

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS  
TITLE 10A HISTORIC PRESERVATION

**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**

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).

The following terms specifically applicable to this chapter are defined in Chapter 99:

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

**3001 APPEARANCE AND REPRESENTATION**

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.

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**

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

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**

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

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 this chapter.

#### **3004 ORDER OF PROCEDURE**

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) Officially adopted 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.

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 is not required.

#### **3005 WITNESSES AND EVIDENCE**

Any party or person may appear as a witness and offer evidence at the public hearing.

Witnesses shall testify orally under oath or affirmation.

Witnesses may be cross-examined by any other party.

Evidence shall be taken in conformity with the Administrative Procedure Act (D.C. Official Code § 2-509 (b)).

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.

Copies of exhibits shall be submitted for the record, either at the hearing or before closure of the record. If models are used at the hearing, photographs of the models not exceeding letter size shall be supplied.

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.

The provisions of the Historic Protection Act and these regulations are considered part of every proceeding before the Mayor's Agent and it is not necessary for any party or person to move their introduction into evidence.

### **3006 CONCLUSION OF THE HEARING**

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.

Copies of proposed findings and conclusions shall be served by each party upon all other parties.

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.

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**

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.

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.

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.

Service by mail upon a party is complete on deposit in the United States mail, properly stamped and addressed.

Service by overnight delivery is complete on deposit with the delivery company, properly addressed and with the charges prepaid.

Service by facsimile is complete when telecopied with the proper telephone number of the intended recipient's telecopier.

Service by electronic mail is complete when transmitted electronically, properly addressed to the attention of the intended recipient, with proper e-mail address.

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**

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.

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.

This prohibition shall not extend to communication between the Mayor's Agent and the staff concerning matters relating to administration of the hearing or matters of record.