Mr. Chairman and Members of the Committee,

We write to present our views on DCRA’s performance over the past year. In structuring our testimony, we highlight DCRA’s performance in each of the seven areas we identified to the Council in our written and in-person testimony for the February 21, 2017 roundtable:

1. Public access to construction permit documents
2. Construction permit application review
3. Issuance of after-hours permits
4. Office of the Zoning Administrator
5. Vacant building enforcement
6. Stop-work orders and collection of associated fines
7. Need for additional construction inspectors, especially on Sundays and holidays

In sum, although DCRA has made modest progress in a few areas, the agency’s overall performance remains unacceptable.

1. **Public access to construction permit documents**

District FOIA law requires DCRA to post all construction permit application documents—plans, drawings, etc.—on a website for public access at no cost. DCRA is not now and never has been compliant with this law. After we took our concerns to the Office of Open Government in 2015, that office issued a scathing letter on January 29, 2016.

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1 ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on February 15, 2018, with a quorum of 6 out of 6 commissioners and the public present, by a vote of 6-0.

2 Copy attached (minus exhibits) at Tab 1.


4 That letter, attached to ANC 6C’s January 2016 and July 2016 written testimony, can be viewed online at
2016 stating that “DCRA is woefully out of compliance with FOIA” and criticizing DCRA’s practice of forcing residents to pay an outside service to make paper copies of such records.

In spring 2016, the Council appropriated $3 million—the full amount requested by DCRA—to fund development of the required website. Two full years later, a solution is still not in place. In the meantime, DCRA continues to deny citizens access to these important documents. The agency engages in the same illegal practices (such as forcing requestors to pay for reproduction of paper copies) harshly criticized in OOG’s 2016 opinion letter.

In the meantime, DCRA has introduced several new websites purporting to provide more information to the public. By and large, these sites—such as the widely publicized “dashboard”—are merely window dressing for the same databases as before. They do not materially improve the quantity or quality of records available.

Indeed, in some cases the “improved” websites supply garbled or conflicting information. For example, DCRA recently introduced a “2.0” version of its Property Information Verification System (PIVS), a database of basic information about stop-work orders, construction inspections, etc. As shown at Tab 2—the list of stop-work orders for 310 E St. NE—PIVS 2.0 shows two or even three entries for each SWO, with multiple conflicting dates for “date removed.” Not only is PIVS 2.0 more confusing than its predecessor, but DCRA officials have ignored multiple requests for an explanation of these inconsistencies.

2. **Inadequate construction permit application review**

DCRA continues to issue permits for projects that involve the construction or substantial alteration of habitable space without requiring that the plans be stamped by a DC-licensed architect.

In the area of permit-issuance policy, one bright spot for DCRA was the January 2018 issuance of Bulletin CC2018-01. That policy statement seeks to curb permitholder abuses by requiring the listed master tradesperson for plumbing, electrical, or similar work to be physically present for inspections of work performed in that discipline.

3. **Improper issuance of after-hours permits**

As we informed the Council in our September 26, 2017 letter (attached at Tab 3), DCRA continues to issue permits for after-hours construction that fail to comply with the standards set out in the applicable regulations. In one of the cases cited in our letter, http://www.open-dc.gov/sites/default/files/OOG%20002_1.29.16%20AO_Redacted.pdf.

5 See, e.g., DCRA’s response to oversight question 30, in which it boasts a “revamped website [with] a fresh look and feel.” DCRA Written Responses to 2018 Oversight Questions at p. 53.
DCRA not only granted permission for construction in a residential zone 24 hours a day, 7 days a week, but also granted a blanket exemption from all noise restrictions even though the applicant had assured the commissioner for that SMD that noisy late-night exterior work would not be necessary.

Our letter called upon the Council to enact legislation narrowing and clarifying the vague (and in any event unenforced) standards in current law. The need to do so continues.

4. Office of the Zoning Administrator

The Zoning Administrator (ZA) plays a critical gatekeeper role: he reviews building permit applications to ensure that they comply with the zoning regulations, and where necessary withholds approval until an applicant obtains required relief from the BZA or Zoning Commission. He also oversees enforcement of work performed in violation of the zoning regulations (either without or inconsistent with issued permits). When this system breaks down, illegal work often avoids public scrutiny and is allowed to remain in place, to the detriment of neighbors and others in the community. 6

As noted in our written and in-person testimony7 before the Council at the October 24, 2017 roundtable on DCRA’s permitting practices, the agency often issues permits in violation of the zoning regulations. Owing to DCRA’s unresponsiveness to informal complaints, we have been left with no alternative but to pursue multiple appeals to BZA.

Specifically, in a period of 18 months, we filed three separate appeals for 518 6th St. NE (Nov. 2015), 1511 A St. NE (Nov. 2016), and 1125 7th St. NE (May 2017). In each of the first two cases, DCRA relented only after the filing of our BZA appeals and moved to revoke the permits at issue. (For 1511 A St. NE, the property owner pursued its own appeal of that revocation, which the BZA rejected on October 11, 2017.) In the third case, which is technically still pending, DCRA has once again conceded to the ANC—to date, only privately—that it issued the permit in error.

Although we are proud of our unblemished record in calling DCRA to account for such errors, we remain troubled that the DCRA playing field remains tilted in favor of unscrupulous permit applicants. The task of carefully reviewing applications for code compliance belongs to DCRA, yet time and again we find ourselves expending substantial time and effort to prepare BZA filings in order to force DCRA to carry out this basic civic function.

Incredibly, DCRA has once again claimed to the Council that in FY16 it prevailed in 100% of the appeals taken against the ZA. See DCRA Written Responses to 2018 Oversight Questions #37(a) at p. 57. (No figures are provided for FY17 or FY18.) In

6 As noted in part 1 above, DCRA’s policy of making permit application documents largely inaccessible to the public—in clear violation of District law—substantially hinders outside review of such errors.

7 Copy attached at Tab 4.
doing so, DCRA repeats the same false claim it made last year. As ANC 6C noted in its written March 16, 2017 oversight testimony,\(^8\)

\[w\]e also note that in claiming that DCRA had a spotless 14-0 record before the BZA last year \(i.e.,\) in 2016, Director Bolling gave false testimony. Likewise false is DCRA’s written response (Question 39(a), page 81) claiming 100% “successful defenses of appeals of ZA decisions before the Board of Zoning Adjustment.” These statements are the equivalent of saying that “DCRA won every case in which it prevailed,” because they intentionally omit cases in which DCRA’s position was so meritless that the agency relented and revoked the improper permits.

Finally, we note that the ZA’s efforts in enforcing the zoning regulations after the fact \(e.g.,\) against illegal commercial uses in residential zones) are inadequate and at times non-existent. We respectfully suggest that this issue merits the Council’s attention, especially as ANCs and citizens have no recourse against such inaction. (The zoning regulations expressly prohibit BZA appeals of ZA refusals to enforce.\(^9\))

5. **Vacant building enforcement**

ANC 6C has little to add to the detailed testimony\(^10\) it provided at the Council’s November 14, 2017 roundtable on DCRA’s mismanagement of the vacant & blighted property program:

VBEU’s subpar performance has long been a source of concern for ANC 6C. As reflected in the highly critical DC Auditor report issued on September 21, [2017] the program continues to suffer from multiple shortcomings.

6. **Stop-work orders and collection of associated fines**

As stated in ANC 6C’s Aug. 2, 2017 letter\(^11\) to the Council Chairman, we remain concerned that DCRA is not applying the escalating fine schedules provided for by law against repeat violators. We therefore eagerly await the results of the OIG investigation mentioned in DCRA’s written response to oversight question 19(b).

We also remain concerned about DCRA’s failure to follow through after issuance of a SWO (and payment of any fine) to also require abatement or removal of any illegally

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\(^8\) Copy (minus exhibits) attached at Tab 5.

\(^9\) See 11 DCMR subtitle Y, § 302.1 (“a discretionary decision not to bring an enforcement action for a violation of the Zoning Regulations shall not be deemed a ‘refusal’”).

\(^10\) Copy attached at Tab 6.

\(^11\) Copy attached at Tab 7.
built structure. In addition to the case cited in our Oct. 24, 2017 roundtable testimony (see Tab 4), we continue to see DCRA fail to pursue followup action despite persistent urging from citizens. As set forth in our October 2017 testimony,

the message DCRA communicates to the public (and to bad actors) is that there are rarely, if ever, consequences for breaking the law. DCRA’s internal enforcement processes seem to have no momentum of their own; absent complaints from a gadfly ANC commissioner to the agency Director, even clear cases of illegal construction can easily remain in place for the price of minimal fine. This is not an effective deterrent to future misconduct.

7. **Need for additional construction inspectors, especially on Sundays and holidays**

ANC 6C did note measurable improvement in DCRA’s responsiveness to reports of illegal construction after hours and on weekends. However, we caution that performance remains inconsistent and below the levels required.

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We thank you for the opportunity to provide testimony and welcome any followup questions the Committee may have.