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**Government of the District of Columbia**



**Office of the Tenant Advocate**

Testimony of

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**Bill 23-0433, the “Rental Housing Act Extension  
Amendment Act of 2019”**

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

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11:00 a.m.

Room 500  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
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Thank you, Chairperson Bonds, for this opportunity to comment on Bill 23-0433, the “Rental Housing Act Extension Amendment Act of 2019.” As introduced, this legislation would extend the Rental Housing Act of 1985 (“Act”) for another ten (10) years. Today I will discuss not only the need to renew the Rental Housing Act, but also the need to strengthen and improve the Act – and in particular the Rent Stabilization program.

Let me start, however, by saying this. I believe the time has come to make rent control a *permanent* part the District’s affordable housing strategy. In the 45 years since Home Rule and local rent control began virtually simultaneously, here is what I believe the District should have learned – and what a wave of other jurisdictions are now learning -- about rent control. No other program can provide as much housing security for the vast majority of residents who have moderate or lower incomes; those who may not need housing subsidies; but who simply cannot afford to stay in their homes without common sense rent regulation.

**The need for renewal**

I will now turn to the need to continue the District’s rent stabilization program, commonly referred to as “rent control” (Title II). As we all know, the 1985 Act is based on legislative findings and purposes that speak to the

existence of an affordable rental housing crisis in the District, particularly for moderate and lower income renters.

If we take into account the District's rental housing stock and renter population as a whole – regardless of rent control status – it is clear that what was true in 1985 remains true today. In recent months, the Urban Institute reported that between 2000 and 2017, rental units in the region priced at less than \$1,300 a month were lost at a truly stunning rate -- an average of between 10,500 and 12,600 units annually.<sup>1</sup> Another analysis concluded that in order to pay the average rent for a two-bedroom apartment in the District (\$3,100), a renter would have to earn a whopping \$50,000 more than the median household income of \$82,372.<sup>2</sup>

These are just a couple of the statistics that speak to the continuing, and indeed growing, unaffordability of the District's overall rental housing stock. Of course rent control cannot solve the District's housing affordability problems, nor have I heard anyone claim that it could. But for so many District residents, rent control is in fact a critical "make or break" buffer against the devastating impact unregulated rent increases would

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<sup>1</sup>"Meeting the Washington Region's Future Housing Needs: A Framework for Regional Deliberations," Urban Institute, September 2019, pp 19-20.

<sup>2</sup>"The Income Needed to Pay Rent in the Largest U.S. Cities – 2019 Edition," SmartAsset, 7/29/19, <https://smartasset.com/career/income-needed-to-pay-rent-in-us-cities-2019>)

have on their lives. At the OTA, we see evidence of this on a weekly and even daily basis in the worries of tenants who come to see us about a rent increase, which too often threatens to be life-altering.

### **Arguments against rent control**

I would like to take this opportunity to address some arguments against rent control -- arguments typically made each time the program comes up for renewal. I respectfully but strongly disagree with each of them.

One argument is that rent control, however well-intentioned, exacerbates the housing shortage because it doesn't address the source of the problem, namely the shortage in the supply of affordable housing units. Of course the purpose of rent control was never to grow the supply, rather it is to "prevent the erosion of moderately priced rental housing."<sup>3</sup> Rent control does exactly that. If we eliminated rent control, the simple fact is that the shortage of affordable rentals would increase by the number of rent control units that are now affordable, but only due to the program.

Moreover, eliminating rent control would have a significant adverse impact on the District's other affordable housing tools. This was shown in

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<sup>3</sup>D.C. Official Code sec. 42-3501.02(5).

an Urban Institute report that section 220 ("Report of the Mayor") of the 1985 Act itself commissioned. The 1988 report to the Council concluded that -- absent rent control -- both the number of households eligible for subsidy programs, and the government's total subsidy costs, would increase significantly.<sup>4</sup> So far as I know, no data exists that contradicts the continuing validity of that conclusion.

Also, as we are learning from the experience of other jurisdictions, the elimination of rent control only exacerbates affordable housing problems. In the 25 years since Boston eliminated rent control, that city's affordable housing crisis has burgeoned -- despite the deployment of an array of other affordable housing tools, including subsidies and Inclusionary Zoning. Tenants are being priced out of their homes at alarming rates, and there is rising angst and even terror within the renter community. Not surprisingly, rent control is once again on the table for discussion as an obvious and desperately needed counter-measure to the crisis. My written

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<sup>4</sup>*"Rent Control and the Availability of Affordable Housing in the District of Columbia: A Delicate Balance,"* by Margery Austin Turner, Urban Institute, October 1988, p. 100 ("In the absence of rent control, the number of eligible households would be about 9,000 higher, increasing the annual subsidy cost of an entitlement program by as much as \$35 million.")

testimony includes links to recent columns detailing these problems in Boston.<sup>5</sup>

Another argument against rent control is that subject units are not truly “affordable housing” because they are not means-tested, and thus could be occupied by the very wealthy. The thrust of the 1988 Urban Institute report and its subsequent 1991 report suggests just the opposite – that rent control largely achieves the goal of benefiting the target population of moderate and low income residents.

Finally, it is argued that rent control makes the rental housing business unprofitable and serves as a disincentive to investment. The 1988 Urban Institute report indicates that simply isn’t the case.<sup>6</sup> And, tellingly, the 1991 Urban Institute report concluded – and I quote:

*... after accounting for appreciation gains and tax benefits, the profitability of investment in D.C. rental housing today compares favorably to alternative investment opportunities. In the absence of controls, the gross rent revenues would be higher, but the after-tax rate of return on investment would probably increase by only about*

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<sup>5</sup><https://realestate.boston.com/news/2019/11/11/rent-control-boston/>;  
<https://www.boston.com/news/local-news/2019/10/17/boston-affordable-housing-policy-advocates-rally>; <https://www.necir.org/2019/07/01/real-estate-boom-threatens-rooming-houses-at-bottom-of-the-housing-market/>

<sup>6</sup>“Rent control appears to have moderated the housing affordability problem, but has by no means solved it. And there is no convincing evidence that controls have significantly deterred investment in either maintenance or new construction, although the profitability of rental housing would be higher in the absence of controls.” 1988 Urban Institute report, p. 95.

*two percentage points for small properties and by as much as five percentage points for larger properties.*<sup>7</sup> (*emphasis added*)

While the Urban Institute studies I am referring to may be decades old, the fact is that the arguments against rent control then are the same as those used now -- and indeed in each intervening renewal cycle. These arguments were resoundingly debunked then, and I have seen no comprehensive data since then to support different conclusions.

In short, there should be no question that the District's rent control law should be renewed. Rent control is not, and was never intended to be, the panacea for our affordable housing crisis. Yes of course there are problems with the existing law, as there is with any regulatory regime.

While I believe the time has come for more comprehensive reform, I am encouraged by the Council's and this Committee's demonstrated ability to identify and fix such problems. In particular, I would cite:

- Law 21-0197, the "Rent Control Hardship Petition Limitation Amendment Act of 2015," which helped prevent countless evictions by capping the conditional hardship rent increase at five (5) percent of the rent charged;
- Law 21-0210, the "Residential Lease Amendment Act of 2015," which among other things prohibited housing providers from requiring

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<sup>7</sup>"Housing Market Impacts of Rent Control: The Washington, D.C. Experience," by Margery Austin Turner, Urban Institute Report 90-1, 1990, p. 10.

tenants to pay mandatory service and facilities fees that had not been properly approved;

- Law 21-0239, the “Elderly and Tenant with a Disability Protection Amendment Act of 2016,” which promoted affordability by adding the Social Security COLA as a further cap on rent increases for elderly and disability tenants who reside in rent controlled apartments; and most recently
- Law 22-0248, the “Rent Charged Definition Clarification Amendment Act of 2018,” which clarified the definition of the term “rent charged” as it pertains to housing provider filings at the Rent Administrator’s office, thereby helping to curtail the scourge of “*de facto* rent ceilings.”

#### Renewal for how long

Thus the question should not be *whether* to renew the District’s rent control law -- rather the question should be for how long. In 2010 the Council extended the Act for ten (10) years; previously the Act had been renewed every five (5) years. Historically, some tenant advocates have advocated for keeping a periodic renewal provision in place for two reasons. First, they believed that renewal on the basis of a legislative finding of a continuing “housing emergency” is helpful, and perhaps necessary, in the event that the law is ever challenged in court on Constitutional takings grounds. Second, like any complex regulatory regime, the rent control law needs to be periodically reviewed and updated



to ensure that fundamental objectives are being met. For some, the renewal timetable doubles as a helpful prompt for the Council to amend the law to address newly identified flaws and loopholes.

New York State recently made its rent stabilization law permanent, ending its half-century practice of renewing the law every three (3) years. Our understanding is that the state legislature did so for two reasons. First they recognized the reality of the affordable housing crisis -- particularly in larger urban areas -- that the crisis has proven to be truly perpetual, never merely periodic or temporary. Second, rent stabilization is a critical affordable housing tool, one that should not become a political football every time party control of the state legislature changes hands.

I note that housing providers recently challenged the Constitutionality of New York's recent rent control reform law, partly on "regulatory takings" grounds. The Constitutional concern they cited, however, was not the law's new "permanency" feature, but rather the law's previous *renewal* feature, which was characterized as a "rote renewal" of the law every three years. Thus, I do not believe that, in and of itself, permanency would create the specter of a more serious Constitutional challenge to the District's rent control law.

Accordingly, as I noted earlier in my remarks, I believe the time has come to make rent control permanent in the District. Should the Committee decide against doing so, however, I would urge renewal of the Act for at least another ten (10) years and preferably more. Reversion to a five (5) year renewal period, I believe, would be step backwards not only for rent control in the District, but also for the District's affordable housing strategy. I believe this is especially true in light of the administration's recently stated goals regarding the creation and preservation of rental units in the District. A longer rent control renewal period would help policy-makers better assess -- and potentially better synchronize -- the District's various affordable housing tools.

Before I discuss a few of my own rent control reform priorities, I note that the Act should be renewed so that other important tenant protections may also continue. They include (1) relocation assistance for tenants who have been displaced in certain circumstances (Title VII); (2) the District's policy against the conversion of housing accommodations from rentals to transient uses (Title VI); and (3) the rental unit fee (Title IV) which due to a 2018 amendment now helps to fund:

- DCRA's Nuisance Abatement Program;
- The "Unsubsidized Seniors Program"; and
- OTA activities.

### **Need to improve rent control**

I will now highlight a few of the rent control reforms that I urge the Council to enact.

#### **1. Replacement reserve account**

Rent control should not be an excuse for a housing provider's failure to employ best business practices in terms of planning for necessary repairs and maintenance. An appropriate portion of rental revenue should be deposited into a reserve account for that purpose. Tenants should not have to pay the cost of deferred maintenance because the housing provider failed to do its job. Accordingly, in order to be eligible for such rent increases, the housing provider should be required to provide proof that reasonable replacement reserve funds have been maintained for the accommodation.

#### **2. Housing provider petitions and Voluntary agreements**

There are any number of needed reforms in the area of housing provider petitions and Voluntary Agreements. The OTA has compiled an exhaustive list of possible reforms which I would be happy to share with the

Committee as we have in the past. One key example is the amount of the “guaranteed return on equity,” which allows the housing provider to file a hardship petition to increase rents when profits fall below that amount. Essentially, the housing provider is entitled to whatever rent increases are necessary to result in a twelve (12) percent return on equity, which relatively speaking often imposes a much greater hardship on the affected tenants. I believe that the guaranteed return on investment should be no greater than eight (8) percent.

### 3. Vacancy increase

This Committee took an important first step last year by limiting rent increases for vacated rent-controlled apartments to ten (10) percent of the rent charged if the previous tenant occupied the unit for ten (10) years or less; or to twenty (20) percent if the previous tenant occupied the unit for more than ten (10) years.<sup>8</sup> My concern is that even with that improvement, vacancy increases will continue to cause rents to unjustifiably escalate, particularly in university and college areas where turnover is high. I believe the vacancy increase should be at most five (5) percent.

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<sup>8</sup> Law 22-0223, the “Vacancy Increase Reform Amendment Act of 2018,” effective 2/22/19 (formerly known as the “Rental Housing Affordability Stabilization Amendment Act of 2017”).

#### 4. “Third generation rent control” ideas

In June I attended a “third generation rent control” conference at New York University’s Furman Center. I believe the Committee should consider two intriguing ideas discussed at the conference:

- Tax credits for voluntary participation in rent control program which would help expand the District's stock of rent control accommodation. Where data supports the need in appropriate circumstances, I would also support consideration of using District tax credits to encourage housing providers to rehabilitate rent controlled accommodations as needed in lieu of raising rents.
- Regardless of the unit’s rent control status, an across the board “anti-gouging” provision to cap rent increases at an appropriate level above the rent control caps to protect all tenants against unconscionable rent increases. This would help to stabilize renter occupancy for example at newly constructed rental accommodations on Capitol Hill and other development hotspots.

## Conclusion

Finally, I note the recent passing of media personality Mark Plotkin. Besides being memorably colorful and an unparalleled champion of DC statehood, Mark was also a truly devoted friend of tenant causes, particularly rent control. I can think of no more fitting a tribute to Mark than naming this renewal bill after him, and I hope the Committee will consider the idea.

I thank you, Chairperson Bonds and the Committee, for this opportunity to testify and for your strong support for affordable housing in the District. I look forward to working with you over the coming months on the effort both to renew and to strengthen rent control and the Rental Housing Act. This concludes my testimony and I am happy to answer any questions you may have.