Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Public Hearing on:

B21-880, the "Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016"

B21-884, the "Rental Housing Affordability Stabilization Amendment Act of 2016"

B21-885, the "Four-unit Rental Housing Tenant Grandfathering Amendment Act of 2016"

Committee on Housing and Community Development
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

Wednesday, October 19, 2016, at 10:00 AM
John A. Wilson Building, Room 123
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairperson Bonds and members of the Committee and staff. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate (OTA). I am here today to testify on the three bills that the Committee has introduced: Bill 21-880- "Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016"; Bill 21-884, the "Rental Housing Affordability Stabilization Amendment Act of 2016"; and Bill 21-885, the "Four-unit Rental Housing Tenant Grandfathering Amendment Act of 2016."

Bill 21-884, the "Rental Housing Affordability Stabilization Amendment Act of 2016"

First, I will address Bill 21-884, the "Rental Housing Affordability Stabilization Amendment Act of 2016." Thank you, Chairperson Bonds, and for the Committee's for introducing this important legislation prompt consideration. The bill would help to stabilize rent increases in rent controlled units by lowering the cap on standard annual rent increases and by eliminating vacancy rent increases.

What Bill 21-884 would do

Regarding standard annual rent increases, the bill would eliminate the "plus 2%," and lower the safety valve for periods of high inflation. So

for non-elderly and non-disability tenants, the cap would be the Consumer Price Index (CPI-W) or five (5) percent, whichever is less. Currently, the cap is the CPI-W plus two (2) percent, never to exceed ten (10) percent.

For elderly tenants -- age 62 or over -- and tenants with disabilities, the bill would add the prevailing Social Security Cost-of-Living Adjustment (SS COLA) as an additional limiting factor, so that the cap would be CPI-W *or* five (5) percent *or* the SS COLA, whichever is least. Currently, the cap is the Consumer Price Index (CPI-W) or five (5) percent, whichever is less.

Finally, the bill would repeal vacancy rent increases altogether. Currently, each time a vacancy occurs, a housing provider may increase the rent on a unit by at least ten (10) percent, or up to thirty (30) percent, depending on how high the current rent charged is for a comparable unit in the building. So, for example, if there is no "comparable" unit for which the rent is more than ten (10) percent higher than the rent for the vacant unit, then the maximum amount of the vacancy rent increase is ten (10) percent. If a "comparable" unit in the building rents for twenty-five (25) percent more than the current rent for the vacant unit, then the maximum rent increase for that vacant unit is twenty-five (25) percent. And if a "comparable" unit in the building rents for forty (40) percent more than the

current rent charged for the vacant unit, then the maximum rent increase for that vacant unit is thirty (30) percent, due to the overall thirty (30) percent cap.

Why Bill 21-884 is needed

I support these measures because I believe they will better promote the Act's core purposes -- to provide affordable rental units and to stabilize rent increases so that they are predictable and manageable. I believe they will help preserve the District's stock of affordable rental housing, and will better protect District renters, particularly renters of moderate and modest means, from the erosion of their incomes due to housing costs. And I do not believe these measures will compromise the ability of housing providers and developers to earn a reasonable rate of return on their investments.[1]

Standard Annual Rent Increases

Regarding the standard annual rent increase, attached to this testimony is a chart prepared in 2014 by an OTA stakeholder who happens to be an economist. For the seven-year period from 2006 through 2013, the chart compares average rent increases based on CPI-W, CPI-W plus 2

[1] D.C. Official Code 42-3501.02(1) & (5).

percent, and the market rate (using Bureau of Labor Statistics (BLS) data for the Washington metropolitan area). It shows that over the seven year period, rent increases equal to CPI-W fell below market rate rent increases by just over six (6) percent, while rent increases equal to "CPI-W plus 2 percent" exceeded market rate rent increases by over eleven (11) percent. Of course these differentials only increase over time.

Also attached is an OTA chart entitled "Historical Comparison of the Rent Control CPI-W and the SS COLA" for chart for 1985 to 2016. What the chart demonstrates is that the rent control CPI-W was higher than the SS COLA for a majority of the time, which can and often does cause real hardships for those who live on fixed incomes, such as elderly tenants and tenants with disabilities. The problem was particularly acute in 2010 when the CPI-W exceeded the SS COLA by almost five (5) percent.

I also wish to note that even if the Council eliminates the "plus two percent," the District's cap on the annual standard rent increases will not be the lowest in the country. In San Francisco, that cap is 60 percent of the the Bay Area's Consumer Price Index for Urban Consumers (CPI-U), never to exceed seven (7) percent.[2]

---

[2] San Francisco Administrative Code, Section 37.3 (a)(1).

Vacancy rent increases

The vacancy rent increase, which again may range from ten (10) to thirty (30) percent, is a mechanism that places rent control units out of reach for District residents who need rent control protection the most. For example, just yesterday, the agency received an "Ask the Director" inquiry that alerted us as to how this mechanism is being exploited. This particular housing provider is reconfiguring one-bedroom units into two- or more bedroom units, so that the rent can be made "comparable" to larger higher-rent units through vacancy rent increases.

With regard to vacancy rent increases, I note that the District has a large transient population, due partly to the large number of students, interns, and political appointees who reside here. According to a 2015 report by the D.C. Chief Financial Officer's Office of Revenue Analysis, only 23 percent of the residents who filed their first tax returns in 2004 remained on the tax rolls in 2012.[3] Furthermore, according to the American Community Survey (ACS) census data, the District's rental vacancy rate in 2014 was 5.17 percent. As the OTA has seen particularly in

[3] "Who stays in the District? Who leaves? Preliminary findings from DC tax filers from 2004," by Yesim Taylor, *Office of Revenue Analysis, D.C. Office of the Chief Financial Officer,* January 28, 2015.

off-campus housing near colleges and universities, frequent vacancies and frequent turnover results in wild rent escalation for which there is no cost justification.

The D.C. Court of Appeals has recognized the "cost justification" principle underlying the District's rent control program when, in the context of a vacancy increase dispute, it stated that "the rent ... may be increased under the Act only when there is an increased cost to the landlord which justifies the increase."[4] The legal issue was whether the landlord could take a vacancy increase upon a partial vacancy, where some of the tenants remained in the rental unit. However the Court may interpret the "cost justification" principle, it is now a policy question that is now squarely before the Council with the introduction of this bill.

I have long advocated for requiring a housing provider to maintain and adequately fund a replacement reserve account, into which a reasonable portion of rental revenue should be deposited for the purpose of planned upgrades and replacements, based on useful life of the building's various components. This is an industry "best practice" that

[4] *Guerra v. D.C. Rental Hous. Comm'n*, 501 A.2d 786, 790 (D.C. 1985).

would obviate at least some of the financial costs associated with vacancies.

Recommendation

As I will discuss in the context of Bill 21-880, the rent control law currently defines the term "rent" but not the term "rent charged." This is a gap in the law that both Bill 21-880 and Bill 21-884 would fill. I recommend that the Committee reconcile the two proposed definitions.

Bill 21-885, the "Four-unit Rental Housing Tenant Grandfathering Amendment Act of 2016"

I will now discuss Bill 21-0885, the "Four-unit Rental Housing Tenant Grandfathering Amendment Act of 2016."

What Bill 21-885 would do

Bill 21-885 amends the Rental Housing Act's "small landlord" exemption from rent control (D.C. Official Code § 42-3502.05(A)(3)), where the landlord has already transferred rent control units to a family member under the TOPA law's *inter vivos* transfer exemption. Before claiming the rent control small landlord exemption, the housing provider must first provide tenants with the opportunity to purchase the accommodation. The

bill would also "grandfather" current tenants, so no current tenant would lose the benefit of rent control for the duration of his or her tenancy.

Why Bill 21-885 is needed

This bill addresses a loophole in the rent control law's "small landlord" exemption, which only applies to natural persons who own four (4) or fewer rental units in the District. The loophole, apparently newly discovered, is that the owner may qualify for the exemption by taking advantage of the "*inter vivos* transfer" exemption from TOPA, under which the owner may transfer units to a family member without having to issue the tenants a TOPA offer.

The OTA represented a tenant who ultimately lost the benefit of rent control under precisely these circumstances. She lived in a building with more than four (4) units, and never received a rent increase in excess of the rent control amount. A new landlord, however, claimed an exemption from rent control (not the small landlord exemption), which the tenant challenged and indeed proved at OAH was invalid. Undeterred, the landlord, taking advantage of the TOPA *inter vivos* transfer exemption so that the tenant did not receive a TOPA offer, gave a family member a number of the rental units, in order to qualify for the small landlord

exemption from rent control. This end-run of both the TOPA law and the rent control is perfectly legal today, but it shouldn't be. This was an unjust ending to a District tenant's struggle to preserve her rent control status, and quite likely her ability to live in the District. While so far this may be a relatively unique situation, clearly it represents a potential loophole which, if allowed to persist, will encourage other housing providers to perform similar end-runs around the rent control law.

Accordingly, I commend you Chairperson Bonds for introducing this legislation to close a loophole *before* it becomes a more pervasive problem. And I support it because no tenant should be denied the benefit of rent control under the circumstances I have described above. I note that the bill will not affect any rental unit *not* already under rent control, nor will it affect any housing provider -- unless and until he or she applies for the "small landlord" exemption, having already transferred "rent control" units to a family member under the TOPA exemption.

Recommendation

If the Committee decides that the tenant should receive a TOPA offer -- rather than merely being "grandfathered" into retaining rent control benefits for the duration of the tenancy -- then we recommend that the

relevant TOPA exemption also be amended to reflect this change (D.C. Official Code § 42-3404.02(c)(2)(B).

Bill 21-880, the "Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016"

I will now discuss Bill 21-880, the "Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016," and the problem of "rent concession" practices that effectively are re-establishing a "de facto" rent ceiling regime, in violation of section 206 of the Act (D.C. Official Code § 42-3502.06)("Rent ceilings abolished"). For context, here is a brief history of rent ceilings in the District.

History of rent ceilings

The District had a "rent ceiling" system as a matter of law ever since the first rent control law was enacted shortly after Home Rule began in 1975 until 2006. For each rental unit, the system required the housing provider to report two numbers to the Rent Administrator: (1) the actual rent charged for the unit; and (2) the "rent ceiling," or maximum allowable rent, which included any rent adjustment the housing provider may have chosen to preserve for future implementation. By 1993, it was clear that the "rent ceiling" system was allowing virtually unlimited rent increases in

so-called "rent control" apartments. So the Council took action and amended the system by prohibiting the housing provider from increasing the actual rent charged by more than the amount of a single "rent ceiling" adjustment at any one time (DC Law 9-191, effective March 16, 1993). Even with this "anti-stacking" measure, however, it didn't take long for the rent ceiling system to once again make a mockery of the term "rent control." A December 2005 report from the Office of the Inspector General showed that rents in rent control apartment buildings all across the District were continuing to escalate.

In 2006, the Council abolished rent ceilings once and for all (or so it was believed). Instead the Council decreed that rent increases must be calculated solely on the basis of the amount of the actual "rent charged." The common scenario I am about to describe in today's "rent concession" context is precisely the common scenario that led to rent ceiling abolition a decade ago.

Rent concession practices today

In terms of tenant complaints and inquiries, "rent concessions" have made a huge imprint on the OTA's radar over the last several years. A typical scenario is that a prospective tenant is lured into applying for a

rental unit due to (1) the advertised monthly rate for the unit, and (2) the unit's rent control status which should mean that future rent increases will be manageable. After all, rent control currently caps rent increases *based on the rent charged amount* at either CPI-W or CPI-W plus two (2) percent.

The rental applicant may notice and inquire about the term "rent concession," and about a second "rent" number shown on the lease that is hundreds or even thousands of dollars more than the advertised rate. If so, the individual usually receives an assurance from the rental office that indeed the "concession" will continue into the future, and after all rent control is there to help keep the rent affordable. What the tenant does not know is that the housing provider has reported the higher "rent" number with the Rent Administrator as the official "rent charged" for the unit, while the lower "rent concession" amount becomes a completely meaningless legal fiction once it expires.

That is when the tenant is in for a rude awakening. The rent increase may be for the entire "concession" amount, or for only a slightly more affordable amount, but if so then it is contingent on the tenant signing a renewal lease. The tenant is left to wonder what happened to rent

control? What about the cap on my annual rent increases? What about my right to a month-to-month tenancy after that initial lease term?

As a practical matter, rent concessions are in fact reestablishing the virtually the same rent ceiling system that the Council abolished. Indeed, in some ways, the new "de facto" rent ceiling system is even *less* protective of tenants, because there is no "anti-stacking" provision or any other meaningful control on the amount of the rent increase.

The OTA believes this violates the law and we help tenants who wish to challenge rent increases based on these practices at the Office of Administrative Hearings. Regardless, the time has come for the Council to clarify the "rent ceiling abolition" law, and to prohibit "rent concession" practices that create "de facto rent ceilings." Rent concessions generally are a tool used when the rent exceeds the market rate, giving the landlord all the incentive in the world to "preserve" an allowable rent adjustment for future implementation, adjustments no new rental applicant would be unwilling to pay. It is a perversion of the purposes of rent control that tenants in rent control units are subject to rent increases that the market simply won't bear.

I wish to thank Councilmember Mary Cheh for convening a "rent concessions" working group and for introducing Bill 20-880, and you Chairperson Bonds for your full engagement with the working group starting prior to the bill's introduction. The group's challenge has been to develop language to clearly prohibit 'de facto rent ceilings' and associated practices, while also considering whether and how to accommodate the possibility of "good rent concessions" – those that may well serve a tenant beneficiary, without creating "de facto rent ceilings" and running afoul of rent ceiling abolition.

What Bill 21-880 would do

As Councilmember Cheh has stated, the introduction of this bill does not mean that the working group has solved all the problems and reconciled all the possible competing public interest concerns. Rather it is merely "the start of the conversation"; the working group continues to develop the bill's general concepts.

As introduced and as conceived, the bill would:

- Define "rent charged" and "temporarily reduced rent" (due to a "good" rent concession).
- Limit how long an approved or allowable rent increase may be preserved for future implementation (to reflect section 208(g) of the

Act which requires the housing provider to wait twelve (12) months in between rent increases for a given unit).

- Establish a reporting requirement that serves as a precondition for preserving a rent adjustment, subject to the expiration period (30 days after the landlord is first eligible to take the increase).

- Require any increase in the actual rent charged – other than upon the expiration of a valid rent concession -- to be based on the lesser of the "rent charged" or "temporarily reduced rent."

- Prevent "de facto rent ceilings" by circumscribing the instances and the conditions (including a written agreement and other reporting data to be filed with the Rent Administrator) whereby a rent increase may be based on the expiration of "a rent concession."

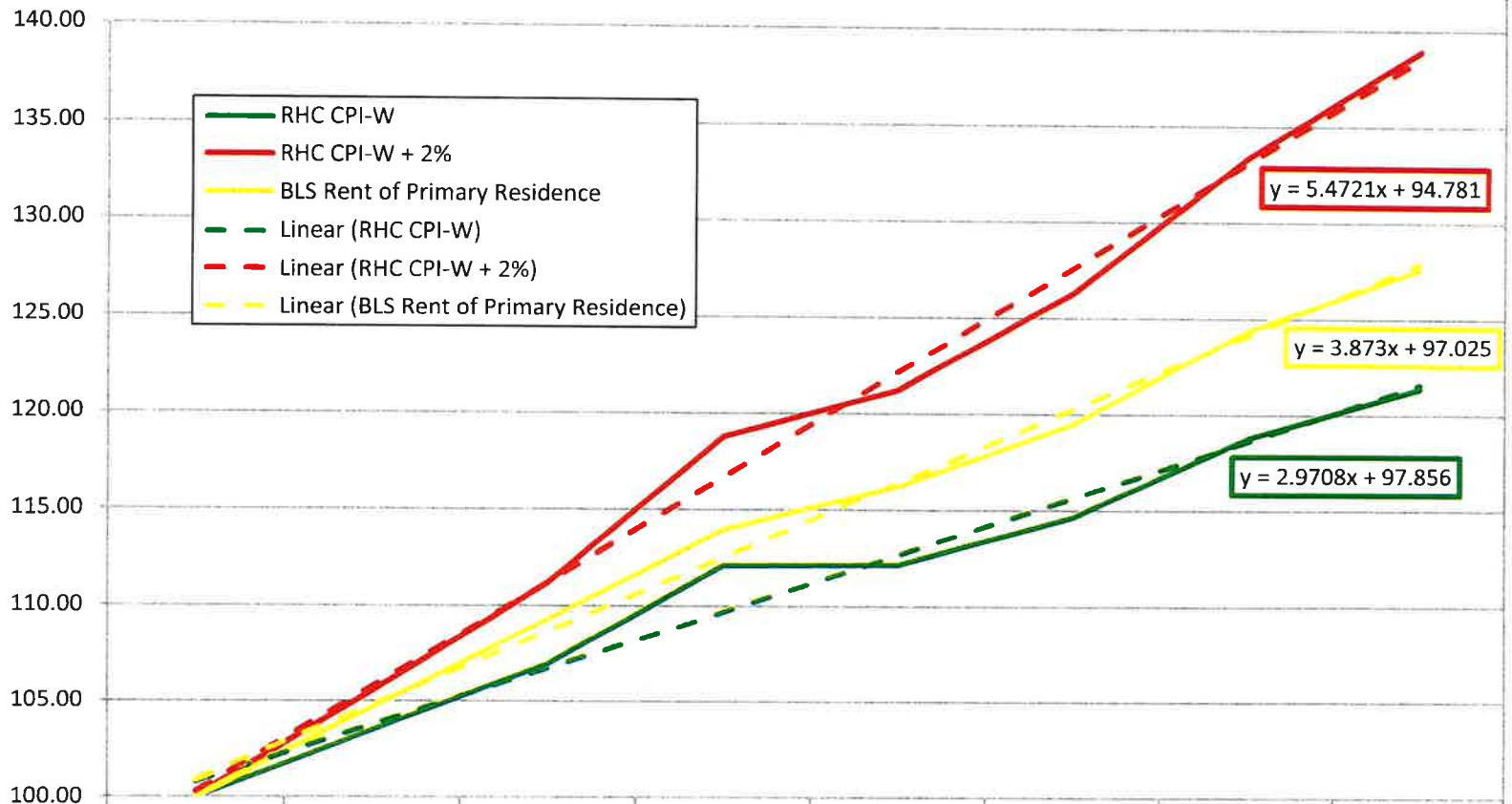
- Prohibit such agreements from being "conditional" upon the tenant's waiver of a statutory right, such as the right to a month-to-month tenancy.

Given the number of concepts that need to be more fully developed and the number of issues that need to be resolved, I urge the Committee and the Council to continue to fully engage the OTA and the working group, but also to act decisively by enacting this critical legislation in this Council session.

Conclusion

Thank you, Chairperson Bonds, for this opportunity to testify and for your leadership on these important issues. This concludes my testimony and I am happy to answer any questions you may have at this time.

DC Rental Housing Commision CPI-W, CPI-W + 2%, and CPI-W Component "Rent of Primary Residence" (Urban Wage Earners and Clerical Workers, Washington-Baltimore, DC-MD-VA-WV), With Trendlines 2006-2013 (2006=100)



	2006	2007	2008	2009	2010	2011	2012	2013
RHC CPI-W	100.00	103.50	107.02	112.16	112.21	114.68	118.81	121.42
RHC CPI-W + 2%	100.00	105.50	111.20	118.76	121.19	126.28	133.35	138.96
BLS Rent of Primary Residence	100.00	104.64	109.28	113.95	116.21	119.48	124.39	127.67

Consumer Price Index - Urban Wage Earners and Clerical Workers
Original Data Value

Year	RHC CPI-W (Annual Average of 12-Month Increase)	RHC CPI-W + 2%	RHC CPI-W Index	RHC CPI-W + 2% Index	BLS Consumer Price Index Urban Wage Earners and Clerical Workers Washington-Baltimore, DC-MD-VA-WV **Rent of primary residence (Index of Annual Data)**
2006			100.00	100.00	100.00
2007	3.50%	5.50%	103.50	105.50	104.64
2008	3.40%	5.40%	107.02	111.20	109.28
2009	4.80%	6.80%	112.16	118.76	113.95
2010	0.05%	2.05%	112.21	121.19	116.21
2011	2.20%	4.20%	114.68	126.28	119.48
2012	3.60%	5.60%	118.81	133.35	124.39
2013	2.20%	4.20%	121.42	138.96	127.67

D.C. Office of the Tenant Advocate
Historical Comparison of the "Rent Control CPI" and
the Social Security Cost of Living Adjustment

In January or February of each year, the Rental Housing Commission publishes the "rent control CPI" percentage based on the monthly US Bureau of Labor Statistics CPI-W ("Consumer Price Index for Workers") for the greater DC metropolitan area.

The "rent control CPI" percentage determines the maximum standard annual rent increase for any rental unit in the District that is subject to rent control. The "rent control year" begins on May 1st of each year and ends on April 30th of the following year. For elderly tenants and tenants with disabilities, the maximum standard annual rent increase is equal to the "rent control CPI," and for all other tenants, it is equal to the CPI + two (2) percent.

The federal Social Security Cost of Living Adjustment (SS COLA) is used to calculate the increase in a beneficiary's Social Security income for each calendar year. Thus it is a significant point of comparison particularly for elderly tenants and tenants with disabilities who may live on fixed incomes.

The following is a list of the "rent control CPI" for each "rent control" year starting in 1985; the SS COLA that applies to each calendar year; and the difference between them during each calendar year. The "rent control year" coincides with the SS COLA calendar year from May 1st through December 31st, and coincides with the following SS COLA calendar year from January 1st through April 30th.

YEAR	Rent Control CPI-W (May – April)	SS COLA (Jan – Dec)	DIFFERENCE (Jan–April/ May–Dec)	
1985	4.4%	3.5%	--	+0.9%
1986	4.0%	3.1%	+1.3%	+0.9%
1987	1.6%	1.3%	+2.7%	+0.3%
1988	4.7%	4.2%	-2.6%	+0.5%
1989	4.6%	4.0%	+0.7%	+0.6%
1990	5.6%	4.7%	-0.1%	+0.9%
1991	5.4%	5.4%	+0.2%	=
1992	2.7%	3.7%	+1.7%	-1.0%
1993	2.9%	3.0%	-0.3%	-0.1%
1994	2.1%	2.6%	+0.3%	-0.5%
1995	1.7%	2.8%	-0.7%	-1.1%
1996	1.9%	2.6%	-0.9%	-0.7%
1997	2.8%	2.9%	-1.0%	-0.1%
1998	1.8%	2.1%	+0.7%	-0.3%
1999	1.0%	1.3%	+0.5%	-0.3%
2000	2.1%	2.5%	-1.5%	-0.4%
2001	3.3%	3.5%	-1.4%	-0.2%
2002	2.6%	2.6%	+0.7%	=
2003	2.1%	1.4%	+1.2%	+0.7%
2004	2.9%	2.1%	+0.2%	+0.8%
2005	2.7%	2.7%	+0.2%	=
2006	4.2%	4.1%	+0.1%	+0.3%
2007	3.5%	3.3%	+0.9%	+0.2%
2008	3.4%	2.3%	+1.2%	+1.1%
2009	4.8%	5.8%	-2.4%	-1.0%
2010	0.05%	0.0%	+0.05%	+4.8
2011	2.2%	0.0%	+0.05%	+2.2%
2012	3.6%	3.6%	+1.4%	=
2013	2.2%	1.7%	+1.9%	+0.5%
2014	1.4%	1.5%	+0.7%	-0.1%
2015	1.5%	1.7%	-0.3%	-0.2%
2016	0.0%	0.0%	NA	+1.5%