

CHAPTER 6 ZONING AND OTHER ADMINISTRATIVE REFERRALS

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600 GENERAL PROVISIONS

- 600.1 The SHPO and Review Board shall review referrals from the Zoning Commission, Board of Zoning Adjustment, Office of Zoning, and Zoning Administrator as appropriate under the Zoning Regulations (DCMR Title 11) and the Foreign Missions Act (Title II, P.L. 97-241, 96 Stat. 286).
- 600.2 The Review Board and staff shall review the design and placement of commemorative works on public space included within the boundaries of a historic landmark or historic district, pursuant to the Commemorative Works on Public Space Amendment Act of 2000 ("Commemorative Works Act"), D.C. Official Code § 9-204.01 et seq. (2002 Supp.).
- 600.3 The Board shall comment to the Council of the District of Columbia on applications to close streets located on the L'Enfant Street Plan, pursuant to the Street and Alley Closing and Acquisition Procedures Act of 1982 (D.C. Official Code § 9-202.02) and implementing regulations (24 DCMR Chapter 14).
- 600.4 The SHPO, following the Comprehensive Plan for the National Capital, shall advise the Office of Planning on overlay zones or changes in zoning, as necessary to protect and enhance each historic district's distinctive characteristics of housing type, density, height, open space, and use.
- 600.5 By administrative agreement with other District agencies, the SHPO may review other applications and agency actions to ensure the protection of designated or potential historic properties.

601 SPECIAL EXCEPTIONS AND OTHER ZONING REVIEWS

- 601.1 The SHPO shall review referrals for planned unit developments, special exceptions, variances, and other relief upon referral from the Zoning Commission, Board of Zoning Adjustment, or Office of Zoning. This review shall be for the limited purpose of determining whether the proposal is consistent with the purposes of the Historic Protection Act. Comments shall be made either by transmittal of a copy of any staff

report adopted by the Board in the case, by written staff comments provided to the Office of Planning, or by other correspondence or testimony to the referring agency.

- 601.2 Upon receipt of a referral from the Zoning Administrator, or at the request of an applicant seeking approval from the Zoning Administrator, the SHPO shall certify whether or not a property is a historic landmark or a building or structure that contributes to the character of a historic district. The staff shall make this determination on behalf of the SHPO by applying the procedures in Chapter 7. An applicant who disagrees with the staff determination may submit written documentation to the SHPO with a request for review. The SHPO shall make a determination in writing and this decision shall be final.

602 TRANSFER OF DEVELOPMENT RIGHTS

- 602.1 The Board shall determine whether buildings and structures have been preserved in accordance with the Historic Protection Act, for the purposes of qualifying for a transfer of development rights in accordance with the Downtown Historic Properties Residential Rehabilitation Incentive Program and Downtown Development District provisions of the D.C. Zoning Regulations (11 DCMR Chapters 7 and 17, as amended).

- 602.2 An owner wishing to obtain a transfer of development rights shall submit to the Board a conceptual design or permit application describing a proposed scope of preservation work. The Board shall consider such applications in accordance with the procedures described in Chapter 3.

- 602.3 If an owner undertakes preservation work on a property with the intention of applying for a transfer of development rights, this intention shall be indicated on any conceptual review or permit application for the project.

- 602.4 For an applicant to qualify for the transfer of development rights, the building or structure shall be preserved in a manner consistent with the purposes of the Historic Protection Act, or shall be preserved as part of a project of special merit approved by the Mayor's Agent pursuant to the Act.

- 602.5 For the purposes of the Downtown Historic Properties Residential Rehabilitation Incentive Program, the project shall retain sufficient historic fabric to constitute "whole building retention" as determined by the staff. A project shall be considered "whole building retention" if the staff determines that it does not involve demolition as defined in Chapter 34.

- 602.6 The Board shall require a high standard of preservation to qualify for the transfer of development rights, and may apply a more stringent standard than normally applied to rehabilitation proposed in the absence of this benefit. At a minimum, the Board shall normally require preservation in accordance with Secretary's Standards, as provided in Chapter 20, including preservation or restoration of façades to an appropriate historic appearance.

602.7 Once the Board or Mayor's Agent has specifically authorized a scope of preservation work as sufficient to qualify for the transfer of development rights, the staff may review and approve a Transfer of Development Rights Agreement on behalf of the Board, and may issue any related certifications of restoration timetables or consistency with approved plans and permits.

602.8 If the staff determines that the owner has not adequately completed the scope of preservation work, the staff may return the project to the Board for further review.

603 FOREIGN MISSIONS ACT

603.1 The Board shall review conceptual design and permit applications for foreign missions for compliance with the purposes of the Historic Protection Act, subject to review by the Secretary of State. The Foreign Missions Act obliges the Secretary of State to require foreign missions to comply substantially with D.C. building and related codes in a manner not inconsistent with the international obligations of the United States.

603.2 Upon referral of a conceptual design or permit application from DCRA for work related to a foreign mission, the staff and Board shall consider the case in accordance with the procedures in Chapter 3.

603.3 Upon referral of an application from the Foreign Missions Board of Zoning Adjustment relating to the location, replacement, or expansion of a chancery in an area requiring FMBZA review, the Board shall consider the case in accordance with the procedures in Chapter 3, and shall advise the FMBZA of its findings. The Board shall provide appropriate opportunities for participation by the public in any proceedings.

604 COMMEMORATIVE WORKS

604.1 Upon receipt of a referral from the D.C. Commemorative Works Committee ("CWC"), the SHPO shall determine, in consultation with the Chairperson of the Board in his or her capacity as a member of the CWC, whether to schedule the application for review by the Board.

604.2 If the SHPO determines after such consultation not to refer the case to the Board, the staff shall review the case in accordance with the procedures for delegated review described in Chapter 3, and shall provide comments to the CWC either orally or in writing, as appropriate under the rules and procedures of the CWC. The staff shall provide these comments within 45 days, or within 60 days if incorporated as part of the case report prepared by the Office of Planning.

604.3 If the SHPO refers the case to the Board, the Board shall review the application in accordance with the procedures in Chapter 3. The Board may provide comments to the

CWC either in writing or orally through the Chairperson as a member of the CWC. The Board may delegate further review of the case to the staff, or may retain review authority through the conceptual design or permit review process pursuant to the Historic Protection Act.

604.4 Board or staff review of referrals from the CWC shall be for the limited purpose of determining whether the proposed commemorative work is consistent with the purposes of the Historic Protection Act. However, the Chairperson of the Board or his or her designated representative, when acting as a member of the CWC, shall also apply the guidelines for consideration of applications as set forth in § 415 of the Commemorative Works Act.

604.5 The Chairperson of the Board may designate a Board member or a member of the staff to serve as his or her representative on the CWC, either on a term basis or on a case-by-case basis.

605 CLOSURE OF L'ENFANT PLAN STREETS

605.1 Upon referral of an application from the Surveyor to close a L'Enfant Plan street, the Board shall review the application in accordance with the procedures in Chapter 3. The SHPO shall transmit the Board's comments to the Council.

605.2 An applicant wishing to obtain comments from the Board prior to referral of a street closing application from the Surveyor may submit a conceptual design application for review by the Board.

605.3 Board action pursuant to this section shall be in addition to any applicable authority to review building permit or subdivision applications pursuant to the Historic Protection Act.

606 ADMINISTRATIVE CLEARANCE OF SUBDIVISION APPLICATIONS

606.1 By administrative agreement with the Surveyor, the SHPO shall review subdivision plats prior to admission to record. The purpose of this review is to ensure that historic properties are not subdivided without proper review pursuant to the Historic Protection Act.

606.2 Upon referral of a proposed subdivision, the staff shall determine whether the affected property is subject to the Act. The staff may request any additional information as may be reasonably necessary to make such a determination.

606.3 If the subdivision does not involve a property subject to the Act, the SHPO shall indicate concurrence by signing the official plat of subdivision or in any other manner as agreed in consultation with the Surveyor.

606.4 If the subdivision involves property subject to the Act, the staff shall either review the subdivision pursuant to the delegation of authority described in Chapter 3, or shall require the application to be filed for review by the Board in accordance with the procedures in Chapter 3.

607 ADMINISTRATIVE CLEARANCE OF RAZE PERMIT APPLICATIONS

607.1 By administrative agreement with DCRA, the SHPO shall review raze and raze operations permit applications prior to permit issuance. The purpose of this review is to ensure that designated historic properties are not demolished by administrative error, and to provide an opportunity for general public notice prior to demolition of properties that may meet the criteria for historic designation.

607.2 Upon referral of a raze permit application, the staff shall determine whether the affected property is subject to the Act.

607.3 If the property is subject to the Act, the staff shall either review the application pursuant to the delegation of authority described in Chapter 3, or shall require the application to be filed for review by the Board in accordance with the procedures in Chapter 3.

607.4 If the property is not subject to the Act, the SHPO may return the referral to DCRA at any time after receipt, but the staff may also defer return of the referral to DCRA for 40 days after DCRA's official notice to the affected ANC. The SHPO shall endeavor not to impede expeditious processing of applications to raze properties that clearly do not possess historic or architectural significance.

607.5 If the property is not subject to the Act, the SHPO shall provide public notice of the receipt of the application by electronic mail to those persons on the HPO email list described in § 2698, or by other means.

607.6 If the property is not subject to the Act upon expiration of the ANC notice period, the SHPO shall immediately return the referral to DCRA stating no objection to issuance of the permit.

CHAPTER 7 CERTIFICATION OF HISTORIC BUILDINGS AND STRUCTURES

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700	General Provisions
701	Method of Evaluation
702	Contributing Buildings, Structures, and Sites
703	Non-Contributing Buildings, Structures, and Sites
704	Application for Certification
705	Certification of Buildings Proposed for Demolition

700 GENERAL PROVISIONS

- 700.1 The Board shall determine whether buildings or structures contribute to historic districts or landmarks for the purposes of the demolition provisions of the Historic Protection Act (D.C. Official Code § 6-1104(c)).
- 700.2 The SHPO shall certify whether buildings or structures contribute to historic districts or landmarks for the purposes of D.C. Zoning Regulations (DCMR Title 11), the Targeted Historic Housing Tax Credit (D.C. Official Code § 47-1806.08), and other purposes as appropriate.
- 700.3 The SHPO may seek the advice and/or consent of the Board on any determination with respect to certification.
- 700.4 The following terms specifically applicable to this chapter are defined in Chapter 34:
- (a) Contributing building, structure, or site;
 - (b) Non-Contributing building, structure or site;
 - (c) Period of significance;
 - (d) Integrity; and
 - (e) Location, design, setting, materials, workmanship, feeling and association.

701 METHOD OF EVALUATION

- 701.1 Historic districts and landmarks are identifiable entities that possess and convey historic significance as a whole. To meet the integrity requirement for designation, the preponderance of buildings and structures comprising a district or landmark must contribute to its historic significance. Most districts nonetheless contain some buildings or structures that do not contribute to the significance of the district. Some landmark sites may also include buildings or structures that do not contribute to the significance of the landmark.

701.2 Buildings or structures shall be evaluated by comparison with the established historic significance and physical attributes of the overall district or landmark. The determination of whether or not a building or structure contributes to historic significance shall be based on information such as date of construction, function, associations, and physical characteristics. In the case of archaeological sites, the determination shall be based on an analysis of the information potential of the component element.

701.3 Additions to historic buildings, particularly those that are largely self-contained, may be evaluated separately for a determination of significance. Integral elements of a building or structure shall not be evaluated separately for such purposes.

701.4 Contributing and non-contributing determinations made at the time of a historic district or historic landmark designation shall be presumed to retain validity unless a re-evaluation is warranted due to physical change, the availability of new information, or the passage of time since the designation was made.

702 CONTRIBUTING BUILDINGS, STRUCTURES, AND SITES

702.1 A contributing building or structure adds to a district's sense of time and place and historical development by virtue of location, design, setting, materials, workmanship, feeling and association.

702.2 A contributing building or structure adds to the historic associations or historic architectural qualities for which a district is significant because it dates from the period of significance, relates to the documented significance of the district, and possesses historic integrity.

702.3 A contributing archaeological site adds to the archaeological values for which a property is significant because it was present during the period of significance and is capable of yielding information about the period.

702.4 A building, structure, or site may also be determined contributing if it independently meets the criteria for listing in the D.C. Inventory or National Register.

702.5 For some historic districts, contributing buildings have been specifically identified at the time of designation. However, the district may include buildings, structures, or sites that have achieved significance since the time of the district's designation.

702.6 The same criteria may be applied to historic landmarks.

703 NON-CONTRIBUTING BUILDINGS, STRUCTURES, AND SITES

703.1 A non-contributing building or structure does not add to a district's sense of time and place and historical development if its qualities of location, design, setting, materials,

workmanship, feeling and association have been so altered or are so deteriorated that the integrity of the property is irretrievably lost.

- 703.2 A non-contributing building or structure does not share the historic associations or historic architectural qualities for which a district is significant if it does not date from the district's period of significance, does not relate to its documented significance, or no longer possesses historic integrity due to changes since the period of the significance.
- 703.3 An archaeological site does not contribute to the archaeological values for which a district is significant if it postdates the district's period of significance, does not relate to its documented significance, or is no longer capable of yielding important information about the period due to disturbance or other changes.
- 703.4 For districts with a specified period of significance, some buildings or structures may be judged to have achieved significance based on re-evaluation or the passage of time since the district's designation. For districts lacking a specified period of significance, non-contributing buildings shall be identified on a case-by-case basis.
- 703.5 Ordinarily, when considering eligibility for the National Register, buildings that date from the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given, or the documented historical attributes of the district are less than 50 years old.
- 703.6 The same criteria may be applied to historic landmarks.

704 APPLICATION FOR CERTIFICATION

- 704.1 An application for certification of a property as contributing to the character of a historic district or landmark shall be made only by the owner of the property or the owner's authorized agent.
- 704.2 A request for certification shall be initiated by the filing of an application in the form and number as the staff may prescribe. The application shall at a minimum state the address of the property and the purpose for which the request is made, and shall include a photograph or photographs clearly showing the current condition of the property and its setting. The staff may request additional information as may be reasonably necessary for making a determination.
- 704.3 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.

705 CERTIFICATION OF BUILDINGS PROPOSED FOR DEMOLITION

- 705.1 In the case of a request for demolition of a building or structure that the staff has determined to be non-contributing on the basis of National Register documentation approved by the Board as provided in Chapter 2, the staff may so certify on behalf of the Board.
- 705.2 In the case of a request for demolition of a building or structure that the staff has determined to be contributing, or in any other case the staff deems appropriate, the staff shall make a recommendation and shall refer the case to the Board for a final determination in conjunction with the Board's consideration of the demolition permit application.

CHAPTER 8 CERTIFICATION OF REHABILITATION

Secs.

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802	Application for Preliminary Certification
803	Processing of Requests for Preliminary Certification
804	Certification of Completed Work
805	Processing of Certifications
806	Methods of Evaluation
807	Phased Rehabilitation
808	Applications Submitted After Initiation of Work
809	Revisions to Approved Projects

800 GENERAL PROVISIONS

800.1 The SHPO shall determine on behalf of the Mayor whether the rehabilitation of qualified structures meets the Secretary of the Interior's Standards for Rehabilitation for the purposes of the Targeted Historic Housing Tax Credit (D.C. Official Code § 47-1806.08). Under these provisions, an eligible taxpayer who substantially rehabilitates a qualified structure is allowed a credit against D.C. tax liability, calculated on the basis of income, with a potential bonus in some cases. Under certain circumstances, a qualified nonprofit corporation is eligible to receive and transfer the same credits.

800.2 The role of the SHPO is to certify the eligibility of buildings proposed for rehabilitation and the consistency of construction work with required preservation standards. The SHPO is not involved in determining taxpayer eligibility for the credit or in any other matters related to the calculation of or application for the tax credit. Such tax considerations shall be referred to the D.C. Office of Tax and Revenue.

801 DEFINITIONS

801.1 "Substantial rehabilitation" means rehabilitation of a qualified structure for which the qualified rehabilitation expenditures, during the 24-month period selected by the taxpayer, exceed \$5,000. In the case of a rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications drawn by an architect licensed by the District of Columbia before the rehabilitation begins, a 60-month period may be substituted for the 24-month period.

801.2 "Certified rehabilitation" means a rehabilitation of a qualified structure that the Mayor has certified as meeting the Secretary's Standards.

801.3 "Qualified rehabilitation expenditure" means a rehabilitation expenditure that (1) is properly chargeable to a capital account, (2) is not attributable to the enlargement of an existing building, (3) is not attributable to the cost of acquiring a structure or an interest in a structure, and (4) is properly allocable to the qualified residence, including, in a cooperative, the exterior, the roof, and the electrical, plumbing, heating, ventilation, and cooling systems.

- 801.4 “Qualified structure” means a contributing structure that is located within either the Anacostia, Blagden Alley/Naylor Court, Capitol Hill, Greater Fourteenth Street, Greater U Street, LeDroit Park, Mount Pleasant, Mount Vernon Square, Shaw, or Takoma Park Historic District, or within any other district subsequently added by the Council of the District of Columbia.
- 801.5 “Qualified residence” means a qualified structure, or the portion of a qualified structure, which is owned and occupied, or will be owned and occupied, as the principal place of residence of the eligible taxpayer.
- 801.6 “Secretary’s Standards” means the Secretary of the Interior’s Standards for Rehabilitation (36 CFR § 67.7, as amended).
- 801.7 “Eligible taxpayer” means a taxpayer, as defined in D.C. Official Code § 47-1801.04(7), who has a household income of 120% or less of the area median income.
- 801.8 “Area median income” means:
- (a) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;
 - (b) For a household of 3 persons, 90% of the area median income for a household of 4 persons;
 - (c) For a household of 2 persons, 80% of the area median income for a household of 4 persons;
 - (d) For a household of 1 person, 70% of the area median income for a household of 4 persons; and
 - (e) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4).
- 801.9 “Qualified nonprofit corporation” means an entity exempt from taxation pursuant to D.C. Official Code § 47-1802.01.

802 APPLICATION FOR PRELIMINARY CERTIFICATION

- 802.1 An application for preliminary certification shall be made only by an eligible taxpayer or a qualified nonprofit corporation.
- 802.2 A request for certification shall be initiated by filing an application in the form and manner as the staff shall provide. The application shall request certification that the affected building is a qualified structure, and that the rehabilitation plans meet the Secretary's Standards.
- 802.3 The application for preliminary certification shall at a minimum include the following information:
- (a) The name, address, and telephone number of the property owner;
 - (b) The address and legal description (square and lot number or parcel number) of the building proposed for rehabilitation;
 - (c) Current photographs of the building prior to rehabilitation, including photographs showing the building together with immediately adjacent structures;
 - (d) Current photographs of interior features and spaces prior to rehabilitation;
 - (e) A detailed description of the proposed rehabilitation or preservation work; and
 - (f) Architectural plans and specifications as appropriate for the proposed rehabilitation, as well as for any attached, adjacent, or related new construction.
- 802.4 Additional documentation such as detailed specifications for window replacement may be required by the staff to evaluate certain rehabilitation projects. The staff may also request a site visit of the property if necessary or appropriate for completing its review and evaluation.

803 PROCESSING OF REQUESTS FOR PRELIMINARY CERTIFICATION

- 803.1 Within 15 days of receipt of an application, the staff shall determine if the application includes adequate documentation for review and is complete. If the application is not complete, the staff shall contact the owner to request the missing information or documentation. If these materials are not received within a reasonable period of time, the staff shall suspend review and notify the owner in writing of the information that is required to reactivate review. If the requested information is not provided within 30 days, the SHPO shall return the submission to the owner with a written notice that the application is incomplete and cannot be reviewed. A request for preliminary certification may be resubmitted with complete information.
- 803.2 Within 15 days of receipt of a complete application, the SHPO shall determine if the building proposed for rehabilitation is a qualified structure. The SHPO shall make this determination by applying the standards in Chapter 7.

- 803.3 After determining that an application is complete and the building is a qualified structure, the SHPO shall assign a case number and shall notify the owner in writing of its acceptance for review. The SHPO shall also mail a written certification to the owner that the structure is a qualified structure.
- 803.4 If the SHPO determines that the building is not a qualified structure, the SHPO shall notify the owner in writing, stating the reasons for its determination, and informing the owner of the right to written appeal of the determination to the Board. The owner shall have 15 days to make such a request in writing. If the owner requests Board review, the staff shall schedule the case for the Board's consideration on the Denial Calendar in accordance with the procedures described in Chapter 3. The determination of the Board shall be final.
- 803.5 Within 30 days of receipt, the SHPO shall review the rehabilitation plans to determine their consistency with the Secretary's Standards, as applied to the rehabilitation of both the interior and exterior of the structure. If the project meets the Secretary's Standards, the SHPO shall issue a preliminary certification to the owner in writing. If there are any conditions that must be met for the project to conform to the Secretary's Standards, the preliminary certification shall state the specific conditions required to qualify for final certification.
- 803.6 If at any time during the processing of an application, the staff determines that additional information is required for review, the staff shall request the information from the owner. The staff may also request a site visit of the property. The staff may suspend review and evaluation of the application if the necessary documentation or access to the site is not provided within a reasonable period of time. The staff shall notify an owner in writing if a review has been suspended, indicating the information that is required to reactivate review. If the requested information is not provided within 30 days, the SHPO shall return the application as incomplete. A returned application may be resubmitted by the owner as a new application with complete information.
- 803.7 If the project does not meet the Secretary's Standards, the staff shall consult with the owner to determine whether it may be possible to revise the project to bring it into conformity with the Standards. If the project cannot be brought into conformity with the Standards, or the owner does not wish to make the necessary revisions, the SHPO shall advise the owner of its determination in writing, indicating the reasons that the project does not meet specific Standards. The SHPO shall also identify any revisions that would bring the project into conformity with the Standards, and notify the owner of the right to a written appeal to the Board.
- 803.8 An owner shall have 15 days after receipt of a notice of denial of preliminary certification to request an appeal in writing. If the owner requests such a review, the staff shall forward any written materials and exhibits for consideration by the Board in accordance with the procedures for the Denial Calendar described in Chapter 3. The determination of the Board shall be final, and the SHPO shall issue a preliminary certification or denial of certification as appropriate.

804 CERTIFICATION OF COMPLETED WORK

- 804.1 A project does not become a certified rehabilitation until it is completed and so designated by the Mayor. The owner shall submit a Request for a D.C. Certification of Completed Work confirming that the rehabilitation of the qualified structure is consistent with the Secretary's Standards, as applied to the rehabilitation of both the interior and exterior of the structure.
- 804.2 The Request for Certification of Completed Work shall include at a minimum the following information, submitted in duplicate:
- (a) The name, address, and telephone number of the owner;
 - (b) The name, address, and telephone number of the eligible taxpayer or qualified nonprofit corporation requesting certification;
 - (c) The address and legal description (square and lot number or parcel number) of the rehabilitated building;
 - (d) The amount of qualified rehabilitation expenditures;
 - (e) The percentage of qualified rehabilitation expenditures allocable to the exterior of the qualified structure, with a statement or documentation indicating how such percentage was calculated;
 - (f) Dates within which the qualified rehabilitation expenditures were incurred, and the date the rehabilitation was completed;
 - (g) Current photographs adequate to document the appearance of the building after rehabilitation, including photographs of any attached, adjacent, or related construction;
 - (h) A signed statement that the completed rehabilitation project meets the Secretary's Standards and is consistent with the work described in the application for preliminary certification;
 - (i) In the case of a taxpayer, a signed statement that the qualified residence is the principal place of residence of the taxpayer or will be the principal place of residence of the taxpayer within 60 days after the rehabilitation is completed, and a signed statement that the taxpayer intends to maintain the qualified residence as his or her principal place of residence for 5 years after the date on which the rehabilitation is certified by the Mayor; and
 - (j) In the case of a nonprofit corporation, a signed statement of intent to transfer ownership of the structure and the credit to an eligible taxpayer.

804.3 The eligible taxpayer or an authorized officer of the nonprofit corporation shall sign the Request for Certification of Completed Work and attest to the accuracy of all information therein, including the amount of the qualified rehabilitation expenditures eligible pursuant to D.C. Official Code § 47-1806.08(5) (2002 Supp.). An original signature shall be required on both copies of the request for certification. Falsification of factual representations shall be subject to any applicable civil or criminal sanctions as determined by the D.C. Office of Tax and Revenue.

805 PROCESSING OF CERTIFICATIONS

805.1 Within 15 days of receipt of a Request for Certification of Completed Work, the staff shall determine if the application includes adequate documentation for review and is complete. If the Request for Certification is not complete, or if at any time during the processing of the application the staff determines that additional information is required for review, the staff shall contact the owner to request the missing information or documentation. If these materials are not received within a reasonable period of time, the staff shall suspend review and notify the owner in writing of the information that is required to reactivate review. If the requested information is not provided within 30 days, the SHPO shall return the submission to the owner with a written notice that the request is incomplete and cannot be reviewed. A Request for Certification may be resubmitted with complete information.

805.2 Within 30 days of receipt of a complete Request for Certification, the SHPO shall determine if the project is consistent with the Secretary's Standards. The staff may request a site visit of the property or any additional information as may be reasonably necessary to conduct this review.

805.3 If the project meets the Standards, the SHPO shall sign the certification on behalf of the Mayor and mail an original copy to the property owner and an original copy to the Office of Tax and Revenue.

805.4 If the project does not meet the Standards, the staff shall consult with the owner to determine whether it may be possible to revise the project to bring it in conformity with the Standards. If the project cannot be brought into compliance with the Standards, or the owner does not wish to make the necessary revisions, the SHPO shall advise the owner of its determination in writing, indicating the reasons that the project does not meet specific Standards. The SHPO shall also advise the owner of any revisions that would bring the project into conformity with the Standards, and of the right to appeal the SHPO decision to the Board.

805.5 An owner shall have 15 days after receipt of a notice of denial of certification to request an appeal in writing. If the owner requests such a review, the staff shall schedule the case for consideration by the Board in accordance with the procedures described for agenda cases in Chapter 3. The determination of the Board shall constitute the final recommendation to the Mayor.

805.6 If certification is denied, the SHPO shall so indicate on the request for certification, and shall return an original copy to the owner with the reasons for denial stated in writing. The SHPO shall also send a copy of the denial to the Office of Tax and Revenue.

806 METHODS OF EVALUATION

806.1 A rehabilitation project for certification purposes shall encompass all work on the interior and exterior of the certified historic structure and its site, as well as any related demolition, new construction or rehabilitation work which may affect the historic qualities or integrity of the structure or its site. All elements of the rehabilitation project must meet all ten of the Secretary's Standards, and portions of the rehabilitation project not in conformance with the Standards may not be exempted.

806.2 The SHPO shall review the project first as it affects the qualified structure and second as it affects the district, and make a certification decision accordingly.

806.3 In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or for rehabilitation work that was undertaken by previous owners or third parties. However, if the SHPO considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project subject to review under these regulations, the SHPO may choose to recommend that the Mayor deny a rehabilitation certification or withhold a decision on such a certification until such time as the Office of Tax and Revenue has determined, pursuant to these regulations and applicable provisions of the D.C. Tax Code and implementing regulations, the proper scope of the project to be reviewed by the SHPO.

806.4 In the event that an owner of a qualified residence that is a portion of a qualified structure requests certification for a rehabilitation project related only to the qualified residence, but there is or was a larger related rehabilitation project occurring with respect to the qualified structure, the SHPO's decision shall be based on review of the overall rehabilitation project(s) for the qualified structure.

807 PHASED REHABILITATION

807.1 For rehabilitation projects which are to be completed in phases over the alternate 60-month period allowed in D.C. Official Code § 47-1806.08(9) (2002 Supp.), the application for preliminary certification and supporting architectural plans and specifications should identify the project as a 60-month phased project and describe the number and order of the phases and the general scope of the overall rehabilitation project. If the initial application clearly identifies the project as a phased rehabilitation, the SHPO shall consider the project in all its phases as a single rehabilitation.

However, if the scope of work changes in a later phase of the project, it shall be resubmitted for additional review.

- 807.2 If complete information on the rehabilitation work of the later phases is not described in the initial application for preliminary certification, it may be submitted at a later date but must be clearly identified as a later phase of a 60-month phased project that was previously submitted for review.
- 807.3 Work undertaken in a later phase of a 60-month phased project that does not meet the Secretary's Standards, whether or not submitted for review, shall result in a denial of certification of the entire rehabilitation, with the tax consequences of such a denial to be determined by the Office of Tax and Revenue.
- 807.4 Separate certifications for portions of phased rehabilitation projects shall not be issued. Owners submitting an application for preliminary certification after completion of an initial phase of rehabilitation shall comply with the procedures in § 808.

808 APPLICATIONS SUBMITTED AFTER INITIATION OF WORK

- 808.1 Owners are strongly encouraged to submit an application for preliminary certification prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior certification from the SHPO do so strictly at their own risk. Because the circumstances of each rehabilitation project are unique to the particular qualified structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on for evaluating another project.
- 808.2 Any application for a project in progress, or for a completed project, shall nonetheless include the complete information required on an application for preliminary certification (§ 802). In the case of a completed project, an application for completed work (§ 804) is also required. In all cases, photographs shall be adequate to document the appearance of the structure, both interior and exterior, prior to rehabilitation.

809 REVISIONS TO APPROVED PROJECTS

- 809.1 Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application for preliminary certification shall be brought promptly to the attention of the SHPO to ensure continued conformity with the Secretary's Standards.
- 809.2 Any such changes shall be made in writing using the same format as the application for preliminary certification. Within 30 days of receipt of a revision, the SHPO shall notify the owner in writing whether the revised project continues to meet the Secretary's Standards. Oral approvals of revisions are not authorized or valid.

809.3 The SHPO may inspect a certified project at any time up to five years after completion of rehabilitation. An owner shall not unreasonably withhold permission for the SHPO to inspect either exterior or interior work. The SHPO shall be authorized to recommend that the Mayor revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in the applications and supporting documentation, or the owner obtained certification but subsequently undertook further unapproved project work inconsistent with the Secretary's Standards. The SHPO may also recommend revocation if the owner unreasonably refused permission to inspect either exterior or interior work. The tax consequences of a revocation for this or any other reason shall be determined by the Office of Tax and Revenue.

CHAPTER 9 INSPECTIONS AND ENFORCEMENT

Secs.	
900	General Provisions
901	Compliance and Penalties
902	Responsibility for Work Performed
903	Historic Preservation Inspectors
904	Inspection Procedures
905	Notice of Inspection and Enforcement Action
906	Issuance of Enforcement Action
907	Notices of Violation
908	Stop Work Orders
909	Notices of Infraction
910	Reinspection
911	Final Inspection

900 GENERAL PROVISIONS

- 900.1 The Mayor's Agent shall enforce the provisions of the Historic Protection Act through inspections, adjudication, and other enforcement action undertaken in conjunction with enforcement of the D.C. Construction Code, Zoning Regulations, Housing Regulations, and other applicable laws and regulations.
- 900.2 The Mayor's Agent shall coordinate inspections and enforcement activities with DCRA and may enter into interagency agreements with DCRA to implement enforcement provisions of the Act. Such agreements may authorize inspections and enforcement of the Act by historic preservation inspectors and others on the HPO staff, DCRA staff, or both.
- 900.3 The Mayor's Agent may impose civil fines and penalties pursuant to authority derived from the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code § 2-1801 *et seq.*), or other appropriate authorities.
- 900.4 The Mayor's Agent may seek and obtain assistance from DCRA and the Office of the Corporation Counsel in any enforcement action pursuant to the provisions of the Act.
- 900.5 The following terms specifically applicable to this chapter are defined in Chapter 34:
- (a) Unlawful work;
 - (b) Unlawful continuance;
 - (c) Notice of violation;
 - (d) Stop work order;
 - (e) Notice of infraction;
 - (f) Historic preservation inspector.

901 COMPLIANCE AND PENALTIES

- 901.1 It shall be unlawful for any person to alter, repair, demolish, or construct any building, structure, or site subject to review under the Historic Protection Act in violation of the provisions of the Act or these regulations.
- 901.2 Any person who willfully violates any provision of the Act or these regulations may be subject to a criminal penalty including a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both.
- 901.3 Any person who alters, demolishes, or constructs a building or structure in violation of the Act shall be required to restore the building, structure, or site to its appearance prior to the violation. This civil remedy shall be in addition to and not in lieu of any criminal prosecution.
- 901.4 Any person who alters, demolishes, or constructs a building, structure, or site in violation of a permit, approved plan, or directive of the historic preservation inspector may be subject to civil fines and penalties imposed as alternative sanctions for infractions of the Act or these regulations.

902 RESPONSIBILITY FOR WORK PERFORMED

- 902.1 Property owners shall be responsible for ensuring that the necessary permit is obtained prior to any work. An owner may require a contractor or tenant to obtain the permit under the terms of a valid contract, but the owner remains liable for obtaining the necessary permit and for proper enforcement of the contract.
- 902.2 Contractors are responsible for undertaking work only pursuant to proper permits, even if the requirement to obtain a permit is not stated in a valid contract or agreement with the owner.
- 902.3 Both owners and contractors may be subject to enforcement action for unlawful work, regardless of their own contractual arrangements.

903 HISTORIC PRESERVATION INSPECTORS

- 903.1 Historic preservation inspectors shall monitor historic landmarks and historic districts and shall take appropriate enforcement action to ensure compliance with the Act.
- 903.2 The duties of historic preservation inspectors shall include, but are not limited to the following:

- (a) Conducting periodic inspections of historic landmarks and historic districts to identify and take appropriate action against unlawful work;
- (b) Responding to complaints of unlawful work in progress;
- (c) Monitoring construction for compliance with the terms and conditions of issued permits;
- (d) Issuing stop work orders, notices of violation, and notices of infraction as appropriate;
- (e) Providing direction to property owners to encourage voluntary compliance with the Act;
- (f) Maintaining records of all enforcement cases;
- (g) Coordinating with enforcement actions of other District agencies;
- (h) Representing the SHPO at administrative adjudication hearings; and
- (i) Disposing of enforcement actions as appropriate.

904 INSPECTION PROCEDURES

- 904.1 Inspectors in the performance of their duties shall have the right to enter any unoccupied building, or any building under construction, alteration, repair, or demolition. Inspectors shall not enter into any occupied habitable portion of a building without obtaining prior consent from the owner, contractor, or other person of suitable age and discretion therein.
- 904.2 Inspectors shall carry and display proper credentials, including a badge and identification number while performing inspection duties.
- 904.3 During a site inspection, an inspector may request to see or obtain all information pertinent to work subject to review under the Act, including but not limited to the following:
- (a) The name and telephone number of the owner, contractor, or other person responsible for the work;
 - (b) The license number and license date of any contractor working on the site;
 - (c) A copy of any written contract, work order, or agreement between the owner and contractor;

- (d) Permits and plans for work being conducted on the property, including approved stamped plans and plats;
 - (e) Proof of any prior inspections or approvals; and
 - (f) A business license, certificate of occupancy, or any other document required to be displayed or maintained on the property.
- 904.4 During a site inspection, an inspector may take any and all appropriate actions necessary for proper enforcement of the Act, including but not limited to the following:
- (a) Determining the person responsible for the work;
 - (b) Inspecting the property and any work completed or in progress;
 - (c) Identifying any unlawful work;
 - (d) Photographing the property and the work completed or in progress;
 - (e) Encouraging voluntary compliance with the Act, and cautioning about sanctions for unlawful work;
 - (f) Issuing notices of violation, stop work orders, and notices of infraction as appropriate; and
 - (g) Taking any other authorized enforcement action deemed appropriate in the circumstances.
- 904.5 Upon completion of an inspection, the inspector shall leave a copy of any inspection materials, enforcement actions, or approvals with a responsible person. These materials shall indicate at a minimum the date and reason for inspection, and the inspector's name and telephone number.
- 904.6 Inspectors shall coordinate enforcement with other D.C. agencies, and shall be responsible for reporting possible violations of other D.C. codes or regulations to the appropriate officials.

905 NOTICE OF INSPECTION AND ENFORCEMENT ACTION

905.1 Prior notice of an inspection or enforcement action is not required.

905.2 If the owner is not present at the time of an inspection, the inspector may conduct the inspection with a responsible person on the site. The inspector may subsequently inform the owner of the inspection and any communication made regarding the property, but is not required to do so.

905.3 If the inspector takes an enforcement action and gives the owner notice of the action at the time of inspection, no further notice is required.

905.4 If the inspector takes an enforcement action when the owner is not present, the inspector shall notify the owner by sending a copy of the enforcement action by certified mail to the owner's address of record.

905.5 If the property is vacant or there is no responsible person on the property at the time of inspection, the inspector shall post any enforcement action on the site and send a copy to the owner by certified mail.

906 ISSUANCE OF ENFORCEMENT ACTION

906.1 Inspectors shall issue notices of violation, stop work orders, and notices of infraction as appropriate for unlawful work.

906.2 If unlawful work is completed and there is no indication that other work may occur, the inspector may issue a notice of violation.

906.3 If unlawful work is in progress, the inspector may issue a notice of violation or a stop work order, or both.

906.4 If there is unlawful work, the inspector may also issue a notice of infraction.

906.5 The inspector may assess the circumstances of unlawful work and use discretion in the issuance of enforcement action. Among pertinent factors are the nature and magnitude of the work involved, whether the work appears inadvertent or egregious, and whether or not prior enforcement action has been taken with regard to the project or the property.

907 NOTICES OF VIOLATION

907.1 If there is no construction activity in progress on the property, but there are indications that unlawful work has occurred, the inspector may issue a notice of violation pursuant to the D.C. Construction Code (12 DCMR § 116.2).

907.2 The following shall be cause for issuance of a notice of violation:

- (a) Work completed without a permit where a permit is required (12 DCMR § 107.1);
and
- (b) Work not conforming to the approved application and plans (12 DCMR § 111.3).

907.3 The notice of violation shall include the following information:

- (a) The address of the property;
- (b) The date and time of the inspection;
- (c) The nature of the violation;
- (d) The specific section of the code violated;
- (e) The action required to cure the violation;
- (f) The time period allowed to cure the violation;
- (g) The amount of the potential fine;
- (h) A description of the owner's right to appeal; and
- (i) The name, telephone number, and signature of the issuing inspector.

907.4 The notice of violation shall require the owner to apply for an appropriate permit, to remove unlawful work, or to take other specific action as indicated within a specified time period. The notice shall state that failure to comply will result in a fine in the amount indicated.

907.5 Depending on the circumstances and nature of the violation, the owner shall typically be allowed a cure period of between five and ten days.

907.6 The notice of violation shall be officially served by posting the notice on the property, or by personally serving the owner or a responsible person on the premises. If any person other than the owner is served, the inspector shall send the owner a copy of the notice of violation by certified mail within three days of issuance.

907.7 If a property is vacant or unoccupied at the time of inspection, the inspector shall post the notice of violation, and shall send the owner a copy of the notice by certified mail within three days of posting.

907.8 The recipient of a notice of violation may contact the inspector prior to expiration of the cure period to request an extension of time for good cause. Additional time may be allowed at the inspector's discretion, and with any conditions the inspector may impose. Stipulations may include scheduling of an appointment with HPO staff, specific remedial action, or other conditions as appropriate.

908 STOP WORK ORDERS

908.1 If unlawful work is in progress on a property at the time of an inspection, or there are active signs of unlawful work in progress, or that unlawful work may occur, the

inspector may immediately issue a stop work order pursuant to the D.C. Construction Code (12 DCMR § 117).

- 908.2 The following shall be cause for issuance of a stop work order:
- (a) Work started without a permit where a permit is required (12 DCMR § 107.1);
 - (b) Work not conforming to the approved application and plans (12 DCMR § 111.3);
 - (c) Working without a posted permit (12 DCMR § 108.7); and
 - (d) Working without approved stamped plans on site (12 DCMR § 111.3.1).
- 908.3 The stop work order shall contain the same information included on a notice of violation.
- 908.4 The stop work order shall require the owner to cease all or specified work on the property, to apply for an appropriate permit, or to take other action as indicated within a specified time period. The order shall state that failure to comply will result in a fine in the amount indicated.
- 908.5 Depending on the circumstances and nature of the violation, the owner shall typically be allowed a cure period of between one and three days.
- 908.6 A stop work order shall be officially served by posting the order in a conspicuous location on the property, or by personally serving the owner or a responsible person on the premises with the order and an appeal form, or both. If any person other than the owner is served, the inspector shall send the owner a copy of the stop work order and an appeal form by certified mail within three days of issuance.
- 908.7 If a property is vacant or unoccupied at the time of inspection, the inspector shall post the stop work order and shall send the owner a copy of the order by certified mail within three days of posting.
- 908.8 The recipient of a stop work order may contact the inspector prior to expiration of the cure period to request an extension of time for good cause. Additional time for compliance may be allowed at the inspector's discretion, and with any conditions the inspector may impose.

909 NOTICES OF INFRACTION

- 909.1 If the nature of unlawful work merits the imposition of a civil fine, the inspector shall issue a notice of infraction pursuant to the D.C. Construction Code (12 DCMR § 116.6).

- 909.2 The following shall be cause for issuance of a notice of infraction:
- (a) Any of the reasons for issuance of a violation notice or stop work order;
 - (b) Unlawful continuance of work after a posted stop work order (12 DCMR § 117.2);
 - (c) Substantial non-compliance with the maintenance standards for historic property (10A DCMR § 1000.1); and
 - (d) Failure to protect historic property from demolition by neglect (10A DCMR § 1000.2).
- 909.3 The notice shall include the same information as a notice of violation.
- 909.4 Fines for notices of infraction shall be assessed according to the fine schedule in Chapter 33.
- 909.5 The inspector shall issue a notice of infraction in the event of any unlawful demolition of all or any portion of a building or structure.
- 909.6 A notice of infraction shall be served in the same manner as a notice of violation.
- 909.7 A notice of infraction may be cancelled only if issued in error.
- 909.8 The inspector shall attend adjudication hearings scheduled on notices of infraction, and may be represented at hearings by the Office of the Corporation Counsel.
- 909.9 If a violator has been found liable for a first infraction and has not corrected the unlawful work, subsequent notices of infraction may be issued until the violation is corrected or the work has been removed. A second or subsequent notice of infraction shall not be issued until the violator has been found liable for payment of the first or previous notice. This restriction shall not apply to the issuance of notices of infraction for different violations.

910 REINSPECTION

- 910.1 Inspectors shall reinspect properties after issuance of stop work orders or notices of violation to confirm the completion of required corrective action. A reinspection shall generally occur within 30 days of the original inspection.
- 910.2 At a reinspection, the inspector shall determine whether there is compliance with the conditions of the stop work order or notice of violation, and that no other unlawful work has occurred.

910.3 If the property is not in compliance upon reinspection, the inspector shall issue a notice of infraction.

911 FINAL INSPECTION

911.1 Historic preservation inspectors may inspect properties either before or after a final construction inspection by DCRA to confirm that work has been completed in accordance with the approved plans and any terms and conditions of the permit or subsequent enforcement action.

911.2 If all work has been completed in accordance with the permit, approved plans, and any other conditions of approval, the inspector shall issue a final inspection approval. The inspector shall sign and date the stamped plans indicating approval or shall issue an approval card.

CHAPTER 10 MAINTENANCE OF HISTORIC PROPERTY

Secs.	
1000	General Provisions
1001	Property Maintenance Standards
1002	List of Deteriorated Historic Buildings
1003	Demolition by Neglect
1004	List of Vacant Historic Buildings
1005	Monitoring of Vacant Historic Buildings

1000 GENERAL PROVISIONS

- 1000.1 Owners shall maintain historic properties in accordance with the property maintenance provisions of the Historic Protection Act as amended (D.C. Official Code § 6-1104.01(a) (2002 Supp.)).
- 1000.2 Owners shall protect buildings against demolition by neglect, in accordance with the demolition by neglect provisions of the Historic Protection Act as amended (D.C. Official Code § 6-1104.01(b) (2002 Supp.)).
- 1000.3 Owners shall maintain vacant historic buildings in a secure condition and protected against decay and deterioration, in accordance with §§ 101-103 of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (D.C. Official Code §§ 42-3131.01 *et seq.* (2002 Supp.)).
- 1000.4 The SHPO and Review Board shall monitor the maintenance of historic properties, and shall take appropriate enforcement action.
- 1000.5 The SHPO and Review Board shall identify historic buildings threatened by demolition by neglect, shall take appropriate enforcement action, and shall recommend to the Mayor appropriate additional actions that should be taken to prevent demolition by neglect.
- 1000.6 The SHPO and Review Board shall monitor the maintenance of vacant historic buildings and shall take appropriate enforcement action.
- 1000.7 The following terms specifically applicable to this section are defined in Chapter 34:
- (j) Demolition by neglect;
 - (k) List of Deteriorated Historic Buildings;
 - (l) List of Vacant Historic Buildings.

1001 PROPERTY MAINTENANCE STANDARDS

- 1001.1 Historic buildings or structures shall be preserved against decay and deterioration and shall be free from structural defects through prompt corrections of any of the following defects:
- (a) Facades or façade elements which may fall and injure persons or property;
 - (b) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls, or other vertical structural supports;
 - (c) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective material or deterioration;
 - (d) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;
 - (e) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective coating; or
 - (f) A fault or defect in the building which renders it structurally unsafe or not properly water-tight.

1002 LIST OF DETERIORATED HISTORIC BUILDINGS

- 1002.1 The SHPO shall identify those historic properties that are substantially non-compliant with the property maintenance standards for historic buildings. The staff may periodically inspect historic landmarks and districts for this purpose.
- 1002.2 In applying the property maintenance standards, the SHPO shall give specific attention to major deterioration as well as defects of structure and weather protection that would threaten structural integrity or the preservation of character-defining architectural features elements such as cornices, window and door surrounds, metalwork, ornament, and the like.
- 1002.3 The SHPO shall maintain a List of Deteriorated Historic Buildings so identified, indicating the address of the property and the nature of the deterioration.
- 1002.4 The SHPO may supplement this list with buildings identified by other parties, but the SHPO shall not add any building to the list without first inspecting the property to confirm that the building meets the test for inclusion on the list.
- 1002.5 Prior to the inclusion of any building on the list, the staff shall notify the owner of the property by certified mail or by the issuance of a notice of violation that the staff has made a determination that the building is substantially non-compliant with the property maintenance standards for historic buildings included in the Historic Protection Act.

The notice shall identify the reasons for non-compliance and indicate the corrective action required to bring the property into compliance.

- 1002.6 The SHPO shall afford the owner a reasonable opportunity to meet to discuss the non-compliant conditions, and shall provide the owner at least 15 days after a notice of non-compliance to take corrective action to bring the property into compliance.
- 1002.7 If the owner does not bring the property into compliance within the time allowed, the SHPO shall be authorized to add the property to the deteriorated historic buildings list.
- 1002.8 The Review Board may hold a public meeting to review the condition of a property on the List of Deteriorated Historic Buildings.
- 1002.9 At least 10 days prior to such a meeting, the Board shall notify the owner of the deteriorated property by certified mail that it intends to review the case at a public meeting. The notice shall inform the owner that the Board will review the condition of the property, determine what corrective action or remedies are appropriate, and determine whether the property is threatened by demolition by neglect, in which case the Board may indicate corrective actions needed to ensure compliance with the law.
- 1002.10 The Board shall consider the case in accordance with the procedures in Chapter 3. The Board shall ascertain what steps, if any, are being taken by the owner to bring the property into compliance, and shall determine what corrective action or remedies are appropriate under the Historic Protection Act to ensure compliance.
- 1002.11 The Board may also determine whether the property is threatened by demolition by neglect as defined in Chapter 34. If the Board makes such a determination, it shall adopt a written report stating the specific reasons for this determination and indicating the corrective actions needed to ensure compliance with the law.
- 1002.12 The SHPO may make copies of the List of Deteriorated Historic Buildings available to any interested persons or agencies, and may periodically publish the list in the D.C. Register or other newspapers of general or local circulation.

1003 DEMOLITION BY NEGLIGENCE

- 1003.1 The Review Board shall identify those properties on the List of Deteriorated Historic Buildings that appear to be threatened by demolition by neglect. The Board shall make this determination only in a public meeting held in accordance with the procedures in Chapter 3.
- 1003.2 Upon finding that a building or structure is threatened by demolition by neglect, the Board shall so designate the property on the List of Deteriorated Historic Buildings, and shall recommend an appropriate course of action to the Mayor in accordance with the specific remedies for demolition by neglect, or any other civil and criminal penalties provided in the Historic Protection Act (D.C. Official Code §§ 6-1104.02

(2002 Supp.) and 6-1110). The Board and HPO may also take any other appropriate and authorized actions to promote compliance with the law.

- 1003.3 In its comments to the Mayor, the Board may consider the extent of capitalization of the revolving fund established pursuant to the Historic Protection Act (D.C. Official Code § 6-1104.03 (2002 Supp.)) for the purpose of paying the costs of correction of conditions contributing to demolition by neglect. The Board may include in its recommendations to the Mayor such comments regarding the use of the revolving fund as it may deem appropriate.

1004 LIST OF VACANT HISTORIC BUILDINGS

- 1004.1 The SHPO shall obtain copies of the list of registered vacant buildings, the list of vacant buildings, and the quarterly updates of the list of vacant buildings maintained by DCRA pursuant to D.C. Official Code § 42-3131.11 (2002 Supp.).
- 1004.2 The SHPO shall identify all properties on the lists of vacant buildings that are either historic landmarks or buildings within historic districts. Within 15 days of receipt of the list or quarterly update, the SHPO shall provide written notice to DCRA of those properties that are either historic landmarks or contributing buildings within historic districts. The SHPO shall apply the standards in Chapter 7 to determine contributing buildings.
- 1004.3 The SHPO shall compile and maintain a List of Vacant Historic Buildings based upon this information. The SHPO shall update this list quarterly upon receipt of the quarterly update of vacant buildings maintained by DCRA.

1005 MONITORING OF VACANT HISTORIC BUILDINGS

- 1005.1 Within 45 days of adding a building to the List of Vacant Historic Buildings, the staff shall inspect the building to determine whether it appears to be preserved against decay and deterioration, appears to be free from structural defects, and otherwise appears to be in compliance with the property maintenance standards in the Historic Protection Act (D.C. Official Code § 6-1104.01(a) (2002 Supp.) and the vacant building maintenance standards in 14 DCMR Chapter 68. The staff shall periodically reinspect properties on the List of Vacant Historic Buildings as appropriate to ensure continued compliance with the property maintenance standards.
- 1005.2 Upon identification of a building that does not appear to be in compliance with the property maintenance standards, the SHPO shall notify DCRA in writing and shall pursue in coordination with DCRA any action deemed appropriate to ensure compliance.

1005.3 If the SHPO is unable to secure compliance with the property maintenance standards, the SHPO may add the building to the List of Deteriorated Historic Buildings in accordance with the procedures for the addition of properties to that list (§ 1002).

CHAPTER 11 UNSAFE AND INSANITARY BUILDINGS

Secs.	
1100	General Provisions
1101	Abatement of Unsafe Conditions
1102	Enforcement of an Abatement Order
1103	Immediate Threat to Public Safety

1100 GENERAL PROVISIONS

- 1100.1 The State Historic Preservation Officer shall advise the Mayor on the condemnation of historic buildings in accordance with the Unsafe Structures and Insanitary Buildings Act, as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (D.C. Official Code §§ 6-801 *et seq.* and 6-901 *et seq.* (2002 Supp.)).
- 1100.2 The Mayor shall consider applications for any construction permits required to implement a condemnation or abatement order as provided in the Historic Protection Act (D.C. Official Code § 6-1111). No permit for the demolition of a historic landmark or building or structure in a historic district shall be issued to the owner except in accordance with the Act.

1101 ABATEMENT OF UNSAFE CONDITIONS

- 1101.1 Pursuant to D.C. Official Code §§ 6-801(a-1) (2002 Supp.) and 6-901(a) (2002 Supp.), the Mayor in consultation with the SHPO may direct an owner to proceed with the abatement of unsafe conditions in an historic building or structure either by repair or demolition of the unsafe building or structure.
- 1101.2 In the case of a historic landmark or building or structure located within a historic district, the Board for the Condemnation of Insanitary Buildings ("Condemnation Board") shall include as a fourth member an architect or historic architect who meets the qualifications of set forth in 36 CFR § 61.4(f)(1). The SHPO shall designate a qualified representative, who need not be a member of the staff, to serve in this capacity.
- 1101.3 In any Condemnation Board proceeding, the SHPO representative shall determine the historic and architectural significance of the building or structure based upon the information available and shall supply this information to the Condemnation Board. The SHPO representative shall advocate the historic preservation interest in the property. The SHPO representative shall apply the standard that a historic building or structure shall not be demolished unless (1) there is an extreme and immediate threat to public safety resulting from unsafe structural conditions, and (2) the unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure.

1102 ENFORCEMENT OF AN ABATEMENT ORDER

- 1102.1 The Mayor shall refer any permit application necessary to comply with an abatement order to the Review Board or Commission of Fine Arts as provided in the Historic Protection Act (D.C. Official Code §§ 6-1104 and 6-1105).
- 1102.2 Upon referral of any such application, the Board shall review the application in accordance with the procedures in Chapter 3.
- 1102.3 The Mayor's Agent shall act on any such application in accordance with the procedures in Chapter 4.
- 1102.4 Pursuant to D.C. Official Code § 6-802(a) (2002 Supp.), when an owner does not comply with an abatement order, the Mayor is authorized to enter onto the property and abate the unsafe conditions on behalf of the owner, either by repair or demolition of the building or structure.

1103 IMMEDIATE THREAT TO PUBLIC SAFETY

- 1103.1 Pursuant to the Unsafe Structures Act (D.C. Official Code § 6-801(a-1) (2002 Supp.)) and the Insanitary Buildings Act (D.C. Official Code § 6-901(a) (2002 Supp.)), the Mayor is authorized to consider in consultation with the SHPO the emergency demolition of historic structures where the Mayor has determined the public safety requires immediate action.
- 1103.2 The SHPO shall designate an appropriate person and alternates as necessary to serve as an emergency contact for such occurrences. The SHPO shall provide the list of such contacts to DCRA, and shall maintain and update the list as necessary to remain current at all times. The SHPO shall establish and maintain an appropriate system to ensure that the SHPO representative is immediately available to confer with DCRA should an emergency situation arise.
- 1103.3 In any such emergency situation the SHPO representative shall determine the historic and architectural significance of the building or structure involved to the best of his or her ability based upon the information immediately available, and shall supply this information to the condemnation official. The SHPO representative shall advocate the historic preservation interest in the property as appropriate in the given circumstances. The SHPO representative may confer with the Chairperson of the Board or other agency officials as necessary, appropriate, and reasonable in the given circumstances. The SHPO representative shall apply the standard that a historic building or structure shall not be demolished unless (1) there is an extreme and immediate threat to public safety resulting from unsafe structural conditions, and (2) the unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure.

CHAPTER 12 DUE PROCESS DEMOLITION

Secs.	
1200	General Provisions
1201	Definitions
1202	Standards for Preliminary Determinations of Eligibility
1203	Preliminary Determination of a Potential Historic District
1204	Preliminary Determination of a Potential Historic Structure
1205	Preliminary Determinations of Eligibility by the Staff
1206	Review of Applications for Demolition, Repair, or Enclosure

1200 GENERAL PROVISIONS

- 1200.1 The Board shall consider the proposed demolition, repair, or enclosure of buildings and structures pursuant to the due process demolition provisions in § 102 of the Housing Act of 2002 (D.C. Official Code § 42-3173.01 *et seq.*).
- 1200.2 The Board shall make preliminary determinations of whether or not there is a substantial possibility that structures are eligible for designation as historic landmarks or contributing buildings in historic districts as provided in D.C. Official Code § 42-3173.04.

1201 DEFINITIONS

- 1201.1 A “potential historic district” means an area for which the Historic Preservation Review Board has made a preliminary determination that there is a substantial possibility the area is eligible for designation as a historic district.
- 1201.2 A “potential historic structure” means a structure for which the Historic Preservation Review Board has made a preliminary determination that there is a substantial possibility the structure is eligible for designation as a historic landmark or a contributing building in a historic district.
- 1201.3 A “preliminary determination of eligibility” means a determination that there is a substantial possibility of eligibility for historic designation, made by the Review Board or the staff in accordance with the procedures in this chapter, and for the purposes of this chapter.

1202 STANDARDS FOR PRELIMINARY DETERMINATIONS OF ELIGIBILITY

- 1202.1 The Board shall make preliminary determinations based on specific information about the possible historic significance of a potential landmark or district. Such information shall include documentation of the individual structure in question, including physical characteristics, estimated date of construction, function, and known associations, as well as information about its physical and historic context.

- 1202.2 Sources of information for reaching a preliminary identification of a potential historic district or structure shall include, but not be limited to, historic resource surveys, draft nominations, prior determinations of eligibility, publications, newspaper articles, historic and contemporary photographs, building permit data, archival material, and oral history. The Board or staff may supplement this information with field investigation of a structure and its vicinity.
- 1202.3 The Board shall apply the criteria for designation in Chapter 2 in order to make a preliminary determination on the basis of available information that there is a substantial possibility that the landmark or district is eligible for designation.
- 1202.4 Any such preliminary determination of shall be used solely for the purposes of applying the provisions of the Housing Act of 2002. Such a determination shall not constitute the Board's final determination on the eligibility of a landmark or district for designation, and shall not bind the Board in making a final evaluation of eligibility at such time as an application for historic landmark or historic district designation is filed with the Board.

1203 PRELIMINARY DETERMINATION OF A POTENTIAL HISTORIC DISTRICT

- 1203.1 The Board may make a preliminary determination of a potential historic district either prior to or in conjunction with a request for determination of a potential historic structure within that district. The Board shall make such a determination only during a regularly scheduled public meeting with the opportunity for public testimony.
- 1203.2 At least 40 days prior to the meeting, the Board shall send notice via first class mail to the affected ANC and the public mailing list maintained in accordance with Chapter 32. Each notice shall state the date, time, place, and nature of the hearing, and a delineation of the boundaries of the potential historic district to be evaluated.
- 1203.3 Prior to the meeting, the staff shall prepare a written recommendation for the Board. The staff report shall be released to the public at least five days prior to the meeting.
- 1203.4 The Board shall consider the available documentation, staff recommendations, and public testimony prior to making a determination of a potential historic district. If there is no member of the public wishing to testify, the Board may adopt the staff recommendation on the Consent Calendar.
- 1203.5 The Board's determination shall briefly state the likely reasons for potential significance, indicate likely boundaries, and establish a likely period of significance for the potential district.
- 1203.6 Upon the Board's determination of a potential historic district, any further determinations whether structures within the potential district would be contributing or non-contributing buildings shall be delegated to the staff.

1204 PRELIMINARY DETERMINATION OF A POTENTIAL HISTORIC STRUCTURE

- 1204.1 The Board shall make a preliminary determination of possible eligibility for designation upon receipt of a request from the Mayor or his designee, identifying the address or location of a property and including a photograph documenting the appearance of the structure and its immediate surroundings.
- 1204.2 If the structure is located within an area for which the Board has made a preliminary determination as a potential historic district, the staff shall determine whether the structure would contribute to the significance of the district by applying the standards for contributing buildings in Chapter 7. The staff shall make this determination by comparing information about the structure to known information about the physical characteristics and likely historic significance of the potential district.
- 1204.3 If the structure is not located within an area for which the Board has made a preliminary determination as a potential historic district, the staff shall either determine that the structure does not appear eligible for designation, or shall schedule the case for consideration by the Board.
- 1204.4 The Board shall consider cases in accordance with the criteria in Chapter 2. In the case of a building which may be eligible as a potential historic landmark, the Board shall follow the same procedures but apply the criteria for designation as a historic landmark.
- 1204.5 The Board shall make such a determination within 60 days of receipt of a request from the Mayor or his designee. After the Board has made a determination, the HPO shall inform the Mayor or his designee of the Board's action in accordance with the format established for this purpose.

1205 PRELIMINARY DETERMINATIONS OF ELIGIBILITY BY THE STAFF

- 1205.1 The staff shall be authorized to provide informal determinations of eligibility for consultation purposes.
- 1205.2 The staff shall be authorized to issue a written determination on behalf of the Board for any building or structure for which there does not appear to be a substantial likelihood of eligibility for historic designation.
- 1205.3 In any case where the Board has determined a substantial likelihood of a potential historic district, the staff shall be authorized to issue a written determination on behalf of the Board whether a building or structure within that potential district would be eligible for designation as a contributing building.

1206 REVIEW OF APPLICATIONS FOR DEMOLITION, REPAIR, OR ENCLOSURE

1206.1 The Board and Mayor's Agent shall consider any applications for demolition, repair, or enclosure of buildings submitted by the Mayor under the due process demolition provisions by following the procedures described in Chapters 3 and 4.

1206.2 The staff shall have the authority to act on behalf of the Board to the extent authorized under the delegation of authority in Chapter 3.

CHAPTER 13 STATE HISTORIC PRESERVATION OFFICER FUNCTIONS

Secs.	
1300	General Provisions
1301	Historic Preservation Planning
1302	Historic Resource Surveys
1303	National Register Nominations
1304	Review of Federal Projects
1305	Preservation Tax Incentives
1306	Historic Preservation Fund Grant-in-Aid Program
1307	Conservation Easements and Protective Covenants
1308	Public Education and Outreach Activities

1300 GENERAL PROVISIONS

1300.1 The State Historic Preservation Officer shall perform the functions and duties mandated by the National Historic Preservation Act and implementing regulations.

1300.2 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) Advising and assisting Federal and District agencies in carrying out their historic preservation responsibilities;
- (e) Cooperating with Federal and District agencies to ensure that historic properties are taken into consideration at all levels of planning and development;
- (f) Reviewing applications for Federal preservation tax incentives;
- (g) Administering the Historic Preservation Fund (HPF) Grant-in-Aid program; and
- (h) Providing public information, education, training, and technical assistance related to historic preservation programs.

1301 HISTORIC PRESERVATION PLANNING [RESERVED]**1302 HISTORIC RESOURCE SURVEYS [RESERVED]****1303 NOMINATIONS TO THE NATIONAL REGISTER**

- 1303.1 If the Board has recommended the nomination of a property to the National Register, the SHPO shall prepare the National Register nomination form, obtain the completed form from the applicant, or cause the form to be prepared by other means.
- 1303.2 The SHPO shall forward the nomination to the National Register in accordance with applicable federal regulations.
- 1303.3 In the case of a historic district, the SHPO shall publish in the *D.C. Register* a notice of nomination to the National Register, or of intent to nominate to the National Register. The designation shall become effective 30 days after publication of this notice.
- 1303.4 When a historic landmark or historic district is listed in the National Register, the SHPO shall mail a notice to each owner. In lieu of individual notice in the case of a historic district where there are more than 50 owners, the SHPO may publish a general notice in a newspaper of general circulation in the area of the proposed designation.
- 1304 REVIEW OF FEDERAL PROJECTS [RESERVED]**
- 1305 PRESERVATION TAX INCENTIVES [RESERVED]**
- 1306 HISTORIC PRESERVATION FUND GRANT-IN-AID PROGRAM [RESERVED]**
- 1307 CONSERVATION EASEMENTS AND PROTECTIVE COVENANTS**
- 1307.1 The SHPO may accept conservation easements and protective covenants on historic properties, for diverse purposes including the allowance of property tax relief pursuant to D.C. Official Code §§ 47-842 through 844.
- 1307.2 For the purposes of D.C. Official Code §§ 47-842 through 844, a historic building shall be a historic landmark or a building that contributes to the character of a historic district listed in the D.C. Inventory of Historic Sites. The SHPO shall determine whether a building is a contributing building by applying the standards in Chapter 7.
- 1307.3 The SHPO may seek the advice of the Board or Board Chairperson on the nature and conditions of any covenant.
- 1307.4 The SHPO may require that appropriate maintenance, repair, or other preservation work be completed on the property as a prior condition of the covenant. The SHPO may require that any such work requiring a permit subject to review by the Board be consistent with the Secretary of the Interior's Standards for Rehabilitation (36 CFR § 67.7).

1307.5 The SHPO shall monitor compliance with the terms of any covenant accepted by the SHPO with this provision in its terms.

1308 PUBLIC EDUCATION AND OUTREACH ACTIVITIES [RESERVED]

CHAPTER 14 STATE REVIEW BOARD FUNCTIONS

Secs.	
1400	General Provisions
1401	National Register and National Historic Landmark Nominations
1402	Review of Federal Projects
1403	Advice and Guidance to the State Historic Preservation Officer

1400 GENERAL PROVISIONS

- 1400.1 The Board shall conduct the State Review Board functions for the District of Columbia in accordance with the provisions of the National Historic Preservation Act and implementing regulations.
- 1400.2 State Review Boards have the authority to conduct the following activities:
- (a) Review National Register nominations and appeals from nominations;
 - (b) Provide general advice and guidance to the State Historic Preservation Officer, including advice and guidance in the review of federal projects;
 - (c) Review appropriate documentation submitted in conjunction with the Historic Preservation Fund administered by the National Park Service; and
 - (d) Perform such other duties as may be appropriate.

1401 NATIONAL REGISTER AND NATIONAL HISTORIC LANDMARK NOMINATIONS

- 1401.1 The Board shall review each National Register nomination proposal prior to submission to the National Register to determine whether or not the property meets the National Register criteria for evaluation, and to make a recommendation that the SHPO nominate or reject the proposed nomination.
- 1401.2 The Board shall participate in the review of any appeal to National Register nomination, and shall provide a written opinion on the significance of the property.
- 1401.3 The Board shall review National Register nominations in accordance with the National Register regulations at 36 CFR Part 60.
- 1401.4 Whenever possible, the Board shall review National Register nominations simultaneously with corresponding applications for designation in the D.C. Inventory. If a Federal agency is the sponsor of a National Register nomination, and the agency does not submit a corresponding application for listing in the D.C. Inventory, the Board may initiate such an application for consideration by following the procedures in Chapter 2.

1401.5 The Board shall comment on proposed National Historic Landmark designations by the Secretary of the Interior. Prior to its consideration of such nominations, the Board shall provide notice to the property owner and affected ANC in accordance with the procedures in Chapter 2.

1402 REVIEW OF FEDERAL PROJECTS

1402.1 The Board shall assist the SHPO in carrying out the review and consultation process established pursuant to §§ 106 and 110(f) of the National Historic Preservation Act. Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. Section 110(f) requires that Federal agencies, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to National Historic Landmarks, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.

1402.2 The role of the SHPO is to represent the interests of the District and its citizens in the preservation of their cultural heritage. The SHPO consults with and assists Federal agency officials and their licensees when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects.

1402.3 The SHPO may seek the informed advice and guidance of the Board in the review of Federal agency undertakings. Board meetings held for this purpose shall also serve as a forum for public participation, and the Board shall afford interested persons an opportunity to express their views.

1402.4 The SHPO shall determine in consultation with the Chairperson of the Board which Federal undertakings shall be referred to the Board for its involvement. This determination shall be made on the basis of the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public, the extent of public review afforded by other District or Federal review bodies, and any other pertinent considerations.

1402.5 The Board shall schedule meetings as needed for the purpose of reviewing proposed Federal undertakings under the Section 106 process. Any such meeting shall be held in accordance with the notice requirements and procedures described in Chapter 3.

1402.6 The Board may delegate any authorities noted in this section to the Chairperson or to one or more individual members of the Board.

1403 ADVICE AND GUIDANCE TO THE STATE HISTORIC PRESERVATION OFFICER

- 1403.1 The Board shall provide other general advice and guidance to the SHPO in carrying out duties and responsibilities pursuant to the Procedures for Approved State and Local Government Historic Preservation Programs (36 CFR Part 61).
- 1403.2 The Board shall provide advice and guidance to the SHPO on the preservation planning, survey, education, and outreach programs supported by the Historic Preservation Fund (HPF) administered by the National Park Service.
- 1403.3 The Board shall hold meetings as appropriate to provide recommendations and to consider public comments on the Historic Preservation Plan for the District of Columbia.
- 1403.4 The Board shall provide advice and guidance to the SHPO on the survey, identification and interpretation of sites of historic or cultural interest. The Board may recommend the establishment of commemorative sites or trails to promote public understanding and appreciation of the historic and cultural heritage of the District of Columbia.
- 1403.5 The Board may review and recommend the placement of plaques, wayside or wayfinding signs, or commemorative features incorporated within ordinary walkway paving.
- 1403.6 The Board shall provide advice and guidance to the SHPO on conservation easements or protective covenants for properties whose preservation is assisted by federal or D.C. funds.
- 1403.7 The Board shall provide advice and guidance to the SHPO on the establishment of revolving loan or grant funds, conservation districts, preservation partnerships, and any other mechanisms to further the preservation of the historic and cultural assets of the District of Columbia.
- 1403.8 The Board shall provide advice to the SHPO about documentation submitted in conjunction with the Historic Preservation Fund, including but not limited to grant applications, end-of-year reports, and the comprehensive historic preservation planning process.
- 1403.9 The Board may delegate any functions in this section to the Chairperson or to one or more members of the Board.

CHAPTERS 15-19 [RESERVED]

CHAPTER 20 DESIGN AND CONSTRUCTION STANDARDS AND GUIDELINES

Secs.	
2000	General Provisions
2001	Purpose and Use
2002	Consistency with the Purposes of the Historic Protection Act
2003	Secretary of the Interior's Standards for Rehabilitation
2004	Historic Preservation Guidelines

2000 GENERAL PROVISIONS

- 2000.1 The Board shall establish standards and guidelines to assist it and the staff in making determinations whether proposed work is compatible with the character of historic properties. The standards and guidelines shall enunciate the Board's policy with respect to various types of work, and shall indicate what types of work are considered to constitute appropriate treatments or adaptations of historic properties.
- 2000.2 Work undertaken in conformity with the Board's standards and guidelines shall be considered consistent with the purposes of the Historic Protection Act.
- 2000.3 Standards and guidelines shall be developed through a process that provides an opportunity for public review and comment. Any standards shall be promulgated as part of these regulations.
- 2000.4 In addition to its own specific standards and guidelines, the Board shall apply commonly accepted standards of historic preservation practice.
- 2000.5 The following terms specifically applicable to this chapter are defined in Chapter 34:
- (a) Adapt and adaptation;
 - (b) Compatible;
 - (c) Incompatible;
 - (d) Rehabilitation; and
 - (e) Restoration.

2001 PURPOSE AND USE

- 2001.1 The Board's design and construction standards are intended to promote the clear understanding and use of responsible historic preservation methods and practices. They are not intended as rigid and unyielding rules for all situations, but rather as a general means of promoting equity of treatment among applicants and consistency to the directions given by the Board and staff.

2001.2 The Board's standards shall be used with discretion, considering the context in which they are applied. Their application shall involve a careful assessment of the historic characteristics of the affected property, the nature of the proposed project, and other practical considerations.

- (a) Pertinent considerations about the historic property shall include its relative importance, nature of significance, condition, and degree of material integrity.
- (b) Pertinent conditions about the project shall include the extent of its impact, its degree of reversibility, and related practical or regulatory constraints.

2001.3 The burden shall be on an applicant to show that an exception to the Board's standards or guidelines is appropriate.

2002 CONSISTENCY WITH THE PURPOSES OF THE HISTORIC PROTECTION ACT

2002.1 The Board shall review applications for demolition, alteration, and subdivision to determine whether the work is consistent with the purposes of the Historic Protection Act.

2002.2 The purposes of the Act are, with respect to historic landmarks:

- (a) To retain and enhance historic landmarks and to encourage their adaptation for current use; and
- (b) To encourage the restoration of historic landmarks.

2002.3 The purposes of the Historic Protection Act are, with respect to historic districts:

- (a) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
- (b) To assure that alterations of existing structures are compatible with the character of the historic district; and
- (c) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.

2003 SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

2003.1 The Secretary of the Interior's Standards for Rehabilitation are the most commonly accepted national standards of good preservation practice. They are used by all federal agencies and SHPOs, and have been adopted by historic district and planning commissions across the country.

- 2003.2 The Board, the SHPO, and the staff apply the Secretary's Standards in all project reviews under the federal preservation program, including Section 106 cases and projects seeking certified rehabilitation status for federal tax purposes.
- 2003.3 The Board and the staff may also apply the Secretary's Standards in the review of projects under the Historic Protection Act. Rehabilitation that meets the Secretary's Standards shall be considered compatible with the character of a historic landmark or historic district. Although conformity is encouraged, rehabilitation need not always meet the Secretary's Standards to be considered consistent with the purposes of the Act.
- 2003.4 The Secretary's Standards are:
- (a) *Standard 1:* A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - (b) *Standard 2:* The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - (c) *Standard 3:* Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - (d) *Standard 4:* Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - (e) *Standard 5:* Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
 - (f) *Standard 6:* Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
 - (g) *Standard 7:* Chemical or physical treatments, such as sandblasting, that cause damage to historic material shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
 - (h) *Standard 8:* Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

- (i) *Standard 9:* New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.
- (j) *Standard 10:* New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2003.5 The Secretary's Standards are accompanied by *Guidelines for Rehabilitating Historic Buildings*, which are intended to assist in applying the Standards to projects generally. The Standards and Guidelines are published by the National Park Service, U.S. Department of the Interior, and are available from the U.S. Government Printing Office. The HPO shall also make copies available for review by the public at the HPO office.

2004 HISTORIC PRESERVATION GUIDELINES

2004.1 To promote the clarity and understanding of design and construction standards, the Board and HPO shall prepare design guidelines for use in conjunction with the standards. The Board's design guidelines shall augment the standards and provide examples of treatments that are recommended or not recommended.

2004.2 Prior to the implementation of any design guidelines, the HPO shall submit the proposed guidelines to the Board for its review and acceptance. The Board shall adopt design guidelines only after distribution of the proposed guidelines to the public for review and comment, and a duly noticed public hearing at which the public may participate.

2004.3 The HPO may make minor changes to adopted guidelines without a public hearing by the Board.

CHAPTER 21 STANDARDS FOR RENOVATION [RESERVED]

CHAPTER 22 STANDARDS FOR ADDITIONS AND NEW CONSTRUCTION [RESERVED]

CHAPTER 23 STANDARDS FOR WINDOW REPAIR AND REPLACEMENT (WINDOW STANDARDS)

Secs.	
2300	General Provisions
2301	Window Types
2302	Window Components and Attributes
2303	Window Maintenance and Repair
2304	Storm Windows
2305	Window Replacement: General Provisions
2306	Window Replacement: Historic Landmarks
2307	Window Replacement: Contributing Buildings in Historic Districts (Major Buildings)
2308	Window Replacement: Contributing Buildings in Historic Districts (Small Buildings)
2309	Window Replacement: Contributing Buildings in Historic Districts (Large Buildings)
2310	Window Replacement: Non-Contributing Buildings in Historic Districts
2311	Windows in New Additions to Historic Buildings
2312	Windows in New Construction in Historic Districts
2313	Supplemental Information for Permit Applications

2300 GENERAL PROVISIONS

2300.1 Windows are an important and integral part of the design of most buildings. They typically comprise thirty to forty percent of the surface area of the building's principal façade. In making a determination on proposed changes to windows, the Board and staff evaluate the effect of the proposal on the aesthetic values and the historical and architectural significance of the affected historic building. Factors in this evaluation include the architectural style and integrity of the historic building, and the design, material, color, and general appearance of the proposed work.

2300.2 These window standards are based on the following principles:

- (a) The historic character of a property and its distinguishing qualities shall be retained and preserved. The removal of historic materials or alteration of distinctive architectural features should be avoided.
- (b) Deteriorated architectural features should be repaired rather than replaced.
- (c) In the event that replacement is necessary, the new feature should match the historic in design, color, texture, and other visual qualities, and, where possible, materials.

2300.3 To the maximum extent possible, these standards shall be applied so as to minimize harm to National Historic Landmarks and National Historic Landmark Districts.

2300.4 The following terms specifically applicable to this chapter are defined in Chapter 34:

- (a) Façade;
- (b) Principal façade;

- (c) Secondary elevation; and
- (d) Character-defining feature.

2301 WINDOW TYPES

2301.1 "Existing windows" means the windows existing at the time of designation, if supported by documentary evidence, or windows that have been changed subsequent to designation pursuant to a valid permit reviewed by the Board.

2301.2 "Historic windows" means:

- (a) Windows that appear to date from the construction of the historic building, as determined with a reasonable degree of certainty by professional evaluation;
- (b) Windows that are of a type characteristic of the building when constructed, as supported by documentary evidence which may include typologies of similar buildings in similar periods and styles; or
- (c) Windows that were incorporated into the building by a major alteration undertaken within the period of significance of the historic landmark or district, as supported by documentary evidence.

2301.3 "Special Windows" means windows that create a special architectural effect, or are a custom design, not typically found in a manufacturer's catalogue. Such windows may or may not be repetitive, and usually involve one or more of the following attributes:

- (a) Non-rectilinear frame or sash;
- (b) Transom or side light configuration;
- (c) Multi-pane configuration with twelve or more panes in a single sash;
- (d) Curved glass;
- (e) Stained, leaded, or artistically crafted glazing;
- (f) Decorated, carved, or embellished sash, frame, or surround; or
- (g) Projecting bay or oriel.

2302 WINDOW COMPONENTS AND ATTRIBUTES

2302.1 "Color" means the hue, value and saturation characteristics of the surfaces of window components.

- 2302.2 "Configuration" means the number, shape, organization and relationship of panes or lights of glass, as defined by sash, frame, muntins, or tracery
- 2302.3 "Dimensions" means the size and measurements of both stationary and moveable portions of a window and its applied moldings.
- 2302.4 "Fenestration" means the way in which windows are arranged in a façade, including configuration, profile, material, and finish.
- 2302.5 "Finish" means the visual characteristics, including color, texture and reflectivity of all exterior materials. A replacement window shall not be considered to match the finish of a wood window if it is clad with metal or vinyl.
- 2302.6 "Frame" means the stationary portion of a window unit, which is affixed to the façade and which holds the sash or other operable portions of the window.
- 2302.7 "Glazing" means the glass or other material forming the transparent portion of the window, often in a configuration of separate pieces referred to as panes or lights.
- 2302.8 "Match" means a closely approximate, but not necessarily an exact, replication. Tolerances permitted in determining the acceptable level of approximation shall in general be in fractions of inches. In making such determination, the staff considers overall sizes of window openings and proportions of elements making up the window. In all cases, there shall be minimum variation in the distance between the plane of glass and the plane of adjacent exterior surfaces (muntins, sash and frame).
- 2302.9 "Materials" means the substances used to fabricate windows and their component parts.
- 2302.10 "Meeting rail" means the horizontal portion of sash in a double hung window designed to interlock with the other sash member, usually at the middle of the window.
- 2302.11 "Method of operation" means the manner in which a window opens, closes, locks, or functions. If non-operable, a window or window element, such as a sidelight, is identified as "fixed."
- 2302.12 "Molding" means a trim piece which introduces varieties of outline or contour in edges or surfaces of window elements such as jambs and heads. Moldings are generally rectilinear, curved, or a composite of curves.
- 2302.13 "Mullion" means a vertical primary framing member which separates paired or multiple windows within a single opening.
- 2302.14 "Muntin" means a tertiary framing member which subdivides window sash into individual panes, lights or panels. For the purposes of these standards, the term

includes lead comes associated with stained glass windows. False muntins or “grids” placed between two sheets of glass are not considered muntins.

2302.15 “Panning” (also known as “capping” or “wrapping”) means a material, usually metal or vinyl, applied to cover the exterior surface of an existing window frame or mullion.

2302.16 “Profile” means the three-dimensional appearance of a window, particularly as perceived under the conditions of sunlight and shadow. Profile is established by the contours of frame and sash elements, and by the successive depth of recess of the window within the opening, the sash within the frame, and the glass within the sash.

2302.17 “Sash” means the secondary part of a window, either operable or fixed, which holds the glazing in place. Sash is usually constructed of horizontal rails and vertical stiles, and it may be subdivided with muntins.

2303 WINDOW MAINTENANCE AND REPAIR

2303.1 Proper maintenance and repair of historic windows is the most appropriate historic preservation approach, since it promotes the long-term preservation of the physical fabric, historic integrity, and appearance of historic buildings and districts. Historic windows should be repaired where possible.

2303.2 A permit is not required to undertake the following maintenance work:

- (d) Replacement of broken glass, together with associated replacement of glazing compound and, if necessary, of damaged moldings and muntins with material of matching characteristics.
- (e) Scraping, priming and repainting of window sash or frames.
- (f) Caulking around frames and sill.
- (g) Repair and replacement of window hardware, including pulley chains.
- (h) Installation of weather-stripping.
- (i) Rebuilding portions of sills, sash and other window members, using the same material and to the same configuration, size, shape, and profile.
- (j) Consolidating wood members with epoxy or other wood fillers.

2303.3 A permit is required for repair work that involves any change in configuration, shape, size or profile of any component of the total window assembly, or any change in the type of material used for replacement work, or in wholesale replacement of any window element.

2304 STORM WINDOWS

2304.1 The use of secondary windows or storm windows, either exterior or interior, is encouraged as a means of preserving historic windows. Under the D.C. Construction Code (12 DCMR § 111), a permit is required for the installation of storm windows in historic landmarks or in historic districts.

2304.2 Interior Storm Windows

- (k) Storm panels should have no intermediate dividing members (mullions or muntins), except in the case of large windows, where any necessary dividing members should align with major divisions of the historic window.
- (l) Frames should be narrow and not visible or minimally visible when viewed from the exterior of the building.
- (m) Glazing should be only of clear glass or other transparent material.

2304.3 Exterior Storm Windows

- (n) Sash should fit tightly within window openings without the need for a subframe or panning around the perimeter.
- (o) Sash should have no intermediate dividing members (mullions or muntins), except in the case of large windows, where any necessary dividing members should align with major divisions of the historic window.
- (p) Meeting rails should be used only in conjunction with double-hung windows and should be in the same relative location as in the primary sash.
- (q) The color of the frame members should approximate the color of the primary window frame.
- (r) Glazing should be only of clear glass.
- (s) The plane of glass in the secondary (storm) sash shall not be more than two inches further forward (towards the exterior) from the plane of the glass in the primary window unless unusual conditions make this infeasible.

2305 WINDOW REPLACEMENT: GENERAL PROVISIONS

2305.1 Replacement of historic windows should be considered only if the preferred option of preserving historic windows is not feasible, given the facts and circumstances of each particular case.

- 2305.2 Under the D.C. Construction Code (12 DCMR § 107), a permit is required for the replacement of windows in historic landmarks or buildings within an historic district.
- 2305.3 The requirement for a permit applies equally to the removal or replacement of sash in existing frames, and to the removal or replacement of both sash and frames. If repair or rehabilitation of frames is proposed, that work shall also be indicated on the permit application.
- 2305.4 Replacement sash and frames shall match the historic sash and frames in all respects—configuration, method of operation, profile, dimensions, material, finish, and any other salient character-defining features, except as provided below.
- 2305.5 Panning, capping, or wrapping of window piers, mullions, frames, and sills is generally discouraged.
- 2305.6 Replacement windows may be double-glazed, but they shall have either “true-divided” lights, or “simulated-divided” lights (integrally applied external and internal muntins), with configuration and profiles matching the historic window. False muntins or “grids” located between two panes of glass, and “snap-ins” applied either internally or externally are not considered acceptable muntins.
- 2305.7 Glazing in replacement windows shall be clear, non-reflective glass unless otherwise historically appropriate or determined compatible by the staff. Replacement of stained or specialty glass shall match the historic glass or be historically appropriate or compatible.
- 2305.8 Window screens in all replacement sash windows shall be half screens, not full screens covering the entire window opening.
- 2305.9 The standards for window replacement reflect a hierarchy of building importance, as delineated in the following sections. The strictest standard shall be applied to National Historic Landmarks, historic landmarks and major buildings in historic districts, a more flexible standard shall be applied to contributing buildings in historic districts (with additional flexibility applied to larger buildings), and the most flexible standard shall be applied to non-contributing buildings and new construction.
- 2305.10 If the existing windows in an historic building are not historic windows, replacement windows should be consistent with the historic window design if known, or should be consistent with the period of the building and compatible with its general historic character.

2306 WINDOW REPLACEMENT: HISTORIC LANDMARKS

- 2306.1 Principal Facades

- (a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they match the historic windows in all respects—configuration, method of operation, profile, dimensions, material, finish, and any other salient character-defining features. A stricter standard of reasonableness shall be applied to special windows.
- (b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating “significant” effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building,
- (c) The color of replacement windows shall match or approximate the historic color of the historic windows, if this can be determined. Otherwise, the color shall be historically appropriate.
- (d) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the historic building.
- (e) Replacement of windows in a different material shall require approval by the Board.
- (f) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2306.2 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows match the historic windows in terms of configuration, method of operation, profile, dimensions, and finish, and provided that they do not replace special windows. Matching the material is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation and dimensions, and provided that they do not replace special windows.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2307 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (MAJOR BUILDINGS)

- 2307.1 For the purposes of these standards, a "major building" in a historic district shall be defined as a contributing building that is individually distinguished by such characteristics as symbolic value, visual prominence, substantial size, architectural elaboration, or historical association. Such buildings often meet the criteria for historic landmark designation, and typically include public and institutional buildings, schools, mansions, and places of worship or public assembly.
- 2307.2 Major buildings in historic districts shall be treated on a case-by-case basis, usually according to the same standards applicable to historic landmarks.

2308 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (SMALL BUILDINGS)

- 2308.1 For the purposes of these standards, a "small building" in a historic district shall be defined as a building of four stories or less, unless the building has a street frontage of 100 feet or more on any single street.
- 2308.2 Principal Facades
- (a) If historic windows cannot reasonably be restored, replacement windows shall be approved if they reasonably match the historic windows in all respects— configuration, method of operation, profile, dimensions, material, and finish. A stricter standard of reasonableness shall be applied to special windows.
 - (b) Variations in profile shall be permitted if these variations do not significantly affect visual characteristics of the historic window. In evaluating "significant" effect, factors to be considered shall be the age of the building, its architectural quality, and the extent of diminution in the total glazed area of the sash. Exact replication of profiles may be required if warranted by the significance of the historic building.
 - (c) With respect to matching of materials, it shall be understood that a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal. Exact replication of materials may be required if warranted by the significance of the building.
 - (d) The color of replacement windows should be historically appropriate or compatible with the character of the building .
 - (e) In buildings other than one- or two-family dwellings, where the historic windows are simple one-over-one, straight-headed, double hung sash with non-contoured

and unornamented frames, flexibility may be applied to allow replacement in a different material.

- (f) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2308.3 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Matching the material and finish is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Flexibility is allowed in the choice of configuration, profile, material, and finish.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2309 WINDOW REPLACEMENT: CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS (LARGE BUILDINGS)

2309.1 For the purposes of these standards, a "large building" in a historic district shall be defined as a building of five or more stories in height, or a building of less than five stories with a street frontage of 100 feet or more on any single frontage.

2309.2 Principal Facades

- (a) Replacement windows shall be approved if they match the historic windows in terms of configuration, operation, profile, dimensions, and finish. However, matching the material is encouraged and may be required if deemed appropriate by the staff.
- (b) Where the historic windows possess special architectural value, including special windows, replacement windows shall match the material of the historic windows. Special architectural value often applies to large buildings with ground floor or lower floor windows that are distinctively different from the typical upper floor windows. In such cases, the staff may deem it appropriate to require matching the material on the lower windows (or to require retention of the original lower

windows), while allowing replacement in a different material for the upper windows.

- (c) Alteration of window openings shall generally require approval by the Board. For basement openings not visible from a street or public open space, or only marginally visible, the staff may approve alterations that do not compromise historic or architectural characteristics.

2309.3 Secondary Elevations

- (a) If existing windows are visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of configuration, method of operation, profile, and dimensions, and provided that they do not replace special windows. Matching the material and finish is encouraged but not required.
- (b) If existing windows are not visible from a street or public open space, a permit shall be issued if replacement windows reasonably match the historic windows in terms of method of operation and dimensions, and provided that they do not replace special windows. Flexibility is allowed in the choice of configuration, method of operation, profile, material, and finish.
- (c) Alteration of window openings is discouraged, but some flexibility may be applied.

2310 WINDOW REPLACEMENT: NON-CONTRIBUTING BUILDINGS IN HISTORIC DISTRICTS

2310.1 For replacement windows in a non-contributing building within an historic district, a permit shall be issued if the windows are appropriate for the building and compatible with the historic district.

2310.2 This guidance is intended to promote design compatibility with historic districts, rather than to discourage good contemporary design or creative architectural expression.

2311 WINDOWS IN NEW ADDITIONS TO HISTORIC BUILDINGS

2311.1 Windows in additions to historic buildings should be appropriate for the new addition and in most cases consistent in overall character with the windows found on the historic building. This is generally most important for windows in close proximity to a primary historic façade.

2311.2 Windows in rear additions to historic buildings should generally reflect the less formal design that is characteristic at the rear of most historic structures. Alternatively,

windows in an addition distinguished by deliberate contrast should be compatible in scale and character with the historic building overall.

2311.3 Windows should generally be made of the same material as the building's historic windows, particularly in additions to historic landmarks, major buildings in historic districts, and small buildings in historic districts. Alternatively, use of a different window material should serve to support the design integrity of an addition distinguished by contrast.

2311.4 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2312 WINDOWS IN NEW CONSTRUCTION IN HISTORIC DISTRICTS

2312.1 Windows in new construction within an historic district should be generally consistent in character with the windows found in the historic district.

2312.2 Windows should generally be made of the materials characteristic of similar building types within the historic district.

2312.3 This guidance is intended to promote design compatibility with historic buildings and districts, rather than to discourage good contemporary design or creative architectural expression.

2313 SUPPLEMENTAL INFORMATION FOR WINDOW PERMIT APPLICATIONS

2313.1 Permit applications for window work shall include close-up photographs of existing windows in the building or other materials adequate to document the condition of existing windows.

2313.2 For applications to replace windows, supplemental materials shall include documentation sufficient to indicate the design and construction of the proposed new windows, such as drawings from the manufacturer's catalogue or other drawings with comparative dimensions, details of construction, configuration, color and finish.

2313.3 If necessary, the staff may request material samples or an on-site mock-up.

CHAPTER 24 STANDARDS FOR COMMERCIAL STOREFRONTS [RESERVED]

CHAPTER 25 STANDARDS FOR SIGNS AND AWNINGS [RESERVED]

CHAPTER 26 STANDARDS FOR LANDSCAPE FEATURES [RESERVED]

CHAPTER 30 MAYOR'S AGENT PUBLIC HEARING PROCEDURES

Secs.	
3000	General Provisions
3001	Appearance and Representation
3002	Status of Parties and Persons
3003	Duties of the Mayor's Agent
3004	Order of Procedure
3005	Witnesses and Evidence
3006	Conclusion of the Hearing
3007	Service of Papers
3008	<i>Ex Parte</i> Communication

3000 GENERAL PROVISIONS

3000.1 Public hearings by the Mayor's Agent shall be conducted according to the contested case procedures of the Administrative Procedure Act (D.C. Official Code § 2-509).

3000.2 The following terms specifically applicable to this chapter are defined in Chapter 34:

- (a) Applicant;
- (b) Party;
- (c) Person;
- (d) Affected person; and
- (e) Affected Advisory Neighborhood Commission.

3001 APPEARANCE AND REPRESENTATION

3001.1 In any proceeding before the Mayor's Agent, the following shall apply:

- (a) Any person or party may appear personally or through counsel;
- (b) A partner of a partnership may represent the partnership;
- (c) An officer or official of a corporation or association may represent the corporation or association if properly authorized to do so by the articles of incorporation, bylaws, or board of directors of the corporation or association;
- (d) The Chairperson, counsel, or an authorized member of the Historic Preservation Review Board may represent the Board;
- (e) An officer or employee of a public agency or government unit or department may represent that agency, unit, or department; and

- (f) One or more duly authorized members or staff persons of an Advisory Neighborhood Commission (ANC) may represent the ANC.

3001.2 Any person or party appearing before the Mayor's Agent other than on his or her own behalf shall establish his or her authority to act in that capacity.

3002 STATUS OF PARTIES AND PERSONS

3002.1 The Mayor's Agent shall determine who will be recognized as a party at a public hearing.

3002.2 Any individual or organization not recognized as a party to a public hearing may participate as a person under these rules.

3003 DUTIES OF THE MAYOR'S AGENT

3003.1 The Mayor's Agent shall be the presiding officer at the public hearing.

3003.2 As presiding officer, the Mayor's Agent shall have authority to perform the following duties:

- (a) Regulate the course of the hearing;
- (b) Dispose of procedural requests or similar matters, including motions to amend, to order proceedings reopened, or to consolidate applications for review;
- (c) Request any party or person at any time during the hearing to state his or her respective position concerning any issues in the proceeding and theory in support of that position;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Assign exhibit numbers for all written documentary and other tangible matter offered in evidence;
- (f) Call, examine, and cross-examine witnesses and introduce into the record documentary or other evidence;
- (g) Rule upon the qualifications of witnesses offered as experts;
- (h) Establish reasonable time limits for witnesses and fairly allocate time among the parties and others;
- (i) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;

- (j) Adjourn a hearing and establish the date when the hearing will be continued;
- (k) Close a hearing;
- (l) Require the parties to submit proposed findings of fact and conclusion of law; and
- (m) Take any other action authorized or necessary under the provisions of this chapter.

3004 ORDER OF PROCEDURE

3004.1 The order of procedure for the public hearing shall be as follows, unless the Mayor's Agent determines otherwise for good cause:

- (a) Introductory statement by the presiding officer;
- (b) Consideration of pending motions and procedural matters;
- (c) Swearing of witnesses;
- (d) Presentation of the applicant's case;
- (e) Reports or statements by the Historic Preservation Review Board;
- (f) Reports or statements by public agency representatives;
- (g) Statements by affected Advisory Neighborhood Commission(s);
- (h) Statements by parties in support of the application;
- (i) Statements by persons in support of the application;
- (j) Statements by parties in opposition to the application;
- (k) Statements by persons in opposition to the application;
- (l) Rebuttal by the applicant;
- (m) Rebuttal by parties in support of the application; and
- (n) Surrebuttal by parties in opposition to the application.

3004.2 The public hearing may be adjourned from time to time. If the time and place of the resumption is publicly announced when the adjournment occurs, further notice of the adjourned hearing shall not be required.

3005 WITNESSES AND EVIDENCE

- 3005.1 Any party or person may appear as a witness and offer evidence at the public hearing.
- 3005.2 Witnesses shall be examined and cross-examined orally under oath or affirmation.
- 3005.3 Evidence shall be taken in conformity with the Administrative Procedure Act (D.C. Official Code § 2-509 (b)).
- 3005.4 Exhibits may be offered in evidence at the public hearing. Exhibits may be in the form of photographs, models, architectural plans, graphs, or the like.
- 3005.5 No material shall be submitted for the record which exceeds standard letter size of 8½ by 11 inches, or cannot be folded to letter size.
- 3005.6 If models are used at the hearing, photographs of the models not exceeding letter size shall be supplied either at the hearing or prior to closure of the record.
- 3200.1 The provisions of the Historic Protection Act and these regulations shall be part of every proceeding before the Mayor's Agent and it shall not be necessary for any party or person to move their introduction into evidence.

3006 CONCLUSION OF THE HEARING

- 3006.1 The applicant and any party may submit proposed findings of fact and conclusions of law within the time directed by the Mayor's Agent, and the Mayor's Agent may request the parties to submit proposed findings and conclusions.
- 3006.2 Copies of proposed findings and conclusions shall be served by each party upon all other parties.
- 3006.3 The record shall be closed following the public hearing, unless the Mayor's Agent directs that the record be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs.
- 3006.4 If warranted by the nature of the case, the Mayor's Agent may issue a bench decision at the conclusion of the public hearing, based on the written record and the evidence and testimony presented at the hearing. The Mayor's Agent may also issue an immediate written order based on proposed findings of fact and conclusions of law submitted by the applicant.

3007 SERVICE OF PAPERS

- 3007.1 Any paper required to be served upon a party shall be served upon the party or upon the representative designated by the party or by law to receive service of papers. When a party has appeared by attorney or other representative, service shall be made upon the attorney or representative of record.
- 3007.2 Service may be made by personal or overnight delivery, U.S. mail, facsimile, electronic mail, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Mayor's Agent may make special provisions at the proceeding regarding the service of papers.
- 3007.3 Service by personal delivery upon a party is complete on handing the paper to the person, or leaving it at the person's office with a clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place in that office. If the office is closed or the person to be served has no office, service is complete by leaving the paper at the person's usual place of residence with a resident or employee of suitable age and discretion.
- 3007.4 Service by mail upon a party is complete on deposit in the United States mail, properly stamped and addressed.
- 3007.5 Service by overnight delivery is complete on deposit with the delivery company, properly addressed and with the charges prepaid.
- 3007.6 Service by facsimile is complete when telecopied with the proper telephone number of the intended recipient's telecopier.
- 3007.7 Service by electronic mail is complete when transmitted electronically, properly addressed to the attention of the intended recipient, with proper e-mail address.
- 3007.8 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by any of the following ways:
- (a) Written acknowledgement of the party served or the party's attorney of record;
 - (b) The certificate of the attorney of record if the attorney has made the service; or
 - (c) The certificate of the person making the service.

3008 EX PARTE COMMUNICATION

- 3008.1 In any contested case proceeding by the Mayor's Agent, all parties shall be prohibited from receiving or participating in any *ex parte* communication with the Mayor's Agent relevant to the merits of the proceeding. This shall include any oral or written communication not in the public hearing record with respect to which reasonable prior notice is not given to all parties to the proceeding.

- 3008.2 This prohibition shall begin upon the referral of the application to the Mayor's Agent and shall not terminate until the final disposition of the case.
- 3008.3 This prohibition shall not extend to communication between the Mayor's Agent and the staff concerning matters of record.

CHAPTER 31 HISTORIC PRESERVATION REVIEW BOARD MEETING AND HEARING PROCEDURES

Secs.	
3100	General Provisions
3101	Appearance and Representation
3102	Duties of the Chairperson
3103	Order of Proceedings
3104	Quorum and Voting Procedures
3105	Duties of Board Members
3106	Recusal and Conflict of Interest

3100 GENERAL PROVISIONS

- 3100.1 The Board's hearings and meetings are rulemaking proceedings and shall be conducted in accordance with D.C. Official Code § 2-505.
- 3100.2 The Board shall hold a regularly scheduled monthly meeting, except that the Board may decide not to schedule a hearing in August or for other good cause. In addition to the regularly scheduled monthly meeting, the Chairperson may call such additional meetings or hearings as needed for the conduct of business.
- 3100.3 The proposed agenda for each meeting or hearing shall be posted in the Historic Preservation Office and made available to the public at least five days prior to the meeting or hearing.
- 3100.4 Copies of the agenda shall be available to the public at the meeting or hearing. Notwithstanding the prepared agenda, the Board shall not be precluded from amending or reordering the agenda at the meeting or hearing to promote the public interest or efficient administration of the Historic Protection Act.
- 3100.5 Board proceedings may be adjourned from time to time. If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.

3101 APPEARANCE AND REPRESENTATION

- 3101.1 Any applicant, government representative, or person may appear and offer statements and exhibits in any proceeding before the Board, or may submit written materials for consideration by the Board.
- 3101.2 An individual may appear on his or her own behalf or on behalf of any other person, when authorized by that person.
- 3101.3 An individual need not be a member of the bar of any court to appear before the Board in a representative capacity.

3101.4 Any individual appearing before the Board other than on his or her own behalf shall establish his or her authority to act in a representative capacity.

3102 DUTIES OF THE CHAIRPERSON

3102.1 The Chairperson of the Board shall be the presiding officer at all hearings and meetings. The presiding officer shall have authority to do the following:

- (a) Regulate the course of the proceedings;
- (b) Dispose of procedural requests or similar matters;
- (c) Determine if the materials supplied to the Board are of sufficient detail and clarity to permit a Board decision;
- (d) Call, qualify, and question persons at a hearing, receive relevant information, and introduce into the record documentary or other material;
- (e) Request any applicant or person at any time during a proceeding to state his or her respective position concerning any issues in the proceeding and theory in support thereof;
- (f) Adjourn a proceeding and establish the date when it will be continued;
- (g) Close a proceeding;
- (h) Establish reasonable time limits for comments and fairly allocate time among the applicant, interested persons, and others;
- (i) Exclude unduly repetitious or irrelevant comments or presentations, and permit a person to adopt the prior statement of another person; and
- (j) Take any other action authorized by these rules or necessary under these rules for the proper, expeditious, and fair conduct of the hearing or meeting.

3103 ORDER OF PROCEEDING

3103.1 The order of proceeding at a historic landmark or historic district designation hearing shall be as follows, unless the Chairperson determines otherwise for good cause:

- (a) Introductory statement by the Chairperson;
- (b) Statement by the applicant;
- (c) Staff report;

- (d) Statement by the owner, if not the applicant (in the case of a proposed historic landmark);
- (e) Reports or statements by public agencies;
- (f) Statements by affected Advisory Neighborhood Commissions;
- (g) Statements by persons in support of the application;
- (h) Statements by persons in opposition;
- (i) Response by the owner, if any (in the case of a historic landmark nomination); and
- (j) Discussion and determination by the Board.

3103.2 The order of proceeding at a meeting to consider permit and other applications shall be as follows, subject to the Chairperson's discretion:

- (a) Staff presentation;
- (b) Applicant's presentation;
- (c) Reports or statements by public agencies;
- (d) Statements by affected Advisory Neighborhood Commissions;
- (e) Statements by persons in support of the application;
- (f) Statements by persons in opposition; and;
- (g) Discussion and determination by the Board.

3103.3 The Board may ask questions of any person or seek clarification of any statement at any time during a proceeding.

3104 QUORUM AND VOTING PROCEDURES

3104.1 A majority of the duly constituted Board shall constitute a quorum for the purpose of conducting business at a public hearing or meeting pursuant to these regulations.

3104.2 If the Board loses a quorum during the course of a meeting, unless otherwise prohibited, the Board may at its own discretion proceed to conduct business without a quorum on a case-by-case basis, provided that there is no objection from the applicant or any person interested in the matter under consideration by the Board.

3104.3 Actions of the Board shall be taken in public by a majority vote among the members present and voting, and the vote of each member shall be recorded and noted for inclusion in the transcript or minutes of the meeting.

3104.4 A member may participate and vote in the decision on a case even though that member may not have attended prior proceedings in the case, provided that the member states on the public record that he or she has read the transcript and reviewed the complete record in the case.

3105 DUTIES OF BOARD MEMBERS

3105.1 Each Board member shall become knowledgeable regarding the statutes, regulations, standards, and other policies relating to the Board's responsibility and authority.

3105.2 Members shall not participate in decisions before the Board without becoming familiar with the case pending before the Board, including previous discussions and decisions associated with the matter.

3106 CONFLICT OF INTEREST

3106.1 Board members shall comply with all applicable D.C. rules and regulations on conflict of interest.

3106.2 Any member of the Board shall recuse himself or herself from voting and all other proceedings on any case for which the member has a real or apparent conflict of interest. Upon recusal, the Board member shall not be present in the meeting or hearing room during the Board's consideration of the case.

3106.3 During the time a case is under consideration by the Board, no Board member shall engage in communication about the merits of the case with any interested person outside the Board's official proceedings.

CHAPTER 32 GENERAL ADMINISTRATIVE PROCEDURES

Secs.	
3200	General Provisions
3201	Public Hearings and Meetings
3202	Public Mailing List
3203	Annual Notices
3204	Minutes and Transcripts
3205	Legal Advice and Representation
3206	Computation of Time
3207	Amendment and Waiver of Rules
3208	Severability

3200 GENERAL PROVISIONS

3200.1 All proceedings of the Mayor's Agent and Board shall be conducted in accordance with the Administrative Procedure Act (D.C. Official Code § 2-501 *et seq.*) and other applicable laws and regulations.

3201 PUBLIC HEARINGS AND MEETINGS

3201.1 Public hearings and meetings conducted by the Mayor's Agent and Review Board shall be open to the public. All interested persons are invited to participate.

3201.2 The Mayor's Agent and Review Board shall accord "great weight" to the properly adopted written recommendations of affected Advisory Neighborhood Commissions in all matters under their consideration and subject to ANC purview.

3201.3 Decorum and good order shall be maintained at all times. No person or group shall willfully and knowingly utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct within any building or part of any building owned or under the control of the District of Columbia with the intent to impede, disrupt, or disturb the orderly conduct of a public meeting or hearing pursuant to these regulations, or enter or remain in, during the course of any public meeting or hearing pursuant to this chapter, any area set aside for use by persons other than the general public.

3202 PUBLIC MAILING LIST

3202.1 The Board shall maintain a general public mailing list for notice of public meetings, hearings, and other matters. The mailing list shall include the members of the Council of the District of Columbia, all Advisory Neighborhood Commissions, and any historic preservation organization, civic group, or interested person upon request.

3202.2 At least every two years, the HPO may purge the mailing list of organizations and persons listed by request, after giving notice indicating the manner in which they should state their desire to remain on the list. The HPO may also routinely purge the

mailing list of any addressees upon receipt of mail returned by the U.S. Postal Service as undeliverable. Anyone purged from the list may request reinstatement at any time.

- 3202.3 The Board may supplement the general public mailing list with an electronic mailing list maintained for the same purposes.

3203 ANNUAL NOTICES

- 3203.1 Near the end of each calendar year, the Board shall publish in the *D.C. Register* a notice of its meeting dates for the upcoming year, also indicating the deadline dates by which applications must be filed prior to each meeting. The notice may also include supplemental meeting dates as the need arises. This notice shall be available in the HPO office and shall be posted on the HPO website throughout the year.

- 3203.2 Near the end of each calendar year, the Board shall publish in the *D.C. Register* a notice of historic landmark and historic district designations made during the prior year.

3204 MINUTES AND TRANSCRIPTS

- 3204.1 Any proceeding before the Mayor's Agent or Board shall be reported under the supervision of the presiding officer, stenographically or by recording or other means, by an official reporter who may be designated for this purpose from time to time.

- 3204.2 The transcript prepared by the reporter shall be the sole official transcript of the hearing.

- 3204.3 Minutes of Review Board proceedings may also be prepared by the staff. Minutes shall be summary in nature and shall include the vote and nature of the action taken on each case.

- 3204.4 Transcripts and minutes are a matter of public record, and shall be open for inspection at the Historic Preservation Office. Copies of the transcript shall be available to any interested person from the official reporter on payment of any applicable copying charge.

- 3204.5 In case of conflicts between the transcript and minutes, the wording of the transcript shall prevail.

3205 LEGAL ADVICE AND REPRESENTATION

- 3205.1 The Mayor's Agent, State Historic Preservation Officer, and Review Board may request and receive legal advice from the Office of the Corporation Counsel at any time.

- 3205.2 The Review Board may request and obtain representation by the Office of the Corporation Counsel at any proceeding before the Mayor's Agent.
- 3205.3 The Review Board may request legal assistance from the Office of the Corporation Counsel in any enforcement action or other matter pursuant to these regulations.

3206 COMPUTATION OF TIME

- 3206.1 In computing any period of time specified in this chapter, calendar days shall be counted unless otherwise indicated.
- 3206.2 In computing any period of time specified in this chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless the period ends on a Saturday, Sunday, or holiday, in which case the period shall run until the end of the next business day.
- 3206.3 The one hundred twenty (120) day period provided by the Act during which the Mayor must act on an application, shall be computed from the date the Review Board receives the referral of a complete application from DCRA, or in the case of applications subject to review pursuant to the Old Georgetown Act or the Shipstead-Luce Act, from the date the CFA receives the referral.
- 3206.4 The provision of a 40-day notice to Advisory Neighborhood Commissions is intended to address the statutory requirement for a notice period of 30 working days. In case of any discrepancy, the calculation by working days shall control.
- 3206.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Mayor's Agent, SHPO or Board, as the case may be.
- 3206.6 Except as otherwise provided by law, failure to take action within a time period specified in these rules shall not invalidate an otherwise proper action pursuant to the rules.

3207 AMENDMENT AND WAIVER OF RULES

- 3207.1 At any time, the Mayor's Agent, State Historic Preservation Officer, or Review Board may amend provisions of these rules pertinent to their respective authorities. Any amendments shall be adopted in accordance with the provisions of the Administrative Procedure Act (D.C. Official Code § 2-505).
- 3207.2 If the duties of an agency or official cited in these rules change pursuant to a governmental reorganization, any affected authorities or responsibilities under these

rules shall automatically transfer to the agency or official assuming such duties, without the need for amendment.

- 3207.3 The Mayor's Agent, SHPO, and Review Board may, for good cause shown, waive any of the provisions of these rules pertaining to their respective authorities, if in their judgment the waiver will not prejudice the rights of any person and is not otherwise prohibited by law.

3208 SEVERABILITY

- 3208.1 If any section or provision of this subtitle is determined invalid after judicial review, that decision shall not affect the validity of the regulations as a whole, or any part of the regulations other than the part determined to be invalid.

CHAPTER 33 SCHEDULE OF FEES AND FINES

Secs.	
3300	General Provisions
3301	Application Fees: Historic Landmark and Historic District Designations
3302	Application Fees: Review of Work Affecting Historic Landmarks and Districts
3303	Civil Infractions Fines

3300 GENERAL PROVISIONS

- 3300.1 The Mayor’s Agent shall assess fees for the review of applications pursuant to the Historic Protection Act in accordance with the schedules listed in this Chapter.
- 3300.2 The Mayor’s Agent shall impose fines for violations of the Act in accordance with the schedules listed in this Chapter, and as provided in any pertinent agreement with the Department of Consumer and Regulatory Affairs. These fines shall serve as alternative civil sanctions for infractions of the Act, and shall be in addition to any other penalties provided in the Act.
- 3300.3 These fine schedules may be amended upon submission to the Council of the District of Columbia for its approval or disapproval, in whole or in part, by resolution. Any amendments shall not become effective until approved by the Council, or 60 days after submission if the Council has not disapproved the schedule or amendments.

3301 APPLICATION FEES: HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

- 3301.1 The schedule of fees for historic landmark and historic district applications is as follows:
 - (a) Historic landmark with up to five contributing buildings.....\$ 100
 - (b) Historic landmark with more than five contributing buildings.....\$ 200
 - (c) Historic district with fewer than 100 contributing buildings\$ 250
 - (d) Historic district with 100 to 750 contributing buildings.....\$ 500
 - (e) Historic district with more than 750 contributing buildings.....\$ 1,000
- 3301.2 Application fees shall be waived for District and Federal government agencies.

3302 APPLICATION FEES: REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

3302.1 The schedule of fees for Board review of applications for work affecting historic landmarks and historic districts is as follows:

- (a) C
 Conceptual Design Review, Single-Family Residential
 - (1) New construction, each dwelling.....\$ 100
 - (2) Additions (including rooms or decks).....\$ 100
 - (3) Alterations.....\$ 25

- (b) C
 Conceptual Design Review, All Other Development
 - (1) Less than 10,000 square feet.....\$ 100
 - (2) 10,000 to 100,000 square feet.....\$ 300
 - (3) More than 100,000 square feet.....\$ 1,000

- (c) P
 Permit Applications, Single-Family Residential
 - (1) New construction, each dwelling.....\$ 100
 - (2) Additions (including rooms or decks).....\$ 100
 - (3) Alterations.....\$ 25

- (d) P
 Permit Applications, All Other Development
 - (1) Less than 10,000 square feet\$ 100 L
 - (2) 10,000 to 100,000 square feet.....\$ 300 1
 - (3) More than 100,000 square feet.....\$ 1,000 M

- (e) M
 Miscellaneous Applications
 - (1) Commission of Fine Arts (including Old Georgetown Board).....\$ 25

3302.2 The schedule of fees for public hearings before the Mayor's Agent is as follows:

- (a) Demolition Applications
 - (1) Applicant's claim of consistency with the purposes of the Act.....\$ 250
 - (2) Applicant's claim of special merit\$ 2,500
 - (3) Applicant's claim of economic hardship\$ 500
 - (4) Applicant's claim of economic hardship, low-income owner\$ 25

(b) Alteration and Subdivision Applications

- (1) Applicant's claim of consistency with the purposes of the Act.....\$ 100
- (2) Applicant's claim of special merit\$ 1,000
- (3) Applicant's claim of economic hardship\$ 250
- (4) Applicant's claim of economic hardship, low-income owner\$ 25

(c) New Construction Applications

- (1) S
single-family residential \$ 100
- (2) A
All other development, less than 10,000 square feet \$ 250
- (3) A
All other development, 10,000 to 100,000 square feet \$ 500
- (4) A
All other development, more than 100,000 square feet \$ 1,000

(d) If there are multiple applications for a single project, a single fee shall be assessed for the application with the highest fee. If an applicant for demolition, alteration, or subdivision asserts multiple claims, a single fee shall be assessed for the claim with the highest fee, except in the case of a low-income owner.

3303 CIVIL INFRACTIONS FINES

3303.1 Civil fines, penalties, and fees may be imposed as alternative sanctions for any of the infractions of the provisions of the Historic Protection Act, or any rules or regulations issued under its authority (D.C. Official Code § 6-1110(c)).

3303.2 Adjudication of any infraction of the Act shall be pursuant to the DCRA Civil Infractions Act (D.C. Official Code § 2-1801 *et seq.*)

3303.3 Violations of any of the following provisions of the Historic Protection Act shall be a Class 3 infraction:

- (a) Failure to protect a historic building or structure against decay and deterioration (D.C. Official Code § 6-1104.01(a));
- (b) Failure to comply with terms or conditions of approval by the Mayor's Agent (10A DCMR § xxx);

3303.4 Violations of any of the following provisions of the Historic Protection Act shall be a Class 2 infraction:

- (a) Failure to protect a historic building or structure from demolition by neglect (D.C. Official Code § 6-1104.01(a));
- (b) Failure to comply with the terms or conditions of an Order issued by the Mayor's Agent subsequent to a public hearing (10A DCMR § xxx);

3303.5 Fines for infractions of the Act shall be based on the fine schedule issued pursuant to the DCRA Civil Infractions Act (16 DCMR Chapter 32).

3303.6 The pertinent fines for infractions specified in 16 DCMR § 3200.1 are as follows:

- (a) For Class 3 infractions, the fines are as follows:
- (b) For Class 2 infractions, the fines are as follows:
 - (1) For the first offense..... \$ 500;
 - (2) For the second offense \$ 1,000;
 - (3) For the third offense..... \$ 2,000;
and
 - (4) For the fourth or subsequent offense\$ 4,000.

CHAPTER 34 DEFINITIONS

Secs.	
3400	Defined Terms
3401	Undefined Terms
3402	Interpretation

3400 DEFINED TERMS

3400.1 Terms defined in this section are generally applicable throughout the historic preservation regulations. Some definitions of terms pertinent to only one section of the regulations are given within that section, and are cross-referenced here.

Act: The Historic Landmark and Historic District Protection Act as defined in this chapter.

Adapt or Adaptation: The process of altering a property to accommodate an intended use, and can involve one or a combination of methods including repair, rehabilitation, restoration, and new construction.

Advisory Neighborhood Commission or ANC: One of the elected citizen advisory bodies established pursuant to the Advisory Neighborhood Commissions Act of 1975, as amended (D.C. Official Code §1-207.38 *et seq.*).

Affected Advisory Neighborhood Commission: The ANC for the area within which a subject property is located.

Affected person: In the context of a public hearing by the Mayor's Agent, either of the following:

- (a) Any adjacent or immediately proximate owner or resident who is directly affected by the proposed action, through the possibility of physical damage to historic property, alteration to the character of historic property, or the introduction of visual or environmental elements out of character with historic property.
- (b) Any affected Advisory Neighborhood Commission or historic preservation organization.

Alter or Alteration: A change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required; except that alter or alteration also means a change in any interior space which has been specifically designated as a historic landmark (D.C. Official Code § 6-1102(1)). See also § 301.

Applicant: The person, entity or authorized representative responsible for submission of an application, in any of the following circumstances, as appropriate:

- (a) An applicant for historic landmark or historic district designation pursuant to D.C. Official Code §§ 6-1103;
- (b) An applicant for an alteration, demolition, or new construction permit, or for a subdivision, or for preliminary review pursuant to D.C. Official Code §§ 6-1104 through 1108;
- (c) An applicant for conceptual design review pursuant to these regulations;
- (d) An applicant for the receipt of grant assistance pursuant to these regulations; or
- (e) An applicant for any other certification or official action pursuant to these regulations.

Area Median Income: See § 801.

Association: The link of a historic property with a historic event, activity, or person. Also, the quality of integrity through which a historic property is linked to a particular past time and place.

Board: The Historic Preservation Review Board as defined in this chapter.

Building: A roofed structure for the shelter, support, or enclosure of persons, chattels, or movable property of any kind. As applied to historic buildings, the term may apply to the portion of a structure that historically constituted a separate building.

Certified Rehabilitation: See § 801.

Character-Defining Feature: The form and detailing of those architectural materials and features that are important in defining a building's historic character and whose retention will preserve that character.

- (c) The character of a historic building may be defined by exterior features such as facades, roofs, porches, and windows, and exterior materials such as masonry, wood, and metal;
- (d) The character of a historic building may be defined by its structural features such as bearing walls, floor framing, and roof framing, and structural materials such as brick, steel, and wood;
- (e) The character of a historic interior may be defined by features such as room configurations, spatial relationships, stairs, trim, and decoration, and by materials such as partitions, woodwork, plaster and finishes;

- (f) The site and setting of a historic property may be defined by features such as views to and from the property, landscaping, walls, and fencing, and materials such as stone and vegetation.

Commission of Fine Arts or CFA: The U.S. Commission of Fine Arts, established pursuant to the Act of May 17, 1910 (36 Stat. 371; 40 U.S.C. 104).

Compatible: Possessing characteristics that allow for a harmonious relationship. Compatibility does not require matching or copying of attributes, and may involve the relation of dissimilar things that are juxtaposed to produce an agreeable effect.

Conceptual Design Review or Conceptual Review: The process that allows an applicant to obtain informal guidance and a finding of general consistency with the purposes of the Act from the Board on a project without the necessity of preparing a finished architectural design or obtaining prior approval from the Zoning Administrator.

Contributing building, structure, or site: A building, structure, or site located within a historic district that adds to the district's sense of time and place and historical development (see also § 702).

Department of Consumer and Regulatory Affairs or DCRA: The agency responsible for receiving applications, providing notice of filed applications, and issuing permits and subdivisions pursuant to the Act (D.C. Official Code §§ 6-1104 through 1108), for administering the D.C. Zoning Regulations and Building Codes, and for enforcing public health and safety regulations related to buildings and construction.

Demolish or Demolition: The razing or destruction entirely or in significant part, of a building or structure, and includes the removal or destruction of any façade of a building or structure (D.C. Official Code § 6-1102(3)). See also § 302.

Demolition by neglect: Neglect in maintaining, repairing, or securing a historic landmark or a building or structure in a historic district that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure (D.C. Official Code § 6-1102(3A) (2002 Supp.)).

Design: Either of the following, depending upon the context:

- (a) The sum of elements that create the physical form, plan, space, structure, and style of a property (when used as a quality of integrity); or
- (b) Exterior architectural features including height, appearance, texture, color, and nature of materials (when used in the context of the review of new construction pursuant to the Historic Protection Act, D.C. Official Code § 6-1107).

District of Columbia Inventory of Historic Sites or D.C. Inventory: The inventory of officially designated historic properties subject to the Historic Protection Act, and maintained by the Board in accordance with the Act.

Elevation: The exterior wall of a building or structure (see also "secondary elevation").

Eligible Taxpayer: See § 801.

Façade: A building elevation that possesses significant architectural composition or features (see also "principal façade").

Feeling: The quality of integrity through which a historic property evokes the aesthetic or historic sense of past time and place.

Historic building: A historic landmark listed in the D.C. Inventory of Historic Sites, or a contributing building within an historic district listed in the D.C. Inventory of Historic Sites.

Historic district: An area listed as an historic district in the D.C. Inventory, or which the State Historic Preservation Officer has nominated or issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.

Historic landmark: A building, structure, object or feature, and its site, or a site:

- (a) Listed in the D.C. Inventory, or
- (b) For which an application for listing is pending with the Historic Preservation Review Board (provided the statutory time period for consideration of the application has not expired).

Historic Landmark and Historic District Protection Act or Historic Protection Act: See § 100.

Historic Preservation Office or HPO: The administrative staff of the Mayor's Agent, State Historic Preservation Officer, and Historic Preservation Review Board.

Historic preservation organization: A membership organization that includes among its purposes the promotion of historic preservation in the District of Columbia, as expressed in the organization's articles of incorporation, articles of association, charter, or bylaws.

Historic Preservation Review Board, HPRB, Review Board or Board: The District of Columbia Historic Preservation Review Board designated pursuant to the Historic Protection Act (D.C. Official Code § 6-1103) and pursuant to regulations promulgated by the Secretary of the Interior under the National Historic Preservation Act.

Historic property: A historic landmark (and its site), historic district, or a building or structure (and its site) that contributes to the character of a historic district.

Incompatible: Characterized by clashing or conflicting qualities that lead to an incongruous, discordant, or disagreeable relationship. Diversity, variety, or contrast of qualities does not necessarily imply incompatibility as long as harmonious relationships are maintained.

Integrity: Authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance.

List of Deteriorated Historic Buildings: The list of historic buildings that the SHPO has determined to be substantially non-compliant with the property maintenance standards in the Historic Protection Act (D.C. Official Code § 6-1104.01(a) (2002 Supp.)).

List of Vacant Historic Buildings: The list of vacant historic buildings maintained by the SHPO in accordance with D.C. Official Code §§ 42-3131.01 *et seq.* (2002 Supp.).

Location: A quality of integrity retained by a property that exists in the same place as it did during its period of significance.

Low-income owner: An owner whose household income is 80% or less of the median household income for the Washington Metropolitan Area as established from time to time by the U.S. Department of Housing and Urban Development (when used in the context of an application for demolition, alteration, or subdivision of a building or site that serves as the owner's principal place of residence, and is subject to the Act).

Materials: As a quality of integrity, the physical elements that were combined or deposited in a particular pattern or configuration to form a historic property.

Mayor: The Mayor of the District of Columbia, or his or her designated agent (the "Mayor's Agent") as defined in the Historic Protection Act (D.C. Official Code § 6-1102 (8)).

Mayor's Agent: The person officially designated by a Mayor's Order to carry out specified functions pursuant to the Historic Protection Act (D.C. Official Code §§ 6-1104 through 6-1108), or the hearing officer to whom the officially designated Mayor's Agent has delegated the authority to hold public hearings pursuant to the Act (see explanatory comments in § 103).

National Historic Landmark or NHL: A district, site, building, structure, or object that possesses exceptional value and quality in illustrating or interpreting the heritage of the United States, as designated by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 (16 U.S.C. §461-467) and the National Historic Preservation Act.

National Historic Preservation Act: See § 100.

National Register of Historic Places or National Register: The official national record of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture, as maintained by the Secretary of the Interior pursuant to § 101 of the National Historic Preservation Act.

Necessary in the public interest: Consistent with the purposes of the Historic Protection Act as set forth in D.C. Official Code § 6-1101 (b) (see also § 2001), or necessary to allow the construction of a project of special merit.

Non-contributing building, structure, or site: A building, structure, or site located within a historic district that does not add to the district's sense of time and place and historical development (see also § 703).

Notice of infraction: An official written notice issued by a historic preservation inspector or other code enforcement official, for unlawful work subject to a civil fine established under the provisions of the Civil Infractions Act or other appropriate legislation, and directing corrective action to be taken in accordance with the notice

Notice of violation: An official written notice of unlawful work issued by a historic preservation inspector or other code enforcement official, directing corrective action to be taken in accordance with the notice.

Old Georgetown Act: See § 100.

Old Georgetown Board or OGB: The committee of three architects appointed by the Commission of Fine Arts to serve as a board of review to advise the Commission regarding permit applications referred to it pursuant to the Old Georgetown Act.

Party: In the context of a public hearing by the Mayor's Agent, the applicant, property owner, and any affected person accepted as a party by the Mayor's Agent.

Period of significance: The span of time in which a historic property attained the significance for which it meets the criteria for historic designation.

Permit Processing Division: The office within the Department of Consumer and Regulatory Affairs responsible for the processing of District of Columbia building permits, or its successor.

Person: In the context of a public hearing by the Mayor's Agent, any participant (including any individual, partnership, association, corporation, public agency, board, or government unit or department) who is not a party.

Potential historic district: See § 1201.

Potential historic structure: See § 1201.

Potential determination of eligibility: See § 1201.

Preliminary Review: The process that allows an applicant to obtain a preliminary finding from the Mayor's Agent on whether a project is consistent with the purposes of the Historic Protection Act, pursuant to D.C. Official Code § 6-1108.

Principal Façade: A building elevation that faces a street or public open space, or any other major building elevation that possesses significant architectural composition or features.

- (d) Generally, a mid-block rowhouse has a single principal façade (the front), while a corner rowhouse has two principal facades (the front and side).
- (e) An elevation facing an alley or service access is not usually a principal façade, except in the case of an alley building, on which the alley façade is usually the principal façade.
- (f) In some instances, all four elevations of a detached building may be considered principal facades.

Qualified Nonprofit Corporation: See § 801.

Qualified Rehabilitation Expenditure: See § 801.

Qualified Residence: See § 801.

Qualified Structure: See § 801.

Raze or Razing: The destruction or removal of a structure in its entirety down to the ground. See also "demolition."

Rehabilitate or Rehabilitation: The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Replacement in kind: Replacement of an architectural feature with a feature of like material that replicates the existing feature in proportion, appearance, texture, design, detail, and dimensions.

Restore or Restoration: The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

Review Board: The Historic Preservation Review Board as defined in this chapter.

Secondary Elevation: A wall of a building that does not face a street or public open space, and that does not possess significant architectural composition or features.

- (a) Typically, the rear or alley side of a rowhouse is considered a secondary elevation.
- (b) The sides and rear of a detached building may or may not be considered secondary elevations, dependent on the circumstances.

Secretary's Standards: See § 801.

Setting: As a quality of integrity, the physical environment of a historic property.

Shipstead-Luce Act: See § 100.

Special merit: A plan or building having significant benefits to the District or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.

Staff: The Historic Preservation Office, serving as the administrative staff to the Mayor's Agent, State Historic Preservation Officer, or Historic Preservation Review Board.

State Historic Preservation Officer or SHPO: The person designated by the Mayor to administer within the District of Columbia the historic preservation programs established by the National Historic Preservation Act; also, the administrative head of the Historic Preservation Office.

State Review Board: In the District of Columbia, the Historic Preservation Review Board.

Stop work order: An official written directive issued by a code enforcement official, such as a historic preservation inspector, to cease all construction activity on a property until corrective action is taken in accordance with the order to address unlawful work.

Structure: Anything constructed, including a building, which requires fixed location on the ground, or attached to something having fixed location on the ground.

Subdivide or Subdivision: A division or assembly of land into one or more lots of record. Subdivision includes the division of any lot of record into two or more theoretical building sites as provided by the D.C. Zoning Regulations.

Substantial Rehabilitation: See § 801.

Surveyor: The Surveyor of the District of Columbia, or his or her designated agent.

Unlawful work: Any work subject to review under the Act, but undertaken without a permit properly reviewed and issued pursuant to the Act, or beyond the scope of a proper permit, or at variance with the approved plans or terms and conditions of a proper permit

Unreasonable economic hardship: Circumstances where failure to issue a permit would amount to a taking of an owner's property without just compensation or, in the case of a low-income owner or owners, as defined in this Chapter, when failure to issue a permit would place an onerous and excessive financial burden upon the owner(s).

Workmanship: As a quality of integrity, the physical evidence of the crafts of a particular culture, people, or artisan.

3401 UNDEFINED TERMS

3401.1 Words not defined in this section shall have the meanings given in the current edition of *Webster's Unabridged Dictionary*.

3401.2 The following rules shall apply:

- (a) Words in the present tense shall include the past and future tense, and variations thereof;
- (b) Gender-specific words shall apply to either gender;
- (c) Words in the singular shall include the plural, and vice versa; and
- (d) The word "shall" is mandatory and not discretionary.

3402 INTERPRETATION

3402.1 The Mayor's Agent, State Historic Preservation Officer, and Historic Preservation Review Board shall have the authority to decide any disagreement over interpretation of the definitions applicable to their respective areas of responsibility.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title IX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Official Code § 1-609.01 *et seq.*) (2001), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. These rules would amend Chapter 9, *D.C. Personnel Regulations*, Excepted Service, to modify § 912, Performance Incentives for Excepted Service. Specifically, § 912.2 has been amended to provide that a performance incentive under this chapter shall be paid only once in a fiscal year; delete § 912.4; renumber §§ 912.5 through 912.8 as §§ 912.4 through 912.7; and amend renumbered § 912.7 to provide that the amount of a performance incentive shall not be adjusted upward to cover applicable income or social security taxes. Upon adoption, these rules will amend Chapter 9, Excepted Service, published at 32 DCR 2271 (April 26, 1985) and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), 47 DCR 8093 (October 6, 2000) and 50 DCR 4743 (June 13, 2003).

CHAPTER 9**EXCEPTED SERVICE**

Section 912 of the D.C. Personnel Regulations is amended to read as follows:

912 PERFORMANCE INCENTIVES

- 912.1 A personnel authority may authorize performance incentives for exceptional service by an employee in an Excepted Service policy position under § 903 (a) of the CMPA (D.C. Official Code § 1-609.03(a)) (2003 Supp.).
- 912.2 A performance incentive shall be paid only once in a fiscal year, and only when the employee is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is to be paid.
- 912.3 When there is no annual performance contract as described in § 912.2, the employee's annual individual performance plan pursuant to Chapter 14 of these regulations shall be considered the annual performance contract for the purpose of authorizing a performance incentive.

- 912.4 A performance incentive shall not exceed ten percent (10%) of the employee's rate of basic pay. For the purposes of determining the percentage of a performance incentive, the amount of the incentive shall be calculated based on the employee's scheduled rate of basic pay during the performance rating period in which the exceptional service occurred, pursuant to Chapter 19 of these regulations. The percentage scale provided in Chapter 19, and the documentation required therein, shall also apply to performance incentives pursuant to this section.
- 912.5 Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations, except for monetary awards.
- 912.6 Performance incentives shall be submitted, processed and approved in accordance with Chapter 19 of these regulations.
- 912.7 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, N.W., Room 300S, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL

NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title X-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code § 1-610.51 *et seq.*) (2001), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. These rules would amend Chapter 10, *D.C. Personnel Regulations*, Executive Service, to modify § 1005, Performance Incentives. Specifically, § 1005.2 has been amended to provide that a performance incentive under this chapter shall be paid only once in a fiscal year; delete § 1005.3; renumber §§ 1005.4 through 1005.6 as §§ 1005.3 through 1005.5; and add a new § 1005.6 to provide that a performance incentive shall be subject to the withholding of federal, District of Columbia, and State income taxes, if applicable, and that the amount of a performance incentive shall not be adjusted upward to cover applicable income or social security taxes. Upon adoption, these rules will amend Chapter 10, Executive Service, published at 28 DCR 1325 (March 27, 1981) and amended at 47 DCR 6224 (August 4, 2000), 50 DCR 4254 (May 30, 2003) and 50 DCR 6707 (August 15, 2003).

CHAPTER 10

EXECUTIVE SERVICE

Section 1005 of the D.C. Personnel Regulations is amended to read as follows:

1005 PERFORMANCE INCENTIVES

- 1005.1 The Mayor may authorize performance incentives for exceptional service by a subordinate agency head.
- 1005.2 A performance incentive shall be paid only once in a fiscal year, and only when the agency head is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is to be paid.
- 1005.3 The amount of a performance incentive shall be determined by the Mayor and shall not exceed ten percent (10%) of the employee's rate of basic pay in any year.
- 1005.4 A performance incentive pursuant to this section shall be approved in accordance with Chapter 19 of these regulations.

- 1005.5 An agency head shall not be eligible to receive monetary awards pursuant to Chapter 19 of these regulations.
- 1005.6 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, N.W., Room 300S, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 962, IN THE MATTER OF THE
IMPLEMENTATION OF THE DISTRICT OF COLUMBIA
TELECOMMUNICATIONS COMPETITION ACT OF 1996 AND
IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its intent to act upon the Application of Verizon Washington, DC Inc. ("Verizon DC") in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.²

2. On October 24, 2003, Verizon DC filed an Application requesting authority to introduce the following tariff pages:

NETWORK INTERCONNECTION SERVICES TARIFF, P.S.C.-D.C.-NO. 218
Section 2, 1st Revised Pages 4, 4a, 4b, 7, 7a, 8, 8a, 9, 11, 42, 50, 51, and 52

3. Verizon DC's application proposes to amend its Collocation Services tariff in order to comply with the terms and conditions of interconnection agreements made with AT&T Corporation, Sprint Communications Company L.P., and Covad Communications Company.³ In its Application, Verizon DC states that the agreement was reached in a Pennsylvania Public Utility Commission case. Accordingly, the agreement serves as a final settlement resolving collocation provisioning interval issues.⁴ Verizon DC's tariff filing also maintains that sections of the tariff are being amended to mirror the agreement. Specifically, the tariff would affect joint planning and implementation intervals for physical and virtual collocation, forecasting and use of data, collocation capacity, vendor delays, vendor capacity, space availability, and raw space conversion.

¹ D. C. Code, 2001 Ed. § 2-505.

² *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996*, Letter to Sanford M. Speight, Acting Commission Secretary, from Natalie O. Ludaway, Counsel for Verizon DC, re: Formal Case No. 962, Amended Collocation Services Tariff, filed October 24, 2003 (hereinafter referred to as "Application").

³ Application at 1.

⁴ *Id.*

4. This Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the tariff pages are available upon request, at a per-page reproduction cost.

5. Comments on the proposed tariff pages must be made in writing to Sanford M. Speight, Acting Commission Secretary, at the above address. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 45 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final action on Verizon DC's Application.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Code § 34-2201.01 et seq.), hereby gives notice of its intent to amend the Water and Sanitation Regulations (21 DCMR), Chapter 3, "Water Meters", Section 301, "Meter Setters and Connections". The proposed rule will revise section 301.2 to establish that the General Manager may recover all costs of installing meter setters or other approved fittings by agreements with "Consumers" and that the General Manager shall identify all costs of installation in advance of the installation.

If adopted, this rule will replace the existing rule. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Chapter 3 "WATER METERS", Section 301 "METER SETTERS AND CONNECTIONS", Subsection 301.2 is amended to read as follows:

301.2 The General Manager may install a meter setter or other approved fittings designed to receive a water meter and may recover all costs of such installation by agreements with consumers. In cases where special costs of installation are recovered through agreements with consumers, the General Manager shall identify all costs of installation in advance of installation.

Comments on this proposed rule should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Linda R. Manley, Secretary to the Board of Directors, 5000 Overlook Ave., S.W., Washington, D.C., 20032. A copy of this proposed rule may be obtained from the Authority at the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 993 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for independent habilitation services provided by licensed or supervised professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for independent habilitation services.

On March 14, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 2262). These emergency and proposed rules supercede and replace the rules published on March 14, 2003 (50 DCR 2262) by expanding independent habilitation services to persons residing in supervised apartments. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of independent habilitation services.

The emergency rulemaking was adopted on October 21, 2003 and will become effective on the date of publication of this notice of emergency rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until February 17, 2004 unless earlier superceded by another emergency rulemaking or by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director gives notice of the intent to take final rulemaking action to adopt these emergency and proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 993, to read as follows:

993 INDEPENDENT HABILITATION SERVICES

993.1 The Medicaid Program shall reimburse for independent habilitation services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 993.2 Independent habilitation services provide periodic supports for the client living in his or her own home or within a supervised apartment to enable the client to live independently and participate in community activities.
- 993.3 Independent habilitation services shall include the following activities:
- (a) Training in activities of daily living and independent living skills;
 - (b) Assistance in performing personal care tasks;
 - (c) Training on, and assistance in using community resources;
 - (d) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
 - (e) Training in adapting to a community and home environment, including management of financial and personal affairs and awareness of health and safety precautions; and
 - (f) Coordinating transportation to community events.
- 993.4 A client shall be eligible for independent habilitation services if he or she is living in one of the following types of residences:
- (a) His or her own home;
 - (b) The home of an unpaid caregiver; or
 - (c) A supervised apartment.
- 993.5 Independent habilitation services shall not exceed forty (40) hours when provided to a client residing in an institutional setting prior to his or her transition to a supervised apartment and when authorized in the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 993.6 Independent habilitation services shall be authorized by the client's interdisciplinary team and provided in accordance with each client's IHP or ISP.
- 993.7 The IHP or ISP shall indicate whether the staffing plan requires the participation of a licensed professional to meet the client's individual needs.
- 993.8 A professional who participates in a staffing plan pursuant to section 993.7 shall be licensed to practice his or her profession pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*); or be

licensed to practice his or her profession within the jurisdiction where he or she provides the services.

993.9 Each provider of independent habilitation services shall:

- (a) Be a non-profit, home health agency, social service agency, or other business entity;
- (d) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for independent habilitation services under the Waiver;
- (e) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (f) Have a current Human Care Agreement with MRDDA for residential services if independent habilitation services are provided in a supervised apartment;
- (g) Ensure that all independent habilitation services staff are qualified and properly supervised;
- (h) Ensure that the service provided is consistent with the client's IHP or ISP;
- (i) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (j) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations as set forth in 29 CFR 1910.1030;
- (k) Maintain records that support billed services and document in each record the type of activity provided including the date and time the service was rendered;
- (l) Maintain a policy manual which contain the following subjects:
 - (1) Admission and discharge of clients;
 - (2) Operational procedures for client care;
 - (3) Clients rights and responsibilities;
 - (4) Procedures for emergency care, infection control and reporting of unusual incidents;
 - (5) Health and safety issues;

- (6) Staffing and personnel;
 - (7) Financial and record-keeping requirements; and
 - (8) Quality Assurance.
- (m) Ensure that each supervised apartment comply with the zoning regulations set forth in Title 11 of the District of Columbia Municipal Regulations (DCMR) and the Housing Code set forth in Title 14 DCMR;
 - (n) Ensure that each supervised apartment is accessible to public transportation and emergency vehicles;
 - (o) Ensure that each supervised apartment for wheelchair-bound clients is handicapped-accessible; and
 - (p) Maintain a written staffing plan and provide a written staffing schedule for each site that services are provided.

993.10

Each person providing independent habilitation services pursuant to section 993.9 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (d) Have the ability to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Have a high school diploma or a general educational development (GED) certificate;
- (g) Have at least one (1) year of experience working with persons with developmental disabilities;
- (h) Complete training as required by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official

Code § 44-551 *et seq.*) and any rules issued pursuant to the Act;
and

- (j) Complete training in First Aid and CPR.
- 993.11 Each billable unit of service shall be one (1) hour.
- 993.12 The reimbursement rate shall be thirteen dollars and eighty cents (\$13.80) per billable hour and shall not exceed eight (8) hours per day Monday through Friday and sixteen (16) hours per day Saturday and Sunday, if the client resides in an supervised apartment. If the client resides in his or her own home or the home of an unpaid caregiver, reimbursement shall be limited to eight (8) hours per day.
- 993.13 Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the client. There shall be face-to-face contact between the client and the provider to bill for the service.
- 993.14 Nursing services attributable to the administration of medication when a client is unable to self-administer or take medication independently shall not be billed as a Waiver service.
- 993.15 Reimbursement for independent habilitation services shall not include:
- (a) Room and board costs;
 - (b) Protective oversight costs;
 - (c) Routine care and general supervision that would be expected to be provided by the family or the provider;
 - (d) Overhead or administrative costs;
 - (e) Building maintenance costs;
 - (f) Household supplies, including towels and linens; or
 - (g) Services or costs for which payment is made by a source other than Medicaid.
- 993.16 Independent habilitation services shall not be billed concurrently as:
- (a) Attendant care;
 - (b) Homemaker, except when the client is living in his or her own home;
 - (c) Personal Care;
 - (d) Day Habilitation;
 - (e) Supportive Employment;
 - (f) Pre-vocational;
 - (g) Chore, except when the client is living in his or her own home;
 - (h) Residential habilitation services;
 - (i) Respite;

- (j) Family Training; or
- (k) Adult Companion.

993.99 **DEFINITIONS**

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

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable disease—that term as set forth in section 201 of Title 22 of the District of Columbia Municipal Regulations.

Individual Habilitation Plan or IHP- that plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

Individual Support Plan or ISP- the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Supervised Apartment- A living arrangement located in the District of Columbia for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, excluding holidays, between 8:15 A.M. and 4:45 P.M. from the same address.