

Administrative Code

Title 25, Chapter 3

LANDMARKS PRESERVATION AND HISTORIC DISTRICTS

§ 25-301 Purpose and declaration of public policy.

a. The council finds that many improvements, as herein defined, and landscape features, as herein defined, having a special character or a special historical or aesthetic interest or value and many improvements representing the finest architectural products of distinct periods in the history of the city, have been uprooted, notwithstanding the feasibility of preserving and continuing the use of such improvements and landscape features, and without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, cultural and historic values represented by such improvements and landscape features. In addition, distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the sense of the council that the standing of this city as a world-wide tourist center and world capital of business, culture and government cannot be maintained or enhanced by disregarding the historical and architectural heritage of the city and by countenancing the destruction of such cultural assets.

b. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this chapter is to (a) effect and accomplish the protection, enhancement and perpetuation of such improvements and landscape features and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history; (b) safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such improvements, landscape features and districts; (c) stabilize and improve property values in such districts; (d) foster civic pride in the beauty and noble accomplishments of the past; (e) protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; (f) strengthen the economy of the city; and (g) promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city.

§ 25-302 Definitions. As used in this chapter, the following terms shall mean and include:

- a. "Alteration." Any of the acts defined as an alteration by the building code of the city.
- b. "Appropriate protective interest." Any right or interest in or title to an improvement parcel or any part thereof, including, but not limited to, fee title and scenic or other easements, the acquisition of which by the city is determined by the commission to be necessary and appropriate for the effectuation of the purpose of this chapter.
- c. "Capable of earning a reasonable return." Having the capacity, under reasonably efficient and prudent management, of earning a reasonable return. For the purposes of this chapter, the net annual return, as defined in subparagraph (a) of paragraph three of subdivision v of this section, yielded by an improvement parcel during the test year, as defined in subparagraph (b) of such paragraph, shall be presumed to be the earning capacity of such improvement parcel, in the absence of substantial grounds for a contrary determination by the commission.

- c-1. "Chair." The chair of the landmarks preservation commission.
- d. "City-aided project." Any physical betterment of real property, which:
 - (1) may not be constructed or effected without the approval of one or more officers or agencies of the city; and
 - (2) upon completion, will be owned in whole or in part by any person other than the city; and
 - (3) is planned to be constructed or effected, in whole or in part, with any form of aid furnished by the city (other than under this chapter), including, but not limited to, any loan, grant, subsidy or other mode of financial assistance, exercise of the city's powers of eminent domain, contribution of city property, or the granting of tax exemption or tax abatement; and
 - (4) will involve the construction, reconstruction, alteration or demolition of any improvement in a historic district or of a landmark.
- e. "Commission." The landmarks preservation commission.
- f. "Day." Any day other than a Saturday, Sunday or legal holiday; provided, however, that for the purposes of section 25-203 and subdivision d of section 25-317 of this chapter, the term "day" shall mean every day in the week.
- f-1. "Designation report." The report prepared by the commission and used as a basis for designating a landmark or historic district pursuant to this chapter.
- g. "Exterior architectural feature." The architectural style, design, general arrangement and components of all of the outer surfaces of an improvement, as distinguished from the interior surfaces enclosed by said exterior surfaces, including, but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvement.
- h. "Historic district." Any area which:
 - (1) contains improvements which:
 - (a) have a special character or special historical or aesthetic interest or value; and
 - (b) represent one or more periods or styles of architecture typical of one or more eras in the history of the city; and
 - (c) cause such area, by reason of such factors, to constitute a distinct section of the city; and
 - (2) has been designated as a historic district pursuant to the provisions of this chapter.
- i. "Improvement." Any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.
- j. "Improvement parcel." The unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for the purpose of levying real estate taxes, provided however, that the term "improvement parcel" shall also include any unimproved area of land which is treated as a single entity for such tax purposes.
- k. "Interior." The visible surfaces of the interior of an improvement.

l. "Interior architectural feature." The architectural style, design, general arrangement and components of an interior, including, but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such interior.

m. "Interior landmark." An interior, or part thereof, any part of which is thirty years old or older, and which is customarily open or accessible to the public, or to which the public is customarily invited, and which has a special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation, and which has been designated as an interior landmark pursuant to the provisions of this chapter.

n. "Landmark." Any improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation, and which has been designated as a landmark pursuant to the provisions of this chapter.

o. "Landmark site." An improvement parcel or part thereof on which is situated a landmark and any abutting improvement parcel or part thereof used as and constituting part of the premises on which the landmark is situated, and which has been designated as a landmark site pursuant to the provisions of this chapter.

p. "Landscape feature." Any grade, body of water, stream, rock, plant, shrub, tree, path, walkway, road, plaza, fountain, sculpture or other form of natural or artificial landscaping.

q. "Minor work." Any change in, addition to or removal from the parts, elements or materials comprising an improvement, including, but not limited to, the exterior architectural features or interior architectural features thereof and, subject to and as prescribed by regulations of the commission if and when promulgated pursuant to section 25-319 of this chapter, the surfacing, resurfacing, painting, renovating, restoring or rehabilitating of the exterior architectural features or interior architectural features or the treating of the same in any manner that materially alters their appearance, where such change, addition or removal does not constitute ordinary repairs and maintenance and is of such nature that it may be lawfully effected without a permit from the department of buildings.

r. "Offense." As used in the phrase "second and subsequent offense", a violation encompassing some or all of the conditions or actions described or encompassed by a prior notice of violation or summons. For purposes of this definition, there shall be a presumption that the conditions encompassed by a second or subsequent offense have been in existence for each day between the time the respondent admits to liability or is found liable for or guilty of the prior offense and the time the second or subsequent notice of violation or summons is served.

r. "Ordinary repairs and maintenance." Any:

- (1) work done on any improvement; or
- (2) replacement of any part of an improvement;

for which a permit issued by the department of buildings is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage to such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

s. "Owner." Any person or persons having such right to, title to or interest in any improvement so as to be legally entitled, upon obtaining the required permits and approvals from the city agencies having jurisdiction over building construction, to perform with respect to such property any demolition, construction, reconstruction, alteration or other work as to which such person seeks the authorization or approval of the commission pursuant to section 25-309 of this chapter.

t. "Person in charge." The person or persons possessed of the freehold of an improvement or improvement parcel or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person directly or indirectly in control of an improvement or improvement parcel.

u. "Protected architectural feature." Any exterior architectural feature of a landmark or any interior architectural feature of an interior landmark.

v. "Reasonable return."

(1) A net annual return of six per centum of the valuation of an improvement parcel.

(2) Such valuation shall be the current assessed valuation established by the city, which is in effect at the time of the filing of the requests for a certificate of appropriateness; provided that:

(a) The commission may make a determination that the valuation of the improvement parcel is an amount different from such assessed valuation where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of such request; and

(b) The commission may make a determination that the value of the improvement parcel is an amount different from the assessed valuation where there has been a bona fide sale of such parcel within the period between March fifteenth, nineteen hundred fifty-eight, and the time of the filing of such request, as a result of a transaction at arm's length, on normal financing terms, at a readily ascertainable price, and unaffected by special circumstances such as, but not limited to, a forced sale, exchange of property, package deal, wash sale or sale to a cooperative. In determining whether a sale was on normal financing terms, the commission shall give due consideration to the following factors:

(1) The ratio of the cash payment received by the seller to

(a) the sales price of the improvement parcel and

(b) the annual gross income from such parcel;

(2) The total amount of the outstanding mortgages which are liens against the improvement parcel (including purchase money mortgages) as compared with the assessed valuation of such parcel;

(3) The ratio of the sales price to the annual gross income of the improvement parcel, with consideration given, where the improvement is subject to residential rent control, to the total amount of rent adjustments previously granted, exclusive of rent adjustments because of changes in

dwelling space, services, furniture, furnishings, or equipment, major capital improvements, or substantial rehabilitation;

(4) The presence of deferred amortization in purchase money mortgages, or the assignment of such mortgages at a discount;

(5) Any other facts and circumstances surrounding such sale which, in the judgement of the commission, may have a bearing upon the question of financing.

(3) For the purposes of this subdivision v:

(a) Net annual return shall be the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return, whichever is lower; provided, however, that no allowance for depreciation of the improvement shall be included where the improvement has been fully depreciated for federal income tax purposes or on the books of the owner; and

(b) Test year shall be (1) the most recent full calendar year, or (2) the owner's most recent fiscal year, or (3) any twelve consecutive months ending not more than ninety days prior to the filing (a) of the request for a certificate, or (b) of an application for a renewal of tax benefits pursuant to the provisions of section 25-309 of this chapter, as the case may be.

w. "Scenic landmark." Any landscape feature or aggregate of landscape features, any part of which is thirty years old or older, which has or have a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated a scenic landmark pursuant to the provisions of this chapter.

x. As used in section 25-317.1:

(1) "Type A violation." Except as otherwise defined by the rules of the commission, the following work done or condition created or maintained in violation of this chapter without an appropriate approval from the commission:

(a) the removal of or alterations to, except for painting, a significant portion of an exterior architectural feature, including, without limitation thereof, removal of or alterations to:

(i) the windows on a single facade or, where original, historic or special windows exist, the removal of or alterations to a significant portion of such original, historic or special windows on a single facade;

(ii) a decorative element made of metal, glass, wood, brick, ceramic, and/or stone including, without limitation thereof, a cornice, lintel, grille or molding;

(iii) the paving stones or curbstones of a stone sidewalk;

(iv) an exterior doorway or stoop;

- (v) a wall, fence, railing, porch, balcony or roof, including dormers, bays, gables and parapets; and
- (vi) a storefront, but not including the installation of signs, awnings, flagpoles or banners;
- (b) the removal of or alterations to a significant portion or a protected feature of an interior landmark as described in the designation report;
- (c) the construction of all or a portion of a new building, structure, addition or any other improvement on a landmark site or within the boundaries of a historic district. Without limiting the generality of the foregoing, any significant modification of the existing bulk or envelope of a building shall be a violation under this paragraph;
- (d) the elimination by paving or other construction of a significant portion of an area-way, planting area, or front, rear or side yards, where such a feature is a significant component of the landmark or historic district;
- (e) where the improvement is not a building or an interior landmark, the removal of or alterations to a significant portion of such improvement;
- (f) the failure to submit to the commission any periodic inspection report required under the terms of a restrictive declaration recorded in connection with any zoning permit, certification or authorization granted to an improvement under the jurisdiction of the commission.
- (2) "Type B violation." All other violations of this chapter, except for violation of section 25-311 of this chapter.

§ 25-303 Establishment of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.

a. For the purpose of effecting and furthering the protection, preservation, enhancement, perpetuation, and use of landmarks, interior landmarks, scenic landmarks and historic districts, the commission shall have power, after a public hearing:

- (1) to designate and, as herein provided in subdivision j, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of landmarks which are identified by a description setting forth the general characteristics and location thereof;
- (2) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of interior landmarks, not including interiors utilized as places of religious worship, which are identified by a description setting forth the general characteristics and location thereof;
- (3) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to a list of scenic landmarks, located on property owned by the city, which are identified by a description setting forth the general characteristics and location thereof; and
- (4) to designate historic districts and the location and boundaries thereof, and, in order to effectuate the purposes of this chapter, to designate changes in such locations

and boundaries and designate additional historic districts and the location and boundaries thereof.

b. It shall be the duty of the commission, after a public hearing, to designate a landmark site for each landmark and to designate the location and boundaries of such site.

c. The commission shall have power, after a public hearing, to amend any designation made pursuant to the provisions of subdivisions a and b of this section.

d. The commission may, after a public hearing, whether at the time it designates a scenic landmark or at any time thereafter, specify the nature of any construction, reconstruction, alteration or demolition of any landscape feature which may be performed on such scenic landmark without prior issuance of a report pursuant to subdivision c of section 25-318. The commission shall have the power, after a public hearing, to amend any specification made pursuant to the provisions of this subdivision.

e. Subject to the provisions of subdivisions g and h of this section, any designation or amendment of a designation made by the commission pursuant to the provisions of subdivisions a, b and c of this section shall be in full force and effect from and after the date of the adoption thereof by the commission.

f. Within ten days after making any such designation or amendment thereof, the commission shall file a copy of same with the council, the department of buildings, the city planning commission, the board of standards and appeals, the fire department and the department of health.

g. (1) Within sixty days after such filing, the city planning commission shall (a) hold a public hearing on any such designation of a historic district and (b) shall submit to the council a report with respect to the relation of such designation whether of a historic district or a landmark, interior landmark, scenic landmark, or landmark site, or amendment of such designation to the zoning resolution, projected public improvements and any plans for the development, growth, improvement or renewal of the area involved. The city planning commission shall include with any such report its recommendation, if any, for council action with respect to any such designation of a historic district.

(2) The council may modify or disapprove by majority vote any such designation or amendment thereof within one hundred twenty days after a copy thereof is filed with the council provided that the city planning commission has submitted the report required by this subdivision or that sixty days have elapsed since the filing of the designation or amendment with the council. All votes of the council pursuant to this subdivision shall be filed by the council with the mayor and shall be final unless disapproved by the mayor within five days of such filing. Any such disapproval by the mayor shall be filed by the mayor with the council and shall be subject to override by a two-thirds vote of the council within ten days of such filing. If the council shall disapprove such designation or amendment, such designation or amendment shall continue in full force and effect until the time for disapproval by the mayor has expired; provided, however, that if the mayor disapproves such council disapproval it shall continue in full force and effect unless the council overrides the mayor's disapproval. If the council shall modify such designation or amendment, such designation or amendment as adopted by the commission shall continue in full force and effect until the time for disapproval by the mayor has expired, and after such time such modification shall be in effect; provided, however, that if the mayor

disapproves council such modification, the designation or amendment as adopted by the commission shall continue in full force and effect unless the council overrides the mayor's disapproval, and in the event of override the modification shall take effect on and after the date of such override.

h. (1) The commission shall have power, after a public hearing, to adopt a resolution proposing rescission, in whole or in part, of any designation or amendment or modification thereof mentioned in the preceding subdivisions of this section. Within ten days after adopting any such resolution, the commission shall file a copy thereof with the council and the city planning commission.

(2) Within sixty days after such filing, the city planning commission shall submit to the council a report with respect to the relation of such proposed rescission of any such designation, whether of a historic district or a landmark, interior landmark, scenic landmark or landmark site, or amendment or modification thereof, to the zoning resolution, projected public improvements and any plans for the development, growth, improvement, or renewal of the area involved.

(3) The council may approve, disapprove or modify such proposed rescission within one hundred twenty days after a copy of the resolution proposing same is filed with the council, provided that the city planning commission has submitted the report required by this subdivision or that sixty days have elapsed since the filing of such resolution. Failure to take action on such proposed rescission within such one hundred twenty-day period shall be deemed a vote to disapprove such proposed rescission. All votes of the council pursuant to this subdivision shall be filed by the council with the mayor and shall be final unless disapproved by the mayor within five days of such filing. Any such mayoral disapproval shall be filed by the mayor with the council and shall be subject to override by a two-thirds vote of the council within ten days of such filing. If such proposed rescission is approved or modified by the council, such rescission or modification thereof shall not take effect until the time for disapproval by the mayor has expired; provided, however, that if the mayor disapproves such rescission or modification, it shall not take effect unless the council overrides the mayor's disapproval. If such proposed rescission is disapproved by the council, it shall not take effect unless the mayor disapproves such council disapproval and the council fails to override the mayor's disapproval.

i. The commission may at any time make recommendations to the city planning commission with respect to amendments of the provisions of the zoning resolution applicable to improvements in historic districts.

j. All designations and supplemental designations of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts made pursuant to subdivision a shall be made pursuant to notices of public hearings given, as provided in section 25-313. In addition to such notice, the commission shall give notice to the city planning commission, all affected community boards and the office of the borough president in whose borough the property or district is located in advance of any public hearing relating to such designations.

k. Upon its designation of any improvement parcel as a landmark and of any landmark site, interior landmark, scenic landmark or historic district or any amendment of any such designation or rescission thereof, the commission shall cause to be recorded in the office of the register of the city of New York in the county of which such landmark, interior landmark, scenic landmark or district lies, or in the case of landmarks, interior landmarks, scenic landmarks and

districts in the county of Richmond in the office of the clerk of said county of Richmond, a notice of such designation, amendment or rescission describing the party affected by, in the case of the county of Richmond, its land map block number or numbers, and its tax map, block and lot number or numbers, and in the case of all other counties, by its land map block and lot number or numbers.

§ 25-304 Scope of commission's powers.

a. Nothing contained in this chapter shall be construed as authorizing the commission, in acting with respect to any historic district or improvement therein, or in adopting regulations in relation thereto, to regulate or limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses or to create districts for any such purpose.

b. Except as provided in subdivision a of this section, the commission may, in exercising or performing its powers, duties or functions under this chapter with respect to any improvement in a historic district or on a landmark site or containing an interior landmark, or any landscape feature of a scenic landmark, apply or impose, with respect to the construction, reconstruction, alteration, demolition or use of such improvement or landscape feature or the performance of minor work thereon, regulations, limitations, determinations or conditions which are more restrictive than those prescribed or made by or pursuant to other provisions of law applicable to such activities, work or use.

§ 25-305 Regulation of construction, reconstruction, alterations and demolition.

a. (1) Except as otherwise provided in paragraph two of this subdivision a, it shall be unlawful for any person in charge of a landmark site or an improvement parcel or portion thereof located in a historic district or any part of an improvement containing an interior landmark to alter, reconstruct or demolish any improvement constituting a part of such site or constituting a part of such parcel and located within such district or containing an interior landmark, or to construct any improvement upon land embraced within such site or such parcel and located within such district, or to cause or permit any such work to be performed on such improvement or land, unless the commission has previously issued a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed authorizing such work, and it shall be unlawful for any other person to perform such work or cause same to be performed, unless such certificate or notice has been previously issued.

(2) The provisions of paragraph one of this subdivision a shall not apply to any improvement mentioned in subdivision a of section 25-318 of this chapter, or to any city-aided project, or in cases subject to the provisions of section 25-312 of this chapter.

(3) It shall be unlawful for the person in charge of any improvement or land mentioned in paragraph one of this subdivision a to maintain same or cause or permit same to be maintained in the condition created by any work in violation of the provisions of such paragraph one.

b. (1) Except in the case of any improvement mentioned in subdivision a of section 25-318 of this chapter and except in the case of city-aided project, no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in a historic district or containing an interior landmark shall be issued by the department of buildings, and no application shall be approved and no special permit or amended special permit for such construction, reconstruction or alteration, where required by article seven of the zoning resolution, shall be granted by the city planning commission or the board of standards and appeals, until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work.

c. (1) A copy of every application or amended application for a permit to construct, reconstruct, alter or demolish any improvement located or to be located on a landmark site or in a historic district or containing an interior landmark shall, at the time of the submission of the original thereof to the department of buildings, be filed by the applicant with the commission. A copy of every application, under article seven of the zoning resolution, for a special permit for any work which includes the construction, reconstruction or alteration of any such improvement shall, at the time of the submission of such application or amended application of the city planning commission or the board of standards and appeals, as the case may be, be filed with the commission.

(2) Every such copy of an application or amended application filed with the commission shall include plans and specifications for the work involved, or such other statement of the proposed work as would be acceptable by the department of buildings pursuant to the building code. The applicant shall furnish the commission with such other information relating to such application as the commission may from time to time require.

(3) Together with the copies of such application or amended application, every such applicant shall file with the commission a request for a certificate of no effect on protected architectural features or a certificate of appropriateness in relation to the proposed work specified in such application.

§ 25-306 Determination of request for certificate of no effect on protected architectural features.

a. (1) In any case where an applicant for a permit from the department of buildings to construct, reconstruct, alter or demolish any improvement on a landmark site or in a historic district or containing an interior landmark, or an applicant for a special permit from the city planning commission or the board of standards and appeals authorizing any such work pursuant to article seven of the zoning resolution, or amendments thereof, files a copy of such application or amended application with the commission, together with a request for a certificate of no effect on protected architectural features, the commission shall determine: (a) whether the proposed work would change, destroy or affect any exterior architectural feature of the improvement on a landmark site or in a historic district or any interior architectural feature of the interior landmark upon which said work is to be done; and (b) in the case of construction of a new improvement, whether such construction would affect or not be in harmony with the external appearance of other, neighboring

improvements on such site or in such district. If the commission determines such question in the negative, it shall grant such certificate; otherwise, it shall deny such request.

(2) Within thirty days after the filing of such application and request, the commission shall either grant such certificate, or give notice to the applicant of a proposed denial of such request. Upon written demand of the applicant filed with the commission after the giving of notice of a proposed denial, the commission shall confer with the applicant. The commission shall determine the request for a certificate within thirty days after the filing of such demand. If a demand is not filed within ten days after the giving of notice of the proposed denial, the commission shall determine such request within five days after the expiration of such ten-day period.

(3) In the event of a denial of such a certificate, the applicant may file with the commission a request for a certificate of appropriateness with respect to the proposed work specified in such application.

§ 25-307 Factors governing issuance of certificate of appropriateness.

a. In any case where an applicant for a permit to construct, reconstruct, alter or demolish any improvement on a landmark site, or in a historic district or containing an interior landmark, files such application with the commission together with a request for a certificate of appropriateness, and in any case where a certificate of no effect on protected architectural features is denied and the applicant thereafter, pursuant to the provisions of section 25-306 of this chapter, files a request for a certificate of appropriateness, the commission shall determine whether the proposed work would be appropriate for and consistent with the effectuation of the purposes of this chapter. If the commission's determination is in the affirmative on such question, it shall grant a certificate of appropriateness, and if the commission's determination is in the negative, it shall deny the applicant's request, except as otherwise provided in section 25-309 of this chapter.

b. (1) In making such determination with respect to any such application for a permit to construct, reconstruct, alter or demolish an improvement in a historic district, the commission shall consider (a) the effect of the proposed work in creating, changing, destroying or affecting the exterior architectural features of the improvement upon which such work is to be done, and (b) the relationship between the results of such work and the exterior architectural features of other, neighboring improvements in such district.

(2) In appraising such effects and relationship, the commission shall consider, in addition to any other pertinent matters, the factors of aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color.

(3) All determinations of the commission pursuant to this subdivision b shall be made subject to the provisions of section 25-304 of this chapter, and the commission, in making any such determination, shall not apply any regulation, limitation, determination or restriction as to the height and bulk of buildings, the area of yards, courts or other open spaces, density of population, the location of trades and industries, or location of buildings designed for specific uses, other than the regulations, limitations, determinations and restrictions as to such matters prescribed or made by or pursuant to applicable provisions of law, exclusive of this chapter; provided, however, that nothing contained in such section

25-304 or in this subdivision b shall be construed as limiting the power of the commission to deny a request for a certificate of appropriateness for demolition or alteration of an improvement in a historic district (whether or not such request also seeks approval, in such certificate, of construction or reconstruction of any improvement), on the ground that such demolition or alteration would be inappropriate for and inconsistent with the effectuation of the purposes of this chapter, with due consideration for the factors herein above set forth in this subdivision b.

c. In making the determination referred to in subdivision a of this section with respect to any application for a permit to construct, reconstruct, alter or demolish any improvement on a landmark site, other than a landmark, the commission shall consider (1) the effects of the proposed work in creating, changing, destroying or affecting the exterior architectural features of the improvement upon which such work is to be done, (2) the relationship between such exterior architectural features, together with such effects, and the exterior architectural features of the landmark, and (3) the effects of the results of such work upon the protection, enhancement, perpetuation and use of the landmark on such site. In appraising such effects and relationship, the commission shall consider, in addition to any other pertinent matters, the factors mentioned in paragraph two of subdivision b of this section.

d. In making the determination referred to in subdivision a of this section with respect to an application for a permit to alter, reconstruct or demolish a landmark, the commission shall consider the effects of the proposed work upon the protection, enhancement, perpetuation and use of the exterior architectural features of such landmark which cause it to possess a special character or special historical or aesthetic interest or value.

e. In making the determination referred to in subdivision a of this section with respect to an application for a permit to alter, reconstruct or demolish an improvement containing an interior landmark, the commission shall consider the effects of the proposed work upon the protection, enhancement, perpetuation and use of the interior architectural features of such interior landmark which cause it to possess a special character or special historical or aesthetic interest or value.

§ 25-308 Procedure for determination of request for certificate of appropriateness. The commission shall hold a public hearing on each request for a certificate of appropriateness. Except as otherwise provided in section 25-309 of this chapter, the commission shall make its determination as to such request within ninety days after filing thereof.

§ 25-309 Request for certificate of appropriateness authorizing demolition, alterations or reconstruction on ground of insufficient return.

a. (1) Except as otherwise provided in paragraph two of this subdivision a, in any case where an application for a permit to demolish any improvement located on a landmark site or in a historic district or containing an interior landmark is filed with the commission, together with a request for a certificate of appropriateness authorizing such demolition, and in any case where an application for a permit to make alterations to or reconstruct any improvement on a landmark site or containing an interior landmark is filed with the commission, and the applicant requests a certificate of appropriateness for such work, and the applicant establishes to the satisfaction of the commission that:

(a) the improvement parcel (or parcels) which include such improvement, as existing at the time of the filing of such request, is not capable of earning a reasonable return; and

(b) the owner of such improvement:

(1) in the case of an application for a permit to demolish, seeks in good faith to demolish such improvement immediately (a) for the purpose of constructing on the site thereof with reasonable promptness a new building or other income-producing facility, or (b) for the purpose of terminating the operation of the improvement at a loss; or

(2) in the case of an application for a permit to make alterations or reconstruct, seeks in good faith to alter or reconstruct such improvement, with reasonable promptness, for the purpose of increasing the return therefrom; the commission, if it determines that the request for such certificate should be denied on the basis of the applicable standards set forth in section 25-307 of this chapter, shall, within ninety days after the filing of the request for such certificate of appropriateness, make a preliminary determination of insufficient return.

(2) In any case where any application and request for a certificate of appropriateness mentioned in paragraph one of this subdivision a is filed with the commission with respect to an improvement, the provisions of this section shall not apply to such request if the improvement parcel which includes such improvement has received, for three years next preceding the filing of such request, and at the time of such filing continues to receive, under any provision of law (other than this chapter or section four hundred fifty-eight, four hundred sixty or four hundred seventy-nine of the real property tax law), exemption in whole or in part from real property taxation; provided, however, that the provisions of this section shall nevertheless apply to such request if such exemption is and has been received pursuant to section four hundred twenty-a, four hundred twenty-two, four hundred twenty-four, four hundred twenty-five, four hundred twenty-six, four hundred twenty-seven, four hundred twenty-eight, four hundred thirty, four hundred thirty-two, four hundred thirty-four, four hundred thirty-six, four hundred thirty-eight, four hundred forty, four hundred forty-two, four hundred forty-four, four hundred fifty, four hundred fifty-two, four hundred sixty-two, four hundred sixty-four, four hundred sixty-eight, four hundred seventy, four hundred seventy-two or four hundred seventy-four of the real property tax law and the applicant establishes to the satisfaction of the commission, in lieu of the requirements set forth in paragraph one of the subdivision a, that:

(a) The owner of such improvement has entered into a bona-fide agreement to sell an estate of freehold or to grant a term of at least twenty years in such improvement parcel, which agreement is subject to or contingent upon the issuance of the certificate of appropriateness or a notice to proceed;

(b) The improvement parcel which includes such improvement, as existing at the time of filing of such request, would not, if it were not exempt in whole or in part from real property taxation, be capable of earning a reasonable return;

(c) Such improvement has ceased to be adequate, suitable or appropriate for use for carrying out both (1) the purposes of such owner to which it is devoted

and (2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes; and

(d) The prospective purchaser or tenant:

(1) In the case of an application for a permit to demolish seeks and intends, in good faith either to demolish such improvement immediately for the purpose of constructing on the site thereof with reasonable promptness a new building or other facility; or

(2) In the case of an application for a permit to make alterations or reconstruct, seeks and intends in good faith to alter or reconstruct such improvement, with reasonable promptness.

b. In the case of an application made pursuant to paragraph one of subdivision a of this section by an applicant not required to establish the conditions specified in paragraph two of such subdivision, as promptly as is practicable after making a preliminary determination as provided in paragraph one of such subdivision a, the commission, with the aid of such experts as it deems necessary, shall endeavor to devise, in consultation with the applicant, a plan whereby the improvement may be (1) preserved or perpetuated in such manner or form as to effectuate the purposes of this chapter, and (2) also rendered capable of earning a reasonable return.

c. Any such plan may include, but shall not be limited to, (1) granting of partial or complete tax exemption, (2) remission of taxes and (3) authorization for alterations, construction or reconstruction appropriate for and not inconsistent with the effectuation of the purposes of this chapter.

d. In any case where the commission formulates any such plan, it shall mail a copy thereof to the applicant promptly and in any event within sixty days after giving notice of its preliminary determination of insufficient return. The commission shall hold a public hearing upon such plan.

e. (1) If the commission, after holding a public hearing pursuant to subdivision d of this section, determines that a plan which it has formulated, consisting only of tax exemption and/or remission of taxes, meets the standards set forth in subdivision b of this section, as such plan was originally formulated, or with such modifications as the commission deems necessary or appropriate, the commission shall deny the request of the applicant for a certificate of appropriateness and shall approve such plan, as originally formulated, or with such modifications.

(2) Such plan, as so approved, shall set forth the extent of tax exemption and/or remission of taxes deemed necessary by the commission to meet such standards.

(3) The commission shall promptly mail a certified copy of such approved plan to the applicant and shall promptly transmit a certified copy thereof to the tax commission. Upon application made by the owner of such improvement pursuant to the provisions of paragraph five of this subdivision e, the tax commission shall grant, for the fiscal year next succeeding the date of approval of such plan, the tax exemption and/or remission of taxes provided for therein.

(4) In accordance with procedures prescribed by the regulations of the commission, it shall determine, upon application by the owner of such improvement made

in advance of each succeeding fiscal year, the amount of tax exemption and/or remission of taxes, if any, which it deems necessary, as a renewal of such plan for the ensuing year, to meet the standards set forth in subdivision b of this section, and shall promptly mail a certified copy of any approved renewal of such plan to the applicant and shall promptly transmit a certified copy of such renewal to the tax commission. Upon application made by the owner of such improvement pursuant to the provisions of paragraph five of this subdivision e, the tax commission shall grant, for such fiscal year, the tax exemption and/or remission of taxes specified in such determination.

(5) Where any such plan or a renewal thereof is approved by the commission, pursuant to the provisions of the preceding paragraphs of this subdivision e, prior to January first next preceding the fiscal year to which the tax benefits of such plan or renewal thereof are applicable, the owner shall not be entitled to such benefits for such fiscal year unless he or she files an application therefor with the tax commission between February first and March fifteenth, both dates inclusive, next preceding such fiscal year. Where any such plan or a renewal thereof is approved by the commission between January first and June thirtieth, both dates inclusive, next preceding the fiscal year to which the tax benefits of such plan or renewal thereof are applicable, the owner shall not be entitled to such benefits for such fiscal year unless he or she files an application therefor with the tax commission on or before August first of such fiscal year.

f. (1) In any case where the commission determines, after holding a public hearing pursuant to subdivision d of this section, that a plan which it has formulated, consisting in whole or in part of any proposal other than tax exemption and/or remission of taxes, meets the standards set forth in subdivision b of this section, as such plan was originally formulated, or with such modifications as the commission deems necessary or appropriate, the commission shall approve such plan, as originally formulated, or with such modifications, and shall promptly mail a copy of same to the applicant.

(2) The owner of the improvement proposed to be benefitted by such plan mentioned in paragraph one of this subdivision f may accept or reject such plan by written acceptance or rejection filed with the commission. If such an acceptance is filed, the commission shall deny the request of such applicant for a certificate of appropriateness. If a new application for a permit from the department of buildings and a new request for a certificate of appropriateness are filed, which application and request conform with such proposed plan, the commission shall grant such certificate as promptly as is practicable and in any event within thirty days after such filing.

(3) If such accepted plan consists in part of tax exemption and/or remission of taxes, the provisions of paragraphs two, three, four and five of subdivision e of this section shall govern the granting of such tax exemption and/or remission of taxes.

g. (1) Except in a case where the applicant is required to establish the conditions set forth in paragraph two of subdivision a of this section, if

(a) The commission does not formulate and mail a plan pursuant to the provisions of subdivisions b, c, and d of this section within the period of time prescribed by such subdivision d; or

(b) The commission does not approve a plan pursuant to the provisions of subdivision e or f of this section within sixty days after the mailing of such plan to the applicant; or

(c) A plan approved by the commission pursuant to the provisions of paragraph one of subdivision f of this section is rejected by the owner of such improvement pursuant to the provisions of paragraph two of such subdivision;

the commission may, within ten days after expiration of the applicable period referred to in subparagraphs (a) and (b) of this paragraph one, or within ten days after the filing of a rejection of a plan pursuant to paragraph two of subdivision f of this section, as the case may be, transmit to the mayor a written recommendation that the city acquire a specified appropriate protective interest in the improvement parcel which includes the improvement with respect to which the request for a certificate of appropriateness was filed, and shall promptly notify the applicant of such action.

(2) If, within ninety days after transmission of such recommendation, or, if no such recommendation is transmitted, within ninety days after the expiration of the period herein prescribed for such transmission, the city does not:

(a) Give notice, pursuant to section three hundred eighty-two of the charter, of an application to condemn such interest or any other appropriate protective interest agreed upon by the mayor and the commission; or

(b) Enter into a contract with the owner of such improvement parcel to acquire such interest, as so recommended or agreed upon; the commission shall promptly grant, issue and forward to the owner, in lieu of the certificate of appropriateness requested by the applicant, a notice to proceed.

h. No plan which consists in whole or in part of the granting of a partial or complete tax exemption or remission of taxes pursuant to the provisions of this chapter shall be deemed to have been approved by the commission unless it is also approved by the mayor and council within the period of time prescribed by the section for approval of such plan by the commission.

i. (1) In any case where the applicant is required to establish the conditions set forth in paragraph two of subdivision a of this section, as promptly as is practicable after making a preliminary determination with respect to such conditions, as provided in paragraph one of subdivision a of this section, and within one hundred and eighty days after making such preliminary determination, the commission, alone or with the aid of such persons and agencies as it deems necessary and whose aid it is able to enlist, shall endeavor to obtain a purchaser or tenant (as the case may be) of the improvement parcel or parcels with respect to which the application has been made, which purchaser or tenant will agree, without condition or contingency relating to the issuance of a certificate of appropriateness or notice to proceed and subject to the provisions of paragraph three of this subdivision i, to purchase or acquire an interest identical with that proposed to be acquired by the prospective purchaser or tenant whose agreement is the basis of the application, on reasonably equivalent terms and conditions.

(2) The applicant shall, within a reasonable time after notice by the commission that it has obtained such a purchaser or tenant, which notice shall be served within the period of one hundred and eighty days provided by paragraph one of this subdivision i, enter into such agreement to sell or lease (as the case may be) with the purchaser or

tenant so obtained. Such notice shall specify a date for the execution of such agreement, which may be postponed by the commission at the request of the applicant.

(3) The provisions of this section shall not, after the consummation of such agreement, apply to such purchaser or tenant or to the heirs, successors or assigns of such purchaser or tenant.

(4) (a) If, within the one hundred eighty day period following the commission's preliminary determination pursuant to paragraph one of subdivision a of this section, the commission shall not have succeeded in obtaining a purchaser or tenant of the improvement parcel, pursuant to paragraph one of this subdivision i, or if, having obtained such a purchaser or tenant, such purchaser or tenant fails within the time provided in paragraph two of this subdivision i, to enter into the agreement provided for by such paragraph two, the commission, within twenty days after the expiration of the one hundred eighty day period provided for in paragraph one of this subdivision i, or within twenty days after the date upon which a purchaser or tenant obtained by the commission pursuant to the provisions of such paragraph one fails to enter into the agreement provided for by said paragraph, whichever of said dates later occurs, may transmit to the mayor a written recommendation that the city acquire a specified appropriate protective interest in the improvement parcel or parcels which include the improvement or are part of the landmark site with respect to which the request for a certificate of appropriateness was filed, and shall promptly notify the applicant of such action.

(b) If, within ninety days after transmission of such recommendation, or, if no such recommendation is transmitted, within ninety days after the expiration of the period herein prescribed for such transmission, the city does not give notice, pursuant to section three hundred eighty-two of the charter, of an application to condemn such interest or any other appropriate protective interest agreed upon by the mayor and the commission, or does not enter into a contract with the owner of such improvement parcel to acquire such interest, as so recommended and agreed upon; the commission shall promptly grant, issue and forward to the owner, in lieu of the certificate of appropriateness requested by the applicant, a notice to proceed.

(5) Such notice to proceed shall authorize the work of demolition, alteration, and/or reconstruction sought with respect to the improvement parcel or parcels concerning which the application was made, only if such work (a) is undertaken and performed by the purchaser or tenant specified pursuant to the provisions of paragraph two of subdivision a of this section, in the application, or a bona-fide assignee, successor, lessee or sub-lessee of such purchaser or tenant (other than the owner who made application therefor), and (b) is undertaken and performed with reasonable promptness after the issuance of such notice to proceed.

§ 25-310 Regulation of minor work.

a. (1) Except as otherwise provided in section 25-312 of this chapter, it shall be unlawful for any person in charge of an improvement located on a landmark site or in a historic district or containing an interior landmark to perform any minor work thereon, or to cause or permit such work to be performed, and for any other person to perform any such

work thereon or cause same to be performed, unless the commission has issued a permit, pursuant to this section, authorizing such work.

(2) It shall be unlawful for any person in charge of any such improvement to maintain same or cause or permit same to be maintained in the condition created by any work done in violation of the provisions of paragraph one of this subdivision a.

b. The owner of an improvement desiring to obtain such a permit, or any person authorized by the owner to perform such work, may file with the commission an application for such permit, which shall include such description of the proposed work, as the commission may prescribe. The applicant shall submit such other information with respect to the proposed work as the commission may from time to time require. The commission shall promptly transmit such application to the department of buildings, which shall, as promptly as is practicable, certify to the commission whether a permit for such proposed work, issued by such department, is required by law. If such department certifies that such a permit is required, the commission shall deny such application, and shall promptly give notice of such determination to the applicant. If such department certifies that no such permit is required, the commission shall determine such application as hereinafter provided.

c. (1) The commission shall determine:

(a) Whether the proposed work would change, destroy or affect any exterior architectural feature of an improvement located on a landmark site or in a historic district or interior architectural feature of an improvement containing an interior landmark; and

(b) If such work would have such effect, whether judged by the standards set forth in subdivisions b, c, d and e of section 25-307 of this chapter with respect to an improvement of similar classification hereunder, such work would be appropriate for and consistent with the effectuation of the purposes of this chapter.

(2) If the commission determines the question set forth in subparagraph (a) of paragraph one of this subdivision c in the negative, or determines the question set forth in subparagraph (b) of such paragraph in the affirmative, it shall grant such permit, and it shall deny such permit if it determines such question set forth in subparagraph (a) in the affirmative and determines such question set forth in subparagraph (b) in the negative.

d. The procedure of the commission in making its determination with respect to any such application shall be as prescribed in subparagraph two of subdivision a of section 25-306 of this chapter, except that any period of thirty days referred to in such subparagraph shall, for the purposes of this subdivision d, be deemed to be twenty days.

e. The provisions of this section shall be inapplicable to any improvement mentioned in subdivision a of section 25-318 of this chapter and to any city-aided project.

§ 25-311 Maintenance and repair of improvements.

a. Every person in charge of an improvement on a landmark site or in a historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair.

b. Every person in charge of an improvement containing an interior landmark shall keep in good repair (1) all portions of such interior landmark and (2) all other portions of the improvement which, if not so maintained, may cause or tend to cause the interior landmark contained in such improvement to deteriorate, decay or become damaged or otherwise fall into a state of disrepair.

c. Every person in charge of a scenic landmark shall keep in good repair all portions thereof.

d. The provisions of this section shall be in addition to all other provisions of law requiring any such improvement to be kept in good repair.

§ 25-312 Remedying of dangerous conditions.

a. In any case where the department of buildings, the fire department or the department of health, or any officer or agency thereof, or any court on application or at the instance of any such department, officer or agency, shall order or direct the construction, reconstruction, alteration or demolition of any improvement on a landmark site or in a historic district or containing an interior landmark, or the performance of any minor work upon such improvement, for the purpose of remedying conditions determined to be dangerous to life, health or property, nothing contained in this chapter shall be construed as making it unlawful for any person, without prior issuance of a certificate of no effect on protected architectural features or certificates of appropriateness or permit for minor work pursuant to this chapter, to comply with such order or direction.

b. The department of buildings, fire department or department of health, as the case may be, shall give the commission as early notice as is practicable, of the proposed issuance or issuance of any such order or direction.

§ 25-313 Public hearings; conferences.

a. The commission shall give notice of any public hearing which it is required or authorized to hold under the provisions of this chapter by publication in the City Record for at least ten days immediately prior thereto.

The owner of any improvement parcel on which a landmark or a proposed landmark is situated or which is a part of a landmark site or proposed landmark site or which contains an interior landmark or proposed interior landmark, or any property which includes a scenic landmark or proposed scenic landmark shall be given notice of any public hearing relating to the designation of such proposed landmark, landmark site, interior landmark or scenic landmark, the amendment to any designation thereof or the proposed rescission of any designation or amendment thereto. Such notice may be served by the commission by registered mail addressed to the owner or owners at his or her or their last known address or addresses, as the same appear in the records of the office of the commissioner of finance or if there is no name in such records, such notice may be served by ordinary mail addressed to "Owner" at the street address of the improvement parcel or property in question. Failure by the commission to give such notices shall not invalidate or affect any proceedings pursuant to this chapter relating to such improvement parcel or property.

b. At any such public hearing, the commission shall afford a reasonable opportunity for the presentation of facts and the expression of views by those desiring to be heard, and may, in its discretion, take the testimony of witnesses and receive evidence; provided, however, that the commission, in determining any matter as to which any such hearing is held, shall not be confined to consideration of the facts, views, testimony or evidence submitted at such hearing.

c. The commission may delegate to any member or members thereof the power to conduct any such public hearing and to hold any conference required to be held under the provisions of sections 25-306 and 25-310 of this chapter.

d. The commission, may, in its discretion, direct that notice of any such public hearing on a request for a certificate of appropriateness, or on any plan formulated by the commission in relation thereto, be given by the applicant to such owners of property in the neighborhood of the improvement or improvement parcel to which such request relates, as the commission deems proper. When so directed, the applicant shall mail a notice of such hearing to such owners, at their last known addresses, as the same appear in the records of the office of the commissioner of finance, and shall likewise mail a notice of such hearing to persons who have filed written requests for such notice with the commission. A reasonable period of time, as prescribed by the regulations of the commission, shall be afforded the applicant for giving notice of such hearing to such owners and persons. Any failure to give or receive such notice shall not invalidate any such hearing or any determination made by the commission with respect to such request for a certificate or with respect to such plan.

§ 25-314 Extension of time for action by commission. Whenever, under the provisions of this chapter, the commission is required or authorized, within a prescribed period of time, to make any determination or perform any act in relation to any request for a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work, the applicant may extend such period of time by his or her written consent filed with the commission.

§ 25-315 Determinations of the commission; notice thereof.

a. Any determination of the commission granting or denying a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work shall set forth the reasons for such determination.

b. The commission shall promptly give notice of any such determination, and of any preliminary determination of insufficient return made pursuant to paragraph one of subdivision a of section 25-309 of this chapter, to the applicant. Such notice shall include a copy of such determination.

c. Subject to the provisions of section 25-304 of this chapter, any determination of the commission granting a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work may prescribe conditions under which the proposed work shall be done, in order to effectuate the purposes of this chapter, and may include recommendations by the commission as to the performance of such work, provided that the provisions of this subdivision shall not apply to any notice to proceed granted pursuant to the provisions of subdivisions g and i of section 25-309 of this chapter.

§ 25-316 Transmission of such certificates and applications to proper city agency. In any case where a certificate of no effect on protected architectural features, certificate of appropriateness or notice to proceed is granted by the commission to an applicant who has filed with the commission a copy of an application for a permit from the department of buildings, the commission shall transmit such certificate or a copy of such notice to the department of buildings. In any case where any such certificate or notice is granted to an applicant who has filed an application for a special permit with the city planning commission or the board of standards and appeals pursuant to article seven of the zoning resolution, the commission shall transmit such certificate or a copy of such notice to the planning commission or the board of standards and appeals, as the case may be.

§ 25-317 Criminal punishments and fines.

a. Any person who violates any provision of subdivision a of section 25-305 of this chapter or any order issued by the chair with respect to such provisions shall be guilty of a misdemeanor and shall be punished by a fine of not more than ten thousand dollars and not less than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

b. Any person who violates any provision of subdivision a of section 25-310 of this chapter or any provision of section 25-311 or any order issued by the chair with respect to such provisions shall be punished, for a first offense, by a fine of not more than one thousand dollars and not less than five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment, and shall be punished for a second or subsequent offense, by a fine of not more than five thousand dollars or less than two thousand five hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

c. Any person who willfully makes any false statement or an omission of material fact in an application or request to the commission for a certificate, permit or other approval or in any document submitted to the commission certifying the correction of a violation, shall be punished by a fine of not more than five thousand dollars or less than one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

d. For the purpose of this subdivision, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or any violation of the provisions of section 25-311 of this chapter or any order issued by the chair with respect to such provisions, shall constitute a separate violation.

§25-317.1 Civil penalties.

a. Any person who violates any provision of sections 25-305 or 25-310 or subdivision c of section 25-317 or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered by the corporation counsel in a civil action in any court of competent jurisdiction. Such civil penalty shall be determined as follows:

1. The defendant shall be liable for a civil penalty of up to the fair market value of the improvement parcel, with or without the improvement, whichever is greater, where in violation of such provision or order:

(a) all or substantially all of an improvement on a landmark site or within a historic district has been demolished;

(b) work has been performed or a condition created or maintained which significantly impairs the structural integrity of an improvement on a landmark site or within a historic district; or

(c) work has been performed or a condition created or maintained which results in the destruction, removal or significant alteration of more than fifty percent of the square footage of two facades of an improvement on a landmark site or within a historic district, including party and sidewalls.

2. Where, in violation of such provision or order, work is performed or a condition is created or maintained which results in the destruction, removal or significant alteration of a significant portion of the protected features identified in the designation report of an interior landmark, the defendant shall be liable for a civil penalty equal to two times the estimated cost of replicating the protected features that were demolished, removed or altered.

3. All other violations. The defendant shall be liable for a civil penalty of not more than five thousand dollars.

4. For the purposes of this subdivision, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or any order issued by the chair with respect to such provisions shall constitute a separate violation.

b. In addition to or as an alternative to any of the remedies and penalties provided in this chapter, any person who violates any provision of sections 25-305 or 25-310 or subdivision c of section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered in an administrative proceeding before the office of administrative trials and hearings, the environmental control board or other administrative tribunal having jurisdiction as hereinafter provided.

(1). An administrative proceeding for civil penalties shall be commenced by the service of a notice of violation in accordance with the applicable law and rules governing the procedures of the administrative tribunal before which the notice of violation is returnable or as otherwise provided by the rules of the commission. The notice of violation shall identify the allegedly illegal conditions or work with reasonable specificity. As used in this subdivision, the term "reasonable specificity" shall mean a description of work or conditions, reasonably described giving the circumstances, sufficient to inform a reasonable person that (1) work has been or is being done without an appropriate approval from the commission or (2) conditions have been created or are being maintained in violation of this chapter. Such administrative tribunal shall have the power to impose civil penalties in accordance with this chapter. A judgment of an administrative tribunal imposing civil penalties may be enforced by the commencement of a civil action or proceeding in a court or as otherwise authorized by the applicable law governing the procedures of such administrative tribunal. Prior to serving a notice of violation, the chair shall serve a warning letter upon a respondent either personally or by mail in the manner provided by the rules of the commission. The warning letter shall inform the respondent that the chair believes the respondent has violated the provisions of this chapter, shall describe generally the allegedly illegal conditions and/or activities, shall warn the respondent that the law authorizes civil penalties for such violations, and shall provide the

respondent with a grace period for removing or applying for a permit to legalize or otherwise address the allegedly illegal conditions. No such warning letter shall be required prior to the service of a notice of violation where (i) the subject violation is a second or subsequent offense, (ii) the subject violation is alleged to be an intentional violations, or (iii) the chair is seeking civil penalties for failure to comply with a stop work order, issued pursuant to this chapter.

(2) Except as otherwise specifically provided in this chapter, where a respondent has been found liable for or admitted liability to a violation of this chapter in an administrative proceeding, a civil penalty for such violation shall be imposed in accordance with the schedule set forth below.

(a) Type A violation.

(i) First offense. The respondent shall be liable for a civil penalty of not more than five thousand dollars.

(ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than two hundred fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the day the respondent was found liable for or admitted liability to the prior violation, but in no event shall the civil penalty be less than the maximum possible penalty for a first offense.

(b) Type B violation.

(i) First offense. The respondent shall be liable for a civil penalty of not more than five thousand dollars.

(ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the day the respondent was found liable for or pled guilty to the prior violation, but in no event shall the penalty be less than the maximum possible penalty for a first offense.

(3) Notwithstanding the penalty schedule set forth above, the chair may, in his or her discretion, for good cause shown, recommend that a lesser or no civil penalty be imposed on a respondent in an administrative proceeding.

(4) Restrictions on service of notice of violation for a second or subsequent offense.

(a) The chair shall not serve a notice of violation for a second or subsequent offense unless (i) more than twenty-five days have elapsed since the respondent was found liable or admitted liability in the prior proceeding and (ii) where the respondent in the prior proceeding has submitted an application to the commission for an appropriate approval to legalize or to undertake the work necessary to cure the condition underlying the prior proceeding, more than thirty days have elapsed since such application has been disapproved or denied in whole or in part or if granted, such approval by its terms has expired. If the respondent has filed more than one such application with the commission, the thirty day period shall commence after the first such application has been disapproved or denied in whole or in part or, if granted, by its terms has expired.

(b) Nothing in this subdivision shall prohibit the chair, subject to the rules of the administrative tribunal having jurisdiction over the proceeding, from serving an amended notice of violation for the purpose of clarifying the allegedly illegal conditions referred to in the prior notice of violation, or from serving a subsequent notice of violation that alleges separate

violations of this chapter. An amended notice of violation shall be returnable on the same date and before the same administrative body as the initial notice of violation.

(5) Multiple violations incurred for the same work. If work, reasonably identified in a notice of violation, was done without an appropriate approval from the commission, the total amount of any civil penalty for such work shall be determined by, to the extent feasible, separately considering and assessing a penalty for each type of work and/or each distinct effect on the protected features of the landmark, exterior landmark or improvement in a historic district. In no event shall the civil penalty exceed five thousand dollars for a first offense. Where the respondent is the owner, separate penalties shall not be assessed for each type of work and/or each distinct effect if the illegal work was performed during a period of time when the premises were leased to and under the control of a person other than the owner.

(6) Grace period.

(a) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation, the respondent concedes liability for the violation and supplies the commission with proof, satisfactory to the commission, that the violation has been corrected. If the respondent makes any misrepresentation or omission of a material fact to the commission regarding the removal of the violation, the respondent shall be liable for a civil penalty of not more than ten thousand dollars.

(b) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation the respondent concedes liability for the violation and submits an application to the commission for approval to legalize or to undertake the work necessary to cure the violation.

(c) The provisions of this paragraph shall not apply to a second or subsequent offense or where the respondent is alleged to have violated a stop work order or where the respondent has after the issuance of a warning letter pursuant to paragraph one of subdivision (b) of section 25-317.1 applied for and received a permit to cure or otherwise address a violation, and the respondent has failed to cure the violation pursuant to the terms of such permit.

§25-317.2 Violations of landmarks laws: enforcement.

a. Stop-work orders.

(1) An order to stop work may be issued by the chair, or his or her authorized representative, at any time when the chair reasonably believes that work is being performed in violation of the provisions of this chapter. Each order issued by the chair shall have his or her signature affixed thereto, but the chair may authorize any subordinate to affix such signature.

(2) Such orders may be given orally or in writing to a person in charge or apparently in charge of the improvement or involved in the work being performed thereon or may be served on the owner or the person in charge of the improvement parcel as otherwise provided in the commission's rules. The police department and the department of buildings shall, upon the request of the chair, assist the chair in the enforcement of such orders. Where the order is given orally a written notice of such order shall be mailed to the person to whom the order was addressed or affixed to the premises where the violation occurred within forty-eight hours after service of such oral order.

b. Contents of orders. All stop work orders issued by the chair shall identify the allegedly illegal conditions or work with reasonable specificity. As used in this subdivision, the term "reasonable specificity" shall mean a description of work or conditions, reasonably described given the circumstances, sufficient to inform a reasonable person that (1) work has been or is being done without an appropriate approval from the commission or (2) conditions have been created or are being maintained in violation of this chapter. The order shall also identify the subject premises by the tax block and lot or street address, and shall be addressed to a person in charge of the improvement, or to a person who is alleged to have created the illegal conditions or performed, authorized, overseen or permitted the illegal work. The chair may issue a separate order to each person who, as a result of the same condition or work, is alleged to have violated the provision of this chapter.

c. In addition to any of the remedies or penalties provided for in this section, failure to comply with a stop work order shall be subject to the payment of a civil penalty in the sum of five hundred dollars for each day there is non-compliance, to be recovered in a civil action brought in the name of the chair or in an administrative proceeding before the office of administration trials and hearings, the environmental control board or other administrative tribunal having jurisdiction.

d. Enforcement proceedings.

(1) Upon the violation of any provision of this chapter, or the failure to comply with any stop-work order issued by the chair thereunder, or whenever any person is about to engage in or is engaging in any act or practice that may constitute a violation of any provision of this chapter, the chair may request the corporation counsel to institute all necessary actions and/or proceedings to restrain, correct or abate such violation or potential violation, to compel compliance with such order and/or to seek civil penalties pursuant to this chapter. The corporation counsel may institute such actions or proceedings as may be necessary and appropriate for such purposes.

(2) Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of appropriate jurisdiction. In such actions or proceedings, the city may apply for restraining orders, preliminary injunctions or other provisional remedies, with or without notice.

e. Notice of violation; presumptive evidence. In any action or proceeding founded upon a claim by the chair that any law or rule enforceable by the commission has been violated, or that a lawful order issued by the chair has not been complied with, a notice of violation shall be presumptive evidence of any matter stated therein.

f. In addition to police officers, officers and employees of the commission and employees of other city agencies designated by the chair may enforce the provisions of this chapter and may issue summonses and appearance tickets returnable in criminal court and notices of violation returnable before the environmental control board, the office of administrative trials and hearings or other administrative tribunal having jurisdiction.

§ 25-318 Reports by commission on plans for proposed projects.

a. Plans for the construction, reconstruction, alteration or demolition of any improvement or proposed improvement which:

- (1) is owned by the city or is to be constructed upon property owned by the city;
and

(2) is or is to be located on a landmark site or in a historic district or contains an interior landmark;

shall, prior to city action approving or otherwise authorizing the use of such plans with respect to securing the performance of such work, be referred by the agency of the city having responsibility for the preparation of such plans to the commission for a report. Such report shall be submitted to the mayor, the city council and to the agency having such responsibility and shall be published in the City Record within forty-five days after such referral.

b. (1) No officer or agency of the city whose approval is required by law for the construction or effectuation of a city-aided project shall approve the plans or proposal for, or application for approval of, such project, unless, prior to such approval, such officer or agency has received from the commission a report on such plans, proposal or application for approval.

(2) All such plans, proposals or applications for approval shall be referred to the commission for a report thereon before consideration of approval thereof is undertaken by any such officer or agency, and the commission shall submit its report to each such officer and agency and such report shall be published in the City Record within forty-five days after such referral.

c. Except as provided in subdivision d of section 25-303, where the commission so requests, plans for the construction, reconstruction, alteration or demolition of any landscape feature of a scenic landmark shall, prior to city action approving or otherwise authorizing the use of such plans with respect to securing the performance of such work, be referred by the agency of the city having responsibility for the preparation of such plans to the commission for a report. Such report shall be submitted to the mayor, the city council and to the agency having such responsibility and shall be published in the City Record within forty-five days after such referral. No such report shall recommend disapproval of any such plans where land contour work or earthwork is necessary in order to conform with applicable laws concerning regulation of lots, storm water disposal and water courses. The commissioner of parks and recreation may request an advisory report concerning work proposed to be performed on, or in the vicinity of, a scenic landmark, and such report shall be published in the City Record.

d. In addition to the powers conferred by this chapter, the commission shall have the powers specifically conferred upon it by chapter thirty-seven of the charter.

§ 25-319 Regulations. The commission may from time to time promulgate, amend and rescind such regulations as it may deem necessary to effectuate the purposes of this chapter, including but not limited to, regulations:

(a) for the protection, preservation, enhancement, and perpetuation and use of landmarks, interior landmarks, scenic landmarks and historic districts, subject to the provisions of section 25-304 of this chapter. Such regulations may apply to one or more historic districts or to one or more portions of a historic district and may vary from area to area in their provisions;

(b) relating to the determination of the earning capacity of improvement parcels by the commission pursuant to section 25-309 of this chapter;

(c) relating to the procedures of the commission in carrying out its functions, powers and duties under this chapter, including procedures for the giving of notice by the commission by mail or otherwise, where notice is required by this chapter; and

(d) relating to forms to be used in proceedings before the commission.

§ 25-320 Investigations and reports. The commission may make such investigations and studies of matters relating to the protection, enhancement, perpetuation or use of landmarks, interior landmarks, scenic landmarks and historic districts, and to the restoration of landmarks, interior landmarks, scenic landmarks and buildings in historic districts as the commission may, from time to time, deem necessary or appropriate for the effectuation of the purposes of this chapter, and may submit reports and recommendations as to such matters to the mayor and other agencies of the city. In making such investigations and studies, the commission may hold such public hearings as it may deem necessary or appropriate.

§ 25-321 Applicability. The provisions of this chapter shall be inapplicable to the construction, reconstruction, alteration or demolition of any improvement on a landmark site or in a historic district or containing an interior landmark, or of any landscape feature of a scenic landmark, where a permit for the performance of such work was issued by the department of buildings, or, in the case of a landscape feature of a scenic landmark, where plans for such work have been approved, prior to the effective date of the designation, or amended or modified designation, pursuant to the provisions of section 25-303 of this chapter, first making the provisions of this chapter applicable to such improvement or landscape feature or to the improvement parcel or property in which such improvement or landscape feature is or is to be located.

§25-322 Notification; lease notification.

a. Upon designation by the commission of any improvement or property as a landmark and of any landmark site, interior landmark or historic district, or any amendment of such designation, the owner of such improvement or property shall be notified in writing of such designation by the commission. Such notice shall be sent to the owner or owners at his or her or their last known address or addresses, as the same appear in the records of the office of the commissioner of finance or if there is no name in such records, such notice may be sent to the street address of the improvement parcel or property in question, addressed to "Owner". The failure by the commission to give notice of designation as required by this subdivision shall not invalidate or affect any actions or proceedings pursuant to this chapter relating to such improvement parcel or property, except that no action or proceeding pursuant to subparagraph d of this section shall be commenced until thirty days after such notice has been given.

b. It shall be the duty of the owner or person in charge of an improvement or property that is a landmark, interior landmark or is located on a landmark site or within a historic district to ensure that every lease or sublease, or renewal thereof, between the owner or such other person in charge as lessor and a nonresidential tenant as lessee and concerning such improvement or property shall contain a notice, conspicuously set forth therein, stating that in accordance with sections 25-305, 25-306, 25-309 or 25-310 of this chapter the lessee must obtain a permit from the commission before commencing any exterior or interior work on the improvement or property, except for ordinary repair and maintenance as that term is defined in subdivision r of

section 25-302 of this chapter. When an improvement or property is designated a landmark, interior landmark or as part of a historic district during the term of a lease or sublease of all or a portion of such improvement or property, the lessor of such lease or sublease shall, within thirty days after being notified in writing of such designation by the commission or a person in charge, send a written notice as described above to all nonresidential lessees of such lessor. Such notice shall be sent by certified or registered mail, return receipt requested to all nonresidential lessees on the first two floors of the improvement or property, and shall be sent to all other nonresidential lessees by any means reasonably designed to ensure that notice is given.

c. The commission shall promulgate such regulations as it deems necessary to comply with the provisions of this section, with respect to notice requirements in all nonresidential leases for buildings under its jurisdiction.

d. Any person who violates subdivision b of this section, or the regulations promulgated hereunder, shall be subject to a civil penalty of not more than five hundred dollars per violation which shall be returnable to the environmental control board.