July 17, 2020

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

By this correspondence, the DC Commission on the Arts and Humanities respectfully transmits, for the Council’s consideration and enactment, the Commission on the Arts and Humanities’ (“CAH”): (1) proposed emergency legislation entitled the “Arts and Humanities Omnibus Emergency Amendment Act of 2020”; (2) proposed and related “Resolution”; (3) “Temporary” and “Permanent” versions of the above-referenced CAH emergency bill; and (4) related Fiscal Impact Statement and Legal Sufficiency Certification. The purpose of this legislation is to revise the Commission on the Arts and Humanities Act of 1975, as amended, in a manner that revises some of the formulas used to allocate CAH’s grant awards.

On January 31, 2020, the federal Department of Health and Human Services (“DHHS”) declared a public health emergency for the United States, for the purpose of aiding the nation’s health care community in responding to the worldwide COVID-19 pandemic (“Pandemic”). In response to the Pandemic, the World Health Organization and the United States’ Center for Disease Control both declared COVID-19 to be a “public health emergency of international concern.” In response to the Pandemic and in accordance with the DHHS’ above-referenced public health emergency declaration, the Mayor of the District of Columbia issued, on March 11, 2020, Mayor’s Order 2020-045 and Mayor’s Order 2020-046 (both of which are captioned “Declaration of Public Health Emergency: Coronavirus (COVID-19)”).

Our Commission has learned that many in our local arts and humanities communities are struggling to survive during this ongoing worldwide Pandemic. If enacted, the proposed and accompanying “Arts and Humanities Omnibus Emergency Amendment Act of 2020” will authorize the Commission to lawfully award certain grants to organizations, the proceeds of which may be used by a grantee to pay, among other expenses, the respective grantee’s mortgage and/or rent obligations that are directly related to their art-making and/or humanities work-related space.

Accordingly, we respectfully urge the Council to act favorably and expeditiously on the above-referenced legislation. Thank you for your time and consideration.

Sincerely,

[Signature]

On behalf of the DC Commission on the Arts and Humanities
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 2 of Title 39 of the District of Columbia Official Code to revise the formulas used to allocate the Commission on the Arts and Humanities’ annual budget.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Arts and Humanities Omnibus Amendment Act of 2020”.

Sec. 2. Title 39 of the District of Columbia Official Code is amended as follows:

(a) Chapter 2 is amended as follows:

(1) Section 39-205 is amended as follows:

(A) Section 39-205 (c-1)(2)(A) is amended by striking the entire sentence that reads “17% for grants to fund capital projects in support of either the Arts and Humanities Cohort or the National Capital Arts Cohort” and inserting in its place the following language:

“(A) 17% for grants to fund grant recipients’ operations-related expenses which, in this context, include capital project-related expenses and, exclusively during the District’s Fiscal Year 2021,
certain arts- and/or humanities-related mortgage and/or rent obligations including, but not
necessarily limited to: (i) expenses related to the operation of a grant recipient’s United States
Internal Revenue Service-recognized and arts- and/or humanities-related home-based office; and
(ii) expenses related to a grant recipient’s rental of District-based space that is used to produce
and/or publicly present arts- and/or humanities-related work. Any and all grant funds that are
awarded to a grantee by the Commission pursuant to this Subsection but that are not expended
during the fiscal year within which the funds were awarded shall be returned to the Commission
by the involve grantee immediately after the grantee has determined that she/he/it will not
expend the subject funds during the current fiscal year, and by no later than the last day of the
fiscal year during which the subject grant award was made. Any such returned grant-related
funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of
the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the
Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01;”

(B) Section 39-205 is further amended by inserting, immediately below Section
39-205 (c-1)(2)(A), the following language: “(A-1) During the District’s Fiscal Year 2021,
members of the National Capital Arts Cohort shall not be eligible to receive any of the
Commission grant funds that are referenced in this Chapter’s Section 39-205 (c-1)(2)(A);”

(C) Section 39-205 (c-1)(2)(C) is amended by adding the following language:
“(iii) Any and all Commission grant funds that are awarded to an organization that is a member
of the National Capital Arts Cohort but that are not expended during the fiscal year within which
the funds were awarded shall be returned to the Commission by the involve National Capital
Arts Cohort member immediately after that grantee has determined that it will not expend the
subject funds during the current fiscal year, and by no later than the last day of the fiscal year
during which the subject grant award was made. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01.”

(D) Section 39-205 (c-1)(2)(D) is amended by deleting the sentence that reads “5% the [sic] for the Humanities Grant Program” and inserting the following language: “5% for the Humanities Grant Program.”

(2) Section 39-205.01 is amended as follows:

Section 39-205.01 (b) is amended by inserting, immediately following § 39-205.01 (b)(4), the following language: “(5) Grant funds that have been awarded by the Commission and subsequently returned to the Commission pursuant to the mandates of either D.C. Official Code § 39-205 (c-1)(2)(A) or D.C. Official Code § 39-205 (c-1)(2)(C).”

(3) Section 39-205.02 is amended as follows:

Section 39-205.02 (b)(1) is amended by inserting, immediately following the sentence that begins with the words “Each year, the Commission shall make a grant in the amount provided under § 39-205 (c-1)(2)(D) to a grant-managing entity . . .” the following language: “Any and all grant funds that are awarded to the grant-managing entity that is referenced in this Subsection but that are not expended during the fiscal year within which the funds were awarded shall be returned to the Commission by the grant-managing entity immediately after the grant-managing entity has determined that it will not sub-grant and/or expend all of the subject funds during the current fiscal year, and by no later than the last day of the fiscal year during which the subject grant award was made. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of
the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the
Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01. The grant-
managing entity that is referenced in this Subsection shall not be eligible to receive from the
Commission any grant funds that are awarded by the Commission to its grantees for general
operating support.”

Sec. 3. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement
required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December
24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the
Mayor, action by the Council to override the veto), and a 30-day period of congressional review
as provided in section 602(c) (1) of the District of Columbia Home Rule Act, approved
December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206(c) (1)), and publication in the
District of Columbia Register.
MEMORANDUM

TO: J. Carl Wilson
   General Counsel
   Commission on Arts and Humanities (DCCAH)

FROM: Brian K. Flowers
      Deputy Attorney General
      Legal Counsel Division

DATE: July 7, 2020

RE: Arts and Humanities Omnibus Emergency, Temporary and Permanent Amendment Act of 2020 and an Accompanying Emergency Declaration Resolution (AE-20-492)

This responds to an email request we received from your office by which you transmitted proposed legislation entitled the “Arts and Humanities Omnibus Emergency Amendment Act of 2020” (Emergency Act), substantively identical temporary and permanent versions of the draft legislation, and an accompanying emergency declaration resolution (Resolution) on the same subject to our Office for a legal sufficiency review (together, the Legislation).¹

The Legislation will amend, on an emergency, temporary and permanent basis, Chapter 2 of Title 39 of the District of Columbia Official Code to revise the formula used to allocate the Commission on the Arts and Humanities’ annual budget. In substantive part, it provides that the DCCAH may allocate up to:

...17% for grants to fund grant recipients’ operations-related expenses and, exclusively during the District’s Fiscal Year 2021, certain arts- and/or humanities-related mortgage and/or rent obligations including, but not necessarily limited to: (i) expenses related to the operation of a grant recipient’s United States Internal Revenue Service-recognized arts- and/or humanities-related home-based office; and (ii) expenses related to a grant recipient’s rental of District-based space that is used to produce and/or publicly present arts- and/or humanities-related work.

Further, the Legislation provides that the balance of any unused grant funds must be returned to the DCCAH no later than the last day of the fiscal year of the award for deposit into the Arts and Humanities revolving fund established by D.C. Official Code § 39-205.01.

¹ This Office suggested several clarifying changes that the DCCAH accepted and incorporated into revised versions of the Legislation.

1350 Pennsylvania Avenue, N.W., Suite 409, Washington, D.C. 20004  Phone (202) 724-5524  Fax (202) 724-6160
The Resolution establishes the emergency circumstances leading to the need for the emergency version of
the Legislation.

This Office has reviewed the Legislation and determined that it is legally sufficient. I have attached a
Certificate of Legal Sufficiency for your use. In addition, please be reminded that you must secure a
cal impact statement from the Office of the Chief Financial Officer to accompany the Legislation. If
you have any questions about this memorandum, please contact either Anne R. Hollander, Senior
Assistant Attorney General, at 724-5560, or me at 724-5524.

BKF/arh

Attachment
MEMORANDUM

TO: Ronan Gulstone  
   Director  
   Office of Policy and Legislative Affairs  

FROM: Brian K. Flowers  
       Deputy Attorney General  
       Legal Counsel Division  

DATE: July 7, 2020  

RE: Arts and Humanities Omnibus Emergency, Temporary and Permanent Amendment Act of 2020 and an Accompanying Emergency Declaration Resolution (AE-20-492)

This is to Certify that this Office has reviewed the legislation entitled the “Arts and Humanities Omnibus Emergency Amendment Act of 2020”, substantively identical temporary and permanent versions of the draft legislation, and an accompanying emergency declaration resolution on the same subject, and determined that the legislation and resolution are legally sufficient. If you have any questions, please do not hesitate to call me at 724-5524.

Brian K. Flowers  
Brian K. Flowers
MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: July 17, 2020

SUBJECT: Fiscal Impact Statement – Arts and Humanities Omnibus Emergency Amendment Act of 2020 (and accompanying permanent version)

REFERENCE: Draft Introduction as provided to the Office of Revenue Analysis on July 8, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 budget and the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the proposed resolution.

Background

The DC Commission on the Arts and Humanities ("Commission") is currently required to make grants that include 17% of total grant amounts for capital projects of the National Capital Arts Cohort\(^1\) or Arts and Humanities Cohort\(^2\); 50% for the Arts and Humanities Cohort; 28% for the National Capital Arts Cohort; and 5% for the Humanities Grant Program. The proposed bill changes the 17% allocation so that it may be used for grant recipients' capital or operating expenses, which may include, during fiscal year 2021, mortgage and/or rent obligations for District-based space that is used to produce and/or publicly present arts- and/or humanities-related work. Members of the National Capital Arts Cohort are not eligible to receive these grants during fiscal year 2021.

\(^1\) The National Capital Arts Cohort includes those organizations that (i) Have an annual income, exclusive of District funds, in excess of $1 million for each of the 3 years before receipt of a grant awarded under this chapter; (ii) Have income from federal funds of less than $1 million for each of the 3 years before receipt of a grant under this chapter; and (iii) Receive funding from the National Capital Arts and Cultural Affairs Grant Program ("NCACA Grant Program"). D.C. Code § 39-202(9).

\(^2\) The Arts and Humanities Cohort includes those individuals and organizations that directly produce or present content or facilitate productions of other arts and humanities organizations or provide arts education services. D.C. Code § 39-202(3).
The bill further requires organizations which will not expend their grant funds prior to the end of a fiscal year to return such unspent funds to the Commission. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the Arts and Humanities Fund.3

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 budget and the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the proposed resolution. The proposed bill alters the uses, but not the amounts, of the Commission’s required grants.

3D.C.Code § 39-205.01
Prospective Statute Revisions

D.C. Official Code Sections 39-205 ("Administration"), 39-205.01 ("Arts and Humanities Fund") and 39-205.02 ("Humanities Grant Program")

§ 39–205. Administration.

(a) (1) On or before October 1, 2019, the Commission shall nominate, and with the advice and consent of the Council, shall appoint an Executive Director for the Commission for a renewable 4-year term. The 4-year year term shall commence on October 1 in the year of the appointment and expire on September 30 of the fourth year of the term. The Executive Director may be removed by the Commission for just and reasonable cause.

(2) The Executive Director shall receive annual compensation fixed in accordance with the provisions of subchapter XI of Chapter 6 of Title 1 and shall serve as the chief administrative officer of the Commission.

(3) In addition to any other duties set forth in this chapter, the Executive Director shall:

(A) Supervise the staff of the Commission;
(B) Assist the Commission in executing its policies and duties;
(C) Perform other duties as directed by the Commission; and
(D) Report regularly on the activities and operations of the agency to the members of the Commission.

(b) The Commission shall meet monthly, except when a meeting is cancelled by the Chairperson and a majority of the Commission. Special meetings of the Commission may be called by the Chairperson of the Commission, or upon the request of 5 members of the Commission.

(b-1) (1) The Mayor shall provide the Commission with the services and facilities necessary for the Commission to carry out its duties and responsibilities.

(2) All District agencies shall collaborate with the Commission, including sharing data to the extent permitted by law, in furtherance of the Commission's duties and responsibilities.

(c) The Commission shall prepare and submit to the Mayor, with a copy to the Council, an annual budget to be included in the regular budget process of the District of Columbia developed in accordance with subchapter I of Chapter 3 of Title 47. In addition, each annual capital budget request submitted by the Mayor to the Council shall include as a discrete capital project a public
arts fund in the amount of 1% of the total authority requested for the construction, renovation, and repair of public facilities and institutions, exclusive of land acquisition and infrastructure. Public arts fund financing shall be used by the Commission to fund the creation, installation, and maintenance of public art. The commissioning of artists and the selection, approval, placement, and maintenance of public art shall be the responsibility of the Commission in consultation with both the Department of Public Works and, if applicable, the public official or employee with chief administrative responsibility for the actual use of the public place affected.

(c-1) For the fiscal year 2021 budget and every fiscal year thereafter the Commission shall allocate the annual budget as follows:

(1) Not more than 23% of the annual budget shall be allocated for administrative costs.

(2) Not less than 77% of the annual budget shall be allocated for the following purposes:

(A) 17% for grants to fund grant recipients’ operations-related expenses and, exclusively during the District’s Fiscal Year 2021, certain arts- and/or humanities-related mortgage and/or rent obligations including, but not necessarily limited to: (i) expenses related to the operation of a grant recipient’s United States Internal Revenue Service-recognized and arts- and/or humanities-related home-based office; and (ii) expenses related to a grant recipient’s rental of District-based space that is used to produce and/or publicly present arts- and/or humanities-related work. Any and all grant funds that are awarded to a grantee by the Commission pursuant to this Subsection but that are not expended during the fiscal year within which the funds were awarded shall be returned to the Commission by the respective grantee immediately after the grantee has determined that she/he/it will not expend the subject funds during the current fiscal year, and by no later than the last day of the fiscal year during which the subject grant award was made. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01;”

(A-1) During the District’s Fiscal Year 2021, members of the National Capital Arts Cohort shall not be eligible to receive any of the Commission grant funds that are referenced in this Chapter’s Section 39-205 (c-1)(2)(A);”

(B) 50% for grants to support the Arts and Humanities Cohort;
(C) 28% for grants to support the National Capital Arts Cohort to be allocated as follows:

(i) 70% shall be distributed equally to each organization that belongs to the National Capital Arts Cohort; and

(ii) 30% shall be distributed proportionally to each organization that belongs to the National Capital Arts Cohort, in an amount based on that organization's share of the total annual income for the prior year, not including District funds, of all organizations that belong to the National Capital Arts Cohort; and

(iii) Any and all Commission grant funds that are awarded to an organization that is a member of the National Capital Arts Cohort but that are not expended during the fiscal year within which the funds were awarded shall be returned to the Commission by the respective National Capital Arts Cohort member immediately after that grantee has determined that it will not expend the subject funds during the current fiscal year, and by no later than the last day of the fiscal year during which the subject grant award was made. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District's General Fund at the end of the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01.”

(D) 5% for the Humanities Grant Program.

(d) The Chairperson shall submit to the Mayor and the Council the annual reports of the Commission’s activities, the public arts plan required by § 39-204(8), and any other plans, recommendations, and projections for the following year. These reports, plans, recommendations, and projections shall accompany the budget request referred to in subsection (c) of this section.

(e) If any member of the Commission is an employee, member, director, or officer of any organization that has applied to the Commission for a grant, such member shall:

(1) Provide a written statement before the grant is considered by the Commission or an advisory panel describing the potential conflict of interest and deliver the statement to the Executive Director and the Chairperson of the Commission;

(2) Not communicate with or attempt to influence any other member of the Commission or any member of an advisory panel regarding the grant application; and
(3) Not be present when the grant application is considered by the Commission or an advisory panel.

§ 39–205.01. Arts and Humanities Funds

(a) There is established as a special fund the Arts and Humanities Fund ("Fund"), which shall be administered by the Commission in accordance with subsection (c) of this section.

(b) The following shall be deposited into the Fund:

(1) Proceeds of the sale or loan by the District government of works of art, prints, and promotions items;

(2) Fees collected pursuant to § 50-1501.02e;

(3) Subject to the availability of funds, up to $2.5 million annually pursuant to § 1-350.04(d); and

(4) Dedicated taxes pursuant to §§47-2002(d) and 47-2202(b).

(5) Grant funds that have been awarded by the Commission and subsequently returned to the Commission pursuant to the mandates of either D.C. Official Code § 39-205 (c-1)(2)(A) or D.C. Official Code §39-205 (c-1)(2)(C).”

(c) Money in the Fund shall be used for:

(1) The administration, improvement, and maintenance of property and programs managed by the Commission; and

(2) Purposes, including grants, consistent with § 39-205(c-1).

(d) (1) The money deposited into the Fund but not expended in a fiscal year shall not revert to the unassigned fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

§ 39–205.02. Humanities Grant Program.

(a) There is established within the Commission a Humanities Grant Program to provide subgrants in the humanities.

(b)(1) Each year, the Commission shall make a grant in the amount provided under § 39-205(c-1)(2)(D) to a grant-managing entity, which shall be used to make subgrants for the purpose of promoting cross-cultural understanding and appreciation of local history in all
neighborhoods of the District of Columbia. Any and all grant funds that are awarded to the grant-managing entity that is referenced in this Subsection but that are not expended during the fiscal year within which the funds were awarded shall be returned to the Commission by the grant-managing entity immediately after the grant-managing entity has determined that it will not sub-grant and/or expend all of the subject funds during the current fiscal year, and by no later than the last day of the fiscal year during which the subject grant award was made. Any such returned grant-related funds shall not revert to the unassigned fund balance of the District’s General Fund at the end of the fiscal year, or at any other time, but shall, instead, be deposited by the Commission into the Arts and Humanities Fund that was established by D.C. Official Code § 39-205.01. The grant-managing entity that is referenced in this Subsection shall not be eligible to receive from the Commission any grant funds that are awarded by the Commission to its grantees for general operating support."

(2) Any costs to the Commission or the Humanities Grant Program to administer subgrants shall be paid out of the Humanities Grant Program’s budget.

(3) Up to 30% of each disbursement from the Humanities Grant Program budget to the grant-managing entity may be utilized by the grant-managing entity for administrative expenses, capacity building, technical assistance, and evaluation of the Humanities Grant Program.

(c) Subgrants shall be:

(1) Awarded on a competitive basis;

(2) Used exclusively to fund District of Columbia residents, non-profits, neighborhood citizen or civic associations, educational institutions, alumni groups, and other entities with qualifying proposals under this section; and

(3) Selected through a process that includes independent review panels.

(d) The Humanities Grant Program shall be administered pursuant to the requirements of part B of subchapter XII-A of Chapter 3 of Title 1

(e) The grant-managing entity shall enter into a Memorandum of Understanding ("MOU") with the Commission. The MOU shall set forth certain administrative requirements for the grant-managing entity to abide by when it obtains District funds and awards subgrants involving District funds, and will clarify and reaffirm the grant-managing entity responsibility and obligation with respect to District funds, including the monitoring of the use of District funds.