildings, the construction of penthouse habitable space, including all forms of habitable space, shall trigger the affordable housing requirement as set forth in Subtitle C § 1505.~~

***1501 PENTHOUSE HEIGHT moved to new 1502 HEIGHT***



**1501 USES**

**1500.3 1501.1** A penthouse may house mechanical equipment or any use permitted within the zone, **except as follows with the following limitations:**

~~(a) Penthouse habitable space on a detached dwelling, semi-detached dwelling, rowhouse, or flat shall be limited pursuant to Subtitle C § 1500.4;~~

~~(b) Within residential zones in which the building is limited to thirty-five feet (35 ft.) or forty feet (40 ft.) maximum, the penthouse use shall be limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;~~

(a) A habitable penthouse on the roof of a single household dwelling or flat in any zone, or a conversion pursuant to Subtitle U § 320.2 shall be permitted, provided the penthouse is a maximum of ten feet (10 ft.) in height and one (1) story; and 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; however, the Board of Zoning Adjustment may approve by special exception a penthouse not meeting these limitations, pursuant to Subtitle C § 1506.

~~1500.3 (c) (b) A nightclub, bar, cocktail lounge, or restaurant~~ An eating and drinking establishment within a penthouse, or on a rooftop or rooftop deck located on the highest roof of the building and devoted to an eating and drinking establishment, shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9; or

~~1500.3 (d) (c) Penthouse habitable space~~ or publicly accessible rooftop deck on the highest roof of the building is not permitted 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 shall be permitted only by special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and with written approval by the US Secret Service.

**1501-1502 PENTHOUSE HEIGHT**

**~~1501.1~~ 1502.1 Except as otherwise limited in this Chapter, permitted penthouse height and number of stories shall be as prescribed in the development standards for the applicable zone.**

**~~1501.2~~ 1502.2 Permitted penthouse height and number of stories for a building constructed pursuant to ~~the a~~ planned unit development (PUD) shall be as prescribed for the PUD standards for the applicable zone, pursuant to Subtitle X, Chapter 3.**

**~~1501.3 Architectural embellishments consisting of spires, tower, domes, minarets, 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 the wall on which the architectural embellishment is located.~~**

**~~1501.4~~ 1502.3 Pursuant to § 5 of the Height Act, a penthouse or roof 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.**

**~~1501.5 A chimney or smokestack 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.~~**

**1503 ENCLOSING WALLS OF A PENTHOUSE OR ROOF STRUCTURE**

~~1500.6 All penthouses and mechanical equipment shall be placed in one (1) enclosure, except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure, and shall harmonize with the main structure in architectural character, material, and color.~~

~~1500.6~~ **1503.1** All penthouse and mechanical equipment space shall be ~~placed~~ in one (1) enclosure, except ~~that~~ **for the following:**

**(a) When located on the roof of a public school, public recreation center, or public library;**  
**or**

~~(a)~~ **(b)** A rooftop egress stairwell or elevator enclosure not containing any other form of habitable or mechanical space may be ~~contained~~ within a separate enclosure, and shall harmonize with the main penthouse in architectural character, material, and color.

~~1500.7~~ **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.

~~1500.8~~ **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.

~~1500.9~~ **1503.4** Enclosing walls of a penthouse or screening around uncovered mechanical equipment shall be of equal, uniform height as measured from roof upon which the penthouse sits, except that:

(a) Enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space;

~~(b) For a penthouse containing no habitable space~~ Enclosing walls of penthouse mechanical space shall be of a single uniform height except walls enclosing an elevator override may be of a separate uniform height;

(c) Required screening walls around uncovered mechanical equipment may be of a single, different uniform height; and

**(d) Enclosing walls of a stairwell providing access to a roof need not be of a single uniform height.**

**1500.10 Enclosing walls of a penthouse from roof level shall rise vertically to a roof, with a slope not exceeding twenty percent (20%) from vertical.**

**1502 1504 PENTHOUSE SETBACKS**

**1502.1 Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:**

**1504.1 Except as exempted by C §§ 1504.2 to 1504.4, penthouses and roof structures 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 ~~the~~ a side building wall of the roof upon which it is located if:

~~(1) In any zone, it is on a building used as a detached dwelling, semidetached dwelling, rowhouse or flat, that is: Subtitle C-113~~

~~(A) Adjacent to a property that has a lower or equal permitted matter of right building height, or~~

~~(B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park;~~

~~(2) In the R-1 through R-3 and RF zones, it is on any building not described in Subtitle C § 1502.1(c)(1) that is:~~

~~(A) Adjacent to a property that has a lower or equal permitted matter of right building height, or~~

~~(B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park;~~

~~(3) For zones not listed in paragraph Subtitle C § 1502.1(c)(2), it is on a building not described in paragraph Subtitle C § 1502.1(c)(1) that is located adjacent to a property that has a lower permitted matter of right building height;~~

~~(4) For any zone, it is on a building adjacent to a property improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter of right building height; and~~

~~(5) For any zone, it is on a building with walls that border any court other than closed courts;~~

~~(d) A distance equal to one-half (0.5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of paragraphs Subtitle C §§ 1502.1(c)(1) through (5); or~~

(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 common side lot line has a lower permitted matter-of-right building height; or

(4) The adjacent property along the common side lot line is improved with a building that is a designated landmark or contributing structure to a historic district, that is built to a lower defined height by 10 feet or greater.

(d) A distance equal to its height from building walls that border all sides of an open court on the property; or

~~(d)~~ (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 penthouse constraints contained within adopted PADC Guideline documents.

**1504.2 The setback requirements of 1504.1(a)-(d) (front, rear, side , open court, respectively) shall not apply to:**

(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.), measured from the surface of the roof upon which they sit;

(d) 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;

(e) 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;

**(f) 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**

**(g) Mechanical equipment or screening for mechanical equipment on the roof of a public school, recreation center, or library.**

**1504.3 The setback requirements of 1504.1(b)-(d) (rear, side, open court, respectively) shall further not apply to:**

**(a) For a rooftop deck other than as addressed in C § 1504.2(e), 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 setback requirements of 1504.1(d) (open court) shall further not apply to:**

**(a) A rooftop access stairwell or elevator.**

**1503 PENTHOUSE AREA****1505 ENCLOSED AREA**

**~~1503.1~~ 1505.1** For the purposes of calculating floor area ratio for the building, the aggregate square footage of all penthouse levels or stories 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.

**~~1503.2~~ 1505.2** Penthouses including any combination of mechanical or habitable space, shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits **~~in the following areas:~~**

- ~~(a) Zones or portions of zones where there is a limitation on the number of stories of three (3) or less~~
- (b), for any** property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

**~~1503.3~~ 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**.

**1504 1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE REQUIREMENTS**

**1504.1 1506.1** Relief ~~to~~ **from** the requirements of Subtitle C §§ ~~1500.6 – 1500.10 and 1502 1503~~ **and 1504** may be granted as a special exception by the Board of Zoning Adjustment subject to:

**(a) The general special exception requirements of** Subtitle X, Chapter 9;

~~**(e) (b) The applicant’s demonstration that every 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** ~~subject to~~ the following:  
**considerations:**

~~**(a) (1)**~~ **(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;

~~**(b) (2)**~~ **(2)** The relief requested would result in a better design of the **penthouse or** roof structure without appearing to be an extension of the building wall;

~~**(c) (3)**~~ **(3)** The relief requested would result in a **penthouse or** roof structure that is visually less intrusive; **and**

~~**(d) (4)**~~ **(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.

~~**(e) Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks.**~~

~~**(f) The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.**~~

**1504.2 1506.2** Relief shall not be granted to the setback requirements of Subtitle ~~C § 1502~~ **C § 1504** for a penthouse or roof structure located on a building constructed to the maximum height allowed by the Height Act.

**1504.3 1506.3** A request to add penthouse habitable space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Subtitle X, Chapters 3 and 6 prior to January 8, 2016, 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;**

~~(a)-(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

~~(b)-(c)~~ The Office of Planning shall submit a report with a recommendation a minimum of seven (7) days in advance of the meeting.

**1504.4 1506.4** In addition to meeting the requirements of Subtitle X, Chapter 9, 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

(c) Verification that the affected Advisory Neighborhood Commission has been notified of the request.

~~**1505 AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NONRESIDENTIAL BUILDING OF PENTHOUSE HABITABLE SPACE**~~

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

~~**1505.1 The owner of a non-residential building proposing to construct penthouse habitable space shall produce or financially assist in the production of residential uses that are affordable to low-income households, as those households are defined by Subtitle C, Chapter 10, in accordance with this section.**~~

~~**1505.2 The requirements of this section shall be triggered by the filing of a building permit application that, if granted, would result in the provision of penthouse habitable space exceeding one thousand square feet (1,000 sq. ft.).**~~

**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 HPTF in accordance with the procedures and requirements of 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 C § 1003.7 and C § 1507.5, except:**

- (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.**

~~**1505.3**~~ **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.

~~**1505.4 Qualifying residential uses include single dwelling units, flats, multiple dwelling units, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in Subtitle B.**~~

**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 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 (HPTF), consistent with the provisions of Subtitle C §§ 1507.6 through 1507.10, except that the calculation 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.

~~1505.4 Qualifying residential uses include single dwelling units, flats, multiple dwelling units, including apartment houses, rooming houses, and boarding houses, but shall not include lodging uses, all as defined in Subtitle B.~~

~~1505.5 If the owner constructs or rehabilitates the required housing, the provisions of Subtitle C §§ 1505.6 through 1505.11 shall apply.~~

~~1505.6 The gross square footage of new or rehabilitated housing shall equal:~~

- ~~(a) Not less than one-fourth (1/4) of the proposed penthouse habitable space if the required housing is situated on an adjacent property;~~
- ~~(b) Not less than one-third (1/3) of the proposed penthouse habitable space if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and~~
- ~~(c) Not less than one-half (0.5) of the proposed penthouse habitable space if the location of the required housing is other than as approved in paragraphs (a) and (b) above.~~

~~1505.7 If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing~~

~~1505.8 For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR).~~

~~1505.9 In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first~~

~~certificate of occupancy for the residential development, or if for a single dwelling unit, the effective date of the first lease agreement.~~

~~1505.10 If the required housing is provided for home ownership, it shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a single dwelling unit, the effective date of the first sales agreement.~~

~~1505.11 No certificate of occupancy shall be issued for the owner's building to permit the occupancy of penthouse habitable space until a certificate of occupancy has been issued for the housing required pursuant to this section, or in the case of a residential unit for which a certificate of occupancy is not required, prior to the final building inspection.~~

~~1505.12 If the owner instead chooses to contribute funds to a housing trust fund, as defined in Subtitle B, the provisions of Subtitle C §§ 1505.13 through 1505.16 shall apply.~~

1507.6 When the construction of habitable penthouse space results in a contribution to the HPTF, the contribution amount and timing shall be in accordance with the provisions of C §§ 1507.7 through 1507.10.

~~1505.13 The contribution shall be equal to one-half (0.5) of the assessed value of the proposed penthouse habitable space.~~

~~1505.14 The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the penthouse habitable space.~~

~~1505.15 The contribution shall be determined by dividing the assessed value per square foot of land that comprises the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse habitable space to be constructed.~~

1507.7 The required amount of the HPTF 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; then
- (b) 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; then
- (c) Multiply the value per square foot by the total gross floor area of the penthouse habitable space to be constructed; and

**(d) The contribution shall be equal to one-half (0.5) of this amount.**

**1507.8 For the purposes of the calculation of 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.**

**1505.14(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 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.**

~~1505.16~~ **1507.9** Except as described in 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 or the building on which it is located is subject to a Planned Unit Development or Map Amendment, the HPTF payment required pursuant to 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 HPTF contribution shall be made in accordance with the calculation of 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 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 1507.7 (a), shall be made.

**In Subtitles D through K:**

1. Replace wherever it occurs, in reference to penthouses on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat, the words “~~as prohibited on~~” with “as limited on”;
2. Update references as needed; and
3. Replace where appropriate the term “penthouse” with “penthouse or roof structure”.

**Example:****SUBTITLE D RESIDENTIAL HOUSE (R) ZONES****CHAPTER 2 GENERAL DEVELOPMENT STANDARDS (R)**

...

**CHAPTER 3 RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3**

...

**303 HEIGHT**

...

303.2 The maximum permitted height of a penthouse or roof structure, except as permitted in Subtitle D § ~~303.3~~ 207.7 and ~~as prohibited on~~ as limited on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in Subtitle C § 1501.1, shall be twelve feet (12 ft.) and one (1) story.

...

**Make similar changes in:**

**Subtitle D §§ 403.2, 503.2, 603.2, 703.2, 803.2, 903.2, 1003.2, and 1303.2;**

**Subtitle E §§ 303.7, 403.7, 503.7, and 603.7;**

**Subtitle F §§ 303.1, 403.3, 503.2, and 603.2;**

**Subtitle G §§ 303.1, 403.3, 503.2, 603.2, 703.3, 703.4, 803.2, and 903.2;**

**Subtitle H §§ 303.2, 403.2, 503.2, 603.2, 703.2, 803.2, and 903.2; and**

**Subtitle K §§ 403.5 and 702.4,**