

ENROLLED ORIGINAL

A RESOLUTION

15-211

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 8, 2003

To declare the existence of an emergency with respect to the need to adopt expeditiously the
Maret School, Inc. Revenue Bond Project Emergency Approval Resolution of 2003.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
resolution may be cited as the "Maret School, Inc. Revenue Bond Project Emergency
Declaration Resolution of 2003".

Sec. 2. Emergency circumstances.

(a) Maret School, Inc. is a nonprofit corporation organized under the laws of the District
of Columbia which seeks to have District of Columbia Revenue Bonds issued and receive a loan
of the proceeds for the financing and refinancing of all the costs incurred in connection with the:

(1) Refinancing of and modifications to the \$9 million District of Columbia
Revenue Bonds (Maret School, Inc. Issue) Series 1998; and

(2) Financing, construction, and renovation of the Maret School, Inc's facilities
located at 3000 Cathedral Avenue, N.W., Washington, D.C. 20008 (Lot 843, Square 2113),
together with the other property, real and personal, functionally related and subordinated thereto,
including furniture, fixtures, equipment, soft costs, capitalized interest, and costs of issuance.

(b) Interest rates on the tax-exempt bonds are presently low, but interest rates are volatile
and in order for the Maret School, Inc. to maximize interest savings on the District of Columbia
Revenue Bonds, it is important that the Council expedite the process of the issuance to the
revenue bonds by the District.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated
in section 2 constitute emergency circumstances making it necessary that the Maret School, Inc.
Revenue Bond Project Emergency Approval Resolution of 2003 be adopted on an emergency
basis.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

15-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 8, 2003

To authorize and provide, on an emergency basis, for the issuance, sale, and delivery of an aggregate principal amount not to exceed \$21 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of the bonds to assist the Maret School, Inc., a District of Columbia nonprofit corporation, in the financing, refinancing, and reimbursing of costs incurred in connection with the refinancing of and modifications to the \$9 million District of Columbia Revenue Bonds (Maret School, Inc. Issue) Series 1998 and the financing, construction, and renovation of the school's facilities pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Maret School, Inc. Revenue Bond Project Emergency Approval Resolution of 2003".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) "Authorized Delegate" means the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individual has subdelegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) "Borrower" means the Maret School, Inc., a nonprofit corporation organized under the laws of the District of Columbia.

(5) "Chairman" means the Chairman of the Council of the District of Columbia.

(6) "Closing Documents" means all documents and agreements other than Financing Documents that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan contemplated thereby, and includes agreements, certificates, letters, opinions,

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forms, receipts, and other similar instruments.

(7) "Council" means the Council of the District of Columbia.

(8) "District" means the District of Columbia.

(9) "Financing Documents" means the documents other than Closing Documents that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds and the making of the Loan, including any offering document, and any required supplements to any such documents.

(10) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(11) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, program fees and administrative fees charged by the District; underwriting, legal, accounting, rating agency, and other financing fees, costs, and expenses; fees paid to financial institutions and insurance companies, initial letter of credit fees, compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District; and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of Loan contemplated thereby.

(12) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(13) "Mayor" means the Mayor of the District of Columbia.

(14) "Project" means:

(A) The financing and refinancing of all the costs incurred in connection with the refinancing of and modifications to the \$9 million District of Columbia Revenue Bonds (Maret School, Inc. Issue) Series 1998; and

(B) The financing, construction, and renovation of the Borrower's facilities located at 3000 Cathedral Avenue, N.W., Washington, D.C. 20008 (Lot 843, Square 2113), together with the other property, real and personal, functionally related and subordinated thereto, including furniture, fixtures, equipment, soft costs, capitalized interest, and costs of issuance.

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may by resolution authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by Loans made directly or indirectly to any individual or legal entity, by the purchase of any

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mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series as part of a plan of financing for the Project, in an aggregate principal amount not to exceed \$21 million and to make the Loan for the purpose of financing, refinancing or reimbursing the costs of the Project.

(3) The Project will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of elementary and secondary school facilities within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series as part of a plan of financing for the Project, in an aggregate principal amount not to exceed \$21 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds; the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District; and maintaining official records of each bond transaction and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this resolution in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

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(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and

(11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District; are without recourse to the District; are not a pledge of, and do not involve, the faith and credit or the taxing power of the District; do not constitute a debt of the District; and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Borrower subject to the approval of the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

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Sec. 6. Sale of the Bonds.

(a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interest of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District; may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters; and may authorize the distribution of the documents in connection with the sale of the Bonds.

(c) The Mayor is authorized to deliver the executed and sealed Bonds, on behalf of the District, for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds, and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds; income realized from the temporary investment of those proceeds; receipts and revenues realized by the District from the Loan; income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners; other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds; and other sources of payment (other than the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

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Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

(b) The Mayor is authorized to execute in the name of the District, and on its behalf, by the Mayor's manual or facsimile signature, any Financing Documents and any Closing Documents to which the District is a party.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Financing Documents and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents, including those Financing Documents and Closing Documents to which the District is not a party.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to, or simultaneously with, the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to an Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve the faith and credit or the taxing power of, the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any

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transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, nor as a result of the incorrectness of any representation in, or omission from, the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or, except as otherwise provided in section 10(f), be subject to any personal liability by reason of the issuance of the Bonds or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents, shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

Sec. 12. Maintenance of documents.

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 13. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in, or assist the Borrower in any way with, the financing, refinancing, or reimbursing of the costs of the development of the Project. The Borrower shall have no claims for damages or for any other legal

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or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue its Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance, and makes no representations, that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds authorized by this resolution.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing of the costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

Sec. 16. Severability.

If any particular provision of this resolution, or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds authorized by this resolution, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval, pursuant to section 490(k) of the Home Rule Act, by the Council of the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving a plan of financing for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District and constitutes public approval for purposes of section 147(f) of the Internal Revenue Code of 1986, as amended.

Sec. 18. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

15-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 8, 2003

To declare the existence of an emergency with respect to the need to review and approve an Unsolicited Proposal submitted by Sang Oh & Company for the negotiated purchase and disposition of 375 Morse Street, N.E., which is a portion of Lot 807 in Square 3587 and known as the Ironworks Parcel, as surplus property.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Unsolicited Proposal Submitted by Sang Oh & Company for the Negotiated Purchase and Disposition of Surplus Property at 375 Morse Street, N.E., also known as the Ironworks Parcel, Emergency Declaration Resolution of 2003".

Sec. 2. (a) Pursuant to section 1(b)(2) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b)(2)), the Mayor transmitted to the Council a request for Council approval of the disposition of 375 Morse Street, N.E., which is a portion of Lot 807 in Square 3587 and is also known as the Ironworks Parcel.

(b) Pursuant to the resolution, the Ironworks Parcel will be purchased by Sang Oh & Company, subject to the provisions of the Act.

(c) On April 10, 2003, Sang Oh & Company submitted an Unsolicited Proposal to the District of Columbia Department of Housing and Community Development to develop the Ironworks Parcel, along with abutting properties, to create the Gateway Market Center, a 187,612 square foot wholesale, retail, and office complex, providing the following community accommodations, which will be provided in perpetuity:

- (1) A 100-seat community meeting room;
- (2) An office for the Advisory Neighborhood Commission 5B; and
- (3) Space and signage for a Metropolitan Police Department Community Work

Station.

(d) Sang Oh & Company intends to simultaneously settle on the acquisition and financing of the properties that comprise the Gateway Market Center, which include the Ironworks Parcel, along with the former Washington Beef Properties (approved by the Council in

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Resolution 14-440, May 7, 2002) and a privately-owned abutting property to be acquired by Sang Oh & Company under a recent contract to purchase. The simultaneous settlements will allow Sang Oh & Company to begin construction and demolition, and address environmental concerns all at once, so that the project can begin over the summer of 2003.

(e) In order for Sang Oh & Company to have a timely construction start, it must obtain site control as quickly as possible so that it may secure the necessary financing and construction permits to ensure the affordability of the community accommodations it proposes, and to exercise its option to purchase the privately-owned parcel in a timely manner.

(f) Without the simultaneous settlements of the three parcels composing the Gateway Market Center, including the Ironworks Parcel, during the summer of 2003, Sang Oh & Company cannot ensure the economic feasibility of providing the community benefits. Specifically, the parking concerns of the Advisory Neighborhood Commission 5B would not be appropriately addressed, reducing the number of parking spaces from 152 spaces to 119 spaces.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Unsolicited Proposal Submitted by Sang Oh & Company for the Negotiated Purchase and Disposition of Surplus Property at 375 Morse Street, N.E., also known as the Ironworks Parcel, Emergency Approval Resolution of 2003 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 8, 2003

To review and approve, on an emergency basis, an Unsolicited Proposal submitted by Sang Oh & Company for the negotiated purchase and disposition of 375 Morse Street, N.E., which is a portion of Lot 807 in Square 3587 and known as the Ironworks Parcel, as surplus property.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Unsolicited Proposal Submitted by Sang Oh & Company for the Negotiated Purchase and Disposition of Surplus Property at 375 Morse Street, N.E., also known as the Ironworks Parcel, Emergency Approval Resolution of 2003".

Sec. 2. (a) Pursuant to section 1(b)(2) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b)(2)), the Mayor transmitted to the Council a request for Council approval of the disposition of 375 Morse Street, N.E., which is a portion of Lot 807 in Square 3587 and is also known as the Ironworks Parcel.

(b) The Mayor and the Council have determined that 375 Morse Street, N.E., the Ironworks Parcel, is no longer needed for use by the District government.

(c) Pursuant to section 1(c) of the Act, the Council, finding that 375 Morse Street, N.E., the Ironworks Parcel, is no longer required for public purposes, hereby approves the unsolicited proposal submitted by Sang Oh & Company for the negotiated purchase and disposition of the Ironworks Parcel for development of the Gateway Market Center.

(d) In the event that the Ironworks Parcel, or any portion thereof, is not used for the purposes authorized in this resolution or in the sale agreement between the District government and Sang Oh & Company, the District of Columbia may reacquire the Ironworks Parcel in accordance with section 1(e) of the Act.

Sec. 3. The Mayor has taken the necessary steps to ensure continuous community input regarding the disposition of the Ironworks Parcel, as required by section 1(f) of the Act.

Sec. 4. 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. 5. The Secretary to the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Chief Financial Officer, and to Sang Oh & Company.

Sec. 6. This resolution shall take effect immediately.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICERNatwar M. Gandhi
Chief Financial Officer**MEMORANDUM**

TO: The Honorable Linda W. Cropp
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer

DATE: June 24, 2003

SUBJECT: Fiscal Impact Statement: "Unsolicited Proposal for the Negotiated Disposition of 375 Morse Street, NE, Square 3587, Lot 807 (in part)"

REFERENCE: Resolution

Conclusion

Funds are sufficient in the FY 2004 through FY 2007 budget and financial plan to approve the "Unsolicited Proposal for the Negotiated Disposition of 375 Morse Street, NE, Square 3587, Lot 807 (in part)".

Background

The proposed resolution would review, and provide no comment on, the unsolicited proposal submitted by Sang Oh & Company to purchase the 3,995 square foot "iron-works parcel" at 375 Morse Street, NE.

Financial Plan Impact

The current Office of Tax and Revenue (OTR) assessed value of this parcel of land is \$69,480 (OTR shows District-owned property at 375 Morse St as Square 3587, Lot 809 not Lot 807 as stated in the resolution). The appraised value of this parcel is \$120,000. Sang Oh & Company plans to pay the District \$120,000 for this parcel.

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A RESOLUTION

15-215

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 8, 2003

To declare the existence of an emergency with respect to the need to suspend the use of payment cards by District government employees for 225 days, or until each agency complies with the required reporting requirements.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Suspension of Purchase Authority in the District of Columbia Government Purchase Card Program Emergency Declaration Resolution of 2003".

Sec. 2. The Council finds that:

- (1) The Committee on Government Operations held a hearing on June 27, 2003 to investigate the agency credit card budgets and spending limits for all agencies that permit personnel to use credit cards under the Office of Contracting and Procurement's Purchase Card Program.
- (2) The Subcommittee on Human Rights, Latino Affairs and Property Management ("Subcommittee") discovered credit card abuse by an employee in the Office of Property Management and held a series of hearings, including a hearing on June 19, 2003.
- (3) When the administration was asked, on June 27, 2003, about the number of people with large credit card balances by the Committee on Government Operations, the response was that one person had a credit card with a 30-day limit equal to or greater than \$70,000.
- (4) On July 2, 2003, the Office of Contracting and Procurement provided additional information to the Chairman of the Subcommittee from USBank, a witness at the Committee on Government Operations, June 27, 2003 hearing, stating that over 45 card holders had 30-day credit limits equal to or greater than \$70,000.
- (5) This information was not provided to the Committee on Government Operations during their June 27, 2003 meeting, although the information was available to the administration on June 25, 2003, 2 days before testimony was presented to the Committee on Government Operations.
- (6) To date, all of the agencies have not clarified the number of persons holding credit cards and their spending limits as requested by the Committee on Government Operations.

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(7) To protect the citizens of the District of Columbia ("District") from individuals using District government credit cards for improper use, and to protect the citizens against repeated abuse of the credit card privileges by District employees, it is appropriate to suspend the use of credit cards for all agencies.

(8) By requiring specific reporting requirements as a prerequisite to permitting District agencies to exercise the privilege of obtaining goods and services using a credit card, the District will reduce its credit card costs.

(9) The July 7, 2003 response from the Deputy Mayor for Operations demonstrates that individuals may expend all of their annual budgeted use of a District-issued credit card in one month.

(10) The information received from the Deputy Mayor for Operations on July 7, 2003, and the information received on July 2, 2003, are inconsistent because those identified by USBank, the card issuer, as having 30-day limits equal to or greater than \$70,000 in some cases do not show up in the agencies' self-reporting of credit card monitoring.

(11) The Committee on Government Operations was informed on July 8, 2003 that US Bank, the issuer of the District's credit cards, provided the District with monitoring capabilities that the District has not taken advantage of when they specifically stated, "The CARE (Customer Automated Reporting Environment) system allows government customers to access both demographic (name, address, work phone, etc.) information and authorization control information (30-day credit limits, single purchase limits.) for all accounts under their span of control."

(12) Having heard testimony from over 29 government agencies, the Office of Contracting and Procurement and the Deputy Mayor for Operations, and having received inconsistent information on the requirements for supervising the use of credit cards and the public information on abuse of the District's purchase card (credit card) monitoring system, reporting requirements should be instituted as a prerequisite to permitting further credit card charges to be made against the District's money.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Suspension of Purchase Authority in the District of Columbia Government Purchase Card Program Emergency Amendment Act of 2003 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

15-216

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To confirm the Mayoral appointment of Mr. Robert J. Spagnoletti as the Corporation Counsel of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Corporation Counsel Robert J. Spagnoletti Confirmation Resolution of 2003".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Robert J. Spagnoletti
7528 12th Street, N.W.
Washington, D.C. 20012
(Ward 4)

as the Corporation Counsel, in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, each to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-217

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To declare the existence of an emergency with respect to the need to review and approve the disposition of the Hilltop Terrace property, located between G Street, Hanna Place, Hilltop Terrace, and Benning Road, S.E., Square 5359, Lots 307 and 827, as surplus property.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace Property, Emergency Declaration Resolution of 2003".

Sec. 2. (a) Pursuant to section 1(b)(2) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b)(2)), the Mayor transmitted to the Council a request for Council approval of the disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace property.

(b) Pursuant to the resolution, the Hilltop Terrace property will be purchased by the Marshall Heights Community Development Organization ("MHCDO"), subject to the provisions of the Act.

(c) MHCDO intends to begin construction of the for-sale residential units in the summer of 2003.

(d) In order for MHCDO to have a timely construction start, it must obtain site control as quickly as possible so that it may secure the necessary financing and construction permits to ensure the affordability of the 13 units reserved for low and moderate individuals and families.

(e) If construction does not begin in the summer of 2003, MHCDO cannot ensure the economic feasibility of the project to reserve residential units for low and moderate income individuals and families in the Benning Heights section of the Fort Dupont neighborhood, which needs new homeownership and housing opportunities.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace Property, Emergency Approval Resolution of 2003 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-218

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To review and approve, on an emergency basis, the disposition of the Hilltop Terrace property, located at G Street, Hanna Place, Hilltop Terrace, and Benning Road, S.E., Square 5359, Lots 307 and 827, as surplus property.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace Property, Emergency Approval Resolution of 2003".

Sec. 2. (a) Pursuant to section 1(b)(2) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes ("Act"), approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b)(2)), the Mayor transmitted to the Council a request for Council approval of the disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace property.

(b) The Mayor and the Council have determined that the Square 5359, Lots 307 and 827, the Hilltop Terrace property is no longer needed for use by the District government.

(c) The Council, finding that Square 5359, Lots 307 and 827, also known as the Hilltop Terrace property, is no longer required for public purposes, hereby approves the negotiated sale of the Hilltop Terrace property to the Marshall Heights Community Development Organization for development of detached residential dwellings, with 13 units reserved for low and moderate income individuals and families in accordance with the sale agreement.

(d) In the event that the Hilltop Terrace property, or any portion thereof, is not used for the purposes authorized in this resolution or in the sale agreement between the District government and the Marshall Heights Community Development Organization, the District of Columbia may reacquire the Hilltop Terrace property in accordance with section 1(e) of the Act.

Sec. 3. The Mayor has taken the necessary steps to ensure continuous community input regarding the disposition of the disposition of Square 5359, Lots 307 and 827, also known as the Hilltop Terrace property, as required by section 1(f) of the Act.

Sec. 4. 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. 5. The Secretary to the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Chief Financial Officer, and to the Marshall Heights Community Development Organization.

Sec. 6. This resolution shall take effect immediately.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICERNatwar M. Gandhi
Chief Financial Officer**MEMORANDUM**

TO: The Honorable Linda W. Cropp
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: JUN 20 2003

SUBJECT: Fiscal Impact Statement: "Disposition of Square 5359 Lots numbered 307 and 827, also known as the Hilltop Terrace property, Emergency Declaration Resolution of 2003"

REFERENCE: Emergency Resolution

Conclusion

Funds are sufficient in the FY 2003 through FY 2006 budget and financial plan to approve the "Disposition of Square 5359 Lots numbered 307 and 827, also known as the Hilltop Terrace property, Emergency Declaration Resolution of 2003".

Background

The proposed resolution would declare the Hilltop Terrace property surplus and sell it to the Marshall Heights Community Development Organization (MHCDO). The Hilltop Terrace property is currently non-taxable, vacant, District-owned property. The MHCDO would build 20 single-family homes on this site and sell 13 of them to low to moderate-income families. The affordable homes would include a Special Warranty Deed that would insure re-sale of the affordable homes to low to moderate-income purchasers.

Financial Plan Impact

The District would dispose of this parcel to the MHCDO for \$63,000. These funds, less administrative expenses, would be deposited into the General Fund. The parcel's current Office of Tax and Revenue assessed value is \$71,990 or about \$8,990 more than the sale price.

ENROLLED ORIGINAL

A RESOLUTION

15-219

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To declare the existence of an emergency, with respect to the need to provide guidance on the calculation and distribution of funds to District of Columbia Public Schools and Public Charter Schools.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Public School Enrollment Integrity Emergency Declaration Resolution of 2003".

Sec. 2. The Public School Enrollment Integrity Temporary Amendment Act of 2001, effective October 13, 2001 (D.C. Law 14-38; 48 DCR 7116), expired on May 26, 2002. The Public School Enrollment Integrity Emergency Act of 2003 will maintain in effect the guidance for student counts, calculations, distributions of payments and other details for Public Charter Schools that need to be clarified before the academic year begins for the District of Columbia Public Schools and Public Charter Schools.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Public School Enrollment Integrity Emergency Amendment Act of 2003 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-220

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To declare the existence of an emergency with respect to the need to enforce the Council subpoena of Fernando "Fred" Villegas in the Superior Court of the District of Columbia to require him to appear before the Council Subcommittee on Human Rights, Latino Affairs, and Property Management and give testimony on lease and construction transactions with the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Enforcement of Subpoena of Fernando Villegas Emergency Declaration Resolution of 2003".

Sec. 2. The Council finds that:

(1) Fernando Villegas has been subpoenaed 4 times in connection with an investigation on lease and construction transactions with the District of Columbia.

(2) Mr. Villegas testified on June 6, 2003, in response to the first subpoena that was served to him on May 30, 2003, and on that date voluntarily produced 5 boxes of documents concerning the task orders issued by the District government to his company, International Builders, Inc., for 441 4th Street, N.W.

(3) Fernando Villegas again was properly served with a subpoena on June 16, 2003 to appear and testify before the Subcommittee on Human Rights, Latino Affairs, and Property Management ("Subcommittee") on June 19, 2003. Instead of complying with the subpoena, Mr. Villegas's counsel from Akin Gump presented the Subcommittee with a letter assuring it that he was "anxious to cooperate," but since counsel had recently been retained, they requested additional time to prepare, which request the Subcommittee granted despite his absence.

(4) Mr. Villegas again was properly served on June 23 to appear and testify before the Subcommittee on June 30, but when Mr. Villegas appeared for the hearing, his attorneys asked for yet another accommodation, which was granted, and Mr. Villegas was subsequently excused from testifying. His attorney indicated that Mr. Villegas would return for the next scheduled hearing on July 14, 2003.

(5) Subsequent to that time, the Subcommittee Chair had a lengthy conversation with Mr. Villegas's counsel, Mark McDougall of Akin Gump, informing him that his client would be

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required to testify at a hearing scheduled on July 10, 2003. Mr. Villegas was then properly served with a subpoena on July 7, 2003, at 9:45 a.m., for that purpose. Mr. McDougall informed the Subcommittee Chair that he would be traveling, but did not object to the suggestion that Mr. Villegas could be represented by one of his Akin Gump colleagues since he was planning on asserting his Fifth Amendment right against self-incrimination.

(6) On July 9, at 3:30 p.m., the Subcommittee received a letter indicating that Mr. Villegas would not be appearing at its July 10 hearing. Instead of appearing and complying with yet another properly served and valid subpoena, the letter stated that Mr. Villegas would appear on Monday, July 14, 2003.

(7) On July 14, 2003, Mr. Villegas appeared before the Subcommittee and, invoking his Fifth Amendment right against self-incrimination, refused to answer any questions regarding his June 6 testimony or information contained in the 5 boxes of documents that he previously provided.

(8) Mr. Villegas has waived his right to claim the privilege under the Fifth Amendment due to his testimony on June 6 regarding these matters and the Council is entitled to truthful answers on those questions and to cross-examine him on those answers and any matters related to those answers.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Enforcement of Subpoena of Fernando Villegas Emergency Resolution of 2003 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-221

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To authorize enforcement of the Council subpoena of Fernando "Fred" Villegas in the Superior Court of the District of Columbia to require him to appear before the Council Subcommittee on Human Rights, Latino Affairs, and Property Management and give testimony on lease and construction transactions with the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Enforcement of Subpoena of Fernando Villegas Emergency Resolution of 2003".

Sec. 2. The Council finds that:

- (1) The Council, in Committee of the Whole Resolution 15-3 authorized the Subcommittee to conduct a formal investigation complete with subpoena authority on May 20, 2003.
- (2) Fernando Villegas has been subpoenaed 4 times in connection with this investigation.
- (3) Mr. Villegas testified on June 6, 2003, in response to the first subpoena that was served to him on May 30, 2003, and on that date voluntarily produced 5 boxes of documents concerning the task orders issued by the District government to his company, International Builders, Inc., for 441 4th Street, N.W.
- (4) Fernando Villegas again was properly served with a subpoena on June 16, 2003 to appear and testify before the Subcommittee on Human Rights, Latino Affairs, and Property Management ("Subcommittee") on June 19, 2003. Instead of complying with the subpoena, Mr. Villegas's counsel from Akin Gump presented the Subcommittee with a letter assuring it that he was "anxious to cooperate," but since Counsel had recently been retained, they requested additional time to prepare, which request the Subcommittee granted despite his absence.
- (5) Mr. Villegas again was properly served on June 23 to appear and testify before the Subcommittee on June 30, but when Mr. Villegas appeared for the hearing, his attorneys asked for yet another accommodation, which was granted, and Mr. Villegas was

ENROLLED ORIGINAL

subsequently excused from testifying. His attorney indicated that Mr. Villegas would return for the next scheduled hearing on July 14, 2003.

(6) Subsequent to that time, the Subcommittee Chair had a lengthy conversation with Mr. Villegas's counsel, Mark McDougall of Akin Gump, informing him that his client would be required to testify at a hearing scheduled on July 10, 2003. Mr. Villegas was then properly served with a subpoena on July 7, 2003, at 9:45 a.m., for that purpose. Mr. McDougall informed the Subcommittee Chair that he would be traveling, but did not object to the suggestion that Mr. Villegas could be represented by one of his Akin Gump colleagues since he was planning on asserting his Fifth Amendment right against self-incrimination.

(7) On July 9, at 3:30 p.m., the Subcommittee received a letter indicating that Mr. Villegas would not be appearing at its July 10 hearing. Instead of appearing and complying with yet another properly served and valid subpoena, the letter stated that Mr. Villegas would appear on Monday, July 14, 2003.

(8) On July 14, 2003, Mr. Villegas appeared before the Subcommittee and, invoking his Fifth Amendment right against self-incrimination, refused to answer any questions regarding his June 6 testimony or information contained in the 5 boxes of documents that he previously provided.

(9) Under law, a witness may not refuse to answer questions based on the Fifth Amendment right against self-incrimination as to matters concerning questions which he has previously answered. The efficient conduct of Council investigations and oversight will be frustrated if witnesses, under the guise of voluntariness, can decide what information will be given and what information will be withheld.

(10) Fernando Villegas should be compelled to comply with a properly served and valid subpoena to appear before the Council, pursuant to the Committee of the Whole Resolution 15-3, as indicated in previous subpoenas that were ignored.

(11) Fernando Villegas should be compelled to answer questions regarding information that he voluntarily testified to on June 6, 2003.

(12) Fernando Villegas should be required to answer questions regarding the 5 boxes that he voluntarily submitted to the Subcommittee during his June 6 testimony.

(13) Fernando Villegas has waived his rights to claim the privilege under the Fifth Amendment due to his testimony on June 6 regarding these matters and the Council is entitled to truthful answers on those questions and to cross-examine him on those answers and any matters related to those answers.

Sec. 3. For the reasons set forth in section 2, the Council directs its General Counsel to file a petition in the Superior Court of the District of Columbia for the enforcement of the Subcommittee on Human Rights, Latino Affairs, and Property Management subpoena to compel answers to the following questions (and cross examination on those answers) from Fernando Villegas in testimony before the Subcommittee under penalty of contempt:

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(1) Questions regarding his June 6 testimony before the Subcommittee on Human Rights, Latino Affairs, and Property Management; and

(2) Questions regarding the 5 boxes of documents voluntarily submitted during his testimony on June 6 before the Subcommittee on Human Rights, Latino Affairs, and Property Management.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-222

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To declare the existence of a emergency with respect to the need to rectify the structural imbalance in the District's fiscal system due to the federal law prohibiting the District from taxing nonresident income, which prevents the District from providing even an average level of services without overtaxing its residents, by joining a lawsuit challenging the constitutionality of the federal law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council in Support of Litigation Challenging the Constitutionality of the Congressional Prohibition on the District's Ability to Tax All Income Earned Within District Borders Emergency Declaration Resolution of 2003".

Sec. 2. (a) A recent report by the United States General Accounting Office has concluded that a substantial structural imbalance exists in the District's fiscal system, ranging between \$470 million and \$1.1 billion each year, which requires the District to overtax its residents just to provide an average level of services, and which management improvements cannot offset because the structural imbalance is caused by factors beyond the control of the District.

(b) Because nearly two-thirds of the income earned within the District of Columbia is earned by nonresidents, the unique Congressional prohibition on a District nonresident income tax has the unique and devastating effect of severely constraining the District's revenue base, which is a primary cause of the District's structural imbalance.

(c) No other jurisdiction in the United States is subject to a Congressional prohibition on taxing income earned within its borders. In fact, the universal principle of taxation is to tax income where it is earned, and every one of the 41 states in the United States that has an income tax imposes the tax on income earned in the state by residents and nonresidents alike.

(d) In allowing the District to tax \$.34 of every dollar earned in the District, the Congress deprives the District of well over \$400 million in revenue every year and sends that revenue, instead, to other jurisdictions, mostly Maryland and Virginia, which already have a competitive advantage over the District due to the fact that they, unlike the District, have wealthier suburban areas around their cities that help defray the higher service costs of their urban populations.

(e) A tax on income earned by nonresidents in the District would eliminate the District's structural imbalance because the District would have sufficient revenue both to make service and

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capital improvements and to reduce the tax burden on its own residents and businesses and, thereby, allow the District to be more competitive with its surrounding jurisdictions.

(f) The Committee of the Whole, the Committee on Finance and Revenue, and the Committee on Government Operations and Subcommittee on Public Interest held a public hearing on July 9, 2003, on two bills introduced by all 13 members of the Council: the Commuter Tax Act of 2003 (D.C. Bill 15-180) and the District Government Nonresidents Employees Tax Act of 2003 (D.C. Bill 15-212). Both bills are prohibited from taking effect unless the Congress or the Courts take action to allow their enactment by the Council. At the public hearing, testimony was presented documenting the discriminatory nature of the Congressional prohibition against a District nonresident income tax, and the harm caused to the District government and its residents by the prohibition.

(g) A lawsuit will be filed shortly by District taxpayers challenging the constitutionality of the unique Congressional prohibition against a District nonresident income tax. It is of vital importance that the Council and the Mayor promptly take the steps necessary to join as plaintiffs in this lawsuit to seek a declaration that the Congressional prohibition is unconstitutional.

Sec. 3. The Council of the District of Columbia finds that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Sense of the Council in Support of Litigation Challenging the Constitutionality of the Congressional Prohibition on the District's Ability to Tax All Income Earned Within District Borders Emergency Resolution of 2003 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

15-223

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2003

To declare, on an emergency basis, the sense of the Council that there exists in the District's fiscal system a structural imbalance making it impossible for the District to provide average levels of service without overtaxing its residents, that this structural imbalance is caused in part by a federal law prohibiting the District from taxing non-resident income, and that the Council should join as a party in a lawsuit challenging the constitutionality of the federal law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council in Support of Litigation Challenging the Constitutionality of the Congressional Prohibition on the District's Ability to Tax All Income Earned Within District Borders Emergency Resolution of 2003".

Sec. 2. The Council finds that:

(1) The United States General Accounting Office ("GAO") has concluded after extensive study, in a report issued in May 2003, that a "structural imbalance" exists in the District's fiscal system, which requires the District to overtax its citizens in order to provide even average services to those who live and work here.

(2) This is also the conclusion recently reached by independent experts at the American Economics Group, Inc., after a similarly extensive study.

(3) According to the GAO, "a fiscal system is said to have a structural imbalance if it is unable to finance an average ... level of services by taxing its funding capacity at average rates."

(4) The GAO concluded that there is a "substantial structural deficit" suffered by the District. Its lowest estimate for this deficit is \$470 million and its highest is \$1.1 billion, each year. This insurmountable structural imbalance exists after taking account of all federal grants to the District each year.

(5) The GAO states that the "existence of this structural deficit means that even if the District's services were managed efficiently, the District would have to impose above-average tax burdens just to provide an average level of services" and that "management

ENROLLED ORIGINAL

improvements will not offset the underlying structural imbalance because it is caused by factors beyond the direct control of District officials.”

(6) As a result of this structural imbalance, the District has been forced to overtax its residents in order to raise enough revenue just to provide average levels of service to people who live and work in the District. Simultaneously, the structural imbalance has prevented the District from making badly needed capital expenditures to maintain and improve its infrastructure.

(7) The structural imbalance is caused in part by section 602 of the Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-206.02), which prohibits the District from taxing income earned within its borders by nonresidents.

(8) The appropriate cure for the structural imbalance would be a tax on income earned by nonresidents in the District. Depending on its rate, such a tax would close part or all of the imbalance.

(9) It is a universal principle of taxation that all income may be taxed where it is earned. Each of the 41 states with income taxes imposes them on residents and nonresidents alike. Only the District has been prohibited by the Congress from doing so.

(10) Nonresidents impose significant costs on government services, and the District should have the universal right to require nonresidents who use its services to make some fair contribution to those costs.

(11) Over 60% of income earned in the District is earned by nonresidents. A tax on non-resident income would permit the District to:

(A) Reduce taxes on its residents; and

(B) Raise the revenue required to provide improved services to residents and nonresidents alike. Nonresidents would be entitled to a credit against their home state returns for non-resident taxes paid to the District.

(12) But for the prohibition, the Council would enact a law to reduce income tax rates on its overtaxed residents and impose a fair and reasonable income tax on nonresidents.

(13) The prohibition discriminates in favor of residents of states that have voting representation in Congress and against residents of the District who lack such representation.

(14) Taxation without representation has always been suspect in this country, beginning with our Declaration of Independence. Tax laws which discriminate against people who are unrepresented in the taxing legislature are even more suspect.

Sec. 3. It is the sense of the Council that the Congressional prohibition against a non-resident income tax in the District is a discriminatory tax law, which has resulted in a substantial structural imbalance in the District and the overtaxing of District residents, and that this discrimination cannot be justified and must be promptly rectified. It is also the sense of the Council that while it will continue to work diligently in support of efforts to persuade Congress

ENROLLED ORIGINAL

to repeal the prohibition or to find other means to compensate the District for the revenue lost by the prohibition, the Council will join in a lawsuit seeking a declaration that the prohibition is unconstitutional.

Sec. 4. This resolution shall take effect immediately.