

Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

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Public Hearing on:

The Proposed Fiscal Year 2022 OTA Budget

Committee on Housing and Executive Administration
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

on

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3:00 p.m.

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9:30 a.m.
Via Virtual Platform

Introduction

Good afternoon Chairperson Bonds, members of the Committee, and staff. I am Johanna Shreve, Chief Tenant Advocate at the Office of the Tenant Advocate (OTA). Today I will testify on the Mayor's proposed Fiscal Year 2022 (FY22) budget for the agency, and I will also comment on a number of related rental housing topics. I wish to thank the Mayor and her team for a budget proposal that reflects care for the concerns of District renters, and for the OTA's efforts on their behalf, as we transition to a post-COVID environment. I would also like to thank you, Chairperson Bonds, for your leadership and for this opportunity to continue our ongoing dialogue about the agency's budget and mission, especially in these unique times.

Summary of the Proposed Fiscal Year 2022 OTA Budget

The Mayor's total proposed FY22 operating budget for the OTA is \$4,061,702. Local funds account for \$3,258,266, or 80 percent of that total; Special Purpose Revenue (SPR) funds account for \$467,826, or 12 percent;¹ and, for the first time, federal funds account for the remaining \$335,610, or 8 percent; amounting to an increase of 1.3 percent in the agency's overall budget.

¹ The agency's SPR funding comprises \$3.50 per unit in rental unit fees paid by landlords into the Rental Unit Fee Fund pursuant to D.C. Official Code § 42-3504.01(a)(2)(B) and § 42-3504.02.

Additionally, the Agency's personnel total would increase by 16.7 percent, with an enhancement of four (4) two-year term FTEs. Further explanation of how the new staff and associated non-personnel cost will be used is reflected in the attachments to this testimony regarding the agency's proposed Legal Branch and Education & Outreach Branch expansions.

Additional changes in the proposed budget

With respect to intra-District fixed costs, the FY22 proposed budget includes two new operational expenditures for the Agency. First, as a Tier three (3) agency, traditionally our human resource activities costs were covered by the Department of Human Resources (DCHR). In the proposed budget the OTA will become responsible for providing a transfer of \$22,400 to DCHR for those activities. Additionally, for the past fifteen years our financial requirements (i.e., budget), monthly expenditure analysis, etc., were covered by OCFO. Within the proposed budget OTA and ABRA would each become responsible for covering 50% of staff costs in the amount of \$50,000 for a shared budget officer. Further, costs associated with the creation of the new rent control database will be decreased by \$157,733. This is due to the conclusion of the OTA's role in the ongoing development of the new database and its expected transfer to the Rental Accommodations Division of DHCD by the end of calendar year 2021. Finally, the

proposed budget reflects an elimination of \$68,402 for the Mold Assessment Program. I note that the OTA received 249 mold complaints in FY20 and 66 in FY21 to date, and a high of 444 mold cases in FY18.

OTA Operational Performance During and After the PHE

OTA Education and Outreach services during and after the PHE

I would now like to put the discussion about the agency's FY22 budget in the context of program activities provided thus far during the PHE, and to discuss anticipated community needs in the PHE's aftermath. As stated at this year's oversight hearing, the OTA has not only maintained its level of program services during the PHE, we also expanded them. For example, while COVID's social distancing imperatives compelled us to suspend the Annual Tenant and Tenant Association Summit, the Agency's Education and Outreach branch took a giant leap forward in the delivery of services to District renters confronting mounting uncertainty and confusion. We connected with an ever-increasing number of District residents in all parts of the City. In calendar year 2021 to date, the education and outreach team has presented to over 1,100 residents across all District wards; and we anticipate that number will grow significantly. We teamed up with food distribution organizations to connect more District residents who experience food insecurity and related housing issues to the OTA and other

resources. After all, this is the population that is likely to have to make the painful choice as to whether to pay the rent or to put food on the table.

I believe that the OTA's education and outreach services, while always central to our mission, are becoming ever more vital to the public welfare. For example, as the PHE ends, many tenants will be at risk of being rushed into the eviction process without knowing about the available financial and legal resources that could help them remain in their homes. We have started to implement multi-phased PHE transition outreach strategies.

Phase one involves more frequent Renters Rights 101 webinars (in both English and Spanish); an expanded social media campaign; low-tech, high-visibility outreach methods such as A-frame signs at vaccination sites; and partnering with community organizations to target those facing the greatest housing insecurity. These activities are well under way. Phase two involves seeking ways to more visibly advertise tenant rights and OTA program services; creation of an OTA app; creation of a PHE Tenant Protections Timeline (attached to this testimony); signage on public transit vehicles and bus shelters on targeted routes; as well as TV and radio ads. We are in the process of designing these activities; however, as we identify more outreach opportunities, we are also starting to anticipate spending pressures.

Phase three includes transitioning signs at vaccine sites to the Department of Parks and Recreation (DPR), and D.C. Public Libraries locations; Phase four involves the production of tutorial videos on various aspects of District rental housing law; and phase five involves technical advisory assistance to tenant associations facing the impending onslaught of more than 100 TOPA transactions. Calls for this type of assistance have significantly expanded. Currently the Agency is engaged in technical advisory support for the tenant association at Congress Park Plaza in Southeast. Expansion of personnel resources is highly likely to be necessary with so many TOPA deals on the table.

OTA legal services after the PHE

Similarly, as the legal team makes strides in its delivery of services to our clients, the demand for those services continues to grow – and will grow even more dramatically as the PHE comes to an end. The agency and indeed all of us anticipate a barrage of new eviction-related cases once the moratoria on notices to vacate and filings end. Estimates suggest as many as 67,900 District households could be at risk of eviction as the PHE-related tenant protections are lifted. It is safe to say that District tenants are in dire need of affordable legal services like never before.

Again, I thank the Mayor for dedicating a portion of the federal COVID

funding to the agency. This funding enhancement will assist the agency in putting shoulder to the wheel as the District copes with the coming wave of eviction actions and other post-pandemic tenant issues.

However, I do believe that my initial estimation when requested by the administration fell short of the mark. A further expansion of the Legal Branch will be necessary to enable the agency to do its part to meet both the full scope of the looming eviction crisis, and the increasing demands for legal services generally. In particular, I believe that the OTA must significantly expand its litigation activity, especially impact litigation as contemplated in our establishment act. Please see the attached document that outlines my vision for the proposed expansion.

Eviction diversion

I would like to note that in the State of California, Governor Newsom has initiated an eviction diversion program that calls for paying the back rent of all tenants in the state. While I know that the District does not have such financial resources we anticipate that the Courts and the Council, in collaboration with agencies and community organizations, will develop a robust eviction diversion program for the District. I believe it is critical that the OTA be in a position to facilitate any program that gets implemented.

Court and litigation costs

The proposed budget includes \$1,000 on line item 3030 - Legal Service Provider account to cover filing fees and other court costs that the agency incurs. However, with the projected rise in the number of cases \$1,000 is not a sufficient amount of funding to handle the expansion. Thus I have two requests - first please move the \$1,000 to activity code 3015 legal in-house representation services; and second, increase the funding to approximately \$150,000 to cover court fees and other litigation expenses, including expert witnesses.

Rent Control Clearinghouse Database

We recently provided the Committee with our latest quarterly report. We have expended \$490,000 of the \$980,000 total project costs for the Rent Control Clearinghouse Database, representing a 50 percent spend-down. We are generally on target for delivery of the database to DHCD's Rental Accommodations Division (RAD) by the statutory deadline – December 31, 2021. The contractor most recently presented a third iteration of the database to the OTA, together with the Chairperson of the Rental Housing Commission and an OAH Administrative Law Judge. The contractor is incorporating feedback from this and earlier presentations, as well as feedback from a user group of landlords assembled by the OTA. We have provided the member list for this user group to

Chairperson Bonds' office and will do likewise for the tenant user group once it is assembled.

However, the development phase of the project will require more resources. First, we must create a new Application Programming Interface or "API" to give RAD the ability to receive rental housing business license data needed as part of the registration process. This aspect, requiring between \$140,000 and \$216,000, can be funded with our existing budget. However, our next and final phase is to add certain user improvements, such as a tenant portal for the electronic submission of tenant petitions, elderly or disability status registration forms, rent payment plan complaint forms, and other documents; as well as a portal for electronic submissions by landlords. We estimate an additional \$246,590 will be required to make these improvements. I would be happy to explain the variables for these costs further if necessary.

I appreciate the Council's willingness to work with us last year to extend the deadline for delivery of the database to December 31, 2021, via emergency and temporary legislation. **However, I note that the temporary legislation extending this deadline (Law 23-178) expires on August 4th.** We hope to work with the Committee on amending the Budget Support Act to ensure that the deadline

extension in fact remains effective through the deadline provided in the legislation itself.

IT Systems Upgrade

As our workload and responsibilities expand, the agency's need for a significant IT systems upgrade is becoming abundantly clear. First, improving our IT capacity would promote functionality and create efficiencies across the agency in any number of ways. It would (1) improve the way we provide "brief services" assistance to thousands of tenants every year, thus allowing the attorney team to devote more time and attention to matters requiring legal expertise including impact litigation; (2) improve our methods of collecting data, generating reports, and tracking intake issues for problem areas in the law for policy development purposes; and (3) allow us to create a cohesive emergency housing management system and thus improve communications with tenants, housing providers, and other government agencies, including DCRA, HSEMA, DHS, DC Council, and the office of the Mayor. This includes the ever-increasing demand for data collection – demographic and otherwise – in order to know our clients better and improve the agency's responsiveness across programmatic branches.

In addition, the agency's workload with respect to electronic communication has increased significantly. An upgrade to our IT systems will

improve our ability to meet new Council requirements and communicate with tenants regarding the agency's receipt of copies of certain legal notices. Some of these agency activities are required by laws enacted in recent years, while others are measures that I implemented to better fulfill the agency's mission in light of such laws. For example, the Council has given the OTA responsibility for receiving filings under TOPA for single-family dwellings, in addition to our robust TOPA rapid response letter program. More recently, the Council charged us with receiving copies of eviction notices under Act 24-67, the "Eviction Moratorium Public Safety Exception Amendment Act of 2021." In addition, ever since the March 2019 enactment of Law 22-245, the "Eviction with Dignity Amendment Act of 2018," up until the enactment of the COVID-related eviction moratorium, the OTA – while not legally required to do so – has sent rapid response letters to each tenant scheduled to be evicted by the US Marshals Service (USMS). Of course we will resume doing so once the moratorium is lifted.

The agency estimates it would need \$300,000 to fund this IT upgrade. I have attached an IT systems upgrade proposal that elaborates in detail on the agency's proposal.

Non-Agency Budget Considerations

a. Funding the moratorium on Voluntary Agreements

I have testified numerous times on the unfair use of Voluntary Agreements (VAs) by some landlords to raise rents dramatically in rent-controlled units, which effectively removes entire buildings from meaningful rent control. In enacting Law 23-246, the “Voluntary Agreement Moratorium Amendment Act of 2020,” effective March 16th, the Council has placed a much-needed two-year moratorium on VAs. Unfortunately, the Office of the Chief Financial Officer (OCFO) has assessed this law as having a cost in the form of foregone future property and business income tax revenues – despite the fact that, unlike corporate landlords, tenants who can afford to stay in the District pay personal income, sales, and other taxes that may offset any projected loss of tax revenue from landlords.

Thus, due to this fiscal impact, the VA moratorium itself cannot take effect until the Council funds the measure. As the cost is a mere \$5,000 in FY22 and \$191,000 over four years, I urge the Committee and the Council to do so in the FY22 budget.

b. Costs of compliance with Building Energy Performance Standards

The Department of Energy and the Environment (DOEE) recently approved regulations outlining compliance pathways for housing providers to meet the District's Building Energy Performance Standards (BEPS) under Law 22-257, the "Clean Energy DC Omnibus Amendment Act of 2018." Many owners of residential accommodations will have to upgrade building systems to comply with the new energy efficiency requirements.

In April, the OTA submitted comments on the BEPS rulemaking to DOEE. We applauded the District's move towards environmental responsibility and sustainability, however, we also expressed concern that many landlords of rent controlled buildings may attempt to pass the cost of such improvements onto tenants by petitioning for the government's approval of Capital Improvement (CI) surcharges.

I urge the Committee and the Council to consider ways to help small landlords in particular cover the cost of these improvements. After all, promoting energy efficiency and maintaining affordable housing are both matters that are squarely in the District's short, medium, and long-term public interest. We look forward to working with the Committee and the Council on this issue.

Conclusion

This concludes my testimony. Thank you again, Chairperson Bonds, and I welcome any questions you and other members may have.