MURIEL BOWSER
MAYOR

June 29, 2023

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council of the District of Columbia are the "Floodplain Review Authority Amendment Act of 2023," the "Floodplain Review Authority Temporary Amendment Act of 2023," and the "Floodplain Review Authority Emergency Amendment Act of 2023," along with an accompanying emergency declaration resolution.

The legislation would repeal section 6B of the District of Columbia Applications Insurance Implementation Act, effective April 5, 2021 (D.C. Law 23-269; D.C. Official Code § 6-507), to allow the Mayor to continue to delegate the functions of that act to the Director of the Department of Energy and Environment ("DOEE"). DOEE has historically exercised the authority of the Applications Insurance Act to implement regulations relating to flood hazards and safety in the District, and DOEE has been identified by the Mayor as the District coordination agency for the National Flood Insurance Program ("NFIP"), as required by the Federal Emergency Management Agency. Repeal of section 6B will ensure that the District continues to maintain, and thus obtain the benefits of, its membership in the NFIP.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

Muriel Bowser

Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the District of
Columbia Applications Insurance Implementation Act to repeal the direction to the
Mayor that the functions of the act be delegated to the Director of the Department of
Buildings.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

resolution may be cited as the "Floodplain Review Authority Emergency Declaration Resolution

of 2023".

Sec. 2. (a) Section 501(b) of the Department of Buildings Establishment Act of 2020,

effective April 5, 2021 (D.C. Law 23-269;68 DCR 1490), amended the District of Columbia

Applications Insurance Implementation Act, effective May 26, 1976 (D.C. Law 1-64; D.C.

Official Code § 6-501 *et seq.*) ("Applications Insurance Act") by adding a new section 6B (D.C.

Official Code § 6-507) that directs the Mayor to delegate the functions in the Applications

Insurance Act to the Director of the Department of Buildings.

(b) The purpose of the Applications Insurance Act is to implement certain elements of a

flood protection program for the District, to ensure that the District meets the federal

requirements for membership in the National Flood Insurance Program ("NFIP").

(c) Since 1996, the functions in the Applications Insurance Act have been delegated by

the Mayor to the Department of Energy and Environment and its predecessor agencies. The

33   Department of Energy and Environment is currently funded and staffed to administer the

34   Applications Insurance Act.

35   (d) While the Department of Buildings regulates the construction of buildings through the

36   Construction Codes, which include flood elevation requirements, the Department of Energy and

37   Environment regulates site and building development in floodplains more broadly, and

38   specifically in accordance with the regulations and guidance of the Federal Emergency

39   Management Agency ("FEMA").

40   (e) The District's membership in the NFIP provides benefits to the District that include

41   guaranteed annual grants of $120,000 and more to support floodplain management, access to

42   affordable flood insurance for District residents through the NFIP, and federal disaster relief

43   should a flood occur in the District.

44   (f) The Department of Energy and Environment has historically, pursuant to Mayor's

45   Orders, exercised the authority of the Applications Insurance Act to implement regulations

46   relating to flood hazards and safety in the District, and has been identified by the Mayor as the

47   District coordination agency for the NFIP, as required by FEMA, by designating the Director of

48   the Department of Energy and Environment as the Floodplain Administrator for the District,

49   responsible for interacting with FEMA on the development of flood maps and implementation of

50   FEMA guidelines related to flood hazards and safety.

51   (g) Emergency legislation is necessary to repeal section 6B of the Applications Insurance

52   Act (D.C. Official Code § 6-507), thereby clarifying that the Mayor may continue delegating the

53   functions of the Applications Insurance Act to the Director of the Department of Energy and

54   Environment. This will ensure that the District continues to maintain, and thus obtain the

55   benefits of, its membership in the NFIP.

56   Sec. 3. The Council of the District of Columbia determines that the circumstances

57   enumerated in section 2 constitute emergency circumstances making it necessary that the

58   Floodplain Review Authority Emergency Amendment Act of 2023 be adopted after a single

59   reading.

60   Sec. 4. This resolution shall take effect immediately.

BRIAN L. SCHWALB
ATTORNEY GENERAL

LEGAL COUNSEL DIVISION

<u>MEMORANDUM</u>

TO: **Dan Emerine**
         Legislative Director
         Department of Energy and Environment

FROM: **Megan D. Browder** *MDB*
         Deputy Attorney General
         Legal Counsel Division

DATE: **June 27, 2023**

SUBJECT: **Legal Sufficiency Review – Draft "Floodplain Review Authority Emergency**
         Amendment Act of 2023," "Floodplain Review Authority Temporary Amendment
         Act of 2023," "Floodplain Review Authority Emergency Declaration Resolution of
         2023," and "Floodplain Review Authority Amendment Act of 2023"
         (AE-23-423 B)

This legislation would repeal a recent addition to the District of Columbia Applications Insurance Implementation Act ("Insurance Act").[1] That act requires the review of building permit applications, subdivision proposals, sewage systems, and more for potential flood hazards.[2] The Mayor has delegated administration of the Insurance Act to your Department,[3] but the Council recently directed the Mayor to move that delegation to the new Department of Buildings.[4] This legislation would repeal that direction. It is legally sufficient.[5]

If you have any questions regarding this memorandum, please contact Joshua Turner, Assistant Attorney General, Legal Counsel Division, at (202) 442-9834, or me at (202) 724-5524.

MDB/jat

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[1] Effective May 26, 1976 (D.C. Law 1-64; D.C. Official Code § 6-501 *et seq.*).

[2] *See* D.C. Official Code §§ 6-501—6-504.

[3] *See, e.g.,* Mayor's Order 2007-61, dated June 14, 2006.

[4] Department of Buildings Establishment Act of 2020, § 501(b), effective Apr. 5, 2021 (D.C. Law 23-269; 68 DCR 4174).

[5] The repeal of this direction would also make it unnecessary for us to resolve whether that direction impermissibly abridged the Mayor's delegation authority under the Charter. *See* D.C. Official Code § 1-204.22(6) (authorizing the Mayor to delegate her functions to "any director of an executive department").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

BRIAN L. SCHWALB
ATTORNEY GENERAL

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: **Tommy Wells**
             Director
             Office of Policy and Legislative Affairs

FROM: **Megan D. Browder**
             Deputy Attorney General
             Legal Counsel Division

DATE: **June 27, 2023**

SUBJECT: **Legal Sufficiency Review – Draft "Floodplain Review Authority Emergency Amendment Act of 2023," "Floodplain Review Authority Temporary Amendment Act of 2023," "Floodplain Review Authority Emergency Declaration Resolution of 2023," and "Floodplain Review Authority Amendment Act of 2023" (AE-23-423 B)**

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at (202) 724-5524.

Megan D. Browder

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