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**COMMENT ON ZONING COMMISSION CASE NO. 08-06-4,
Comprehensive Zoning Regulations Rewrite: Arts & Culture**

**Submitted by
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I appreciate the opportunity to comment on the proposed zoning concepts submitted by the Office of Planning in regards to promoting arts and culture in the District. My primary concerns are that these proposals represent a top-down rather than bottom-up approach to zoning and they recommend significant changes to allowable uses in various zone districts.

NEW ARTS DISTRICTS

1. Stand-alone arts districts instead of arts overlays.

The Comprehensive Plan states: "use zoning overlays to promote and sustain Arts Districts. Ensure that Arts overlay zones are consistent with other District zoning regulations and that incentives for arts-related uses are not precluded by other provisions of zoning."
(Action AC-1.2.A: Arts Overlay Zones)

You need only look at the different goals and prescriptive provisions in the Uptown Arts and H Street Neighborhood Commercial Overlay Districts to see how different communities approach creating an arts district. It would be hard to find a single template set of provisions in these two approaches. But with an overlay a similar land use goal can be achieved in a variety of ways as seen in the Uptown and H St. examples. Neighborhoods like overlays because they allow them to react to citywide zoning principles and influence land use from the bottom-up without impacting the interests of another neighborhood. Overlays can provide a broader mix of uses because they allow a community to put some brakes on the intensity without prohibiting the use altogether.

The Office of Planning is proposing a new preferred use list that would replace the well-considered lists in the current arts district overlays. They want to eliminate differences in the preferred use lists, which they assert cause confusion. But it is precisely these differences that reflect each community's interest in the arts. By expanding the list and removing the overlays OP is replacing the interests of the community with the interests of OP and prospective developers and owners. How many communities would want matter of right bookstores with fast food, cabarets, and industrial arts in their commercial areas? But these same communities might well support an arts district that they could design through an overlay process.

ZONING COMMISSION
District of Columbia
CASE NO. 08-06-4
ZONING COMMISSION
EXHIBIT NO. 12
District of Columbia
CASE NO. 08-06-4
EXHIBIT NO. 12

It appears that the Office of Planning finds some current commercial zone district provisions too limiting so they want to scrap them and replace them with a new zone district category that would allow a wide disparity in intensity of uses (framing shops to furniture manufacturing) as acceptable matter of right uses. The Office of Planning appears to be overreaching under the guise of promoting arts...since when are bars and fast food establishments preferred arts uses?

Even though the Comp Plan specifically endorses the use of overlays in the context of arts districts and other commercial uses, the Office of Planning is determined to get rid of them. Overlays provide the bottom-up zoning that gives communities some control over their usually small commercial areas and at the same time gives them the ability to impact the zoning regulatory process when developers or owners seek to override the regulations. The Office of Planning seeks to change that and I urge the Zoning Commission to make a strong statement now about supporting overlays so that the Office of Planning can recalibrate aspects of its approach to the zoning re-write process.

4. Create new arts districts in areas generally suitable for commercial uses.

The Comp Plan defines Arts Districts as “identified, mixed use areas of the city in which a high concentration of art and culture facilities serve as an anchor of attraction.” (AC-1.2)

Sustain the Downtown Arts District as the preeminent location in the city for region-serving arts venues, including theaters, galleries, and museums and encourage the development of additional arts districts throughout the city. (Policy AC-1.2.1)

Identify, recognize, and support existing clusters of arts establishments and encourage the designation of such areas as Arts Districts. (Policy AC-1.2.2)

Not all commercial zones are appropriate for arts districts. Would a C-1 or C-2-A or 2-B be eligible for an arts district? There is an anticipated intensity of use in an arts district based on the Office of Planning’s proposed preferred arts uses (PAUL) that suggests a narrower range of commercial districts would be appropriate for concentrated arts uses. Since OP is recommending that non-arts-related retail and service uses not be required in an arts district it follows that you don’t want to locate an arts district where the community relies on neighborhood-serving retail and services, thus, narrowing the range of appropriate commercial zones. Is OP targeting areas for new arts districts that have clusters of arts establishments as the Comp Plan recommends? Is OP suggesting that the current commercial designations be eliminated just like the overlays and be replaced with something new? It would seem that they are since some of the PAUL uses would currently be limited to high intensity commercial zones, SP or CR zones. I urge the Zoning Commission to request more information about where these districts would be located, what zoning would apply to them, and how current residents can participate in their development. As currently conceived, the Office of Planning seems to be saying let’s just get rid of the potentially inconsistent underlying zoning and the overlays, and introduce all sorts of uses that aren’t currently allowed and

we'll do this by calling it an arts district, even though the Comp Plan says that arts districts should be consistent with other District zoning regulations.

8. Bonus Densities as Incentive for Certain Arts Use Groups.

It is unclear how bonus densities would work with other bonus density programs, like Inclusionary Zoning. Currently, the H Street NCOD provides bonus density for preserving pre-1958 facades and the Uptown Arts Overlay District for certain preferred uses. It seems that the Office of Planning would extend the bonus densities to every use from bookstores to restaurants to graphic design shops. The asserted purpose of the bonuses is to provide an incentive for preferred arts uses rather than other permitted uses. An overlay can do this without the bonus densities, which should be used sparingly and only to achieve a very high public policy purpose, like affordable housing. In other land use contexts bonus densities should be requested and reviewed on a case by case basis by the Zoning Commission in a public hearing.

10. and 11. Ground Floor Design and Use Requirements on "Primary Streets"

This section would be better considered as part of a discussion on commercial districts since these recommendations would impact other allowed commercial uses. There are multiple issues that should be considered before recommending 14-15 foot ground floor heights in new or substantially renovated buildings. For example, the H St. NCOD encourages the retention of pre-1958 facades so mandating 14 foot ground floor ceiling may be inconsistent with that community's desires. Historic districts might want to support the renovation of buildings for arts uses but not endorse any particular ceiling height if it would result in an awkward or non-historical façade or building entrance. Neighborhoods might have similar concerns if the uniform scale promoted by OP is not compatible with the scale of surrounding buildings or the built-out neighborhood. This ceiling height issue demonstrates the problems with developing a single template of provisions. It might work for the Uptown Arts District, but not for other parts of the city that would still like to develop arts districts. The Zoning Commission might consider that there is a need for large volume spaces for certain arts uses in specific locations, but that many uses on the Office of Planning's PAUL would find 14 foot clear ceilings excess space and that requiring these heights could lead to higher square footage leasing costs and a more limited pool of establishments that can pay the higher rents. Again, an overlay could prescribe 14 foot ceilings where they are appropriate and lesser or no heights where the contemplated arts uses don't need the extra volume or the community finds these heights would not be compatible with existing structures or with the goals of their arts district.

ARTS USES IN RESIDENTIAL AREAS

12. Allow art uses in appropriate residentially zoned locations with special exception review required based upon FAR limits and lot size thresholds.

In the working group recommendation materials, there is a recommendation that uses from the PAUL Education and Multi-function Use Group be permitted by special exception "in appropriately residentially zoned locations." Where would this be? The proposed use group includes art centers, which are defined to include administrative office of arts organizations, cinema, concert hall, legitimate theatre, media studio, etc. What residentially zoned area would embrace the introduction of these uses, even by special exception which is only one degree removed from matter of right? While there seem to be a number of conditions that would have to be met, there are no specifics. I urge the Zoning Commission to request much more information about the types of uses, the category of residential area where these uses might be appropriate, and to consider whether this is the beginning salvo to open residential zone districts to a host of commercial uses.

13. Allow certain arts uses as home occupations.

The Office of Planning wants to include the uses listed in the definition of an artist studio as permitted home occupations. Almost all of these uses would currently be allowed. The only one that appears to be new is related to the recording or production of music, video or other media form. Again, more should be known about how these uses, which seem to involve more intensive activity, could be accommodated in a residential zone district.

15. Artist studios should continue to be permitted in private garages and on alley lots.

The Comp Plan doesn't question this current use so it seems odd that it is included among these concept recommendations. There are recommendations in the OP Arts and Culture Subject Area draft that would broaden the allowance for two story accessory buildings in residential zone districts and would also reduce the current requirements for constructing alley buildings. These recommendations were apparently mentioned in the working group as potentially providing more housing and art studio space. Since this recommendation is not restricted to arts use and would alter the existing residential zone district regulations it should be considered in that context. The Zoning Commission might want to question OP as to why this recommendation was included in these concept recommendations.

The focus of the Office of Planning recommendations for changes to the zoning regulations is the creation of Arts Districts. It is unclear whether they are ignoring the

first section of the Comp Plan Arts and Culture Element that includes multiple policies about improving the distribution of arts facilities or whether they are combining the arts facilities policies with the arts district policies. There are important distinctions between the policies related to each of them.

The Comp Plan policies regarding arts facilities emphasize the need to locate these facilities in underserved parts of the city where impacts upon nearby uses can easily be managed. The Comp Plan becomes more specific by making it policy that inclusion of arts and cultural facilities and arts-supportive businesses should be part of the city's neighborhood commercial revitalization programs, such as DC Main Streets.

The concepts recommended by the Office of Planning are silent about whether zoning changes are necessary to further the goal of locating arts facilities in the areas of the city recommended by the Comp Plan. The Comp Plan makes a compelling case that even single arts uses can add vibrancy and interest to a commercial area. I urge the Zoning Commission to explore with the Office of Planning whether there is a need for zoning changes that would allow arts and culture facilities to locate around the city and to separate that discussion from zoning changes that would create concentrated arts uses in arts districts. The economic benefit from creating arts and entertainment districts that attract suburbanites and tourists may be compelling, but it's important to target these nodes and to emphasize that the quality of life interests and concerns shared by District residents will be paramount in using zoning to encourage the creation of arts districts. As is obvious from my testimony, I strongly urge the Zoning Commission to follow the prescription in the Comp Plan by using overlays to create arts districts that will more likely model the character of a neighborhood and thus, produce a more interesting destination.