

Historic Landmark and Historic District Protection Act of 1978

(D.C. Law 2-144, as amended through October 1, 2016)

Note: This unofficial version is for the convenience of the user, and is not intended to substitute for the D.C. Official Code

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide protection for historic landmarks and historic districts in the District of Columbia

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the *Historic Landmark and Historic District Protection Act of 1978*.

Section 2. Purposes. (D.C. Official Code § 6-1101)

(a) It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural and aesthetic merit are in the interests of the health, prosperity and welfare of the people of the District of Columbia. Therefore, this act is intended to:

- (1) Effect and accomplish the protection, enhancement and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political and architectural history;
- (2) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;
- (3) Foster civic pride in the accomplishments of the past;
- (4) Protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and
- (5) Promote the use of landmarks and historic districts for the education, pleasure and welfare of the people of the District of Columbia.

(b) It is further declared that the purposes of this act are:

- (1) With respect to properties in 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;
- (2) With respect to historic landmarks:
 - (A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and
 - (B) To encourage the restoration of historic landmarks.
- (3) With respect to archaeological sites designated as historic landmarks or contributing properties within historic districts:
 - (A) To protect historic and prehistoric archaeological sites from irreparable loss or destruction; and
 - (B) To encourage the retrieval of archaeological information and artifacts when the destruction of an archaeological site is necessary in the public interest.

(Note: Paragraph 3 was added by D.C. Law 16-185 on November 16, 2006)

Section 3. Definitions. (D.C. Official Code § 6-1102)

(a) For the purposes of this act the term:

- (1) *Alter or alteration* means:

- (A) 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;
- (B) A change in any interior space that has been specifically designated as an historic landmark;
- (C) The painting of unpainted masonry on a historic landmark or on a façade restored as a condition of a permit approved pursuant to this act; or
- (D) Excavation or action disturbing the ground at an archaeological site listed in the District of Columbia Inventory of Historic Sites or an archaeological site identified as a contributing feature in the designation of a historic landmark or historic district.

(Note: Paragraphs C and D were added by D.C. Law 16-185 on November 16, 2006)

(1A)

(A) *Area median income* means:

- (i) 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;
- (ii) For a household of 3 persons, 90% of the area median income for a household of 4 persons;
- (iii) For a household of 2 persons, 80% of the area median income for a household of 4 persons;
- (iv) For a household of one person, 70% of the area median income for a household of 4 persons; and
- (v) 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;

(B) Any percentage referenced in paragraph (1) of this subsection shall be determined through a direct mathematical calculation not taking into account any adjustments made by the U.S. Department of Housing and Urban Development for the purposes of the programs it administers. *(Note: Section 1A was added by D.C. Law 16-189, effective March 2, 2007)*

- (2) *Commission of Fine Arts* means the United States Commission of Fine Arts established pursuant to the Act of May 17, 1910 (40 U.S.C. 104).
- (3) *Demolish* or *demolition* means the razing or destruction, entirely or in significant part, of a building or structure, and includes the removal or destruction of any facade of a building or structure.
- (3A) *Demolition by neglect* means neglect in maintaining, repairing, or securing an historic landmark or a building or structure in an historic district that results in substantial deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure. *(Note: This subparagraph was added by D.C. Law 13-281 on April 27, 2001 and amended by D.C. Law 16-185 on November 16, 2006 to add the word "substantial")*
- (4) *Design* means exterior architectural features including height, appearance, texture, color and nature of materials.
- (4A) *District of Columbia undertaking* means a project of the District of Columbia government, a public charter school as defined in section 2002(29) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.02(29)), or any other entity not part of the District of Columbia government, that involves or contemplates subdivision of or demolition, alteration, or new construction on a property owned by or under the jurisdiction of the District of Columbia government. *(Note: This subparagraph was added by D.C. Law 16-185, effective November 16, 2006; and amended by D.C. Law 20-95, effective March 14, 2014)*
- (5) *Historic district* means an historic district:
 - (A) listed in the National Register of Historic Places as of the effective date of this act;
 - (B) nominated to the National Register by the State Historic Preservation Officer for the District of Columbia; or

- (C) which the State Historic Preservation Officer for the District of Columbia has issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.
- (6) *Historic landmark* means a building, structure, object or feature, and its site, or a site:
- (A) listed in the National Register of Historic Places as of the effective date of this chapter; or
 - (B) listed in the District of Columbia's Inventory of Historic Sites, or for which application for such listing is pending with the Historic Preservation Review Board; provided, that the Review Board shall schedule a hearing on the application within 90 days of one having been filed, and will determine within 90 days of receipt of an application pursuant to sections 5 through 9 of this act whether to list such property as a historic landmark. *(Note: This subparagraph is as amended by D.C. Law 12-86 on April 29, 1998 and D.C. Law 16-185, effective November 16, 2006)*
- (6A) *Historic Preservation Office* or *HPO* means the administrative office that serves as the staff to the Historic Preservation Review Board, State Historic Preservation Officer, and Mayor in performing functions pursuant to this act. *(Note: This subparagraph was added by D.C. Law 16-185, effective November 16, 2006)*
- (7) *Historic Preservation Review Board* or *Review Board* means the Board designated pursuant to section 4 of this act and pursuant to regulations promulgated by the United States Secretary of the Interior under the Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.).
- (8) *Mayor* means the Mayor of the District of Columbia, or his designated agent.
- (9) *National Register of Historic Places* or *National Register* means that national record of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, and culture established pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. 470a).
- (10) *Necessary in the public interest* means consistent with the purposes of this act as set forth in section 2(b) or necessary to allow the construction of a project of special merit.
- (10A) *Public safety facility* means a fire station, police station, or any other building or structure owned by the District of Columbia used for public safety operations, but excludes facilities used primarily for administrative functions. *(Note: This paragraph was added by D.C. Law 15-228, effective March 16, 2005)*
- (11) *Special merit* means a plan or building having significant benefits to the District of Columbia 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.
- (12) *State Historic Preservation Officer* or *SHPO* means the person designated by the Mayor to administer the National Register Program within the District of Columbia established pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).
- (13) *Subdivide* or *subdivision* means the division or assembly of land into one or more lots of record, including the division of any lot of record into two or more theoretical building sites as provided by the Zoning Regulations of the District of Columbia (11 DCMR 2516 et seq.). *(Note: This paragraph is as amended by D.C. Law 8-232, effective March 8, 1991)*
- (14) *Unreasonable economic hardship* means that failure to issue a permit would amount to a taking of the owner's property without just compensation or, in the case of a low-income owner(s) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such owner(s).

Section 4. Historic Preservation Review Board. (D.C. Official Code § 6-1103)

- (a) The Mayor is authorized to establish an Historic Preservation Review Board comprised of nine members who shall be confirmed by the Council of the District of Columbia. The Review Board shall be constituted and its members qualified so as to meet the requirements of a State Review Board under regulations issued by the Secretary of the Interior pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). *(Note: This paragraph is as amended by D.C. Law 16-185, effective November 16, 2006)*

(b) Subject to the requirements of subsection (a) of this section, all appointments to the Historic Preservation Review Board shall be made with a view toward having its membership represent to the greatest practicable extent the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics. The term of office of each member of the Review Board shall be 3 years, staggered so that one third of the appointments expire each year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Upon expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed. *(Note: This paragraph is as amended by D.C. Law 16-185, effective November 16, 2006)*

(c) The Review Board shall:

- (1) Advise the Mayor on the compatibility with the purposes of this act (as set forth in section 2) of the applications referred to it by the Mayor pursuant to sections 5 through 9 of this act;
- (2) Perform the functions and duties of a State Review Board as set forth in regulations issued pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*);
- (3) Designate and maintain a current inventory of historic landmarks and historic districts in the District of Columbia and, in connection therewith, adopt and publish appropriate procedures; and
- (4) Perform such other functions and duties relating to the protection, preservation, enhancement and perpetuation of the historic, architectural, cultural and aesthetic heritage of the District of Columbia as the Mayor may from time to time assign.

[Subparagraph 5, which read "Consider applications to designate historic landmarks under the contested case procedures contained in D.C. Official Code § 1-1509" was added by D.C. Law 12-256 on April 29, 1998, and repealed by D.C. Law 13-172 on October 19, 2000.]

(d) (1) If, after a hearing, the Review Board has determined to deny an application to designate a building, structure, object or feature, and its site, as a historic landmark, or has determined to deny an application to designate a historic district, the Review Board shall not accept a subsequent application for that designation during the 12-month period after the denial. *(Note: This subparagraph was added by D.C. Law 12-86, effective April 29, 1998, and amended by D.C. Law 16-185, effective November 16, 2006)*

- (2) If an application for designation of a historic landmark or historic district is withdrawn, the Review Board shall not accept a new application for the same property during the 12-month period following the withdrawal. *(Note: This subparagraph was added by D.C. Law 12-86, effective April 29, 1998, and amended by D.C. Law 16-185, effective November 16, 2006)*

Section 5. Demolitions. (D.C. Official Code § 6-1104)

(a) Before the Mayor may issue a permit to demolish an historic landmark or a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and section 9c, and, for applications that will be submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing, place notice of the application in the *District of Columbia Register* and on the website for the Historic Preservation Office. *(Note: This paragraph is as amended by D.C. Law 20-249, effective April 30, 2015)*

(b) Prior to making the finding required by subsection (e) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Official Code, § 6-1201 *et seq.*). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section: Provided, that the Mayor may make such finding without a public hearing in the case of a building or structure in an historic district or on the site of an historic landmark if the Review Board or Commission of Fine Arts has advised in its

recommendation that the building or structure does not contribute to the historic district or the historic landmark. *(Note: This paragraph is as amended by D.C. Law 16-185, effective November 16, 2006)*

(d) If the Review Board recommends against granting the permit, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application.

(g) (1) In any instance where there is a claim of unreasonable economic hardship, the owner shall submit, by affidavit, to the Mayor at least 20 days prior to the public hearing, at least the following information:

(A) For all property:

- (i) The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
- (ii) The assessed value of the land and improvements thereon according to the two most recent assessments;
- (iii) Real estate taxes for the previous two years;
- (iv) Annual debt service, if any, for the previous two years;
- (v) All appraisals obtained within the previous two years by the owner or applicant in connection with his purchase, financing or ownership of the property;
- (vi) Any listing of the property for sale or rent, price asked, and offers received, if any; and
- (vii) Any consideration by the owner as to profitable adaptive uses for the property; and

(B) For income-producing property:

- (i) Annual gross income from the property for the previous two years;
- (ii) Itemized operating and maintenance expenses for the previous two years;
- (iii) Annual cash flow, if any, for the previous two years.

(2) The Mayor may require that an applicant furnish such additional information as the Mayor believes is relevant to his determination of unreasonable economic hardship and may provide in appropriate instances that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(h) In those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit for new construction is issued simultaneously under section 3 of this act and the owner demonstrates the ability to complete the project.

[Note: Sections 5a, 5b, and 5c were added by D.C. Law 13-281, effective April 27, 2001, and were amended and renumbered as sections 10b, 10c, and 11a by D.C. Law 16-185, effective November 16, 2006]

Section 6. Alteration. (D.C. Official Code § 6-1105)

(a) Before the Mayor may issue a permit to alter the exterior or site of an historic landmark or of a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and section 9c, and, for applications that will be submitted to the Historic Preservation

Review Board or the Commission of Fine Arts for a public hearing, place notice of the application in the *District of Columbia Register* and on the website for the Historic Preservation Office. *(Note: This paragraph is as amended by D.C. Law 20-249, effective April 30, 2015)*

(b) Prior to making the finding required by subsection (f) of this section, the Mayor may refer the permit application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Official Code, § 6-1201 *et seq.*) or the Shipstead-Luce Act (D.C. Official Code, § 6-611.01). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral pursuant to subsection (b) of this section, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor. If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of Fine Arts' recommendation. *(Note: The second sentence of this paragraph was added by D.C. Law 16-185, effective November 16, 2006)*

(e) In cases in which a claim of unreasonable economic hardship or special merit is made and in any other case he deems appropriate or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner.

(g) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any instance where there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of section 5 of this act.

(h) If the Mayor finds that an alteration is necessary to allow the construction of a project of special merit, a permit shall not be issued unless the owner demonstrates the ability to complete the project. *(Note: This paragraph was added by D.C. Law 16-185, effective November 16, 2006)*

Section 7. Subdivisions. (D.C. Official Code § 6-1106)

(a) Before the Mayor may admit to record any subdivision of an historic landmark or of a property in an historic district, the Mayor shall review the application for admission to record in accordance with this section and section 9c, and, for applications that will be submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing, place notice of the application in the *District of Columbia Register* and on the website for the Historic Preservation Office. *(Note: This paragraph is as amended by D.C. Law 20-249, effective April 30, 2015)*

(b) Prior to making the finding on the application for admission to record required by subsection (e) of this section, the Mayor shall refer the application to the Historic Preservation Review Board for its recommendation.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section: Provided, that the Mayor may make such finding without a public hearing in the case of a subdivision of a lot in an historic district or a subdivision that assembles land with the lot of a historic landmark if the Review Board advises him that such subdivision is consistent with the purposes of this act. *(Note: This paragraph is as amended by D.C. Law 16-185, effective November 16, 2006)*

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No subdivision subject to this act shall be admitted to record unless the Mayor finds that admission to record is necessary in the public interest or that a failure to do so will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any case in which there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of section 5 of this act.

(g) In those cases in which the Mayor finds that the subdivision is necessary to allow the construction of a project of special merit, no subdivision shall be permitted to record unless a permit for new construction is issued simultaneously under section 8 of this act and the owner demonstrates the ability to complete the project. *(Note: This paragraph is as amended by D.C. Law 16-185, effective November 16, 2006)*

Section 8. New Construction. (D.C. Official Code § 6-1107)

(a) Before the Mayor may issue a permit to construct a building or structure in an historic district or on the site of an historic landmark, the Mayor shall review the permit application in accordance with this section and section 9c, and, for applications that will be submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing, place notice of the application in the *District of Columbia Register* and on the website for the Historic Preservation Office. *(Note: This paragraph is as amended by D.C. Law 20-249, effective April 30, 2015)*

(b) Prior to making the finding on the permit application required by subsection (f) of this section, the Mayor may refer the application to the Historic Preservation Review Board for recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Official Code § 6-1201 *et seq.*) or the Shipstead-Luce Act (D.C. Official Code § 6-611.01). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor. If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of Fine Arts' recommendation. *(Note: The second sentence of this paragraph was added by D.C. Law 16-185, effective November 16, 2006)*

(e) In any case where the Mayor deems appropriate, or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible; provided, that in any case in which an application is made for the construction of an additional building or structure on a lot where there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark. Notwithstanding a finding of incompatibility, the Mayor may find that issuance of the permit

is necessary to allow the construction of a project of special merit. *(Note: The last sentence of this paragraph was added by D.C. Law 16-185, effective November 16, 2006)*

Section 9. Preliminary review; conceptual review. (D.C. Official Code § 6-1108)

(a) An applicant may apply to the Mayor for a preliminary review of a project for compliance with the provisions of this act relating to new construction, and to any demolition, alteration or subdivision necessary for such new construction. Upon the provision of such information and upon compliance with such other conditions as the Mayor may require, such application shall be considered by the Mayor, in accordance with this subsection and section 9c, without the necessity of the applicant completing other permit requirements not necessary for a finding under this act. Where an application for a preliminary review is received pursuant to this section, the Mayor will determine, in accordance with the procedures and requirements specified in sections 5, 6, 7, and/or 8, as applicable, whether to issue a preliminary finding of compliance with this act; provided, that no permit shall be granted except in accordance with all other permit requirements, and after final review by the Mayor under this act; provided further, that where the final review shows that the project is not consistent with the preliminary review, the application will again be processed in accordance with the procedures and requirements of sections 5, 6, 7, and/or 8, as applicable. *(Note: This paragraph is as amended by D.C. Law 20-249, effective April 30, 2015)*

(a-1) The Mayor shall place notice of applications for preliminary review that will be submitted to the Historic Preservation Review Board or the Commission on Fine Arts for a public hearing on the website for the Historic Preservation Office. *(Note: This paragraph was added by D.C. Law 20-249, effective April 30, 2015)*

(b) A prospective permit applicant may apply to the Historic Preservation Review Board for conceptual review of a project for compliance with the provisions of this act relating to demolition, alteration, subdivision, or new construction. After receipt of such information as it may require, the Review Board shall consider the application, in accordance with this subsection and section 9c, without requiring the applicant to complete other permit requirements not necessary for its review. To assist in conducting conceptual review, the Review Board may appoint advisory committees composed of two or more Review Board members. *(Note: This paragraph was added by D.C. Law 16-185, effective November 16, 2006, and amended by D.C. Law 20-249, effective April 30, 2015)*

(b-1) The Mayor shall place notice of applications for conceptual review that will be submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing on the website for the Historic Preservation Office. *(Note: This paragraph was added by D.C. Law 20-249, effective April 30, 2015)*

(c) The Mayor shall not determine compliance with sections 5, 6, 7, or 8 based on an application for conceptual review, but the Mayor may consider the Review Board's recommendation on an application for conceptual review as evidence to support a finding on a related application submitted for review under sections 5, 6, 7, or 8. *(Note: This paragraph was added by D.C. Law 16-185, effective November 16, 2006)*

Section 9a. Conceptual review of public safety facilities. (D.C. Official Code § 6-1108.01) *(Note: This section was added by D.C. Law 15-228 on March 16, 2005)*

(a) For any public safety facility that is a historic landmark, potential historic landmark as determined by the State Historic Preservation Officer, or building or structure within a historic district, the Mayor shall conduct conceptual review of a proposed rehabilitation or new construction in accordance with this section and shall place notice of the application for conceptual review in the District of Columbia Register.

(b) Before proceeding beyond conceptual plans for a proposed rehabilitation or new construction, and before making the referral required in section 5(b), 6(b), 7(b), or 8(b), the Mayor shall refer an application for conceptual review of a proposed rehabilitation or new construction plan to the State

Historic Preservation Officer and the Historic Preservation Review Board, and may refer the application to the Commission of Fine Arts for a recommendation.

(c) The State Historic Preservation Officer shall advise the Mayor on how to accommodate the rehabilitation or new construction plan with any historic preservation interests consistent with operational needs of the public safety facility.

(d)(1) The Historic Preservation Review Board shall:

- (A) Advise the Mayor on the compatibility of the rehabilitation or new construction plan with the purposes set forth in section 2(b); and
- (B) Determine whether to list the property as a historic landmark pursuant to section 4(c).

(2) If the Review Board recommends against granting the application, it shall promptly notify the Mayor in writing of its recommendation and the reasons for it.

(e) Within 120 days after the Mayor refers the application for conceptual review to the Historic Preservation Review Board pursuant to subsection (b) of this section, the Mayor shall make the finding required by subsection (f) of this section. If the Mayor makes no finding within 120 days, the project shall be deemed to be one of special merit as that term is defined in section 3(11), and the affected public safety agency may proceed with the design and permit process, unless the affected public safety agency and the State Historic Preservation Officer agree in writing to an extension of time for the Mayor to make the finding required by subsection (f) of this section.

(f) No permit shall be issued unless the Mayor finds that the issuance of a permit is necessary in the public interest. Upon making a finding, the Mayor shall issue an order defining the nature of the approved conceptual design and specifying any further consultation the Mayor considers appropriate prior to the submission of the application required in section 5(b), 6(b), 7(b), or 8(b).

(g) In a case in which a claim of special merit is made, the Mayor shall hold a public hearing on the conceptual review application. In considering a claim of special merit, substantial rehabilitation or new construction for operational needs of a public safety facility shall constitute a public interest having a significantly higher priority than that of historic preservation. The Mayor may consider increased costs of historic preservation that constitute an excessive financial burden on the operational needs of the facility in deciding whether to issue a permit.

Section 9b. Effect of District undertaking; comment by State Historic Preservation Officer. (D.C. Official Code § 6-1108.02) *(Note: This section was added by D.C. Law 16-185, effective November 16, 2006; and amended by D.C. Law 20-95, effective March 14, 2014).*

Before authorizing the expenditure of funds for design or construction or seeking the permit, license, or approval for a District of Columbia undertaking, the head of the District of Columbia governmental entity, public charter school, or other entity with direct jurisdiction over the undertaking shall take into account the effect of that undertaking on any property listed or eligible for listing in the District of Columbia Inventory of Historic Sites and shall consult with and afford the State Historic Preservation Officer a reasonable opportunity to comment on the undertaking.

Section 9c. Notice requirements. (D.C. Official Code § 6-1108.03) *(Note: This section was added by D.C. Law 20-249, effective April 30, 2015)*

(a) Immediately after the application is filed for a permit for demolition pursuant to section 5, alteration pursuant to section 6, subdivision pursuant to section 7, new construction pursuant to section 8, preliminary review pursuant to section 9(a), or conceptual review pursuant to section 9(b), that will be

submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing, the applicant shall:

- (1) Post notice of the application on a form provided by the Mayor, in plain view of the public, at each street frontage on the property that is subject to review and on the front of each building located on the property that is subject to review; and
 - (2)(A) Provide, by hand delivery with a delivery receipt or via the United States Postal Service with a certificate of mailing, to the owners of record of all confronting or abutting properties, excluding streets and alleys, and to all affected Advisory Neighborhood Commissions, the following:
 - (i) Notice of the application;
 - (ii) Information regarding how to obtain the schedule for review by the Historic Preservation Review Board or the Commission of Fine Arts; and
 - (iii) A copy of the plans for the demolition, alteration, new construction on, or subdivision of, the property that is subject to review, or instructions on how to access the plans on a publicly available website or, upon request, for in-person viewing.
 - (B) In the case of a residential condominium or cooperative with 25 or more dwelling units, notice by hand delivery with a delivery receipt or via the United States Postal Service with a certificate of mailing as required by subparagraph (A) of this paragraph may be provided to the board of directors or to the association of the condominium or cooperative that represents all of the owners of all of the dwelling units.
- (b)(1) Before the Mayor approves a permit based on an application submitted to the Historic Preservation Review Board or the Commission of Fine Arts for a public hearing pursuant to section 5, section 6, section 7, section 8, or section 9(a) of this act, or before the Historic Preservation Review Board gives conceptual design approval pursuant to section 9(b) of this act for such an application, the Mayor shall require a certification by the owner that the requirements of subsection (a) of this section have been met.
- (2) The Mayor shall not approve a permit, and the Historic Preservation Review Board shall not grant conceptual design approval, pursuant to paragraph (1) of this subsection until 21 days have elapsed for citizen review of applications prior to the scheduling of a hearing, and following the date the Mayor receives the certification by the owner pursuant to paragraph (1) of this subsection.

Section 10. Regulations. (D.C. Official Code § 6-1109)

The Mayor is authorized to issue such regulations as may be necessary or appropriate to carry out his duties under this act. *(Note: This section is as amended by D.C. Law 16-185, effective November 16, 2006)*

Section 10a. Violations. (D.C. Official Code § 6-1109.01) *(Note: This section was added by D.C. Law 16-185, effective November 16, 2006)*

- (a) It shall be unlawful for any person to alter, demolish, or construct any building or structure subject to the provisions of this act or to subdivide any property subject to the provisions of this act except in accordance with this act or any rules, regulations, permits, or orders issued pursuant to this act.
- (b) It shall be unlawful for any person acting under authority of or pursuant to a building permit or otherwise subject to this act to fail to complete any alteration, repair, construction, or other work required as a condition of any order, permit approval, or enforcement action issued in accordance with this act.

Section 10b. Maintenance of property. (D.C. Official Code § 6-1109.02) *(Note: This section was added as Section 5a by D.C. Law 13-281, effective April 27, 2001, and amended as Section 10b by D.C. Law 16-185, effective November 16, 2006).*

(a) The owner of an historic landmark or a contributing building or structure within an historic district shall comply with all laws and regulations governing the maintenance of real property. The buildings or structures shall be preserved against decay and deterioration and shall be made and kept free from structural defects through prompt corrections of defects such as:

- (1) Façade or façade elements that may fall and injure persons or property;
- (2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls, or other vertical structural supports;
- (3) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that sag, split, or buckle due to defective material or deterioration;
- (4) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;
- (5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or
- (6) A fault or defect in the building or structure that renders it structurally unsafe or not properly watertight.

(b) An owner who fails to maintain a building or structure in compliance with this section shall be subject to the remedial procedures of section 10c and the penalties under section 11.

Section 10c. Prevention of demolition by neglect. (D.C. Official Code § 6-1109.03) *(Note: This section was added as Section 5b by D.C. Law 13-281, effective April 27, 2001, and amended as Section 10c by D.C. Law 16-185, effective November 16, 2006).*

(a) If the Mayor determines that an historic landmark or a contributing building or structure within a historic district is threatened by demolition by neglect, upon obtaining an order from the Superior Court of the District of Columbia, the Mayor may:

- (1) Require the owner to repair all conditions contributing to demolition by neglect; or
- (2) If the owner does not make the required repairs within a reasonable period of time, enter the property and make the repairs necessary to prevent demolition by neglect.

(b) The cost of any work pursuant to subsection (a) of this section shall be charged to the owner and may be levied by the District of Columbia as a special assessment against the real property. The special assessment shall be a lien against the real property.

Section 10d. Annual notice to property owners. (D.C. Official Code § 6-1109.04) *(Note: This section was added by D.C. Law 19-123, effective April 27, 2012).*

Beginning with real property assessments for tax year 2013 and for each real property tax year thereafter, the Mayor shall provide, along with the annual notice of the assessment for the next real property tax year, each owner of real property with a historic landmark designation and each owner of real property located within a historic district information on the current law and regulations relating to historic property improvements, including regarding:

- (1) Building permits;
- (2) Consultation with Advisory Neighborhood Commissions;
- (3) Review by the Commission of Fine Arts; and
- (4) Any other information that the Mayor determines would be helpful to owners of historic properties.

Section 11. Penalties; remedies; enforcement (D.C. Official Code § 6-1110)

(a) *Criminal penalty.* Any person who willfully violates any provision of this act or of any regulation issued under the authority of this act shall, upon conviction, be fined not more than \$1,000 for each day a violation occurs or continues or be imprisoned for not more than 90 days, or both. Any prosecution for violations of this act or of any regulations issued under the authority of this act shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia. *(Note: This section is as amended by D.C. Law 16-185, effective November 16, 2006)*

(b) *Civil remedy.* Any person who demolishes, alters or constructs a building or structure in violation of sections 5, 6, or 8 of this act shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty. *(Note: This section is as amended by D.C. Law 16-185, effective November 16, 2006)*

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act, or any rules or regulations issued under the authority of this act, pursuant to the Civil Infractions Act of 1985 (D.C. Official Code § 2-1801 *et seq.*). Adjudication of any infraction of this act shall be pursuant to the Civil Infractions Act of 1985 (D.C. Official Code § 2-1801 *et seq.*).

(d) (1) The Historic Preservation Office shall be responsible for enforcement of the provisions of this act.

(2) The Mayor may delegate to the Historic Preservation Office coordinated enforcement of Building Code provisions applicable to preservation of historic landmarks and historic districts pursuant to a written agreement with and under the authority of the Building Code Official.

(Note: This paragraph was added by D.C. Law 16-185, effective November 16, 2006)

(e) An appeal of any enforcement action brought by the Historic Preservation Office shall be heard by the Office of Administrative Hearings. *(Note: This section was added by D.C. Law 16-189, effective March 2, 2007)*

Section 11a. Historic Landmark-District Protection Fund; establishment. (D.C. Official Code § 6-1110.01) *(Note: This section was added as Section 5c by D.C. Law 13-281, effective April 27, 2001, and amended as Section 11a by D.C. Law 16-185, effective November 16, 2006).*

(a) There is established within the General Fund of the District of Columbia, the Historic Landmark-District Protection Fund (“HLP Fund”) as a nonlapsing, revolving fund; the funds of which shall not revert to the General Fund at the end of any fiscal year but shall remain available, without regard to fiscal year limitation pursuant to an act of Congress, for the purpose of paying the costs of repair work necessary to prevent demolition by neglect as described in section 10c or for the costs of carrying out any other historic preservation program consistent with the purposes of and pursuant to this act.

(b) There shall be deposited into the HLP fund:

(1) Such amounts as may be appropriated for the fund;

(2) Grants or donations from any source to the fund or to the District of Columbia for the purposes of the fund;

(3) Interest earned from the deposit or investment of monies of the fund;

(4) Amounts assessed and collected as costs or penalties under this act, or otherwise received to recoup any amounts, incidental expenses, or costs incurred or expended for purposes of the fund, or any sums received pursuant to a resolution or settlement of disputes or enforcement actions under this act where the resolution or settlement provides in writing for such payment;

(5) All other receipts derived from the operation of the fund;

- (6) The proceeds from the sale of real or personal property or other items of value from any source donated to the fund or to the District of Columbia for the purposes of the fund; and
- (7) All proceeds from the payment of the filing fee and transmittal fees for applications to designate a historic landmark or historic district as set forth at 10 DCMR § C 205.

(Note: Subparagraph (7) was added to this section by D.C. Law 19-21, effective September 14, 2011)

(c) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year such amount as may be necessary for capitalization of the HLP fund.

Section 11b. Targeted Homeowner Grant Program. (D.C. Official Code § 6-1110.02) *(Note: This section was added by D.C. Law 16-189, effective March 2, 2007)*

(a) The Mayor may use authorized funds to establish a targeted homeowner grant program to assist homeowners with the rehabilitation of their historic property.

(b) A grant under this program may be used to rehabilitate a structure that contributes to the character of one of the following historic districts:

- (1) Anacostia Historic District;
- (2) Blagden Alley/Naylor Court Historic District;
- (3) Capitol Hill Historic District;
- (4) Greater Fourteenth Street Historic District;
- (5) Greater U Street Historic District;
- (6) LeDroit Park Historic District;
- (7) Mount Pleasant Historic District;
- (8) Mount Vernon Square Historic District;
- (9) Mount Vernon Triangle Historic District;
- (10) Shaw Historic District;
- (11) Strivers' Section Historic District; or
- (12) Takoma Park Historic District.

(c) A grant shall be limited to structural repairs or work on the exterior of a qualified structure.

(d) A grant shall not exceed \$25,000; except, that a grant may be a maximum of \$35,000 if the structure is located in the Anacostia Historic District.

(e) (1) A grant may be made to a taxpayer, as defined in D.C. Official Code section 47.1801.04(7), who has a household income of 120% or less of the area median income; provided, that:

- (A) The grant is for rehabilitation of the taxpayer's principal place of residence or a structure that will be the taxpayer's principal place of residence within 60 days after the rehabilitation is completed;
- (B) The taxpayer submits an application showing that the taxpayer meets the applicable household income criteria and is listed on the Office of Tax and Revenue's records as currently receiving the homestead deduction for property taxes, and includes written consent from each person in the applicant's household to disclosure by Office of Tax and Revenue to the Historic Preservation Office of his or her gross income; which disclosure shall be used solely for consideration of grant applications under this section.

(2) The Office of Tax and Revenue shall report the gross income of each of the persons in the taxpayer's household at the time the grant application is made pursuant to subparagraph (B) of paragraph (1) based upon the most recent income tax return of each person to the Historic Preservation Office prior to the award of a grant.

(f) A taxpayer who has a household income of more than 60% but no more than 90% of area median income shall be required to match the grant by contributing a minimum of 25% of the cost of the

rehabilitation; except, that the match requirement shall be a minimum of 15% for a taxpayer in the Anacostia Historic District.

(g) A taxpayer who has a household income of more than 90% of area median income shall be required to match the grant by contributing a minimum of 50% of the cost of the rehabilitation; except, that the match requirement shall be a minimum of 40% for a taxpayer in the Anacostia Historic District.

(h) The Mayor shall:

- (1) Approve the scope of rehabilitation work prior to award of a grant;
- (2) Ensure that all work is consistent with the purposes of this act and implementing regulations; and.
- (3) Award grants and disburse grant funds pursuant to rules and procedures the Mayor shall establish for this purpose.

(i) (1) The taxpayer shall enter into a preservation covenant with the State Historic Preservation Officer against the property on which the structure is located. The covenant shall run with the land and shall require that the rehabilitation improvements be maintained in good repair satisfactory to the State Historic Preservation Officer for 5 years after the date on which the grant is fully disbursed.

- (2) If the taxpayer does not maintain the certified rehabilitation improvements in good repair for any period of time covered by the covenant, the Mayor may take any enforcement action authorized under this act and may assess the amount of the grant as a tax on the property, and shall:
 - (A) Carry the tax on the regular tax rolls; and
 - (B) Collect the tax in the same manner as real property taxes are collected provided; that a lien shall not be valid as against any bona fide purchaser, or holder of a security interest, mechanic's lien, or other such creditor interested in the property, without notice, until notice by filing the lien in the Recorder of Deeds.

(j) (1) An action may be brought in the name of the District at any time within 3 years after the expiration of 60 days from the date that the tax was assessed to recover the amount of the unpaid tax.

- (2) A lien shall be satisfied by payment of the amount of the lien to the State Historic Preservation Officer.

(k) (1) The Mayor shall deposit in the HLP Fund established in section 11a any funds appropriated for the purposes of the Targeted Homeowner Grant Program.

- (2) The Mayor may expend up to \$1.25 million of appropriated funds for this purpose each fiscal year. Any appropriated funds not expended during a fiscal year shall be used only for the same purpose in subsequent fiscal years.

- (3) In each fiscal year, the Mayor may expend up to 5% of the amount of the funds authorized in that year for reasonable administrative costs.

(Note: This paragraph was amended by the Targeted Homeowner Grant Program Funding Amendment Act of 2009 (Title II, Subtitle M, Fiscal Year 2010 Budget Support Act of 2009, D.C. Law 18-111, effective March 3, 2010))

Section 12. Insanitary and Unsafe Buildings. (D.C. Official Code § 6-1111)

(a) Nothing in this act shall interfere with the authority of the Board for the Condemnation of Insanitary Buildings to put a building or structure into sanitary condition or to demolish it pursuant to the provisions of the Act of May 1, 1906 (D.C. Official Code, §§ 5-701 through 5-719); except, that no permit for the demolition of an historic landmark or building or structure in an historic district shall be issued to the owner except in accordance with the provisions of this act.

(b) Nothing in this act shall affect the authority of the District of Columbia to secure or remove an unsafe building or structure pursuant to the Act of March 1, 1899 (D.C. Official Code, §§ 5-601 through 5-603).

(c) Except as provided under Subtitle B of Title IV-A of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, nothing in this act shall affect the authority of the Mayor to enclose or demolish a structure under Subtitle B of Title IV-A of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (i.e., Due Process Demolition, Subchapter II of Chapter 31C of Title 42, D.C. Official Code §§ 42-3173.01 through 42-3173.12). *(Note: This section was added by D.C. Law 14-144, effective April 19, 2002, as amended by D.C. Law 14-213, effective October 19, 2002).*

Section 13. Administrative Procedures. (D.C. Official Code § 6-1112)

(a) In any case of demolition, alteration, subdivision, or new construction in which a hearing was held, the Mayor's decision on such application shall not become final until 15 days after issuance. In all applications for which a hearing is held, the Mayor's decision must be issued within 120 days after the hearing record is closed, including the filing of any required post-hearing submissions. *(Note: This subsection was amended by D.C. Law 12-86, effective April 29, 1998, which added the sentence "The hearing by the Review Board upon the filing of an application to designate a historic landmark shall be conducted under the contested case procedures contained in §1-1509. Any final order of the Mayor under this act and any final order of the Review Board regarding the designation of a historic landmark shall be reviewable in the District of Columbia Court of Appeals." D.C. Law 13-172, effective October 19, 2000, deleted these sentences, substituted "120 days" for "60 days" and deleted "or the application shall be deemed approved by the Mayor" at the end of the second sentence, which had also been added by D.C. Law 12-86. D.C. Law 13-313, effective June 19, 2001, added "subdivision" and amended D.C. Law 13-172 to provide that its provisions apply only prospectively to hearings held by the Mayor or the HPRB after October 19, 2000).*

(b) All proceedings pursuant to this act shall be conducted in accordance with the applicable provisions of the District of Columbia Administrative Procedure Act (D.C. Official Code, § 2-501 *et seq.*). *(Note: This subsection is as amended by D.C. Law 13-172 on October 19, 2000).*

Section 14. Annual Report. (D.C. Official Code § 6-1113) *(Note: This section is as amended by D.C. Law 16-185, effective November 16, 2006).*

By April 1 of each year, the Mayor shall transmit to the Council a detailed report on the implementation of this act, including:

- (1) The number of applications reviewed pursuant to sections 5, 6, 7, and 8 for historic landmarks and each historic district, categorized by type of application;
- (2) The number of such applications granted after a public hearing; specifying for each application the nature of the requested permit, the nature of the applicant's claim, whether or not economic hardship was found, whether or not it was found to be in the public interest and on what grounds; and
- (3) The financial condition of the HLP fund, including:
 - (A) The results of the operations and collections for the preceding fiscal year;
 - (B) An accounting of receipts and expenditures;
 - (C) Amounts of unrecovered costs, taxes, and penalties;
 - (D) The names of delinquent property owners; and
 - (E) The nature of corrected building violations.

Section 15. Repealers. (Deleted from the D.C. Official Code)

Regulation No. 73-25 (Delay-in-Demolition) and the Historic Sites Subdivision Amendment of 1976, effective September 2, 1976 (D.C. Law 1-30), are hereby repealed.

Section 16. Severability. (D.C. Official Code § 6-1114)

The sections of this chapter are hereby declared to be severable. In the event that any section of this act or portion thereof is held void or unenforceable for whatever reason, all remaining provisions shall remain in full force and effect.

Section 17. Effective Date. (D.C. Official Code § 6-1115)

This act shall become effective as provided for acts of the Council of the District of Columbia in D.C. Official Code § 1.206.02(c)(1). Notwithstanding any other provision of law, upon the effective date of this act, all pending applications for permits shall be subject to this act and no outstanding permits shall be renewed or reissued except in accordance with the provisions of this act.

Effective March 3, 1979

Amendments:

Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Law 6-42, effective October 5, 1985)

Historic Landmark and Historic District Protection Amendment Act of 1990 (D.C. Law 8-232, effective December 27, 1990)

Omnibus Regulatory Reform Amendment Act of 1998 (D.C. Law 12-86, effective April 29, 1998)

Historic Preservation Reorganization and Amendment Act of 2000 (D.C. Law 13-172, effective October 19, 2000)

Technical Amendments Act of 2000 (D.C. Law 13-313, effective June 19, 2001)

Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 (D.C. Law 13-281, effective April 27, 2001)

Housing Act of 2002 (D.C. Law 14-114, effective April 19, 2002)

Technical Amendments Act of 2002 (D.C. Law 14-213, effective October 19, 2002).

Historic Preservation Process for Public Safety Facilities Amendment Act of 2004 (D.C. Law 15-228, effective March 16, 2005)

Historic Preservation Amendment Act of 2006 (D.C. Law 16-185, effective November 16, 2006).

Targeted Historic Preservation Assistance Amendment Act of 2006 (D.C. Law 16-189, effective March 2, 2007)

Targeted Homeowner Grant Program Funding Amendment Act of 2009 (Title II, Subtitle M, Fiscal Year 2010

Budget Support Act of 2009, D.C. Law 18-111, effective March 3, 2010)

Historic Preservation Fee Authorization Clarification Amendment Act of 2011 (Title II, Subtitle B, Fiscal Year 2012

Budget Support Act of 2011, D.C. Law 19-21, effective September 14, 2011)

Historic Property Improvement Notification Amendment Act of 2012 (D.C. Law 19-123, effective April 27, 2012)

Public Charter School Historic Preservation Amendment Act of 2014 (D.C. Law 20-95, effective March 14, 2014)

Notice Requirements for Historic Properties Amendment Act of 2014 (D.C. Law 20-249, effective April 30, 2015)