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March 3, 2010

The Honorable Jim Graham
The Honorable Tommy Wells
DC City Council
1350 Pennsylvania Ave., NW
Washington, DC 20004

Dear Chairman Graham and Councilmember Wells,

Please include this correspondence as a part of the full hearing record.

The Committee of 100 appreciated the opportunity to present testimony on streetcars and overhead wires at the Council oversight hearing on the DC Department of Transportation on Friday, February 26, 2010. We want to work with the Council to understand the planned streetcar system in greater detail so that we can help to achieve its maximum benefit for the District.

Councilmember Wells raised questions about legal recognition of aesthetics, questioning what the U.S. Supreme Court's stand has been on aesthetic regulation.

The Supreme Court has addressed aesthetics on a number of occasions. I refer you to *Berman v. Parker*, 348 U.S. 26 (1954) in which the court gave strong support for government action based solely on aesthetic considerations:

> The concept of the public welfare is broad and inclusive… The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. (*Berman v. Parker*, at 33*)*

Relying on this language, courts began upholding billboard controls, preservation regulations, and height restrictions on aesthetic grounds alone. By 1978, in the *Penn Central Transportation Co. v, New York City*, the court wrote:

1317 G STREET, NORTHWEST
WASHINGTON, D.C. 20005-3102
202•628•8030 FAX: 202•628•8031
EMAIL:THECOMM100@AOL.COM • WEBSITE: HTTP://WWW.COMMITTEEOF100.NET