

**Testimony of Beth Mellen Harrison  
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**Before the Committee on Housing & Neighborhood Revitalization  
Council of the District of Columbia**

**Public Hearing Regarding:**

**B23-0136, “District Opportunity to Purchase Amendment Act of 2019”**

**July 10, 2019**

Faced with the District’s rapid gentrification, the Legal Aid Society of the District of Columbia<sup>1</sup> has long supported legislation that preserves affordable housing, and the District Opportunity to Purchase Act (DOPA) is one such law. We acknowledge that the Mayor’s proposed amendments to DOPA in Bill 23-0136, the District Opportunity to Purchase Amendment Act of 2019, are appropriate and necessary, but we also believe that the bill can and should be strengthened to better promote the preservation of deeply-affordable rental units.

Legal Aid participated in a group convened by the Coalition for Non-Profit Housing and Economic Development (CNHED) and DC Appleseed last year to provide comments to the Department of Housing & Community Development (DHCD) on its regulations implementing the District Opportunity to Purchase Act. Our testimony on Bill 23-0136 is informed by the perspective of affordable housing developers on how to ensure DOPA is sufficiently flexible and financially feasible that it can actually be utilized in real-world scenarios.

- Section 2(a) of the bill would expand the number of properties that are eligible for the District to exercise its opportunity to purchase, by raising DOPA’s current rent limit. While Legal Aid recognizes this greater flexibility may be needed, we also suggest amending the bill to prioritize more affordable properties.
- Section 2(b) of the bill would allow owners to impose annual rent increases on tenants in affordable units. While allowance for annual increases may be necessary to make DOPA projects feasible, we suggest amending the bill to limits these increases.

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<sup>1</sup> 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.” Over the last 87 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

- Also under Section 2(b) of the bill, new provisions clarify that rent restrictions on affordable units will be made permanent, through an affordability covenant on the property, and that rent-restricted units only will be offered to low-income households as they become vacant. Legal Aid supports these provisions with limited suggestions on how to strengthen them.

### **Legal Aid Recognizes the Need to Expand Eligibility for DOPA to Higher-Rent Properties, But More Affordable Properties Should Be Prioritized**

DOPA is designed to focus on the preservation of affordable housing. The law does this, first, by limiting the District’s opportunity to purchase to affordable housing developments and, second, by requiring that existing affordable rents for affordable units be maintained. The law also is designed so that the District can assign its opportunity to purchase to affordable housing developers, who ultimately will own and operate the targeted properties. These features of DOPA provide the context for Legal Aid’s comments on the current bill. Legal Aid believes DOPA should prioritize and maximize the preservation of existing, deeply-affordable rental units. At the same time, we recognize that DOPA must be designed and implemented so that projects will be both financially feasible and attractive to affordable housing developers.

In its first change, Bill 23-0136 will increase flexibility by expanding the number of properties that may be eligible for the District to exercise its opportunity to purchase. Under current law, in order for the District to exercise its rights under DOPA at a particular property, at least 25 percent of the units must be affordable to households with incomes at 50 percent or less of area median income.<sup>2</sup> Affordable for these purposes means that the existing rent is 30 percent or less of household income.<sup>3</sup> Using 2019 figures, this means that rent for a family of four would have to be \$1,516 per month or less.<sup>4</sup>

DOPA’s strict rent limit ensures that the District will only be able to exercise its rights at affordable housing developments. Unfortunately, given the District’s rapidly escalating rental market, the reality is the current limit likely is too strict. Bill 23-0136 seeks to raise the limit to include units that are affordable to households at 60 percent of area median income or below. For a family of four, this would raise the rent limit from \$1,516 to \$1,820 per month. This rent is

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<sup>2</sup> D.C. Code § 42-3404.32(c).

<sup>33</sup> *Id.* § 42-3404.32(c)(2).

<sup>4</sup> U.S. Dep’t of Hous. & Urban Dev., *Income Limits – Tables for Section 8 Income Limits*, <https://www.huduser.gov/portal/datasets/il/il19/Section8-IncomeLimits-FY19.pdf>. The income limit for very low-income families, i.e. families at 50 percent of area median income or below, is \$60,650. Monthly rent at 30 percent of this income level would be \$1,516 per month.

more realistic in a market where median monthly rent for a two-bedroom apartment is \$1,550 and climbing,<sup>5</sup> with average rents topping \$2,000 per month.<sup>6</sup>

Increasing the rent limit to 60 percent of area median income also will ensure that all Low-Income Housing Tax Credit (LIHTC) properties qualify for DOPA. Under LIHTC, properties must maintain a certain percentage of units at rents affordable to households at either 50 or 60 percent of area median income. Current law would exclude LIHTC 60 percent properties from consideration under DOPA; the amendment will sweep in these properties.

While Legal Aid supports more flexibility under DOPA, we also believe the District should continue to prioritize preservation of deeply-affordable units, including targeting properties with these units for its exercise of DOPA rights. We urge this Committee to amend the bill to add a new subsection to D.C. Code § 42-3404.34(c)(3) to codify that more affordable housing developments will receive priority:

In exercising the opportunity to purchase under this subchapter, the Mayor shall give priority to housing accommodations in which at least 25% of the rental units are affordable to households with an income of 50% of the area median income, using the same formula.<sup>7</sup>

Finally, Legal Aid joins the comments submitted by CNHED on the need to clarify how affordable rents are defined in the context of a unit subject to an existing rental subsidy. Any rental unit subject to a project-based subsidy contract should be considered affordable, and we urge the Committee to amend the bill to clarify that these units are included.<sup>8</sup>

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<sup>5</sup> Michele Lerner, “DC’s median rent up 2 percent in 2018,” *Washington Post* (1/29/19), available at [https://www.washingtonpost.com/business/2019/01/24/dc-median-rent-up-percent/?utm\\_term=.af7732524d24](https://www.washingtonpost.com/business/2019/01/24/dc-median-rent-up-percent/?utm_term=.af7732524d24).

<sup>6</sup> Rent Jungle, *Rent trend data in Washington, District of Columbia*, available at <https://www.rentjungle.com/average-rent-in-washington-rent-trends/> (citing average monthly rent of \$2,846 for a two-bedroom apartment and \$2,360 for apartments overall as of April 2019); RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/> (citing average monthly rent of \$2,131 for all apartment sizes).

<sup>7</sup> DHCD has published property selection criteria that will be considered in evaluating possible DOPA projects. *See Selection Criteria for Prioritizing Building(s) for district opportunity to purchase act (DOPA) Purchase and Assignment of Rights*, available at [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/service\\_content/attachments/DOPA%20Selection%20Criteria.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/service_content/attachments/DOPA%20Selection%20Criteria.pdf). DHCD notes that these criteria are designed “to prioritize DOPA transactions that represent the most significant opportunities to preserve affordable housing.” *Id.* However, the published criteria do not specifically give higher priority to projects with more deeply-affordable units. Codifying a priority for more affordable projects will ensure that this remains a primary selection criterion and cannot be changed by DHCD in the future.

<sup>8</sup> Specifically, the definition of affordable rental units in D.C. Code § 43-3404.32(c) should be amended to include “a rental unit subject to a project-based subsidy under section 8 of the United

## **Legal Aid Recognizes the Need for Annual Rent Increases, But These Increases Should Be Limited**

The second change under Bill 23-0136 will allow owners of properties acquired under DOPA to impose annual rent increases on affordable units. Under current law, the owner of a property acquired through DOPA must limit the rents for existing tenants occupying affordable units to the lower of the existing rent at the time the property is offered for sale or 30 percent of the household's income.<sup>9</sup> This rent limit is fairly extraordinary. Taken literally, it would require the owner to treat all existing tenants similar to subsidy holders, limiting their rent to 30 percent of their income. It also can be read, as a practical matter, to bar any rent increases.<sup>10</sup> While these protections for existing tenants are quite strong, they also likely are not feasible for deeply-affordable, low-rent units without rental or other operating subsidies in place – precisely the types of units that should be preserved under DOPA.

DHCD has published regulations implementing DOPA that allow for annual rent increases on affordable units.<sup>11</sup> Bill 23-0136 codifies this approach, freezing rents on affordable units for the first 12 months of new ownership, but then allowing for annual rent increases after that. The bill does not contain any limitations on the amount of these annual rent increases. Legal Aid urges this Committee to codify and strengthen DHCD's existing regulation on this point, by limiting annual increases to those allowed under the Rent Stabilization Program for all units, except those already covered by a local or federal affordability program, e.g. rental subsidies or LIHTC.<sup>12</sup> We suggest adding the following language to (b)(1)(B), as amended by the bill:

Allowable annual rent increases shall be limited to the allowable annual increase in monthly rent for a rental unit pursuant to Section 208(h) of the Rental Housing Act (D.C. Official Code § 42-3502.08(h)), or in the case of any local or federal rental affordability program (with respect to such unit or occupants thereof), the increase permitted under such program.

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States Housing Act of 1937, approved September 1, 1937 (88 Stat. 662; 42 USC § 1437f), or any comparable local or federal project-based rental assistance program that limits tenant-paid monthly rent to a proportion of an eligible occupant's income.”

<sup>9</sup> D.C. Code § 43-3404.33(b).

<sup>10</sup> Legal Aid acknowledges there is some ambiguity in the existing statutory language. For example, while section (b)(1) can be read as barring any rent increases for existing tenants, section (b)(5) caps rent increases for these tenants at 10 percent. *Id.*

<sup>11</sup> See 14 DCMR §§ 2406.4, 2499.1.

<sup>12</sup> DHCD's regulations limit the annual increases to those allowed under the Rent Stabilization Program, but only for those properties already covered by that protection. Tenants at other properties - for example, properties built after 1975 and therefore exempt from the Rent Stabilization Program - still should benefit from limits on annual rent increases.

## Legal Aid Supports Provisions Clarifying and Strengthening DOPA's Requirements to Maintain Affordable Rents

Finally, Bill 23-0136 contains several provisions to clarify and strengthen DOPA's requirements that the new owner of a property acquired through DOPA maintain affordable rents on affordable units. Legal Aid supports each of these amendments, with modest recommendations for ways to strengthen them.

First, Bill 23-0136 ensures that DOPA's rent restrictions for affordable units will be permanent. Under current law, DOPA states that affordable rents must be maintained for affordable units "as long as the housing accommodation remains a housing accommodation owned by the District."<sup>13</sup> Given that the District typically will assign its rights under DOPA to a private affordable housing developer that will own and operate the property, this affordability restriction might not mean that much. The bill will ensure long-term affordability restrictions, by requiring the District to record a permanent affordability covenant on the. This provision will ensure that DOPA is used to preserve affordable units for the long term.

Second, Bill 23-0136 clarifies that affordable units not only will be rent-restricted but also will be reserved for low-income families as they become vacant. Under current law, units in a DOPA-acquired property that were affordable to households at 30 percent or 60 percent of area median income must maintain rents affordable at those income levels as they become vacant.<sup>14</sup> While these rent restrictions are helpful, they do not ensure that rent-restricted units will be occupied by low-income families in need. The bill clarifies that these units not only are rent-restricted, but also income-restricted. For example, as units with rents affordable to households with incomes at 30 percent of area median income become vacant, their affordability at that level must be maintained and they must be occupied by families with incomes at or below 30 percent of area median income.

Legal Aid supports these provisions but also believes they can and should be expanded. The same rent and income restrictions should apply to units affordable to households at or below 40 or 50 percent of area median income. Legal Aid urges the Committee to amend the bill to include similar language for these units, for example the following language for units affordable to households at or below 40 percent of area median income:

If the most recent monthly rent was equal to or less than 30% of the annual income of a household with an income of 40% of the area median income on the date the offer of sale was provided to the Mayor, divided by 12, that unit shall become a rent-and-income-restricted unit restricted to tenants with annual household incomes equal to or less than 40% of the area median income.

Finally, in line with recent federal changes to the LIHTC program, the bill allows owners to meet these rent and income restrictions with income averaging. Income averaging provides helpful

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<sup>13</sup> D.C. Code § 42-3404.33(c)(1).

<sup>14</sup> *Id.* § 42-3404.33(c)(2).

flexibility for owners seeking to meet income restrictions. In fact, it may allow owners to meet the needs of households at lower income levels, when this goal otherwise would be out of reach. By offering affordable units to households with income at 70 or 80 percent of area median income, for example, an owner may be better positioned to offer affordable units to households with incomes at or below 30 or 40 percent of area median income.

While Legal Aid supports this additional flexibility, it should be accompanied by additional restrictions, similar to those found in the new LIHTC income-averaging regulations.<sup>15</sup>

### **Conclusion**

Thank you for this opportunity to testify. We look forward to continuing our dialogue with DHCD and this Committee about ways to strengthen DOPA and ensure that it is an effective tool for affordable housing preservation.

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<sup>15</sup> To give a specific example: LIHTC's income-averaging rule allows a property to meet the requirement that 40 percent of units are occupied by households at 60 percent of area median income or below by showing that: 1) 40 percent of the property's units have an average income at or below 60 percent of area median income, 2) household incomes in these units do not exceed 80 percent of area median income, and 3) all of these units restrict rents to the applicable income band for that household, i.e. 30 percent of income for households at 30, 40, 50, 60, 70, or 80 percent of area median income.