

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

Public Hearing Regarding:

Bill 23-0237, “Rent Concession Amendment Act of 2019”

Bill 23-0530, “Rent Stabilization Affordability Qualification Amendment Act of 2020”

Bill 23-0877, “Substantial Rehabilitation Petition Reform Amendment Act of 2020”

Bill 23-0879, “Capital Improvement Petition Reform Amendment Act of 2020”

Bill 23-0878, “Voluntary Agreement Moratorium Amendment Act of 2020”

September 24, 2020

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. While we are generally supportive of the ideas embodied in the voluntary agreement and petition reform bills that the Council is receiving testimony on today (Bills 23-0877, 23-0878, and 23-0879), a more comprehensive reform to rent control is necessary. Legal Aid is a member of the Reclaim Rent Control Coalition and supports the Rent Stabilization Program Reform and Expansion Amendment Act of 2020 (Bill 23-0873), which is an omnibus package of legislation to expand the Rent Stabilization Program to cover more units and to fix the many loopholes in the current system that have resulted in the loss of thousands of affordable, rent-controlled units.

Legal Aid opposes the two other bills before the Committee today. Bill 23-0530 would introduce means testing into rent control, changing the very nature of the program without preserving or producing a single new unit of affordable housing. While we agree that there is a shortage of affordable, rent-controlled housing, the Council should address this problem by expanding rent control to cover more housing units, not by restricting who has access to it. Legal Aid also opposes Bill 23-0237, which would allow for so-called discounted rents. While

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.

the bill has good intentions, we fear it would open up a new loophole, allowing landlords to take large rent increases above market levels and preserve them for future implementation.

The Council Must Act Boldly to Address the District’s Affordable Housing Crisis

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low and moderate incomes — many headed by people of color — are being left behind.² Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.³ As a result, 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”.⁴ 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.⁵

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly black households. 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 “intensity of gentrification” of any city across the country for that period.⁶ The District also saw the most black residents — more than 20,000 — displaced from neighborhoods, mostly by white, affluent, recent transplants.⁷ An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification,” with displacement continuing.⁸

Against this backdrop, the national economy now is facing what is being described as the worst economic crisis since the Great Depression.⁹ In the District, as of this week, over 145,000 residents have filed for unemployment.¹⁰ This loss of income is putting tens of thousands of

² RentCafe, *Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

³ D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing* (March 2015), available at <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁴ D.C. Fiscal Policy Institute, *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents 3* (Dec. 8, 2016), available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

⁵ *Id.* at 1.

⁶ National Community Reinvestment Coalition, *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>.

⁷ *Id.*

⁸ National Community Reinvestment Coalition, *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

⁹ New York Times, “I.M.F. Predicts Worst Downturn Since the Great Depression” (Apr. 14, 2020), available at <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-economy-recession-depression.html>.

¹⁰ Department of Employment Services, “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

District residents at risk of eviction. Updated Census survey data indicate that over 50,000 households in the District are not current in their rent payments, and the same number had little or no confidence in their ability to pay September rent.¹¹

The burden of this economic and housing crisis is falling disproportionately on low-income black and Latinx families. More than 70 percent of the families reporting that they are not current in their rent or nearly 90 percent of those families with little or no confidence in their ability to pay October rent are black or Latinx.¹² Those most affected are families with children with reported 2019 annual income of \$25,000 or less, the majority of whom report loss of employment income since mid-March 2020, many of whom still are not employed.¹³

Mayor Muriel Bowser’s administration describes the District’s response to the pandemic as “a once-in-a-generation opportunity to thoughtfully build toward a more equitable, resilient, and vibrant city.”¹⁴ Any long-term strategy to preserve the District’s dwindling supply of affordable housing must include comprehensive reform to strengthen and expand the Rent Stabilization Program.

The Housing Committee Should Hold a Hearing and Approve the Rent Stabilization Program Reform and Expansion Amendment Act of 2020

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

- Rent control should be expanded by limiting the new construction exemption to buildings less than 15 years old, immediately covering units built between 1976 and 2005.
- 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 reserve accounts and comply with the housing code.
- 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.

In July of 2020, Councilmembers Brianne Nadeau and Trayon White introduced the Rent Stabilization Program Reform and Expansion Amendment Act of 2020 (Bill 23-0873), which

¹¹ U.S. Census Bureau, Week 14 Household Pulse Survey: September 2 – September 14 – Detailed Tables, available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp14.html>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the District, since the week of April 23, 2020. The latest data, released just this week, reflects surveying between September 2 and September 14, 2020.

¹² *Id.*

¹³ *Id.*

¹⁴ Executive Office of the Mayor, *ReOpen DC Overview*, available at <https://coronavirus.dc.gov/reopencdc>.

would accomplish each of these necessary reforms. Even if the bills before the Committee today on capital improvement petitions, substantial rehabilitation petitions, and voluntary agreements were enacted, they do not go far enough to address the many loopholes that allow landlords to take extraordinary, permanent increases on rent-controlled units — for example, failing to include any reforms to hardship petitions — nor do they expand rent control to protect more District residents. We recommend that this Committee work to combine the positive aspects of these independent bills, which are discussed below, into the omnibus legislation, and then hold a hearing on and approve this vitally important and comprehensive bill.

Reforms to Capital Improvement Petitions, Substantial Rehabilitation Petitions, and Voluntary Agreements Should Be Included in a Comprehensive Package

The Capital Improvement Petition Reform Amendment Act of 2020 (Bill 23-0879) and the Substantial Rehabilitation Petition Reform Amendment Act of 2020 (Bill 23-0877) contain important reforms to these two petition types, and the substance of these bills should be enacted. In fact, these bills contain certain provisions that are even more protective than those in the omnibus reform package that Legal Aid and the Reclaim Rent Control Coalition support. But simply reforming those two petition types is not enough. Prior experience shows that reforming one aspect of the rent control system while leaving other provisions unchanged simply encourages landlords to find new tactics to evade and undermine the law.

Instead, the bold change that the District needs right now, as we emerge from the current pandemic, is a comprehensive reform — one, for example, that includes fundamental changes to hardship petitions as well, and combines all elements into one package, along with expansion and other measures to limit annual and vacancy increases. As for voluntary agreements, we believe that Bill 23-0878, which would suspend voluntary agreements for two years, does not go far enough. Instead, we support provisions in the omnibus reform package to eliminate voluntary agreements entirely.

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. They have achieved these dramatic rent increases by offering current tenants a deal they cannot refuse: agree to the rent increases, but only future tenants will have to pay them. And landlords who do not use this technique use similar ones, for example providing current tenants with large move-out payments if they approve 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 increases are locked in through 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. 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. Some of these agreements approve rent increases as high as \$3,000 per month per unit.

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 three years negotiating in good faith with landlords and their representatives to try to move this bill forward, to no avail. 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 nearly-15 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.

The Rent Stabilization Program Should Not Be Means-Tested

Legal Aid opposes Bill 23-0530, the Rent Stabilization Affordability Qualification Amendment Act of 2020. There is no evidence in the District of any wide-spread problem of wealthy families renting low-rent, rent-controlled units. What we do know is that the supply of affordable, rent-controlled housing is dwindling each year, while the District's affordable housing crisis grows. To the extent the Committee is considering this bill because it is concerned about the scarcity of affordable, rent-controlled housing, the right solution is to expand rent control to cover more units, not restrict the number of District residents that rent control housing is available to.

The Rental Accommodations Act of 1975 enacted the District's rent control program and applied it to all rental housing constructed before 1975. Forty-five years later, the Council has never amended this bill to cover more rental housing units, and in fact the number of rent-controlled units in the District has decreased significantly over time. 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, that number shrunk to 120,000 due to new exemptions.¹⁵ Today only 90,000 units remain, and this number will continue to shrink as more units fall under existing exemptions or are demolished, discontinued from housing use, or converted to condominiums or cooperatives.¹⁶

Against this backdrop, the solution to the dwindling supply of affordable, rent-controlled units is clear: cover more units, do not restrict the families those units are available to. The omnibus reform legislation would do just that, by exempting new construction from rent control for 15

¹⁵ 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.

¹⁶ Peter Tatian, et al., Urban Institute, *Affordable Housing Needs Assessment for the District of Columbia: Phase II* 24 (May 2015), available at https://www.urban.org/research/publication/affordable-housing-needs-assessment-district-columbia/view/full_report.

years before covering it automatically, and limiting the small landlord exemption to those landlords that own three or fewer units. Instead of limiting the number of families that will have access to stable, affordable housing, the Council should approve the omnibus reform legislation and increase the supply for everyone.

Additionally, this bill would exclude some low-income District families from desperately needed affordable, stable housing based on an imperfect formula. As an example of why the formula proposed by the bill — that a person’s monthly income cannot exceed five times the monthly rent — does not accomplish the Council’s intended goal of reserving affordable units for those with low income, consider the following: A landlord is renting a covered two-bedroom unit for \$800 per month.¹⁷ A family of four (two parents and two kids or a single parent with three kids) that earns \$48,500 per year or \$4,042 per month would be over-income for that unit. This means a family living at 185% of the Federal Poverty Line in one of the country’s most expensive jurisdictions would be denied an affordable housing unit for being over-income. No Councilmember should support a bill that has this effect. It is important to note that there is no comprehensive database of all the rent-controlled units in the District and their monthly rents. Therefore, there is no way of knowing whether any units this family would qualify for exist and are vacant, and there is certainly no way of directing this family to a unit they could both afford and qualify for.¹⁸

In addition to the low-income families that would be excluded from rent-controlled housing due to the formula, others would be excluded based on incorrect applications of the formula or incomplete documentation. As with any means-tested program, this bill erects barriers to access. This bill presumably would put landlords in charge of determining a family’s prior year gross income. Landlords inevitably will make mistakes, but also some families may not have documentation, whether because they work nontraditional jobs, because they are undocumented, or for any other of a number of reasons. Human error in determining eligibility and inability to produce sufficient documentation already cause District families to lose out regularly on lifeline benefits such as SNAP, TANF, Medicaid, and subsidized housing programs. The Council should not add rent-controlled housing to that list.

Discounted Rents Would Create a Loophole In Existing Law and Should Not Be Allowed

The final bill before the Committee, Bill 23-0237, the Rent Concession Amendment Act of 2019, contains two components: 1) a clarification of existing law to ensure that landlords do not preserve rent increases for future implementation, and 2) a new concept of discounted rents, allowing a landlord to charge a tenant less than the full, legal rent for a unit. Legal Aid supports

¹⁷ Though the supply of low rent, rent-controlled units is shrinking due to loopholes and exemptions in the current Rent Stabilization Program, Legal Aid has worked with clients who live in units at this rent level.

¹⁸ Additionally, a person’s prior year gross income is not always a good indicator of their current financial situation. For example, an individual with no kids could have been a college student with no income during the prior calendar year, but at the time of application be earning \$100,000 per year. This individual would still qualify for this unit instead of the family of four.

the first component, which already is incorporated into the omnibus rent control legislation. As for the concept of discounted rents, while they sound beneficial to tenants, we fear the bill actually would create a new loophole that would allow landlords to take large, above-market rent increases, continuing the abuses we have seen with rent concessions.

In the past decade-plus, landlords have been using various tactics to return to a two-track rent control system, in which the actual rent charged to a tenant and the maximum lawful rent are distinct, and tenants have to understand both in order to protect their rights. Such a system in many ways replicates the prior rent ceiling system. The Council abolished that system with enactment of the Rent Control Reform Amendment Act of 2006 — and with good reason. The “extreme complexity” of the rent control system in effect prior to 2006 “led to confusion among tenants.”¹⁹ It was not unusual for tenants to face large rent increases — on the order of \$500 or even \$1,000 or more — based on prior rent ceiling increases that the landlord had been saving up for a future date. These rent increases were neither transparent nor predictable and often were too large for tenants to pay.²⁰

Despite the 2006 Act and its abolition of rent ceilings, landlords continue to claim the right to retain approved rent increases for future implementation. Some landlords will hold on to approved rent increases and not record them in the rent amount on file, only to implement those same increases years later. Other landlords will implement large, often above-market increases on paper, but will charge tenants lower rents, offering “rent concessions” for the difference. This practice results in de facto rent ceilings, in which what a tenant actually pays for rent and what the landlord claims could be charged are two different numbers, often hundreds or even thousands of dollars apart.

The Council already has taken action to clarify the law with the Rent Charged Definition Clarification Amendment Act of 2018, Law 22-0248, which added a definition for “rent charged,” the core concept under the 2006 Act. By defining this term as the amount that the tenant currently is being charged, that amendment clarified that there is only one number for rent control purposes, and only that number can be the basis for all future rent increases. The Council did not take the next logical step, however, which Bill 23-0237 does — clarifying that all current rents are reset to the current rent charged and providing that any future rent increases must be implemented within 30 days or forfeited. Legal Aid supports these provisions, which have been incorporated in large part into the omnibus reform legislation. These clarifications will help eliminate de facto rent ceilings, increase transparency, protect tenants from large rent increases, and ensure that rent ceilings finally are abolished.²¹

¹⁹ D.C. Council, Comm. on Consumer & Regulatory Affairs, *Committee Report – Bill 16-109, “Tenants’ Right to Information Act of 2005”* 1 (2006).

²⁰ D.C. Council, Comm. on Consumer & Regulatory Affairs, *Committee Report – Bill 16-109, “Rent Control Reform Amendment Act of 2006”* 2-3, 7-10 (2006).

²¹ The Rental Housing Commission has confirmed this reading of the statute in its decision in *Fineman v. Smith Prop. Holdings Van Ness, LP*, RH-TP-16-30,842 (RHC Jan. 18, 2018), and the same analysis is reflected in draft regulations issued by the Commission last year, 66 D.C. Reg. 9813-10003 (Aug. 2, 2019), *available at*

For all of the reasons that the abolition of rent ceilings must be maintained and enforced, any allowance for discounted rents risks opening up a new loophole. The concept of discounted rents (or rent concessions) appears to be a benevolent one — a landlord is willing to accept less than the maximum lawful rent from a tenant. The danger is that discounted rents could be used in more sinister ways, including to further the two-track rent system described above. Landlords could implement rent increases well above current market rates, and then use discounted rents to hold on to the difference and implement it over time. Rent control still applies but becomes ineffective for all practical purposes.

An example may help to illustrate the problem. A landlord wins approval of a hardship petition rent increase of 50 percent, which will increase the rent on a unit from \$1,200 to \$1,800 per month. But given the condition of the building and its units, the landlord knows that the most any tenant will pay right now is \$1,500 per month, a 25 percent increase. The landlord therefore implements the full increase of \$1,800 but then offers the current tenant a discounted rent of \$1,500. The current tenant pays market rent and hardly can be said to benefit from that arrangement. When that tenant vacates, the landlord will be able to go back in time and recalculate the rent as if it had taken and charged \$1,800 all along, helping to ensure that the next tenant also will pay at or above market rate.

Rent stabilization is only successful if it helps to mitigate market effects, keeping rent increases affordable and stable at times when market increases are inflationary. In the District, average rents increased by 55 percent between 2010 and 2019, while the annual rent control increases during this same period totaled 40 percent.²² Rent control allows landlords in the District to continue to increase their rents at a fairly rapid clip, while still keeping increases stable and restraining an inflationary local market. If landlords are able to use a loophole like discounted rents to recapture all or part of that 15 percent gap, the value of the rent stabilization program will be threatened.

Conclusion

The Housing Committee should not move forward with a bill that would impose means testing on the Rent Stabilization Program or introduce yet another loophole — discounted rents — into the current system. Instead, this Committee should combine the positive aspects of the petition

<https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N0085819>. Further clarification by the Council will help to ensure these protections remain enshrined in the law.

²² “D.C. area's rent increases among the highest in past decade,” *Washington Business Journal* (Dec. 18, 2019), available at <https://www.bizjournals.com/washington/news/2019/12/18/d-c-areas-rent-increases-among-the-highest-in-past.html>;

D.C. Office of the Tenant Advocate, *Historical Comparison of the “Rent Control CPI” and the Social Security Cost of Living Adjustment Through 2019*, available at

https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2019%20OTA%20History%20of%20SS%20COLA%20%26%20RC%20CPI-W.FINAL_.pdf. The 40 percent increase is

based on the Consumer Price Index (CPI) plus 2 percent; for tenants who are elderly or have disabilities, the increase during this same period would have been only 17 percent. *Id.*; see also D.C. Code §§ 42-3502.08(h), 42-3502.24(a).

reform bills before the Committee today (Bills 23-0878 and 23-0877) with the omnibus Rent Stabilization Program Reform and Expansion Amendment Act of 2020 (Bill 23-0873) and then move forward with a comprehensive reform package, including holding a hearing on the omnibus bill. We look forward to working with the Committee as it undertakes this work.