Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing on:

B22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017"

B22-100, the "Preservation of Affordable Rent Control Housing Amendment Act 2017"

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

Wednesday, June 28, 2017
10:00 a.m., Room 500, John A. Wilson Building
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 in support of the two bills that the Committee is considering today: Bill 22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017"; and Bill 22-100, the "Preservation of Affordable Rent Control Housing Amendment Act of 2017."

B22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017"

Bill 22-25, the "Rental Housing Affordability Stabilization Amendment Act of 2017," would further stabilize rents and rent increases in rent controlled units (1) by lowering the cap on standard annual rent increases and (2) by limiting any vacancy rent increase to five (5) percent of the current rent charged.

Approximately ten weeks ago, the "Elderly Tenants and Tenants with Disabilities Protection" legislation took effect,[1] giving elderly and disability tenants living in rent controlled apartments an important new measure of affordability protection. For these tenants, the standard annual rent increase can now be no greater than the Consumer Price Index (CPI-W), or five (5) percent of the current rent charged, or the Social Security cost of living adjustment (COLA), whichever is least.

[1] Law 21-239, the "Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016," effective April 7, 2017.

This bill goes one step further by also providing affordability protection to *non-elderly* and *non-disability* tenants living in rent controlled apartments. For these tenants, the current cap on the standard annual rent increase is the Consumer Price Index plus two 2 percent (CPI-W + 2%), never to exceed ten (10) percent. The proposed legislation eliminates the "plus 2%," and also lowers the ten (10) percent "safety valve," which exists for periods of high inflation. Thus, the standard annual rent increase would be capped at just the CPI-W or five (5) percent, whichever is less.

Impact of "plus two percent"

Attached to my testimony (as it was last October when the Committee held a hearing on similar legislation, Bill 21-884) is a chart prepared in 2014 by an OTA stakeholder. The chart shows that, over the seven year period from 2006 through 2013, annual rent increases equal to CPI-W fell below market rate increases by just over six (6) percent. But by adding plus 2 percent to the CPI-W, the allowable rent increase under rent control actually exceeded the market rate by over eleven (11) percent. These differentials only compound over time.

Our research into relevant laws in other rent control jurisdictions shows 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, the cap is 60 percent of the Bay Area's Consumer Price Index for Urban Consumers (CPI-U), never to exceed seven (7) percent.[2]

Vacancy rent increases

Regarding the vacancy rent increase, currently the housing provider may increase the rent charged on a vacant unit by ten (10) percent or up to thirty (30) percent, depending on what the highest rent level is for any comparable unit in the same building. The proposed legislation caps any vacancy rent increase at five (5) percent of the current rent charged.

In many rent control buildings, the vacancy rent increase has an escalating effect on rent levels that no policy principle can justify. As we all know, the District has a large transient population, partly due to the large number of students, emissaries, interns, and political appointees who reside here. College and university neighborhoods -- where students may lease and then vacate a unit every year or even more often -- are especially vulnerable. Under the current law, the first vacancy occurrence is the only exception to the general rule that no rent increase may be taken within twelve (12) months of the previous rent increase. Thus, if a vacancy occurs just a month after a rent increase has taken effect, the housing provider may take a vacancy increase at that time, and then

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

may do so every twelve (12) months thereafter upon each subsequent vacancy occurrence. Thus, it is easy to see how the rent level for a unit in a college or university area can quickly escalate and become unaffordable.

Indeed, within 15 days of the commencement of a tenancy, the housing provider must disclose to the tenant the amount of -- and the basis for -- each of the three (3) previous rent increases for the rental unit.[3] Tenants living in the vicinity of schools such as UDC and George Washington University have come to the OTA with such disclosure notices. On these notices, we have seen two and even three large vacancy rent increases in succession. Unsurprisingly, the "official" rent level for such a unit -- as reported to the Rent Administrator – far exceeds the market rate.

In a vacancy rent increase case, the D.C. Court of Appeals 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] This may be what lawyers call "*dicta*" or unessential judicial editorializing. Nevertheless, it raises the same policy question that I have raised with the Council and others. What is the policy justification for automatic vacancy rent increases? Other factors, such as the fact

[3] DC Official Code § 42-3502.13(d)
[4] *Guerra v. D.C. Rental Hous. Comm'n*, 501 A.2d 786, 790 (D.C. 1985).

that the housing provider may be entitled to federal tax deductions in the event of one or more vacancies, underscores this policy question.

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 strongly support eliminating "plus 2 percent" from the standard rent increase, and limiting vacancy rent increases to five (5) percent of the current rent charged. I believe these measures will better promote the core purposes of the District's rent control law. They will go a long way towards helping to preserve the District's stock of affordable rental housing and preventing the erosion of incomes for District renters, particularly those of very low, low, and moderate means.

Another purpose of the Act is to provide housing providers with a reasonable rate of return on their investments.[5] I appreciate the data that W.C. Smith submitted to the Committee following last year's hearing regarding the impact of eliminating the plus two (2) percent. This led to the start of a conversation about how rent controlled properties in the District are assessed for tax purposes, a conversation that I believe should continue. I remain convinced that eliminating the plus two (2) percent would achieve a more appropriate balance between the Act's competing purposes.

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

Recommendations

In terms of our recommended changes to the bill as introduced, there are a number of seemingly technical matters that will have a significant and substantive impact on how well the legislative intent is executed, and how well rent control ultimately functions. For example, as of the effective date of Law 21-239, the "Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016," the rent control law now includes a much needed definition for the term "rent charged." Bill 22-25 as introduced defines the same term in a slightly different way. The term is also an important but tricky part of the Committee's rent concession discussions. I recommend that careful thought be given as to how to reconcile the various definitions of the term "rent charged."

Other recommendations include:

1. Reconciling this bill with Law 21-239 in terms of the placement of the rent increase caps that apply to elderly tenants and tenants with disabilities (section 208(h) and section 224(a), respectively); and
2. Moving the "three prior rent increases" disclosure from section 213(d) of the Act ("Vacant accommodation") to section 222 ("Disclosure to tenants"). This would help both the tenant and housing provider more easily identify all disclosures required by the Act. While most of the

existing section 222 disclosures apply to all rental units, several like the section 213(d) disclosure apply only to units under rent control. Section 222 should be reorganized to distinguish between these two distinct categories of required disclosures – "rent control only" disclosures and "all rental units" disclosures.

B22-100, the "Preservation of Affordable Rent Control Housing Amendment Act 2017"

I will now discuss Bill 22-100, the "Preservation of Affordable Rent Control Housing Amendment Act 2017." The purpose of this bill is to prevent agreements between housing providers and current tenants that result in the loss of affordability in rent control buildings for all future tenants. Such agreements typically involve the following *quid pro quo*: current tenants agree to allow the housing provider to raise the "official" rent charged amounts, as reported to the Rent Administrator, for all units in the accommodation -- usually by exorbitant amounts; the housing provider then agrees not to impose these increases on the current tenants.

The result is that the entire accommodation becomes a rent controlled building ***in name only***. Whenever a current tenant vacates his or her unit and a new tenant moves in, the rent level may soar to "market rent"; the new tenant is

subject to a "*de facto*" rent ceiling; and the problems associated with rent concessions may begin. Depending on the terms of the agreement, the current tenant may be protected only for a certain period of time. After that period of time expires, the current tenant may find him or herself subject to the same problems as a future tenant. In some instances, the terms of a separate development agreement protect against the VA rent increases only those tenants who actually sign onto the VA. In those instances, current tenants who refuse to sign the VA also suffer the same fate as a future tenant.

This problem arises most prominently in the context of the five so-called housing provider petitions under the rent control law: whether the 70 percent Voluntary Agreement itself, or an agreement to settle a tenant or tenant association challenge to any kind of housing provider petition (capital improvement; services and facilities; substantial rehabilitation; and hardship).

Bill 22-100 does not purport to resolve all problems associated with housing provider petitions. I am pleased that in the last Council period the Committee began to work with the OTA and stakeholders to consider more holistic reforms to the Act's housing provider petition and Voluntary Agreement provisions. Nevertheless, I consider this legislation -- which is squarely aimed at preventing the "cost-shifting" deals I have described -- to be absolutely crucial to

the very survival of rent control in the District of Columbia. As I have testified about at least as far back as 2008,[6] each Voluntary Agreement that gets executed represents a diminution of the District's stock of affordable rental housing. The same is true of too many settlement agreements in housing provider petition cases.

What the bill does

The bill adds to section 208 of the Act ("Increases above base rent") a new subsection (i) to address the specific problem of these "cost-shifting" agreements. It seems fairly clear that the legislative intent is to capture both Voluntary Agreements and settlement agreements that have such a "cost-shifting" effect. It is also clear that the bill captures settlement agreements in contested Voluntary Agreement cases. It is less clear, however, that the language at lines 36 through 38 actually captures the Voluntary Agreement itself. In part, this is because the bill does not amend the Act's Voluntary Agreement provision at section 215.

Recommendations

Our recommendations are as follows:

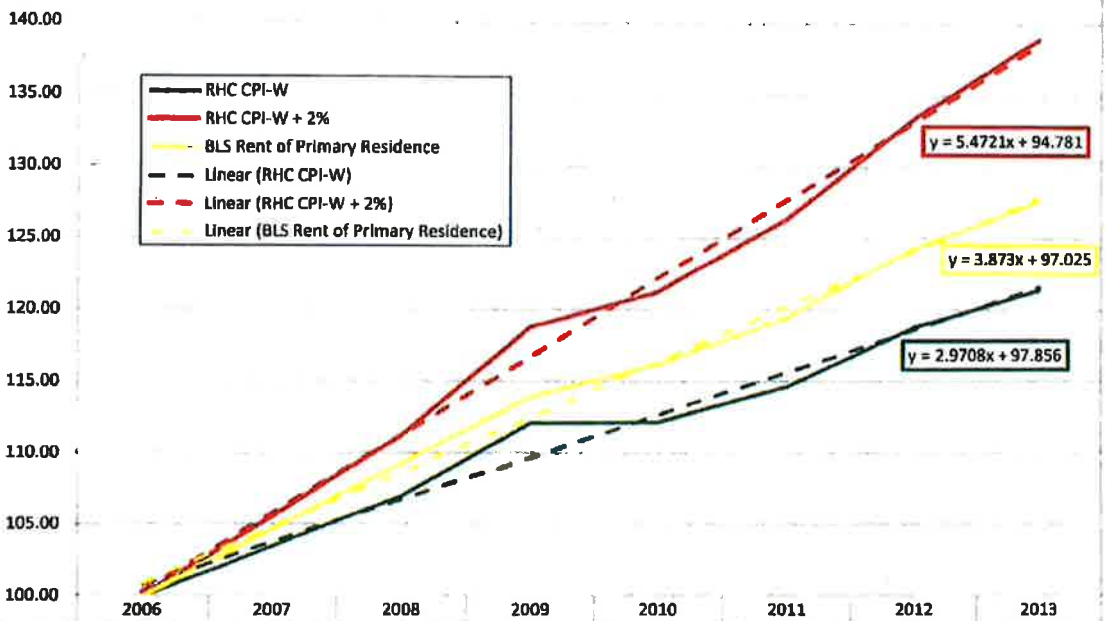
[6] I am separately submitting to the Committee copies of my October 2008 testimony on Bill 17-778, the "Rent Control Protection Amendment Act of 2008." That testimony discusses in detail the legislative history of the "70 Percent Voluntary Agreement," and how the VA is being used in ways that contravene legislative intent and undermine rent control itself.

1. Amend section 215(a) to add to the Act's Voluntary Agreement provision the same prohibition included in the new section 208(i)(1) pertaining to settlement agreements.
2. Add a proviso to the new section 208(i)(1) to clarify that a settlement agreement involving an individual tenant's rent abatement claim is not impacted by this legislation, which is mainly aimed at housing provider petition cases. A tenant who has had to endure substantial housing code violations should be able to secure a rent abatement through a settlement agreement, even though that rent abatement would not apply to a future tenant.
3. Amend new section 208(i)(2) to reflect the fact that, like a capital improvement petition, a services and facilities petition may also apply only to a portion of the units in the building.

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

Bureau of Labor Statistics

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

Source: Bureau of Labor Statistics

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Jason Chaffetz Proposes $2,500 Housing Stipend For Members of Congress

by Nena Perry-Brown

Are DC's runaway housing prices even too expensive for our nation's legislators?

In advance of his resignation from Congress this Friday, Representative Jason Chaffetz (R-Utah) suggested during an interview with The Hill that members of Congress should receive a monthly housing stipend of $2,500 in order to afford a place to live in DC.

Despite his $174,000 annual salary, Chaffetz and other members of Congress sleep on cots in their offices on the Hill and fly back home several times every month. "Washington, DC is one of the most expensive places in the world," Chaffetz told The Hill. "I think a $2,500 housing allowance would be appropriate and a real help to have at least a decent quality of life in Washington if you're going to expect people to spend hundreds of nights a year here."

The Hill calculated that a $2,500 monthly stipend would cost taxpayers $33,000 per legislator, or approximately $16 million annually for all 535 members of Congress.

Throughout his tenure, Chaffetz was known for meddling in the District's affairs and having strong opinions about local legislation; however, none of that interference extended to the city's costly housing market. Representative Eleanor Holmes Norton (D-DC) has not yet commented on this idea.

This article originally published at
http://dc.urbanturf.com/articles/blog/jason_chaffetz_proposes_2500_housing_stipend_for_members_of_congress/12735