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Plenty of Bark, But Not Much Bite: Putting Teeth Back into Historic Preservation Enforcement in D.C.

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Introduction

Washington, D.C. has one of the largest inventories of protected historic buildings of any city in the United States. Over 25,000 structures stand within the city's borders that are either individually landmarked or contributing buildings within a historic district. These buildings are covered by statutory protection designed to prevent alteration or demolition without consultation with the Office of Historic Preservation (HPO) and/or the D.C. Historic Preservation Review Board (HPRB). Enforcement of these protections relies on HPO's inspectors.

While the District currently employs two historic preservation inspectors, recent changes in the structure of HPO and other D.C. bureaucracies brought about a staff reduction in historic preservation enforcement – hampering the city's best efforts to shepherd the buildings within its charge.¹ In the last several years the number of enforcement actions carried out by HPO has declined precipitously, reflecting inefficiencies symptomatic of the new arrangement. Without significant changes to the current mode of operation, HPO inspectors will be forced to continue enforcement triage while allowing the majority of infractions to escape without consequence. This in turn has a detrimental impact on the number of fines assessed by HPO inspectors, thereby reducing the amount of funds available for historic preservation projects.

This is a policy paper, and as such, will lay out in detail the current structure and practices of the historic preservation regime in Washington D.C., analyze its strengths

¹ In contrast to D.C., New York City's Landmark Preservation Commission (LPC), which is responsible for 1,145 individual landmarks and over 23,000 properties, employs only one full time inspector for the entire city. However, the LPC consists of fifty full-time staff members and is the largest municipal preservation agency in the United States. See generally <http://www.nyc.gov/html/lpc/html/home/home.shtml> (last visited May 11, 2007).

and weaknesses and provide recommendations for improving the process and its overall efficacy. Part I of the paper will separate the enforcement process into its component steps in order to examine the means by which they are performed. In Part II, a case study will be presented to illustrate the realities confronted by HPO inspectors and to provide contextual reference in which to consider the capacity of extant procedure. Part III will examine the administration of building code enforcement by the Department of Consumer and Regulatory Affairs (DCRA), to compare how HPO's sister agency enforces regulations under its jurisdiction.² Finally, in Part IV, recommendations will be provided for potential solutions to HPO's most pressing problems as well as long term structural changes that may increase the inspectors' efficacy.

Part I

HPO/HPRB—Jurisdiction and Organization

The Historic Landmark and Historic District Protection Act of 1978 (HPA) provides the legislative mandate for all city historic preservation enforcement actions.³ Proactive enforcement of the Act and its corresponding regulations can be found in Section 2 which states, “the purposes of this act are . . . [t]o retain and enhance those properties which contribute to the character of the historic district . . . assure that alterations of existing structures are compatible with the historic district; and . . . assure

² Although historic preservation regulations are also building codes, DCRA is assigned to exclusively enforce standard, i.e. non-historic preservation building codes. City building code provisions can be found in D.C. CODE §§6-1401-11(2007). Building code regulations can be found in D.C. MUN. REGS. titles 12A - 12J (2003).

³ D.C. Law 2-144, most recently amended by Bill 16-195, known as the Historic Preservation Amendment Act of 2006 (HPAA 06). The Act can be found in D.C. CODE §§6-1101-15, and online at http://www.grc.dc.gov/grc/cwp/view,a,1205,q,447198,pm,1,grcNav_GID,1423,.asp (last visited April 10, 2007).

that new construction and subdivision of lots within the historic district are compatible with the character of the historic district.”⁴ To facilitate this objective, the Act authorizes the Mayor to establish a nine member Historic Preservation Review Board (HPRB). The Board is tasked with designating and maintaining the city’s inventory of historic landmarks and districts as well as advising the Mayor on permit applications’ compatibility with the Act.⁵

The HPRB is served by the professional staff and inspectors of the Office of Historic Preservation within the Office of Planning. Until 2000, HPO existed within D.C.’s main permitting agency, the Department of Consumer and Regulatory Affairs. In 2000, HPO was transferred out from DCRA and into the Office of Planning.⁶ The transfer was initiated to broaden HPO’s scope of responsibilities beyond permit administration and on to greater policy and planning functions.⁷ Pursuant to this change, HPO’s historic preservation enforcement function was likewise transferred from DCRA to the Office of Planning. Previously, HPO’s enforcement arm had co-existed with the District’s other building code inspectors in the Office of Civil Infractions (OCI), the building code enforcement division of DCRA. However, none of the administrative staff which had supported the historic preservation inspectors within OCI were concomitantly

⁴ D.C. CODE §§6-1101(a)(b)(1)(A)-(C) (2007). Although these subsections refer specifically to properties in historic districts, the appropriation of enforcement powers is similarly read into the Code’s jurisdiction over historic landmarks and archaeological sites designated as historic landmarks.

⁵ D.C. CODE §6-1103(c) (2007).

⁶ Omnibus Budget Revision Act of 2000.

⁷ Conversation with David Maloney, Deputy State Historic Preservation Officer, Historic Preservation Office (April 10, 2007).

transferred, leaving the HPO inspectors solely responsible for both the inspection and administrative functions once performed while within OCI.⁸

The HPA grants the HPRB power of review over new construction and subdivisions in historic districts as well as demolition and alterations of historic landmarks and structures within historic districts.⁹ However, ultimate authority to authorize permits rests with the Mayor, who has delegated this duty to a Mayor's Agent. The Mayor's Agent is the Director of the Office of Planning who, for practical purposes, assigns the permit approval function to the Director of HPO, assisted by the HPRB in certain circumstances.¹⁰ The HPA requires that HPRB provide recommendations to the Mayor's Agent (Director) on the conformity of permit applications with the purposes of the Act.¹¹ Should the HPRB recommend against granting the permit, it must notify the applicant in writing of its recommendation and reasoning.¹² Should the applicant appeal a recommendation of denial by the HPRB, the appeal is heard by the Mayor's Agent (Hearings).

Although the Mayor's Agent (Director) is not bound by HPRB's recommendations, the decision to issue a permit must be made in accordance with the requirements of the Act. In the case of demolitions, alterations and subdivisions, the Mayor's Agent (Director) may not recommend a permit issue unless he finds its issuance

⁸ Interview with Toni Cherry, Senior Enforcement Officer, Historic Preservation Office (March 21, 2007).

⁹ D.C. CODE §§ 6-1104, 6-1105, 6-1106, 6-1107 (2007).

¹⁰ D.C. CODE § 6-1102(8)(2007). The Mayor's Agent for historic preservation permits is the Director of the Office of Planning. For purposes of this paper, this mayor's agent will be referred to as the "Mayor's Agent (Director)." However, also called the Mayor's Agent is the person who hears appeals from the HPRB. For purposes of this paper he is called the "Mayor's Agent (Hearings)," as noted in HPO's regulations. *See* D.C. MUN. REGS. tit. 10A § 104 (2002).

¹¹ D.C. CODE §§ 6-1104(b), 6-1105(b), 6-1106(b), 6-1107(b) (2007).

¹² D.C. CODE §§ 6-1104(d), 6-1105(d), 6-1106(d), 6-1107(d) (2007).

necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.¹³ Permits for new construction shall be recommended for issue by the Mayor unless found to be incompatible with the design of the building and the character of the historic district or landmark. However, if the Mayor finds that issuance of the permit is necessary to allow construction of special merit; this consideration trumps a finding of incompatibility.¹⁴

Permits: Application, Review and Issuance

The HPA makes it unlawful for any person to alter or demolish any building subject to the Act without first receiving a permit.¹⁵ It is likewise unlawful for a person acting under the authority of a permit to commence alteration or demolition outside of the conditions of the permit, or to fail to complete work stipulated as a condition of the permit.¹⁶ All permits for work conducted on a historic property are issued by DCRA, which serves as the City's permit issuing clearinghouse and enforcement agency.¹⁷

To receive a permit for any alteration, demolition or new construction, the property owner must first submit an application to DCRA indicating the nature of work to be performed.¹⁸ Depending on the scope of the project, the application may require scale

¹³ D.C. CODE §§ 6-1104(e), 6-1105(f), 6-1106(e) (2007).

¹⁴ D.C. CODE §§ 6-1107(f) (2007).

¹⁵ D.C. CODE § 6-1109.1(a)(2007). This is similarly true for construction on non-historic buildings. *See* D.C. MUN. REGS. tit. 12A § 105.1.4 (2003).

¹⁶ D.C. CODE § 6-1109.1(b) (2007).

¹⁷ D.C. CODE § 6-1405.01 (2007).

¹⁸ Permits may be applied for by the property owner or their agent, including contractors, architects or attorneys.

drawings, schematics, environmental impact studies and other ancillary documentation.¹⁹ Applications proposing the alteration of the exterior of a structure must include plats drawn to scale showing the exterior lines of the building and plot dimensions. A permit will not be granted until the application is reviewed by all of the relevant disciplines and agencies, including the HPRB.²⁰

In the event that a property is either an historic landmark or a contributing structure located within an historic district, DCRA will forward the application to HPRB. Upon receiving an application, HPO staff first reviews it to determine whether it clearly meets the standard prescribed by the HPA. If so, it the permit will be approved under the authority of the Mayor's Agent.²¹ Similarly, the application will be denied if the staff determines that it fails to meet the standards of the HPA. Applications which do not fall within either of the preceding categories are referred to the HPRB to be decided at a public hearing.

Historic Preservation Review Board hearings, while formal and on the record, more closely resemble mediated dispute resolutions than adversarial proceedings. At the hearing the homeowner (or her agent) presents the proposed plan to the Board. In turn, Board members suggest design changes that might bring the design into compliance with the HPA. Once a compromise has been reached, the Board holds a vote on the plan and a majority decides whether to recommend that the Mayor approve or deny the permit application. Applications for complex alterations or large scale construction may come

¹⁹ A thorough description of the permit process and required documents can be found at the DCRA website: <http://dcra.dc.gov> (last visited April 20, 2007).

²⁰ Relevant disciplines include zoning review, mechanical and plumbing, electrical, fire and structural review.

²¹ D.C. MUN. REGS. tit. 10A § 319 (2003).

before the board several times prior to final approval. Once HPRB approves the application, it is forwarded back to DCRA to be routed through the remainder of the permit process.

To increase the likelihood that a controversial design will be approved, applicants may opt to participate with the HPO in a conceptual design review process.²²

The purpose of conceptual design review is to allow applicants to benefit from the guidance of the Review Board and Commission of Fine Arts, or both, in advance of a permit application, and to allow the Board and CFA to review and take action at an early stage of design. Once completed, the process further enables the delegation of final permit review to the staff when appropriate.²³

By working with HPO staff early in the design process, the applicant may gain the staff's support of the project, increasing the likelihood of avoiding costly alterations suggested by HPRB once the application is submitted for review.

Alternatively, the applicant may put forward a design for preliminary review by the Mayor's Agent.²⁴ Under preliminary review, the proposed plans, having received zoning approval, are submitted to the Mayor's Agent for review and a preliminary assessment of compliance.²⁵ However, the Mayor's Agent will likely refer to HPO staff for input—making conceptual design review the preferred process. Neither conceptual design review nor preliminary review may be substituted for the application and approval of a construction permit.²⁶ These processes are intended to encourage applicants of large

²² D.C. MUN. REGS. tit. 10A § 301 (2003).

²³ D.C. MUN. REGS. tit. 10A § 301.2 (2003).

²⁴ D.C. MUN. REGS. tit. 10A § 302 (2003).

²⁵ D.C. MUN. REGS. tit. 10A §§ 302.2-2.3 (2003).

²⁶ D.C. MUN. REGS. tit. 10A §§ 301.3, 302.4 (2003).

scale or controversial projects to begin working with HPO early in the project cycle in order to avoid costly revisions and delays.

Enforcement Procedure – Permits

The Historic Preservation Act delegates to HPO responsibility for enforcing the penalty provisions stipulated by the Act.²⁷ Although not enforced by DCRA, the historic preservation regulations are Building Code provisions specifically applicable to preservation of historic landmarks and districts. Under the Act, the Mayor delegates to HPO the power to enforce the Act’s regulations pursuant to a written agreement with and under the authority of the Building Code Official.²⁸ This provision provides HPO inspectors with the statutory authority to assess fines for violations of the Act.

Nearly every kind of construction or physical alteration to a property requires a permit. Although municipal regulations state that “replacement in kind” of certain architectural accessories such as windows, shingles and fences does not require a permit, the D.C. Municipal Regulations except historic structures from this provision.²⁹

The HPO has several modes of recourse for addressing offenses where work has commenced on a protected structure without a permit or construction is completed outside the conditions of a permit (or in defiance of a denied permit). The HPA subjects offenders to criminal and civil penalties as well as civil fines for violations of the Act and

²⁷ D.C. CODE § 6-1110(d)(1) (2007).

²⁸ D.C. CODE § 6-1110(d)(2) (2007).

²⁹ D.C. MUN. REGS. tit. 12 § 102.6.4 (2003). “[R]eplacement in kind,” when applied to architectural features, means replacement with a feature of like material that replicates the existing feature in proportion, appearance, texture, design, detail and dimensions. D.C. MUN. REGS. tit. 12 § 105.2(9) (2003). The exception of protected structures from the “replacement in kind” permit waiver explains in part why the installation of nonconforming windows and doors is a common source of HPA permit violations. Better educational outreach to historic districts as to the regulations imposed on these features may prevent inadvertent, yet costly, violations of the Act.

its regulations.³⁰ Criminal penalties include, “upon conviction, [fines of] not more than \$1,000 for each day a violation occurs or continues or . . . [imprisonment] for not more than 90 days, or both.”³¹ Criminal penalties, as such, must be brought in D.C. Superior Court by the Office of the Attorney General for the District of Columbia.³² While criminal penalties are the most serious form of recourse available to HPRB they have never been implemented.³³ Reliance on the Attorney General’s office to bring charges requires the diversion of scarce resources away from other criminal prosecutions, explaining HPO’s reluctance to pursue criminal charges.

In addition to criminal penalties, the Preservation Act also provides for civil penalties. The Act requires that any person who demolishes, alters or constructs a building in violation of the Act “shall be required to restore the building or structure and its site to its appearance prior to the violation.”³⁴ However, like criminal penalties, civil penalties must also be brought in D.C. Superior Court by the Attorney General’s office. For the reasons stated above, this enforcement option also has not been pursued.

Finally, the Act provides for civil fines, penalties and fees which may be imposed as an alternative sanction for violations of the Act. Fines, which may be assessed and levied by HPO inspectors, are the enforcement method of choice. As provided by Chapter 32, Title 16 of the D.C. Municipal Regulations, section 3801.2, violations of sections 5, 6 and 8 of the HPA are Class 2 infractions.³⁵ Class 2 infractions, described in

³⁰ D.C. CODE § 6-1110 (2007).

³¹ D.C. CODE § 6-1110(a) (2007).

³² Id.

³³ Conversation with T. Boasberg, Chairman, Historic Preservation Review Board (Feb. 28, 2007).

³⁴ D.C. CODE § 6-1110(b) (2007).

³⁵ This includes “failure to comply with the permit review procedures for demolition, alteration or construction of buildings or structures in historic districts or which are themselves historic landmarks[,] . . .

the Regulations as “serious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity” are subject to a fine of \$1,000 for the first offense.³⁶ The fine amount doubles for each subsequent offense, maxing out at \$8,000 for the fourth and all following offenses.³⁷ While fines do not carry the weight of criminal or civil liability, the threat of a several-thousand-dollar citation provides a strong incentive to property owners to avoid violations of the Act.

Enforcement Procedure – Complaints

All historic preservation enforcement actions begin with a complaint.³⁸ The plethoric number of buildings in D.C.’s historic inventory makes it virtually impossible for HPO inspectors to perform spot checks on permitted construction or regular inspections of historic districts or landmarks.³⁹ Typically, a complaint originates from a concerned citizen aware that their neighborhood is within an historic district, who has noticed a local property owner commencing work without a posted permit.⁴⁰

Reliance on community complaints for the initiation of enforcement proceeding may seem inefficacious, however, HPO inspectors receive far more complaints than they

failure to comply with terms or conditions of approval by the [HPO], [HPRB], or Mayor’s Agent . . . [and] failure to protect a historic building or structure from demolition by neglect.” D.C. MUN. REGS. tit. 16 § 3891.2 (2003); *see also* D.C. CODE §§ 6-1104, 6-1105, 6-1107 (2007); D.C. CODE § 6-1104.02(a) (2007); D.C. MUN. REGS. tit. 10A § 410-11 (2003).

³⁶ D.C. MUN. REGS. tit. 16 §§ 3200.1(b), 3201.1(b)(1) (2003).

³⁷ D.C. MUN. REGS. tit. 16 § 3201.1(b)(4) (2003).

³⁸ Interview with Toni Cherry, Senior Enforcement Officer, Historic Preservation Office (March 21, 2007).

³⁹ Originally, HPO inspectors were hired to uphold Board decisions which might otherwise go unenforced. However, the scope of inspector’s enforcement role has grown to respond to all notifications of HPA violations in the city. *Id.*

⁴⁰ “A photocopy of the permit or the original shall be kept on the site of operations, open to public inspection during the entire time of progression of the work and until it is completed.” D.C. MUN. REGS. tit. 12 § 105.7 (2003).

are able to respond to.⁴¹ Homeowners within historic districts tend to be sensitive to the special regulations applying to their neighborhood and act quickly when unauthorized activity takes place. The inspectors regularly review reported complaints and take action on the most egregious violations first. The highest priority is assigned to un-permitted demolition or alteration of an historic building, or construction completed outside the scope of the granted permit.⁴² Other commonly responded-to violations include nonconforming window and door replacement, illegal signs and awnings and storefront alterations. Historic Preservation Office inspectors also receive tips on HPA violations from DCRA inspectors performing inspections on work permitted outside the HPRB process.⁴³ Similarly, HPA permit violations are often concomitant with other building code violations, of which HPO inspectors notify their DCRA counterparts.

Once a complaint has been filed regarding an historic building, either with DCRA or HPO, the notification is forwarded to the HPO inspectors. The two inspectors' jurisdiction is divided geographically; each is assigned to enforce approximately one-half of the city's inventory.⁴⁴ The inspector assigned to the potential violation first visits the property to observe the work performed and verify the accuracy of the complaint. This preliminary inspection is important for mitigating illicit demolition or alteration that has already begun on the property. Prompt response by the investigator also potentially saves

⁴¹ See *supra* note 38.

⁴² Homeowners attempt to circumvent review of questionable construction by obtaining a permit for the conforming work, then building unapproved structures under the guise of the legitimate permit. This category of violation is commonly populated by unapproved additions such as rooftop decks, which are difficult to observe from street level. *Id.*

⁴³ For example, a DCRA inspector may notice a non-permitted alteration of the building's exterior while on site to inspect electrical or plumbing installations. *Id.*

⁴⁴ *Id.*

the homeowner from continuing illegal work which may be costly to undue.⁴⁵ In the event that the inspector is unable to verify whether there has been a violation based on the on-site permit, the inspector must go to DCRA to obtain copies of all permits and plans related to the property. Upon determining that the work being performed does not conform to the issued permit, or that no permit has been obtained for the work, the inspector creates a case file and begins enforcement proceedings.

Enforcement Procedure – Citations

Depending on the nature and extent of the violation, the inspector, at her discretion, may issue a “notice of violation” (similar to a warning) or a “notice of infraction” (citation with fine).⁴⁶ Analogous to a traffic warning, a notice of violation is issued for minor infractions causing little or no structural alteration.⁴⁷ More serious violations, such as an illegal roof addition or porch replacement, may warrant a notice of infraction. A notice of infraction (NOI) informs the homeowner and/or contractor that construction is not in compliance with the historic preservation provisions of the Building Code and demands abatement of the noncompliance.⁴⁸ It is through the NOI that the inspector levies a fine for the infraction.⁴⁹ The inspector may also impose a deadline for

⁴⁵ Homeowners who are guilty of commencing with illegal construction or demolition often claim ignorance of the law or attempt to shift blame to their contractors. Unlicensed contractors are often party to HPA violations, however, it is not unusual for a licensed contractor to play the odds and commence work without a permit. *Id.*

⁴⁶ D.C. MUN. REGS. tit. 12 § 113.2 (2003).

⁴⁷ *See supra* note 38. Common violations under this category include nonconforming window and door replacement. *See* D.C. MUN. REGS. tit. 10A §§ 2305-12 (2003).

⁴⁸ D.C. MUN. REGS. tit. 12 § 113.2.2 (2003).

⁴⁹ D.C. MUN. REGS. tit. 12 § 113.2.4 (2003).

abatement of the noncompliance, at which time the inspector will reinspect the premises and determine whether subsequent action is warranted.⁵⁰

A notice of infraction is filed in circumstances where the violation is particularly egregious or where the property owner has demonstrated an unwillingness to cooperate with the inspector.⁵¹ A notice of infraction imposes a fine on the property owner and/or contractor and thus a substantially more serious penalty for the violation than does a violation notice.⁵² The notice of infraction records property information pertinent to the violation, identifies the applicable regulation(s) and establishes the fine amount assessed by the inspector.⁵³ The NOI further requires the respondent to return the citation within fifteen days of the date of service, identifying whether she admits, admits with explanation or denies the infraction.⁵⁴

At the inspector's discretion, a stop-work order may be issued contemporaneously to a violation notice or NOI – usually when construction is being performed either without a permit or outside the scope of the permit.⁵⁵ A stop-work order requires the property owner or contractor to cease and desist from performing any further work on the premises until the order is lifted by the “Building Code Official.”⁵⁶ The respondent must submit an appeals form to the Building Code Official who then affirms, modifies or

⁵⁰ See *supra* note 38.

⁵¹ *Id.*

⁵² D.C. MUN. REGS. tit. 12 § 113.2.4 (2003).

⁵³ Notice of Infraction, Form OAH-412, Rev. 1-06 (2006).

⁵⁴ *Id.*

⁵⁵ See *supra* note 38.

⁵⁶ D.C. MUN. REGS. tit. 12 § 114.1 (2003). The Building Code Official is the Administrator for the DCRA Building and Land Regulation Administration. The administration procedure for stop work orders, which are enforcement tools used exclusively in building code violations, is completely separate from that of NOIs under OAH. However, stop work orders are often issued concomitantly with NOIs because of their immediate injunctive power.

reverses the action.⁵⁷ Typically, a stop work order will be lifted without rectification of the nonconforming construction only if the structure is built to code but without a permit.⁵⁸ If the owner receives a second stop work order for continuing construction in violation of the order, the Building Code Official may revoke all permits and suspend the contractor's license.⁵⁹

Enforcement Procedure – The Case File

Upon serving the respondent with the violation notice, NOI or stop-work order, the inspector creates a case file.⁶⁰ If the inspector cannot serve the respondent directly, the inspector forwards the NOI and the owner's last known address to the Office of Administrative Hearings which then serves the order.⁶¹ If the respondent is not the owner of the property, as is often the case with commercial properties, the NOI will be served on the tenant.

The case file consists of an exhibits list, the NOI, certificate of service, photographs of the violation, permits and plans on file and, in the case of a business, business licenses and certificates of occupancy.⁶² The inspector also creates an internal case record to track actions taken on the case while open and in the system.⁶³ The internal case record is crucial to maintaining the forward movement of the case through the system as many case files, especially those involving a denial of the NOI, remain

⁵⁷ D.C. MUN. REGS. tit. 12 § 112.1 (2003).

⁵⁸ *See supra* note 38.

⁵⁹ D.C. MUN. REGS. tit. 12 §§ 105.6(4), 114.2 (2003).

⁶⁰ Unless otherwise noted, from this point on "NOI" will refer to any and all infraction related orders and notices.

⁶¹ OAH Rule 2809 (2006).

⁶² *See supra* note 38.

⁶³ *Id.*

open for months and sometimes years at a time. The contents of the internal case record are also entered into HPO's violation database which contains records of all active and closed cases for the fiscal year.⁶⁴

After assembling the case file, the inspector then scans all of the documents into a computer and forwards them via e-mail to the Office of Administrative Hearings (OAH). A copy of the case file is also sent to the respondent in anticipation of any potential administrative hearings which may arise from the citation.⁶⁵

Administrative Hearings – Responding to the Notice of Infraction

Having been served with a NOI, the respondent must return the citation within fifteen days identifying whether she admits, admits with explanation or denies the infraction.⁶⁶ In the event that the respondent fails to respond the NOI an Administrative Law Judge (ALJ) or clerk from OAH may issue a notice of default which is subject to a fine equal to the amount of the civil fine imposed by the NOI.⁶⁷ After the issue of the notice of default, the inspector may issue a second NOI. If the respondent fails to respond to the second NOI, the ALJ will find the respondent in default and impose the full legally authorized fine.⁶⁸ If the respondent admits to the infraction listed on the NOI, the respondent must pay the full value of the assessed fine directly to OAH.⁶⁹ Once the fine has been paid and the inspector verifies through reinspection that the cited violation

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ D.C. CODE § 1802.02(a) (2006); *see also* Notice of Infraction, Form OAH-412, Rev. 1-06 (2006).

⁶⁷ OAH Rule 2827.1 (2006); *see also* D.C. CODE § 1801.04(a)(2)(A) (2007). This amount is assessed in addition to the original fine, effectively doubling the inspector's fine.

⁶⁸ OAH Rule 2827.5 (2006).

⁶⁹ DC CODE § 1802.02(b) (2007).

has been abated or corrected, the case is closed and recorded in HPO's enforcement database.⁷⁰

If the respondent admits with explanation or denies the NOI, OAH sends out a case management order scheduling an evidentiary hearing. One copy of the case management order is served on the respondent and another to the Deputy State Historic Preservation Officer.⁷¹ If the respondent chooses to admit with explanation, the respondent must submit with the citation a written explanation of mitigating factors for the ALJ to consider when ruling on the fine. Upon receiving the written explanation, the ALJ may adjudicate on the NOI without holding a hearing.⁷² Having reviewed the facts of the case and taken into consideration any explanation provided by the respondent, the ALJ will issue a final order which includes the judgment of the ALJ and the amount of the fine imposed on the respondent.⁷³

If the respondent denies the NOI, an evidentiary hearing will be scheduled by OAH. At the hearing, the inspector will present all relevant photographs, documents and communications with the respondent.⁷⁴ The respondent may likewise present her case to the ALJ, arguing either against the basis of the NOI or that mitigating factors led to the infraction and warrant relief in the final order. Evidentiary hearings typically represent a people's court, where the inspector presents the government's case and the respondent represents herself. However, at her choosing, the respondent may opt to be represented

⁷⁰ By the close of FY 2006, twenty two of thirty seven open cases had been closed, only two of which were closed by simple admission of the violation. Fines paid from those two admissions totaled \$4,020. Of the closed cases, \$5,720 in fines had been paid to OAH while \$25,050 in ordered fines remained outstanding.

⁷¹ David Maloney of HPO is the current Deputy State Historic Preservation Officer.

⁷² OAH Rule 2813.3(b)(2) (2006).

⁷³ See also DC CODE §2-502(11) (2007).

⁷⁴ See also OAH Rule 2803.1 (2006).

by an attorney at the hearing.⁷⁵ Should the respondent seek legal representation, the HPO inspector must request representation by DCRA's General Counsel counsel.⁷⁶ The Office of Historic Preservation has no in-house counsel or contract attorneys to represent or assist the inspectors in legal matters.

In the hearing, after evidence has been presented and cross examinations concluded, if the ALJ feels that the evidence weighs against the respondent the ALJ may, at her discretion, offer the respondent a chance to change plea before the final order is issued.⁷⁷ If the respondent changes plea to admit with explanation, the fine amount will often be reduced. However, if the respondent chooses to maintain a plea of deny and the ALJ renders a decision against the respondent, the full fine amount will be imposed.⁷⁸ In the event that the respondent maintains a plea of deny, the ALJ may make a bench decision at the hearing. However, the ALJ usually issues a written final order on the matter.⁷⁹

Administrative Hearings – Enforcement of the Final Order

Once a final order has been issued and the fine imposed, the respondent must pay the fine to the Office of Administrative Hearings. All fines paid to OAH by respondents for HPA infractions are to be deposited in the Historic Landmark District Protection Fund (HLP Fund). The HLP Fund is established within the D.C. General Fund and earmarked

⁷⁵ OAH Rule 2838 (2006).

⁷⁶ Matthew Green is the DCRA attorney assigned to handle HPO hearings.

⁷⁷ See *supra* note 38.

⁷⁸ Id.

⁷⁹ Id.

for the purposes of preventing demolition by neglect as well as carrying out any other historic preservation program consistent with the HPA.⁸⁰

In the event that the respondent does not pay the fine imposed, the mayor may attach a tax lien to the property; effectively converting the fine into a property tax.⁸¹ The fine then will be enforced as a tax judgment following tax enforcement procedures. Currently, no final judgments on HPO enforcement actions are being enforced through this process.⁸² For lien attachment to be carried through, an HPO staff member is required to record the lien with the Recorder of Deeds so as to attach the lien to the property itself. Furthermore, the lien must be filed with the Office of Tax and Revenue to be attached to the property taxes. No one in HPO is assigned to process this paperwork and OAH does not handle lien attachment for the agencies which it serves.⁸³ Theoretically, a property owner aware of this situation could be assessed a fine, default on that fine, and never be subject to enforcement of the fine. Under the current enforcement regime, if a respondent fails to pay the fine imposed by a citation or a final order, the HPO inspectors' only option is to continue issuing NOIs and pile on the fines.⁸⁴

⁸⁰ DC CODE § 6-1110.1 (2007). This section was added as Section 11a by D.C. Law 16-185, effective Nov. 16, 2006. Currently, the HLP Fund exists within the General Fund and is the repository for all HPO landmark filing fees. However, recent amendments to the HPA made uncertain whether HPO fines were to be applied to the account. In the most recent set of amendments to the HPA passed by City Council in November 2006, the word "fees" was removed from §11a(b)(4). However, the Act continues to clearly state that "[a]mounts assessed and collected as costs *or penalties* under this act" are to be deposited into the HLP fund. DC CODE § 6-1110.1(b)(4) (2007) (emphasis added). The Deputy State Historic Preservation Officer has stated that upon clarification of City Council's intent, an agreement with OAH will be drafted to ensure that all fines resulting from HPO enforcement actions will be deposited into the HLP Fund account. Interview with David Maloney, Deputy State Historic Preservation Officer, (April 19, 2007).

⁸¹ DC CODE § 42-3131.01(d) (2007).

⁸² See *supra* note 38.

⁸³ Id.

⁸⁴ Id.

Part II

John Doe Clothing – Historic Preservation Enforcement at Work

The following case study is presented to demonstrate how the many steps of an HPO enforcement action are carried out and to call attention to the heavy burden placed on inspectors by the current enforcement regime. This study is of an actual case that was recently concluded by an OAH evidentiary hearing. All names and addresses have been altered to protect the privacy of the parties involved.⁸⁵

John Doe Clothing is an upscale clothing retailer located within a shopping mall in the Georgetown neighborhood of Washington, D.C.⁸⁶ John Doe Clothing occupies a retail space facing a commercial strip and has an on-street entrance as well as several large storefront windows. These storefront windows, as well as those of other street-level retailers occupying the same mall are shaded by cloth covered awnings. A permit subject to the review and approval of the Commission of Fine Arts is required for any alteration of the color, size or location of awnings within the Georgetown historic district.⁸⁷

⁸⁵ However, the case and all contents of the case file are part of the public record and may be accessed by request to HPO with reference to NOI No. T100074; or to OAH with reference to Case No. OP-I-06-T100074 (2007).

⁸⁶ Georgetown, by act of Congress, was Washington's first neighborhood to be protected as an historic district and falls within the jurisdiction of the U.S. Commission of Fine Arts. The Old Georgetown Act, (Public Law 81-808) was passed on September 22, 1950. The Act defined the boundaries of Georgetown, and officially designated the area a historic district. The Old Georgetown Act also gave the Commission of Fine Arts the authority to appoint an advisory committee, the Old Georgetown Board, to conduct design reviews of semipublic and private structures within Georgetown's boundaries. While the Old Georgetown Board functions in a capacity similar to the HPRB, all enforcement actions are carried out by HPO staff.

⁸⁷ See D.C. MUN. REGS. tit. 10A § 304.1(g) (2002).

On January 19, 2006, the U.S. Commission of Fine Arts submitted a complaint to HPO that new awnings and signage, which did not conform to the building code, had been erected at John Doe Clothing without a building permit or the Commission's approval. On January 20th the HPO inspector responsible for the Georgetown historic district responded to the complaint, inspected and took photographs of the offending alterations and issued a notice of violation (NOV). Written on the NOV was an order warning John Doe Clothing to remove the illegal awnings or apply for a building permit by March 16, 2006, or else face a \$2,000 fine.⁸⁸ The inspector then began a case file containing a copy of the NOV, photographs of the nonconforming awning and inspection notes. The infraction status was then entered into the HPO enforcement database.

Noticing on April 4, 2006 that the NOV deadline had passed and no building permit had been applied for, the HPO inspector returned to John Doe Clothing to re-inspect for compliance. Observing that the violation had not been abated, the inspector contacted John Doe Clothing's corporate headquarters and was assured that all necessary permits had been received. The inspector extended the permit deadline to April 13th and noted again that a fine would be issued for a failure to comply.

On April 13th, John Doe Clothing applied for a building permit for the existing awnings. The application was forwarded to the Commission of Fine Arts which disapproved the alteration. John Doe Clothing was notified of the denied application on May 19th and instructed to file a new submission in compliance with awning regulations. On September 27, 2006 the inspector returned to re-inspect for compliance and

⁸⁸ Typically, a NOV provides only thirty days for compliance. However, the deadline was extended at the request of the respondent because John Doe Clothing headquarters is located outside of D.C. and would be handling all paperwork.

discovered that the non-conforming awnings had not been removed and no permit had been issued. The inspector then issued a notice of infraction imposing a \$2,000 fine. By December 18, 2006 the first NOI had not been responded to and went into default. A second NOI was issued, increasing the total fine to \$4,000. John Doe Clothing responded to the second NOI with a plea of deny and notified OAH that it would be represented by an attorney at the hearing.⁸⁹ The Office of Administrative Hearings scheduled an evidentiary hearing on the deny plea for February 22, 2007.

Prior to the evidentiary hearing, John Doe Clothing reapplied for a building permit for the awnings. The awning specifications in the new permit conformed to the building code and the permit was granted. In an effort to show good faith, new, conforming awnings were installed prior to the evidentiary hearing date.⁹⁰

In an OAH hearing, the administrative law judge begins by reviewing the notice of infraction. The respondent then stipulates their plea; in this case, the respondent changed their plea from deny to admit with explanation pursuant to an agreement made with DCRA General Counsel.⁹¹ At the February 22 hearing, the City did not object to the change of plea and noted the respondent's cooperation.⁹² The ALJ then stated for the record that the he was not obliged to impose the fine agreed to by DCRA counsel, but would take it into consideration when issuing the final order. In response, the respondent requested that the fine be reduced in light of the respondent's cooperation with HPO and abatement of the violation. The City offered no testimony and relied solely on the facts

⁸⁹ See OAH Rule 2838 (2006).

⁹⁰ Interview with Toni Cherry, Senior Enforcement Officer, Historic Preservation Office (March 21, 2007).

⁹¹ Testimony of Matthew Green, DCRA General Counsel, OAH Hearing OP-I-7-T-1074, March 28, 2007. Typically, HPO inspectors represent the City at OAH hearings. However, if the respondent chooses to be represented by counsel, HPO must be represented by DCRA General Counsel. See *supra* note 75.

⁹² Testimony of Matthew Green, DCRA General Counsel, OAH Hearing OP-I-7-T-1074, March 28, 2007.

presented in the case file. Finally, the ALJ accepted the amended plea and the City's recommendation for a reduced fine. A fine of \$1,000 was imposed on the respondent and the ALJ stated that a written decision would be provided within a few weeks. As of April 1, 2007, the fine remained unpaid.

In the course of enforcing this violation, over twelve months elapsed between the original complaint and abatement of the violation. The HPO inspector was required to visit the property on five separate occasions to inspect and re-inspect for compliance and to issue new citations. Ultimately, three citations were issued; a case file was created containing over fifteen evidentiary exhibits, and OAH, HPO and DCRA resources were expended to achieve a \$1,000 fine. While it is difficult to assess the actual cost to the city to enforce this violation, it is certainly a substantial multiple of the fine assessed.

Part III

Comparing HPO to DCRA

Since the transfer of HPO from DCRA to the Office of Planning, the number of enforcement actions taken by HPO inspectors has dropped dramatically. Prior to the transfer from DCRA and the creation of OAH in 2001, HPO inspectors wrote between seventy and one hundred citations per year.⁹³ Under the current arrangement, the two OAH inspectors are able to process approximately twenty citations per year, nearly an 80% drop.⁹⁴ At the close of the 2006 fiscal year, there were 37 infractions listed in the HPO database; of those, 5 were open cases remaining from 2005, 21 had been closed

⁹³ See *supra* note 90.

⁹⁴ *Id.*

either by final order or payment of the fine and the remaining 16 continued as open files into FY2007.⁹⁵ In FY2006, over \$135,000 in fines had been issued; of which \$38,070 had been dismissed by OAH final order, \$5,720 had been collected and \$29,050 was imposed but remained outstanding.⁹⁶ In contrast, during FY2003, \$77,000 in fines was issued by HPO inspectors and \$20,455 was collected.⁹⁷

The HPO inspectors' citation production has been hamstrung by the combination of a lack of administrative support and increased demands on filing procedures. When operating within DCRA, HPO inspectors were responsible primarily for investigating citations and collecting evidence.⁹⁸ Once a case file was created, it was handed over to the administrative staff of the Office of Civil Infractions (OCI) which is responsible for the enforcement of building codes. Under this bureaucratic structure, HPO inspectors were not required to track cases, manage case files, respond to hearing motions or attend hearings (unless the respondent was represented by counsel). All of the administrative paperwork was handled by OCI staff that concentrated on moving cases through the system.⁹⁹

When HPO was transferred to the Office of Planning, the inspectors were moved as well and subsequently lost the support provided by OCI.¹⁰⁰ Post-transfer, the HPO inspectors remained responsible for field inspections, but were required to take on case tracking, scheduling, evidence production, filing, hearing representation and the drafting of motion responses. The inefficiency inherent in handling voluminous citation-related

⁹⁵ FY2006 HPO Notice of Infraction Report.

⁹⁶ *Id.*

⁹⁷ FY2003 HPO Notice of Infraction Report.

⁹⁸ *See supra* note 90.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

paperwork is compounded by ALJ orders requiring inspectors to respond to various motions within relatively short deadlines.¹⁰¹ Inspectors are often forced to delay inspections of violations in order to handle paperwork that, if delayed, may cause the violation to be dismissed.¹⁰²

Building inspectors working for DCRA perform many of the same duties as HPO inspectors, but are able to turn over a higher number of infractions thanks to the size of OCI's support staff. Like HPO, DCRA's enforcement program is complaint driven.¹⁰³ Once an inspector is assigned to a complaint and performs the initial inspection, the NOI generated is entered into the Remote Access Property Inspection Database (RAPID). The RAPID database automatically dispatches a notice order to the property owner with the violation and potential fine.¹⁰⁴ If upon re-inspection the violation has not been abated, the inspector then creates a case file with photographs and the appropriate paperwork. After the case file has been created it is handed off to the OCI administrative staff. This staff is responsible for tracking the case, maintaining records and communicating with OAH and other city agencies.¹⁰⁵ The inspector does not touch the case file again unless called as a witness for an OAH hearing where the respondent is represented by counsel.¹⁰⁶ The separation of inspectors from paperwork allows them to maximize their time in the field inspecting properties and generating citations.

¹⁰¹ Inspectors are often given between ten and fourteen days to respond to motions, changes of plea and notices of default. *See* FY2007 HPO Notice of Infraction Report.

¹⁰² *See supra* note 90.

¹⁰³ Telephone interview with Nick Majett, Deputy Director for Inspections and Compliance, DCRA (March 21, 2007).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

The Office of Historic Preservation has hired administrative assistants for the inspectors in the past; however, retention has proven to be an issue. In the last three years, two administrative assistants have been hired and both resigned less than a year into the position.¹⁰⁷ Training assistants to fill this position is a time consuming task that can be performed only by the inspectors, diverting their time away from handling cases. Furthermore, the level of familiarity with D.C. bureaucratic procedure and legal documentation required to be proficient in the position creates a long learning curve, taking most assistants approximately a year to become efficient at handling the caseload.¹⁰⁸

Evidentiary hearings also consume HPO inspectors' time, further diverting their attention away from the field. Every hearing generated by a plea of deny must be attended by the issuing inspector.¹⁰⁹ If the inspector fails to appear at the hearing the case will be dismissed and the NOI thrown out. If the respondent chooses to be represented by counsel at the hearing, the City is required to be represented by DCRA General Counsel and the HPO inspector must attend the hearing as a witness.¹¹⁰

In contrast, evidentiary hearings resulting from NOIs issued by DCRA inspectors are handled by three DCRA advocates.¹¹¹ Advocates are contract attorneys who appear in lieu of the DCRA inspector and argue the case on the City's behalf. However, advocates technically do not represent the DCRA in a legal capacity. If the respondent chooses to be represented by an attorney, DCRA General Counsel must represent the

¹⁰⁷ See *supra* note 90.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See *supra* note 103.

agency at evidentiary hearings and the inspector who issued the NOI appears as a witness.¹¹² By minimizing the amount of time spent handling paperwork and attending hearings, DCRA has succeeded in maximizing its inspectors' time in the field.

The OAH evidentiary disclosure requirement, which is more stringent than D.C. Superior Court discovery rules, places a significant burden on both HPO and DCRA inspectors.¹¹³ Upon the scheduling of a hearing, OAH requires that the City serve to the respondent all evidence that will be presented at the administrative hearing.¹¹⁴ If the respondent returns a plea of admit, the case will be closed and the evidence in the case file goes unused. However, if the respondent pleads admit with explanation or deny, the entire case file must be transmitted both to the respondent and to OAH.¹¹⁵ The agency which issued the NOI is responsible for serving the respondent with the case file, not OAH.¹¹⁶ Because of this evidentiary requirement, inspectors must approach every NOI as though it were going before an ALJ, even though many never do.

The OAH evidentiary requirement creates a disincentive for inspectors to issue fine-bearing notices of infraction. Notices of violation do not require the property owner to return a plea, and thus no paperwork must be filed with OAH. In many instances, to save time the inspector will issue several violation notices before finally issuing a NOI and assessing a fine. The OAH discovery rules have reduced the number of cases going to OAH by both DCRA and HPO.¹¹⁷ Inspectors' hesitation to issue notices of infraction

¹¹² Id.

¹¹³ Id.

¹¹⁴ OAH Rule 2321.1 (2006).

¹¹⁵ Id.

¹¹⁶ OAH Rule 2321.1 (2006).

¹¹⁷ Telephone interview with Nick Majett, Deputy Director for Inspections and Compliance, DCRA (March 21, 2007).

reduces the amount of fines assessed, and in turn, decreases the amount of enforcement revenue going to the city.

As discussed above, outstanding fines for final orders on HPO infractions are not being enforced through the attachment of tax liens to properties due to a lack of support staff. Within DCRA, a branch of the Office of Civil Infractions handles this role exclusively; attaching liens to deeds and forwarding them to the Office of Tax and Revenue. This accounts in part for DCRA's higher percentage of satisfied fines.¹¹⁸

Part IV

What Can Be Done to Improve Enforcement?

1. Assistance for the inspectors.

The first and most important step towards increasing the efficacy of HPO inspectors is to hire an administrative assistant responsible for managing case files, tracking cases, handling paperwork, scheduling with OAH and providing other general support to the inspectors. While HPO inspectors have had administrative assistants in the past, it is not clear whether money exists in the HPO budget for one now.¹¹⁹ To receive funding for this position, HPO must lobby City Council to increase HPO's budget in order to reinforce its enforcement efforts. Based on the Council's recent agreement to dedicate funding sources into the HLP Fund (in the way of filing fees and fines), it is

¹¹⁸ However, at the close of FY2006, DCRA was owed over \$8,000,000 in unpaid fines for violations across the spectrum of its jurisdiction. August 2006 DEP'T OF CONSUMER AND REG. AFF. REP. OF INSPECTION pt. 1, at 16.

¹¹⁹ Interview with Toni Cherry, Senior Enforcement Officer, Historic Preservation Office (March 21, 2007).

appears that the Council appreciates HPO's mission and would be receptive to requests for funding to bolster enforcement. Provided support staff, the inspectors would be able to dedicate more time to pursuing infractions, the fines derived from which could theoretically pay for their assistants.

While hiring one dedicated assistant to the inspectors would be greatly beneficial to the enforcement mission, the problems of training and retention still exist. A simple, but not inexpensive option would be to hire two assistants. In the event one left, the inspectors would be able to rely on the second until another was hired. This would avoid potentially lengthy breaks between assistants and the training issue could be handled by the remaining assistant rather than the inspectors. However, given the current financial constraints on HPO, hiring two assistants for the inspectors seems like an unlikely option.

Another alternative solution to enforcement's human resources issue would be to hire a third inspector. In this case, each inspector would continue handling inspection and administration of cases, but their inspection jurisdiction would be reduced, allowing them to focus more intensely on their assigned beats. This option may prove to be more expensive than hiring an administrative assistant and also does not address the issue of inspectors taking time away from field inspections to deal with paperwork and hearings. Having a staff dedicated to tracking and maintaining cases also will likely lead to greater uniformity in the case management process and more cooperation and coordination between the inspectors themselves.

The Office of Historic Preservation should also consider contracting with an attorney experienced in OAH proceedings to assist the HPO inspectors in responding to

the litany of motions and other paperwork involved with OAH hearings.¹²⁰ This attorney, like the DCRA advocates, would handle the legal drafting of responses to motions and represent HPO at OAH hearings (where the respondent is not represented by counsel).¹²¹ Even if the attorney only represented HPO at the occasional hearing that an inspector could not attend, it would at least provide some insurance that cases were not being dismissed because inspectors were forced to choose a field response over attending a hearing. Again, this would be a potentially expensive solution, but the cost could be offset by the increased number of final orders ruled in favor of the city.¹²²

2. Direct fines to the HLP Fund.

The importance of directing fines to the HLP Fund cannot be understated. Currently, the only dedicated funding going into the HLP Fund are fees from landmark applications. The HPA clearly states that penalties collected under the Act are to be deposited in the Fund which would provide a source of significant revenue to HPO.¹²³ At the close of FY2006, over \$34,000 in fines had been imposed by citation or OAH final order. Until an agreement with OAH is established to direct HPO fine revenues into the HLP Fund, all of this money goes into the D.C. General Fund and is attributed to the City's gross income.

¹²⁰ The Office of Historic Preservation could contemplate contracting with the existing DCRA advocates since they already have experience with building code enforcement and OAH procedure.

¹²¹¹²¹ *See supra* note 112.

¹²² A low cost alternative would be to establish either an externship opportunity or clinic tie-in with the Georgetown University Law Center. Although a thorough discussion of this proposal is beyond the scope of this paper, there is likely sufficient work to justify a ten hour per week commitment. The Historic Preservation Law seminar offers a direct academic lead into the program – reducing the need for on the job training. However, accountability and oversight could be issues as there is no HPO attorney to mentor the program.

¹²³ *See supra* note 80.

An important advantage of the HLP Fund is that it is a nonlapsing, revolving fund and does not revert to the General Fund at the end of the fiscal year.¹²⁴ This means that unused funds remain in the account into the next fiscal year, potentially growing indefinitely. This is especially important to HPO because the agency may use the funds to commence repairs on historic properties in danger of demolition by neglect.¹²⁵ However, by neglecting to have fines diverted into the Fund, HPO is not taking advantage of its greatest potential source of funding outside of appropriations. The Office of Historic Preservation should make it a priority to establish an agreement with OAH to have all fines derived from HPO enforcement actions deposited into the HLP Fund, as per the HPA.

3. Attach liens for fines in default.

Under the current enforcement regime, fines imposed by HPO inspectors or a subsequent OAH final order, which go into default, are not being collected. At the close of FY2006, only 15% of fines receivable had been collected.¹²⁶ Were all the remaining fines to stay in default, tens of thousands of dollars in potential revenue would go uncollected. The duty of attaching liens to properties and notifying the Office of Tax and Revenue could be assigned to an assistant to the HPO inspectors. However, until an assistant is hired an alternative solution must be considered. Given that OAH is responsible for collecting fines imposed by a final order, it seems illogical that the agency is not also responsible for handling fines that go into default. However, when

¹²⁴ DC CODE § 6-1101.1(a) (2007).

¹²⁵ Id.

¹²⁶ See supra note 95.

considering the enormous number of fines generated by DCRA, it is not surprising that OAH chooses to leave ultimate fine enforcement to the citation generating agencies.

Within the Office of Civil Enforcement at DCRA, there are personnel whose sole responsibility is attaching liens for building code violation fines which have entered into default.¹²⁷ Considering the high volume of defaulted-on fines already processed by DCRA, it would seem to be a fairly minor burden to process the handful currently produced by HPO. Furthermore, a memorandum of understanding currently exists between DCRA and HPO where DCRA General Counsel represents the City at certain OAH hearings involving HPO citations.¹²⁸ It may be possible to expand the scope of the existing memorandum of understanding to include processing lien attachments for defaulted on HPO fines. Placing a cap on the total number of defaulted-on HPO fines or a limit on the time period for which DCRA would be responsible for this processing may increase the chances that DCRA will agree to temporarily accepting the responsibility.

Conclusion

Considering the substantial number of buildings under their jurisdiction, the inspectors of the Office of Historic Preservation have done a laudable job enforcing the provisions of the Historic Preservation Act. Their efforts have halted many illegal demolitions and alterations of protected structures across the city; and the deterrence their actions create has likely prevented many more illegal alterations than could be counted.

¹²⁷ Telephone interview with Nick Majett, Deputy Director for Inspections and Compliance, DCRA (March 21, 2007).

¹²⁸ Id.

However, much remains to be done to improve the HPO enforcement program and the overall effectiveness of historic preservation in D.C. With greater support, the inspectors could easily increase the number of citations issued per year, concomitantly increasing the funding going to HPO and preservation efforts across the city in general. The question remains as to whether the political and bureaucratic will exists to make changes necessary for a stronger enforcement program. Other cities, like Arlington, Virginia and San Antonio, Texas, have noticed D.C.'s success in protecting its historic inventory and have hired historic preservation inspectors of their own. Washington D.C. should continue to set a national example for historic preservation by making enforcement a priority and providing the tools necessary for a proficient effort.