


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: November 21, 2024

RE: **Request to Agendize for the November 26, 2024 Additional Legislative Meeting**

This memorandum is to request that the following measures be placed on the agenda for the November 26, 2024 Additional Legislative Meeting:

- **Consumer Protection Clarification Emergency Declaration Resolution of 2024**
- **Consumer Protection Clarification Emergency Amendment Act of 2024**
- **Consumer Protection Clarification Temporary Amendment Act of 2024**

The Consumer Protection Procedures Act defines a “merchant” as “a person, whether organized or operating for profit or for a nonprofit purpose, who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice.”

In prior cases weighing the applicability of the CPPA to the District, the Court of Appeals held that the District was not a merchant. See, e.g., *Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008) (“[W]e agree with the District and hold that it is not a merchant for purposes of the CPPA.”). Omitting the District and its agencies from coverage under the CPPA plays an important role in protecting the public fisc.

In September 2024, in *May v. River East at Grandview*, No. 21-CV-0612 (D.C. Sept. 12, 2024), however, the Court of Appeals held that neither its decision in *Snowder* nor D.C. Official Code § 28-3901(e) provided the District with a categorical exemption from the CPPA and that the District may be liable for unfair and deceptive trade practices under the CPPA when it is acting as a merchant. The *May* decision could render the District liable under the CPPA for activities that until now were routine provisions of services and funds and that the Council did not intend to be subject to the CPPA. Emergency action is needed to clarify that, under the CPPA, the District is not a “merchant” except where the District of Columbia Housing Authority acts as a landlord.

The draft measures are attached. My office has worked closely with the Mayor and the Attorney General who have advocated for this clarification. Please call me or Blaine Stum if you have any questions at (202) 724-8092.

cc: All Councilmembers
Council Officers