Public Town Hall on Tax Reform Proposals
Before the DC Tax Revision Commission
Testimony of Tzedek DC
With support of the Washington Lawyer's Committee on Civil Rights and Urban Affairs and the Legal Aid Society of the District of Columbia
November 6, 2023

Good evening, Commissioners and staff of the DC Tax Revision Commission. Thank you for the opportunity tonight to share testimony on fines and fees proposals under consideration by the Commission. I am Melissa Millar, Policy Director for Tzedek DC. Headquartered at UDC David A. Clarke School of Law, and with offices as well as in Ward 8, Tzedek DC's mission is to safeguard the legal rights and financial health of DC residents with low incomes dealing with the often-devastating consequences of abusive debt collection practices and other consumer-related issues. We offer direct legal and financial counseling services at no cost to DC residents with low and moderate incomes. We also collaborate with a broad range of coalition partners in advocating for systemic reforms that will advance racial equity, expand access to justice, and broaden economic opportunities; we submit this testimony with the support of the Washington Lawyers' Committee for Civil Rights and Urban Affairs and the Legal Aid Society of the District of Columbia.

Fines and fees are often understood as regressive taxes and are often recognized as easier politically to impose than legislators needing to call a revenue-generating measure a tax. We appreciate the Tax Revision Commission (TRC) for considering a variety of fines and fees-related proposals. As noted in our prior testimony to the Commission, attached here for convenience, we believe the Commission is an appropriate entity to consider several of the District's current fines and fees, as the District leads the region in fines and fees per capita imposed on residents.[1]

The District's non-tax revenue, including fines and fees, accounts for approximately 3% of General Fund revenue[2], which is disproportionate when compared to our neighboring jurisdictions, and is ultimately part of the tax policy choices the District makes. The issues arising out of fines and fees presents an opportunity for the District and public to recognize that while fines and fees generate significant revenue for the government, they do so regressively,

[1] Dan Kopf & Justin Rohrlich, No US City Fines People Like Washington Fines People, QUARTZ (Jan. 29, 2020), t.co/n3GuAMZryQ
[2] General Purpose Non-Tax Revenue by Source, Fiscal Years 2020-2025, pages 35-39; https://cfo.dc.gov/sites/default/files/dc/sites/ora-cfo/publication/attachments/FY22%20DC%20Revenue%20Chapter.pdf;

without regard for household income or the burdens and disruptions they cause, which fall disproportionately on those who are least represented in the political process.

Our testimony today focuses on FF-2, a proposal to end the District's current policy of automatically disqualifying anyone with $100 or more in fines or fees to the District from obtaining or renewing an occupational license or a small business license. I'll also touch on several other proposals, FF-3, -4, and -5, that also address fines and fees issues.

Proposal FF-2 (September 19, 2023)

- FF-2, End the automatic disqualification of occupation and business licenses for clean hands debt[3]

Fines and fees can quickly result in compounded debts owed to the government, and the collateral consequences current law places on the debts often create new, harmful obstacles to financial stability by, among other things, disqualifying those with debts from occupational and small business licenses. Tzedek DC and the Washington Lawyer's Committee for Civil Rights and Urban Affairs support the provisions of proposal FF-2 which seek to eliminate the prohibition on issuance of occupational and small business licenses to those who owe debts to the District government and therefore do not have "clean hands."

The Commissioners discussion on September 19, 2023, recognized how the current Clean Hands Law exacerbates racial inequalities in DC:

1. Black DC residents are five times more likely to live in poverty than white residents.[4] White DC households have 81 times the average wealth of Black DC households[5], and 22 times the wealth of Latino or Latina households. The DC Council's Office of Racial Equity (CORE) has concluded that "[b]ecause of the Clean Hands policy, Black residents are disproportionately blocked from occupational licenses, starting a business, or competing for contracts, among other wealth building activities. This leaves Black residents disproportionately impacted by fines but with fewer opportunities to build wealth that may help them pay debts resulting from fines."[6]
2. The Clean Hands Law specifically entrenches racial disparities in DC's small businesses: 69.8% of DC's small businesses are white-owned, compared to just 5.2% that are Black-owned.[7]

[3] D.C. Code § 47-2861, et seq; the language of D.C. Code § 47-2862(a)(2) focuses *only* on prohibitions on issuing or renewing and does not address suspension

[4] Erica Williams & Tazra Mitchell, Large Black-White Disparities in Poverty and Income Persisted in 2021, DC Fiscal Policy Institute (Sept. 15, 2022) https://www.dcfpi.org/all/large-black-white-disparities-in-poverty-and-income-persisted-in-2021/#:~:text=The%20share%20of%20Black%20people,effect%20on%20the%20poverty%20rat

[5] Kilolo Kijakazi et al., The Color of Wealth in the Nation's Capital vii, 58 tbl.12 (2016), https://www.urban.org/sites/default/files/publication/85341/2000986-the-color-of-wealth-in-the-nations-capital.pdf

[6] D.C. COUNCIL, COMM. ON BUS. & ECON. DEV., Report on Bill 24-0237, at 118 (2022)

[7] Colleen Grablick, Economic Inclusiveness Tool Reflects Large Racial Wealth Gap In D.C. Region, NPR (June 30, 2021), https://www.npr.org/local/305/2021/06/30/1011757593/economicinclusiveness-tool-reflects-large-racial-wealth-gap-in-d-c-region

3. The harmful impact of the law on people with lower incomes getting an occupational license is broad: it blocks residents from accessing over 125 occupations, including working as a barber or cosmetologist, tattoo artist, HVAC-cleaner, plumber, electrician, nurse or nursing assistant, or social worker.
4. Enforcement of Clean Hands harms residents with disabilities: Black DC residents are over three times more likely to have a disability than white residents, and adults with disabilities are more than twice as likely to experience poverty than adults without disabilities.[8] As a result, applicants with disabilities are disproportionately more likely to lose their ability to obtain or renew an occupational or small business license.
5. The Clean Hands Law harms DC employers who want to hire qualified workers and forces qualified professionals to work in Maryland or Virginia and not in DC.

During TRC discussion on FF-2, Commissioners noted that Clean Hands[9] as a policy is not the only penalty in the government's arsenal to compel payment of debts. One Commissioner commented that the proposed increase of the Clean Hands limit from $100 to $5,000 – mirroring a prior proposal from Councilmember Kenyan McDuffie[10] – would likely address most residents' debts. If the Council is to retain some threshold (as opposed to clean abolition), we also support raising the threshold to the TRC-proposed level of $5,000, which will reduce burdens for individuals, small business owners, low-income residents, and returning citizens, to obtain occupational and small business licenses and improve their ability to pay off and avoid future debts.

Specifically with respect to impacts on workers and their ability to attain licenses to work in their chosen profession, the Commissioners' comments were supportive of FF-2 and to efforts to understand the inherent challenges to residents with low income, as well as the ways in which this policy is hamstringing the government. One Commissioner shared his first-hand experience in Ward 8 seeing residents seeking workforce assistance and guidance running into Clean Hands barriers and being prevented from applying for licenses. He noted, "This hurts our residents ... and it disproportionately impacts our community, bottom line" and urged his fellow Commissioners to address this problem and "figure this out." Another Commissioner, to underscore his concern about the policy and the government not using alternative methods to incentivize payment of debts, even pantomimed a choking gesture to himself noting that it prevents people from working and "is a pretty harsh penalty." Mayor Williams noted that not everyone who owes the District money, taxes or otherwise, will encounter Clean Hands, so the District clearly has other methods to extract payment, making it counter-productive to specifically tie payment of taxes and other debts to Clean Hands given the policy's

[8] See Nanette Goodman et al., Financial Inequality: Disability, Race and Poverty in America 12 (2019), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-racepoverty-in-america.pdf.
[9] D.C. Code § 47-2861 *et seq*
[10] https://lims.dccouncil.gov/downloads/LIMS/47106/Introduction/B24-0237-Introduction.pdf?Id=121281

consequences. Other states generally do not limit occupational opportunities based solely on government debts; the District should cease this policy.

Further, multiple Commissioners noted the incompleteness and likely overstatement of the revenue impact estimate offered by the Office of Revenue Analysis (ORA). ORA estimated FF-2 to cost the District roughly $10 million per year. Mayor Williams noted that this estimate does not take into account our current loss of future entrepreneurs, loss of future value, including money from our tax base, and the loss of residents' ability to take care of their families. Specifically, he suggested that those losses – and corresponding offsets to the fiscal impact total – also be calculated so that the Commission has a better understanding of not only uncollected revenue, but potential financial implications of the overall policy. "Calculate that. You need to figure that out," he said.

Similarly, another Commissioner noted that if people could work, they could pay taxes or be more likely to pay their debts, earn more income, etc., and that that earning potential should also be calculated (to Mayor Williams' point) as otherwise the estimate seems inaccurate. She also noted the disproportionate impacts on people of color and that "we are undercutting ourselves." Focusing only on revenue which may go uncollected, versus the economic circumstances underpinning the households from which those revenues may go uncollected, fails to tell the true story of how Clean Hands is preventing thousands of District residents from being able to work in their chosen field and earn incomes commensurate with their education and training, as well as locking out residents from neighboring jurisdictions who would like to work in the District but owe money to the District government.

Separately, another Commissioner noted that there may also be instances where the government itself moves slowly and/or has inaccurate information, leading it to make incorrect determinations that have real-world financial implications to small businesses. Specifically, the government may assess fines, late fees, or penalties that are unwarranted but are not caught until an audit or a reconciliation on the business' account. If, for example, the small business' license came up for renewal during the time that unwarranted fines, fees, or penalties were being actively but inappropriately assessed to the business, the business would likely be unable to renew its license unless it pays for fines, fees, and penalties that are undeserved. The Commissioner urged the TRC and the District to "be mindful of the administrative things and people who want to do the right thing," and suggested a possible alternative that would allow people to be licensed even if debt is owed, assuming a payment plan is established.

The District's Chief Financial Officer noted "the occupational question" of government infringing on access to licensure due to non-tax debts of just over $100, "because any reasonable person would be concerned about that."

Others noted that there are other ways for the District to extract payments that do not infringe on a resident's ability to work, such as tax return and wage garnishments, and establishing payment plans that, pursuant to proposal FF-5 (discussed below), would be less expensive to establish and easier to maintain. And if California's ability to pay pilot is any guide, the District could recoup *more* in outstanding fines and fees from residents by *reducing* their overall debts; as the TRC reported, California saw full repayment on 61% of fines and fees where the residents were granted a reduction based on consideration of ability to pay, versus only 29% of cases where residents fully repaid their fines and fees after being denied a reduction based on ability to pay considerations.[11]

Advancing FF-2 with a $5,000 threshold limit would dramatically alter the landscape for those unable to pay their outstanding tickets, fines, and fees. As the Clean Hands Law currently prohibits obtaining professional licenses and, in some cases, even entering the labor force due to small levels of debt, it creates a poverty trap, preventing people from securing a license to earn the income they need to pay their debts. Clean Hands as a policy pulls the ladder up and away from the most vulnerable residents in need of economic opportunity and advancement; proposal FF-2 recognizes the significant consequence of tying fines and fee debts to occupational and small business licensing and its advancement and codification would help thousands of District residents.

Proposals FF-3, FF-4, FF-5 (September 13, 2023)

- FF-3 proposes to reduce and means-test District traffic fines
- FF-4 proposes to reform late fees on traffic violations
- FF-5 proposes to reform delinquent debt and the Central Collections Unit process

During discussion of FF-3, -4 and -5, the Commission noted that increasing the amount of a fine or fee does not necessarily equate to an increase in efficacy; research shows that people are not specifically driven to pay a fine or fee merely due to its size; the general belief that the "stick" of an increased fine or fee will compel residents to pay that fine or fee has not been borne out with data. This may be, in part, due to residents' specific inability to pay their debts, as the District does not conduct "ability to pay" analyses on debts owed, such as traffic debt. In fact, Mayor Williams noted that while fees may be "socially important," they are also "regressive." It is also not at all clear that fines and fees effectively promote *safety*; the District has roughly $1 billion in outstanding traffic-related fines and fees assessed to drivers, largely from other jurisdictions, and the District also has some well-publicized cases of District residents with significant unpaid tickets assessed to them or their vehicles which are still being driven regularly and at this point, legally. Further, as Tzedek DC has noted, the Council (through the Clean Hands Law) has historically tied the payment of fines and fees to the obtaining of licenses in order to generate greater revenue for the District – *not* to incentivize safer driving.

The proposals under consideration would reduce the cost of DC's traffic fines, bringing them more in line with our neighbors. They would also create an additional reduction for residents who can show receipt of government benefits, such as SNAP, TANF, or Medicaid, which are means-tested and doubles as an "ability to pay" analysis. The proposals would also eliminate late fees, or, if not eliminate them outright, extend the time before late fees are attached. Finally, the

[11] https://jcc.legistar.com/View.ashx?M=F&ID=11695191&GUID=70B48C8A-FE60-48DB-8137-320B528E107D

proposals would forgive delinquent traffic debt older than 10 years; eliminate Central Collections Unit (CCU) surcharges for delinquent debt; and eliminate the 25 percent down payment requirement, all of which have been barriers for residents of low-income to both pay off debts as well as to successfully implement a payment plan for debt.

We support proposal FF-3 to reduce traffic fines; as noted, currently the fines and fees in the District are significantly higher than our neighboring jurisdictions. The Commission shared that the initial cost of a traffic ticket in Montgomery County, Maryland is $40, whereas the same violation in the District is $100. Worse, that $100 violation escalates to $240 if not paid in 90 days. We support additional reductions for residents who are already receiving means-tested benefits, as their ability to pay the current level of fines and fees is likely beyond their financial means. One Commissioner has objected to the means-testing portion of FF-3, citing the segregation of residents into two tiers where different penalties are assessed. However, it is appropriate for the District to recognize the varying financial situations of its residents and to work with impacted populations on how to meet their financial obligations, including paying debts to the District, in ways that are feasible to residents; reducing fines and fees overall while also considering the financial circumstances of those residents receiving government benefits makes for good public policy. Other cities, such as San Francisco, are already implementing ability to pay considerations generally, and specifically with respect to means tested benefits; there, a resident can send a photo of their SNAP or TANF card as a way of showing indigency.

Both Tzedek DC and Legal Aid support the delinquent debt reforms for the CCU proposed by FF-5, including support for each of the listed elements of the proposal: forgiving debt over 10 years old, reforming the CCU by eliminating the 20% surcharge on debts 90 days or older, and eliminating the 25% down payment requirement. As the Commission noted, adding increased costs (the surcharge) and *then* requiring a full one-quarter up-front to establish a payment plan is likely beyond the means of residents of low-income. We have had clients who have *wanted* to enter into payment plans to address their debts but could afford neither the 20% late fee assessment nor the 25% upfront payment needed to establish the plan. Contrast the District's approach with California's, which as the TRC noted saw an **increase** in revenue from traffic fines in jurisdictions that used ability-to-pay programs.

Proposal FF-4 to reform late fees on traffic violations also recognizes the disproportionate impact and hardship of the steep penalties imposed when a traffic ticket is not paid in 30 days. As the Commission has specifically noted, late taxes are only assessed a 10% fee but traffic tickets double (a 100% fee) at only 31 days, with an *additional* 20% fee imposed at 90 days when a ticket is sent to the CCU for collections. As noted earlier, we applaud the TRC's recognition both that increasing fines does not specifically motivate a debtor to pay those fines, and that the fines and fees fall regressively on residents of lower-income. Many people may simply need more time to gather the necessary funds, which speaks to the need for an ability to pay analysis. Finally, the government has *other* ways to collect delinquent debt that would not hinder a worker from being able to work in their chosen field and earn their desired income. Our neighboring jurisdictions do not use government debts as a cudgel to prevent occupational and small business licensing in the same way as the District does via the Clean Hands Law, and we should not either; our statutory language in the Clean Hands law should make clear that the District does not do so.

Conclusion

Overall, the fines and fees proposals under consideration by the TRC would greatly improve equity for residents across the financial spectrum by reducing and recalibrating traffic fines and late fees, reforming the payment plan system to make entering into a plan and satisfying one's debt easier, and reforming the Clean Hands Law so residents are no longer prevented from accessing licensed occupations due solely to money owed to the District government. As the Commission continues its review of the District's revenue-generating streams, we look forward to seeing these equitable proposals move forward to the DC Council for further consideration. Thank you for the opportunity to provide testimony to the Commission. I am happy to answer any questions.

ATTACHMENT –

TZEDEK DC TESTIMONY TO TAX REVISION COMMISSION, MAY 3, 3023

Statement for the DC Tax Revision Commission from Ariel Levinson-Waldman, Founding President and Director-Counsel, Tzedek DC

May 3, 2023

Good afternoon. Thank you, Mayor Williams, for chairing this important Commission and for the invitation to testify and thank you to the entire Tax Revision Commission for your critical work. I'm Ariel Levinson-Waldman, President of Tzedek DC. Tzedek DC is a nonprofit organization with a Hebrew name meaning justice for DC. We are proudly headquartered at the UDC David A. Clarke School of Law. Tzedek DC's public interest mission is to safeguard the legal rights and financial health of DC residents with lower incomes facing predatory lending and abusive debt collection targeted disproportionately at Black and Latino residents—with the goal of addressing racial gaps in wealth.

Our strategic approach combines three programs: (i) free direct services—legal advice and representation and financial counseling; (ii) systemic change through coalition advocacy; and (iii) bilingual community education and outreach on debt collection, identity theft, and credit management. Tzedek DC serves adult DC residents with low-incomes and debt-related problems that impair residents' access to credit, ability to build wealth, and overall economic stability, impeding their access to health care, housing and food. Of those DC residents we provide direct services, 79% self-identify as Black, 9% as Latino, and 4% as multi-racial; 60% are women, and 25% have a disability—with race, gender, and disability often creating intersectional barriers to opportunity, economic stability, and healthy lives. Most live in Wards 5, 7, and 8. Since 2017, Tzedek DC has served over 3,000 client households in legal and financial matters, saving client families over $3.5 Million, and with coalition partners has catalyzed systemic reforms benefiting hundreds of thousands of DC residents.

A significant aspect of this work involves advocacy to reform DC's fines and fees system for DC residents with low incomes. Critical thinking about fines and fees policy, which are sometimes referred to as regressive taxes, fits within what we believe is the Commission's scope, properly framed. The issues arising out of fines and fees presents an opportunity for the District and public to understand that just as taxes are revenue for the government, fines and fees similarly generate revenue and do so regressively, without regard for household income or the burdens of penalties and their associated disruptions, and with the burden often falling on those least represented in the political process. Not only can these fines and fees quickly result in compounded debts owed but the collateral consequences current law places on them often create new, harmful obstacles to financial stability by, among other things, disqualifying residents from occupational and small business licenses.

The District has abundant resources among people and companies with high incomes and wealth to avert reductions to essential services. But like the country at large, the District has a legacy of racism and economic exclusion. In DC, Black residents are five times more likely to be poor than white residents, while white households have three times the income and 81 times the wealth of Black households. Conversely, the rate for Black residents having a debt in collections and thus harming their credit report is 5 times that for White residents (35 versus 7 percent).

Consistent with other witness testimonies to the Commission, Tzedek DC supports the Commission's developing recommendations for prioritizing equity in the District's revenue-related code provisions. Our testimony today focuses on the *additional* and closely related problems caused for residents by DC's fines and fees system. We encourage the Commission to focus on three areas for fines and fees reform.

First, the Commission should look at whether the current fines and fees system is more helpful than harmful. DC currently issues fines and fees to residents at an alarmingly high rate. A study published in 2020 showed, as the resulting DCist article aptly put it: "Washington D.C. Fines Its Residents More Than Any Other City In The Country". The Commission should consider, for example, strategies the Council could use to increase transparency in DC's fines and fees system. For example, the OCFO should be required to publish a report detailing the extent of FTE time and expense exhausted in debt collection efforts each quarter, and, for that effort, how many District dollars were used to collect debt each quarter. Quantifying the extent to which DC spends to recover owed funds may help clarify how aggressive its policies are and whether they are financially sound. Quarterly reporting could also provide additional clarification on the demographics of who owed the debt at the time of collections, which will provide additional context on the extent to which the District is owed money by and collecting from residents of lower-income. It should be no answer for OCFO to simply say, when asked the racial composition of those residents it is debt collecting against, "we don't know because we don't track that".

Second, the Commission should recommend that DC reform or abolish the current pay to play system for occupational and small business licenses. The District's fines and fees enforcement scheme has the effect of disqualifying tens of thousands of residents living in or near poverty from obtaining an occupational or small business license. The District does so through the so-called Clean Hands Law, D.C. Code § 47-2861, et seq. This law disqualifies people from renewing or obtaining a professional or small business license as a punishment if they owe the District more than $100 in parking, traffic, or other fines or fees. The debt's circumstances are irrelevant under this scheme; non-renewal and disqualification are automatic. An individual who was fined in error cannot get, for example, a barbers or cosmetologist or plumber's or nurse's or social worker license renewed. Circumstances do not matter, including, importantly, there being no inquiry into a resident's inability to pay.

For individuals who can afford their outstanding fines, the Clean Hands Law is inconsequential: They typically enter a credit card account number into an online payment portal established by the District, obtain a receipt of payment, and then move on with their lives. But for those unable to pay their outstanding tickets, fines, or taxes, the impact of the Clean Hands Law is severe and often life-altering. The Clean Hands Law bars them from obtaining a professional license and, in many cases, entering the labor force at all. The Clean Hands Law creates a poverty trap, preventing indebted people from securing a license to earn the income they need to pay their debts. It pulls the ladder up and away from the District's most vulnerable residents in need of economic opportunity and advancement.

But DC's current law treats the two groups the same. That is a problem. If DC continues imposing this penalty, there must be an ability to pay inquiry or indigency exception. To avoid imposing unaffordable fines and fees on residents, the OCFO, Task Force, and DC government could analyze existing DC government systems used for benefit eligibility determinations to estimate the number of residents receiving assistance, their median income, and likely ability to pay a given fine or fee. While not all DC residents with low incomes receive government benefits and supports, and thus are captured within existing eligibility systems, reviewing these databases would provide an effective starting point regarding the number of residents and households who may be affirmatively harmed and suffer collateral consequences from receiving one fine or fee from the DC government they are unable to pay on time, let alone for that fine or fee to compound or be sent to collections. The U.S. Department of Justice's (DOJ) April 2023 letter noted the benefit of creating a presumption of indigency for certain classes of defendants, specifically the qualification for and receipt of public benefits or assistance, disability insurance, and food stamps/SNAP.

By barring individuals from attaining an occupational or small business license because of debt, the Clean Hands Law in the name of revenue generation prevents them from paying back that debt and, notably, from generating higher and income-generating income. It also disrupts the city's economy and workforce, harming both workers and employers. The Commission should recommend it be reformed or abolished.

Third, the Commission should examine ways the District can stop trying to balance the books through fines and fees. The planned revenue side of the District's budget raised from residents should come from taxes. Troublingly, the current proposed FY24 budget is poised to double down on the fines and fees revenue strategy. The proposed budget calls for 342 new automated traffic enforcement (ATE) cameras to be installed and projects $578 Million in revenue from automatic traffic cameras over the course of the four-year financial plan. But as the DOJ noted in its April 2023 letter, unaffordable fines and fees and practices geared toward raising revenue that do not ultimately address public safety can erode public trust. The Commission as part of its holistic review of the tax system and tax rates and loopholes should identify ways DC can move away from this model.

Thank you for considering these recommendations.