

OFFICE OF PLANNING

NOTICE OF PROPOSED RULEMAKING

The Director of the District of Columbia Office of Planning, pursuant to the authority set forth in section 10 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979, (D.C. Law 2-144; D.C. Official Code § 6-1109), Mayor's Order 79-50, dated March 21, 1979, section 6 of Mayor's Order 83-119, dated May 6, 1983, section III(B)(8) of Reorganization Plan No. 1 of 1983, effective March 31, 1983, section 402(b) of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000 (D.C. Law 12-172; 47 DCR 6308), and Mayor's Order 2011-120, dated March 18, 2011 hereby gives notice of her intent to amend Subtitle C, Historic Preservation, of DCMR Title 10, Planning and Development by adding a new Chapter 8 entitled "Prevention of Demolition by Neglect," and by amending Chapter 1 entitled "General Provisions" and Chapter 99, Definition. The purpose of the new chapter is to implement section 10c of the Historic Landmark and Historic District Protection Act of 1978, effective November 16, 2006, (D.C. Law 16-185; D.C. Official Code § 6-1109.03 (2008 Repl.)), and the purpose of the amended general provisions is to reflect all of the duties and authorities of the Mayor's Agent that have been delegated to the Director of the Office of Planning pursuant to Mayor's Order 2011-120. The amendments to Chapter 99 delete the term "demolition by neglect" since it will be contained in the proposed new Chapter 8 and simplifies the definition of Mayor's Agent to reflect that whenever the term Mayor's Agent is used in Subtitle C it refers to the Director of the Office of Planning.

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:

Title 10, **PLANNING AND DEVELOPMENT**, Subtitle C, **HISTORIC PRESERVATION**, is amended as follows:

By adding a new Chapter 8, **PREVENTION OF DEMOLITION BY NEGLECT**, to read as follows:

CHAPTER 8 PREVENTION OF DEMOLITION BY NEGLECT

800 GENERAL PROVISIONS

800.1 The purpose of this Chapter is to provide regulations to implement section 10c of the Act, D.C. Official Code § 6-1109.3 (2008 Repl.).

800.2 The term "Demolition by Neglect" is defined by § 3 (3A) of the Act, D.C. Official Code § 6-1102 (3A as the "neglect in maintaining, repairing, or securing a historic landmark or a building or structure in a 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.”

- 800.3 Section 10c (a) (1) of the Act, D.C. Official Code § 6-1109.3 (a) (1), provides that 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 (“Court Order”), the Mayor may require the owner to repair all conditions contributing to demolition by neglect.
- 800.4 Section 10c (a) (2) of the Act, D.C. Official Code § 6-1109.3 (a) (2), provides that if the owner does not make the required repairs within a reasonable period of time, the Mayor may enter the property and make the repairs necessary to prevent demolition by neglect.
- 800.5 Section 10c (b), D.C. Official Code § 6-1109.3 (b) provides that the cost of any work undertaken shall be charged to the owner and may be levied by the District of Columbia as a special assessment against the real property, which would be a lien against the real property.
- 800.6 The Mayor delegated the authority vested in him by § 10c to the Director of the Office of Planning or his or her designee by Mayor’s Order 2011-120, dated March 18, 2011.
- 800.7 For the purposes of this Chapter, the term “Director” means the Director of the Office of Planning or his or her designee.
- 800.8 Examples of Demolition by Neglect include, but are not limited to, the failure to cure any of the following defects:
- (1) Facade or facade elements that may fall;
 - (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.

801 DETERMINATION OF THREATENED DEMOLITION BY NEGLIGENCE

801.1 The Director's determination that a structure is threatened by Demolition by Neglect ("Determination") shall be based upon his or her observations or the observations of any District employee authorized to enforce the Act.

801.2 No notice is required of the intent to make a Determination or of the Determination itself, although the Director may provide the owner of the property containing the threatened structure ("the Property") with such notice as is deemed appropriate and an opportunity to cure.

801.3 A Determination may not be appealed.

801.4 The Director may forward a Determination directly to the Attorney General for the District of Columbia together with a request to obtain a Court Order allowing the Director to make repairs.

802 ACTIONS FOLLOWING OBTAINING A COURT ORDER

802.1 This section establishes the procedures to be followed after a Court Order is obtained to permit the Director to enter and make repairs on a property and, if such repairs are made, to recover the costs incurred.

802.2 After a Court Order is obtained, the Director is authorized to serve the owner of the Property with a written notice ("the Notice") requiring the owner to repair all conditions contributing to the Demolition by Neglect identified in the Court Order (the "Repairs").

802.3 The Director shall effect service of the Notice by one of the following methods:

- (a) Personal service on the owner or owner's agent;
- (b) Delivering the Notice to the last known home or business address of the owner or owner's agent and leaving it with a person over the age of sixteen (16) years old residing or employed therein; or
- (c) Mailing the Notice to the last known home or business address of the owner or owner's agent.

- 802.4 Proof of service shall state the name and address of the person on whom service is made and the manner and date of service.
- 802.5 Proof of service includes any of the following:
- (a) The certificate of service signed by the issuing agent;
 - (b) A return receipt or certificate of mailing, if service is by mail; or
 - (c) A written acknowledgement by the owner or owner's agent.
- 802.6 For purposes of this section, “owner's agent” means a general agent, employee or attorney of the owner.
- 802.7 The Notice shall establish a deadline for completion of the Repairs, which shall be not less than ten (10) days after the date that the Notice was served, and state the consequences for failure to make the Repairs.
- 802.8 Upon the written request of the owner, and for good cause shown, the Director may extend the time for the completion of the Repairs.
- 802.9 If the owner does not make the Repairs within the period specified in the Notice, as that period may be extended, the Director may enter the Property and make the Repairs
- 802.10 Following completion of the Repairs, the Director is authorized to mail the owner of the Property a written statement itemizing the costs incurred in making the Repairs.
- 802.11 The written statement shall be served in the same manner as the Notice and shall inform the owner that full reimbursement of the costs for the Repairs is due no later than thirty (30) days after the date that the written statement was served
- 802.11 If full payment is not received by the expiration of the thirty (30) day period, the Director is authorized to furnish the Director of the Office of Tax and Revenue with the itemized costs included in the written statement along with a request that the costs for the Repairs be levied by the District of Columbia as a special assessment against the Property in accordance with Section 10c (b) of the Act, D.C. Official Code § 6-1109.3 (b).

Chapter C 1, **GENERAL PROVISIONS**, § C 104, **FUNCTION OF THE MAYOR’S AGENT**, is amended as follows:

By amending § 04.1 to read as follows:

- 104.1 The Mayor's Agent reviews proposed work affecting historic properties, including demolition, alteration, subdivision, new construction, and conceptual review of public safety facilities in accordance with the applicable provisions of the Historic Protection Act (D.C. Official Code §§ 6-1104, 6-1105, 6-1106, 6-1107, 6-1108, 6-1108.01, and 6-1111(a)).
- (a) The Mayor's Agent may engage the services of a hearing officer to hold public hearings, prepare written orders, and otherwise assist with these duties.
 - (b) The Mayor's Agent may delegate administrative and other duties to the Historic Preservation Office.

By amending § 104.5 to read as follows:

- 104.5 The Mayor's Agent determines if historic landmarks or contributing buildings in historic districts are threatened by demolition by neglect pursuant to 10 DCMR C § 801 and, upon making that determination is authorized to take the actions set forth C §§ 801 and 802.

By add new §§ 104.8 and 104.9 to read as follows:

- 104.8 The Mayor's Agent implements and administers a targeted historic homeowner grant program to assist homeowners with the rehabilitation of their historic property, pursuant to D.C. Official Code § 6-1110.02.
- 104.9 The Mayor's Agent prepares for transmittal to the Council a detailed report on the implementation of the Act, pursuant to D.C. Official Code § 6-1113.

Chapter 99, **DEFINITIONS**, § 9901, **DEFINED TERMS**, is amended as follows:

By removing the definition of "Demolition by Neglect".

By amending the definition of the "Mayor's Agent" to read as follows:

Mayor's Agent: The Director of the Office of Planning or his or her designee.

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with David Maloney, Associate Director, Office of Planning, 1100 4th Street, SW, Suite E650, Washington, D.C. 20024. Mr. Maloney can be contacted by telephone at 442-8800 or through email at david.maloney@dc.gov. Comments may also be sent electronically to historic.preservation@dc.gov. Copies of this proposal are available at cost by writing to the above address, and are also available electronically at no cost on the Office of Planning's web site at www.preservation.dc.gov.