

**Testimony of Evan Henley
Legal Aid Society of the District of Columbia**

Testimony on Bill 22-025: “Rental Housing Affordability Stabilization Amendment Act of 2017”

**Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia**

June 28, 2017

The Legal Aid Society of the District of Columbia¹ submits this testimony in support of Bill 22-025, the “Rental Housing Affordability Stabilization Amendment Act of 2017.” A robust rent control scheme is essential to maintain housing affordability and prevent displacement of low- and moderate-income residents. This bill strengthens the District’s rent control laws by mitigating the effects of compounding rent increases and “vacancy” increases, which have helped to drive down the District’s supply of affordable housing.

Legal Aid supports Bill 22-025’s cap on yearly permitted increases at CPI-W or 5%. While Legal Aid would prefer a version of the legislation that does not permit any “vacancy” increase, we support the current proposed legislation, which would cap the vacancy increase at 5%. In conjunction with the reforms contained in other bills regarding rent control currently before the Council, these changes will help ensure that rent control is a system capable of fulfilling its statutorily-defined purposes, including protecting low- and moderate-income tenants from income erosion and protecting the District’s supply of affordable housing.²

Background on D.C.’s affordable housing crisis

Rent control’s objectives are equally—if not more—urgent today than they were in the 1970s and 1980s. Low- and moderate-income renters still face a severe shortage of rental housing. Many low- and moderate-income tenants still need assistance to cover basic shelter costs.³ Recent D.C. Fiscal Policy Institute reports put this crisis in stark relief:

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For 85 years, Legal Aid attorneys and volunteers have served tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family, public benefits, consumer, and appellate law. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² See D.C. Code § 42-3501.02.

³ See *id.* § 42-3501.01.

- 26,000 extremely low-income households (below 30% AMI) spend more than 50% of their income on housing costs.⁴
- 70% of the renters in this category are working or looking for work.⁵
- Rising rents have eliminated nearly all private market, low-cost housing options in the District over the past decade, and moderate-cost options are also shrinking.⁶
 - In 2002, there were approximately 58,000 units with rent and utility costs of less than \$800 per month (in 2012 dollars).⁷
 - By 2013, only 33,000 of such units existed.
 - The number of moderate-cost units—with rent and utility costs between \$800 and \$1,000 per month—decreased from 28,000 in 2002 to 20,000 in 2013.⁸

Although there are several reasons for this drastic reduction in the number of affordable units over the past ten years, one contributing factor is rising rents in rent-controlled units accomplished through permitted yearly increases and increases taken when one tenant moves out and another moves in. And without amendments to the Rent Stabilization Program, this trend will continue. Bill 22-025 meaningfully addresses both of these issues.

Yearly increases

Under current rent control law, housing providers who are in compliance with the law can increase rents by the CPI-W (a measure of inflation) plus 2%, with a maximum cap of 10%.⁹ However, due to the power of compounding, this increase can quickly render a unit unaffordable for a low- or moderate-income tenant, particularly because real wages have remained flat or actually decreased for many workers over the last decade.¹⁰

⁴ Claire Zippel, D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens D.C.'s Lowest-Income Residents* 3 (Dec. 8, 2016), available at <http://www.dcfpi.org/wp-content/uploads/2016/12/DCFPI-Broken-Foundation-Housing-Report-12-8-16.pdf> [hereinafter *A Broken Foundation*].

⁵ *Id.* at 5.

⁶ Wes Rivers, D.C. Fiscal Policy Inst., *Going, Going Gone: D.C.'s Vanishing Affordable Housing* 4 (Mar. 12, 2015), available at <http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁷ *Id.* \$800 is an affordable housing cost (based on the “affordability” definition used by the Department of Housing and Urban Development) for someone making \$32,000 per year, or working a full time job at \$15.38 per hour.

⁸ *Id.*

⁹ D.C. Code § 42-3502.08.

¹⁰ *See, e.g., A Broken Foundation, supra*, at 5, 5 n.16.

Bill 22-025 caps the yearly permitted increase at CPI-W (without the extra 2%) and with a maximum cap of 5%. This change ensures that housing providers are able to increase rents to largely keep pace with inflation. And as Table 1 below shows (by running a simulation imagining that this cap took effect in 2008), it will make a real difference for a low- to moderate-income tenant making \$35,000 per year, with a beginning rent of \$850 per month.

Table 1: Simulation of Permitted Rent Increases under Current Law and B22-025

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Rent under Current Law	\$850	\$895.90	\$956.82	\$976.44	\$1017.45	\$1074.42	\$1119.55	\$1157.61	\$1198.12	\$1222.09
Increase Allowed under Current Law	5.4%	6.8%	2.05%	4.2%	5.6%	4.2%	3.4%	3.5%	2%	3.1%
Rent under B22-025	\$850	\$878.90	\$921.09	\$921.55	\$941.82	\$975.72	\$997.13	\$1011.09	\$1026.26	\$1026.26
Increase Allowed under B22-025	3.4%	4.8%	.05%	2.2%	3.6%	2.2%	1.4%	1.5%	0%	1.1%
Difference in Rent Paid (Yearly)	\$0	\$204	\$428.76	\$658.68	\$907.56	\$1184.40	\$1469.04	\$1758.24	\$2062.32	\$2349.96

Total Difference in Rent Paid: \$11,022.96

Vacancy Increases

An even bigger driver of rising rents in rent-controlled buildings is likely the vacancy increase that a housing provider is permitted to take each time that a tenant moves out.¹¹ Under current law, when a unit becomes vacant—either at the tenant’s initiative or by eviction—the housing provider can increase the rent for the unit by the greater of 10% or the difference between the rent of the unit at issue and the rent of a substantially identical unit, up to 30%. This increase, although more limited than that allowed prior to 2006, still can easily result in the loss of affordability and the rent for a unit increasing by hundreds of dollars or more. These increases undercut a primary rationale for rent control. Further, the possibility of such large increases creates perverse incentives for housing providers to seek to increase the pace of unit turnover.

Rent control is intended not only to allow a household to remain in a particular unit, but to allow residents to remain in the District of Columbia and to move when their needs and circumstances change.¹² Rent control is in some ways analogous to a market that relies on

¹¹ D.C. Code § 42-3502.13.

¹² D.C. Code §§ 42-3501.01-.02

“network effects”: the value of an affordable rent-controlled unit is amplified by the availability of each additional affordable rent-controlled unit in its building and throughout the city, and each additional affordable rent-controlled unit creates positive externalities. Among other reasons, this is because a tenant may need to move from one unit to another—because of an increase in family size or onset of disability, perhaps, or a job on the other side of town—but cannot afford to do so unless she can find an appropriate rent-controlled unit elsewhere. If the tenant’s change in circumstances ultimately makes her current unit unworkable, the tenant may feel substantial pressure to leave the unit (or may ultimately be forced to leave), even if there is no safe, affordable alternative available. This can force tenants into difficult decisions—turning down a job that would otherwise be beneficial or making other economically or socially disadvantageous decisions due to the inability to find a suitable alternative apartment.

The vacancy increase is particularly problematic because it allows the housing provider to directly counteract the positive “network effects” of rent control and remove units from affordability. The 2006 Committee Report Addendum concerning Bill 16-109—the bill which resulted in the implementation of 10%/30% cap for vacancy increases—contains instructive data demonstrating a profound decrease in affordability facilitated by unchecked vacancy increases in a selection of apartment complexes studied by the Office of the Inspector General.¹³ In addition to rents in vacant units being increased by as much as \$500 to \$1,000 dollars, the number of affordable units in the seven buildings studied decreased by an average of 31% between 1999 and 2005.

Although the cap on vacancy increases was an improvement from pre-2006 law, it did not go far enough to check the movement of a large number of rent-controlled units from affordable to luxury/unaffordable units, which was identified as a major problem in the report addendum. As the table in the report addendum highlights, the issue with vacancy increases is not only that they can swiftly increase rents by large dollar amounts. The larger problem is that the relationship between affordability and unaffordability is in many ways a binary one, and once units cross the unaffordability threshold, they are lost for good to large segments of the D.C. community, the very segments that rent control was intended to protect.¹⁴

The current cap on vacancy increases is inadequate to accomplish rent control’s purpose. Even randomly occurring vacancies could allow a housing provider to increase rents by a large order of magnitude in just a few years. Table 2 below shows how a housing provider could plausibly accomplish such increases in an eight unit building with a mix of short-term and longer-term tenants (a **bold** entry means that a vacancy occurred that year, and for purposes of this illustration, we will assume a starting rent of \$1,000 in each unit (which are substantially identical), a 3% annual increase is permitted as of right, and 25% turnover each year except 2013).

¹³ See, e.g., D.C. Council, Comm. on Consumer & Regulatory Affairs, Addendum to Committee Report, Bill 16-109, Rent Control Reform Amendment Act of 2006 at 7-9 (June 8, 2006).

¹⁴ *Id.* at 2 (“Chairperson Graham’s primary objectives in introducing the legislation were . . . (2) to restore to the District’s rent control law its chief statutory purpose “[t]o protect low- and moderate-income tenants from the erosion of their income from increased housing costs.”

Table 2: Simulation of Rent Increases Due to Vacancies under Current Law

Unit	2010	2011	2012	2013	2014	2015	2016
1	\$1,000	\$1,100	\$1,133	\$1,166.99	\$1,202	\$1,412.06	\$1,454.42
2	\$1,000	\$1,030	\$1,133	\$1,166.99	\$1,370.93	\$1,412.06	\$1,454.42
3	\$1,000	\$1,030	\$1,060.90	\$1,092.73	\$1,125.51	\$1,159.28	\$1,454.42
4	\$1,000	\$1,030	\$1,060.90	\$1,092.73	\$1,125.51	\$1,159.28	\$1,454.42
5	\$1,000	\$1,030	\$1,060.90	\$1,092.73	\$1,125.51	\$1,159.28	\$1,194.06
6	\$1,000	\$1,100	\$1,210	\$1,246.30	\$1,370.93	\$1,412.06	\$1,454.42
7	\$1,000	\$1,030	\$1,060.90	\$1,092.73	\$1,125.51	\$1,159.28	\$1,194.06
8	\$1,000	\$1,030	\$1,060.90	\$1,092.73	\$1,125.51	\$1,412.06	\$1,454.42

While this example is by design simplistic, it shows just how drastically a landlord can increase rents under the current vacancy increase regime. In 2010, this building offered eight units that were affordable for a family making \$40,000 per year. In 2016, the rents for six of the units had increased to \$1,454.42 due to vacancy increases and annual increases, meaning that a household would need an income of \$58,176.80 to afford the unit. Low- to moderate-income households had been completely priced out. And on the six units, the landlord was able to increase the rent by over 45% in just six years.

This potential for a large rent increase creates a perverse incentive for housing providers, who know well that sizable gains are possible if tenants leave low-rent units frequently. The incentive may lead to outright intimidation, refusal to make repairs, and meritless eviction suits. A housing provider's actions may also take more subtle forms that nonetheless undermine the purpose of rent control, such as when housing providers choose to rent units to young, single people because they are more likely to stay in a given unit for a short period of time.

The Rent Stabilization Program is designed not just to allow current tenants to remain in their units but to preserve an affordable housing stock for future tenants. Viewed through this lens, a vacancy is largely an arbitrary (and, due to the incentives described above, a counterproductive) time to permit large rent increases. These increases are not justified by the need to renovate units when a tenant moves out.¹⁵ General repairs to a unit at the time of apartment turnover are a basic business expense of a housing provider (and one of many reasons why housing providers generally seek to limit turnover). And incentivizing substantial renovations, rather than repairs needed to keep the unit habitable, clean, and safe, actually is a driver for the luxury conversion that the rent control legislation seeks to halt.

¹⁵ The 2006 report addendum accepts the assertion that housing providers will perform renovations for which they can recoup the cost within three years, considers this important, and partially justifies the 10%/30% cap by illustrating that the caps would still permit housing providers to recover renovation costs within this timeframe. *See id.* at 13. However, as discussed above, incentivizing substantial renovations (and corresponding rent increases) during a vacancy runs counter to the purpose of rent control.

Conclusion

For these reasons, the Legal Aid Society of the District of Columbia supports the passage of Bill 22-025 and recommends an amendment stating that no additional vacancy increase be permitted. Thank you for your consideration.