

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: *JL* Joel Lawson, Associate Director, Development Review
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

DATE: January 16, 2020

SUBJECT: ZC Case 14-13__ – Setdown and Pre-Hearing Report for a Proposed Zoning Text Amendment to Penthouse Regulations

I. RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission set down for a public hearing amendments to the zoning regulations to clarify, simplify, and amend various definitions and general regulations regarding both mechanical and habitable penthouse space provisions.

This report serves as the prehearing report required by Subtitle Z § 501. OP requests the flexibility to continue to work with the Office of Attorney General (OAG), to incorporate any requested changes by the Zoning Commission (the Commission) at the setdown meeting and to refine the proposed text as necessary for the public hearing notice.

II. BACKGROUND

The original case, 14-13, was filed in response to requests that OP submit proposed amendments to the zoning regulations to reflect the then recently adopted federal amendments to The Height Act, principally to allow habitable space within penthouses. Because the Zoning Regulations generally were, and remain, more restrictive than what the Height Act amendment would permit, the changes to the Height Act could not be given effect until corresponding changes to the Zoning Regulations were also adopted.

Following extensive discussions and public hearings, the Zoning Commission adopted text amendments on November 9, 2015 to various chapters of the ZR-58 Zoning Regulations. At the time, it was understood that the regulations would be monitored for their effectiveness and impact, and that amendments could be brought forward. There have been four separate minor modifications or technical corrections to the provisions since that time, including:

- 14-13A re affordable housing contributions, approved May 9, 2016;
- 14-13B re vesting, approved May 23, 2016;
- 14-13C re affordable housing contributions, approved June 13, 2016; and
- 14-13D a technical correction re zones where the penthouse is limited to 1/3 of the area of the roof, approved March 26, 2018.

The penthouse regulations were translated into the new ZR-16 Zoning Code, which became effective on September 9, 2016, largely in a new Subtitle C Chapter 15 PENTHOUSES.

Over time, various issues with the regulations have been identified by the Commission, members of the Board of Zoning Adjustment (BZA), staff of the Zoning Administrator (ZA) Office within the Department of Consumer and Regulatory Affairs (DCRA) and other agencies; members of the public, architects, and OP staff. OP has tracked these issues, and worked particularly closely with the ZA, Department of Housing and Community Development (DHCD) staff, and the Office of the Attorney General (OAG) to draft and bring forward the following proposed amendments.

III. ANALYSIS OF THE CURRENT REGULATIONS AND THEIR IMPACT

Existing Regulations:

Prior to the penthouse changes approved in 2015, the zoning regulations included a broad range of regulations related to rooftop construction. The amendments approved in 14-13 not only provided new provisions related to habitable space uses within the penthouse, but also provided revised and in many cases, more detailed regulations regarding where and how penthouse space was permitted. In broad terms, the penthouse regulations approved in 2015:

- Provided new definitions for various forms of penthouse space, including for mechanical vs. habitable penthouse space;
- Essentially removed the distinction between a “penthouse” and a “rooftop structure”;
- Permitted habitable space within the penthouse in most zones and building types;
- Prohibited by-right penthouse space on single family dwellings and flats;
- Included an FAR exemption for mechanical and set amounts of habitable penthouse space;
- Established height, stories, and setback requirements for both mechanical and habitable penthouse space;
- Revised penthouse design related provisions;
- Established a requirement for an affordable housing contribution for most forms of habitable penthouse space, with the exceptions of amenity space on a residential building or habitable penthouse space less than 1,000 sq.ft. in area on a non-residential building; and
- Established a special exception process for varying most penthouse regulations, the main exception being for height which requires variance relief.

Many existing buildings have added habitable space within a penthouse, and many new development proposals have incorporated habitable penthouse space into the building design.

However, OP has continued to consult with staff of DCRA, DHCD, and OAG regarding the effectiveness and ease of interpretation and implementation of the regulations, to identify and discuss issues that require clarification or adjustment to ensure that the regulations are effective, administrable, and enforceable, including a need to:

- Reorganize and simplify the structure of penthouse regulations to make them easier to understand and administer;
- Reintroduce the previous differentiation between enclosed penthouses, and unenclosed rooftop structures such as mechanical equipment;
- Add additional definitions;
- Clarify and simplify the required setback provisions, particularly from side building walls;
- Address the reasonable ability to use roof space in lower density zones;
- Simplify the special exception criteria, currently somewhat redundant and complex; and

- Clarify affordable housing contributions which have resulted in inconsistency and a reduction in the effectiveness of this requirement.

OP and DCRA have been monitoring the impact, effectiveness and ease of both understanding and administering the penthouse provisions adopted in 2016. OP has also consulted with staff of DHCD regarding the affordable housing linkage requirements associated with these provisions. The proposed amendments below reflect these discussions.

OP and DHCD have also tracked BZA and Zoning Commission cases to the end of 2019, and the impacts of the proposal on development and, where possible, the affordable housing linkage and overall development impacts of the habitable penthouse provisions.

BZA cases:

OP identified approximately 70 cases that included some form of BZA relief from Chapter 15, the penthouse provisions. This is about 9% of all BZA cases. Some of these cases involved relief from more than one penthouse provision; approximately half did not require any form of zoning relief other than from penthouse provisions. Over half of these cases were in the multi-family and mixed-use zones; about 1/3 were in the RF zones.

Of these BZA cases, about 65 have proceeded to a public hearing and the BZA had rendered a decision as of the end of 2019. According to the Orders and transcripts for these cases, 64 of the cases were approved by the BZA; the denial was for penthouse access to a roof deck on a new flat in the RF-1 zone. All the cases were recommended for approval by OP, although this was sometimes after the applicant had revised the proposal to better address specific aspects of relief needed. None of the cases included an ANC resolution in opposition to the penthouse relief in the record, although some ANC resolutions did note concerns or conditions, and the ANC did not provide comments in some cases.

The most common forms of BZA relief were:

- from the required setback from a side building wall (C § 1502.1(c)), 50% of the cases;
- from the required setback from a rear building wall (C § 1502.1(b)), 30 % of the cases; and
- to add a penthouse to a building on a single-family dwelling or flat (where a penthouse is not permitted by-right) (C § 1500.4), 21% of the cases.

In the higher density mixed use zones, relief to add a bar / restaurant on a roof ((C § 1500.3) was common, requested in over 40% of the BZA cases including penthouse relief in these zones. BZA, with ANC, neighborhood, and staff review has proven to be effective in addressing potential impacts on these uses on rooftops.

Zoning Commission PUD and Design Review cases:

About 75% of Commission cases included some form of habitable penthouse space. Just over 1/3 of the Commission cases included some form of relief from penthouse related requirements; for which the most common forms of relief requested were:

- from walls of uniform height (C § 1500.9), 41% of the cases;
- to include a bar / restaurant use (C § 1500.3(c)), 24% of the cases;
- from setback from a side building wall (C § 1502.1(c)), 21% of the cases;
- from setback from a court wall (C § 1502.1(d)), 21% of the cases; and
- from number of rooftop enclosures (C § 1500.6), 10% of the cases

Development Impacts of the Penthouse Regulations:

Development and benefits arising from the regulations for by-right projects is not tracked. However, for just the Commission cases noted above, an additional 425,000 sq.ft. of residential space in penthouses has been approved, including both amenity space for residents and additional dwelling units - approximately 280 units in total. In addition, over 125,000 sq.ft. of habitable penthouse space on non-residential buildings has been approved.

Housing Linkage Impacts:

DHCD and OP have tracked aspects of the Commission’s requirement for an affordable housing linkage for most forms of penthouse habitable space. To the end of 2019, the requirement has resulted in about \$14.6 million dollars in contributions to the HPTF, from approximately 150 buildings. This is funding for affordable units above and beyond any other HPTF commitments. The total number of additional affordable dwelling units created in all buildings as a result of the housing linkage has not been tracked. However, OP has examined just the Commission cases which included habitable penthouse space dedicated to units, and for this limited number of projects, the penthouse space resulted in an estimate of 32 additional affordable units, all at 50% MFI. In some cases, the amount of habitable penthouse space did not result in enough square footage for an additional unit, in which case the developer could either create a larger sized unit within the building, or contribute to the HPTF. Many of these units are or will be in parts of the city where the supply of affordable housing is particularly limited.

IV. PROPOSED TEXT AMENDMENTS AND OP ANALYSIS

OP is proposing a series of amendments intended to make the regulations more targeted and effective, and easier to understand and administer. They include proposed amendments to reorganize Subtitle C Chapter 15, Penthouses; to clarify current regulations; and more substantive amendments. A blackline version of the proposed text is provided at Attachment I.

The table below provides a detailed summary of the proposed changes, with OP rationale and analysis of the proposed change. The table is laid out generally in the order in which the provisions appear in the proposed reorganized zoning regulations (Exhibit 1), with section numbers provided for reference.

Proposed Amendment	OP Rationale and Analysis
Throughout the regulations, distinguish enclosed penthouse space and unenclosed mechanical rooftop equipment	This distinction existed in the pre-14-13 regulations. DCRA experience with this change indicates the absence of the rooftop structure provision made administration more difficult, so OP is proposing to reintroduce it.
Subtitle B – Chapter 1 Definitions (B 100.2)	
<ul style="list-style-type: none"> • Provide additional definitions, including “Parapet” and “Structure, Rooftop” 	Requested by DCRA to aid in interpretation and administration of the regulations.
<ul style="list-style-type: none"> • Clarify definitions, including “Penthouse” and “Penthouse Habitable Space” 	Requested by DCRA to aid in interpretation and administration of the regulations.

Proposed Amendment	OP Rationale and Analysis
Subtitle B – Chapter 3 Rules of Measurement	
<ul style="list-style-type: none"> Move general height permissions, not specific to “penthouses” (to B §§ 306.5 and 307.6) 	<p>These provisions, currently located in Subtitle C and in some cases repeated in the zone-specific subtitles, are more appropriately located in Subtitle B, with minor modifications for clarity.</p>
<ul style="list-style-type: none"> Clarify rules of measurement for height, consistent with current practice, for roof hatches, roof membranes, and green roofs. (B §§ 306.7 to 307.9) 	<p>Clarify that roof hatch height is measured in the closed state, and that roof membranes and green roofs do not count towards building height.</p> <p>Clarify where penthouse / roof structure height is measured from and to, including how to measure height on a sloping roof. This proposal is generally consistent with current DCRA interpretation and practice.</p>
Subtitle C Chapter 10 Inclusionary Zoning	
<ul style="list-style-type: none"> Apply the IZ requirement for penthouse space to boarding houses, continuing care retirement communities, and single room occupancy projects (C § 1001.5) 	<p>C § 1001.6 exempts these uses from all IZ requirements, including for penthouse habitable space. The proposal is to include these uses as types of residential development where an affordable housing requirement would apply for habitable penthouse space.</p>
<ul style="list-style-type: none"> Delete C § 1006.10 	<p>Currently, the regulations allow the by-right provision of off-site affordable units resulting from habitable penthouse space, instead of either providing units on site or making a contribution to the HPTF. This provision is rarely if ever used, contributes to confusion regarding the linkage requirement, and has caused administrative difficulties, so it is proposed to be eliminated.</p>
Subtitle C Chapter 13 Antennas	
<ul style="list-style-type: none"> Minor clarifications only 	<p>Wording clarifications only.</p>
Subtitle C Chapter 15 Penthouses (renamed Penthouses and Rooftop Structures)	
<ul style="list-style-type: none"> Reorganization to group similar provisions and provide additional headings. 	<p>Clarification only, for ease of use and administration, including non-substantive wording clarifications, reordering of sections, and the addition of new headings.</p>
1500 Introduction	
<ul style="list-style-type: none"> Clarify how the provisions are to be applied to penthouses and rooftop structures (C §§ 1500.1 through 1500.3) 	<p>The proposal provides clarified wording that all of the penthouse provisions apply to any penthouse or roof structure more than 4 feet (4 ft.) in height, while a penthouse or roof structure less than 4 feet in height above the roof (not the parapet) is subject to setback requirements.</p> <p>C § 1504 provides specific criteria for setbacks for specified kinds of penthouses and rooftop structures.</p> <p>A penthouse located above the Height Act limit for the building would remain subject to the Height Act limitations.</p>

Proposed Amendment	OP Rationale and Analysis
1501 Uses	
<ul style="list-style-type: none"> On low density residential forms of development, permit by right a stair or elevator access and a small storage area, currently permitted by special exception, provided the current special exception conditions are met (C § 1501.1(a)) 	<p>The existing regulations permitted a limited stairway access to a roof of a one family dwelling or flat only by special exception. The proposal is to allow by right a stairway that meets these same conditions, while one that does not meet these conditions would remain permitted by special exception.</p> <p>Over 20% of all cases with BZA penthouse relief, and over 50% of the single-family dwelling or flat cases with penthouse relief in the R and RF zones include relief from this provision. None of the cases included a resolution in opposition from the ANC and all have been supported by OP. All but one have been approved by the BZA.</p> <p>Roof decks are a feature desired by many, particularly in areas with denser rowhouse development where private outdoor space is desired but less possible on the smaller lots of these zones. As such, OP is proposing to remove this procedural barrier to what could be considered a reasonable expectation of a homeowner.</p> <p>In addition, ZC text amendment case 19-21, Roof Top or Upper Floor Elements codifies that a penthouse addition to a house or flat would be required to address potential impacts on neighboring solar panels, and the Building Code currently requires impacts on an adjacent chimney to be addressed, helping to minimize potential impacts of this proposed change. Other provisions currently or proposed as part of this amendment, such as setback requirements and allowing such stairways to not have all walls of equal height (allowing the “bulk” to be reduced to reflect the slope of the stairs below) would further limit potential visual impacts.</p> <p>However, OP acknowledges that roof decks on houses are not supported by all, nor are enclosed stairways to provide access to such decks. The existing special exception review requirement has led to the replacement of some proposed rooftop stairwells with other solutions, such as roof hatches, which may not be as convenient or desirable to some owners, but are less visually prominent. However, OP feels that this is a discussion worth having as part of a public hearing.</p>
<ul style="list-style-type: none"> Restriction on penthouse size on a building limited to 35 or 40 feet (current C § 1500.3 (b)) 	<p>OP is proposing to delete this section, to remove a redundant regulation and to allow additional flexibility in the provision of penthouse space in zones with a stories limit such as RA-1, MU-3, MU-12, and PDR-5 and 6. C § 1501.1(a) would continue to limit penthouse size and placement on single family dwellings and flats, as would setback and other provisions.</p>

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> Allow a restaurant or bar rooftop <u>deck</u> only by special exception, as is currently the case for enclosed rooftop bar or restaurant (C § 1501.1(b)) 	<p>The existing regulations require special exception review of a penthouse housing a nightclub, bar, cocktail lounge, or restaurant use. Although all requests for this relief have been approved, the process has often resulted in revisions to mitigate possible impacts on surrounding properties. As such, OP supports retention of this provision, but is recommending that it also apply to open rooftop decks or patios devoted to commercial eating or drinking establishments, which currently are permitted by right, as a need to address potential impacts are at least as relevant.</p>
<ul style="list-style-type: none"> Within the area proximate to the White House, provide a special exception process for the provision of a habitable penthouse; also apply this to a rooftop deck ((C § 1501.1(c)) 	<p>Currently, a habitable penthouse is not permitted within this defined area, so variance relief is required. To date, there have been three such applications, and all have been approved even though the standard variance test is not well suited to this form of relief.</p> <p>The revised proposal would continue to not allow this use by right, but allow for a more logical special exception process including the provision of a recommendation of support from the US Secret Service. In addition, the review process would be extended to proposals for publicly accessible rooftop decks. OP has provided this proposal to NCPC staff for discussion with the USSS.</p>
1502 Height	
<ul style="list-style-type: none"> No substantive changes; reordering of provisions and moving appropriate ones to Subtitle B, Rules of Measurement where appropriate 	<p>Clarification and ease of use, as well as reducing redundancy.</p> <p>Existing C §§ 1501.3 and 1501.5, which address architectural embellishments, chimneys and smokestacks – not typically considered penthouses or roof structures – would be moved to Subtitle B, so would remain applicable to all development proposals.</p>
1503 Enclosing Walls	
<ul style="list-style-type: none"> Allow mechanical equipment on the roof of a public or charter school, public recreation center, or public library to not all be contained in one enclosure (C § 1503.1(a)) 	<p>Half of the BZA cases for these uses included relief from this provision, and all were approved. The proposed change would mainly facilitate necessary additions and modernizations to existing facilities that required new mechanical equipment to be located on a new roof.</p>
<ul style="list-style-type: none"> Allow a stand-alone elevator override enclosure to not have to be located within the single enclosure permitted (C § 1503.1(b)) 	<p>There have been examples of relief from this provision just for an elevator override, and examples of building owners constructing otherwise unnecessary rooftop structures to connect the elevator override to the main penthouse space, to meet the letter of the provision as existing. Allowing an elevator override to be located free of the main penthouse would result in an additional enclosure on the rooftop, but would add design flexibility and in some cases reduce the amount of structure on the rooftop.</p>

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> Allow a rooftop access stairwell to have walls of unequal height, to allow the walls and roof of the enclosure to slope consistent with the slope of the stairs (C § 1503.4(d)) 	<p>Currently, an enclosed rooftop stair access is required, like all penthouse structures, to have all walls at an equal height, meaning that the stairwell volume be maximized – the roof of the stairwell cannot reflect the slope of the stairs below. The Historic Preservation Office has raised concerns with this provision as it requires that any stairwell visual impact be maximized. Eliminating this requirement would help to minimize the bulk and therefore visual impact of stairwells.</p>
<ul style="list-style-type: none"> Remove a provision requiring that all penthouse walls rise generally perpendicular to the roof (existing C § 1500.10) 	<p>Current regulations require the walls of a penthouse to be generally vertical only – a sloping or inclined wall of more than 20% from vertical is not permitted by right. While this has generally not been raised as a critical issue, it does limit design flexibility, could result in penthouses with greater visibility than might otherwise be the case, and has resulted in administrative difficulties for DCRA. Allowing a greater slope may also maximize the effectiveness of solar panels in some cases, where the panels would be fixed to a penthouse wall.</p> <p>However, if the Commission elects to retain it, OP would propose that it be located as part of this section as a new C § 1503.5.</p>
<p>1504 Setbacks</p>	
<ul style="list-style-type: none"> Clarification of how a penthouse setback is measured (C § 1504.1) 	<p>Language is proposed to clarify how and from where a required penthouse setback is measured, consistent with current DCRA practice – <i>“from a point where a line extending from the top of the roof intersects with the outside face of the building enclosing wall”</i>.</p>
<ul style="list-style-type: none"> Clarify and simplify setback requirements for enclosed penthouses from side building walls, and when a penthouse or rooftop structure may be located on a side building wall with no setback (C § 1504.1(c)) 	<p>The current setback requirements from side building walls are confusing, and particularly difficult to interpret, administer, or adhere to. The result is that the most common form of relief from penthouse regulations, particularly in BZA cases, is for setback from a side building wall – half of all BZA cases with penthouse relief required relief from this provision. All were approved other than one - the rooftop stairwell noted in earlier analysis, although from the record, it not clear if the issue was the setback, the provision of the stairwell penthouse itself, or both.</p> <p>OP is proposing to simplify the provision considerably, and to not require a setback where the potential impact of a penthouse structure on a side lot line would be less likely. The intent, in addition to providing clarity and certainty in the regulation, is to provide additional flexibility for penthouse placement in areas of the roof where potential impacts are minimized. However, a setback would continue to be required where the penthouse would more likely be visible - if the building side wall faces a street or park (such as for a corner lot), if the side wall of the building is set back from the property line, or where the adjacent zoning or historic status would limit the height of the directly adjacent building to less than what the subject site zone would permit.</p>
<ul style="list-style-type: none"> Clarify the setback requirement from an open court (C § 1504.1(d)) 	<p>Clarify that a setback is required from the walls of an open court on the subject property, with the exception of a stairwell or elevator.</p>

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> • More clearly establish when rooftop elements such as guardrails, solar panels, roof hatches, skylights, and green roofs, are not required to meet specific setback requirements (C §§ 1504.2 through 1504.4) 	<p>The current regulations are not clear regarding how various rooftop elements are required to address setback from the building edge; this has caused public confusion and difficulty in interpreting the regulations, and may have impacted the ability of developments to address important objectives such as the provision of green roofs or solar panels.</p> <p>OP is proposing more explicit language, intended to provide additional certainty and clarity in administration, and to encourage the provision or maximization of outdoor amenity space, green roofs, and solar panels on the roof.</p>
<ul style="list-style-type: none"> • Not require a setback for a guardrail or privacy fence for a rooftop deck on the top of a one story detached accessory building (C § 1504.2 (f)) 	<p>This new provision is intended to address a concern raised by an ANC in a formal resolution, requesting that roof decks on an accessory garage not have the privacy fence limited by the required setback. Such roof decks are common in many parts of the city and provide valued outdoor space for residents on what are often small lots. The privacy fences provide a greater sense of privacy for both residents of the building, and neighbors.</p>
<ul style="list-style-type: none"> • Not require a setback for mechanical penthouse or screening on the roof of a public school, recreation center, or library (C § 1504.2 (g)) 	<p>Over half of the BZA cases for these uses included setback relief for mechanical equipment. Because such buildings tend to be low in scale and mechanical equipment placing tends to be an important technical, logistical, and financial concern, OP is proposing that a setback for such equipment not be required.</p>
<ul style="list-style-type: none"> • For specific rooftop elements, require a setback from a front façade, but not from a rear, side, or court wall ((§ 1504.3) 	<p>The elements listed include guardrails for a rooftop deck, certain vents, roof hatches and skylights.</p>
1505 Enclosed Area	
<ul style="list-style-type: none"> • For zones with a number of stories limit, remove the provision limiting mechanical and habitable penthouse to 1/3 of the rooftop area (C § 1505.2) 	<p>This provision limits the size of the penthouse, habitable and mechanical, to a maximum of 1/3 of the area of the roof in all zones which limit height by stories. These zones include the residential R, RF, RA-1, RA-6 and RA-7 zones; the mixed-use zones W-1, C-1, MU-24, MU-25, MU-26, MU-27, and RC-2 zones; and the PDR-5 and PDR-6 zones.</p> <p>While this provision has not often been raised as an issue, OP is proposing to remove this restriction as unnecessary, as other remaining restrictions typically restrict penthouse area to a sufficient or greater degree.</p>
1506 Relief from Penthouse and Rooftop Structures	
<ul style="list-style-type: none"> • Clarify how to apply the special exception provision (C § 1506.1) 	<p>The regulation currently lists the criteria as “considerations”, a term not used elsewhere in the regulations and which has caused confusion. OP is proposing to use language similar to that for the special exemption relief contained elsewhere in the regulations, for consistency and clarity. In addition, the current wording implied that an applicant had to meet all of the listed criteria, which was not the intent, so this is proposed to be clarified.</p>

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> Remove redundant special exception review criteria (existing C § 1504.1(f)) 	<p>This provision is redundant of the general special exception review criteria of Subtitle X Chapter 9.</p>
<ul style="list-style-type: none"> For a minor modification request for a penthouse added to a building approved through a PUD, clarify that the proposed penthouse cannot result in new or additional relief from other zoning provisions (new C § 1506.3(a)) 	<p>The Commission adopted a provision allowing a minor modification process to provide habitable space on an existing building approved through a PUD or Design Review process. This provision has been very successful, with at least 24 such requests resulting in over 170,000 sq.ft. of habitable space including about 60 additional dwelling units, additional affordable units within the building, and over \$1.6 million in Housing Production Trust Fund contributions.</p> <p>OP is proposing a clarifying amendment, that the minor modification process is permitted only if the penthouse does not result in new or expanded zoning relief, so that it would be handled consistent with other requests to amend Orders in a way that results in new or expanded zoning relief.</p>
<p>1507 Affordable Housing Production Requirements</p>	
<p>This section requires the provision of affordable housing or an affordable housing contribution in return for the provision of most forms of habitable space. In general, the regulations require a Housing Production Trust Fund (HPTF) contribution for habitable space on a non-residential building, and require Inclusionary Zoning (IZ) for habitable space on a residential building, except that the IZ space is to be provided at 50% MFI. As noted in Section III of this report, the provision has been successful in providing new affordable units and significant contributions to the HPTF.</p> <p>However, the provision has proven to be somewhat unclear, and sometimes difficult to interpret consistently and equitably. In particular, the methodology for calculating the HPTF calculation requires clarification and additional definitions in the zoning regulations.</p>	
<ul style="list-style-type: none"> Clarify when the requirement for a residential or non-residential penthouse requirement is used (C §§ 1507.1 and 1507.2) 	<p>C §§ 1507.1 and 1507.2 essentially replace existing C §§ 1500.11 and 1500.12, in that they establish the housing linkage requirement for residential and non-residential uses. In addition to the reorganization, additional detail and clarity is provided.</p> <p>In particular, there has been some lack of clarity regarding how to apply the regulations to non-residential habitable penthouse space on an otherwise largely residential building. The proposed regulations clarify that habitable space on a residential building is processed as a residential building, even if the penthouse space is non-residential in character. This is to promote the provision of affordable units within the building wherever possible.</p>
<ul style="list-style-type: none"> Linkage requirement for a penthouse on a single-family dwelling or flat (C § 1507.2(b)) 	<p>Clarifies that the linkage requirement does not apply to the minimal penthouse that may be permitted on a single-family dwelling or flat.</p>
<ul style="list-style-type: none"> Remove the exemption for habitable space on a non-residential building of less than 1,000 sq.ft. (existing C § 1505.2) 	<p>DHCD has indicated that there is no longer any reason to retain this 1,000 sq.ft. trigger, as the processes to administer this requirement are well established. This provision results in inconsistent application of the provision, has caused confusion in some cases, and has resulted in instances of habitable penthouse space of just under 1,000 sq.ft. to avoid the linkage requirement.</p>

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> Continue to require resulting affordable units to be located in the building, but clarify when a HPTF contribution may be made (C § 1507.5) 	<p>This provision provides clarity regarding when an applicant can provide a HPTF payment rather than affordable units on-site.</p>
<ul style="list-style-type: none"> Delete existing C § 1505.4. 	<p>This section details what is considered a residential use for the purposes of the IZ provision, which is currently stipulated in Subtitle C Chapter 10 – Inclusionary Zoning; so OP is proposing to delete this section as redundant (and inconsistent) with C 1001.</p>
<ul style="list-style-type: none"> Remove the option for a developer to provide affordable housing off-site in lieu of on-site IZ units (existing C §§ 1505.5 through 1505.11) 	<p>Currently, the regulations allow the by-right provision of off-site affordable units instead of either providing units on site or contributing to the HPTF. This provision is rarely used and has caused administrative difficulties, so it is proposed to be eliminated.</p>
<ul style="list-style-type: none"> Replace existing C §§ 1505.12 through 1505.15 language for how to calculate a HPTF payment, and replace with clarified language in C §§ 1507.6 through 1507.10. 	<p>The existing methodology was based on existing zoning and Comprehensive Plan language for the provision of a HPTF contribution for non-residential density gained through a PUD, and for street or alley closings in specific instances. Unlike the penthouse provision, these tend to be infrequent and the result of large and complex non-residential developments.</p> <p>OP has worked with DCRA, OAG and DHCD to proposed alternative language which retains the requirement and the methodology, but is more descriptive and specific to penthouse space. While the calculation itself is relatively straight forward, additional language defining terms is needed to provide greater clarity, certainty, and equity in how the provision is administered.</p>
<ul style="list-style-type: none"> o C § 1507.7 – methodology for determining the amount of the contribution 	<p>The proposed language for how do complete the calculation is consistent with the current practice and interpretation of the provision, but is proposed to be more clearly spelled out in the regulations, in an easier to follow series of steps.</p>
<ul style="list-style-type: none"> o C § 1507.8 – clarifications regarding the inputs to the calculation, in various circumstances 	<p>This section provides details and clarifications regarding how to determine the various inputs into the calculation of C § 1507.7, in various situations as identified by DCRA and DHCD:</p> <ul style="list-style-type: none"> what is included in land area (C § 1507.8(a)), to address buildings constructed on multiple lots; how by-right FAR is calculated (C § 1507.8(b)), to address how to calculate permitted FAR, in different types of buildings and in zones which do not have an FAR cap; how land value is calculated to better ensure a reasonable land value (C § 1507.8(c)); and how gross floor area of penthouse habitable space is defined for the purposes of this provision (C § 1507.8(d)).

Proposed Amendment	OP Rationale and Analysis
<ul style="list-style-type: none"> ○ C § 1507.9 and C § 1507.10 	<p>This section essentially retains the requirement of current C § 1505.16 that half of any required HPTF payment is to be made at the time of building permit for the habitable penthouse space, and the other half at the time of certificate of occupancy for the penthouse space.</p> <p>However, DCRA and DHCD staff have noted that basing the contribution calculation on assessed land value at the time of building permit application has led to inequity in the contribution amount. This is because assessed land value at the time of building permit application (which may be well in advance of any building construction) may not have been adjusted to reflect recently adopted changes in land use potential or zoning, such as through the approval of a PUD or zoning map amendment. Analysis of projects which resulted in a HPTF contribution shows that the amount varies considerably, from under \$10 per sq.ft. of habitable penthouse space to over \$140 per sq.ft. Much of this can be explained by the nature and location of the building, but basing land value on the pre-zoning value of the land can also be a significant contributor to some of the very low contributions.</p> <p>For example, the significantly value of an approved PUD with a map amendment from a PDR zone to a high density residential or mixed-use zone may not be reflected in assessed land value at the time that the first building permits are filed for a new building.</p> <p>To address this, OP worked with DHCD, DCRA, and OAG, and consulted with OTR. OP is recommending, in a new C § 1507.10, a process whereby projects which are the result on a rezoning or PUD would provide a second calculation at the time of, but prior to, issuance of a certificate of occupancy for the penthouse space, allowing the contribution amount to “catch up” to the true and approved land value.</p>
Subtitles D through K, Zone Specific Subtitles	
<ul style="list-style-type: none"> • Potentially, to revise the Height section to reflect that a penthouse on a single-family dwelling or flat would no longer be prohibited. 	<p>Currently, the regulations regarding the maximum height of a penthouse or roof structure notes that a penthouse is prohibited on the on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat. If the Commission decides to allow by right the limited form of stairwell access currently permitted by special exception (i.e. the proposed revisions to C § 1501.1(a)), the word “<i>prohibited</i>” would be changed to “<i>limited</i>” in relevant sections of the Zone Subtitles which refer back to the Subtitle C limitation.</p>
<ul style="list-style-type: none"> • Generally, no other proposed changes of significance 	<p>Updates to section references and terminology, mainly to change where appropriate “penthouse” to “penthouse or rooftop structure”.</p>
Subtitles X, Y and Z, BZA and Zoning Commission processes	
<ul style="list-style-type: none"> • No substantive changes 	<p>No major changes proposed, other than to revise section references and terminology as needed, mainly to change where appropriate “penthouse” to “penthouse or rooftop structure”.</p>

V. COMPREHENSIVE PLAN

The Zoning Commission determined that amendments to the penthouse regulations as originally proposed to effectuate the changes to the federal Height Act were not inconsistent with the Comprehensive Plan, and the Comprehensive Plan has not changed significantly since that time.

Many of the proposed modifications in this case are non-substantive, as they are clarifications or re-ordering only. Permitted height, stories, use mix, or area exempt from FAR are not proposed to be changed. Any proposed changes of substance would not be inconsistent with the Comprehensive Plan. As such, these proposed changes would not be inconsistent with the Future Land Use Map; the Generalized Policy Map; or Land Use Element policies. They could further Housing, Urban Design, Economic Development and Implementation Element objectives.

Land Use:

The Land Use Goal is: Ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries. 302.1

Urban Design:

The character of the central city has largely been shaped by the L'Enfant and McMillan Plans and the 1910 Height of Buildings Act. ... The Height Act has resulted in a predominance of structures that are as wide as they are tall, and a street environment that has more in common with Paris than it does with New York, Chicago, and other cities in North America. 902.2

Policy UD-1.1.4: Height Act of 1910

Protect the civic and historical character of the city, particularly the “horizontal” urban quality of Central Washington, by limiting building heights in accordance with the Height Act of 1910. ... 903.10

UD-2.2.B: Using Zoning to Achieve Design Goals.

Explore zoning and other regulatory techniques to promote excellence in the design of new buildings and public spaces. Zoning should include incentives or requirements for façade features, window placement, courtyards, buffering, and other exterior architectural elements that improve the compatibility of structures with their surroundings while promoting high architectural quality. 910.26

Through this amendment, changes to the permitted height of a penthouse or number of stories have not been proposed. Height Act restrictions would remain in place for any penthouse above the Height Act limit. However, since zoning is in most parts of the City more restrictive (often considerably so) than what the Height Act would allow, the amendments proposed in this case would be applicable to projects and penthouses that do not exceed the Height Act.

Housing:

Policy H-1.2.1: Affordable Housing Production as a Civic Priority

Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city. 504.6

Policy H-1.2.7: Density Bonuses for Affordable Housing

Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses

when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood.
504.14

Action H-1.2.C: New Revenue Sources

Identify and tap new sources of revenue for the Housing Production Trust Fund (HPTF) to produce affordable housing and keep rental and owned housing affordable. ... 504.20

Table 25.2: Housing Linkage

The housing linkage objective requires applicants who obtain bonus commercial office space as a result of a discretionary and otherwise appropriate street or alley closing or zoning density increase to produce housing or contribute funds to the production of housing, particularly housing that is affordable to low and moderate-income households throughout the District, in an amount based on a formula tied to the amount or value of the additional commercial office square footage obtained. 2520.1

In 1994, the District of Columbia adopted zoning provisions that linked the granting of bonus density in commercial development projects to requirements for affordable housing. The “linkage” recognized that the demand for housing in the city was driven in part by new commercial development and rising land values. The linkage provisions are currently triggered by:

- *The approval of a "discretionary and otherwise appropriate street or alley closing which results in the provision of additional commercial office space" by the Council; or*
- *The approval of a "discretionary and otherwise appropriate zoning density increase which results in the provision of additional office space" by the Zoning Commission.* (p. 5-14)

The proposed amendments would not have a significant impact, beyond the penthouse provisions previously adopted by the Commission, on housing or density of development. Removing, modifying, or clarifying the specific provisions as proposed, however, is intended to make the penthouse provisions more effective and easier to use, which could encourage more effective utilization of the penthouse provisions. This could result in some additional housing or amenity space for residents, and more equitable housing linkage requirements and additional affordable housing production.

Economic Development:

Policy ED-2.1.1: Office Growth

Plan for an office sector that will continue to accommodate growth in government, government contractors, legal services, international business, trade associations, and other service-sector office industries. The primary location for this growth should be in Central Washington and in the emerging office centers along South Capitol Street and the Anacostia Waterfront. 707.6

Policy ED-2.1.5: Infill and Renovation

Support the continued growth of the office sector through infill and renovation within established commercial districts to more efficiently use available space while providing additional opportunities for new space. 707.10

Clarifying and modifying the regulations as proposed could encourage some additional penthouse space in general, and may help to encourage infill development at a scale and density consistent with existing zoning and Comprehensive Plan direction.

Implementation Element:

Policy IM-1.3.1: Updating Land Use Controls

Regularly review and update the District’s land use controls and building codes to eliminate obsolete regulations and develop new regulations that address emerging issues, land uses, building types, and technologies. 2504.3

OP has been monitoring the penthouse provisions since they were first adopted in 2015, and has coordinated this amendment closely with DCRA, DHCD, and OAG. While many of the penthouse provisions will remain unchanged, the proposed amendments to the penthouse provisions are intended to make the regulations easier to use and more effective, as well as to remove regulations that are redundant or no longer considered necessary or advantageous to the District. Other amendments further encourage progressive energy efficiency elements (green roof, solar panels), a high priority for DC, while other seek to ensure a maximized and more equitable housing linkage requirement.

VI. PROPOSED TEXT AMENDMENTS

Revised text recommended for setdown are attached as Attachment I, with proposed changes shown (proposed additions shown in **bold underline** text, and proposed deletions shown in **~~bold strike-through~~** text). For ease of use, the entirety of Subtitle C Chapter 15 is provided, including existing text to be deleted, text to be modified or clarified, and newly proposed text. Where text is proposed to be moved within the Chapter, that is also noted. For other subtitles, only the specific provisions proposed to be amended are included.

A “clean” version of the proposed text (a version with all of the proposed changes as regular text) is also provided for Subtitle C Chapter 15 (Attachment II).

JS/jl