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TO: Matthew Quinones, President, Board of Representatives

FROM: Michael Toma, Assistant Corporation Counsel *MST*

DATE: July 24, 2020

RE: Jurisdiction Over Statue of Columbus

You have asked for an opinion on who has jurisdiction to remove the statue of Columbus in Columbus Park. In the entire City Charter and City Code, there is one provision which expressly mentions monuments:

Sec. C5-30-5. - Park and Recreation Functions.

Within the Office of Operations, there shall be a Superintendent of Parks and Recreation appointed by the Mayor according to the provisions of this Charter, who, under the advice, instruction and direction of the Director of Operations, shall be responsible for the following park and recreation functions:

(1)The establishment, construction, maintenance and operation of all parks, public recreation areas, public beaches and any structures **and monuments thereon.** [emphasis added]

Pursuant to the clear language of the foregoing section, the Superintendent of Parks and Recreation has jurisdiction over monuments located within public parks. There is no corresponding language granting such jurisdiction to any other entity. While the Parks and Recreation Commission has certain authority over public parks, it pertains to policy-making and to the adoption of rules and procedures relating to providing parks and the use of such parks. Its authority does not extend to the operational authority to remove a statue. Its powers are set forth as follows:

Sec. C6-120-2. - Powers and Duties of the Parks and Recreation Commission.

The Parks and Recreation Commission shall have the following powers and duties:

(1)Subject to the approval of the Mayor and except as may be otherwise determined by the Board of Representatives by ordinance, to establish policies and procedures for providing public park facilities and public recreation programs for the effective, balanced utilization of such areas, facilities and equipment for active and passive recreation;

- (2) To develop such plans as it deems necessary and useful for the preservation and expansion of natural resources and passive recreation areas in the City;
- (3) To make all rules and regulations for the use and conduct of all parks and all public recreation areas.

The Board of Representatives did approve by resolution in 1958 the renaming of the park, and the minutes reflect that the Board was made aware that the statue would be placed in the park, and voiced no objection to it. It appears that Charter section C5-30-5 concerning the Superintendent of Parks and Recreation's authority over monuments was added to the Charter later in time, by a referendum in 1977. Because the Charter now grants the Superintendent of Parks and Recreation with authority over the statue, the Board of Representatives cannot now exercise binding authority concerning the placement of the statue in the park, but it could, if it desired, pass a nonbinding resolution that the statue be removed (or not be removed), and such a resolution would have persuasive effect with the Superintendent.