Mr. Chairman and Members of the Committee,

We write to present our additional views on DCRA’s performance over the past year, and to make specific recommendations for investigation and action by the Council.

In this testimony, we focus on four specific topics:

1. **New OAH decisions reducing DCRA enforcement powers**
2. **Continuing malfeasance by Zoning Administrator Matt LeGrant**
3. **Need for an organized compilation of Zoning Administrator interpretive rules**
4. **Lack of meaningful zoning enforcement**

1. **New OAH decisions reducing DCRA enforcement powers**

Our first issue relates to stop-work orders (SWOs) and DCRA enforcement. Last year, a judge with the Office of Administrative Hearings issued two opinions requiring DCRA to lift SWOs even when the fines for the underlying illegal construction had not been paid. The result is that so long as a violation itself is cured (e.g., by getting a new or revised permit for unpermitted or beyond-scope work), DCRA can't exert further leverage over the violator. In some cases—such as illegal work at night or on Sundays—the “cure” is simply to wait until the following day and then resume work.

ANC 6C asks the Council to look into this matter and consider curative legislation. The deterrents against illegal work are too low and too few already, and this lone judge’s decisions make a bad situation worse. On those occasions when DCRA is willing to enforce, there should be teeth behind that.

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1 On March 13, 2019, at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of 6 out of 6 commissioners and the public present, the Commission voted 6-0 to adopt this testimony.

2 Copies are attached at Tabs A and B.
2. **Continuing malfeasance by Zoning Administrator Matt LeGrant**

In our February 27 performance oversight testimony, we described the Zoning Administrator’s mysterious issuance in January of a certificate of occupancy that was identical to one revoked seven weeks earlier for the same location.\(^3\) That earlier revocation was the result of substantial effort by ANC 6C documenting obvious noncompliance with important provisions of the zoning regulations.

On February 26, Commissioner Mark Eckenwiler (6C04) emailed Mr. LeGrant to request an explanation for the new C of O’s issuance. Mr. LeGrant replied on March 6, indicating that the new C of O would be revoked\(^4\); since then, however, DCRA has issued no such revocation despite the passage of more than a month from the initial ANC 6C inquiry. With the BZA filing deadline imminent, ANC 6C was forced to expend substantial time and energy collecting all the relevant exhibits and submitting a BZA appeal last Friday.

It is important not to lose sight of the larger issue here: the dysfunction and/or incompetence that led to the erroneous reissuance. We understand that mistakes happen—we are all human and fallible—but the volume and inexplicability of Mr. LeGrant’s errors far surpasses what could be forgiven as mere good-faith slip-ups. Indeed, Mr. LeGrant’s failure to provide any explanation for the new C of O’s issuance, despite repeated requests, raises pointed questions. That is doubly true where, as in this case, the application form for the approved C of O was almost completely blank.

We respectfully urge the Council to inquire into this matter, as well as into the serious, broader problems it embodies. ANCs should not be forced to pursue constant after-the-fact corrections to the Zoning Administrator’s unlawful actions.

3. **Need for an organized compilation of Zoning Administrator interpretive rules**

In applying the District’s zoning regulations, Mr. LeGrant has also adopted a number of interpretations on top of the published rules. That in itself is not surprising; after all, any body of law will have gaps or ambiguities requiring the exercise of judgment. What is troubling, however, is that many of these interpretations are nowhere published—and to the extent that they do come to public light, these interpretations are sometimes internally inconsistent or in direct conflict with the text of the regulations themselves.

For instance, in a BZA appeal hearing last fall, Mr. LeGrant disclosed that he has adopted an unpublished exception to the regulations’ requirement that “any guard rail on a roof shall be setback from the edge of the roof upon which it is located” by a specified distance. 11-C DCMR § 1502.1 (emphasis added). Testifying under oath, Mr. LeGrant

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\(^3\) Copies of CO1802784 (June 4, 2018) and CO1901156 (Jan. 22, 2019), both for 707 H St. NE, are attached at Tab C. The Nov. 29, 2018 revocation notice for CO1802784 is attached at Tab D.

\(^4\) Mr. LeGrant’s email, along with a portion of the chain that preceded it, is attached at Tab E.
admitted on cross-examination that there is no language in the regulation—which on its face applies expressly to “any guard rail on a roof”—providing for the exception he claims to have adopted.\(^5\)

DCRA does publish the “determination letters” Mr. LeGrant issues periodically in individual cases. However, those letters

- are not indexed or sorted by topic(s)
- cannot be text-searched as a group, except for whatever words happen to appear in the one-line description, and
- sometimes, as ANC 6C has testified in the past, adopt irreconcilable, diametrically opposed positions on the same question of law.\(^6\)

Finding these interpretations should not be so difficult. The public would benefit in multiple ways if DCRA were to publish Mr. LeGrant’s zoning interpretations in a single organized compilation available to the public. Applicants would know what rules they have to follow; the task of reducing these rules to writing would promote clarity and consistency; and citizens who disagree with these interpretations could petition the Zoning Commission to engage in rulemaking to overturn or limit DCRA’s in-house interpretations.

Accordingly, we respectfully ask the Council to press Director Chrappah to produce and publish such a compendium.

4. **Lack of meaningful zoning enforcement**

In addition to the failures described above on the front end of DCRA’s application of the zoning regulations (i.e., during permit application review), ANC 6C notes the ongoing lack of serious enforcement for violations.

Much of ANC 6C covers residential rowhouse neighborhoods. Unfortunately, because we abut the Capitol, numerous businesses—including but not limited to lobbying offices—operate illegally in our residentially zoned areas. These activities often impose significant burdens on nearby residents; for example, one rowhouse in the 200 block of E Street NE is the site of regular political fundraising events, with a dozen or more large black SUVs double-parked in the street, parked in crosswalks, etc.

We have repeatedly expressed our concerns over the past several years to Mr. LeGrant, substantiating them with photographic and other evidence. To date, we have seen no significant effort on his part to respond to these concerns. Whatever the problem is—whether a lack of adequate inspection staff or simple indifference to the problem—ANC 6C believes that residents are entitled to better enforcement of these rules.

\(^5\) Relevant extracts of Mr. LeGrant’s Sept. 19, 2018 testimony in BZA 19550 are attached at Tab F.

\(^6\) Specific examples appear in our detailed submission to the Zoning Commission in ZC 16-19.
We therefore ask the Council to demand answers, and more vigorous enforcement efforts, from Director Chrappah and his staff.

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Thank you for the opportunity to testify. ANC 6C welcomes any follow-up questions the Committee may have.