

**Testimony of Beth Mellen Harrison & Amanda Korber
Supervising Attorneys, Housing Law Unit
Legal Aid Society of the District of Columbia**

**Before the Committee on Housing & Neighborhood Revitalization
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0433

“Rental Housing Act Extension Amendment Act of 2019”

November 13, 2019

Faced with the District’s rapid gentrification and worsening affordable housing crisis, the Legal Aid Society of the District of Columbia¹ supports policies that preserve and produce affordable housing. The Rent Stabilization Program is a critical piece of this framework, and we support Bill 23-0433, the Rental Housing Act Extension Amendment Act of 2019. But reauthorizing rent control for another 10 years simply is not enough. The Committee should use this opportunity to enact a package of reforms to strengthen and expand rent control.

Legal Aid is part of the Reclaim Rent Control Coalition and endorses the Coalition’s platform:

- Rent control should be expanded to cover units built in 2005 and earlier.
- Rent control should be expanded by limiting the small landlord exemption to 3 units or less.
- Annual and vacancy rent increases should be limited to the Consumer Price Index.
- Petition rent increases should be time-limited and only available to landlords who maintain capital reserves and comply with the housing code.

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.” 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. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

- Hardship rent increases should be limited to landlords not making a profit.
- Voluntary agreements should be eliminated.
- All tenants should be limited to one rent increase per year with notice.

The District’s Deepening Affordable Housing Crisis Demands Bold Action Now

Extremely low-income tenants — those whose incomes are at or fall below 30 percent of area median income — are being pushed out of the District because of a severe and deepening shortage of affordable housing. The vast majority of Legal Aid’s clients have household incomes at or below this income level, which equates to \$35,150 or less for a family of four. These families can afford rent of \$878 per month or less.²

In a city where the average rent now tops \$2,000 per month,³ these residents are being left behind. Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.⁴ The result is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, a threshold that HUD classifies as “severely housing cost burdened.”⁵ In fact, nearly half of these families pay 80 percent or more of their monthly income towards rent.⁶ And this issue also is one of racial equity; of the approximately 27,000 extremely low-income, severely rent burdened households, 88 percent are headed by a person of color.⁷

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes. Thousands of District residents are being displaced from their communities — and the District itself. A study by the National Community Reinvestment Coalition found that about 40 percent of the District’s lower-income neighborhoods experienced gentrification between 2000 and 2013, giving the city the greatest

² Many of Legal Aid’s clients fall far below this income threshold. Adults with disabilities awarded minimum benefits through the Social Security Administration, for example, receive only \$771 per month and can afford rent of only \$231 per month.

³ <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

⁴ D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015).

⁵ D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* 3 (Dec. 8, 2016).

⁶ *Id.*

⁷ *Id.* at 1.

“intensity of gentrification” of any city across the country.⁸ The District also saw the most African American residents — more than 20,000 — displaced from their neighborhoods mostly by white, affluent, recent transplants.⁹

For those who are still struggling to remain in the District, as housing costs consume a higher and higher portion of a family’s monthly budget, other needs go unmet. Severely rent-burdened households are at higher risk for food insecurity, employment instability, and lack of proper medical care.¹⁰ These families also are far more likely to face eviction and, ultimately, possible homelessness. Eviction not only results in the loss of a family’s home; it can have devastating, long-term negative effects on physical and mental health, employment, and school performance.¹¹

Rent control currently covers approximately 90,000¹² of the District’s 165,000¹³ rental units, making the success of rent control protections a key factor in overall housing affordability. Without amendments to the rent control law – along with other policies to preserve and produce affordable housing – the District’s affordability crisis will continue unabated.

Studies Show That Rent Control Preserves Affordable Units, Stabilizes Rents, Prevents Displacement, and Promotes Stable, Diverse Neighborhoods

Rent control was implemented in the District to address the severe shortage of affordable housing available, particularly for low- and moderate-income renters. The purposes of the rent control law include “protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs,” “protect[ing] the existing supply of rental housing from conversion to other uses,” and “prevent[ing] the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.”¹⁴

⁸ National Community Reinvestment Coalition, *Shifting Neighborhoods; Gentrifications and cultural displacement in American cities* (March 19, 2019).

⁹ *Id.*

¹⁰ *See id.* at 1-2.

¹¹ *See, e.g.,* Matthew Desmond, *Evicted: Poverty and Profit in the American City* 296, 298, 299 (2016); Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Prob. 46, 59 (2016); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 89, 118 (2012).

¹² Urban Institute, *Affordable Housing Needs for the District of Columbia, Phase 2*, May 2015, at 24 (table 2).

¹³ American Community Survey Data, *Physical Housing Characteristics for Occupied Housing Units, 2018 1-Year Estimates*, available at <https://www.census.gov/acs/www/data/data-tables-and-tools/>.

¹⁴ D.C. Code § 42-3501.02.

Studies from across the country show that when rent control works, it helps to preserve existing affordable units, stabilize rents, prevent displacement, and promote stable, diverse neighborhoods. Tenants in rent control units stay in their homes longer and are less likely to be forced to move.¹⁵ In fact, one of the most-cited, recent studies criticizing rent control found that San Francisco tenants in rent control units were 20 percent more like to remain in their homes than other tenants.¹⁶ Because it stabilizes rents, rent control also helps to preserve existing affordable units, provide predictability, and slow gentrification and displacement.¹⁷ While rent control protects tenants at various income and rent levels, it disproportionately benefits low-income households headed by older residents, women, and people of color.¹⁸ By keeping more money in the pockets of low-income residents in particular, rent control also helps put money back into the local economy and local businesses and contributes to better employment, health, and educational outcomes for these families.¹⁹

Rent Control Should Be Expanded to Cover Newer Units and Smaller Buildings

When the Rental Accommodations Act was enacted in 1975, rent control covered approximately 190,000 units across the District. Ten years later, when the current Rental Housing Act of 1985 went into effect, the number had shrunk to 120,000 because of new exemptions.²⁰ Today only 90,000 units still remain, and this number will continue to shrink as more units fall under existing exemptions²¹ or are demolished, discontinued from housing use, or converted to condominiums or cooperatives. Unless rent control is expanded, the program will continue to

¹⁵ Ameer Chew & Sarah Treuhaft, PolicyLink, the Center for Popular Democracy, and the Right To The City Alliance, *Our Homes, Our Future, How Rent Control Can Build Stable, Healthy Communities* 24-26 (Feb. 2019); Manuel Pastor, Vanessa Carter, & Maya Abood, USC Dornsife Program for Environmental & Regional Equity, *Rent Matters: What are the Impacts of Rent Stabilization Measures?* 16-17 (Oct. 2018); Nicole Montojo, Stephen Barton, & Eli Moore, Haas Institute, *Opening the Door for Rent Control* 26 (2018).

¹⁶ Rebecca Diamond, Tim McQuade, & Franklin Qian, “The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco” (Mar. 4, 2019), *available at* <https://web.stanford.edu/~diamondr/DMQ.pdf>.

¹⁷ Chew & Treuhaft, 27-28; Pastor, Carter, & Abood, 10-12; Montojo, Barton, & Moore, 27.

¹⁸ Chew & Treuhaft, 21-22; Pastor, Carter, & Abood, 19-21.

¹⁹ Chew & Treuhaft, 29-33; Pastor, Carter, & Abood, 17-19.

²⁰ Kenneth Bredemeier, “Lines Drawn in D.C. Rent Control Battle,” *The Washington Post* A1 (Mar. 17, 1985). Between 1975 and 1985, the exemption for subsidized units was expanded and the small landlord exemption was added.

²¹ To cite one example, units covered by the Low-Income Housing Tax Credit program are exempt, D.C. Code § 42-2703.08(a), and LIHTC remains a critical source of funding for preservation of rent control units when buildings are offered for sale.

decline in its reach and effectiveness. Legal Aid supports two changes to expand the protections of rent control to more District residents.

First, the Rental Housing Act should be amended to move the exemption year. Under current law, all buildings built after 1975 are exempt from rent control. This date should be moved to 2005. In addition, the exemption year should be dynamic, so that only buildings less than 15 years old are exempt, with more units coming under rent control each year. Exempting units built within the last 15 years will allow owners and investors adequate time to maintain market rental income streams and recoup their initial investments. A 15-year old building falling under rent control for the first time would start at market rates, with rental income only gradually becoming more limited over time. California and Oregon recently enacted statewide rent control laws with 15-year exemption periods, recognizing this time period as a reasonable benchmark.²²

Second, the current small landlord exemption should be narrowed. Under current law, if a natural person owns four or fewer rental units, then those units are exempt from rent control. Instead, the small landlord exemption should only apply to owners with three or fewer units. Four-unit buildings in the District are an important source of naturally-affordable rental housing, and it is precisely these buildings that may be most at risk of becoming unaffordable as gentrification spreads. For tenants living in these buildings, their ability to remain in their homes and maintain affordable rents often depends entirely on who happens to own the building – or who will purchase it next. Limiting the small landlord exemption would ensure that all four-unit buildings fall under rent control, while still protecting smaller landlords, including those who may rent out one or more accessory dwelling units in their own homes.

This past year, Legal Aid worked with a four-unit building in Ward 5 that was at risk of losing its affordable status because of the small landlord exemption. The long-time owner of the building had owned multiple properties and fell under rent control. When she passed away, the building was contracted for sale to a new owner who did not own any other rental units in the District and would have been exempt. The four tenants, whose rents all fell under \$1,000 a month, were at risk of large rent increases and displacement in a neighborhood that is rapidly gentrifying. Legal Aid worked with the tenants to exercise their TOPA rights and find a developer to keep the building under rent control, rehabilitate it, and maintain affordability with only modest rent increases. By expanding rent control to all four-unit buildings, the Committee can ensure affordable units like these are preserved, regardless of who owns them.

Petition Rent Increases Should Be Time-Limited and Limited to Landlords That Maintain Capital Reserves and Comply With the Housing Code

²² Lauren Dake, “Rent Control Is Now the Law in Oregon,” *Oregon Public Radio* (Feb. 28, 2019), available at <https://www.opb.org/news/article/oregon-rent-control-law-signed/>; Jenna Chandler, “Here’s how California’s rent control law will work,” *Curbed Los Angeles* (Oct. 9, 2019), available at <https://la.curbed.com/2019/9/24/20868937/california-rent-control-law-bill-governor>.

Petitions allow landlords to request and get approval to take extraordinary rent increases often ranging as high as 50 to 100 percent or more. Because rent increases at this level often may take affordable units out of reach for low-income tenants and are very likely to lead to displacement, petitions should be limited to landlords who follow the law and demonstrate a true need for the requested rent increase. Where appropriate, these rent increases also should be time-limited to meet the needs presented by the landlord but no more. Legal Aid recommends that the Committee amend the Rental Housing Act to: 1) ensure that petition rent increases expire once the needs set forth in the petition are met, and 2) make clear that landlords will only be approved for petition rent increases if they maintain capital reserves and keep their properties in compliance with the housing code.

First, because petition rent increases are extraordinary, they should be limited in time to meet the needs claimed by the landlord. Capital improvement petitions²³ already impose time-limited rent surcharges, which are calculated based on the total cost of the project and expire and are removed once the project is paid for in full. Substantial rehabilitation petition²⁴ rent increases already are calculated based on the total cost of the project, but — unlike capital improvement petition increases — they never expire. There is no logic behind this different treatment. While substantial rehabilitation surcharges necessarily would remain in place longer, given the scope of the projects, there is no reason these rent increases should remain in place once the project costs have been paid. Similarly, hardship petition²⁵ rent increases should only remain in place for a year, followed by a reevaluation of the landlord's finances to determine if the need for the rent increase remains.²⁶

²³ A capital improvement petition allows a landlord to seek a rent increase to fund capital investments, such as a new roof or new windows. The resulting rent increase is time-limited to either 64 months (for limited projects) or 96 months (for building-wide projects), and the rent increase is calculated to pay off the total project cost over this period with a maximum cap of 15 or 20 percent respectively. *See* 14 D.C.M.R. §§ 4210.1-.55.

²⁴ A substantial rehabilitation petition allows a landlord to seek a rent increase to fund a broader rehabilitation or renovation of a building. These projects may involve replacing multiple systems, upgrading bathrooms and kitchen, and so on. The resulting rent increase is calculated to pay off the total project cost, with a maximum cap of 125 percent and no expiration date. *See* 14 D.C.M.R. §§ 4212.1-.12.

²⁵ Described in further detail below, a hardship petition allows a landlord to seek a rent increase if current profits on the building's operations do not provide a 12 percent annual return on the landlord's equity in the building. The resulting rent increase can be any amount and never expires, regardless of how the landlord's finances may change in future years. *See* 14 D.C.M.R. §§ 4201.1-.20.

²⁶ The Elderly Tenant and Tenant With a Disability Protection Amendment Act of 2016, L21-0239, clarified that substantial rehabilitation and hardship petition rent increases should be treated as surcharges but did not specify how or when those rent surcharges would expire. *See* D.C. Code §§ 42-3501.03(29C), -3502.24(i)(2).

Second, petition rent increases should be limited to financially-responsible landlords that have established reserve accounts to cover capital expenditures over time. When available, these funds could help to cover all or part of the costs of repairs and rehabilitation that otherwise might form the basis for a capital improvement, substantial rehabilitation, or hardship petition. There are some models available for establishing the parameters for this type of requirement — HUD requires a reserve for replacements account in properties that the agency insures or subsidizes,²⁷ the Department of Housing & Community Development similarly assesses reserve requirements on Low-Income Housing Tax Credit properties,²⁸ and New York requires the establishment of such an account when a building is converted from rental to condominium.²⁹ We recommend that the Committee establish a similar requirement for rent control properties and require landlords to show compliance in order to file a petition. For those petitions where capital expenditures are relevant, the landlord also should have to show that capital reserves already have been or will be accessed before relying on rent increases for funding.

Finally, landlords should not be able to seek petition rent increases unless their properties currently are in compliance with the housing code. The Rental Housing Act already is clear that a landlord may not increase a tenant's rent if the tenant's unit or the common areas of the building are not in compliance with the housing.³⁰ The regulations implementing the law state that petitions should be treated as rent increases in this regard,³¹ but Legal Aid and other attorneys representing tenants have found that landlords and even judges sometimes ignore this rule. A landlord should not be able to seek approval via a petition for a rent increase that cannot currently be implemented, and such a landlord should not be rewarded for its failure to follow District law. The Committee should amend the Rental Housing Act to clarify that a landlord cannot file a petition seeking an extraordinary rent increase unless the property complies with the housing code.

Legal Aid recently represented tenants facing a hardship petition increase despite substantial housing code violations in their building. The tenants currently benefit from affordable rents in a gentrifying neighborhood but have had to endure poor conditions for a number of years. Inspections conducted by the Department of Consumer & Regulatory Affairs before and after the petition was filed found multiple, substantial housing code violations, with violations cited in

²⁷ See, e.g., HUD Reserve for Replacement Guidelines, Region VIII – Denver (Sept. 2014), available at <https://www.hud.gov/states/shared/working/r8/mf/reserveguidelines/14>.

²⁸ See Department of Housing & Community Development, *Low-Income Housing Tax Credit Qualified Allocation Plan 24*, 34 (June 2019), available at <https://dhcd.dc.gov/page/2019-dhcd-low-income-housing-tax-credit-qualified-allocation-plan-draft>.

²⁹ N.Y.C. Admin. Code §§ 26-703 to 26-704. Project sponsors must provide a fund equal to at least three percent of the overall offering prices for all units combined, either within 30 days or over a five-year period with a minimum initial contribution.

³⁰ D.C. Code § 42-3502.08(a)(1)(A).

³¹ 14 D.C.M.R. § 4216.1

every unit in the building. Despite this fact, the landlord still filed and pursued the petition, seeking a rent increase of over 50 percent.

Hardship Rent Increases Should Be Limited to Landlords That Are Not Making Enough Money to Cover Their Expenses

Under current law, a landlord that is not receiving a 12 percent return on its equity in a rent control property is entitled to raise rents to whatever level is necessary to reach this guaranteed return on investment.³² The resulting hardship petitions often seek large rent increases, ranging from 50 to 100 percent or more. Once approved, many hardship rent increases push affordable units out of reach of low-income tenants and result in displacement of current residents. Moreover, because the hardship formula focuses on return on equity rather than operating gains and losses, it often rewards landlords with comparatively little financial need. A large landlord that can afford to invest more equity in a building will be entitled to large rent increases, even if it is operating with a comfortable profit margin, while a small landlord that may be losing money and have little cash invested will not qualify.

An analysis by Legal Aid of hardship petitions filed since 2006 has found that many landlords that benefit from hardship rent increases may not need them. Over half of hardship petitions submitted (52%) came from properties with positive net income. Over a third of the landlords – 35% of submitted petitions – reported profit margins of 15 percent or more. This same analysis found that hardship petitions have contributed to the loss of hundreds of affordable rent control units during the past 10-plus years. For the 65 petitions that were approved, covering 1,001 units, the average rent increase was \$642 per month, or 76 percent.

The hardship petition formula should be changed to put a brake on large increases and focus on operating gains and losses, rather than return on investment. We propose limiting hardship increases to the amount necessary to bring a property into the black and at a profit rate equal to a dynamic market indicator, such as the 10-year Treasury Bill rate. This will ensure that landlords do not operate properties at a loss, including after accounting for repairs and all other necessary expenses, but also will ensure that tenants do not have to shoulder high rent increases in order to provide landlords with an exorbitant guaranteed rate of return.

Voluntary Agreements Should Be Eliminated

The Rental Housing Act includes a provision for voluntary agreements between landlords and tenants to raise rents on the theory that landlords and tenants can come together and bargain to provide benefits to both sides. Tenants would agree to pay higher rents within a range they can afford, and in exchange landlords would agree to make improvements to their building. The

³² This rate of return – which is incredibly high compared to modern market conditions – was established in 1985 at a time of high interest rates and inflation, when the yield on a 10-year Treasury Bill was nearly 12 percent. See Macrotrends, 10 Year Treasury Rate - 54 Year Historical Chart, available at <https://www.macrotrends.net/2016/10-year-treasury-bond-rate-yield-chart>.

process was designed to ensure a fair compromise by requiring approval of a super-majority (70 percent) of tenants.

Unfortunately, since the 2006 reforms to the District's rent control law, landlords increasingly have used voluntary agreements to win approval for rent increases of hundreds or even thousands of dollars per month, well above market rates. Here's how it works: a landlord proposes a voluntary agreement that includes substantial rent increases, often well above current market rents. The landlord then books these large increases and implement them over time, ensuring that rent control units remain at market levels or higher and evading rent control protections for all practical purposes. The landlord wins approval for these deals by offering current tenants a deal they cannot refuse: agree to the rent increases, but you will never have to pay them. A proposed voluntary agreement will provide that only future tenants will have to pay the increased rents.

Landlords who do not push rent increases onto future tenants often use similar techniques, for example providing current tenants with large move-out payments if they approve large rent increases and then vacate. 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. 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.

This practice is not just theoretical, it is well-documented. An analysis by Legal Aid and the Coalition for Nonprofit Housing & Economic Development of voluntary agreements filed since 2006 has found that these agreements alone have resulted in average increases of \$804 per month per unit for 5,462 total units, resulting in the loss of 2,376 low-cost units during this time period. The 207 approved voluntary agreements resulted in monthly rent increases totaling \$5,824,226 per month. Voluntary agreements that shifted costs to future tenants had average increases of \$1,182 per month, compared to \$771 for agreements that did not.

Last Council period, Chairwoman Anita Bonds and other members of the Committee introduced a bill to end this practice, B22-0100, the Preservation of Affordable Rent Control Housing Amendment Act of 2017. Legal Aid, other tenant advocates, and tenants spent the last three years negotiating in good faith with landlords and their representatives to try to move this bill forward, to no avail. While these negotiations have continued during the past year, the group has been unable to make any further progress. And this latest bill is one of five other pieces of legislation introduced since 2006 to reform the voluntary agreement process, all of which have failed to win passage.

Recognizing this impasse, the incredible damage done by voluntary agreements in the past 10-plus years, and the inherent unequal bargaining power between landlords and tenants that may inevitably result in these types of outcomes, Legal Aid has come to the conclusion that voluntary agreements should be eliminated entirely.

All Tenants in the District Should Be Limited to One Rent Increase Per Year, Following Notice to the Tenant

Finally, Legal Aid supports the Reclaim Rent Control Coalition's recommendation that the Rental Housing add a new protection to limit rent increases for all tenants. Landlords may only increase the rent once a year, following a minimum of 30 days' notice, for tenants living in rent control units.³³ Tenants in non-rent control units should receive these same protections. While some landlords treat the rent control limits as applicable to all units, and only increase rents once annually following notice, Legal Aid has seen exceptions. Without these protections, tenants are left vulnerable and landlords have an easy tool for harassment and retaliation. The Committee should amend the Rental Housing Act to limit all landlords to one rent increase per year following notice to the tenant.

Conclusion

Legal Aid joins the call of the Reclaim Rent Control Coalition – the status quo is not enough. While we support reauthorizing rent control for another 10 years, the Council can and should do more, by using this opportunity to expand and strengthen rent control for the coming decades. We look forward to working with the Committee and the full Council on this vital work.

³³ D.C. Code §§ 42-3502.08(g), 42-3509.04(b).