

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF COLUMBIA,
CENSUS AND THE NATIONAL ARCHIVES

TESTIMONY OF THE COMMITTEE OF 100 ON THE FEDERAL CITY
ON THE 1910 HEIGHT ACT

July 19, 2012

Good afternoon, Chairman Gowdy and members of the Subcommittee. I am Laura M. Richards, appearing on behalf of the Committee of 100 on the Federal City, of which I am a past chairman and current trustee. The Committee of 100 is a 90-year-old nonprofit organization dedicated to safeguarding and advancing Washington's historic distinction, natural beauty and overall livability. The Committee's officers, trustees and volunteer members contribute expertise and civic action in the service of responsible planning in Washington.¹ We appreciate the opportunity to testify on the important issue of building heights in the District of Columbia.

We emphasize two points: first, the Height Act of 1910 plays a positive, powerful role in shaping the cityscape and the experience of living in the District. Second, changes to the Height Act, including the suggestion to allow rooftop construction alongside mechanical penthouses, are not necessary to achieve additional residential capacity or to stimulate economic development. In short, lifting the height limit will alter irretrievably the District's historic, welcoming scale without producing upside

¹ Mission statement. www.committeeof100.net.

benefits. The Committee of 100 therefore believes that the Height Act should remain undisturbed and should be enforced vigorously.²

1. The Height Act shapes the District in positive, powerful ways.

The Height Act serves both faces of Washington – the national capital and the local hometown. Its benefits were summarized eloquently by international planner Larry Beasley during the act’s centennial celebration two years ago:

[The height limit] allows the national symbols of the capital to stand out and prevail over all other massing of the city ... [It] keep[s] the overall heights of context buildings lower than the dramatic dome of the Congress and the spire of the Washington Monument ... [and] creat[es] a coherent frame of walls among many buildings around the grand ceremonial spaces of the capital, such as the National Mall and the White House.³

And the Act’s effect is “not just about expressing national power,” Beasley continued. “It’s about the joyful pleasure of walking down a gently scaled street, of unexpectedly coming upon a magnificent public edifice that stands proudly superior to the mundane buildings around it It’s about the frantic life of our modern world being made more bearable”⁴

Beasley’s elegant appreciation of the Act’s power is echoed with equal enthusiasm by District residents across the city. From Southeast: “This is a small city. With tall

² District heights also are governed by the D.C. Zoning Code, which, where appropriate, can and does impose height limits lower than the maximum heights permitted by the Height Act’s formula, which generally sets maximum building heights as the width of the street on which a building fronts, plus 20 feet. Building heights in designated historic districts may be subject to height limits determined by the historic context.

³ Larry M. Beasley, C.M., *The Equation of Height and Density in the Form and Economy of Washington, D.C. in the 21st Century* at 8 (May 18, 2010) (an address on the occasion of the Centennial of Washington’s 1910 Height Act hosted by the National Capital Planning Commission and the U.S. Commission of Fine Arts).

⁴ *Id.* at 14.

buildings, I would feel swallowed up by it.” And from upper Northwest: “Visitors are enthralled and indeed astounded to visit a monumental city without monumental heights. You can see the Capitol dome and other sights from so many places that you might literally stop on the street to admire them.”⁵ In addition to preserving the dominance of iconic public buildings and memorials, the Height Act protects the vistas of and from the rim of the topographic bowl in which the District sits. In particular, viewsheds from the Civil War Defenses of Washington and Fort Circle Parks should not be lost through highrise development away from the central core.

The Height Act was debated vigorously during its centennial year and no groundswell of public support developed for its repeal. Removing the limit was rejected on urban planning, social policy, historic and aesthetic grounds, with the majority of residents and businesses recognizing that Washington’s charm and character stem in significant part from its scale.

The United States has wonderfully diverse cities, each with its own special identity, such as San Francisco, New York, Boston, and others, but our capital stands as the identifying focus for our country as a whole and our commitment to freedom as a society. Its unique history, physical design and aesthetic character are integral parts of that essential role. It is not uncommon for other national capital cities to have a zealously guarded identity that is special aesthetically and historically. We would not be unique in preserving our heritage and making it a source of inspiration for the future.

⁵ George R. Clark, Chairman, Committee of 100, in the Washington Post’s letters column, responding to an attack on the Height Act.

There are proponents of the towers and canyons that distinguish New York and Chicago, but those features are not what attracted new residents to Washington in recent years. Now that the District is on an upswing, it would be shortsighted to kill the goose that is producing golden eggs of population growth and development by trying to turn the city into something it is not, and should not become, by changing the Height Act.

a. The penthouse proposal risks creating visual clutter and sets a bad precedent. A proposal under discussion to allow the space surrounding rooftop mechanical penthouses to be used for residential, commercial or other uses completely inverts the reason why penthouses are excluded when a building's height is measured. A penthouse self-evidently is adjunct to a building to allow it to function and serves no independent purpose. The setback requirements – one foot on each side for each foot of penthouse height – acknowledge that penthouses, while necessary, should be minimized as much as possible.

Building heights, on the other hand – whether determined under the Height Act or zoning regulations – are based on type and intensity of use, neighborhood context and other factors. When a building is constructed to its maximum permissible height, it is as high as it ought to be. When another story or two is added (penthouses can be up to 18.5 feet tall) simply because the penthouse is there, the adjunct feature becomes the arbitrary factor driving heights, rather than neighborhood context or zone purposes.

The proposal risks the creation of visual clutter. One building may develop its rooftop space while an adjacent building elects not to, creating a “pop-up” effect. Also, during task force meetings held in conjunction with the District's ongoing work of rewriting its zoning regulations, rooftop pools and party rooms were mentioned

frequently as desirable uses of roof space. These ends may be achieved in new construction by providing for these uses within the permissible height, but are party rooms a sufficient reason to disturb the Height Act?

b. Proposals for lifting the height limit outside the monumental core also present drawbacks. Some proponents for higher buildings concede that Height Act limitations ought to apply to the central, monumental core and urge that higher buildings be constructed further out. One suggestion we have heard would allow higher buildings in various neighborhoods throughout the District. Another proposal is to create a Paris-style highrise sector, probably east of the river, possibly at Poplar Point.

The Committee of 100 believes that restricting the height limit solely to the monumental core risks severing the unity that now exists between the national capital and local Washington, to the detriment of both. The monumental core derives its impact from its dominance. Surrounding it with a ring of highrises can result in what some call the “Disneyfication” of our national icons. The idea of creating a single highrise sector risks a different negative outcome: because sites mentioned as candidates for such a sector are almost invariably east of the river, the sector would result in displacement of a significant part of Washington’s African-American community and further exacerbate the city’s racial divide. Moreover, there is just as much affection for Washington’s horizontal scale east of the river as there is anywhere else in the city.⁶

⁶ For example, residents vigorously and successfully opposed a proposed seven-story affordable housing apartment building at Minnesota and Pennsylvania avenues, SE; a smaller building was erected. Elsewhere, Penn-Branch community residents insisted on a 50-foot height limit at Pennsylvania and Branch avenues, instead of the proposed 80-foot height.

The Committee of 100 also opposes tinkering with the Height Act on a piecemeal basis. The Height Act must neither be swept away nor chipped away. A recent egregious example of such chipping away is the Burnham Place project behind Union Station, which was deemed to comply with the Height Act only because the prospective building was measured from the top of the bridge over the railroad tracks, rather than at grade.

2. The District can grow its economy and house its residents without raising the height limit.

a. The local economy. It is not necessary to lift the height limit to generate a more robust local economy, a bigger housing supply or more affordable housing, despite arguments to the contrary.⁷ The District overall is experiencing sustained growth that has insulated large parts of the city from the ongoing national downturn. In addition to visible construction activity – evidenced by 32 cranes at work on a day several months ago – there is a growing small business sector led by the two fastest-growing population groups, young singles and empty nesters.

Indeed, some economic expansion beyond the central city – for example, NOMA – arguably is in part driven by the Height Act. Also, it was asserted at a business conference earlier this year that the Height Act stimulates foreign investment interest in the District.⁸

⁷ See, e.g., Michael Grunwald, writing in the Washington Post on July 2, 2006 that the height limit, among other purported evils, “has inflated office rents, deflated the municipal tax base, limited affordable housing, contributed to the region's hideous traffic jams and generally helped keep Washington a second-tier city”

⁸ According to Professor Julian Josephs, the height limit “was what created Washington as a market of choice for international investors,” because “[w]e are the only market that really has

Notwithstanding a burgeoning economy throughout much of the city, there is persistent double-digit structural unemployment east of the Anacostia River. Structural unemployment is a problem that must be solved, but raising the height limit is not the answer. Since the 1970s, the District has seen successive development booms: central downtown, West End, downtown east of 16th Street, Penn Quarter, NOMA, etc. Each development wave resulted in substantial new construction and renovations. None of these waves – none – led to meaningful short-term or long-term employment opportunities, directly or indirectly, for African-Americans living in the District, especially those east of the river. If development were the answer to structural unemployment, the District would have seen some evidence of this at some point since 1975. The Committee of 100 views arguments that raising the height limit is a cure for structural unemployment as wishful thinking at best, and disingenuous at worst.

b. Housing. There is solid information, based on the District's own reports, that the housing supply does not need a boost from raising the height limit. In 2001, when the District was at a financial nadir, Alice Rivlin, who chaired the Control Board charged with overseeing District finances, proposed that the District would benefit financially

that huge restraint on new buildings,” quoted in Lydia DePilis, *Foreign investors like the height limit too* (City Paper Housing Complex blog, Feb. 7, 2012). Also, the Association of Foreign Investors in Real Estate reported earlier this year that Washington and New York, along with Paris and London, are the top cities worldwide attracting foreign investment.
< <http://www.afire.org/newsletter/2011/leads.pdf>>.

and socially with the addition of 100,000 new residents over the next 10 years.⁹ The population then stood at 572,000 residents.

Although no basis for choosing that particular number was articulated, the target was adopted as a goal by then-Mayor Anthony Williams and the target became a staple of DC planning and economic development initiatives.¹⁰ This led to the question, “When we talk about adding 100,000 residents, a common question asked is where will they all live?”¹¹ To accommodate the anticipated growth, the District, among other measures, designated 10 large tracts for intensive residential development, including Saint Elizabeth’s Hospital, DC Village and Poplar Point.¹² The ten new developments are projected to contain 15,000 units accommodating 30,000 to 40,000 residents.¹³ In addition to these large sites, the District identified 30,000 vacant, abandoned or underutilized sites that it estimated could house 60,000 to 80,000 residents.¹⁴

The 2010 census revealed that the District had gained about 30,000 new residents. While short of the 100,000 target, the increase represented substantial

⁹ Carol O’Cleireacain and Alice M. Rivlin, *Envisioning a Future Washington* at 1 (June 2001) (issued by the Brookings Institution Greater Washington Research Project, Brookings Institution). The report is available at <<http://www.brookings.edu/research/speeches/2003/09/30cities-rivlin>>.

¹⁰ See, e.g., *A Vision for Growing an Inclusive City: A Framework for the Washington, DC Comprehensive Plan Update* at 28 (July 2004) (“Adding 100,000 residents – a long-range target set by Mayor Williams – will help restore many of our once-vibrant neighborhoods”).

¹¹ *Id.* at 29.

¹² Others are the Armed Forces Retirement Home, Mount Vernon Triangle, North Capitol Area, Southwest Waterfront, Southeast Federal Center, M Street Southeast and Reservation 13. *Id.* at 31.

¹³ *Id.* at 29, 31.

¹⁴ *Id.* at 29.

growth and also reversed years of population decline. More dramatically, by the end of 2011, the District gained an additional 16,000 new residents, bringing the city halfway to the Rivlin-Williams goal and exhibiting a growth rate greater than that of the 50 states.

The new residents were accommodated (1) within the existing height limit and (2) without development of most of the new large residential sites. The District has identified more than sufficient capacity for its anticipated growth and has achieved half that growth without tapping much of that capacity.

Further, the District concluded that its housing market returned to full strength in 2011, a year in which 249 residential permits were issued for approximately 4,726 units.¹⁵ According to the District, another 41,000 residential units are in the pipeline.¹⁶ There clearly is much available and projected housing capacity and thus no need exists to disturb the Height Act on that account.

c. Affordable Housing. While the District's overall housing supply is ample and growing, there is a shortage of acceptable affordable housing. Raising the height limit is possibly the least effective way to deal with any affordable housing needs.¹⁷

¹⁵ D.C. Department of Housing and Community Development, *Inclusionary Zoning Annual Report* at 4 (Mar. 14, 2012) The inclusionary zoning ("IZ") program was developed pursuant to section 107 of the Inclusionary Zoning Implementation Act of 2006, D.C. Law 16-275, codified at D.C. Code sec. 601041.07 and Mayor's Order 2008-59 (Apr. 2, 2008). The statistics cited in the report include projects subject to IZ requirements and those exempt from the requirements.

¹⁶ *Id.* at 6. It is unclear whether these pipeline units overlap planned housing in the above-mentioned large tracts.

¹⁷ This fact is sometimes misunderstood. See, e.g., Lydia DePilis, *Let D.C.'s Buildings Grow: The case for scrapping Washington's Height Act* (City Paper, Dec. 17, 2010) (citing as one reason for raising heights that "it's obvious that we have a supply problem when it comes to housing: Residential prices, still stagnant in much of the country, continue to rise precipitously

First, affordable housing is not a one-size-fits-all need. The need embraces senior citizens with limited mobility who need convenient, low-maintenance housing; single parents who need elbow room and access to schools and recreation; workforce families – teachers, firefighters, police officers and other public servants whom the District would like to keep in the city, many of whom now opt for four-bedroom suburban houses; young college graduates starting out in comparatively low-paying jobs who have excellent future prospects; and unemployed single males.¹⁸ In addition to their varying housing needs, these groups have differing abilities to pay. Affordable housing units may be targeted to households at 30, 60 or 80 percent of area median income (currently about \$100,000 for a family of four). In addition to income eligibility, a household's housing payment may be limited to 30 percent of its income.

Raising the height limit will not add significant housing capacity for any of the groups in need of affordable housing. Among other reasons, high-rise housing is the most expensive to built and maintain.¹⁹ Dedicated highrise housing for the very poor

in D.C., which risks turning into a wealthy enclave as the proportion of units subject to rent control grows smaller and smaller”).

¹⁸ In addition, there are the specialized housing needs of at-risk populations, including physically and developmentally disabled individuals, returning incarcerated, etc.

¹⁹ In approving mixed-use Planned Unit Developments (PUDS) with a residential component, the District frequently requires a number of affordable housing units, which must be identical to market rate units except that lower quality interior finishes may be used. Developers have reported difficulty in making this model work in condo units because even with subsidized purchase costs, below-market rate tenants have been unable to afford the condo fees. In other instances, exemptions from affordable housing requirements have been granted, while in other cases, requirements have been imposed but not complied with.

The IZ program, a similar, separate initiative, was intended to create and preserve affordable housing opportunities. The program, now in its third year of implementation, may have an impact in the future, but to date no IZ units have been produced for rent and two IZ units have been produced for sale. IZ Annual Report at 2. We note these circumstances to make clear our

has been tried and abandoned on a national scale as a failed policy, symbolized by the dynamiting of Chicago's Cabrini-Green complex.

Current housing policy generally calls for housing families with children in mixed-income low-rise or townhouse dwellings, the same scale favored by families buying market rate housing. A prime example of this preference is the growth of families with young children in Capitol Hill neighborhoods, where heights are controlled by vigorously enforced historic district mandates. There also is an influx of young families in the low-scale neighborhoods of Brookland in Ward 5; Takoma, Manor Park, Brightwood and Shepherd Park in Ward 4; and Penn-Branch in Ward 7, among others. One-third of the housing stock proposed for the McMillan development – one of the ten large tracts designated by the District to accommodate new residents – consists of workforce housing in the form of two-story townhomes.

3. Additional density can be achieved without additional height.

The District's planners and resident new urbanists make no secret of their desire for additional density throughout Washington. Without endorsing this goal, the Committee of 100 nevertheless notes that height is not an automatic proxy for density and that increased density can be achieved within the existing Height Act envelope. Larry Beasley, in his centennial peroration, flatly reminded his listeners that "an increase in height does not necessarily represent an increase in development capacity.... Manipulating heights only, to a large extent, will not really have much of an effect of the

skepticism that the District can leverage market rate development at any height as the principal means of meeting its affordable housing needs.

economics of a development or the economic climate of the city.”²⁰ He stated that one “can do an equally effective strategy for transit-oriented clustering of dense development in both a high scale and a lower scale format with equal success.”²¹

Similarly, Edward T. McMahon, a senior fellow at Washington’s Urban Land Institute cautioned recently that “density is being pursued as an end in itself, rather than as one means to building better cities.”²² Citing research by the Preservation Green Lab, McMahon noted that “fine grained urban fabric” neighborhoods such as Capitol Hill, the U Street Corridor and NOMA, “are much more likely to foster local entrepreneurship and the creative economy than monolithic office blocks and apartment towers.”²³

Conclusion

The Height Act has worked for 102 years, and will work for the next 102 and beyond. Lifting the limit is not a necessary or effective way of meeting housing needs or accommodating commercial development. We urge this Committee to leave well enough alone and to maintain and celebrate the Height Act as it stands. As Beasley concluded his remarks: “I close with a cautionary note. Be very careful as you gamble with the 100-year legacy of Washington’s Height Act. Take care not to open things up

²⁰ Beasley at 6.

²¹ *Id.*

²² Edward T. McMahon, *Density Without Highrises*, (May 12, 2012) at <www.citiwire.net>.

²³ *Id.*

too casually. I dare say, those height limits may be the single most powerful thing that has made this city so amazingly fulfilling.”²⁴

The Committee of 100 thanks you again for the opportunity to address these important issues.

²⁴ Beasley at 14.