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Testimony of the District of Columbia Building Industry Association

Before the

Committee of the Whole

Honorable Phil Mendelson, Chair

Public Hearing

on

Bill 22-663 Comprehensive Plan Amendment Act of 2018

The John A. Wilson Building
1350 Pennsylvania Avenue, N.W. Room 500
Washington, D.C. 20004

March 20, 2018

2:00 p.m.

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1.) Lisa Mallory, CEO:

Good afternoon Chairperson Mendelson, members of the Committee, and staff.

My name is Lisa Mallory, Chief Executive Officer of the District of Columbia Building Industry Association (DCBIA) and I am a longtime resident of Ward 4.

As you know, DCBIA has been the leading voice of real estate development in the District of Columbia. Our more than 425 members are comprised of professionals involved in all areas of real estate development, including builders, developers, general contractors, subcontractors, engineers, brokers, attorneys, and other key real estate professionals.

DCBIA is well versed in municipality management with respect to its effect on a DC's economic development trajectory and we are pleased to see that the Bowser Administration has put forth Bill 22-663, the Comprehensive Plan Amendment Act of 2018.

DCBIA supports the philosophy behind the Comprehensive Plan, and we believe the Office of Planning (OP) and the Mayor have created a fair initial planning document with this Framework Element. I would like to note that this legislation is intended to help all in our city. It helps all District residents, it supports more job growth and opportunities, and it provides agencies with a

comprehensive framework so that important issues such as land use, economic development, workforce, housing, environmental protection, historic preservation, transportation, and more, are addressed in a way that is equitable and inclusive.

Most importantly, the Framework will provide clarity on the authority of the Zoning Commission—a need showcased by the vast number of lawsuits we have seen in Planned Unit Development (PUD) cases over the last three years. These court cases have caused nearly 6,500 new residential units to be severely delayed or stopped altogether. These delays do not help us address the pressing affordable housing issues our city confronts. Not only do these court cases halt the development of residential units, they also subvert Home Rule because they allow congressionally appointed judges to make land use decisions for the District. These judges then undermine the District’s entitlement process by attacking and diminishing the great weight that has historically and legally been afforded to ANCs. The Framework of the Comp Plan will serve to alleviate these issues.

Again, DCBIA supports this bill, and you will hear from some of my colleagues in a moment detailing more reasons why they support this Framework.

Thank you for convening today’s hearing. I look forward to working with you, the other Councilmembers, OP, and the Mayor in the coming months as the additional chapters of the Comp Plan become ready for public input, where

discussion on further changes to the scope of the Comp Plan can and should be properly vetted.

2.) Brad Fennell, President and Chair of the Board:

Good evening Chairperson Mendelson, members of the Committee, and staff.

My name is Brad Fennell and I'm a former resident of ward 2 and 6 and now reside in ward 3. I'm the current President of the Board of Directors of DCBIA and a Senior Vice President of WC Smith, a DC-based company celebrating its 50th anniversary this year. WC Smith has been a leader in the development and management of housing throughout the city, including more than 4,000 affordable units. Over the years, of our projects have utilized the PUD process to create the full spectrum of rental housing, office, retail, and even some for-sale residential units. We have partnered with the D.C. government and nonprofit groups on many of these projects, producing a myriad of community benefits (including housing, affordable housing, jobs, job training, and retail amenities as well as direct contributions to schools, parks, and community organizations); all made possible through the PUD process and the civic engagement it requires.

The Office of Planning has put forth a fair initial document with this Framework Element. Currently, the Comprehensive Plan has conflicting language that has led courts to undermine decisions made by the Zoning Commission, undoing the negotiations that ANCs and others have done during the PUD process.

The proposed framework clarifies conflicting language in the current Plan and provides flexibility to prioritize the most meaningful community benefits for each project.

The current flood of PUD litigation is bad for the city because it creates uncertainty that at the least, removes projects from seeking the benefits of the PUD and runs the risk of quashing development in DC and sending developers to other jurisdictions. No residential project can be built unless developers secure funding. As more projects get held up in court, lenders and financial partners are beginning to feel that the entitlement process in the District is too risky. Recently, there have been fewer PUD projects proposed in the District, resulting in an overall reduction in housing, including affordable housing, and a loss of ancillary development that benefits neighborhoods. The legislation before you can help reduce the loss of both market rate and affordable units and I therefore support this Framework.

While the city has seen a development boom in recent years, the costs of real estate development continue to rise. Land costs are increasing. Expenses, including DC Water, have seen dramatic increases. Construction costs have been affected by a number of Council decisions, increasing the costs of labor, while national politics have impacted the cost of materials. For every project, there is a point where it's no longer financially viable. The PUD litigation and associated time delays are

additional costs that threaten to slow production and increase pressures on housing costs.

In order to maintain the city as a vibrant and diverse place, we need to provide additional housing for the everyone who wants to live here. Development is not just about housing, it's about jobs, services, entertainment, culture – all of the things that make cities competitive. The Comprehensive Plan needs to guide the city's growth so that all residents can thrive. I believe that the Framing Element provides that foundation.

Thank you for the opportunity to testify today. I look forward to working with the Council and the Mayor in guiding future development in the District.

3.) Jeff Utz, Co-chair of DCBIA's Public Policy Committee

Good afternoon Chairperson Mendelson, members of the Committee, and staff.

My name is Jeff Utz, Co-chair of DCBIA's Public Policy Committee. I am also a land use and zoning attorney at Goulston & Storrs. As a land use and zoning attorney, I utilize the District's Comprehensive Plan every day to help make determinations on what projects can and cannot be developed. I support this bill because the proposed amendments to the Framework element clarify how the Comprehensive Plan and the Generalized Policy and Future Land Use Maps should

be used and interpreted to guide development and the reviews related to enhance development throughout the City.

Over the past few years, the Comprehensive Plan and, in particular, its Generalized Policy and Future Land Use Maps have been scrutinized by the D.C. Court of Appeals in a series of cases. I believe the proposed amendments to the Framework Element clarify some of the essential issues that have been raised by the Court. Let me just reiterate that statement – the proposed amendments clarify the existing language. The amendments don't eliminate or weaken prior limitations on development but rather, they clarify existing language with existing intent.

The Comprehensive Plan has always been intended to be an organic document – that grows and evolves as the District does the same. Indeed, this is why the District spends significant time and resources to update and amend the Comprehensive Plan every 10 years or even more frequently. As a result, there is no magic to the exact text of the Framework Element as it currently exists. Rather, the recent experiences in the Court of Appeals have shown that readers can be led to a state of uncertainty by the currently conflicting and unclear language of the Comp Plan. The language needs to be clarified so that the language itself isn't what's holding us back. To this end, the proposed amendments' text is a fair, balanced effort to resolve the uncertainties and provide clear guidance while still

staying true to the intent and purpose of the Plan. OP should be complimented for their efforts to put together such balanced amendments.

I believe like most District residents that we are facing a housing crisis. The proposed amendments will help address this issue. However, I also know from my work that the Comprehensive Plan cannot be solely about housing development to the exclusion of all other issues. We must also look at the other needs of communities, the workforce, the education system, and so on, and ensure that the Plan remains flexible enough to balance all of these issues. This updated Framework is a positive first step in ensuring we have such a document to guide us as our city grows. We cannot be an inclusive city without recognizing the vast array of demands the residents face. Again, the proposed Framework element does exactly that and responsibly and impressively burnishes the guidance by which these considerations can be considered.

I would also be remiss if I didn't mention a fault with the basic assertion that underlines so many of the opponents' objections to the Comp Plan amendments – that is, that building more density and market rate housing somehow drives up the cost of housing elsewhere. Setting aside the fact that new residential development projects are delivering affordable housing both as a result of required IZ and enhanced affordable offerings, these new projects are providing much needed housing supply to stem the incredible demand the City faces. One doesn't need an

advanced degree in economics to understand that purposefully cutting supply will result in even less affordable or market housing opportunities and will drive up the price of housing alone – exacerbating an even greater housing crisis than we currently face.

For each of the foregoing reasons, we support the proposed amendment to the Framework Element and what it says about the future of our city.

To conclude, I thank you Chairman Mendelson and the Committee for convening today's hearing. We remain committed to working with the Office of Planning, the Mayor and Members of the Council on these amendments to the Framework element of the District's Comprehensive Plan, and the subsequent amendments to the Plan. We are available to answer any questions you might have.

Thank you.