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TO: Jeff Curtis, President, Board of Representatives

FROM: Michael S. Toma, Esq., Assistant Corporation Counsel *MST*

DATE: December 13, 2021

RE: Appointments to the Appointments Commission

You have asked whether it would be a conflict to appoint two members of the Board of Representatives who are members of the Appointments Committee to the Appointments Commission. In my opinion, it would not be a conflict for two members of the Appointments Committee of the Board of Representatives to be appointed to the Appointments Commission. Conflicts of interest exist when public officials are in positions which compromise their ability to act with integrity, independence and impartiality. I do not believe that such a situation exists here. An individual who is a member of both of these bodies is not placed in a compromised situation. The individual can faithfully perform the duties and responsibilities of the Commission, including playing a role in recommending to the Mayor prospective candidates for appointment. The same individual can subsequently faithfully vote, while a member of the Committee, on whether to approve Mayoral appointments.

The relationship between the Committee and the Commission is not one where the Committee sits as a reviewing or appellate body in relation to the Commission. The Commission has no appointing authority; it merely makes recommendations to the Mayor. It is the Mayor who holds the power of appointment. The Committee has the power to review Mayoral appointments. In this context, I do not see a conflict. I have reviewed the Code of Ethics and do not believe that any prohibitions therein are triggered by the question presented.

I note that the Appointments Commission is comprised of seven voting members, and the two members of the Board of Representatives who will sit on the Commission will do so in an ex officio capacity without the right to vote. This limited involvement by these two members bolters the conclusion that there is no conflict here. While I see no conflict under the Ethics Code, I will note that the two members of the Appointments Committee of the Board of Representatives who become members of the Appointments Commission would have the opportunity to express their opinions about a prospective appointee two times, while the other members of the Committee will only have one such opportunity; the President of Board of Representatives may wish to take this into account, as a policy consideration, when making the appointments to the Appointments Commission.