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**Testimony of Mel Zahnd
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Before the Department of Housing and Community Development

Needs Assessment Hearing

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Legal Aid DC¹ submits the following testimony regarding the *District of Columbia's Fiscal Year 2025 Annual Action Plan*. My testimony focuses on:

1. the importance of preserving the District's existing affordable housing;
2. the need to fund the First Right Purchase Program; and
3. the current lack of enforcement of the District's rent stabilization laws.

The Importance of Preserving the District's Existing Affordable Housing

The District must invest heavily in preserving existing affordable housing. There is currently a severe shortage of affordable housing for extremely low-income tenants. Extremely low-income residents, whose incomes fall at or below 30% of the area median income, are being pushed out of DC by rising rent costs as well as deteriorating and unsafe conditions.²

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

² See, e.g., Eliana Golding, DC Fiscal Policy Institute, "A Holistic and Reparative Agenda for Ending Displacement in DC," (Nov. 15, 2023), <https://www.dcfpi.org/all/agenda-for-ending-displacement/>.

District rents are not affordable for our lowest income residents. The average monthly rent in the District is \$2422.³ These expensive rents put safe housing out of reach for many low-income households. For an extremely low-income family of four, any monthly rent amount over \$1141 is unaffordable.⁴ The math does not work for the District's low-income families. The picture becomes even bleaker when we recognize that the average apartment size in DC is a mere 746 square feet, hardly enough space for most families with children or with more than one generation living together.⁵

The District is continuing to lose affordable rental homes at an alarming rate. These high rents mean that we currently have a shortage of over 33,000 affordable rental homes for extremely low-income renters in the District.⁶ In the last ten years, the District along with its surrounding counties lost over 85,000 homes with monthly rents below \$1500.⁷ Without dramatic action, the District's loss of affordable housing will continue to hurtle to disastrously low levels.

This ongoing loss of affordable housing drains the pockets of extremely low-income residents, particularly residents of color. Three quarters of extremely low-income residents in the District are severely cost-burdened by their housing costs.⁸ In 2019, the Deputy Mayor for Planning and Economic Development found that Black residents are three times more likely than white residents to be forced to move because they can no longer pay their housing costs.⁹

³ "Washington, DC Rental Market Trends," RentCafe, <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

⁴ Nat'l Low Income Hous. Coalition, "District of Columbia: Out of Reach," <https://nlihc.org/oor/state/dc>.

⁵ "Washington, DC Rental Market Trends."

⁶ Nat'l Low Income Hous. Coalition, "District of Columbia: Housing Needs by State," <https://nlihc.org/housing-needs-by-state/district-columbia>.

⁷ DHCD, "Metropolitan Washington Regional Fair Hous. Plan," <https://dhcd.dc.gov/page/metropolitan-washington-regional-fair-housing-plan#:~:text=DC%20and%20nearby%20counties%20lost,see%20below%20to%20learn%20more>).

⁸ Nat'l Low Income Hous. Coalition, "District of Columbia: Housing Needs by State."

⁹ DMPED, "DC Housing Survey Report," June 2019.

Since 2000, the population of white residents in the District has increased, while the number of Black residents has declined.¹⁰ Without significant investment in maintaining affordable housing, District residents of color will continue to bear an unfair burden of unaffordable housing costs, which can only end with further displacement.

One of the necessary pieces to solving this problem is significantly increased funding of housing preservation. Legal Aid frequently represents tenant associations that are exercising their rights under the Tenant Opportunity to Purchase Act (TOPA). TOPA is a powerful tool for keeping low-income residents in their homes. While some tenant associations use TOPA to form cooperatives and buy their homes, others use the law to assign their rights to responsible developers who promise to make repairs and keep rents affordable.

Whether tenants are using TOPA to buy their homes themselves or to find responsible developers, there will need to be financing available to both acquire the property and to make necessary repairs and renovations. One of the greatest obstacles that Legal Aid has seen to TOPA's effectiveness is the lack of long-term funding availability to preserve affordable buildings, most of which are aging.

Inflated, speculative prices, along with years of deferred maintenance can make it difficult for responsible buyers to get the financing they need to purchase affordable buildings.¹¹ Because of the deteriorating housing conditions in many older buildings, if tenants cannot find a responsible developer to repair or renovate their homes, then they may be forced to leave altogether.¹² Without options to keep their buildings affordable and in decent condition, tenants are sometimes forced to accept "buyouts," money to leave behind their homes.¹³ These buyouts displace long-time tenants and disrupt communities.¹⁴

¹⁰ Golding.

¹¹ See Coalition for Nonprofit Hous. and Econ. Development, "Sustaining Affordability: The Role of the Tenant Opportunity to Purchase Act (TOPA) in Washington, DC," (Nov. 15, 2023), 66, <https://cnhed.org/news/cnhed-releases-comprehensive-analysis-of-dcs-tenant-opportunity-to-purchase-act-topa/>.

¹² Golding.

¹³ See Coalition for Nonprofit Hous. and Econ. Development at 66.

¹⁴ See *id.*

Legal Aid has seen these problems recur for a number of tenant associations it has represented. For example, in one older property, the tenants chose to exercise their TOPA rights and assign those rights to a nonprofit developer who promised significant renovations and continued affordable rents. For a number of reasons, the sale of the property to this nonprofit developer was delayed. One of the issues was the lack of financing available for the project. While the financing was delayed, the prior owner of the building failed to make major necessary repairs to keep the property habitable, and many tenants were forced to move out of the building and out of the District altogether. If the District is going to continue to have some affordable rental properties that are safe and livable, then it will need to invest in preserving its aging housing stock.

The Need to Fund the First Right Purchase Program

As we previously discussed, TOPA is one of the District's most powerful tools for maintaining affordable housing. Whether tenants are using TOPA to acquire their buildings themselves or to assign their right to acquire the building to a responsible developer, in order to work, TOPA requires that there be funding available, both to buy the building and to make the repairs and renovations that the building needs to stay safe for its residents.

The First Right Purchase Program is one such potential funding source for tenants who are buying their homes. This program offers low-interest loans to groups of tenants who are forming cooperatives to buy their buildings.¹⁵ These groups can also use the First Right Purchase Program to make badly needed repairs. Appropriate funding of the First Right Purchase Program is one key tool to allow TOPA to function as it was intended.

The Current Lack of Enforcement of the District's Rent Stabilization Laws

In addition to TOPA, another set of core tools to maintain affordable housing in the District are the rent stabilization laws. However, the current lack of enforcement of these laws is allowing some bad actor landlords to take rent increases beyond what the law allows or to claim exemptions to which they are not entitled.¹⁶

¹⁵ Jenny Reed, DC Fiscal Policy Institute, "DC's First Right Purchase Program Helps to Preserve Affordable Housing and Is One of DC's Key Anti-Displacement Tools," (Sept. 24, 2013), https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf.

¹⁶ See, e.g., Suzie Amanuel, Washington City Paper, "How Some Landlords Skirt D.C.'s Rent Control Law," (Nov. 22, 2023), <https://washingtoncitypaper.com/article/638913/how-some-landlords-skirt-d-c-s-rent-control-law/>.

The Rental Accommodations Divisions (RAD) of DHCD is responsible for overseeing enforcement of the District's rent stabilization laws. RAD is the depository for all rent stabilization filings by housing providers and by tenants, including rent increase notices, registration forms, claims of exemption, and approval for exemptions. RAD also receives the initial filing of all tenant and housing provider petitions under the District's rent stabilization laws.

While RAD holds this information, the agency currently does not have the staff or resources to confirm that all filed rent increases in fact comply with the law, and some landlords are taking advantage of these failures of enforcement.¹⁷ In addition, RAD does not apply the necessary rigor to confirming that housing provider petitions for extraordinary rent increases are warranted. For example, in one building where Legal Aid recently represented the tenants, the housing provider filed a hardship petition, requesting rent increases that would have made the building unaffordable for the majority of its low-income tenants. Hardship petitions should only be available under the law when housing providers are failing to receive the entitled return on their investment in a residential property. Determining whether these increases are appropriate requires a careful review of the accounting records. In this building, after a nominal audit of the petition, RAD approved the entire rent increase.

Fortunately, this particular group of tenants had the wherewithal and resources to connect with a tenant organizer and ultimately with Legal Aid. After reviewing the petition, Legal Aid identified a number of errors with the petition, including failures to capitalize significant expenditures that should have been capitalized under Generally Accepted Accounting Principles.

While this group of tenants was able to connect with legal counsel to object to this petition and litigate the matter before the Office of Administrative Hearings, for many tenants, the only review of these extraordinary rent increases will occur before RAD. It is essential that RAD conduct meaningful audits of these kinds of extraordinary rent increases.

Conclusion

Thank you for the opportunity to testify about the tools DHCD can implement to preserve affordable housing. We urge DHCD to invest in preservation of existing housing stock, to devote the necessary funds to the First Right Purchase Program and to engage in meaningful enforcement of the rent stabilization laws. We look forward to working with DHCD on the path forward.

¹⁷ *Id.*