


MEMORANDUM

TO: District of Columbia Zoning Commission

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

DATE: August 28, 2014

SUBJECT: ZC 14-13: Supplemental Setdown and Pre-hearing Report – Recommendations for a Text Amendment to the Zoning Regulations: Rooftop Penthouse Regulations for All Non-Low Density Residential Development

I. BACKGROUND

At its July 28, 2014 public meeting, the Zoning Commission received a report from the Office of Planning (OP), dated July 24, 2014, describing proposed amendments to the Zoning Regulations pertaining to rooftop penthouses, arising from recent federal amendments to the Height Act.

At the public meeting, the Zoning Commission requested that OP work with the Office of the Attorney General (OAG) to draft proposed text amendment language, prior to set down. The Zoning Commission also noted a number of issues for which it wished to have alternative language prepared for inclusion in the notification.

The Commission provided for a special public meeting to be held on September 4, 2014 to consider setting down the draft text and alternative text for a public hearing.

This report, along with the July 24, 2014 OP report serves as the Pre-Hearing submissions for this case.

II. PROPOSAL AND ZONING COMMISSION COMMENTS

As described in more detail in the July 24, 2014 OP report (ZC Case 14-13 Exhibit 1), the proposal includes the following:

- Allow 20' of height for all rooftop penthouses and uses within rooftop penthouses, except within the low density residential (R-1 to R-4) zones or above a one-family dwelling or flat;
- Generally permit two levels, or stories, within the 20 foot rooftop penthouse height if located entirely below the Height Act limit, except where penthouse height is currently limited (CAP, Ft. Totten, and ARTS overlay zones); within the low density residential (R-1 to R-4) zones; or above a one-family dwelling or flat;
- Eliminate both of the penthouse area limits (percentage of roof area and FAR), allowing the 1:1 setback requirement to dictate the maximum area of a penthouse, except retain the 1/3 of roof area limit in the low density residential zones (R-1 to R-4);
- Allow all forms of habitable space within a rooftop penthouse as permitted by the zone district, except within the R-1 to R-4 zones; and
- In response to the Commission's instructions, provide a linkage between new penthouse habitable space and affordable housing.

The Zoning Commission further requested that alternative text also be prepared and advertised for the following:

- Retain the current permitted height of eighteen feet-six inches for rooftop penthouses; and
- Establish that 1) an equal amount of affordable housing be provided for each square footage of habitable penthouse space, 2) the new affordable square footage be targeted toward low income households, 3) the affordable housing standards be applicable to new habitable penthouse square footage in all parts of the city, including those zones where IZ is otherwise nor applicable.

III. DRAFT TEXT FOR SETDOWN

The draft proposed text is attached as Appendix I, and addresses the points noted above, including the alternative language requested by the Zoning Commission.

With respect to the Commission's requested affordable housing linkage language, the draft text provides additional detail:

- Apply the current Inclusionary Zoning (IZ) program to new residential habitable space (Chapter 26). New residential units in a penthouse would trigger IZ at the rates contained within the current regulations.

For the alternative, provide new IZ provisions for penthouse residential space, requiring a 1:1 affordable housing square footage set aside, for low income households.

- For new habitable penthouse space in a non-residential building, establish an affordable housing requirement that can be satisfied through the provision of housing off-site or a contribution to the Housing Production Trust Fund (HPTF), generally commensurate with the current Housing Linkage program for street / alley closings or for non-residential FAR gained through a PUD (11 DCMR §2404) (new Section 414).

For the alternative, when new or rehabilitated housing is proposed to be provided by the developer (rather than a HPTF contribution), provide for a 1:1 affordable housing requirement.

OP is proposing that this provision would not apply to any rooftop penthouse addition of less than 1,000 square feet to limit the potential impacts on lower density commercial zones where lots tend to be smaller and new development is particularly encouraged, and because OP analysis indicates that the amount of HPTF contribution would be relatively minimal compared to the associated administrative costs.

OP worked closely with the Office of the Attorney General (OAG) in drafting this text. It includes the relevant existing text, with proposed additions shown in **bold underline** and deletions shown as ~~**bold strikethrough**~~ text. Some existing language that is not proposed to be changed is included for ease of reference; for example, the entire language of Chapter 26, Inclusionary Zoning is provided.

In the attachment, the first column represents draft text reflective of the proposal as outlined in the OP setdown report of July 24, 2014; the second column reflects language that the Zoning Commission requested be set down in the alternative. A final column provides additional description of the proposed text.

OP recommends that the attached draft text, including the proposed text and the alternative text, be set down for a public hearing at this time. OP will continue to work with OAG to refine and clarify the text as needed.

	Proposed Language	Alternative Language	Discussion
	<i>reflects the OP report</i>	<i>reflects additional comments from the ZC</i>	
	CHAPTER 1 - DEFINITIONS		
199.1	<u>Height Act - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).</u>	same as "Proposed Language"	<i>Add a new definition for Height Act, replace throughout the text</i>
	<u>Penthouse – A structure on or above the roof of any part of a building. The terms includes all structures previously regulated as “roof structures” by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment. .</u>	same	<i>Add a new definition for penthouse for consistency with Height Act terminology</i>
	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. The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, or stairway or elevator penthouses, or other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.	same	<i>Removes the size limitation on a penthouse before it is considered a story</i>
	Story, top - the uppermost portion of any building or structure that is used for purposes other than housing for mechanical equipment or stairway or elevator penthouses. The term "top story" shall exclude architectural embellishment.	same	
	CHAPTER 4 - RESIDENTIAL	CHAPTER 4 - RESIDENTIAL	
400.7	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure , it shall be erected or enlarged as follows:	Same	
(a)	It shall meet the requirements of § 411;	same	<i>Unchanged</i>
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and	same	<i>Unchanged</i>
(c)	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	same	<i>Limit height of penthouse for SFD's and flats, as previously proposed through ZRR</i>

	Proposed Language	Alternative Language	Discussion
(d)	For all other buildings and structures, it shall not exceed eighteen feet <u>twenty feet (20 ft.)</u>, six inches (18 ft., 6 in.), in height above the roof upon which it is located.	For all other buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.	<i>Proposal – permit 20’ penthouse consistent with Height Act Alternative – retain current height limit</i>
(e)	For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.) , maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.	same	<i>Current 400.8, reworded</i>
400.8	Housing for mechanical equipment, a stairway, or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.		<i>Deleted; addressed above</i>
411	<u>ROOF STRUCTURE PENTHOUSES</u>	same	<i>Name change for consistency, throughout</i>
411.1	<u>A penthouse as defined in § 199.1 shall be subject to the conditions specified in this section regardless of the zone district in which the structure is located.</u> To exercise a reasonable degree of architectural control upon roof structures in all districts, housing for mechanical equipment, stairway and elevator penthouses, and, when not in conflict with An Act To Regulate the Height of Buildings in the District of Columbia, approved June 10, 1920 (36 Stat. 452; D.C. Official Code, §§ 6-601.01 to 6-601.09, on apartment building roofs, penthouses for (a) storage, showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on that roof; and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space, shall be subject to conditions and variable floor area ratio credit specified in this section.	same	

	Proposed Language	Alternative Language	Discussion
411.2	<u>New provision:</u> A penthouse may be used to house mechanical equipment, stairway and elevator overrides, or any use permitted within the zone in which the penthouse is located; except that a penthouse located within the R-1 through R-4 zones, or any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway and elevator overrides, or ancillary space directly associated with a rooftop deck.	same	<i>Establish permitted uses within a penthouse consistent with Height Act, but Limit penthouse uses within the R-1 through R-4 zones and for any SFD or flat, to current permitted uses</i>
411.3	When located below, at the same roof level with, or above the top story of any building or structure, penthouses (as outlined in § 411.1) shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions and variable floor area ratio specified in this section.	When located below, at the same roof level with, or above the top story of any building or structure, penthouses (as outlined in § 411.1) shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions and variable floor area ratio specified in this section.	<i>Current 411.2</i>
411.4	All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color.	same	<i>Current 411.3</i>
411.5	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.	same	<i>Current 411.4, unchanged</i>
411.6	Deleted-Enclosing walls from roof level shall be of equal height, and shall rise vertically to a roof, except as provided in § 411.6.	Enclosing walls from roof level shall be of equal height, and shall rise vertically to a roof, except as provided in § 411.6.	<i>Current 411.5 Proposal – delete to add flexibility Alternative – retain as existings</i>
411.7	When A penthouse consisting solely of mechanical equipment, the equipment shall be enclosed fully as prescribed in §§ 411.4 3 and 411.5 , 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.	same	<i>Current 411.6.</i>
411.8	Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted <u>Gross floor area within a penthouse shall not be included in the calculation of a building's FAR.</u>	same	<i>Current 411.7 Clarify that it is not included in FAR, consistent with the Height Act</i>

	Proposed Language	Alternative Language	Discussion
411.9	<p>Roof structures shall not exceed one-third (1/3) of the total roof area for those districts where there is a limitation on the number of stories.</p> <p><u>A penthouse within the R-1 through R-4 zones, or on any one-family dwelling or flat in any other zone shall not exceed one-third (1/3) of the total roof area.</u></p>	same	<p><i>Current 411.8</i> <i>Limit this provision to low density residential development (so would not apply to other zones with a story limit - R5A, C-1, C3B)</i></p>
411.10	<p>Deleted</p> <p>In addition to the floor area ratio allowed by § 411.7, mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system shall be permitted in addition to roof structures permitted in this section.</p>		<p><i>Current 411.9 Delete as unnecessary under the OP proposal</i></p>
	Repealed		<p><i>Current 411.10</i></p>
411.11	<p>Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that 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.</p> <p><u>Except for the use restriction of § 411.2, the Board of Zoning Adjustment may grant exceptions under § 3104 from any of the requirements or limits of this section and of §§ 530.4, 630.4, 770.6, 840.3, or 930.3 upon a showing that:</u></p> <p><u>(a) Operating difficulties, size of building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;</u></p> <p><u>(b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and</u></p>	same	<p><i>Clarification – no change in substance</i></p>

	Proposed Language	Alternative Language	Discussion
	<u>(c) The light and air of adjacent buildings will not be affected adversely.</u>		
411.12	Deleted For purposes of this section, the rules of interpretation provided in §§ 411.13 through 411.17 shall be applicable.	same	
411.13	Deleted In computing the floor area ratio of a roof structure, the aggregate square footage of all levels or floors contained within a roof structure measuring six and one-half feet (6 1/2 ft.) or more in height shall be included in the total floor area ratio permitted.	same	Delete as not required
411.14	Deleted 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 roof structure to determine if they comply with § 411.8.	same	Delete as not required
411.15	For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by chapter 27 of this title.	same	Retain section for antennas only. Delete remainder as not required
411.16	For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, <u>safety railings required by the construction code</u> , and plumbing vent stacks shall not be considered as <u>roof structure penthouses</u> .	same	
411.17	Roof structure Penthouses less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.	same	
411.18	<u>A penthouse shall be limited to two (2) stories maximum, except that it shall be limited to one (1) story if:</u>	Do not include this section	Proposal - add new section re story limit above and below the Height Act limit. Alternative - do not add
(a)	<u>The penthouse is located on a building that is located within a R-1 through R-4 zone;</u> <u>or</u>	Do not include this section	Limit penthouses to one story for these zones
(b)	<u>The penthouse is located on a one-family dwelling or flat in any zone; or</u>	Do not include this section	Limit penthouses to one story for these types of buildings

	Proposed Language	Alternative Language	Discussion
(c)	<u>Any portion of the height or volume of the penthouse is located above the height limit established by The Height Act for the site.</u>	Do not include this section	<i>Limit penthouses to one story if any part of its volume is above the height limit</i>
411.19	<u>There shall be no limitation on the amount of gross floor area that may be occupied by a penthouse, although penthouse residential GFA is subject to the Inclusionary Zoning set-aside provisions of § 2609 and the construction of penthouse non-residential GFA in excess of 1,000 square feet (1,000 sq.ft) triggers the affordable housing production requirement as set forth in § 414.</u>	Same	<i>Clarification based on proposal and references to affordable housing triggers</i>
412	<u>No change</u>	No change	
413	<u>No change</u>	No change	
414	<u>AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA</u>	Same	
414.1	<u>The owner of a building proposing to construct more than one thousand square feet (1,000 sq.ft.) of penthouse non-residential gross floor area shall produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low income households, as those households are defined by § 2601.1, in accordance with this section.</u>	Same	<i>Establishes requirement; 1,000 sq.ft. threshold for admin purposes For low income households</i>
414.2	<u>For the purposes of this section, the term “penthouse non-residential gross floor area” shall mean all of the gross floor area of a penthouse not occupied by dwelling units; space accessory to rooftop deck space such as storage, rest rooms, or change rooms; mechanical equipment; stairway; or elevator overrides.</u>	same	<i>Define area included in affordable housing requirement, to exclude mechanical and access space and ancillary space for decks currently permitted.</i>
414.3	<u>The requirements of this section shall not apply to properties:</u> <u>(a) Subject to the minimum residential use requirement of §§ 1706.4 through 1706.6; or</u> <u>(b) Owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.</u>	Same	<i>Exemptions from the requirement</i>

	Proposed Language	Alternative Language	Discussion
<u>414.4</u>	<u>Qualifying residential uses include one-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.</u>	Same	<i>Define what forms of residential would satisfy this requirement</i>
<u>414.5</u>	<u>If the owner constructs or rehabilitates the required housing, the provisions of §§ 414.6 through 414.10 shall apply.</u>	same	<i>Provisions if the developer meets this requirement by providing affordable housing</i>
<u>414.6</u>	<p><u>The gross square footage of new or rehabilitated housing shall equal</u></p> <p><u>(a) Not less than one-fourth (1/4) of the proposed penthouse non-residential gross square area if the required housing is situated on an adjacent property;</u></p> <p><u>(b) Not less than one-third (1/3) of the proposed penthouse non-residential gross square area 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</u></p> <p><u>(c) Not less than one-half (1/2) of the proposed penthouse non-residential gross square area if the location of the required housing is other than as approved in paragraphs (a) and (b) above;</u></p>	<p><u>The gross square footage of new or rehabilitated housing shall equal one square foot of density for low-income households for every one square foot of new penthouse non-residential gross floor area, other than as exempted in § 414.3.</u></p>	<p><i>Established required amount if the developer is providing affordable housing on or more likely off site.</i></p> <p><i>Proposal – consistent with housing linkage requirement for a PUD (§2404.6)</i></p> <p><i>Alternative – more extensive requirement (1:1)</i></p>
<u>414.7</u>	<u>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 ft.²); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing;</u>	Same	<i>Consistent with housing linkage requirement for a PUD (§2404.6)</i>
<u>414.8</u>	<u>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).</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.6)</i>

	Proposed Language	Alternative Language	Discussion
<u>414.9</u>	<u>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 one-family dwelling the effective date of the first lease agreement.</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.6)</i>
<u>414.10</u>	<u>If the required housing is provided for home ownership shall be the 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 one-family dwelling the effective date of the first sales agreement.</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.6)</i>
<u>414.11</u>	<u>No certificate of occupancy shall be issued for the Owner's building to permit the occupancy of penthouse non-residential gross floor area until a certificate of occupancy has been issued for the housing required pursuant to this section.</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.6)</i>
<u>414.12</u>	<u>If the owner instead chooses to contribute funds to a housing trust fund, as defined in 2499.1, the provisions of §§ 414.13 through §414.16 shall apply.</u>	same	<i>Provisions if the developer meets this requirement by contributing to the Housing Production Trust Fund (HPTF)</i>
<u>414.13</u>	<u>The contribution shall be equal to one-half (1/2) of the assessed value of the proposed penthouse non-residential gross floor area for office use;</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.7)</i>
<u>414.14</u>	<u>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 non-residential gross floor area</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.7)</i>
<u>414.15</u>	<u>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 non-residential gross square feet to be constructed.</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.7)</i>

	Proposed Language	Alternative Language	Discussion
414.16	<u>Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse non-residential gross floor area, 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 non-residential gross floor area.</u>	same	<i>Consistent with housing linkage requirement for a PUD (§2404.9)</i>
	CHAPTER 5 - SP		
530.4	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	same	
530.5	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	same	
(a)	It shall meet the requirements of § 411;	same	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and	same	
(c)	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	same	<i>Limit height of penthouse for SFD's and flats, as previously proposed through ZRR</i>
(d)	It <u>For all other buildings and structures, it shall not exceed eighteen feet twenty feet (20 ft.), six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>	<u>For all other buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.</u>	<i>Proposal – permit 20' penthouse consistent with Height Act Alternative – retain current height limit</i>
(e)	<u>For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.</u>	<u>For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.</u>	<i>Current 530.6 reworded</i>
530.6	Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.	same	

	Proposed Language	Alternative Language	Discussion
530.7	Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))) , the Height Act, a height in excess of that permitted shall be authorized by the Mayor.	same	
537	ROOF STRUCTURES PENTHOUSES (SP)	same	<i>Name change for consistency</i>
537.1	The provisions of § 411 shall also regulate roof structure penthouses in SP Districts.	same	
537.2	The gross floor area of roof structure penthouses permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	same	
	CHAPTER 6 - CR		
630	HEIGHT OF BUILDINGS OR STRUCTURES (CR)	Same	
630.3	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	same	
630.4	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	same	
(a)	It shall meet the requirements of § 411;	same	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and	same	
(c)	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	same	<i>Limit height of penthouse for SFD's and flats, as previously proposed through ZRR</i>
(d)	<u>For all other buildings and structures, it shall not exceed eighteen feet twenty feet (20 ft.), six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>	<u>For all other buildings and structures,</u> it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.	<i>Proposal – permit 20' penthouse consistent with Height Act Alternative – retain current height limit</i>

	Proposed Language	Alternative Language	Discussion
(e)	For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.) maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.	For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.	Current 630.5 reworded
630.5	Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.		
639	ROOF STRUCTURE PENTHOUSES (CR)		
639.1	The provisions of § 411 shall apply to roof structure penthouses in CR Districts.	same	
639.2	The gross floor area of roof structure penthouses permitted under this section shall not be counted in determining the required number of off-street parking spaces or loading berths as required elsewhere in this chapter.	same	
	CHAPTER 7 - C		
760.2	Beyond the general purposes specified in § 760.1, the C-5 (PAD) District shall be established to:	same	
(a)	Encourage development to the potential permitted under the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), The Height Act along a portion of the north side of Pennsylvania Avenue, N.W., as designated in that Act and the Pennsylvania Avenue Plan - 1974;	same	
770	HEIGHT OF BUILDINGS OR STRUCTURES (C)		
770.3	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	same	

	Proposed Language	Alternative Language	Discussion
770.6	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	same	
(a)	It shall meet the requirements of § 411;	same	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;	same	
(c)	In the C-5 (PAD) District, it shall be set back from that portion of the perimeter of the roof fronting on a street a minimum distance equal to twice the height of the roof structure <u>penthouse</u> above the roof upon which it is located; and	same	
<u>(d)</u>	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	same	<i>Limit height of penthouse for SFD's and flats, as previously proposed through ZRR</i>
<u>(e)</u>	<u>For all other buildings and structures, it shall not exceed eighteen feet <u>twenty feet (20 ft.)</u>, six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>	<u>For all other buildings and structures</u> , it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.	<i>Proposal – permit 20' penthouse consistent with Height Act Alternative – retain current height limit</i>
<u>(f)</u>	<u>For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), <u>maximum permitted</u> height of the housing, as specified in paragraphs (d) and (e) above.</u>	<u>For all buildings and structures</u> , mechanical equipment shall not extend above the <u>maximum permitted</u> height of the housing, as <u>specified in paragraphs (d) and (e) above.</u>	<i>Added for consistency</i>
770.8	Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.)) <u>The Height Act</u> , a height in excess of that permitted shall be authorized by the Mayor.	same	
770.9	The height permitted for a building eligible for the additional density permitted pursuant to § 771.4 shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09) <u>The Height Act</u> .	same	
777	<u>ROOF STRUCTURE PENTHOUSES (C)</u>	same	
777.1	The provisions of § 411 shall also regulate roof structure <u>penthouses</u> in the Commercial Districts.	same	

	Proposed Language	Alternative Language	Discussion
777.2	The gross floor area of roof structure penthouses permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	same	
	CHAPTER 8 - INDUSTRIAL		
840	HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)	same	
840.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	same	
840.3	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	same	
(a)	It shall meet the requirements of § 411;	same	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and	same	
(c)	<u>For all buildings and structures, it shall not exceed eighteen twenty feet (20 ft.) in height above the roof upon which it is located.</u> It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.	<u>For all buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>	<i>Proposal – permit 20’ penthouse consistent with Height Act Alternative – retain current height limit</i>
(d)	<u>For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the housing, as specified in paragraphs (c) above.</u>	<u>For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the housing, as specified in paragraphs (c) above.</u>	<i>Current 840.6 reworded</i>
840.4	<u>Deleted</u> Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the District in which it is located.		

	Proposed Language	Alternative Language	Discussion
840.5	Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.)) , The Height Act , a height in excess of that permitted in that Act shall be authorized by the Council of the District of Columbia.	same	
845	ROOF STRUCTURE PENTHOUSES (C-M, M)	same	
845.1	Section 411 shall be applicable to roof structure penthouses in the Industrial Districts.	same	
845.2	The gross floor area of roof structure penthouses permitted under § 411 shall not be counted in determining the amount of off-street parking required elsewhere in this title.	same	
	CHAPTER 9 - WATERFRONT		
930	HEIGHT OF BUILDINGS OR STRUCTURES (W)	same	
930.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.	same	
930.3	If housing for mechanical equipment or a stairway or elevator a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	same	
(a)	It shall meet the requirements of § 411;	same	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and	same	
<u>(c)</u>	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	same	<i>Limit height of penthouse for SFD's and flats, as previously proposed through ZRR</i>
<u>(d)</u>	<u>For all other buildings and structures, it shall not exceed eighteen feet twenty feet (20 ft.), six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>	<u>For all other buildings and structures,</u> it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.	<i>Proposal – permit 20' penthouse consistent with Height Act Alternative – retain current height limit</i>

	Proposed Language	Alternative Language	Discussion
(e)	Mechanical For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), <u>maximum permitted</u> height of the housing, <u>as specified in paragraphs (c) and (d) above.</u>	For all buildings and structures, mechanical equipment shall not extend above the <u>maximum permitted</u> height of the housing, <u>as specified in paragraphs (c) and (d) above.</u>	Current 930.4 reworded
930.4	Deleted Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.		
930.5	Roof structure Penthouses less than ten (10) feet in height above a roof or parapet wall of a structure in the W-0 District on Kingman Island shall not be subject to the requirements of this section when the top of the roof structure penthouse is below maximum building height prescribed for the W-0 District.	same	
936	<u>ROOF STRUCTURE PENTHOUSES</u> (W)	same	
936.1	The provisions of § 411 shall apply to roof structure penthouses in the Waterfront Districts.	same	
936.2	The gross floor area of roof structure penthouses permitted under this section shall not be counted in determining the required number of off-street parking spaces or loading berths as specified elsewhere in this title.	same	
	CHAPTER 12 - CAP		
1203.1	Except as specified in § 1203.2 and in chapters 20 through 25 of this title, the height of buildings or structures in the CAP Overlay District shall not exceed forty feet (40 ft.) or three (3) stories in height.	same	unchanged
1203.2	The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:	same	unchanged
(a)	A spire, tower, dome, minaret, pinnacle, or penthouse over elevator shaft may be erected to a height in excess of that authorized in § 1203.1; and	same	

	Proposed Language	Alternative Language	Discussion
(b)	<p>If erected or enlarged as provided in § 411, housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that:</p> <ol style="list-style-type: none"> the housing It is set back from all lot lines of the lot upon which the structure is located a distance equal to its height above the roof of the top story; and In any case, a roof structure It shall not exceed ten feet (10 ft.) or one story in height above the roof upon which it is located. 	same	<p><i>Re-formatting for ease of use,</i> <i>Retains the 1:1 setback and the 10' maximum height limit in this zone, and establishes a one story limit</i></p>
1203.4	<p>All provisions of § 411 shall also apply to roof structures in the CAP Overlay District. The gross floor area of roof structure penthouses permitted under this subsection shall not be counted in determining the amount of off-street parking as required elsewhere in this title.</p>	same	<p><i>Duplicative portion eliminated</i></p>
	CHAPTER 15 NO OVERLAY	same	
1534	HEIGHT, AREA, AND BULK REGULATIONS (NO)	same	
1534.1	The maximum permitted building height in the NO Overlay District shall not exceed forty feet (40 ft.).	same	
1534.4	All provisions of § 411 shall also apply to roof structure penthouses in the NO Overlay District.	same	
	CHAPTER 15 FT TOTTEN OVERLAY		
1563.4	The maximum height and bulk of a new building for a newly established use in the underlying CR District shall be eighty-feet (80 ft.) in height, inclusive of penthouse which shall be limited to one story roof structure , and 5.0 floor area ratio.	same	<p><i>Retains 80' height limit for buildings including the penthouse, and establishes a one story limit.</i></p>
1563.5	Buildings proposed to have a height in excess of sixty-five feet (65 ft.) shall provide special architectural features, roof parapet detailing, and design consideration of rooftop and penthouses structures to ensure that the views and vistas from the historic fortification of Fort Totten are not degraded or obstructed. The D.C. Office of Planning shall review and provide a report with recommendation.	same	

	Proposed Language	Alternative Language	Discussion
	CHAPTER 19 – ARTS OVERLAY		
1902.1	In the underlying C-3-A District, a building may be constructed in excess of the height limit of sixty-five feet (65 ft.), up to a maximum height of seventy-five feet (75 ft.); provided:	Same	
(a)	No roof structure penthouse permitted by this title shall exceed a height of eighty-three and one-half feet (83 1/2 ft.) above the measuring point used for the building, or exceed one story ; and	Same	<i>Retains height limit for penthouses in this zone and establishes a one story limit.</i>
	CHAPTER 25 – MISC ZONING REQUIREMENTS		
2522	MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING		
2522.1	The Zoning Administrator is authorized to permit the following deviations...:	same	
(a)	Deviations not to exceed two percent (2%) of the area requirements governing minimum lot area, percentage of lot occupancy, and areas of courts and roof structures;	same	
(c)	Deviations not to exceed the greater of ten percent (10%) or twelve (12) inches of the linear requirements governing rear yard, side yard, and minimum dimensions of the court and court niche and roof structure penthouse setback requirements , provided that all deviations of roof structure penthouse setback requirements comply with the (Height) Act <u>The Height Act</u>.	same	<i>Clarifies existing ZA flexibility</i>

	Proposed Language	Alternative Language	Discussion
	CHAPTER 26 INCLUSIONARY ZONING	<i>For ease of use, the entire language of this section has been provided, including sections not proposed in this initiative to be changed</i>	
2601	DEFINITIONS		
	Unchanged	<p><u>Designated area– Any one of the following areas:</u></p> <p><u>(1) The Downtown Development or Southeast Federal Center Overlay Districts;</u></p> <p><u>(2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;</u></p> <p><u>(3) The W-2 zoned portions of the Georgetown Historic District;</u></p> <p><u>(4) The R-3 zoned portions of the Anacostia Historic District;</u></p> <p><u>(5) The C-2-A zoned portion of the Naval Observatory Precinct District; and</u></p> <p><u>(6) The Eighth Street Overlay.</u></p>	<p><i>Proposal– Unchanged;</i></p> <p><i>Alternative - moved existing text from 2602.3.</i></p> <p><i>These properties are presently exempt from IZ. In order to apply an IZ requirement to penthouse GFA in these areas, they were removed from the exemptions and made a defined term for ease of later referral.</i></p>
2602	APPLICABILITY		
2602.1	Except as provided in § 2602.3, the requirements and incentives of this Chapter shall apply to developments that:	Same	
(a)	Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;	Same	<i>Portion deleted as duplicative of 2602.1</i>
(b)	Have ten (10) or more dwelling units (including off-site inclusionary units; and	same	<i>Unchanged</i>
(c)	Are either:	same	
(1)	New multiple-dwellings;	same	<i>Unchanged</i>
(2)	New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or	same	<i>Unchanged</i>

	Proposed Language	Alternative Language	Discussion
(3)	An existing development described in subparagraph (a) or (b) for which: (A) A new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; or (B) <u>Any existing building, including one described in subparagraph (3)(A) above, that includes a penthouse with gross floor area devoted to residential uses.</u>	same	<i>New reference to penthouse space provision</i>
2602.2	A new development with less than ten (10) dwelling units shall become subject to this Chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a two-year period after the issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.	same	<i>Unchanged</i>
2602.3	This Chapter shall not apply to:	same	
(a)	Hotels, motels, inns, or dormitories;	same	<i>Unchanged</i>
(b)	Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;	same	<i>Unchanged</i>
(c)	Housing that is owned or leased by foreign missions exclusively for diplomatic staff;	same	<i>Unchanged</i>
(d)	Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments.	same	<i>Unchanged</i>
(e)	Properties located in any of the following areas:	Properties located in any of the following areas:	<i>Proposal – unchanged; Alternative - moved to a definition in order to make these areas subject to the penthouse requirement</i>
(i)	The Downtown Development or Southeast Federal Center Overlay Districts;	The Downtown Development or Southeast Federal Center Overlay Districts;	
(ii)	The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;	The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;	
(iii)	The W-2 zoned portions of the Georgetown Historic District;	The W-2 zoned portions of the Georgetown Historic District;	

	Proposed Language	Alternative Language	Discussion
(iv)	The R-3 zoned portions of the Anacostia Historic District; and	The R-3 zoned portions of the Anacostia Historic District; and	
(v)	The C-2-A zoned portion of the Naval Observatory Precinct District.	The C-2-A zoned portion of the Naval Observatory Precinct District.	
(vi)	The Eighth Street Overlay.	The Eighth Street Overlay.	
(f)	Any development financed, subsidized, or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7.	same	<i>Unchanged</i>
2602.4	Except as provided in §§ 2602.5, 2603.5 and 2607.1 (c), or the Act, all inclusionary units created pursuant to this Chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.	same	<i>Unchanged</i>
2602.5	An owner/occupant of an inclusionary unit may not sell the unit at a price greater than that established by the Mayor pursuant to § 103 of the Act unless the price is offered by the Mayor or a Housing Trust authorized by the Mayor.	same	<i>Unchanged</i>
2602.6	No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.	same	<i>Unchanged</i>
2602.7	A development exempted under § 2602.3 (f) shall be subject to the following provisions:	same	<i>Unchanged</i>
(a)	The development shall set aside, for low or moderate-income households, affordable dwelling units (“Exempt Affordable Units”) equal to at least the gross square footage that would have been required pursuant to §§ 2603.1 and 2603.2. The terms “low-income household” and “moderate-income household” shall have the same meaning as given them by the federal or District funding source, or financing or subsidizing entity, and shall hereinafter be referred to collectively as “Targeted Households”;	same	<i>Unchanged</i>

	Proposed Language	Alternative Language	Discussion
(b)	The Exempt Affordable Units shall be reserved for the Targeted Households and sold or rented in accordance with the pricing structure established by the federal or District funding source, or financing or subsidizing entity, for so long as the project exists;	same	Unchanged
(c)	The requirements set forth in § 2602.7 (a) and (b) shall be stated as declarations within a covenant approved by the District; and	same	Unchanged
(d)	The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include one-family dwellings, the covenant shall be recorded before the first purchase agreement or lease is executed.	same	Unchanged
2602.8	No exemption may be granted pursuant to § 2602.3 (f) unless the Zoning Administrator receives a written certification from the DHCD Director that the development meets the requirements of § 2602.7 (a) and (b).	same	Unchanged
2602.9	A development exempted by § 2602.3 (f) may, nevertheless, utilize the bonus density and zoning modifications provided for in § 2604 and the zoning overlay provisions of Chapters 11 - 16, 18, or 19.	same	Unchanged
2603	SET-ASIDE REQUIREMENTS	SET-ASIDE REQUIREMENTS	
2603.1	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use <u>including floor area devoted partially or entirely to one or more dwelling units within a penthouse,</u> or 75% of the bonus density being utilized for inclusionary units.	<u>In addition to the set-aside requirement of § 2603.9 if applicable,</u> an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use <u>exclusive of penthouse gross floor area,</u> or 75% of the bonus density being utilized for inclusionary units. <u>This requirement does not apply to a development located in a designated area, or to an existing building other than one described in § 2602.1 (c)(3)(A).</u>	<i>Proposal – clarifies that penthouse residential GFA is included in the existing set-aside computation.</i> <i>Alternative – does not include penthouse residential GFA in the existing set-aside computation because new §§2603.8 will impose a 1:1 set-aside that will apply to existing and formerly exempt properties and all existing buildings. Because the formerly exempted properties (“designated areas” should still not be subject to this general set-aside they are expressly excluded.</i>

	Proposed Language	Alternative Language	Discussion
2603.2	An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use <u>including floor area devoted partially or entirely to one or more dwelling units within a penthouse</u> , or 50% of the bonus density being utilized for inclusionary units.	<u>In addition to the set-aside requirement of § 2603.9 if applicable</u> , an inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use <u>exclusive of penthouse gross floor area</u> , or 50% of the bonus density being utilized for inclusionary units. <u>This requirement does not apply to a development located in a designated area. or to an existing building other than one described in § 2602.1 (c)(3)(A).</u>	
2603.3	Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0 and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.	Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0 and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units <u>provided pursuant to §§ 2603.1 or 2603.2</u> for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.	<i>Alternative – new language needed because these same properties also may be required to provide Inclusionary Units generated by penthouse GFA to low- income households</i>
2603.4	Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units for eligible moderate-income households.	Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units <u>provided pursuant to §§ 2603.1 or 2603.2</u> for eligible moderate-income households.	<i>Alternative – new language needed because these same properties also may be required to provide Inclusionary Units generated by penthouse GFA to low- income households</i>
2603.5	The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units <u>required by this Chapter</u> in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.	same	<i>Clarification only</i>

	Proposed Language	Alternative Language	<i>Discussion</i>
2603.6	Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units required by this Chapter in a for-sale inclusionary development if any of the following circumstances exist:	same	<i>Clarification only</i>
(a)	There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or	same	<i>Unchanged</i>
(b)	Title to the units has been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.	same	<i>Unchanged</i>
2603.6	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an StE District shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use for inclusionary units.	same	<i>Unchanged</i>
2603.7	An inclusionary development of steel and concrete frame construction located in an StE District shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in an StE District.	same	<i>Unchanged</i>
<u>2603.8</u>		<u>Subsections 2603.9 and 2603.10 shall apply to all Inclusionary Developments applying for a building permit to construct new residential gross floor area located within a penthouse.</u>	<i>New provision, re inclusionary units provided for penthouse residential area</i>
<u>2603.9</u>		<u>An inclusionary development described in s§ 2603.8 shall devote one square foot of gross floor area for inclusionary units set-aside for eligible low-income households for every square foot of residential gross floor area contained in the building's penthouse.</u>	<i>Require 1:1 set aside, for low density (50% AMI) households</i>

	Proposed Language	Alternative Language	Discussion
2603.10		<u>For new residential gross floor area located within a penthouse on an existing building, inclusionary units provided in accordance with § 2603 may be provided on-site; or may be provided off-site, subject to the requirements of §§2607.4 to 2607.8; and provided the off-site development meets the conditions of § 2607.2.</u>	<i>Allows more flexibility to locate off-site if a penthouse addition to an existing building where on-site provision would be more difficult</i>
2604	BONUS DENSITY	BONUS DENSITY	
2604.1	Inclusionary developments subject to the provisions of this Chapter, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by The Height Act, the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).	Inclusionary developments subject to the provisions of this Chapter §§ 2603.1 or § 2603.2, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by <u>The Height Act, the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).</u>	<i>Proposal – makes conforming change to Height Act reference.</i> <i>Alternative – adds language to make it clear that an existing building that adds residential penthouse GFA is not entitled to additional bonus density.</i>
2604.2	Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density: <i>(table unchanged)</i>	same	<i>Unchanged</i>
2605	DEVELOPMENT STANDARDS	DEVELOPMENT STANDARDS	
2605.1	REPEALED	REPEALED	
2605.2	The proportion of studio, efficiency, and one-bedroom inclusionary units to all inclusionary units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units.	Same	<i>Unchanged</i>
2605.3	All inclusionary units shall be comparable in exterior design, materials, and finishes to the market-rate units.	Same	<i>Unchanged</i>
2605.4	The interior amenities of inclusionary units (such as finishes and appliances) shall be comparable to the market-rate units, but may be comprised of less expensive materials and equipment.	Same	<i>Unchanged</i>

	Proposed Language	Alternative Language	<i>Discussion</i>
2605.5	All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development, the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units.	Same	<i>Unchanged</i>
2605.6	Inclusionary units shall not be overly concentrated on any floor of a project.	Same	<i>Unchanged</i>
2606	EXEMPTION FROM COMPLIANCE	EXEMPTION FROM COMPLIANCE	
2606.1	The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant economically viable use of its land.	same	<i>Unchanged</i>
2606.2	No application for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.	same	<i>Unchanged, although OAG has identified unrelated corrections to be made to this section</i>
2607	OFF-SITE COMPLIANCE	OFF-SITE COMPLIANCE	
2607.1	The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:	same	<i>Unchanged</i>
(a)	Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;	same	<i>Unchanged</i>
(b)	The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or	same	<i>Unchanged</i>
(c)	For a rental development the owner of which wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible.	same	<i>Unchanged</i>
2607.2	An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:	same	<i>Unchanged</i>

	Proposed Language	Alternative Language	Discussion
(a)	Is located within the same census tract as the inclusionary development;	same	<i>Unchanged</i>
(b)	Consists of new construction for which no certificate of occupancy has been issued;	same	<i>Unchanged</i>
(c)	Is at a location suitable for residential development;	same	<i>Unchanged</i>
(d)	Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;	same	<i>Unchanged</i>
(e)	Has not received any development subsidies from federal or District government programs established to provide affordable housing;	same	<i>Unchanged</i>
(f)	Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;	same	<i>Unchanged</i>
(g)	Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and	same	<i>Unchanged</i>
(h)	Has not utilized bonus density beyond that provided by § 2604.1	same	<i>Unchanged</i>
2607.3	The requirement of § 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.	same	<i>Unchanged</i>
2607.4	Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.	same	<i>Unchanged</i>
2607.5	No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.	same	<i>Unchanged</i>
2607.6	The covenant shall bind the owner and all future owners of the off-site development to:	same	<i>Unchanged</i>

	Proposed Language	Alternative Language	<i>Discussion</i>
(a)	Construct and reserve the number of inclusionary units allowed to be accounted for off-site, in accordance with the plans approved by the Board and the conditions of the Board's order;	same	<i>Unchanged</i>
(b)	Sell or rent, as applicable, such units in accordance with the provisions of this Chapter and the Act for so long as the off-site development remains in existence;	same	<i>Unchanged</i>
(c)	Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;	same	<i>Unchanged</i>
(d)	Acknowledge that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and	same	<i>Unchanged</i>
(e)	Not request special exception or variance relief with respect to the obligations accepted or its own obligations under this Chapter.	same	<i>Unchanged</i>
2607.7	Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this Chapter and the Act.	same	<i>Unchanged</i>
2607.8	No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.	same	<i>Unchanged</i>
2608	APPLICABILITY DATE	APPLICABILITY DATE	
2608.1	The provisions of §§ 2600 through 2607 of this Chapter as adopted by Zoning Commission Orders No. 04-33, 04-33A, and 04-33B and all amendments made by Orders No. 04-33A and 04-33B to 11 DCMR Chapters 1, 11 through 14, 15, 16, and 19 shall become effective upon the publication of the first purchase/rental schedule in the D.C. Register.	same	<i>Unchanged</i>

	Proposed Language	Alternative Language	<i>Discussion</i>
2608.2	The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.	<u>With the exception of §§ 2603.8 through 2603.10</u> , the provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.	<i>Proposal - Unchanged Alternative – add reference to new penthouse section</i>
<u>2608.3</u>	<u>A request to add penthouse residential space to a building approved by the Zoning Commission as a Planned Unit Development or through the design review requirements of Chapters 16, 18, 28, or 29 shall be deemed a minor modification that may be approved without a hearing through the consent calendar procedures of § 3030.</u>	same	<i>Allow proposal to add penthouse space to an approved PUD site as a minor modification consent calendar item</i>
	CHAPTER 27 - REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES		
2707	EXEMPTED ANTENNAS		
2707.1	The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:		
(b)	Entirely enclosed on all sides by a roof structure , penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit penthouses or roof structures in excess of the <u>permitted</u> height above a roof; limitations for roof structures;	same	
2715	EQUIPMENT CABINET OR SHELTER		
2715.2	If an antenna equipment cabinet or shelter is provided on the roof of a building or structure, it shall be erected or enlarged subject to the following:	Same	<i>unchanged</i>
(d)	It shall be placed only on a roof of a principal structure and may not be permitted on a roof of any other roof structure or a penthouse.	same	
	CHAPTER 28 – HILL EAST		
2809	<u>ROOF STRUCTURE PENTHOUSES</u>		
2809.1	The provisions of §§ 411 and 400.7 shall apply to roof structure penthouses in the HE District.	Same	
2809.2	The gross floor area of roof structure penthouses permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.	same	

	Proposed Language	Alternative Language	Discussion
	CHAPTER 29 - USN		
2906	ROOFTOP PENTHOUSES		
2906.1	Rooftop penthouses not intended for human occupation, such as penthouses over mechanical equipment, a stairway, or an elevator shaft shall be erected or enlarged pursuant to § 770.6 through 770.8.	same	
2906.2	<u>For all buildings and structures, it shall not exceed twenty feet (20 ft.) in height above the roof upon which it is located. For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the penthouse.</u> Such a penthouse shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.	<u>For all buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. For all buildings and structures, mechanical equipment shall not extend above the maximum permitted height of the penthouse.</u>	<i>Proposal – permit 20’ penthouse consistent with Height Act Alternative – retain current height limit</i>
2906.3	A penthouse not intended for human occupaney may be erected to a height in excess of that authorized in the USN District subject to the provisions of the Height Act.	same	
2906.4	Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.	same	
	CHAPTER 33 – ST ELIZABETHS		
3312	ROOF STRUCTURE PENTHOUSES		
3312.1	Rooftop A penthouse not intended for human occupation, such as penthouses over mechanical equipment, a stairway or an elevator shaft shall be erected or enlarged pursuant to <u>§§ 400.7 and</u> 411 of this title.	same	<i>Note – 411 does not include the setback or height provisions so 400.7 should be added...</i>