

October 28, 2016

Via electronic mail

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20005
PMendelson@DCCouncil.US

Dear Chairman Mendelson:

Our organizations are part of the D.C. Rent Control Coalition, a group of tenant and community organizers, legal services attorneys representing tenants, and long-time tenant advocates supporting improvements to the District's rent control laws. We are writing to seek your support for Bill 21-173, the Elderly Tenants and Tenants with Disabilities Protection Amendment Act of 2016 (Bill), which will come before the Council for its first vote this coming Tuesday, November 1. We also are writing to address concerns that have been raised about the Bill by the Apartment Office and Building Association (AOBA) and others.

Overview of Bill 21-173

Bill 21-173 contains important protections for elderly tenants and tenants with disabilities who live in the District's rent control units. Among other provisions, the Bill will:

- lower the annual increase of general applicability that applies to elderly tenants and tenants with disabilities to reflect the lower of the CPI-W or the Social Security COLA, better aligning these annual increases with the income sources on which many of these tenants rely;
- clarify the process for elderly tenants and tenants with disabilities to qualify for these lower annual rent increases and allow them to apply via fax or email;
- exempt low-income (defined as 60 percent of area median income or below) elderly tenants or tenants with disabilities from larger rent increases approved under housing provider petitions or voluntary agreements, and provide housing providers with matching tax credits for petition-based rent increases; and
- bar settlement agreements or voluntary agreements in which current tenants agree to rent increases under rent control that only apply to future tenants and current tenants that are not parties to the agreement.

The Bill's protections address important housing affordability concerns. Many elderly tenants and tenants with disabilities depend solely on Social Security retirement or disability benefits for their income. Over time, these tenants find that the annual rent increases on their rent control units tied to CPI-W outstrip annual increases in their income tied to the Social Security

COLA. When low-income elderly tenants or those with disabilities face even larger rent increases under voluntary agreements or housing provider petitions, they seldom can afford to remain in their homes. We also find that many who qualify for the law's current lower annual rent increases for elderly tenants and those with disabilities have not registered with the Rental Accommodations Division and have faced larger rent increases than otherwise would be permitted, simply because they do not understand the process or are intimidated by it. Bill 21-173 addresses each of these issues while also protecting housing provider interests.

The Bill also contains a provision to stop a current practice employed by housing providers that effectively circumvents the protections of rent control and threatens the future affordability of many buildings that fall under the law's protections. Section 3(d)(2) of the Bill would prohibit settlement agreements or voluntary agreements in which current tenants agree to rent increases that only future tenants or other tenants will pay. We disagree with AOBA's recent assertions to Councilmembers and staff that this provision is bad policy and that it was introduced too late in the process to be reviewed properly.

Why the Council Should Bar Inequitable Settlement and Voluntary Agreements

At the outset, it is important to note that Bill 21-173 does not limit housing providers and tenants from entering traditional voluntary agreements or settlement agreements in which current tenants agree to pay rent increases themselves in exchange for housing providers making improvements or providing other benefits. These are the types of voluntary agreements that the Rental Housing Act originally envisioned,¹ and they will be preserved.

What the Bill prohibits is a technique that housing providers increasingly are using to win approval for dramatic rent increases. Here's how it works: a housing provider files a petition or proposes a voluntary agreement that includes substantial rent increases, often well above current market rents. The housing provider then offers current tenants a deal they cannot refuse: agree to the rent increases, but *you will never have to pay them*. A proposed settlement or voluntary agreement will provide that only future tenants (or, at times, current tenants who are not members of the signing tenant association) will have to pay the increased rents.

What this practice does is externalize the costs of rent increases by shifting them to future and other tenants who are not party to the agreement, giving current tenants little to no incentive to challenge such increases. Legally or factually insufficient housing provider petitions, that otherwise would be denied or significantly decreased if contested, are approved without objection. As a result, entire buildings of affordable units become unaffordable. Rent control still theoretically applies, but the law's restrictions are meaningless once substantial rent increase are locked in through settlement agreements or voluntary agreements.

Through FOIA requests, our coalition has compiled all hardship petitions and related orders since October 1, 2006, the last time the Council implemented a major overhaul of the rent control law.² Our analysis shows just how many hardship petitions have been resolved in recent years with the type of settlement agreement described above. This phenomenon, which has significantly exacerbated the affordable housing crisis in the District, has in some ways been hidden in plain sight, because it has been 'hidden' in private settlement agreements.

Since October 1, 2006, tenants filed objections and fought proposed rent increases in 26 hardship petition cases filed.³ Tenants proceeded through a full hearing in four cases, each time defeating the hardship petition with no rent increase granted. In the remaining 16 cases that proceeded,⁴ tenants entered settlement agreements withdrawing their objections and agreeing to the housing provider's proposed rent increases.⁵ The settlement agreements available for review⁶ all have the same structure - current tenants are protected from the rent increases they are authorizing.⁷ As result of these 16 petition cases, over 500 rental units in the District have had rents increased from a little over \$700 per month - affordable by District standards – to rents just shy of \$1,200 per month.

These rent increases – and the agreements behind them – are but one piece of the larger story of how the District has lost half of its affordable housing units in the past 10 years.⁸ Housing providers will defend such agreements as protecting current tenants, but the cost is future housing affordability. In many situations, tenants in these buildings have been denied basic maintenance for years, allowing buildings to fall into critical disrepair. In these circumstances, housing providers too often can secure voluntary agreements offering no benefit except bringing properties up to code, and in exchange housing providers are rewarded with massive rent increases on future tenants. Housing providers who know they can count on securing voluntary agreements that will increase rents for future tenants also can bid up the purchase price when properties are sold, greatly limiting the tenants' ability to exercise their rights under the Tenant Opportunity to Purchase Act due to the high cost of buying the property. The Council should put a stop to this destructive practice.

Fiscal Rationale for Including the Bar on Settlement and Voluntary Agreements in This Bill

In analyzing the fiscal impact of Bill 21-173, the Office of the Chief Financial Officer raised concerns about current disincentives for tenants to fight petitions and how those disincentives might be exacerbated with the new exemptions provided by the Bill. When the prohibition on agreements was added to the Bill, along with additional data on hardship petitions provided by our analysis of hardship petitions, OCFO changed its methodological approach to its financial analysis, and subsequently lowered its Fiscal Impact Statement to 30 percent of the original cost (about \$18 million down to about \$6 million over four years). The prohibition also ensures the best use of taxpayer money. Because the Bill exempts low-income elderly tenants and tenants with disabilities but provides matching tax credits to housing providers for petition-based rent increases, taxpayer money now will be on the line. If tenants have the ability to agree to dramatic, unjustified rent increases for future tenants, rather than challenging meritless or inappropriate petitions, tax credits will subsidize housing providers at the expense of extending protections to more tenants.⁹

AOBA and other housing provider interests now are claiming that the prohibition on agreements was snuck into the Bill at the eleventh hour. That is not the case. When the Rent Control Coalition and housing provider representatives, including AOBA, met with Committee staff last fall, we talked extensively about this and many other policy concerns and proposals. Shortly after discussions with the OCFO that resulted in the significant lowering of the FIS, a

full 9 days before the mark-up of the Bill, bullet points highlighting this provision were shared with AOBA. A draft of the revised Bill was shared a week before the Committee mark-up, and AOBA also met with Committee staff during that period without ever raising this issue. AOBA then complained to Committee staff the morning of the mark-up, inaccurately claiming the provision was added the day before.

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Our bottom line is simple. Housing providers should not be allowed to ask current tenants to protect their own short-term interests by giving up the future, long-term affordability of a building. Without such a prohibition in Bill 21-173, the impact of its protections may be diluted and taxpayer money may be wasted.

We urge the Council to approve Bill 21-173, including the provision barring unfair settlement and voluntary agreements.

Sincerely,

Steve Glaude & Scott Bruton, The Coalition for Non-Profit Housing & Economic Development

Sarah Novick, Jews United for Justice

Talia Brock & Rob Wohl, Latino Economic Development Center

Beth Mellen Harrison, The Legal Aid Society of the District of Columbia

Jennifer Berger & Daniel Palchick, Legal Counsel for the Elderly

Mary C. Young ANC3B04 Commissioner- SMD of only large multi-unit buildings

Cynthia Pols, Tenant Advocate & President, Briarcliff Tenant Association

cc. Councilmember Yvette Alexander
Councilmember Charles Allen
Councilmember Anita Bonds
Councilmember Mary M. Cheh
Councilmember Jack Evans
Councilmember David Grosso

Councilmember LaRuby May
Councilmember Kenyan McDuffie
Councilmember Brianne Nadeau
Councilmember Elissa Silverman
Councilmember Brandon T. Todd
Councilmember Robert C. White, Jr.

¹ The Rental Housing Act allows seventy percent or more of the tenants of a housing accommodation to enter into a voluntary agreement with the housing provider “(1) To establish the rent charged; (2) To alter levels of related services and facilities; and (3) To provide for capital improvements and the elimination of deferred maintenance (ordinary repair).” D.C. Code § 42-3502.15.

² Legal Aid submitted these requests to the Department of Housing & Community Development (DHCD) and the Office of Administrative Hearings (OAH) on behalf of the Rent Control Coalition. The documents numbered over 2,500 pages. Using intern and attorney time, we have created a database of the results. We currently have an outstanding FOIA request to DHCD for the same documents for all housing provider petitions types and for voluntary agreements during the same time period.

³ During this same period, housing providers filed 95 hardship petitions. In most cases, tenants never filed objections (47) or the Rent Administrator rejected the petition in full (14). Many petitions may have gone unchallenged because of the lack of attorneys available to represent low-income tenants,

particularly in earlier years. Since mid-2009, tenants have found counsel and filed objections in 21 of 34 hardship petitions. In prior years, tenants filed objections in only 5 of 61 petitions.

⁴ In four cases, the final outcome of the hardship petition is missing. In two more cases, tenants filed objections but their cases were rejected by OAH.

⁵ In two cases, the approved rent increases were slightly lower than the amounts requested; in 14 of the 16 cases, tenants agreed to rent increases in the amount requested *or higher amounts*.

⁶ The final settlement agreements are available in 10 of the 16 cases.

⁷ Most of these agreements provide signing tenants with complete protection from the rent increases – they will never have to pay them. Several of the agreements also protect signing tenants from any future housing provider petition rent increases.

⁸ See Wes Rivers, D.C. Fiscal Policy Institute, *Going, Going, Gone: DC's Vanishing Affordable Housing* (May 2015).

⁹ The Bill contains a cap of \$1,250,000 per year (adjusted annually for CPI-W) for the exemptions granted and matching tax credits. While the cap will contain costs, fewer tenants may benefit and the money will not be well spent if it goes to unjustified rent increases.