Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing on:

B22-0441, the "Rental Unit Fee Adjustment Amendment Act of 2017"

B22-0442, the "Rental Housing Registration Update Amendment Act of 2017"

and

B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017"

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

on
Monday, December 18, 2017
2:00 p.m., Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good afternoon, Chairperson Bonds, and members of the Committees 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 B22-0441, the "Rental Unit Fee Adjustment Amendment Act of 2017", B22-0442, the "Rental Housing Registration Update Amendment Act of 2017", and B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017."

B22-0441, the "Rental Unit Fee Adjustment Amendment Act of 2017"

Title IV of the Rental Housing Act of 1985 ("Rental unit fee") requires all for-profit housing providers to pay a fee for each rental unit operated within the District of Columbia. The rental unit fee has been increased periodically over its 40 year history. However, it was not increased for nearly a decade prior to the FY 2018 Budget Support Act, which increased the fee by $3.50 from $21.50 to $25.

Bill 22-441, the "Rental Unit Fee Adjustment Amendment Act of 2017," would further increase the rental unit fee by $5 from $25 to $30. I understand the legislative rationale to be that the rental unit fee would now be approximately $30, had fee increases kept pace with the rent control law's standard annual rent increases (CPI plus 2 percent).

Given the District's development boom and also its critical needs, I believe this increase in the fee is warranted. According to an Urban Turf article last week, 5,171 new rental apartments were newly constructed in the District during the first three quarters of 2017 alone.[1] At the same time, it is well-documented that rental housing in the District that is affordable for moderate as well as lower income households is disappearing. I was gratified to hear that at a joint stakeholder working group session, housing providers expressed support for the concept of a rental unit fee increase, provided that it is used strategically to address the District's critical rental housing needs.

Under a 2012 amendment, rental unit fee revenue is now deposited into DCRA's Nuisance Abatement Fund. As important as this fund is, I believe that the rental unit fee revenue should be used first and foremost to effectuate its original purpose, namely the administration and enforcement of the District's rent control law and the other parts of Act, as well as the Act's core purposes.

The first line for administration and enforcement of the Act is the Rental Accommodations Division at DHCD (RAD). That office needs to be adequately funded in light of the move towards digitalization of the rent

[1] *10.4 Million Square Feet: An Accounting of DC's Development Pipeline*, by Nena Perry-Brown, Urban Turf, December 13, 2017.

control clearinghouse database, for which RAD will assume full responsibility. Thus I recommend that the Committee work with the administration towards achieving this objective, while also ensuring that the Nuisance Abatement Fund is also fully funded.

The Act's core purposes include the "protecting low-and moderate income tenants from the erosion of their income from increased housing costs"; and "preventing the erosion of moderately prices rental housing." (D.C. Official Code § 42-3501.02(1) & (5)). Towards those ends, it would be most appropriate to dedicate a portion of rental unit fee revenue to fund the Elderly Tenant and Tenant with a Disability Protection law. In relevant part, a provision in that law, which is subject to funding, exempts low-income elderly and disability tenants from having to pay rent increases pursuant to housing provider petitions.[2]

I also wish to note that historically the rental unit fee has long suffered from an under-collection rate of as much as 50 percent. The District simply cannot afford any under-collection. We must make concerted efforts to ensure compliance using a multi-pronged approach, including a public information campaign and any appropriate enforcement methods.

[2] Law 21-239, the "Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016," effective April 7, 2017; D.C. Official Code § 42-3502.24(b).

B22-0442, the "Rental Housing Registration Update Amendment Act of 2017"

Bill 22-442, the "Rental Housing Registration Update Amendment Act of 2017," would require that housing providers in the District reregister their accommodation under the Rental Housing Act within 120 days of the effective date of the legislation. The stated legislative purpose is to secure updated data on the number, composition, viability, and affordability of the District's current rent control housing stock, and to ensure that registration statements are made available for public inspection online on DHCD's website.

Certainly there is an acute need for more and better data regarding the District's stock of rent control units and rental housing units generally, whether for enforcement, policy-making, or other purposes. However, I do believe that certain amendments to the bill as introduced to better achieve the legislative objectives are warranted.

Rent Control Clearinghouse Database Demonstration Project

First and foremost, I believe that it would be a mistake to require the creation of a database for reregistration purposes separate and apart from the Rent Control Clearinghouse Database, the creation of which has been tasked to the OTA, and the development of which is underway. Even in the demonstration phase, the clearinghouse database could have the capacity to

fulfill the bill's re-registration requirements, inasmuch it will include data fields associated with any and all statutory and regulatory requirements. Thus, it would be more efficient to implement the reregistration requirement as a priority task order to the OTA in the development of the clearinghouse database, along with the appropriate supplemental funding. Upon the Committee's request, I will conduct a cost analysis to determine what that amount is. Finally, I note that this "one unified database" approach would also preempt potential interoperability and inter-communicability issues associated with dual systems.

Coverage

The regulations are clear that the registration requirement applies to both units that are exempt from rent control as well as units that are subject to rent control (14 D.C.M.R. § 4106). However, arguably there is some ambiguity in the statute, which carries over to the bill's reregistration requirement (D.C. Official Code § 42-3502.05(f)). Thus I recommend that the bill be amended to clarify that the registration as well as the reregistration requirements apply to all units, whether they are subject to or are exempt from rent control. Additionally, given that any number of rental units in the District have never been registered, an (appropriately funded)

public information campaign will be essential to achieving the legislative objectives.

Timing and fees

The bill's requirement that all housing providers reregister all rental units within 120 days of the effective date raises some timing issues. If all housing providers are required to reregister within the same timeframe, it may create efficiencies to require license renewals at the same time. This would put all housing providers on the same two year renewal cycle, rather than the two staggered odd versus even year cycles that currently exists.

Alternatively, consideration should be given to imposing the reregistration requirement on each housing provider at the time the license renewal is due under the current system. This could help avoid the burdens of multiple filings and fees within a short period of time.

This bill as introduced does not address whether a reregistration fee should be imposed on the housing provider, or whether the District should absorb any associated administrative costs. Either way, the Committee should consider amending the bill to clarify the legislative intent.

B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017"

Bill 22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017," would change the formula for calculating the new

base rent for a unit that reverts to rent control upon the termination of an exemption due to a tenant-based subsidy. To understand what the bill is intended to do, it is helpful to understand the various new base rent formulas under existing law.

Current law

Under the existing law, there are three different formulas for calculating the new base rent for a unit that either is newly covered by rent control, or reverts to rent control following the termination of an exemption.

1. Upon the termination of most but not all exemptions, the new base rent is calculated by adding five (5) percent to the average rent charged during the last six (6) months of the exemption. (D.C. Official Code § 42-3502.09(a)). If the unit had been subject to a rent subsidy, the rent charged is considered to be the entire amount of rent for which both the tenant and the government were responsible for paying, or the equivalent of market rent.
2. In the unusual event that a unit in an accommodation established after 1985 becomes subject to rent control, the housing provider may choose the amount of the base rent, presumably based upon the market rate. (D.C. Official Code § 42-3502.09(b)).

3. Finally, upon the expiration of the exemption for rental units owned by certain cooperative housing associations, the new base rent is calculated by taking the rent charged *at the outset* of the exemption, and adding to that amount each annual adjustment of general applicability (more commonly known as the "rent control CPI") during the period of the exemption. (D.C. Official Code § 42-3502.09(c)). This is the most favorable new base rent formula in terms of affordability preservation, because it is the only one for which the market rent is not a factor.

Currently, when a unit reverts to rent control upon the termination of an exemption due to a tenant-based subsidy, the first of these three formulas – essentially market rate plus five (5) percent – is the one used to calculate the new base rent. Bill 22-570 would replace this formula with the third formula – the last rent charged just prior to the start of the exemption plus each annual rent control CPI thereafter. This is only the case in the context of a tenant-based subsidy. The bill as introduced does not impact the existing new base rent formula upon the termination of a project or building-wide subsidy, which would remain at essentially market rate plus five (5) percent.

I support this measure because it would help to preserve affordability by effectively lowering the new base rent for a significant category of units upon reverting to rent control, and eliminating the housing provider's incentive to discontinue renting the unit to a subsidized tenant. I urge the Committee to also carefully assess each type of building-wide subsidy program, and consider extending the bill's coverage as appropriate. I have the following additional recommendations.

New base rent formula for other exemptions

Unless the scope of the bill is expanded to cover other exemptions, the formula for calculating the new base rent for some previously exempt units will continue to be essentially market rate plus five (5) percent. I recommend that, at minimum, section 209(a) of the Act (D.C. Official Code § 42-3502.09(a)) be amended to replace the "plus five (5) percent" with the standard annual rent increase formula that applies to elderly tenants and tenants with disabilities. That cap is the amount equal to the lowest of three (3) factors: the rent control CPI; the Social Security Cost of Living Adjustment; and five (5) percent. (D.C. Official Code § 42-3502.24(a)). Even this seemingly minimal measure will have a positive impact in terms of preserving the affordability of the District's stock of rent controlled units.

Meeting enforcement challenges

I recommend that the bill also be amended to require the housing provider to record certain information with the Rent Administrator's office upon claiming an exemption from rent control based on a government subsidy program. This information should include which program is in play, and the start and anticipated termination date of the program. This will help to ensure compliance with the Act, particularly with section 209, after what could be a considerable passage of time.

This will also help address instances in which the housing provider claims a 100 percent building-wide exemption on the basis of a single tenant-based subsidy, or where subsidized tenants occupy very few units in the accommodation. While we cannot quantify how often this happens, the OTA has been made aware of such instances. These false and unlawful claims of exemption have a potentially very serious impact on the District's affordable housing stock. Accordingly, I recommend that the bill also be amended to include a penalty on a housing provider who is found to have filed any such claim of exemption in bad faith.

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.