DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of proposed rulemaking action to adopt the following amendments to 3 DCMR Chapter 4, "Hearings," 3 DCMR Chapter 5, "Voter Registration," and 3 DCMR Chapter 7, "Election Procedures."

The proposed amendments would alter the Board's administrative complaint procedures so as to accommodate complaints which allege violations of Title III of the Help America Vote Act of 2002 ("the Act"); situate in the Board's regulations the circumstances specified in the Act which would require an individual to vote by special ballot, as well as the procedures by which to appeal the Board's special ballot determinations; outline new voter registration requirements as set forth in the Act, and other purposes.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the D.C. Register.

Amend Section 400 by deleting Subsection 400.1 in its entirety and substituting the following in its place:

400.1 The provisions of this chapter shall govern the procedures of the Board in all cases involving petition challenges; alleged violations of the District of Columbia Election Act, as amended; alleged violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended; alleged violations of Title III of the Help America Vote Act of 2002; and petitions requesting the promulgation, amendment, or repeal of any regulation of the Board.

Amend Section 408 by:

1) Deleting Subsection 408.1 in its entirety and substituting the following in its place:

"408.1 An action before the Board shall be commenced by the filing of a written complaint which shall be signed and sworn by the complainant and notarized."

2) Adding a new Subsection 408.6 to read follows:

"408.6 The Board may consolidate complaints alleging violations of Title III of the Help America Vote Act of 2002 if they relate to the same actions or events or raise common questions of law or fact."

Amend Section 428 by adding the following subsections:

428.6 If the Board determines that there is a violation of any provision of Title III of the Help America Vote Act of 2002, the Board shall provide the appropriate remedy.

428.7 If the Board determines that there is no violation of Title III of the Help America Vote Act of 2002, the Board shall dismiss the complaint and publish the results of the hearing on the Board's website.

428.8 The Board shall render final determinations with respect to complaints alleging violations of Title III of the Help America Vote Act of 2002 prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

428.9 If the Board fails to meet the deadline applicable under Subsection 428.8, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established pursuant to Section 431 of this chapter. The record and other materials from any proceedings conducted under standard Board complaint procedures shall be made available for use under the alternative dispute resolution procedures.

Add a new Section 432 to read as follows:

"432 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR HELP AMERICA VOTE ACT COMPLAINTS

432.1 On or before the 5th business day after a final Board determination with respect to a Help America Vote Act Title III complaint is due, the respondent shall designate in writing to the complainant the name of an arbitrator to serve on a panel to resolve the complaint.

432.2 Within 3 business days after the complainant receives the designation of an arbitrator, the complainant shall designate in writing to the respondent the name of a second arbitrator.

432.3 Within 3 business days after the complainant's designation of a second arbitrator, the two arbitrators designated shall select a third arbitrator to complete the panel.

432.4 The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but may not receive additional testimony or evidence. In exceptional cases, however, the panel may request that the parties present additional briefs or memoranda.

432.5 The arbitrators shall determine the appropriate resolution of the complaint by a majority vote, and issue a written resolution within 60 days after the final Board determination was due under Subsection 428.8 of this chapter. The 60-day period may not be extended.

432.6 The final resolution of the panel shall be published on the Board's website, and mailed to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final resolution.

432.7 The final resolution of the arbitration panel is the final resolution of the complaint."

Amend Section 500 by:

1) Deleting the word "and" at the end of Paragraph 500.4(d);

2) Deleting the phrase "May provide applicant's political party affiliation, if any." in Paragraph 500.4(e) And replacing it with the phrase, "Applicant's political party affiliation, if any (optional); and";

3) Adding the following Paragraph to Subsection 500.4:

"(f) Applicant's driver's license number in the case of an applicant who has been issued a current and valid driver's license, or the last 4 digits of the applicant's social security number in the case of an applicant who has not. If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the Board shall assign the applicant a unique identifier which shall serve to identify the applicant for voter registration purposes."; and;

4) Deleting Subsection 500.8 in its entirety and substituting the following Subsection in its place:

"500.8 If an applicant for voter registration fails to properly complete the mail voter registration form, the Board's registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election."

Amend Section 510 by adding new subsections to read as follows:

"510.9 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank

statement, government check, paycheck, or other document that shows the name and address of the voter.

510.10 Subsection 510.9 shall not apply to:

(a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number, and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name, and date of birth as provided in such registration application; and

(b) Individuals entitled to vote otherwise than in person under Federal law."

Amend Section 703 by:

1) Deleting the final period in Subsection 703.1 and inserting in its place the phrase, "except in instances when the time established for closing the polls is extended pursuant to a Federal or District of Columbia court order or any other order.";

2) Deleting the phrase, "at 8:00 p.m." in Subsection 703.2 and inserting the phrase "at the close of polls" in its place, and;

3) Deleting the phrase, "At 8:00 p.m." in Subsection 703.3 and inserting the phrase "At the close of polls" in its place.

Amend Subsection 710.4 by:

1) Amending Subsection 710.4 by inserting the phrase ", or provisional ballot, as it is termed in the "Help America Vote Act of 2002" (Public Law 107-252)," between the words "ballot," and "because";

2) Deleting the word "or" at the end of Paragraph 710.4(h);

3) Deleting the period (".") at the end of Paragraph 710.4(i) and replacing it with a semi-colon (";"), and;

4) Adding the following paragraphs:

(j) Votes in an election for Federal office as a result of a Federal or District of Columbia court order or any other order extending the time established for closing the polls by a District law in effect 10 days before the date of that election; or

(k) Has not previously voted in a Federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows his or her name and address.

Amend Section 722 by:

1) Deleting Subsection 722.2 in its entirety and substituting the following in its place:

"722.2: At the time of voting, the Board shall provide the voter with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject the voter's special ballot, and of the dates scheduled for hearings for voters whose special ballots are rejected to contest the Board's preliminary determination if they petition to do so.";

2) Deleting current Subsections 722.4 through 722.6 in their entirety, and;

3) Adding new Subsections 722.4 through 722.7 to read as follows:

"722.4 Not earlier than eight (8) days and not later than ten (10) days after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Board's preliminary determination to reject the voter's special ballot.

722.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

722.6 The Board shall make a final determination to either count or reject the voter's special ballot within two (2) days after the date of the hearing.

722.7 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within three (3) days after the date of the Board's decision. The decision of the court shall be final and not appealable."

Members of the public are invited to submit comments in writing to the Office of the General Counsel at the Board of Elections and Ethics, One Judiciary Square, 441 4th Street, NW, Suite 270 North, Washington, D.C., 20001. Comments should be received no later than thirty (30) days from the publication of this Notice. Copies of these rules may be obtained upon request from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

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DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in sections 2(b) and 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (hereinafter "the Act"), effective February 24, 1984, D.C. Law 5-48, D.C. Official Code §§ 44-501(b) and 44-504(a), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of his intent to adopt the following operating standards for home care agencies in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* and upon completion of the forty-five (45) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

The proposed rulemaking was first drafted in 1992 based on recommendations provided by a task force as required by the Act. The Department of Health has continued to seek input from home care providers and has shared revisions of the rulemaking for comment. These rules were previously published as proposed on July 27, 2001, at 48 DCR 6857, and on January 24, 2003, at 50 DCR 805. In response to public comments received, various changes have been made.

These rules set out standards under which licensed home care agencies must operate. In accordance with the Act, the proposed rulemaking sets licensing fees, insurance standards and guidelines for the provision of each service offered by the licensee. In addition, the rulemaking lists patients' rights and addresses required qualifications of personnel as well as recordkeeping policies. Enforcement actions for violation of any provision of this Chapter shall be implemented pursuant to 22 DCMR Chapter 31.

Title 22 DCMR is amended by adding the following new Chapter 39:

HOME CARE AGENCIES

3900 GENERAL PROVISIONS

3900.1 These rules are implemented pursuant to and in accordance with the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (hereinafter "the Act"), effective February 24, 1984, D.C. Law 5-48, D.C. Official Code §§ 44-501(b) and 44-504(a).

3900.2 Each home care agency serving one or more patients in the District of Columbia shall be licensed, and shall comply with the requirements set forth in this Chapter and with those set forth in Chapter 31 of Title 22 of the District of Columbia

Municipal Regulations (DCMR), which contains provisions on inspections, licensing and enforcement actions pertaining to home care agencies and other facilities authorized under the Act. Each home care agency serving one or more patients in the District of Columbia under the auspices of the Medicare Program or the D.C. Medicaid Program shall also comply with all applicable requirements and conditions of participation of that program.

3900.3 Each home care agency serving one or more patients in the District of Columbia and having an office within the District of Columbia on the effective date of this Chapter shall apply for licensure no later than one hundred eighty (180) days after the effective date of this Chapter. Each home care agency serving one or more patients in the District of Columbia but not having an office within the District of Columbia on the effective date of this Chapter shall apply for licensure no later than one (1) year after the effective date of this Chapter.

3900.4 A licensed home care agency shall provide at least one of the following services:

(a) Skilled nursing;
(b) Physical therapy;
(c) Occupational therapy;
(d) Speech language pathology;
(e) Intravenous therapy;
(f) Medical social services; or
(g) Home health aide or personal care aide services.

3900.5 Each home care agency serving one or more patients in the District of Columbia shall maintain an operating office within the District of Columbia. This office shall be staffed, at a minimum, eight hours per day, Monday through Friday.

3900.6 The operating office located within the District of Columbia shall contain, at a minimum, the patient records for all patients served within the District of Columbia and the agency's policies and procedures developed pursuant to this Chapter. All records and documents required under this Chapter and other applicable laws and regulations which are not maintained within this operating office shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the Department of Health.

3900.7 Each home care agency shall post its license in a conspicuous place within the District of Columbia operating office.

3900.8 Each home care agency shall comply with these regulations and with all other applicable federal and District laws and rules.

3901 INSURANCE

3901.1 Each home care agency shall maintain the following minimum amounts of insurance coverage:

(a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars ($1,000,000) per incident.

(b) General liability insurance covering personal property damages, bodily injury, libel and slander in the amount of at least one million dollars ($1,000,000) per occurrence.

(c) Product liability insurance, when applicable.

3902 LICENSE FEES

3902.1 License fees for home care agencies shall be based upon an annual census of admissions of patients served in the District of Columbia. The fees shall be as follows:

(a)	Initial Application	$ 600
(b)	1 - 150 Patients	
	Annual Fee	$ 400
	Late Fee	$ 100
(c)	151 - 750 Patients	
	Annual Fee	$ 700
	Late Fee	$ 100
(d)	751 - 1250 Patients	
	Annual Fee	$ 1100
	Late Fee	$ 100
(e)	1251 or More Patients	
	Annual Fee	$1300
	Late Fee	$ 100
(f)	Duplicate of License	$ 50
(g)	Certification of Validity of License	$ 50

3902.2 Time periods for the submission of applications and fee payments shall be in accordance with Chapter 31 of Title 22 of the District of Columbia Municipal Regulations.

3903 GOVERNING BODY

3903.1 Each home care agency shall have a governing body that shall be responsible for the operation of the home care agency.

3903.2 The governing body shall do the following:

(a) Establish and adopt by-laws and policies governing the operation of the home care agency;

(b) Designate a home care Director who is qualified in accordance with section 3904 of this Chapter; and

(c) Review and evaluate, on an annual basis, all policies governing the operation of the agency to determine the extent to which services promote patient care that is appropriate, adequate, effective and efficient. This review and evaluation must include the following:

(1) The evaluation shall include feedback from a representative sample consisting of either ten percent (10%) of total District of Columbia patients or forty (40) District of Columbia patients, whichever is less, regarding services provided to those patients.

(2) The evaluation shall include a review of all complaints made or referred to the agency, including the nature of each complaint and the agency's response thereto.

(3) A written report of the results of the evaluation shall be prepared and shall include recommendations for modifications of the agency's overall policies or practices, if appropriate.

(4) The evaluation report shall be presented to, and acted upon, by the governing body at least annually. The results of the action taken by the governing body shall be documented, maintained, and available for review by government officials.

3904 DIRECTOR

3904.1 The governing body shall appoint a Director who shall be responsible for managing and directing the agency's operations, serving as liaison between the

governing body and staff, employing qualified personnel, and ensuring that staff members are adequately and appropriately trained.

3904.2 The Director shall be a person who:

(a) Is a licensed physician;

(b) Is a licensed registered nurse; or

(c) Has training and experience in health services administration, including at least one (1) year of supervisory or administrative experience in home health care or related health programs.

3905 POLICIES AND PROCEDURES

3905.1 Each home care agency shall have written operational policies and procedures that address the day-to-day operations of the agency. These policies and procedures shall be approved by the governing body and shall be available for review by appropriate government officials.

3905.2 Written policies and procedures shall be developed for, at a minimum, the following:

(a) Contractor agreements;

(b) Personnel;

(c) Admission and denials of admission;

(d) Discharges and referrals;

(e) Records retention and disposal;

(e) Patient rights and responsibilities;

(f) Complaint process;

(g) The provision of each service offered;

(h) Infection control; and

(i) Unusual incidents.

3905.3 Written policies and procedures should be readily available for use by staff at all times.

3905.4 Written policies and procedures shall be available to patients, prospective patients, and their designated representatives, upon request.

3906 CONTRACTOR AGREEMENTS

3906.1 If a home care agency offers a service that is provided by a third party or contractor, agreements between the home care agency and the contractor for the provision of home care services shall be in writing and shall include, at a minimum, the following:

(a) A description of the services to be provided;

(b) The location where services are to be provided;

(c) The manner in which services will be controlled, coordinated and evaluated by the primary home care agency;

(d) The procedure for submitting clinical and progress notes, periodic patient evaluation, scheduling of visits, and other designated reports;

(e) The procedure for payment for services and payment terms for services furnished;

(f) The procedures used for managing and monitoring the work of personnel employed on a contractual basis;

(g) The duration of the agreement, including provisions for renewal, if applicable; and

(h) Assurance that the contractor will comply with:

(1) All applicable agency policies, including the assurance that contract personnel meet the qualifications and fulfill the responsibilities of agency employees as set out in these rules;

(2) Insurance and bonding requirements as set out in section 3901 of these regulations; and

(3) All applicable federal and District laws and regulations.

3907 PERSONNEL

3907.1 Each home care agency shall have written personnel policies that shall be available to each staff member and shall include the following:

(a) The terms and conditions of employment, including but not limited to wage scales, hours of work, personal and medical leave, insurance, and benefits;

(b) Provisions for an annual evaluation of each employee's performance by appropriate supervisors;

(c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;

(d) A position description for each category of employee; and

(e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.

3907.2 Each home care agency shall maintain accurate personnel records, which shall include the following information:

(a) Name, address and social security number of each employee;

(b) Current professional license or registration number, if any;

(c) Resume of education, training certificates, skills checklist, and prior employment, and evidence of attendance at orientation and in-service training, workshops or seminars;

(d) Documentation of current CPR certification, if required;

(e) Health certification as required by section 3907.6;

(f) Verification of previous employment;

(g) Documentation of reference checks;

(h) Copies of completed annual evaluations;

(i) Documentation of any required criminal background check;

(j) Documentation of all personnel actions;

(k) A position description;

(l) Results of any competency testing;

(m) Documentation of acceptance or declination of the Hepatitis Vaccine; and

(n) Documentation of liability insurance, if applicable.

3907.3 Each home care agency shall comply with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, D.C. Law 12-238, and subsequent amendments thereto, D.C. Official Code § 44-551 *et seq.*

3907.4 Each home care agency shall maintain its personnel records for all personnel serving patients within the District of Columbia in its operating office within the District of Columbia, or shall produce these records for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the Department of Health.

3907.5 Each employee shall have a right to review his or her personnel records.

3907.6 At the time of initial employment of each employee, the home care agency shall verify that the employee, within the six months immediately preceding the date of hire, has been screened for and is free of communicable disease.

3907.7 Each employee shall be screened for communicable disease annually, according to the guidelines issued by the federal Centers for Disease Control, and shall be certified free of communicable disease.

3907.8 No employee may provide home care services, and no agency may knowingly permit an employee to provide home care services, if the employee:

(a) Is under the influence of alcohol, any mind-altering drug or combination thereof; or

(b) Has a communicable disease which poses a confirmed health risk to patients.

3907.9 Each employee who is required to be licensed, certified or registered to provide services shall be licensed, certified or registered under the laws and rules of the District of Columbia.

3907.10 Each home care agency shall document the professional qualifications of each employee or provider to ensure that the applicable licenses, certifications, accreditations or registrations are valid.

3907.11 Each home care agency shall ensure that each employee or contract worker shall present a valid agency identification prior to entering the home of a patient.

3908 ADMISSIONS

3908.1 Each home care agency shall have written policies on admissions, which shall include, at a minimum, the following:

(a) Admission criteria and procedures;

(b) A description of the services provided;

(c) The amount charged for each service;

(d) Policies governing fees, payments and refunds;

(e) Advance directives;

(f) Do Not Resuscitate orders;

(g) Consent for services; and

(h) Consent for interagency sharing of information.

3908.2 A written summary of the agency's admissions policies, including all of the items specified at subsection 3908.1, shall be made available to each prospective patient upon request, and shall be given to each patient upon admission.

3908.3 The agency shall evaluate each request for home care services according to the following criteria:

(a) The ability of the program to provide or coordinate the services that the patient needs;

(b) The patient's general health and the patient's psychosocial condition or functioning status pertinent to the services being requested, as determined in consultation with the patient's physician;

(c) The adaptability of the patient's place of residence to accommodate the services being requested; and

(d) The ability of the patient to participate in his or her own care, or the availability of an individual willing to assume the appropriate level of responsibility when the patient is unable to do so.

3908.4 The home care agency shall notify each entity referring a potential patient to the agency, and each individual requesting services from the agency, of the availability or unavailability of service, and the reason(s) therefor, within 48 hours after the referral or request for services.

3908.5 A home care agency shall maintain records on each person requesting services whose request is not accepted. The records shall be maintained for at least one year from the date of non-acceptance and shall include the nature of the request for services and the reason for not accepting the patient.

3908.6 Each home care agency shall conduct an initial assessment, including a home visit, based on information provided by the prospective patient or the patient's representative and on other pertinent data.

3909 DISCHARGES, TRANSFERS AND REFERRALS

3909.1 Each home care agency shall have written policies that describe transfer, discharge, and referral criteria and procedures.

3909.2 Each patient shall receive written notice of discharge or referral no less than seven (7) calendar days prior to the action. The seven (7) day written notice shall not be required, and oral notice may be given at any time, if the transfer, referral or discharge is the result of:

(a) A medical or social emergency;

(b) A physician's order to admit the patient to an in-patient facility;

(c) A determination by the home care agency that the referral or discharge is necessary to protect the health, safety or welfare of agency staff;

(d) A determination, made or concurred in by a physician, that the condition that necessitated the provision of services no longer exists; or

(e) The refusal of further services by the patient or the patient's representative.

3909.3 Each home care agency shall document activities related to discharge planning for each patient in the patient's record.

3910 RECORDS RETENTION AND DISPOSAL

3910.1 Each home care agency shall maintain a clinical record system that shall include the following:

(a) Written policies that provide for the protection, confidentiality, retention, storage, and maintenance of clinical records; and

(b) Written procedures that address the transfer or disposition of clinical records in the event of dissolution of the home care agency.

3910.2 If an agency is dissolved and there is no identified new owner, the clinical records shall be stored in a public warehouse within one hundred (100) miles of the District of Columbia or, with the approval of the patient, in the offices of the patient's physician.

3910.3 Each home care agency shall inform the Department of Health and each patient in writing, within thirty (30) days of dissolution of the agency, of the location of the clinical records and how each patient may obtain his or her clinical records.

3910.4 A home care agency shall maintain the clinical records of a patient for at least five (5) years after the date of discharge of the patient.

3911 CLINICAL RECORDS

3911.1 Each home care agency shall establish and maintain a complete, accurate, and permanent clinical record of the services provided to each patient in accordance with this section and accepted professional standards and practices.

3911.2 Each clinical record shall include the following information related to the patient:

(a) Admission data, including name, address, date of application, date of birth, sex, agency case number, next of kin or responsible party, date accepted by the agency to receive services, and source of payment, if applicable;

(b) Source of referral, including date of discharge if from a hospital or extended care facility;

(c) Initial assessment and on-going evaluation;

(d) Plan of care for each service provided;

(e) Physician's orders;

(f) History of sensitivities and allergies;

(g) Medication sheet;

(h) Clinical, progress, and summary notes, and activity records, signed and dated as appropriate by professional and direct care staff;

(i) Documentation of supervision of home care services;

(j) Documentation of discharge planning, if appropriate;

(k) Discharge summary, including the reason for termination of services and the effective date of discharge;

(l) Documentation of coordination of services, if applicable;

(m) Type and frequency of diagnostic services;

(n) Type of medical equipment used by the patient;

(o) Dates and times of collection of specimens;

(p) Results of diagnostic services and dates of reporting;

(q) Communications between the agency and all health care professionals involved in the patient's care;

(r) Documentation of consent for specialized services; and

(s) Documentation of training and education given to the patient and the patient's caregivers.

3912 PATIENT RIGHTS AND RESPONSIBILITIES

3912.1 Each home care agency shall develop a written statement of patient rights and responsibilities that shall be given, upon admission, to each patient who receives home care services.

3912.2 Each home care agency shall develop policies to ensure that each patient who receives home care services has the following rights:

(a) To be treated with courtesy, dignity, and respect;

(b) To control his or her own household and life style;

(c) To be informed orally and in writing of the following:

(1) Services to be provided by the agency, including any limits on service availability;

(2) Whether services are covered by health insurance, Medicaid, Medicare, or any other sources, and the extent of uncovered expenses for which the patient may be liable;

(3) The amount charged for each service, and procedures for billing;

(4) Prompt notification of acceptance, denial or reduction of services;

(5) Complaint and referral procedures;

(6) The name, business address, and telephone number of the agency supervising the patient's care; and

(7) The telephone number of the Home Health Hotline maintained by the Department of Health;

(d) To receive treatment, care and services consistent with the agency/patient agreement and with the patient's plan of care;

(e) To participate in the planning and implementation of his or her home care services;

(f) To receive services by competent personnel who can communicate with the patient;

(g) To be informed of his or her condition by the health care provider in accordance with generally accepted professional standards;

(h) To refuse all or part of any treatment, care, or service, and to be informed of the consequences of refusal;

(i) To be free from mental and physical abuse, neglect, and exploitation by agency employees or contract personnel;

(j) To be assured confidential handling of clinical records as provided by law;

(k) To be educated about and trained in matters related to the services to be provided;

(l) To voice a complaint or other feedback in confidence and without fear of reprisal from the agency or any agency personnel, in writing or orally, including an in-person conference if desired, and to receive a timely response to a complaint as provided in these rules; and

(m) To have access to his or her own clinical records.

3912.3 Each home care agency shall inform all patients that they have the right to make complaints and/or to provide feedback concerning the services rendered by the agency to the Department of Health, in confidence and without fear of reprisal from the agency or any agency personnel, in writing or orally, including an in-person conference if desired.

3912.4 Each home care agency shall develop a statement of patient responsibilities regarding the following:

(a) Treating agency personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing the agency when instructions are not understood or cannot be followed; and

(d) Cooperating in making a safe environment for care within the home.

3912.5 Written policies on patient rights and responsibilities shall be made available to the general public.

3912.6 The home care agency shall take appropriate steps to ensure that all information is conveyed, pursuant to these rules, to any patient who cannot read or who otherwise needs accommodations in an alternative language or communication method. The home care agency shall document in the patient's records the steps taken to ensure that the patient has been provided with all required information.

3913 COMPLAINT PROCESS

3913.1 Each home care agency shall develop and implement policies and procedures for an internal complaint process that shall allow the patient or his or her representative to present a complaint to agency staff, contract personnel, or the home care Director.

3913.2 A written summary of the complaint process shall be disseminated as follows:

(a) Given to the patient or his or her representative upon acceptance or denial of services; and

(b) Given to all patients receiving service from a home care agency on the effective date of these rules.

3913.3 The telephone number of the Home Health Hotline maintained by the Department of Health shall be posted in the home care agency's operating office in a place where it is visible to all staff and visitors.

3913.4 A complaint may be presented orally or in writing.

3913.5 The home care agency shall respond to the complaint within fourteen (14) calendar days of its receipt, and shall document the response.

3913.6 If the patient indicates that he or she is not satisfied with the response, the agency shall respond in writing within thirty (30) calendar days from the date of the agency's initial response. The response shall include the telephone number and address of all District government agencies with which a complaint may be filed and the telephone number of the Home Health Hotline maintained by the Department of Health.

3914 PATIENT PLAN OF CARE

3914.1 Each home care agency shall develop, with the participation of each patient or his or her representative, a written plan of care for that patient.

3914.2 The plan of care shall be approved by the patient's physician.

3914.3 The plan of care shall include the following:

(a) Physician orders for skilled services;

(b) Advanced practice registered nurse orders, when appropriate and permissible according to applicable law;

(c) The goals of the services to be provided, including the expected outcome, based upon the immediate and long-term needs of the patient;

(d) A description of the services to be provided, including: the frequency, amount, and expected duration; dietary requirements; medication administration, including dosage; equipment; and supplies;

(e) Identification of agency personnel who are responsible for the provision of each service, including, if applicable, contract providers by job title or discipline;

(f) Provisions relating to the reevaluation of services, discharge planning, referral of services and continuation or renewal of services;

(g) Physical assessment, including all pertinent diagnoses;

(h) Prognosis, including rehabilitation potential;

(i) Activities permitted or precluded because of functional limitations;

(j) Psychosocial needs of the patient;

(k) Safety measures required to protect the patient from injury;

(l) Identification of employees in charge of managing emergency situations;

(m) Emergency protocols; and

(n) Types and frequency of laboratory tests ordered, if applicable.

3914.4 Each plan of care shall be approved and signed by a physician within thirty (30) days of the start of care; provided, however, that a plan of care for personal care aide services only may be approved and signed by an advanced practice registered nurse. If a plan of care is initiated or revised by a telephone order, the telephone order shall be immediately reduced to writing, and it shall be signed by the physician within thirty (30) days.

3914.5 Each home care agency that provides more than one skilled service shall record, in the plan of care, evidence of coordination of care, and specific information related to the provision of each skilled service as set out in subsequent relevant sections of these regulations.

3915 HOME HEALTH AND PERSONAL CARE AIDE SERVICES

3915.1 A home care agency may offer home health or personal care aide services and shall employ or contract with qualified home health or personal care aides to perform those services.

3915.2 A home health aide or personal care aide shall be qualified by completing seventy-five (75) hours of classroom and supervised practical training, with at least sixteen

(16) hours devoted to supervised practical training, and by passing a competency evaluation.

3915.3 Sixteen (16) hours of classroom training must be completed before an individual receives supervised practical training.

3915.4 A certified nurse aide shall be qualified as a home health aide upon satisfactory completion of a supplemental training program in home health care, consisting of at least twelve (12) hours of instruction in the following:

(a) Infection control in the home;

(b) Meal preparation and special diets;

(c) Home safety;

(d) Duties of a home health aide;

(e) Maintenance of a clean, safe, and healthy environment; and

(f) Documentation of patient status and care rendered.

3915.5 Training may be provided by a community college or by another training program approved by the District of Columbia, by the National Foundation for Hospice and Home care, or by another state.

3915.6 After the first year of service, each aide shall be required to obtain at least twelve (12) hours of continuing education or in-service training annually, which shall include information that will help maintain or improve his or her performance. This training shall include a component specifically related to the care of persons with disabilities.

3915.7 Each home health or personal care aide shall be supervised by a registered nurse or other health professional for performing tasks specific to that profession. On-site supervision of skilled services shall take place at least once every two (2) weeks. On-site supervision of all other services shall take place at least once every sixty-two (62) calendar days.

3915.8 Home health or personal care service activities that are performed by an aide shall be explained to the patient by the registered nurse or other health professional, as authorized by a physician and in accordance with the plan of care.

3915.9 Each home care agency shall define the duties of home health aides and personal care aides.

3915.10 Personal care aide duties may include the following:

(a) Basic personal care including bathing, grooming, and assistance with toileting or bedpan use;

(b) Changing urinary drainage bags;

(c) Assisting the patient with transfer, ambulation, and exercise as prescribed;

(d) Assisting the patient with self-administration of medication;

(e) Reading and recording temperature, pulse, and respiration;

(f) Observing, recording, and reporting the patient's physical condition, behavior, or appearance;

(g) Meal preparation in accordance with dietary guidelines, and assistance with eating;

(h) Infection control;

(i) Tasks related to keeping the patient's living area in a condition that promotes the patient's health and comfort;

(j) Accompanying the patient to medical and medically-related appointments, to the patient's place of employment, and to approved recreational activities;

(k) Assisting the patient at his or her place of employment; and

(l) Shopping for items related to promoting the patient's nutritional status and other health needs.

3915.11 Home health aide duties may include the following:

(a) Basic personal care including bathing, grooming, and assistance with toileting or bedpan use;

(b) Changing urinary drainage bags;

(c) Assisting the patient with transfer, ambulation, and exercise as prescribed;

(d) Assisting the patient with self-administration of medication;

(e) Reading and recording temperature, pulse, and respiration;

(f) Observing, recording, and reporting the patient's physical condition, behavior, or appearance;

(g) Meal preparation in accordance with dietary guidelines, and assistance with eating;

(h) Infection control;

(i) Tasks related to keeping the patient's living area in a condition that promotes the patient's health and comfort;

(j) Simple dressing changes that do not require the skills of a licensed nurse;

(k) Assisting the patient with activities that are directly supportive of skilled therapy services; and

(l) Routine care of prosthetic and orthotic devices.

3916 SKILLED SERVICES GENERALLY

3916.1 Each home care agency shall review and evaluate the skilled services provided to each patient at least every sixty-two (62) calendar days. A summary report of the evaluation shall be sent to the patient's physician.

3916.2 Each home care agency shall develop written policies for documenting the coordination of the provision of different services. Written policies shall include, at a minimum, the following:

(a) Ensuring that the person supervising the provision of each service delivered participates in the planning and development of the plan of care;

(b) Communicating patient needs to agency personnel and identifying other agencies that can meet patient needs;

(c) Coordinating services with other agencies actively involved in the patient's care, through written communication and/or interdisciplinary conferences, in accordance with the patient's needs; and

(d) Utilizing interagency agreements to ensure the coordination of services between agencies.

3916.3 Skilled services shall be provided in accordance with a plan of care, as outlined in section 3914.

3917 SKILLED NURSING SERVICES

3917.1 Skilled nursing services shall be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, and in accordance with the patient's plan of care.

3917.2 Duties of the nurse shall include, at a minimum, the following:

(a) Initial assessment and evaluation;

(b) Coordination of care and referrals;

(c) Ensuring that patient needs are met in accordance with the plan of care;

(d) Implementing preventive and rehabilitative nursing procedures;

(e) For registered nurses, supervision of nursing services delivered by licensed practical nurses, including on-site supervision at least once every sixty-two (62) calendar days;

(f) Supervision of services delivered by home health and personal care aides and household support staff, as appropriate;

(g) Recording progress notes at least once every thirty (30) calendar days and summary notes at least once every sixty-two (62) calendar days;

(h) Reporting changes in the patient's condition to the patient's physician;

(i) Patient instruction, and evaluation of patient instruction; and

(j) Discharge planning.

3917.3 Except as described further in this subsection, wound care and tube feeding shall be provided only by a registered nurse or by a licensed practical nurse. Simple wound care and gastrostomy tube feeding may be provided by a home health aide or personal care aide, provided that the aide receives adequate training prior to performing the service and provided that the service is monitored continuously, with on-site supervision by a licensed nurse at least every two (2) weeks.

3918 PSYCHIATRIC NURSING SERVICES

3918.1 If psychiatric nursing services are provided, they shall be provided in accordance with the patient's plan of care.

3918.2 Psychiatric nursing services shall be provided by a registered nurse with:

(a) A master's degree in psychiatric or mental health nursing;

(b) A Bachelor of Science in Nursing (BSN) and 1 year of related work experience in an active treatment program for adult or geriatric patients in a psychiatric health care setting;

(c) A diploma or associate degree in nursing and 2 years of related work experience in an active treatment program for adult or geriatric patients in a psychiatric health care setting; or

(d) American Nurses' Association certification in psychiatric or community health nursing.

3919 MONITORING SERVICES

3919.1 If monitoring services are provided, they shall be provided in accordance with the patient's plan of care.

3919.2 Monitoring services shall be provided by the following persons:

(a) A registered nurse certified to perform cardiopulmonary resuscitation (CPR) and who has additional training and experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention;

(b) A physician certified to perform cardiopulmonary resuscitation (CPR) and who has additional training or experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention;

(c) A certified emergency medical technician who has additional training or experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention; or

(d) In the case of respiratory monitoring only, a licensed respiratory therapist.

3920 INTRAVENOUS THERAPY SERVICES

3920.1 If intravenous therapy services are provided, they shall be provided in accordance with the patient's plan of care and administered by a registered nurse or licensed practical nurse who shall have training or experience in intravenous therapy.

3920.2 The intravenous therapy service plan shall include, at a minimum, the following:

(a) Type, amount, flow rate, duration, and mode of administration of nutritional formula or intravenous solution;

(b) Type, dosage, frequency, duration, and mode of administration of medication;

(c) Type and frequency of laboratory tests to be monitored;

(d) Information on use of an anticoagulant in connection with intermittent intravenous therapy; and

(e) Specific laboratory test limits.

3920.3 Each clinical record shall include, at a minimum, the following information related to intravenous therapy:

(a) The intravenous therapy service plan, as ordered by the patient's physician;

(b) A copy of the consent form for intravenous therapy executed by the provider of the intravenous therapy product, or a copy of the consent form for intravenous therapy executed by the home care agency, including risks, benefits and alternatives;

(c) Documentation of training provided to the patient, patient's caregiver, or other responsible person in intravenous therapy;

(d) Information on composition, amount, rate, mode, duration, date, and time of administration of nutrition, medication, and intravenous solution;

(e) History of drug allergies and adverse reaction to medication therapy;

(f) Date and time of venous access insertion, and type and gauge of needle or catheter used;

(g) Information on change of solution, intravenous fluid administration, filter, tubing, and dressings;

(h) Observation of the patient and the access site;

(i) Laboratory monitoring;

(j) Information on all medication administered, including type, dosage, frequency, duration, route of administration, and toxic or side effects;

(k) Progress notes at least every thirty (30) calendar days; and

(l) A summary report at least every sixty-two (62) calendar days.

3920.4 The first dosage of an antibiotic or chemotherapy shall not be administered by a home care agency, unless an anaphylactic kit is immediately available for administration.

3920.5 The home care agency shall have written policies and procedures concerning intravenous therapy that address the following:

(a) Patient selection criteria;

(b) Monitoring of patients and emergency care;

(c) Availability of care twenty-four (24) hours a day and continuity of care;

(d) Preparation and storage of intravenous solutions, special nutrition formulas, and medications;

(e) Infection control;

(f) Disposal of sharps, catheters, tubing and dressings;

(g) Equipment care and maintenance;

(h) Administration guidelines, including adverse reaction protocol;

(i) Obtaining medical supplies;

(j) Blood transfusions; and

(k) Adverse reactions.

3921 NUTRITIONAL SUPPORT SERVICES

3921.1 If a home care agency provides nutritional support services, it shall provide and monitor those services in accordance with the patient's plan of care.

3921.2 Nutritional support services shall be provided by or under the supervision of a licensed health professional qualified in accordance with HORA.

3921.3 Specialized nutritional services provided in accordance with a physician's plan of care for a patient with special needs shall be provided by a qualified dietitian or nutritionist who has a minimum of one (1) year's training or experience in nutrition associated with these services.

3921.4 Each patient's clinical record shall include the following information about nutritional support services, in addition to the basic requirements, as appropriate:

(a) A signed and dated physician's plan of care which includes nutritional needs;

(b) Documentation of nutritional counseling and education of the patient to meet normal as well as therapeutic needs;

(c) Documentation of clinical monitoring and progress notes; and

(d) A summary statement to the physician every sixty-two (62) calendar days.

3922 OCCUPATIONAL THERAPY SERVICES

3922.1 If a home care agency provides occupational therapy services, it shall provide those services in accordance with the patient's plan of care.

3922.2 Occupational therapy services shall be provided by order of a physician by a licensed occupational therapist.

3922.3 Occupational therapy shall be designed to maximize independence, prevent further disability, and maintain health.

3922.4 The occupational therapist shall conduct an initial evaluation and shall prepare clinical and progress notes.

3923 PHYSICAL THERAPY SERVICES

3923.1 If physical therapy services are provided, they shall be provided in accordance with the patient's plan of care.

3923.2 Physical therapy services shall be provided by a licensed physical therapist.

3923.3 The licensed physical therapist shall:

(a) Conduct an initial physical therapy evaluation and assessment of the patient prior to the provision of physical therapy services;

(b) Monitor and assess the extent to which services meet the therapeutic goals that are established; and

(c) Monitor and assess the degree to which therapy treats the identified physical dysfunction or the degree to which pain associated with movement is reduced.

3924 RESTRICTIONS ON SERVICE TO PATIENTS REQUIRING SPECIAL CARE

3924.1 A home care agency shall accept a ventilator-dependent patient only if:

(a) The patient is ventilator stabilized;

(b) A successful home equipment trial has been conducted; and

(c) The agency has developed a plan for emergency services notification.

3925 SPEECH LANGUAGE PATHOLOGY SERVICES

3925.1 If speech language pathology services are provided, they shall be delivered in accordance with the patient's plan of care.

3925.2 Speech language pathology services shall be provided by order of a physician by a certified speech language pathologist.

3925.3 Speech language pathology services shall include, at a minimum, the following:

(a) Screening to identify individuals who require evaluation to determine the presence or absence of a communicative disorder;

(b) Evaluating and diagnosing speech and language disorders;

(c) Delivering services relative to the treatment of speech and language disorders in accordance with the plan of care;

(d) Planning, directing, and conducting rehabilitation programs; and

(e) Discharge planning.

3926 SOCIAL SERVICES

3926.1 If social services are provided, they shall be provided in accordance with the patient's plan of care and in consultation with the patient.

3926.2 Social services shall be provided by order of a physician by a licensed independent clinical social worker, a licensed independent social worker, or a licensed graduate social worker, in accordance with HORA.

3926.3 Social services shall include:

(a) Evaluating the social and emotional needs of a patient;

(b) Assessing whether supplemental services, such as household support, are adequate for the patient's needs;

(c) Delivering services in accordance with the plan of care; and

(b) Acting as a consultant to agency staff.

3999 DEFINITIONS

3999.1 For the purpose of this Chapter, the following terms shall have the meanings ascribed below:

Activity record - documentation of home health aide and personal care aide services as recorded by home health and personal care aides.

Advanced practice registered nurse - a person licensed or permitted to practice advanced registered nursing under HORA, also referred to as a "nurse practitioner".

Agency - a home care agency as defined in this section.

Caregiver - a person over the age of eighteen (18) years who has assumed responsibility for the care of the patient, voluntarily or by order of a court of competent jurisdiction.

Certified Nurse Aide – a person who performs nursing aide services, and who has obtained certification or credentials from the District of Columbia as being qualified to perform such services, pursuant to Chapter 32 of Title 29 of the District of Columbia Municipal Regulations.

Clinical record - a comprehensive compilation of medical and other data that identifies the patient and justifies and describes the diagnosis and treatment of the patient.

Communicable disease - any disease denominated a communicable disease, including, without limitation, any illness due to an infectious agent or its toxic product, which is transmitted directly or indirectly to a well person from an infected person, animal, or ectoparasite; or any illness due to an infectious agent or its toxic product which is transmitted through the agency of an intermediate host, vector, or by exposure within the immediate environment. Communicable disease also shall mean any disease occurring as an outbreak of illness or toxic conditions, regardless of etiology, in an institution or other identifiable group of people.

Dietitian - a person licensed or permitted to practice dietetics in the District of Columbia pursuant to HORA.

Governing body - the group, agency, partnership or corporation designated to assume full legal responsibility for the policy determinations, management, operation and financial liability of the home care agency.

Health professional - a person licensed or permitted to practice as a health professional under HORA.

Home Health Aide – a person who performs home health aide services, and who is qualified to perform such services pursuant to Chapter 51 of Title 29 of the District of Columbia Municipal Regulations.

Home care agency - an agency, organization, or distinct part thereof, other than a hospice, that provides, either directly or through a contractual arrangement, a program of health care, habilitative or rehabilitative therapy, personal care services, household support services, chore services, or other supportive services to sick or disabled individuals living at home or in a community residence facility. The term "home care agency" shall not be construed to require the regulation and licensure of non-medical services delivered by or through a religious organization on a small-scale, volunteer basis.

HORA - the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Household support services - services provided to supplement a patient's capabilities in such areas as light housekeeping, home management, meal planning and preparation, shopping, and care of dependent children.

Intravenous therapy - the provision, administration and monitoring of medical and nutritional substances taken by intravenous infusion through a peripheral vein, a direct central line, or a central line through a peripheral vein, with filters, and with or without intravenous pumps or controllers.

Licensed practical nurse - a person licensed or permitted to practice practical nursing under HORA.

Monitoring services - services utilizing mechanical appliances by which certain conditions or phenomena can be observed and recorded, including, but not limited to, diagnostic x-rays, electrocardiographs, apnea monitors, and emergency response systems.

Nutritional services - services prescribed in accordance with a plan of care that assesses and addresses the nutritional needs of a patient.

Nutritionist - a person licensed or permitted to practice nutrition under HORA.

Occupational therapist - a person licensed or permitted to practice occupational therapy under HORA.

Occupational therapy - the evaluation and treatment of individuals whose ability to manage normal daily functions is threatened or impaired by developmental deficits, the aging process, poverty, cultural differences, physical injury or illness, or psychological and social disability, utilizing task-oriented activities to prevent or correct physical or emotional disabilities and to enhance developmental and functional skills.

Office - the primary business location within the District of Columbia of a home care agency licensed in the District of Columbia, that maintains published open business hours, a working staff, and records.

Personal Care Aide - a person who performs personal care aide services, and who is qualified to perform such services pursuant to Chapter 50 of Title 29 of the District of Columbia Municipal Regulations.

Physical therapist - a person licensed or permitted to practice physical therapy under HORA.

Physical therapy services - treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific application of physical measures to secure the functional rehabilitation and maintenance of the human body, as well as patient and family education.

Physician – a person licensed to practice medicine under HORA.

Plan of care - a plan of action formulated by one or more health care professionals, based upon the nature of the patient's illness, the treatment prescribed by the physician and the assessment of the patient's needs. The plan shall include the patient's health care needs, how these needs can be met, methods and approaches recommended, and modifications necessary to ensure the best results.

Progress note - a dated, written notation by a member of the health care team that summarizes facts about care and the patient's response during a given period of time.

Psychiatric nursing - skilled nursing services provided in conjunction with the diagnosis, treatment or prevention of mental illness.

Registered nurse - a person licensed or permitted to practice registered nursing under HORA

Respiratory therapist - a person who has completed a two (2) year program in respiratory care accredited by the Joint Review Personnel Committee of Respiratory Therapy Evaluation of the American Medical Association (AMA) and who is licensed to practice respiratory therapy under HORA.

Respiratory therapy - the performance, in collaboration with a licensed physician, of actions responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

Skilled nursing services - nursing services that are required to be delivered by licensed nurses who operate within the scope of practice as outlined in HORA and rules implemented pursuant thereto.

Skilled services - health care services that are required to be delivered by licensed health-care professionals or under the direction of licensed health care professionals.

Social worker - a person licensed or permitted to practice social work under HORA.

Speech language pathologist - a person who:

(1) Meets the education and experience requirements for a Certificate of Clinical Competence in speech language pathology granted by the American Speech and Hearing Association; or

(2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be submitted to Denise S. Pope, Administrator, Department of Health, Health Regulation Administration, 825 North Capitol Street, N.E., Second Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained by writing to the address shown above.

HISTORIC PRESERVATION REVIEW BOARD AND THE DISTRICT OF COLUMBIA OFFICE OF PLANNING

NOTICE OF PROPOSED RULEMAKING

(Adoption of new Title 10A, Historic Preservation, and Amendment of 10 DCMR, Planning and Development)

The D.C. Office of Planning and the Historic Preservation Review Board, pursuant to authority under § 10 of the Historic Protection Act (D.C. Law 2-144, as amended, D.C. Official Code § 6-1101 et seq.), § 2 of Mayor's Order 79-50, effective March 21, 1979, § 6 of Mayor's Order 83-119, effective May 6, 1983, 30 DCR 3031 (June 17, 1983), and Mayor's Order 2002-155, effective September 3, 2002; The Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (D.C. Law 13-281; D.C. Official Code § 6-801 *et seq.* (2002 Supp.)); and The Housing Act of 2002 (D.C. Law 14-114; D.C. Official Code § 6-802 *et seq.* (2002 Supp.)), hereby gives notice of its intent to adopt a new 10A DCMR, Historic Preservation, and to amend 10 DCMR, Planning and Development, in the manner described below. The purpose of this proposed rulemaking is to incorporate all historic preservation regulations in a new subtitle, DCMR Title 10A, including regulations currently contained in 10 DCMR chapters 25 and 26 as well as window standards recently adopted by the Historic Preservation Review Board and new rules implementing recently enacted legislation on housing production and the elimination of nuisance properties. The proposed rules are promulgated jointly with the Mayor's Agent and State Historic Preservation Officer.

Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the D.C. Register.

All persons wishing to comment on the subject matter of this proposed rulemaking should submit comments in writing to the Office of Planning, Historic Preservation Office, c/o David Maloney, 801 North Capitol Street, N.E., Suite 300, Washington, DC 20002. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of this proposed rulemaking may be purchased at cost by writing to the above address.

The specific proposed rulemaking is as follows:

1. 10 DCMR chapter 25 – repealed
2. 10 DCMR chapter 26 – repealed
3. 10A DCMR, Historic Preservation – new chapters 1-34 as set forth below.

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS
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100 APPLICABILITY AND AUTHORITY

100.1 These regulations govern implementation of the historic preservation programs of the District of Columbia, including activities conducted pursuant to both District and Federal law.

100.2 These regulations may be cited as the "District of Columbia Historic Preservation Regulations."

100.3 These regulations implement the historic preservation provisions of the following statutes:

(a) The Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144, as amended; D.C. Official Code §6-1101 *et seq.*), also referred to as the "Historic Protection Act" or "the Act";

(b) The Old Georgetown Act of 1950 (D.C. Official Code § 6-1201 *et seq.*);

(c) The Shipstead-Luce Act of 1930 (D.C. Official Code § 6-611.01);

(d) The National Historic Preservation Act of 1966 (80 Stat. 915 *et seq.;* 16 U.S.C. 470 *et seq.*);

(e) The Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (D.C. Law 13-281; D.C. Official Code § 6-801 *et seq.* (2002 Supp.)); and

(f) The Housing Act of 2002 (D.C. Law 14-114; D.C. Official Code § 6-802 *et seq.* (2002 Supp.)).

100.4 The regulations are coordinated and consistent with the following statutes and regulations:

(a) The Administrative Procedure Act (D.C. Official Code § 2-501 *et seq.*);

(b) The Advisory Neighborhood Commission Act (D.C. Official Code § 1-309);

(c) The Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code § 2-1801 *et seq.*);

(d) D.C. Zoning Regulations (DCMR Title 11); and

(e) D.C. Construction Codes (DCMR Title 12).

100.5 These rules are promulgated jointly by the Director, Office of Planning and the Historic Preservation Review Board. Upon adoption, these rules shall be applicable to all activities of the Mayor's Agent, State Historic Preservation Officer, Historic Preservation Review Board, and Historic Preservation Office.

100.6 Unless otherwise noted, the authority for this chapter is § 10 of the Historic Protection Act (D.C. Official Code § 6-1109), § 2 of Mayor's Order 79-50, effective March 21, 1979, § 6 of Mayor's Order 83-119, effective May 6, 1983, 30 DCR 3031 (June 17, 1983), and Mayor's Order 2002-155, effective September 3, 2002.

100.7 These rules shall be effective after adoption and a 30-day official notice published in the *D.C. Register*. Applications filed prior to the effective date of these regulations shall be considered under the rules in effect when the applications were filed.

101 INTENT AND PURPOSES

101.1 The intent of these regulations is to promote the protection, enhancement, and perpetuation of properties of historical, cultural, and aesthetic merit in the interests of the health, prosperity, and welfare of the people of the District of Columbia.

101.2 The intent and purposes of the regulations are further to:

(a) Effect and accomplish the protection, enhancement, and perpetuation of historic landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political and architectural history;

(b) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;

(c) Foster civic pride in the accomplishments of the past;

(d) Protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and

(e) Promote the use of landmarks and historic districts for the education, pleasure, and welfare of the people of the District of Columbia.

102 HISTORIC PRESERVATION AGENCIES, OFFICIALS AND PARTICIPANTS

102.1 District of Columbia historic preservation programs are implemented by the Mayor, State Historic Preservation Officer, and Historic Preservation Review Board. Other District and Federal agencies and officials also perform related or incidental historic preservation functions.

102.2 These agencies and officials work with the owners of historic property to achieve the purposes and benefits of historic preservation.

102.3 These agencies and officials also work with interested members of the public, as individuals or through Advisory Neighborhood Commissions and historic preservation organizations, to achieve the purposes and benefits of historic preservation.

102.4 The following terms specifically applicable to this chapter are defined in Chapter 34:

(a) Mayor;

(b) Mayor's Agent;

(c) State Historic Preservation Officer;

(d) Historic Preservation Review Board;

(e) Historic Preservation Office;

(f) Department of Consumer and Regulatory Affairs;

(g) Commission of Fine Arts; and

(h) Old Georgetown Board;

(i) Advisory Neighborhood Commission; and

(j) Historic preservation organization.

103 FUNCTIONS OF THE MAYOR

103.1 The Mayor, by executive order, may designate a Mayor's Agent to carry out any or all of the Mayor's responsibilities pursuant to the Historic Protection Act. This

authority notwithstanding, some of the Mayor's functions are reserved to the Mayor by statute, or may be delegated to other agencies or officials, as appropriate.

103.2 The Mayor shall appoint a State Historic Preservation Officer to carry out the District of Columbia historic preservation programs established under the National Historic Preservation Act, and any other duties authorized under District or Federal law.

103.3 The Mayor may delegate the responsibility for giving notice of applications pursuant to the Act (D.C. Official Code §§ 6-1104 through 6-1108) to the Permit Processing Division of the Department of Consumer and Regulatory Affairs, or another appropriate agency.

103.4 The Mayor shall include in the budget estimates of the District of Columbia such amounts as may be necessary for the revolving fund established pursuant to the Act.

103.5 The Mayor shall submit to the Council an annual report on implementation of the Act and on the financial condition and uses of the revolving fund.

104 FUNCTIONS OF THE MAYOR'S AGENT

104.1 The Mayor's Agent shall review proposed work affecting historic properties, including demolition, alteration, subdivision, and new construction, in accordance with the applicable provisions of the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108).

(a) The bulk of this authority may be exercised by delegation to the Historic Preservation Office, acting as the administrative staff to the Mayor's Agent and the Historic Preservation Review Board.

(b) This authority may also be exercised by the person designated as a hearing officer for the Mayor's Agent. Although the Mayor's official designee remains the nominal Mayor's Agent, this hearing officer is titled the Mayor's Agent by custom, and exercises the Mayor's authority to decide cases involving a public hearing under the sections noted above.

104.2 The Mayor's Agent shall refer such applications for proposed work to the Historic Preservation Review Board and Commission of Fine Arts, as appropriate, for advice pursuant to the Act.

(a) This authority may be exercised by the Historic Preservation Office under the supervision of the Mayor's Agent.

(b) The Mayor's Agent shall provide direction to the Permit Processing Division of the Department of Consumer and Regulatory Affairs in the processing of these administrative referrals.

104.3 The Mayor's Agent shall consider such advice and make preliminary and final findings on the issuance of permits, as provided in the Act.

(a) This authority may be exercised by the Historic Preservation Office, acting under the supervision of the Mayor's Agent and in accordance with these regulations.

(b) In the case of a public hearing, this authority may be exercised directly by the Mayor's Agent (Hearing Officer).

104.4 The Mayor's Agent shall hold public hearings as required in cases of demolition, subdivision, special merit, or economic hardship, and in other cases as appropriate pursuant to the Act.

(a) This authority may be delegated to the Mayor's Agent (Hearing Officer).

(b) The procedural rules for public hearings in Chapters 4, 30 and 32 refer to the functions of the Mayor's Agent (Hearing Officer) under this delegated authority.

104.5 The Mayor's Agent shall determine if historic landmarks or contributing buildings in historic districts are threatened by demolition by neglect, and shall pursue appropriate remedies pursuant to the Act.

(a) This authority may be exercised by the Historic Preservation Office under the supervision of the Mayor's Agent.

(b) The Historic Preservation Office may pursue enforcement remedies with the assistance of the Office of the Corporation Counsel, the Department of Consumer and Regulatory Affairs, or other agencies as appropriate.

104.6 The Mayor's Agent shall issue regulations to carry out the provisions of the Act. These regulations may be issued jointly with the State Historic Preservation Officer and Historic Preservation Review Board.

105 FUNCTIONS OF THE STATE HISTORIC PRESERVATION OFFICER

105.1 The State Historic Preservation Officer shall perform the functions and duties authorized or required by the National Historic Preservation Act and other Federal laws and regulations. These functions and duties include:

(a) Implementing a comprehensive preservation planning process;

(b) Directing and conducting the comprehensive survey of historic properties;

(c) Identifying and nominating properties to the National Register;

(d) Administering the Historic Preservation Fund (HPF) Grant-in-Aid program;

(e) Advising and assisting Federal and District agencies in carrying out their historic preservation responsibilities;

(f) Cooperating with Federal and District agencies to ensure that historic properties are taken into consideration at all levels of planning and development;

(g) Reviewing applications for Federal preservation tax credits; and

(h) Providing public information, education, training, and technical assistance related to historic preservation programs.

105.2 The State Historic Preservation Officer shall also perform any other functions and duties authorized or required by District of Columbia law and regulations. These functions and duties include:

(a) Reviewing zoning and other administrative referrals from the Office of Zoning and other agencies;

(b) Issuing certifications of eligibility for historic preservation tax credits and other administrative relief; and

(c) Implementing other historic preservation programs on behalf of the Mayor.

105.3 The State Historic Preservation Officer may delegate any of these functions and authorities to the Deputy State Historic Preservation Officer or to the Historic Preservation Office to the extent allowable under these or other applicable federal regulations.

106 FUNCTIONS OF THE HISTORIC PRESERVATION REVIEW BOARD

106.1 The Board shall designate and maintain a current inventory of historic landmarks and historic districts, and shall adopt related procedures.

106.2 The Board shall advise the Mayor on the compatibility with the purposes of the Historic Protection Act (D.C. Official Code § 6-1101) of proposed work affecting historic properties, under D.C. Official Code §§ 6-1104 through 6-1108.

106.3 The Board shall perform the functions and duties of a State Review Board as set forth in regulations issued pursuant to the National Historic Preservation Act, the Historic Protection Act, and other applicable legislation.

106.4 The Board shall advise the Board of Zoning Adjustment on the new construction, demolition and alteration of foreign missions, chanceries, and international organizations located in historic districts or historic landmarks, pursuant to the Foreign Missions Act (22 U.S.C. § 4306).

106.5 The Board shall perform other functions and duties relating to the protection, preservation, enhancement and perpetuation of the historic, architectural, cultural and aesthetic heritage of the District of Columbia as the Mayor may from time to time assign.

106.6 The Board may delegate any of these functions or authorities to the Historic Preservation Office to the extent allowed by law and these regulations.

107 FUNCTIONS OF THE HISTORIC PRESERVATION OFFICE

107.1 The Historic Preservation Office shall serve as the professional staff to the Mayor's Agent, State Historic Preservation Officer, and Historic Preservation Review Board.

107.2 The HPO shall perform customary administrative functions as well as any functions and duties specifically delegated to it by the Mayor's Agent, SHPO, or HPRB.

107.3 The Historic Preservation Office shall also perform any other functions assigned in its role as a component of the Office of Planning.

108 FUNCTIONS OF THE COMMISSION OF FINE ARTS

108.1 The Commission of Fine Arts may advise the Mayor of its recommendations on any referral for review of proposed demolition, alteration, or new construction pursuant to the Historic Protection Act (D.C. Official Code §§ 6-1104, 6-1105, 6-1107, or 6-1108).

108.2 The Commission may obtain the recommendations of the Old Georgetown Board on any such referral prior to making a recommendation to the Mayor.

108.3 The Commission may make its recommendations in accordance with the Shipstead-Luce Act, the Old Georgetown Act, and any implementing regulations, procedures, or policies that it may adopt.

109 FUNCTIONS OF THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

109.1 The Department of Consumer and Regulatory Affairs (DCRA) may accept and transmit applications to the Mayor's Agent and CFA for review pursuant to the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108), and may issue permits and subdivisions upon approval by the Mayor's Agent.

109.2 DCRA may enforce construction codes and other regulations governing work subject to review under the Historic Protection Act, and other health and safety laws and

regulations affecting historic property. This enforcement shall include condemnation proceedings, civil sanctions, adjudications, and other enforcement action.

109.3 DCRA may enter into agreements with the Mayor's Agent to provide for primary or coordinated enforcement of the Historic Protection Act by the HPO staff.

110 ROLE OF PROPERTY OWNERS

110.1 Property owners are the primary stewards of the historic landmarks and historic districts that embody the cultural heritage of the District of Columbia.

110.2 Property owners maintain, adapt, and enhance historic landmarks and historic districts through their own personal and financial investment in the city's heritage.

110.3 Property owners shall retain the right to use and enjoy their property in any manner not inconsistent with its proper regulation to achieve the legitimate public purposes of historic preservation.

111 ROLE OF THE PUBLIC

111.1 The citizens of the District of Columbia, its visitors and the nation are the primary beneficiaries of the rewards conveyed through preservation of the city's cultural heritage.

111.2 Advisory Neighborhood Commissions, historic preservation organizations, and individuals have played a crucial role in seeking recognition and protection of the cultural heritage of the District of Columbia, and sustain this effort through voluntary public service.

111.3 Members of the public as individuals and organizations shall retain the right to seek the benefits and protections of historic preservation through full participation and expression of their views in the historic preservation process.

CHAPTER 2: DESIGNATION OF HISTORIC LANDMARKS AND DISTRICTS

Secs.
200 General Provisions
201 Criteria for Designation in the D.C. Inventory
202 Criteria for Listing in the National Register
203 Application for Designation
204 Filing Fees
205 Multiple Property Designations
206 Designation Initiated by the Board
207 Notice and Scheduling of a Filed Application
208 Amendment or Withdrawal of a Filed Application
209 Notice of Historic Landmark Designation Hearing
210 Notice of Historic District Designation Hearing
211 Public Comment Period
212 Pre-Hearing Submissions
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214 Staff Report on Designation Application
215 Designation Hearing
216 Closure of the Hearing Record and Deliberations
217 Post-Hearing Procedures
218 Effective Date of Designation
219 Amendment or Rescission of Designation

200 GENERAL PROVISIONS

200.1 The Review Board shall maintain the D.C. Inventory of Historic Sites.

200.2 The Review Board shall designate historic landmarks for inclusion in the D.C. Inventory, and shall designate historic districts subject to their nomination by the State Historic Preservation Officer to the National Register of Historic Places.

200.3 The Review Board and SHPO shall comment on Federal agency nominations to the National Register, and on National Historic Landmark designations made by the Secretary of the Interior (see additional procedures in Chapters 13 and 14).

200.4 The following terms specifically applicable to this chapter are defined in Chapter 34:

(a) D.C. Inventory of Historic Sites;

(b) National Register of Historic Places;

(c) Historic landmark;

(d) Historic district; and

(e) National Historic Landmark.

201 CRITERIA FOR DESIGNATION IN THE D.C. INVENTORY

201.1 Historic and prehistoric buildings, building interiors, structures, monuments, works of art or other similar objects, areas, places, sites, neighborhoods, and cultural landscapes shall be designated as historic landmarks or historic districts if they possess one or more of the following values or qualities:

(a) *Events:* They are the site of events that contributed significantly to the heritage, culture or development of the District of Columbia or the nation;

(b) *History:* They are associated with historical periods, social movements, groups, institutions, achievements, or patterns of growth and change that contributed significantly to the heritage, culture or development of the District of Columbia or the nation;

(c) *Individuals:* They are associated with the lives of persons significant to the history of the District of Columbia or the nation;

(d) *Architecture and Urbanism:* They embody the distinguishing characteristics of architectural styles, building types, or methods of construction, or are expressions of landscape architecture, engineering, or urban planning, siting, or design significant to the appearance and development of the District of Columbia or the nation;

(e) *Artistry:* They possess high artistic or aesthetic values that contribute significantly to the heritage and appearance of the District of Columbia or the nation;

(f) *Creative Masters:* They have been identified as notable works of craftsmen, artists, sculptors, architects, landscape architects, urban planners, engineers, builders, or developers whose works have influenced the evolution of their fields of endeavor, or are significant to the development of the District of Columbia or the nation; or

(g) *Archaeology:* They have yielded or may be likely to yield information significant to an understanding of historic or prehistoric events, cultures, and standards of living, building, and design; and

201.2 They possess sufficient integrity to convey, represent or contain the values and qualities for which they are judged significant; and

201.3 Sufficient time has passed since they achieved significance or were constructed to permit professional evaluation of them in their historical context.

202 CRITERIA FOR LISTING IN THE NATIONAL REGISTER

202.1 Properties meeting the criteria for designation in the D.C. Inventory shall also be considered to meet the criteria for listing in the National Register of Historic Places unless the Keeper of the Register determines otherwise.

202.2 The criteria for listing in the National Register (36 CFR § 60.4) are:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

202.3 Properties designated by the Secretary of the Interior as National Historic Landmarks are automatically listed in the National Register, and shall be considered to meet the criteria for listing in the D.C. Inventory.

203 APPLICATION FOR DESIGNATION

203.1 Application for designation of a property as a historic landmark or historic district shall be made only by the owner of the property, the Board, a public agency, governmental unit or department, Advisory Neighborhood Commission, or a historic preservation organization.

(a) The staff may request a copy of an organization's bylaws or other establishment papers if needed to confirm its eligibility as an applicant.

(b) A historic preservation organization established for membership or purposes within a specific neighborhood or area of the District of Columbia shall be an eligible applicant only with respect to properties within that neighborhood or area.

(c) Any eligible applicant may co-sponsor a nomination with another eligible applicant.

203.2 A proposed designation for historic landmark or historic district status shall be initiated by the submission of an application to the Board in the format prescribed by the staff.

203.3 The application shall contain a signed official application form and two complete sets of the following minimum information, preferably submitted with an electronic copy;

(a) The name, address, and telephone number of the applicant;

(b) The name of the property proposed for designation, and the street address if applicable;

(c) In the case of a historic landmark application, the name and address of the property owner;

(d) The official square and lot or parcel number(s) of the property, or in the case of a historic district application, a list of the squares within the proposed boundaries, indicating specific lots, parcels or public reservations where necessary;

(e) A statement of the prehistoric, historic, architectural and/or cultural significance of the property;

(f) A narrative statement of the history and historical development of the property and its relevant historic context;

(g) In the case of a historic landmark application, a description of the present appearance of the property, and where possible its original appearance if different;

(h) In the case of a historic district application, a description of the general character of the district and the types of buildings it contains, indicating the degree to which characteristic features have been maintained;

(i) In the case of a historic district application, a statement of the district's period of significance (including a separate period of significance for archaeological sites, if appropriate), a list of buildings and structures considered contributing to the significance of the district, and a list of those considered non-contributing;

(j) In the case of an application proposed for archaeological significance, a description of the existing condition of the property, indicating what is known about the type and condition of the archaeological deposits;

(k) A list of bibliographic and other sources used to prepare the application, indicating the repository of any sources not readily available;

(l) A clear and accurate map showing the exact boundaries of the property proposed for designation, and in the case of a historic district application, a narrative description of the proposed boundaries of the district; and

(m) Contemporary, good quality black and white photographs of the property (preferably 8 by 10 inches in size), sufficient to provide a clear and accurate visual representation of the property and its setting, and in the case of a historic district application, showing buildings, streetscapes, and other views representative of the district.

203.4 The application shall contain sufficient information to consider nomination of the property to the National Register, and the application shall be considered a draft National Register nomination even if not submitted on a National Register nomination form.

203.5 A fully completed National Register nomination form shall constitute an acceptable application provided that it includes the minimum information required for filing and is accompanied by any other application form required by the staff.

203.6 Within ten days of receipt of an application, the staff shall determine whether it is complete. If the application is complete, and the applicant has paid the applicable filing fee, the staff shall assign a case number, date stamp, and officially file the application.

203.7 The staff may correct errors on an application form during the filing process or prior to the designation hearing, and shall make a notation of any corrections on the form.

204 FILING FEES

204.1 The Board shall adopt a schedule of fees for the filing of historic landmark and historic district applications, as set forth in Chapter 33. The fee schedule may be periodically amended in accordance with applicable laws and regulations.

204.2 Filing fees shall be non-refundable and payable prior to the assignment of a case number.

204.3 Federal and District government agencies (not including ANCs) shall not be required to pay a filing fee.

205 MULTIPLE PROPERTY DESIGNATIONS

205.1 The Board may consider multiple or discontiguous properties for designation as historic landmarks or historic districts. Multiple property designations shall be for properties that are historically, physically, thematically, or otherwise related.

205.2 The staff may determine whether a proposed designation of multiple or discontiguous properties should be filed as a historic landmark or historic district application, or as multiple applications, as appropriate.

205.3 The Board may also consider and adopt National Register multiple property registration forms as a framework for the designation of related properties.

(a) A multiple property registration form shall be assigned a case number and noticed for a hearing in the same manner as other designation applications.

(b) There shall be no filing fee for a multiple property registration form.

(c) If adopted, a multiple property registration form shall not by itself constitute the designation of any historic landmarks or districts. It shall serve as the Board's acceptance of relevant documentation about a type or group of potential historic properties, and as the Board's endorsement of a basis and methodology for making determinations on the designation of such properties.

206 DESIGNATION INITIATED BY THE BOARD

206.1 The Board may initiate a designation by directing the staff to prepare an application, or by adopting an existing National Register nomination, National Historic Landmark nomination, or designation application.

206.2 The Board shall file, give notice, and act upon such an application according to the procedures required for any other application, except that the filing fee shall be waived.

207 NOTICE AND SCHEDULING OF A FILED APPLICATION

207.1 Immediately after an application is officially filed, the staff shall provide written notification to the Permit Processing Division of DCRA.

207.2 Within 10 days of an official filing, the staff shall mail notice of the filed application to the applicant, the owner, and the affected Advisory Neighborhood Commission. In the case of a historic landmark, the staff shall include a copy of the application with the notice to the owner, unless the owner is the applicant. In the case of a historic district, the staff shall mail notice to each owner unless there are more than 50 owners, in which case the staff may place notice of the filed application in the *D.C. Register* in lieu of notice to each owner.

207.3 Within 60 days of an official filing, the staff shall mail notice of the filed application to the public mailing list described in Chapter 32.

207.4 Within 90 days of an official filing, the staff shall schedule a hearing on the application by placing a scheduling or hearing notice in the *D.C. Register.*

207.5 The staff shall in any event provide sufficient advance notice to allow the Review Board to determine whether to designate a property as a historic landmark within 90 days of receipt from DCRA of an application for demolition, alteration, subdivision,

new construction, or preliminary review affecting that property (pursuant to D.C. Official Code §§ 6-1104 through 6-1108).

208 AMENDMENT OR WITHDRAWAL OF A FILED APPLICATION

208.1 An applicant may submit a written amendment of a filed application at any time prior to notice of the public hearing.

208.2 An applicant may submit a written request to withdraw a filed application at any time. The filing fee shall not be refunded and the application materials shall not be returned upon withdrawal.

208.3 Before the staff accepts a withdrawal, the Chairperson of the Board may adopt the application by substituting the Board as the applicant for designation.

209 NOTICE OF HISTORIC LANDMARK DESIGNATION HEARING

209.1 At least 40 but not more than 75 days prior to a designation hearing, the Board shall send notice via first class mail to the affected Advisory Neighborhood Commission.

209.2 At least 30 but not more than 75 days prior to a designation hearing, the Board shall send notice via first class mail to the owner of the property, the applicant for designation, and the Mayor. Within the same time period, the Board shall publish notice in the *D.C. Register*.

209.3 The notice shall state the date, time, place, and nature of the hearing, the name of the applicant, and an accurate description of the property proposed for designation.

209.4 The notice shall also indicate the Board's intent to consider the nomination of the property to the National Register, and shall solicit the submission of written comments on the property's significance prior to the hearing date. The format and content of the notice shall be approved by the National Register.

210 NOTICE OF HISTORIC DISTRICT DESIGNATION HEARING

210.1 For a proposed designation of a historic district where there are 50 or fewer property owners, the Board shall provide the same notice as for a historic landmark designation hearing. The Board shall obtain the list of owners from current District of Columbia land records or tax records.

210.2 For a proposed designation of a historic district where there are more than 50 property owners, the Board shall provide the same notice as for a historic landmark designation hearing, except that in lieu of notice to each property owner, the Board may require the applicant to publish notice in a local newspaper of general circulation in the area of the

proposed designation. The applicant shall publish this notice at least 30 but not more than 75 days prior to the designation hearing.

210.3 If the Board has not provided individual notice to each property owner, the applicant shall post notice in the proposed historic district at least 15 days in advance of the hearing, as follows:

(a) A notice shall be posted in a conspicuous location on each side of each block of the proposed historic district. Each notice shall be in plain view of the public.

(b) Notices shall be posted on placards supplied by the Board, and shall show the number of the application, the nature of the application, the name of the applicant, the name of the proposed historic district, the affected ANC, and the location, time, and date of the public hearing.

210.4 Not less than five days prior to the public hearing, the applicant shall file with the Board a sworn affidavit demonstrating compliance with this posting requirement. A form of affidavit supplied by the Board may be used but is not required.

210.5 The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the location of each sign and the date of each photograph.

210.6 The applicant shall make a reasonable effort to maintain the posted notice by checking the signs periodically, and by posting new notices as necessary.

211 PUBLIC COMMENT PERIOD

211.1 During the time between public notice and the designation hearing, the Board shall accept written comments from affected property owners and any other interested persons concurring in or objecting to the designation and National Register nomination.

211.2 During the public comment period, the staff shall keep the application and National Register nomination on file and open for public inspection at the Historic Preservation Office. The staff shall mail or email a copy of the application to any person upon request, unless the length of the application makes this impractical.

212 PRE-HEARING SUBMISSIONS

212.1 Each applicant for designation shall file with the Board, at least ten days prior to the hearing, a list of persons who will speak on the applicant's behalf.

212.2 Each owner of property proposed for historic landmark designation (if not the applicant), shall file with the Board at least seven days prior to the hearing a list of persons who will speak on the owner's behalf

213 REQUESTS FOR POSTPONEMENT

213.1 The applicant for a proposed historic landmark or historic district designation may request postponement of the hearing by submitting a written request to the Board at least 48 hours prior to a scheduled hearing.

213.2 The owner of a proposed historic landmark may request postponement of the designation hearing by submitting a written request to the Board at least 48 hours prior to a scheduled hearing. In cases where the Review Board is required to make a determination on designation within 90 days in accordance with D.C. Official Code § 6-1102(6)(B), any such request for postponement shall be accompanied by the property owner's written agreement to toll the 90-day time period for the duration of the postponement.

213.3 The Chairperson of the Board may accept or deny a request for postponement as deemed appropriate. If there is a postponement, the Board may provide a new hearing notice as provided in this chapter, or may give notice of the postponement at the time and place originally scheduled for the hearing, in which case no further notice of the postponement is required.

214 STAFF REPORT ON DESIGNATION APPLICATION

214.1 Prior to the designation hearing, the staff shall prepare a written report and recommendation on the designation application.

214.2 The report shall include the staff's determination with respect to the criteria for designation in the D.C. Inventory (§ 201) and the criteria for listing in the National Register (§ 202).

214.3 At least five days prior to the hearing date, the staff shall file copies of the staff report with the Board, and shall make it available to the applicant, owner, and public.

215 DESIGNATION HEARING

215.1 The Board shall hold a public hearing to receive information and public comments on each application for historic landmark or historic district designation.

215.2 At the designation hearing, the Board shall consider the eligibility of the property for listing in both the D.C. Inventory and the National Register.

215.3 The designation hearing shall be conducted in accordance with the Board's procedures in Chapter 31.

216 CLOSURE OF THE HEARING RECORD AND DELIBERATIONS

216.1 The record shall be closed at the end of the public hearing except when directed by the Chairperson to stay open for a specified period of time for the receipt of additional information or public comment. In such cases, the Chairperson shall announce the time and place of a continuance, and no additional public notice shall be required.

216.2 The Board may reopen the record at any time prior to the issuance of a final decision. The Board shall provide notice of a reopening in the same manner as for the initial hearing.

216.3 After closure of the hearing record, the Board shall consider the application and shall hold its deliberations immediately or in a continuation of the public hearing. The Board shall give great weight to any properly adopted written recommendations of the affected ANC that are germane to the issues that fall within the Board's authority in the case.

216.4 The Board may vote to designate the property, deny or defer the designation, or designate the property with reduced boundaries. If the Board wishes to expand the boundaries of a designation, a new notice and hearing is required. The Board may base its designation on any of its criteria, including designation criteria that may not be referred to in the application.

217 POST-HEARING PROCEDURES

217.1 The Board shall issue a written decision with respect to the proposed historic landmark or historic district designation. Each designation decision shall identify the property, describe its general characteristics and significance, specify its boundaries, state the reasons for designation, and indicate whether it is also recommended for nomination to the National Register.

217.2 Each designation of a historic district shall state a period of significance for the historic district pursuant to National Register criteria. Subsequent to each designation of a historic district, the SHPO shall prepare an official list of contributing and non-contributing buildings pursuant to National Register criteria, and shall forward that list with the nomination to the National Register.

217.3 In any case in which the affected ANC has submitted a duly adopted written recommendation, the designation decision shall be accompanied by a written statement acknowledging the ANC recommendation and indicating the Board's response.

217.4 Within 30 days of a designation, the Board shall mail a copy of the official designation order signed by the Chairperson as follows:

(a) For a historic landmark, to the applicant, property owner, and affected ANC;

(b) For a historic district, to the applicant and affected ANC.

217.5 If the Board has recommended the nomination of a property to the National Register, the SHPO shall prepare and forward the nomination to the National Register in accordance with the procedures in Chapter 13.

218 EFFECTIVE DATE OF DESIGNATION

218.1 A historic landmark designation shall be effective immediately upon the vote of the Board.

218.2 A historic district designation shall not be effective until 30 days after the SHPO publishes in the *D.C. Register* a notice of nomination or determination to nominate the property to the National Register.

219 AMENDMENT OR RECISSION OF DESIGNATION

219.1 Listings in the D.C. Inventory may be amended at any time.

219.2 The procedures for amendment of a designation shall be the same as the procedures for designation, except that the Board may amend historic district designations to augment or amend documentation, specify periods of significance, or identify contributing and non-contributing buildings without publishing notice in a newspaper of general circulation or posting notice in the historic district. In the case of applications to amend the boundaries of a historic district, the requirement for notice to owners and affected ANCs shall apply only to those properties within the area of amended boundaries.

219.3 Properties may be removed from the D.C. Inventory only if they no longer meet the designation criteria for inclusion. The procedures for removal of a property from the Inventory shall be the same as the procedures for designation, except that the application form shall document the existing conditions of the property and state the reasons supporting a removal of the designation.

CHAPTER 3 HPRB AND CFA REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

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300 GENERAL PROVISIONS

300.1 The Historic Preservation Review Board shall, and Commission of Fine Arts may, review and provide recommendations to the Mayor's Agent on proposed work affecting historic landmarks and districts (D.C. Official Code §§ 6-1104 through 6-1107). The Board shall, and CFA may, also conduct preliminary review (D.C. Official Code § 6-1108) and conceptual design review of projects prior to application for building permits.

300.2 The following terms specifically applicable to this chapter are defined in Chapter 34:

(a) Conceptual Design Review;

(b) Preliminary Review;

(c) Subdivision;

(d) Alteration;

(e) Replacement in kind;

(f) Demolition;

(g) Permit Processing Division;

(h) Surveyor.

301 PERMIT REQUIREMENTS: GENERAL

301.1 Permits are required for work affecting historic landmarks and historic districts, including demolition, alteration, subdivision, and new construction. The requirements for a construction permit are described more fully in the D.C. Construction Codes (12 DCMR Chapter 1).

301.2 Historic preservation review shall be part of the sequence of zoning and code reviews conducted prior to issuance of construction permits and subdivision plats by the Department of Consumer and Regulatory Affairs. The sequence of review for applications shall be as determined jointly by DCRA and the HPO.

301.3 A separate historic preservation permit or certificate of appropriateness is not required.

302 PERMIT REQUIREMENTS: ALTERATION

302.1 Work considered an alteration under the Act shall include, but is not limited to, any of the following, regardless of whether or not the work is visible from public space:

(a) Any alteration as defined in Chapter 34;

(b) Any addition to the building envelope;

(c) Any alteration or repair that does not involve replacement in kind of an architectural feature, including removal of an architectural feature such as ornamentation or historic signage;

(d) Construction of projections beyond the building line;

(e) Installation or replacement of windows, doors, siding, roofing, and other exterior building finishes;

(f) A change in the exterior appearance of windows due to any work for which a permit is required;

(g) Installation of awnings, signs and other advertising devices;

(h) Construction or replacement of retaining walls, fences, decks, patios, garden storage sheds, swimming pools, and other site features;

(i) Installation of air conditioning, mechanical, plumbing, and other equipment;

(j) Erection of flagpoles, antennas, and telecommunication towers;

(k) Sandblasting and similar types of abrasive cleaning; and

(l) Paint stripping where a permit is required.

302.2 Pursuant to § 107 of the D.C. Construction Code, a permit is required for various minor repairs, even though a permit is not required for the same work on non-historic properties. Under this provision, a permit is required for the following categories of work on a historic landmark or within a historic district:

(a) Brick pointing;

(b) Replacement of windows and doors;

(c) Replacement of roofing and coping;

(d) Replacement of siding; and

(e) Replacement of retaining walls regardless of height.

302.3 Alteration to a designated interior historic landmark shall not include changes in furnishings.

303 PERMIT REQUIREMENTS: DEMOLITION

303.1 Work considered demolition under the Act shall include, but is not limited to, any of the following, as determined by the Mayor's Agent:

(a) The removal or destruction of any façade;

(b) The removal or destruction of all or a substantial portion of the structural components of the building, such as structural walls, floor assemblies, and roofs;

(c) The removal or destruction of all or a substantial portion of the roof along with all or substantially all of one or more exterior walls;

(d) The removal or destruction of all or substantially all of an entire wing or appendage of the building, such as a rear ell, unless the wing lacks physical or historic integrity, or is not a character-defining feature;

(e) The removal or destruction of a substantial portion of the building that includes character-defining features;

(f) The removal or destruction of all or a substantial portion of a designated interior landmark, unless the elements to be removed lack physical or historic integrity, or are not character-defining features; or

(g) Any removal or destruction requiring a partial demolition or raze permit under the D.C. Construction Code.

303.2 In general, the determination whether a proposal involves destruction of a building "in significant part" shall depend on the extent to which character-defining historic features, historic or structural integrity, historic materials, or ability to convey historic significance would be lost. This decision shall depend on all the facts and circumstances of the case.

303.3 Pursuant to § 107 of the D.C. Construction Code Supplement, a partial demolition permit is required for interior demolition not only of bearing walls, but also of non-bearing walls, interior finishes, or other interior non-bearing elements within a building where any interior space has been designated as a historic landmark.

303.4 The filing of an application for a demolition permit shall be considered to incorporate a request for a determination whether the property contributes to the character of a historic landmark or district pursuant to § 704 of this title.

304 SUBMISSION OF APPLICATIONS

304.1 All applications including applications for conceptual or preliminary review shall be submitted to the Surveyor or the Permit Processing Division of DCRA, as appropriate.

304.2 No application substantially the same as an application denied by the Mayor's Agent shall be accepted for review under the Act within one year after the denial, except in the instance of an application denied for lack of information.

305 APPLICATION MATERIALS: FORMS AND FEES

305.1 All applications shall include a completed official application form, signed by the owner or authorized agent, together with any related filing documents required by DCRA or the staff.

305.2 All applications for Board review shall include the appropriate transmittal form issued by DCRA, with an assigned case number.

305.3 All applications shall include payment of any applicable filing fees as provided in Chapter 33.

306 APPLICATION MATERIALS: CERTIFICATIONS AND CLEARANCES

306.1 Applications shall describe any outstanding permit violations for the property or any other historic properties under the applicant's ownership or direct control. If requested, the applicant shall submit a copy of any such notice of violation or stop work order in effect. The nature of outstanding permit violations and any proposed cure shall be considered vital information relevant to the review of the application.

306.2 Applications for preliminary review, alteration, new construction, or subdivision shall include approval by the Zoning Administrator.

306.3 Applications shall disclose the nature of any zoning variance, special exception, or code relief known to be required for the proposed work. If there is a Zoning Commission or Board of Zoning Adjustment order in effect for the property, the applicant shall submit a copy with the application. If requested, the applicant shall submit a copy of any pending application to the Zoning Commission or BZA.

306.4 If there is a conservation easement or preservation covenant in effect for the property, the applicant shall submit written consent of the easement or covenant holder with the application.

306.5 If the applicant intends to request approval of a transfer of development rights pursuant to the Zoning Regulations, the application shall so indicate.

306.6 If requested, the applicant shall submit documentation to verify any claim that adjacent property owners or the affected ANC have been notified of the proposed work.

307 APPLICATION MATERIALS: PHOTOGRAPHS

307.1 All applications shall include comprehensive exterior photographs of the building, structure or site in question.

307.2 In the case of a building, structure or site in a historic district, applications shall also include photographs of the adjacent buildings and immediate neighborhood.

307.3 All photographs shall be of good quality, clearly showing the area to be affected by the proposed work.

307.4 Annotated photographs showing proposed rehabilitation or repair work may be submitted in lieu of architectural plans in appropriate circumstances.

308 APPLICATION MATERIALS: ARCHITECTURAL PLANS

308.1 Applications for conceptual review shall include architectural drawings or model photographs sufficient to indicate the general exterior massing, composition or design of the proposed work within its surroundings.

308.2 Applications for preliminary review shall include architectural drawings sufficient to indicate the exterior design of the proposed work within its surroundings.

308.3 Applications for alteration or new construction shall include architectural drawings of sufficient completeness to indicate the complete exterior design of the proposed work within its surroundings.

308.4 Architectural plans shall clearly show the character of the work to be performed. Plans shall be drawn to scale, fully dimensioned for critical measurements including overall width, length, and height. A progressively higher level of specificity with regard to the exterior design and dimensions shall be required for conceptual, preliminary, and construction permit applications.

308.5 Architectural plans shall be drawn and annotated in a manner that defines without ambiguity the nature and extent of proposed work.

308.6 Architectural plans for additions, new construction, and other substantial work shall normally include a site plan, floor plans, elevations, and sections.

308.7 Architectural specifications, materials samples, or site mock-ups may be required if necessary for review.

308.8 All applications shall clearly show the extent to which the existing building or structure is to be preserved, altered, or demolished.

308.9 Applications for demolition shall include architectural plans or diagrams clearly showing the extent of proposed demolition.

308.10 Applications involving an interior historic landmark shall include architectural plans sufficient to indicate the nature and design of proposed interior work. Plans may be in the form of or include annotated photographs.

308.11 Applications for subdivision shall include a draft plat of subdivision prepared by the Surveyor, or a draft plat clearly showing the proposed reconfiguration of property. Applications for conceptual review of a subdivision shall include a plat or site plan of the proposed subdivision.

309 APPLICATION MATERIALS: PROJECT DESCRIPTION

309.1 Applications for new construction and substantial additions, including conceptual and preliminary review, shall include a written project description indicating the general nature of the project. This description shall include a statement of the program of uses, estimated gross floor area by use, number of residential units, project features, scope of preservation work, and amenities.

309.2 An application for construction of a project of special merit shall include a statement of the proposed grounds upon which the applicant intends to support this claim. Any such application shall also include a general description of the information the applicant intends to submit as evidence of ability to complete the project.

309.3 The applicant shall also submit any other information as may be necessary to understand and evaluate the project for consistency with the purposes of the Act.

310 APPLICATION MATERIALS: ACCURACY AND ADEQUACY OF INFORMATION

310.1 All application materials shall accurately represent the existing conditions of the property and the nature of the work proposed. The entire scope of the proposed project shall be accurately represented in the application, except in the case of a supplemental permit application or an application that represents a portion of a phased project. The signature of the owner or the owner's agent on the application shall be considered to attest to its completeness and accuracy.

310.2 The Board or CFA may request any additional information as may be reasonably necessary for a decision or recommendation.

310.3 If an applicant does not supply sufficient information, the Board or CFA may return the application to the Mayor's Agent, and the Mayor's Agent may deny the issuance of the permit.

311 FILING DEADLINES

311.1 The Board may establish filing deadlines to allow sufficient time for staff review of applications prior to the Board meeting. The staff may defer to the next Board meeting any application not submitted in complete form, with all required information and documents, by the filing deadline.

311.2 The filing of an application by the filing deadline shall not be considered a guarantee that the application will be heard at the next Board meeting. The Board or staff may defer applications to allow sufficient time for review, if additional information is needed, if warranted by the volume of cases, or for any other legitimate reason.

311.3 The staff may establish additional deadlines and requirements for the receipt of supplemental materials to be provided to the Board prior to its meeting. If an applicant fails to provide supplemental materials as required by the deadline, the staff may defer the case to the next meeting.

311.4 In the case of applications returning to the Board for additional review, the following shall apply:

(a) Refiling of the application and assignment of a new case number is not required unless the revision represents a substantially different project, the ownership has changed, more than two years has elapsed since the previous Board review, or the staff otherwise deems it appropriate.

(b) The Board or staff may require the submission of revised plans or other information, and consultation meetings if necessary, prior to further review by the Board.

(c) Submission deadlines shall be the same as for new cases, but the staff may exercise discretion in allowing late submission of revised or supplemental material.

(d) An applicant directed to return to the Board is not guaranteed consideration at the next Board meeting, even if revised materials are submitted by the filing deadline. The staff may schedule the case as appropriate to allow sufficient time for consultation and review.

(e) The staff may defer a case to the next meeting if revised plans or other information is not provided in sufficient time for review, if further revision or consultation is needed, or for any other legitimate reason.

311.5 The Commission of Fine Arts may establish filing deadlines at its own discretion.

312 NOTICE OF FILED APPLICATIONS

312.1 Notice of filed applications for demolition, alteration, subdivision, and new construction shall be placed in the *D.C. Register* as required by D.C. Official Code §§ 6-1104(a), 6-1105(a), 6-1106(a), and 6-1107(a).

312.2 DCRA shall provide this notice in accordance with Mayor's Order 79-50, as amended, and implementing procedures DCRA may adopt.

313 TRANSMITTAL OF APPLICATIONS TO THE MAYOR'S AGENT AND CFA

313.1 The Mayor's Agent shall receive all applications subject to review under the Act transmitted by DCRA.

313.2 Applications subject to review under the Shipstead-Luce Act or the Old Georgetown Act may be transmitted by DCRA to the Commission of Fine Arts.

313.3 If an application is subject to review by both the Mayor's Agent and CFA pursuant to the provisions of the Act, it may be transmitted simultaneously to each.

313.4 All applications except those to be reviewed by the staff under a delegation of authority (§§ 316 and 317) may be transmitted with an assigned case number. If the staff declines to review a case under delegation of authority from the Board, it shall be returned for transmittal with a case number.

313.5 DCRA may transmit applications in accordance with Mayor's Order 79-50, as amended, and implementing procedures it may adopt.

314 REFERRAL OF APPLICATIONS BY THE MAYOR'S AGENT

314.1 The Mayor's Agent shall refer to the Board all applications not referred to the Commission of Fine Arts.

314.2 The Mayor's Agent may refer to the Board any application referred to the CFA. The following considerations shall apply in such cases:

(a) The Mayor's Agent may delegate authority to the staff to determine which applications shall be referred to the Board.

(b) An applicant, directly affected person, or Advisory Neighborhood Commission may submit a written request to the Mayor's Agent for review by the Board, stating the reasons for the request.

(c) An Advisory Neighborhood Commission may submit a duly authorized written request to the Mayor's Agent for review by the Board, stating the specific reasons for the request for duplicate review.

(d) Upon receipt of a request for duplicate review, the Mayor's Agent shall decide whether to refer the application to the Board, or shall refer the matter to the Board for its decision on whether a duplicate review would be appropriate.

314.3 The Mayor's Agent shall refer to the Office of Planning a copy of any application for which the owner intends to demonstrate special merit.

314.4 The Mayor's Agent may refer any application to any other District department or agency for review.

314.5 The Mayor's Agent may request any other person that the Mayor's Agent deems appropriate to provide information and assistance.

315 REVIEW BY THE COMMISSION OF FINE ARTS

315.1 The Commission of Fine Arts (and the Old Georgetown Board) may review applications in accordance with procedures the CFA may adopt.

315.2 The HPO may evaluate applications referred to the CFA, and may coordinate with the CFA and its staff in reviewing applications. The HPO staff may participate and provide public comment on behalf of the Board or SHPO in any review of a case by the Commission or the Old Georgetown Board.

316 REVIEW BY THE OFFICE OF PLANNING AND OTHER AGENCIES

316.1 The staff shall coordinate with the Office of Planning in reviewing any application for which the owner intends to demonstrate special merit.

316.2 The staff is authorized to coordinate with any other department or agency to which the Mayor's Agent has referred an application, and may also seek the advice or assistance of any agency or other appropriate person in reviewing applications.

317 EXPEDITED REVIEW UNDER DELEGATION TO THE STAFF

317.1 The Board may delegate to the staff its authority to review certain applications for minor work not likely to have a significant effect upon the historic character of designated properties. These applications shall not require individual referral to the Board.

317.2 The purpose of this delegation shall be to expedite the processing of applications for routine, minor, and compatible work so as to promote efficient administration of the Historic Protection Act in the general public interest.

317.3 Applicants shall qualify for expedited review only upon submission of sufficient information to support a determination that the proposed work is compatible with the character of the affected historic landmark or historic district. An applicant seeking expedited review shall submit all pertinent application materials required in §§ 304 through 310. The staff may reject for expedited consideration any application lacking proper documentation.

317.4 The staff shall review applications by applying written criteria adopted by the Board. These criteria shall include the design and construction standards in Chapters 20 through 29, as well as any design guidelines adopted by the Board in accordance with §

2003. The staff shall ensure that the Board's standards and guidelines are readily available to the public.

317.5 The staff shall maintain a public record of all approvals granted under this delegation of authority, indicating the address and type of work approved. The staff may provide regular notice of the cases approved under delegated review, either by mail or electronic mail to the public mailing list described in Chapter 32.

318 CATEGORIES OF WORK DELEGATED TO THE STAFF

318.1 The staff is delegated authority to review the following types of work:

(a) Construction of insignificant or clearly compatible minor additions or alterations;

(b) Removal of insignificant or incompatible minor additions or alterations;

(c) Demolition of buildings the Board has previously determined not to contribute, or that clearly do not contribute to the significance of a historic district;

(d) Window and door replacement;

(e) Addition or closure of window or door openings in a manner consistent with the Board's standards and guidelines;

(f) Rear decks and roof decks not visible or obtrusive from a public street;

(g) Fences up to 42 inches high in front yards and up to 7 feet high in rear yards;

(h) Retaining walls, patios, garden storage sheds, swimming pools, and similar site features;

(i) Appropriate siding materials;

(j) Replacement of roofing, coping, gutters and downspouts;

(k) Skylights not visible or obtrusive from a public street;

(l) Installation, modification, or removal of exterior lighting fixtures;

(m) Antennas and satellite dishes;

(n) Air conditioning equipment, if suitably screened or unobtrusive;

(o) Plumbing and exhaust vents, if suitably screened or unobtrusive;

(p) Utility meter boxes;

(q) Awnings, canopies, and signs consistent with the Board's standards and guidelines;

(r) Unenclosed sidewalk cafes consisting of movable components;

(s) In-kind repair or replacement of woodwork, metalwork, and other trim;

(t) Brick pointing and cleaning of building exteriors, except by sandblasting;

(u) Excavation, sheeting and shoring, grading, blasting, and other ground disturbance activity;

(v) Waterproofing and dampproofing; and

(w) Other routine, minor, and compatible work consistent with the above.

318.2 The staff is delegated authority to review applications for the following types of permits:

(a) Projection permits for projections consistent with work approved by the Board or delegated to the staff;

(b) Public space permits for occupation of public space for dumpsters, barricades, and other construction activities, and permits for after-hours work;

(c) Permits for temporary work, including observation stands, scaffolding, and other construction activities;

(d) Renewal or revision permits for items consistent with work approved by the Board or delegated to the staff;

(e) Supplemental plumbing, gas, mechanical, and electrical, and other specialty permits; and

(f) Supplemental raze applications for non-contributing buildings or other structures pursuant to an approval by the Board or Mayor's Agent.

318.3 The staff is also delegated authority to review applications for the following types of subdivision:

(a) Minor or insignificant lot changes compatible with the character of the property or its setting;

(b) Conversion of assessment and taxation lots to record lots; and

(c) Subdivisions required to implement a rehabilitation or construction project approved by the Board.

318.4 The staff may decline to review any application under delegated authority if it deems appropriate.

319 PROCESSING OF APPLICATIONS UNDER DELEGATED REVIEW

319.1 Upon receipt of an application, the staff shall determine whether delegated review is appropriate. If at any time during the consideration of an application, the staff determines that it is not appropriate for delegated review, the staff shall require that it be filed for review by the Board.

319.2 If an application is appropriate for delegated review, the staff shall evaluate it for completeness. The staff may request additional information or documentation as may be reasonably necessary for its review.

319.3 Upon receipt of a complete application, the staff shall review it for conformance with the design and construction standards in Chapters 20 through 29, as well as any applicable design guidelines adopted by the Board.

319.4 During the course of review, the staff may consult with affected Advisory Neighborhood Commissioners, historic preservation organizations, or potentially interested persons prior to taking an action on the application.

319.5 If the staff determines that the applicable standards or guidelines have been met, it shall be authorized to approve the application on behalf of the Board, and to use its delegated approval as a basis for final action by the Mayor's Agent.

319.6 Even if the applicable standards or guidelines appear to have been met, the staff in its sole discretion, or at the request of the Board, may nonetheless refer any matter to the Board either as a Consent Calendar or Agenda item.

319.7 If the staff determines that the applicable standards or guidelines have not been met, the staff shall allow the applicant to amend the application by submitting revised or supplemental materials to show conformance. If the applicant is still unable to show conformance, the staff shall inform the applicant of the specific reason for denial and shall submit the case to the Board on the Agenda or Denial Calendar.

319.8 Prior to referral to the Board, the applicant may request a meeting with the Deputy SHPO to discuss the application of the standards or guidelines.

319.9 Prior to submitting a case to the Board on the Denial Calendar, the staff shall inform the applicant of the reason for denial, and shall notify the applicant in writing of the opportunity to present brief written materials to the Board for consideration with the

staff report. The applicant shall be afforded at least seven days to submit these materials.

320 REVIEW BY THE BOARD

320.1 The Board shall hold regular public meetings for the purpose of reviewing applications for work affecting historic landmarks or historic districts. All Board reviews shall occur at such a public meeting.

320.2 The Board shall review applications scheduled on its Agenda, Consent Calendar, or Denial Calendar. Cases on the Agenda will be heard by the Board in open session with the opportunity for public comment. Cases on the Consent Calendar or Denial Calendar will be reviewed on the basis of submitted materials and staff reports without further public comment.

321 NOTICE OF BOARD MEETING

321.1 Not less than 15 days before a public meeting, the Board shall give notice of the meeting to all those listed on the public mailing list described in Chapter 32. The Board shall mail the notice by first class mail and may supplement this mailing with announcements by electronic mail, facsimile, or posting on the HPO website.

321.2 Notice of the meeting shall state the time, date, and location of the meeting, and shall include a list of cases to be considered, indicating the street address and nature of the application for each case.

321.3 Applicants shall be notified of the meeting by telephone, email, or other direct contact by the staff, or by a meeting schedule posted in the office where applications are filed for review.

321.4 The public notice shall be considered a list of potential cases for consideration, and not a guarantee that the Board will consider each case noticed for the meeting. The staff may approve some noticed cases under delegated authority prior to the meeting. The staff may defer other noticed cases for further consultation prior to Board review. The staff may also defer cases to a supplemental meeting or to the next regularly scheduled meeting if necessary due to the volume of cases or other circumstances.

321.5 The Board shall release the proposed Agenda, Consent and Denial Calendars to the public not later than five days prior to the meeting date.

321.6 The scheduling of cases on the Agenda, Consent, and Denial Calendars shall be at the sole discretion of the Board and staff, and nothing shall preclude the Board from amending the scheduling at a public meeting.

322 STAFF REVIEW PRIOR TO BOARD MEETING

322.1 Prior to consideration by the Board, the staff shall review each case and consult with the applicant as necessary. The staff shall assist the applicant in understanding the Board's procedures and in meeting the Board's standards and guidelines. Applicants are advised to take full advantage of the staff's availability and expertise.

322.2 The staff shall advise applicants of changes in their plans that may be appropriate in order to meet the Board's standards and guidelines, and in response the applicant may submit revised plans for further review. Revisions may be submitted without the requirement for a new application. If the applicant is unable to submit revised plans in sufficient time for staff review prior to the Board meeting, the staff may defer the case to the next Board meeting.

322.3 If the staff is unable to reach an applicant at the telephone number provided on the application, the staff may proceed nevertheless to process the application for Board review.

322.4 The staff may also consult with Advisory Neighborhood Commissions, historic preservation organizations, adjacent property owners, and any other interested or potentially interested persons in an attempt to gather information, assess public interest in the case, and identify potential concerns prior to the Board meeting. The staff shall encourage applicants to work directly with neighbors and any other interested persons or groups in an attempt to resolve possible concerns prior to the Board meeting.

322.5 ANCs, historic preservation organizations, and other groups wishing to participate on a regular basis in the Board's meetings are encouraged to establish a means of periodic contact with the staff in order the make their views known prior to each Board meeting. Organizations may appoint a monitor familiar with the Board's standards, guidelines, and procedures as a means of facilitating a full and orderly involvement in the review process.

322.6 ANCs and historic preservation organizations are also encouraged to establish a schedule of regular meetings for applicants wishing to present cases for community review prior to consideration by the Board. Applicants are encouraged but not obligated to attend such meetings.

(a) The scheduling and conduct of such meetings shall be at the discretion of the ANC or organization.

(b) The HPO is not responsible for informing applicants of such meetings or for submitting cases to ANCs or historic preservation organizations for review.

322.7 The staff shall prepare a written report and recommendation on each case the Board will review. Each staff report shall indicate whether the application is to be considered on the Agenda, Consent Calendar, or Denial Calendar. Each report shall evaluate the project for consistency with the purposes of the Act and with the Board's standards and

guidelines, and shall recommend any modifications needed to achieve such consistency.

322.8 Staff reports shall be submitted to the Board and released to the applicant and public at least five days prior to the meeting.

323 REQUESTS FOR WITHDRAWAL OR DEFERRAL

323.1 An applicant may withdraw an application or may request a deferral of Board review by notifying the staff, in writing or otherwise, at any time.

323.2 In the case of work already completed without the necessary permit, the staff may schedule the application for Board review regardless of a request for withdrawal. If scheduled for Board review, the staff shall inform the applicant of the time and place of the review in accordance with the procedures in this chapter.

323.3 An affected ANC may request a deferral of Board review of a case involving matters of significance to neighborhood planning and development, if the ANC has not received the requisite notice under the ANC Act (D.C. Official Code § 2-). The ANC shall make this request by notifying the staff in writing or by electronic mail, at least 48 hours prior to the scheduled Board meeting. The request shall state that the ANC has not had sufficient opportunity to hold a duly noticed public meeting to consider the application. Upon receipt of a valid ANC request, the staff shall defer the case for a sufficient time to ensure that the ANC has received the requisite notice.

323.4 A person or group directly affected by a case may request a deferral of Board review for good cause, but shall bear the burden of demonstrating the need for a delay in view of the applicant's right to prompt consideration by the Board. The staff may require that such a request be made in writing. The staff shall determine whether to defer the case, and may consult with the Chairperson of the Board in making this determination.

324 BOARD MEETING PROCEDURES

324.1 The Board shall hold its public meetings in accordance with the procedures in Chapter 31.

324.2 The Board shall review cases scheduled for public comment and discussion in accordance with a proposed Agenda released to the public prior to the Board meeting. The Board shall dispose of other cases by adoption of a Consent Calendar and Denial Calendar, as appropriate. The Board may amend the Agenda, Consent, and Denial Calendars at the public meeting as it may deem appropriate.

324.3 After considering each application and hearing public comments, the Board shall deliberate in public and vote on the case. In order to ensure that neighborhood views as expressed through the ANC receive specific attention in its deliberations, the Board

shall give great weight to any properly adopted written recommendations of the affected ANC that are germane to the issues that fall within the Board's authority in the case.

325 CONSENT CALENDAR

325.1 An application may be placed on the Consent Calendar if the applicant and staff agree that the proposed work is consistent with the purposes of the Act, and there is no known objection by an affected ANC, historic preservation organization, or affected person. Any relevant terms or modifications agreed upon by the applicant and staff may be included as conditions of the approval.

325.2 At the request of any Board member, the Chairperson may remove any case from the Consent Calendar and place it on the Agenda for individual consideration by the Board at the meeting. A request from any other group or person to remove a case from the Consent Calendar should be made to the staff in advance of the hearing and shall be considered as a preliminary matter at the hearing.

325.3 The Chairperson may also remove any case from a duly noticed Agenda and place it on the Consent Calendar, provided there is no objection from the applicant, any Board member, or any affected group or person present and wishing to comment on the case.

325.4 The Board may approve the Consent Calendar on a voice vote.

326 DENIAL CALENDAR

326.1 An application which has been denied by the staff pursuant to the Board's delegation of authority may be placed on the Denial Calendar.

326.2 Prior to submitting a case to the Board on the Denial Calendar, the staff shall inform the applicant of the reason for denial, and shall notify the applicant of the opportunity to present brief written materials to the Board for consideration along with the staff report. The applicant shall be afforded at least seven days to submit these materials.

326.3 The staff report shall clearly state the reason for denial, indicating the specific standard or guideline violated.

326.4 At the request of any Board member, the Chairperson of the Board may remove any case from the Denial Calendar and place it on the Agenda for consideration by the Board at the meeting.

326.5 The Board shall consider both the staff report and the applicant's written materials in reaching a decision based solely on the written record. By adopting the Denial Calendar, the Board shall confirm the staff's recommendation of denial.

326.6 The Board may adopt the Denial Calendar on a voice vote.

326.7 If the Board recommends denial, the applicant may request a public hearing before the Mayor's Agent.

327 POST-MEETING PROCEDURES

327.1 Subsequent to each meeting, the Board shall make available for public inspection the minutes and any written transcript that has been made of the proceedings. The transcript shall serve as the official record of the Board's decisions at the meeting.

327.2 The staff may prepare a written summary of the Board's actions based upon the transcripts of the proceedings. The staff may also send written confirmation of the Board's action on a case.

327.3 If the Board recommends approval of the application, and the Mayor's Agent acts on that basis, the staff shall return the application to DCRA with the Board's recommendation and the appropriate notations on the application and accompanying plans. If the Board has conditioned its approval on specific modifications, the staff shall include those modifications as specific conditions on the application or plans, or shall require the applicant to submit revised plans, whichever the staff deems appropriate.

327.4 If the Board recommends denial of the application, the staff shall send written notice to the applicant within 10 days, stating the reasons for the Board's recommendation, and informing the applicant of the right to request a public hearing by the Mayor's Agent.

328 REPORT OF RECOMMENDATIONS TO THE MAYOR'S AGENT

328.1 After reviewing an application under D.C. Official Code §§ 6-1104 through 6-1108, the Review Board and CFA, as applicable, shall report their respective recommendations to the Mayor's Agent.

328.2 The Board and CFA shall not be required to report a recommendation to the Mayor's Agent on an application for conceptual design review.

328.3 The Board and CFA may consider applications for conceptual design review over an indefinite period of time without subsequent referral to the Mayor's Agent.

328.4 In the case of demolition, the recommendation shall indicate whether or not the building or structure contributes to the character of a historic landmark or historic district.

329 FINAL REVIEWS DELEGATED TO THE STAFF

329.1 Upon completion of conceptual review, the Board may delegate final review to the staff, with any conditions or directions the Board deems appropriate.

329.2 If the Board approves a conceptual design and delegates final review to the staff, the applicant shall continue to develop the design in consultation with the staff. The applicant shall inform the staff of significant revisions and refinements of the design as they are incorporated into the project plans. In the case of large or complex projects, the applicant shall meet with the staff to ensure that the development of the design remains consistent with the Board's direction.

329.3 Upon the completion of the final design, the applicant shall submit the permit application and plans for staff review. An official transmittal with an assigned case number shall not be required for this submission unless the staff determines that the case should be returned to the Board for further review.

329.4 The staff may approve the permit application if the plans are consistent with the Board's conceptual review. If the plans are not consistent with the conceptual review, the staff shall consult with the applicant to resolve any discrepancies. If unable to reach a resolution, the staff shall require the applicant to file the case for further Board review.

329.5 The staff shall review final applications as expeditiously as possible. In the case of large or complex projects, the staff shall review final applications within 15 days of receipt.

329.6 The staff may place conditions on a final approval by annotating on the plans or by noting written conditions to be included on the issued permit.

330 CONDITIONS OF APPROVAL

330.1 The Board's recommendations on all applications, including applications for conceptual design review and preliminary review, shall remain in effect for a period of two years from the date of the Board's action. Upon expiration of this period, an applicant may return to the Board with a request for an extension of one additional period of two years for good cause shown. The Board shall not unreasonably withhold its approval of an extension. Upon expiration of this extension, or if the extension is denied, a new application shall be required for any further review of the project by the Board.

330.2 The Board's delegation of final review authority to the staff at the conclusion of conceptual review shall also remain effect for a period of two years from the date of the Board's action. After the delegation has expired, the applicant shall be required to return to the Board to request an additional two years on the basis of good cause shown. The Board shall not unreasonably withhold its approval of an extension. Upon

expiration of this extension, or if the extension is denied, the staff shall return the application to the Board for final review.

330.3 The CFA may place time limitations or any other conditions on its approvals as it may deem appropriate.

331 SUBSTANTIAL CHANGES TO APPROVED PLANS

331.1 Applicants shall notify the staff of any substantial changes made to approved plans, either before or after permit issuance. Substantial changes shall include any modification in the design, massing, proportions, dimensions, design, details, materials, finishes, or other aspects of the design that would significantly or materially differ from the approved design, or affect the compatibility of the plans with the affected historic property.

331.2 The staff shall review significant changes to determine whether they are consistent with the approved plans and any terms and conditions of the approval by the Board and Mayor's Agent.

(f) If the changes are consistent with the approval, the staff shall indicate its approval by means of a stamp or notation on the approved plans.

(g) If the changes are not consistent with the approval, the staff shall consult with the applicant to ensure that the changes are revised to be consistent with the approved plans. If the staff and applicant are not able to reach agreement, the staff shall refer the matter to the Review Board for resolution.

331.3 Applicants shall obtain any construction permit or permit revision required as a result of a substantial change in project plans.

331.4 Failure to comply with approved plans or the terms and conditions of approval shall be grounds for the staff to initiate appropriate enforcement action.

CHAPTER 4 MAYOR'S AGENT REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

Secs.
400 General Provisions
401 Standards for Approval and Denial
402 Approval without a Public Hearing
403 Notification of the Right to Request or Intent to Schedule a Public Hearing
404 Request for a Public Hearing and Statement of Claim
405 Denial without a Public Hearing
406 Scheduling of a Public Hearing
407 Notice of a Public Hearing
408 Supplemental Pre-Hearing Filings
409 Request for Party Status
410 Public Hearing Procedure
411 Issuance of Final Order
412 Conditions of Final Order

400 GENERAL PROVISIONS

400.1 The Mayor's Agent shall make the final determination on the approval or denial of applications for demolition, alteration, new construction, and subdivision subject to the Historic Protection Act (D.C. Official Code §§ 6-1104(e), 6-1105(f), 6-1106(e), and 6-1107(f)), and shall make preliminary determinations of compliance with the Act pursuant to D.C. Official Code § 6-1108.

400.2 The Mayor's Agent shall make these findings after having received and duly considered the recommendations from either the Review Board or the Commission of Fine Arts, or both, as appropriate.

400.3 The Mayor's Agent may make a preliminary or final determination without a public hearing, if not required by law. Any such determination shall be made in accordance with this chapter.

400.4 If a public hearing is required by law, or the Mayor's Agent deems it appropriate to hold a public hearing, it shall be held in accordance with the provisions of this chapter and Chapter 30. As provided in § 104, the Mayor's Agent (Hearing Officer) may assume the duties of the Mayor's Agent for this purpose.

400.5 The Mayor's Agent shall take no action on applications for conceptual design review.

400.6 The following terms specifically applicable to this chapter are defined in Chapter 34:

(a) Necessary in the public interest;

(b) Consistent with the purposes of the Act;

(c) Special merit;

(d) Unreasonable economic hardship;

(e) Low-income owner;

(f) Design.

401 STANDARDS FOR APPROVAL AND DENIAL

401.1 In making a finding on demolition, alteration, or subdivision, the Mayor's Agent shall apply the standard that no permit shall be issued and no subdivision shall be admitted to record unless:

(a) Issuance of the permit or admission of the subdivision to record is necessary in the public interest, or

(b) Failure to issue a permit or admit the subdivision to record will result in unreasonable economic hardship to the owner.

401.2 In making a finding on new construction, the Mayor's Agent shall apply the standard that the permit shall be issued unless:

(a) After due consideration of the zoning laws and regulations of the District of Columbia, the Mayor's Agent finds that the design of the building and the character of the historic district or historic landmark are incompatible;

(b) Provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor's Agent may deny a construction permit entirely upon finding that any additional construction will be incompatible with the character of the historic district or historic landmark.

401.3 In making any determination, the Mayor's Agent shall consider the recommendations of the Review Board and Commission of Fine Arts, as applicable, giving due regard to their statutory role as advisors to the Mayor on the consistency of proposed work with the purposes of the Act.

401.4 In making a determination that work is necessary in the public interest because it is consistent with the purposes of the Historic Protection Act, the Mayor's Agent shall apply the criteria in § 2002. The Mayor's Agent shall consider all applicable criteria in making a determination, and shall find that all applicable criteria have been met for a determination of consistency.

402 APPROVAL WITHOUT A PUBLIC HEARING

402.1 Upon receipt of a recommendation of approval from the Review Board or CFA, the Mayor's Agent may take any of the following actions without a public hearing, and without further public notice:

(a) If the Mayor's Agent finds that a proposed alteration, subdivision, or demolition of a non-contributing building or structure is consistent with the purposes of the Act, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.

(b) If the Mayor's Agent finds in the case of new construction that the design of the building and the character of the historic landmark or historic district are not incompatible, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.

(c) In the case of preliminary review, if the Mayor's Agent finds it appropriate to issue a preliminary finding of compliance with the Act, the Mayor's Agent shall notify the applicant of this finding in writing.

402.2 If the Mayor's Agent has made a preliminary finding of compliance with the Act, upon receipt of a final permit application from DCRA, the Mayor's Agent shall find either:

(a) That the final application is consistent with the approved preliminary application, in which case the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated; or

(b) That the final application is not consistent with the approved preliminary application, in which case the Mayor's Agent shall refer the application to the Board or CFA as appropriate for further review

402.3 The Mayor's Agent may delegate to the staff the authority to approve applications consistent with the recommendations of the Board or the CFA.

403 NOTIFICATION OF THE RIGHT TO REQUEST OR INTENT TO SCHEDULE A PUBLIC HEARING

403.1 In the following instances, upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the opportunity to request a public hearing:

(a) If the Review Board or CFA has recommended that a proposed demolition, alteration, subdivision, or preliminary application is not consistent with the purposes of the Act; or

(b) In the case of new construction, if the Review Board or CFA has recommended that the design of the building and the character of the historic landmark or historic district are not compatible.

403.2 In the following instances, upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the requirement to hold a public hearing, or the Mayor's Agent's intent to hold a public hearing:

(a) In the case of demolition of a building or structure that contributes to a historic landmark or historic district, unless the applicant withdraws the application;

(b) In the case of subdivision of a historic landmark, unless the applicant withdraws the application;

(c) In any case in which a claim of unreasonable economic hardship or special merit is made; and

(d) In any other case the Mayor's Agent deems it appropriate to hold a public hearing.

403.3 The notification by the Mayor's Agent shall inform the applicant of any applicable fees for a public hearing as provided in Chapter 33.

404 REQUEST FOR A PUBLIC HEARING AND STATEMENT OF CLAIM

404.1 In cases where the Mayor's Agent notifies an applicant of the opportunity for a public hearing, the applicant shall have 10 days from the date shown on the notification to request the hearing in writing, and to state one or more of the following as the applicant's claim:

(a) That the proposed demolition, alteration, or subdivision is necessary to construct a project of special merit;

(b) That denial of the permit or failure to admit the subdivision to record will result in unreasonable economic hardship to the owner; or

(c) That the proposed demolition, alteration, or subdivision is consistent with the purposes of the Act as set forth in D.C. Official Code § 6-1101(b).

404.2 In cases where the Mayor's Agent notifies an applicant that a public hearing will be scheduled, the applicant shall have 10 days from the date shown on the hearing notification to state one or more of the reasons in § 404.1 as the nature of the applicant's claim.

405 DENIAL WITHOUT A PUBLIC HEARING

405.1 If the applicant fails to request a hearing, the Mayor's Agent may deny the issuance of the permit or admission of the subdivision to record without a hearing.

405.2 If the Mayor's Agent denies the issuance of the permit or the admission of the subdivision to record, the HPO shall notify the applicant and return the application to DCRA with the denial indicated.

406 SCHEDULING OF A PUBLIC HEARING

406.1 Upon receiving a request for a public hearing and/or statement of the nature of the applicant's claim, the Mayor's Agent shall schedule the hearing.

406.2 If the applicant does not comply with the requirement to notify the Mayor's Agent of the nature of the applicant's claim, the Mayor's Agent may nonetheless schedule the hearing, and any delay caused by the applicant's failure to request a hearing or provide any information required by these regulations shall toll the running of the 120-day period provided by the Act.

407 NOTICE OF A PUBLIC HEARING

407.1 The Mayor's Agent shall give notice of a public hearing not less than 30 days before the hearing, as follows:

(a) By first class mail to the applicant, the owners of all property abutting the property involved in the application, and the affected Advisory Neighborhood Commission; or

(b) By first class mail to all persons listed on the public mailing list described in Chapter 32.

407.2 Notice of the public hearing shall state the following:

(a) The time, date, and location of the hearing;

(b) The name of the applicant;

(c) The case number and nature of the application;

(d) The street address of the property involved;

(e) The lot and square number of the property involved;

(f) The nature of the applicant's claim;

(g) The number of the affected ANC; and

(h) The filing requirements for participation as a party.

408 SUPPLEMENTAL PRE-HEARING FILINGS

408.1 In all cases, the applicant shall file the following information with the Mayor's Agent at least 20 days prior to the public hearing:

(a) A written statement setting forth the grounds upon which the applicant bases the claim of consistency, special merit, or economic hardship;

(b) Architectural drawings of sufficient completeness to indicate the proposed exterior design of the building, structure, or alteration within its historic context;

(c) Photographs sufficient to document the historic features or properties affected by the proposed work;

(d) A list of witnesses who are prepared to testify on behalf of the applicant; and

(e) Any additional information, reports, or other materials that the Mayor's Agent specified when scheduling the public hearing.

408.2 In cases in which the applicant intends to make a claim of unreasonable economic hardship, the applicant shall file the following information, by affidavit, with the Mayor's Agent at least 20 days prior to the hearing:

(a) The amount paid for the property; the date of purchase, and the name of the seller, including a statement of the relationship, if any, between the owner and the seller;

(b) The assessed value of the land and improvements on the land according to the two most recent assessments;

(c) The amount of real estate taxes for the previous two years;

(d) The amount of annual debt service, if any, for the previous two years;

(e) All appraisals obtained within the previous two years by the owner or applicant in connection with his or her purchase, financing, or ownership of the property;

(f) Any listing of the property for sale or rent, the price asked, and offers received, if any;

(g) Any consideration by the owner as to profitable adaptive uses for the property;

(h) For income-producing property, the amount of annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and annual cash flow for the previous two years; and

(i) For a low-income owner, a statement of present household income and the number of persons in the household.

408.3 The Mayor's Agent may require that an applicant furnish additional information that may be relevant to a determination of unreasonable economic hardship. The Mayor's Agent may provide in appropriate instances that this additional information be furnished under seal.

408.4 In cases in which the applicant seeks a bench decision, the applicant shall submit proposed findings of fact and conclusions of law to the Mayor's Agent at least 20 days prior to the hearing.

408.5 If any required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with the affidavit a statement of the missing information and the reasons it cannot be obtained.

408.6 Unless furnished under seal, the staff shall make the applicant's supplemental filing information available for public inspection.

409 REQUEST FOR PARTY STATUS

409.1 Any affected person other than the applicant wishing to participate as a party in a public hearing shall file the following information with the Mayor's Agent not less than 15 days prior to the hearing:

(a) The requesting party's name and address;

(b) Whether the party will appear as a proponent or opponent of the application;

(c) Whether the party will appear through legal counsel, and if so, the name and address of legal counsel; and

(d) A written statement setting forth the manner in which the party may be affected or aggrieved by action upon the application, and the grounds upon which the party supports or opposes the application.

409.2 The Mayor's Agent shall determine whether the person qualifies as a party as provided in Chapter 30.

410 PUBLIC HEARING PROCEDURE

410.1 The Mayor's Agent shall hold the public hearing in accordance with the procedures in Chapter 30.

410.2 The Mayor's Agent shall hold the public hearing within 120 days of receipt of an application, but any failure to conclude the hearing within this time period shall not be construed as an entitlement to approval of the application.

411 ISSUANCE OF FINAL ORDER

411.1 Upon closure of the hearing record, the Mayor's Agent shall issue a final written order, including findings of fact and conclusions of law. The final order shall be filed with the record of the case.

411.2 The final order shall be based only upon the exclusive record of the hearing or any lesser portions of the exclusive record that may be agreed upon by the parties at the hearing.

411.3 The Mayor's Agent shall give notice to each party participating in the hearing, by serving the party with a copy of the final order.

411.4 The final order shall be issued as expeditiously as possible after closure of the hearing record.

411.5 The final order shall be effective 15 days after service.

412 CONDITIONS OF FINAL ORDER

412.1 The Mayor's Agent may include any conditions or restrictions deemed appropriate as terms of the approval.

412.2 As a condition of the issuance of a final order, the Mayor's Agent may require the execution of a signed memorandum describing the terms and conditions of any negotiated settlement or consensus agreement among interested parties.

412.3 The Mayor's Agent may require that a project return to the Board or CFA for further review and refinement after approval, particularly in the case of a project described only in concept.

412.4 In the case of a project of special merit, the Mayor's Agent may specify any documents or assurances the applicant must submit in order to demonstrate the ability to complete the project, as required for permit issuance.

412.5 The Mayor's Agent may require the posting of a performance bond, covenant, or other mechanism to ensure the realization of proffered benefits, and completion of the project in accordance with the terms of the order.

412.6 The Mayor's Agent may impose a performance schedule as a condition of any order, and may impose a time limit on the validity of any order. If no time limit is specified, an order shall be considered valid for a period of five years.

CHAPTER 5 ARCHAEOLOGICAL RESOURCES

Secs.
500 General Provisions
501 Historic Properties Designated for Archaeological Significance
502 Historic Properties with Potential Archaeological Significance
503 Projects Involving a Public Hearing by the Mayor's Agent

500 GENERAL PROVISIONS

500.1 Both the D.C. Inventory and National Register provide for the designation of historic and prehistoric archaeological sites, and both include properties in the District of Columbia designated for their archaeological significance. In addition, some properties designated largely for reasons of architectural or historical significance also possess archaeological significance. However, for the majority of designated properties, including historic districts, the potential for significant archaeological remains has not been fully evaluated.

500.2 In reviewing proposed work under the provisions of the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108), the Mayor's Agent and Review Board shall consider impacts on designated archaeological sites that may be affected by ground disturbance.

500.3 The Board and staff may also consider potential archaeological sites during the conceptual or preliminary design review processes. The goal of this review is to identify, protect, and/or recover information on archaeological heritage of the District of Columbia that may be adversely affected by construction or development.

501 HISTORIC PROPERTIES DESIGNATED FOR ARCHAEOLOGICAL SIGNIFICANCE

501.1 For properties designated solely or in part for their archaeological significance, the Board and staff shall determine the effect of the proposed work on the designated archaeological features, and shall recommend an appropriate treatment consistent with the Guidelines for Archaeological Investigations in the District of Columbia ("Archaeological Guidelines"), as prepared by the staff.

501.2 Upon receipt of a permit or conceptual review application affecting a property designated for archaeological significance, the staff shall determine in consultation with the applicant if the proposed work is likely to affect any archaeological site on the property. The staff shall consult with the applicant with the objective of reaching agreement on an appropriate treatment for the affected archaeological site, consistent with the Archaeological Guidelines.

501.3 Dependent on the circumstances, appropriate treatments may include avoiding disturbance of the site, archaeological testing, or excavation and recovery of artifacts

and data. If the staff and applicant reach agreement, the staff may approve work covered by the delegation of authority in Chapter 3.

501.4 The staff shall determine whether review by the Board is appropriate, depending on the significance of the property and the circumstances of the case. If the staff and applicant are unable to reach agreement on a scope of work, the staff shall refer the case to the Board for consideration in accordance with the procedures in Chapter 3.

501.5 The Board may recommend that an archaeological site not be disturbed, or if disturbance is unavoidable, may recommend that the Mayor's Agent require the applicant to undertake investigation of the features in a manner consistent with the Archaeological Guidelines.

501.6 The Mayor's Agent may impose specific conditions or requirements for archaeological investigation as appropriate.

502 HISTORIC PROPERTIES WITH POTENTIAL ARCHAEOLOGICAL SIGNIFICANCE

502.1 Upon receipt of a permit or conceptual review application affecting a property likely to possess archaeological significance, the staff may consult with the applicant to consider the potential for archaeological investigation. The staff shall conduct preliminary archival research, or have such research conducted by others, to establish whether there is sufficient evidence to anticipate the presence of archaeological resources that might warrant further investigation.

502.2 If the staff determines in consultation with the applicant that significant archaeological potential exists in a project area, the staff may recommend to the Board that archaeological testing, and excavation if appropriate, be conducted prior to ground disturbance. The Board shall consider such recommendations in accordance with the procedures in Chapter 3. The Board shall give due consideration to the applicant's financial capacity to undertake such investigations, which shall not normally be expected of homeowners or small businesses, unless the staff and applicant are able to identify a low-cost method of undertaking an investigation, whether by supervised volunteers or other means.

502.3 If an applicant agrees to undertake archaeological investigation, the staff shall assist in identifying archaeological consultants meeting National Park Service professional standards as described in 36 CFR 61, in preparing a scope of services consistent with the Archaeological Guidelines, and in any other manner deemed appropriate. The Board shall resolve any failure to agree on the scope of an investigation.

503 PROJECTS INVOLVING A PUBLIC HEARING BY THE MAYOR'S AGENT

503.1 In cases referred to the Mayor's Agent for approval after a public hearing, the Board may recommend that specific actions be taken to avoid disturbance of known or potential archaeological resources. The Board may also recommend to the Mayor's Agent that specific levels of archaeological investigation be undertaken prior to disturbance of known or potential archaeological resources.

503.2 In making recommendations for archaeological investigation, the Board shall consider the overall scope and extent of a proposed project and the financial capacity of the applicant. Specifically, the Board may recommend that the Mayor's Agent require archaeological investigation to be undertaken in cases involving demolition of historic structures, substantial impacts on historic landmarks or districts, or a substantial amount of new construction. The Board shall not normally expect homeowners and small businesses to incur the cost of undertaking archaeological investigation.

503.3 The Mayor's Agent may impose specific conditions or requirements for archaeological investigation as appropriate.