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**Government of the District of Columbia**



**Office of the Tenant Advocate**

Testimony of

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**Bill 18-407, the “Tenant Advisory Council  
Clarification Amendment Act of 2009”**

**and**

**Bill 18-484, the “Tenant Bill of Rights  
Amendment Act of 2009”**

Committee on Public Services and Consumer Affairs  
The Honorable Muriel Bowser, Chairperson  
Council of the District of Columbia

Thursday, November 12, 2009  
4:00 p.m.

Room 123  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

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Good afternoon, Councilmember Bowser and members of the Committee on Public Services and Consumer Affairs. I am Johanna Shreve, the Chief Tenant Advocate of the District of Columbia in the Office of the Tenant Advocate. I am here this afternoon to present testimony regarding Bill 18-407, the “Tenant Advisory Council Clarification Amendment Act of 2009,” and Bill 18-484, the “Tenant Bill of Rights Amendment Act of 2009.”

**Bill 18-407, the “TAC Clarification Amendment Act of 2009”**

First I’ll provide comments regarding Bill 18-407. Specifically, I will discuss why, in my view, the Tenant Advisory Council should be reconstituted as a *non-statutory* advisory group of self-starting volunteers, and how in that form TAC could far better serve the tenant community and help advance the OTA’s mission.

What Bill 18-407 would do:

The OTA’s establishment act directs the Mayor to establish a Tenant Advisory Council, known as TAC. TAC is to be composed of tenant organizers, representatives of tenant associations, and other tenant advocates with no connection to commercial real estate interests. Members receive no compensation for their service on TAC. Currently, the TAC is charged with the task of “*monitoring*” and “*reporting*” on the progress of the OTA in

“fulfilling its mandate from its inception and to make recommendations for improving the services of the Office.” (D.C. Official Code 42-3531.08)

Bill 18-407 would not change TAC’s functions, but would clarify *to whom and by when* the TAC shall “report its findings and recommendations.” Specifically, the bill would require TAC to provide a report “to the Mayor and to the Council ... within 45 days of the conclusion of each fiscal year.”

### The TAC experience

This legislation represents a welcome opportunity to resolve long-standing questions about TAC’s statutory role -- a matter the OTA has discussed with many in the tenant community. There is general agreement, I believe, that at the very least TAC’s statutory role should be modified. My own view is that there were good reasons in 2005 for the creation of the TAC, and in some *other* form TAC could be a valuable asset to District tenants. The bottom line, however, is that it is time to revisit the rationale for TAC in its present form. The current statutory model simply has not advanced OTA’s mission.

Major problems that have plagued TAC include:

1. Despite good intentions, TAC’s perennial failure to remain constituted and functional -- whether due to untimely resignations, membership

no-shows at TAC meetings, or unfilled vacancies -- have rendered it ineffective; and

2. Approaches on the part of some TAC members towards the OTA, at times, have been less than constructive. These approaches seem to have stemmed in part from the vague and unclear "monitoring" role TAC is statutorily tasked to perform. They also stem in part from what I believe is the misguided, but quite predictable, belief on the part of some members that "monitoring" the agency precludes collaboration and cooperation.

The key questions that arise from this experience are:

1. Wouldn't TAC be more productive if, rather than monitoring the OTA, it were an *advisory board*, existing perhaps to provide the OTA with an extra pair of "eyes and ears" to the tenant community in each ward?
2. Wouldn't TAC be more productive if were a group of "*self-starting*" *volunteers* -- rather than being comprised of statutory appointees, ever suffering from high turn-over, and ever dependent on further Mayoral appointments in order to remain functional?

Based on our experience, I believe the answer to both these questions is a resounding yes. I urge the Committee to take this opportunity to

consider “what role for TAC would best advance OTA’s statutory mission?” and “how can TAC best serve the tenant community?” These questions in my mind are truly one and the same. My conclusion that TAC should be a non-statutory *advisory board* comprised of *self-starting volunteers* is based on the following considerations.

1. **The rationale for an OTA monitor is obsolete:**

At OTA’s inception, the rationale for having a community board “monitor” the progress of the agency seemed sound. Not only was OTA an infant agency, it was also a part of DCRA. At that time, DCRA had broader responsibilities over rental housing in the District than it does now, and it was widely feared by the tenant community to have been "captured" by landlord interests. Moreover, there simply was no basis upon which to assess OTA’s commitment to its statutory mission. We have come a long way since then and those circumstances simply no longer exist: OTA has become an independent agency; we have a two-year track-record of consistent performance and growth; and generally we receive very favorable testimony by tenants and tenant advocates at our oversight hearings before this Committee. Thus, as sound as the rationale was at the agency’s inception, I simply do not see a continuing rationale for having a TAC to monitor the progress of the OTA.

2. **TAC's "monitoring and reporting" functions are duplicative:**

TAC's "monitoring and reporting" functions closely mirror this Committee's own oversight process – which allows any interested member of the public to report on OTA's progress in fulfilling its mandate, and to make recommendations for improving OTA's services. Moreover, unlike most other agencies, OTA formally engages stakeholders on a monthly basis, regularly convenes policy working groups, and routinely meets with tenant groups, tenant associations, individual tenants, and tenant advocates and attorneys, upon request. I believe the OTA has earned a reputation for being inclusive and responsive to the many ideas and recommendations that come from all quarters of the tenant community.

3. **The burdens of formal OTA support for TAC outweigh the benefits to the tenant community:**

When TAC was functioning, OTA regularly attended TAC meetings, reported on agency activities, and provided technical and logistical support such as copying agendas and other meeting materials. In return, I must say proportionately we did not receive as much by way of insight into tenant problems or creative recommendations to resolve those problems. To the contrary, we were often compelled to devote our attention towards TAC's more parochial concerns: the lack of public and member attendance at TAC meetings; the lack of a quorum to do business; how to deal with TAC

vacancies due to untimely member resignations; requests that OTA perform the duties of absent or lapsed TAC officers.

As these problems became more and more protracted, OTA's engagement with TAC increasingly seemed to me to be an unfortunate diversion of OTA's precious resources away from the agency's specific statutory mission, in order to serve TAC's rather ambiguous statutory mission. And, it seemed to me, that this came at the expense first and foremost of the tenant community itself. This is not meant as a criticism of anyone personally – rather it is an observation about how present circumstances now call for changing a statutory plan that was created for good reasons at a particular point in time.

4. ***A much better model for TAC is non-statutory advisory group:***

As previously noted, OTA regularly receives advice and counsel from a wide range of stakeholders, working groups, tenant associations, and other tenant advocates. We also regularly engage District-wide tenant advocacy organizations such as the Tenant's Advocacy Coalition or TENAC, the Tenant Action Network, and the D.C. Coalition for Rent Control. Our consultations frequently include former TAC members, who provide positive ideas and energy outside the TAC context.

One might wonder whether yet another advisory group is even necessary, but I do believe that TAC if reconstituted along the lines I suggest could serve quite a productive purpose. Per my recommendation at the beginning of my tenure as the Chief Tenant Advocate, the Mayor appointed a TAC member specifically to represent each of the District's eight wards. Ward-based representation has been a feature of TAC that distinguishes it from other advisory groups.

I do not believe the statutory role or Mayoral appointments *per se* are what matters here. Rather, what matters is whether a resident in as many of the wards as possible would volunteer to serve as "eyes and ears" to the tenant community in the respective ward. By reporting to OTA regarding particular issues in the tenant community in each ward, I believe TAC could be an asset to the OTA and represent a valuable expansion of OTA's outreach mission.

Tenant advocates, including some who helped create the OTA, have encouraged us to consider as a model the relationship between the Office of the People's Counsel (OPC) and the Consumer Utility Board (CUB). OPC and CUB share a common cause -- fair utility rates for District consumers. Like the OTA, the OPC is an independent government agency -- a consumer "watchdog" as it were. CUB is a non-statutory, community-based research



and advocacy group. OPC and CUB operate independently from one another, but each provides the other with help and advice as appropriate. I believe that is exactly the right model for the OTA and TAC.

**Bill 18-484, the “Tenant Bill of Rights”**

Now onto Bill 18-484, the “Tenant Bill of Rights Amendment Act of 2009.”

First let me thank you, Councilmember Bowser, for proposing this wonderful idea, and for helping to unveil OTA’s draft bill of rights in September at the Second Annual OTA Tenant Summit at Gallaudet University. One of OTA’s perennial challenges is how to make tenant rights under existing District law more effective. Informing each new tenant about the rights of tenancy represents a very positive step forward in this regard.

**What Bill 18-484 would do:**

Bill 18-484 would require the OTA to promulgate a Tenant Bill of Rights, and would require the landlord to provide a copy to the tenant “at the time the lease is first presented.”

I believe a required Tenant Bill of Rights would serve several highly constructive purposes. It would empower tenants to deal more effectively with their landlords and to know when to seek legal or other assistance; it

would apprise tenants, who too often feel overwhelmed and out-gunned when it comes to a rental housing dispute, that in OTA they have a government resource devoted to helping them understand and exercise their rights; and it would help *landlords* understand what *they* need to know about tenant rights -- particularly small landlords who often have the best of intentions, but because they are not regularly in the rental housing business, are essentially in the same position as the tenant, in that they simply lack information.

#### Why the OTA should promulgate the Bill of Rights

The bill specifically tasks the Office of the Tenant Advocate with promulgating the Tenant Bill of Rights. It is important that the OTA be given this responsibility. Unlike any other government agency, including the Rent Administrator and the Rental Housing Commission, the OTA is charged with gaining expertise regarding the entire scope of tenant rights in the District, and educating the rental community about these tenant rights.

By contrast, the Rent Administrator and the Rental Housing Commission have purview and relevance only regarding the Rental Housing Act of 1985. The Act is certainly a very key component of tenants' rights in the District, but it is by no means exhaustive. Important tenant rights also

exist in the housing code; in other statutes such as the anti-discrimination provisions in the D.C. Human Rights Act; and in judicial case-law.

Relying on an agency other than the OTA to develop a comprehensive list of tenant rights, we believe, would make little sense -- as little sense, say, as relying on someone other than the Housing Provider Ombudsman at DHCD to develop a comprehensive statement about the rights and obligations of housing providers in the District.

#### Recommended amendments to Bill 18-484

We recommend the following amendment to the bill as introduced. The bill specifically requires the landlord to provide the tenant with a copy of the Tenant Bill of Rights “at the time the lease is first presented.” The bill adds this requirement to the list of tenants' right under section 506 of the Rental Housing Act of 1985, which is the “Tenant Right to Organize” provision. (D.C. Official Code §42-3505.06)

Instead, we recommend that this requirement be added to section 222 of the Act, which is the “Disclosure of Information” provision. We believe this is the more appropriate place for this requirement because section 222 addresses what information each landlord owes each tenant, and also exactly *when* the landlord must present the relevant information to the tenant. To be more specific, we recommend that this requirement be placed in a new

section 222(b-1) of the Act, so that the penalty provision of section 222(c) would apply should the landlord willfully refuse to provide the tenant with a copy of the Tenant Bill of Rights (D.C. Official Code §42-3502.22(b-1) & (c))

Additionally, we recommend the following language: “At the time any lease or renewal lease is executed, a housing provider shall provide to the tenant a copy of the Tenant Bill of Rights promulgated by the Office of the Tenant Advocate pursuant to section 2 of this act.” The purpose of this language is to ensure that all landlords provide their tenants with copies of the same document.

Thank you, Chairperson Bowser, for the opportunity to testify on these important measures, and for your continued leadership on behalf of the tenant community. I would be happy to provide the Committee with any further assistance I can. This concludes my testimony and I welcome any questions you may have.