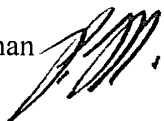


COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW
Washington, DC 20004

MEMORANDUM

TO: Nyasha Smith, Secretary to the Council

FROM: Phil Mendelson, Chairman 

DATE: January 28, 2021

RE: **Request to Place Motion to Override the Mayoral Veto of Bill 23-91 and Bill 23-437 on the Agenda for the February 2, 2021 Legislative Meeting**

Pursuant to Council Rule 429(5), this is a request that the following measures be placed on the agenda as new business for the February 2, 2021 Legislative Meeting:

- **Motion to Override the Mayoral Veto of Bill 23-91, the “Department of Buildings Establishment Act of 2020”**
- **Motion to Override the Mayoral Veto of Bill 23-437, the “Office of the Ombudsperson for Children Establishment Amendment Act of 2020”**

On December 1 & 15, 2020, the Council unanimously approved Bill 23-91, the Department of Buildings Establishment Amendment Act of 2020 and Bill 23-437, the Office of the Ombudsperson for Children Establishment Amendment Act of 2020 on first and second reading.

The purpose of Bill 23-91 is to establish a new Department of Buildings and rename the remainder of the Department of Consumer and Regulatory Affairs (DCRA) as the Department of Consumer Affairs and Licensing. The purpose of Bill 23-437 is to establish the Office of the Ombudsperson for Children as an independent legislative agency tasked with improving outcomes for children involved in the child welfare system by holding all agencies that impact these children accountable for fulfilling their responsibilities under the law.

The Mayor has vetoed both bills. For each, the Mayor cited legal sufficiency issues for portions of the bills, however, the Council’s General Counsel found both measures to be legally sufficient.

With regard to Bill 23-91, the Mayor’s veto message asserts progress is being made to improve DCRA. However, DCRA has not demonstrated marked improvements in the handling of plan reviews, illegal construction, or housing code violations, the primary concerns that led to the introduction and passage of Bill 23-91. In fact, the DCRA’s own data suggests the opposite. For instance, in fiscal year 2020, the agency reports conducting 5,322 housing code inspections where one or more violations were cited, yet DCRA only confirmed repairs in 748 inspections, for a confirmed repair rate of only 14%. This is 18% lower than the 32% repair rate in fiscal year 2019. Not only are violations seldom repaired, the violators are rarely held accountable. In fiscal year 2020, less than one percent of all fines owed to DCRA have been paid. In fact, DCRA’s unpaid fines from fiscal year 2017 through fiscal year 2020 could pay for nearly the entirety of this bill.

With regard to Bill 23-437, the Mayor's veto message argues that this office is duplicative and unnecessarily expensive because CFSA already has an Ombudsman who receives on average 120 complaints annually. The office created by this legislation is not intended to duplicate the existing office, but instead to improve and replace it by prioritizing independence and impartiality to increase credibility (similar to the Council's authority over the Auditor) and by expanding the office's scope to provide oversight of systemic issues, including special attention to matters affecting crossover youth - children who interact with both the foster care system and the juvenile justice system. Furthermore, the office created by this legislation is client focused on all DC youth that are currently or have been known to CFSA. Therefore, the legislation does not single out or merely focus on the administrative acts of one agency. While the expanded scope of the office comes with additional costs, it is also important to note that one of the biggest concerns raised about the current CFSA Ombudsman, at a CFSA led stakeholders meeting in 2020, is that very few constituents are aware of its existence. This reduces the utility and workload of the existing office, thus undermining the Mayor's assertion.

The Mayor also argues that the definition of records is overly broad and does not carve out any exceptions. Given the gravity of issues that constituents seeking help from this new office will face (such as child abuse and neglect), the Committee on Human Services intentionally afforded the Ombudsperson for Children broad access to records. However, the legislation does include some exceptions and the overall access granted to the Ombudsperson is no broader than that granted to the DC Auditor, another DC Council appointed position with broad oversight authority.

Finally, while CFSA should be proud that it is approaching an exit from federal court oversight associated with the LaShawn v. Bowser lawsuit, this exit will leave a significant void in agency oversight that advocates, stakeholders, and the Council have relied on for decades. It is critical that the Ombudsperson for Children is installed before court oversight ends to ensure that the agency does not backslide, and that if it does, the ombudsperson will not be influenced in any way by agency voices, like the CFSA Ombudsperson's current supervisor, CFSA's Chief of Staff.

Copies of the measures are attached. Please call me or Mr. Evan Cash if you have any questions at (202) 724-7002.

cc: All Councilmembers
Council Officers