

Saving DC's Rental Housing Market Strike Force

Friday, February 19th, 2021 | 3:00 pm to 5:00 pm

Draft Summary Notes

Strike Force Members Present: Alex Baca, Josh Berstein, Buwa Binitie, Tom Borger, Councilmember Anita Bonds, Ralph Boyd, Christopher Donald, Polly Donaldson, Judge Todd Edelman, Tyrone Garrett, Steve Glaude, Michele Hagans, Dean Hunter, AJ Jackson, Ramon Jackson, Aurélie Mathieu, Randi Marshall, Sarosh Olpadwala, Kay Pierson, Councilmember Brooke Pinto, Eva Rosen, Johanna Shreve, Marian Siegel, Councilmember Elissa Silverman, Yesim Taylor, Andrew Trueblood, Monica Warren Jones, Tonia Wellons

Strike Force Members Absent: Kristy Greenwalt, Laura Zeilinger

Strike Force Members' Associated Staff Attendees: Tsega Bekele, Jennifer Berger, Maya Brennan, Scott Bruton, Joel Cohn, Liz DeBarros, Vivian Guerra, Drew Hubbard, Gabrielle Johnson, Irene Kang, Richard Livingstone, Danilo Pelletiere, Rachel Pierre, Arthur Rodgers, Ram Uppuluri, Barry Weise, Tim Wilson

Consultant Attendees: Josh Babb, Mencer "Don" Edwards, Kayla Elson, Gabrielle Jackson

Members of the Public: Angela, Alida Austin, Carissa Aranda, Ashe, Anita Ballantyne, Arthur Rodger, Deidre Dixel, Eddie, E Fairbanks, Lisa Gore, Ben Gutman, Sweta Haldar, Elinor Hart, Reshma Holla, Zachary Huke, Kelly Hunt, Dia King, Amanda Korber, Ed Lazere, Christian M, Landis Masnor, Michele Meiners, Sheila Miller, Coy McKinney, Sam Myszkowski, Kevin O'Malley, Cynthia Pols, Emily Price, Andrea Rosen, Leslie Steen, Troy Swanda, Trayci, Joey Trimboli, Chris Wallis, Chris White, Erin Wilson

Next Meeting Date: Friday, February 26th from 3:00pm-5:00pm

Call to Order

Don Edwards, Justice and Sustainability Associates (JSA), called the meeting to order at 3:00pm and reviewed the agenda.

Welcome

Director Polly Donaldson (Chairperson) commended members for their effort and engagement in their respective working groups. She surfaced that presentations would focus on the housing provider perspective of the rental housing market as well as an overview of eviction in Washington D.C.

Open Meeting Process Review

Don Edwards, JSA, recognized the ground rules of the Strike Force and reviewed several public meeting regulations, including advanced notice of scheduled meetings and the availability of meeting summaries. She noted that the meeting is being recorded for public record. Public observers will also have the opportunity to comment via chat at the end of every meeting. All comments will be documented as part of the public record.

February 12th Meeting Summary

Members adopted by acclamation the February 12th meeting summary. Meeting summaries will be part of the public record.

The State of the DC Multifamily Rental Market

Randi Marshall, Vice President of Government Affairs for the Apartment and Office Building Association (AOBA), presented the rental unit inventory, market rents, and vacancy rates of multifamily units in the District. The presentation considered the different classes of buildings (A, B, and C) and their characteristics. The content also reviewed low-, mid-, and high-rise buildings (of which the District has few), and how density impacts locations around the city.

Research on the Eviction Process in Washington D.C.

Eva Rosen, Assistant Professor at Georgetown's McCourt School of Public Policy, presented the results of her report, co-written with Brian McCabe. The presentation reviewed the District's eviction process, drivers of eviction, and data behind serial evictions. Rosen noted that only twenty landlords were responsible for nearly half of all eviction filings in 2018. Data was pre-pandemic, but sought to establish a baseline to think about the geography of eviction over the last five years in the District. See the full report [here](#).

Discussion (Q&A)

(Q=Question, A=Answer, C=Comment)

Discussion related to the State of the DC Multifamily Rental Market

- **Q:** What was the source of the data in the presentation?
 - **A:** CoStar
- **Q:** Were there any high flying schematics on the age and size of the buildings in the data and did they include rent control and non-rent control buildings?
 - **A:** CoStar is generic in regards to national characteristics of real estate and does not identify rent-control as a characteristic of a property. Fortunately, DC Policy Center has done that.
 - **C:** For users of Costar— their characterization of rent control is very problematic.
- **Q:** Can we get data on the utility payments, particularly for the B and C classes? It may augment any data on delinquencies and arrears.
 - **A:** I'm not sure. DC Water reached out to AOBA before starting their Multifamily Assistance Program so data likely exists. AOBA is happy to reach out to its utility partners and share any findings.
- **Q:** How are housing providers looking at delinquency as it relates to vacancy?
 - **A:** Data collection for this issue has been spotty, but there are documents in the shared resources folder in the G-Drive that give a sampling of accounts receivable for the buildings. AOBA will get a sample size of members to discuss what they're seeing in regards to delinquencies.
- **C:** When distributing the Housing Stabilization Grant (HSG), DCHFA saw a gap between people and resources. With additional funding through ERAP and CHAP, how can we close that gap and better connect individuals to necessary resources?

- **C:** The current top priority is to deploy funds to landlords, but there is plenty of demand from tenants. There's also a miscommunication that these emergency assistance programs aren't being used--they're being very well used and Housing Counseling Services is waiting on more resources. Hopefully the new Treasury funds will be able to be deployed faster and to more small landlords.
- **C:** SMOA conducted a survey of 185 small property managers and found that as of February 1, 2021, an average 32% of tenants are behind in rent and 15% of member units are vacant, compared to less than 5% vacancy as of February 1, 2020.
- **C:** Class B and C providers are typically subject to rent control and do not have the same freedom as Class A providers to lower their rents. Once they lower it, they can't raise it pursuant to the rent stabilization laws. This legislation is really hurting small landlords and I hope this group can find a solution.
 - **C:** Landlords can certainly lower their rents to meet market corrections at any time. The demand for affordable units remains incredibly high, while Class C property rents in low and moderate-income areas remain stable. The vacancy rate is not high, and the rents are not going down. It seems like we are seeing the mismatch between the demand for affordable units versus the demand for class A units from the individuals that are temporarily here in the district from time to time.
 - **A:** Landlords with rent control buildings are face lowering their rents now and locking in the low rent amount for a very long time, based on DC Rent Stabilization laws. We just can't afford to do that.
- **C:** It's really important to understand the economic impacts to owners. Owners have to deal with the compound effect of lower occupancy, rent loss, and higher delinquency. For owners with leverage, this can be devastating. Many people are celebrating lower rents in DC, but it's going to create some long-term structural problems.
- **C:** Be mindful of whether landlords are registering or accounting for rental assistance (back rent) as rental income in surveys and in their standard accounting. It's possible that they may report missed payments while also receiving rental assistance.
- **C:** One of the pressures on the rental housing market is the dearth of larger affordable housing units (2-4 bedrooms), especially in light of growing numbers of multi-generational households. IT seems that Class B and C properties offer these units, but the presentation did not speak to this.
 - **A:** Time restrictions limited the inclusion of bedroom count data. I am willing to do a revised presentation to upload to the shared resources folder.
- **Q:** Would Class A building owners be open to converting their market rate units to affordable if they received a tax benefit? It might be cheaper than investing in new affordable housing production.
 - **A:** The value of a Class A unit is probably twice the value of a Class B or Class C unit. If you had a very large building, maybe if you made it with all the taxes, you'd get enough whole dollars to make it worthwhile, but it would be very expensive. It's essentially the same math as inclusionary zoning, so you get relatively few units because the cost of those units in a Class A building is so much greater than the cost of Class B or C.

- **C:** I like the idea of incentivizing landlords to accept lower income households in market rate buildings in exchange for a rent credit. It's less expensive to preserve units than it is to create them
- **C:** The challenge with Low Income Housing Tax Credit (LIHTC) supported affordable housing projects, lies in the interplay between how units are financed and investor/bank pressure vs. what we are intentionally supporting residents in distressed properties that are improved. Service-enriched housing helps to address directly the need for rent assistance and the underlying issues the resident is facing.
- **C:** This group ought to seek what factors are driving distress, aside from unemployment. And then look at how we can connect with them to solve their distress.

Discussion related the Eviction Process in Washington D.C.

- **C:** There have been some regulatory changes, but prior to the pandemic, in order for a tenant or housing provider to get relief or assistance, an eviction filing or writ had to be issued. So there was almost an incentive to initiate an eviction process. Interested to see if some of the mechanisms for relief could be decoupled from the eviction process, so that relief and assistance can come without an eviction filing.
 - **A:** My understanding is that there isn't technically a requirement for a writ in order to receive rental assistance, but that filings with writs tend to get priority so by default these things do get coupled. We need to think creatively about how to decouple them.
 - **C:** Also important to note that since ERAP's inception, the demand for ERAP has far outstipped the available funds. I hope the additional federal assistance this year can help address this demand.
- **Q:** Do other cities have the same disparity as D.C. in regards to such low numbers of filings resulting in actual eviction? What factors contribute to these numbers in the District (i.e. Trans-Lux, eviction filing fee)?
 - **A:** It is my sense that D.C. is an outlier, but we currently lack hard data. The Princeton Eviction Lab is working on gathering this data from across the country. I believe D.C.'s low eviction filing fee (one of the lowest in the country) is one of the biggest contributing factors.
 - **C:** Matthew Desmond did identify D.C. an outlier in his book, *Evicted: Poverty and Profit in the American City*
- **C:** Keep in mind that increasing the filing fee will also increase the amount that a tenant will have to pay to catch up on rent - the tenant must pay the amount of the filing fee as part of the TransLux amount.
 - **Q:** The Maryland State Assembly is considering a bill that would prevent the pass-through directly to tenants as well as prohibit any lease language that allowed property owners to explicitly ask tenants to waive that. It's not foolproof, but is that something for this group to consider?
- **Q:** Is there data in the study on the impact of eviction on a community? Does any of the data speak to the disproportionate impact eviction has on women of color?
 - **A:** Our study doesn't currently have any data on the impact of eviction on communities, but Desmond's book does an excellent job of addressing the impact. We're looking to detail the specific impact on communities of color and differences by race and gender in

the future. The best research I can reference is a recent paper by Desmond's team that quantifies this data on national level. See [here](#).

- **C:** D.C. is one of the hardest jurisdictions to evict someone--only 5% of all filings result in an eviction. It's important to note from the research that only 20 providers are filing the large percentage of evictions. Small landlords evict less, yet they are regulated as if they are the 20 providers filing the majority. We need to reopen the courts because that's how emergency rental assistance is accessed--tenants then have access to counselors, lawyers, and resources to help stop the eviction process.
 - **C:** New York provides a pro-bono training to help folks represent themselves in landlord tenant court
- **C:** The DC Superior Court received a large grant from the National Center for state courts, that's going to examine all of our rules and processes with regard to our high volume Court, which include landlord and tenant, small claims, debt collection and mortgage foreclosure.
- **C:** One of the biggest changes that landlords, tenants, and the court system could benefit from is a pre-filing diversion system in order to reach resolution on these matters quicker. This allows the court to dedicate more time to matters such as lease violation.
 - **A:** I agree that early conversations between tenants and landlords or tenants and emergency rental assistance programs, can do a lot to keep matters out of the court system. And it requires buy-in from both parties. Also agree that matters such as lease violation require litigation, but these violations comprise a very small portion of the eviction filings we see.
 - **C:** I agree with pre-empting the eviction using the court system for collections, and creating a diversion program, but it has to happen way before a rental delinquency could exist.
 - **C:** Mediation between tenants and landlords should occur within the first 10 days of the month, which is the amount of time landlords must wait before filing for an eviction.
- **C:** The real reason that people don't pay their rents is a mismatch between low wage earners and the availability of housing in that price range. In terms of policy discussion, the mismatch is not at the eviction level.
 - **C:** I would say the mismatch is largely the wealth gap -- lack of savings, even if the income for the rent is sufficient.
 - **C:** As an affordable housing provider, our rents are very low compared to market rates in certain neighborhoods. As of today, 2/19, we've only collected 70% of rents, which is concerning. In the event that any one of my properties go into foreclosure, the affordability covenant that we've worked extremely hard with the District to put in place for the next 30 years would be completely wiped out.
- **C:** Regardless of where you are on the rental housing market spectrum, we are all bearing the problem of folks not being able to pay their rent so we need to look to address income insecurity.
 - **C:** Shared solutions to provide access to affordable housing and to keep families in their homes are good approaches for this group to pursue. Evictions are not a good solution for income insecurity, rather they exacerbate the problem.
- **C:** D.C. does not have a sheriff's department, so landlords depend on US Marshals to serve all writs, no other U.S. jurisdiction does this. No evictions occur on days when temperatures are

below freezing, so typically no one is evicted December-February. During an eviction process, we arrange to meet with delinquent tenants and 90% of the time we arrange a payment plan that is presented and signed off by a landlord-tenant court judge. If the tenant fails to follow the payment plan, then the writ is activated. Also note that provider corporations are required to have an attorney as corporations cannot represent themselves.

- **C:** Perhaps we might consider a Universal Basic Income (UBI) pilot, alongside the other proposals. The pilot would demonstrate the need for other interventions to bridge longer-term income and rent gaps.
- **Q:** Do funds from the Housing Production Trust Fund or the Housing Finance Agency have more restrictions in terms of what landlords can do to protect their income streams? See a related study from the Federal Reserve Bank of Philadelphia [here](#).
- **C:** We also need to make sure that organizations disbursing rental assistance are following up with the tenants. The Office of the Attorney General has received reports that the United Planning Organization (UPO) still has not processed rental assistance applications filed in early September 2020.
 - **C:** Borger Management has residents who filed for rental assistance and have had no response from UPO for three months
 - **A:** While the Council made important changes to ERAP in November that allowed for quicker ERAP rent assistance approvals, CHAP has federal regulations that require extensive documentation. It is likely that delays in processing an application for rental assistance could result from the difficulty some tenants have in providing the depth of documentation required by federally sourced funds. Neither UPO, the Council or DHCD can alter those requirements. We hope that national advocacy might reduce some of this burden in the future.

Public Comment

Don Edwards, JSA, initiated the public comment period and public observers were able to make verbal comments upon their written request in the chat. Strike Force members were invited to respond to the public comments via the chat or verbally. See Attachment A for a record of the public comments.

Closing Comments

Don commended the process and the group's engagement and respect during large group sessions. He reminded members that working groups will continue to convene the following week to remain on schedule.

Director Polly Donaldson reiterated that working groups will meet and begin to share draft recommendations next Friday. She affirmed that the purpose of working group conversations is to focus on what the Strike Force can focus on in the short and long-term. She encouraged members to communicate additional ideas and comments to her.

Attachment A: Public Comments

- **Q:** Can someone explain the impact of foreclosure on affordability covenants? Is there specific language in financing documents that suggests this relationship?
 - **A:** The language is usually in the loan documents that Dantes Partners sign with the lenders for all the projects we develop. When a project goes into foreclosure, the lender needs to be able to quickly dispose of the asset such that they can recoup its funds back. They do that by ensuring that there aren't any restrictions on those properties going forward. This is the case for all affordable housing providers throughout the entire country.
- **Q:** Does DHCD have a policy on permanent affordability? I just learned of a past Mi Casa project that wanted to be added to the Douglass CLT but was denied because of a discomfort with permanent affordability.
 - **A:** There is no specific policy. The length of term of covenants is something that we do negotiate as part of the underwriting process with developers. We want to encourage longer affordability but we don't mandate permanent affordability in that way--with the exception of inclusionary zoning, which is a permanent affordability.
 - **A:** It's worth noting that it is tied to the length of the building. In each of these cases, the idea is that affordability is tied to the subsidy. So you can't require affordability to happen beyond a subsidy that's required. In inclusionary zoning, the subsidy is the density that happens with the building. DHCD's subsidy is the Housing Production Trust Fund.
- **Q:** Given DC law requires that landlords give tenants the right to redeem, wouldn't all landlords be required to NOT intend to remove the tenant when they file if the tenant pays up? Tenants pay filing fees so that burden would just be passed along...
 - **A:** From a legal perspective, increasing the filing fee will also increase the amount that a tenant will have to pay to catch up on rent - the tenant must pay the amount of the filing fee as part of the TransLux amount.
 - **C:** My hope is that we could reduce the number of filings so drastically that on balance, we would still be helping people.
- **Q:** Evictions are violence. Many of you have come out in support of the Black Lives Matter movement. Many Black and Brown families have been unable to pay rent and are facing eviction or huge amounts of debt when the moratorium is lifted. The only way to protect our citizens is by cancelling the rent! Programs like ERAP and CHAP at best cover 10% of at-risk Washingtonians. DC Cancel Rent Coalition has written a bill that makes cancelling rent constitutional. Councilmember Bonds, would support this bill and honor your commitment to BLM?
 - **A:** I'm happy to meet with anyone on this matter. Not sure how it will be possible to cancel the rent--curious to see this language.
- **Q:** Listening to the early part of the presentation, I deduced that the high vacancy rate for Class A housing, and the VERY high vacancy rates for such housing in places like Navy Yard, Capitol Hill, and H Street/NOMA, is due to the collapse in the market for housing transients. Yet according to the CFO, the greatest percentage of housing in the pipeline is for Class A housing. Shouldn't the Strike Force be considering how to promote the construction of housing

affordable to actual residents? So much of the Class B and Class C rental stock of today was actually constructed for middle- and low-income Washingtonians of 70 and more years ago. What happened to that construction/development industry?

- **A:** It's an excellent question. Without some sort of subsidy, the economics don't support construction for workforce housing. Land costs, construction costs and high operating expenses all contribute to this.
- **Q:** We heard Judge Edelman and Mr. Borger articulate some very different views of how evictions proceedings should be used. Does anyone seriously agree with how Mr. Borger described the use of evictions? Does anyone find that a useful perspective?
- **C:** I would like to reiterate what Mr. Borger stated. The biggest reason landlords almost always have attorneys in LT Court is that they are required to be by court rules. All LLC's and Corporations are required to have an attorney. Also, another reason there are repetitive filings in DC is that DC is one of the only jurisdictions in the country that does not allow a residential landlord to get their property back when the written lease expires.
- **C:** I thought some type of grant or assistance for property management owners were provided to apply to cover the rent that is loss from the tenants.
- **Q:** Will shared equity models or units be pushed for by the Strike Force?
 - **A:** The working group on the longer term rental housing may consider it as it looks to strengthen existing tools and find new ones to include. They will return to the larger group with their draft recommendations.
- **Q:** Can someone speak to the implications of the Faircloth Amendment for the District? Whether that involves rebuilding exclusively public housing facilities, or even an opportunity to do a hybrid where public housing units are incorporated into other multifamily developments.
 - **A:** DC Housing Authority has actually used the hybrid model of using Annual Contributions Contract (ACC) units in a mixed-income community. There is still some room to use Faircloth, if we wanted to layer the funds, but it is strictly a public housing component. So there would still need to be support from other funding sources.
- **Q:** Listening to the early part of the presentation, I deduced that the high vacancy rate for Class A housing, and the VERY high vacancy rates for such housing in places like Navy Yard, Capitol Hill, and H Street/NOMA, is due to the collapse in the market for housing transients. Yet according to the CFO, the greatest percentage of housing in the pipeline is for Class A housing. Shouldn't the Strike Force be considering how to promote the construction of housing affordable to actual residents? So much of the Class B and Class C rental stock of today was actually constructed for middle- and low-income Washingtonians of 70 and more years ago. Certainly with regard to public property, land costs are moot, so why doesn't the city ALWAYS use public land to build affordable housing?
- **C:** Kay Pierson from UPO just spoke and indicated that they cannot provide rental assistance unless the tenant is in eviction status. This is not the case, and can cause a lot of credit-related impairments for tenants to put themselves in that status. And, right now, eviction moratorium prevents that.