GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Housing and Community Development

Bill 23-537, the "Senior Co-Living Establishment Act of 2019"

Bill 23-643, the "Keeping Cool Elderly Tenants and Tenants with Disability Act of 2020"

Testimony of
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Council of the District of Columbia
The Honorable Anita Bonds, Chairperson

Virtual Hearing via Zoom

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Good morning, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD). I am pleased to appear before you to testify on behalf of Mayor Bowser on the two bills under discussion today.

It is DHCD's mission to produce and preserve affordable housing for low- and moderate-income residents and revitalize underserved neighborhoods in the District of Columbia. In fulfilling its mission, DHCD houses the Rental Accommodations Division (RAD) which administers the Rental Housing Act of 1985 (DC Law 6-10) as amended which is codified at DC Official Code § 42-3501.01 and what follows.

The first bill being considered today, Bill 23-537, the "Senior Co-Living Establishment Act of 2019," creates a program to facilitate senior co-housing and explicitly foresees a role for DHCD in implementing the program. The program would have three elements that each eligible applicant "shall receive:"

1. A small grant of up to $2500 for eligible residents to modify their homes to accommodate a senior (over the age of 60) tenant;

2. Up to $300 a month stipend; and
3. Fee waivers for a Basic Business License, and any necessary rental license fees, registration costs, and inspection fees.

Eligible applicants are defined as owners of their principal place of residence in the District of Columbia, aged 60 years or older who have executed a lease with a "new tenant" who is 60 years of age or older and the rent does not exceed 30 percent of the tenant's income.

Regarding the first portion of the program, the one-time grant for home modification, DHCD administers similar programs and is prepared to administer this one.

DHCD has also recently established two emergency rental assistance programs and in conjunction with our community partners is also capable of efficiently implementing the monthly subsidy.

The final element of the program, providing fee waivers for a Basic Business License, and any necessary rental license fees, registration costs, and inspection fees would need to be coordinated between DHCD and the Department of Consumer and Regulatory Affairs (DCRA), but otherwise should not cause any difficulty.

While we have few concerns with the basic administration of these program elements, we do want to express a number of policy questions about the program that remain unanswered in the bill as written and would have significant implications for the profile of the program and its fiscal impact.

With the reference to "co-living" in the bill it may seem that the purpose of this bill is to encourage seniors with an available room in their own homes to accommodate other seniors in their homes to the mutual benefit of both parties. It is not clear, however, whether the purpose of the program is to merely incentivize "co-living" among seniors generally or if it is intended to specifically assist seniors with housing difficulties, such as older homeowners struggling to maintain a larger house or those finding it difficult to find safe, decent affordable housing. At a more fundamental level, the bill not very clear what is meant by "co-living."

This is because, as currently written, the program is lacking answers to important questions such as:

- Should there be an income or asset limit for either the housing provider (applicant) or the tenant to be eligible?
- What familial relationship may exist between the tenant and the applicant?
- Is there a minimal quality or size standard of the housing accommodation the program supports?

- Does the tenant need to support the applicant's application (as written, the tenant need never know about the receipt of the subsidy for the applicant to be eligible to receive it, raising exploitation concerns)?
- Should the tenant be sharing the same housing unit, as the term "co-living" implies, or can the grant and monthly subsidy also be applied for an accessory apartment, a separate attached flat, or a completely separate owned unit (as written, the bill does not require the eligible lease to be for accommodation in the primary residence or even at the same property that the applicant uses to be eligible for the program).
- How are multi-person tenant households to be handled by the program, particularly those that may include non-senior members or caretakers, or is the program only for singles?
- What, if any, information would be required about the nature of the improvements prior to the disbursement of a grant?
- What post-grant and subsidy performance and compliance activity would be expected from District agencies?
- Should any consideration be given as to the senior homeowner's fitness for providing a housing accommodation or the tenant's fitness in cases where the tenant is providing care for the homeowner?

The lack of guidance on how to answer these questions in the statute can quickly be shown to have practical implications, such as in these examples:

- Should a high wealth/high income family be able to receive the grant and the subsidy for their home, so long as two or more of the family members are above 60 years of age and can show an eligible lease between them?
- Should a housing provider over the age of 60 who lives in an eligible private residence in the District of Columbia be able to receive the benefits of this program for any senior tenant they house anywhere in the city?
- When the tenant and the applicant do share the same unit, does the tenant need to have their own bedroom and what about a bathroom?
- Does the fee waiver apply to an existing housing provider, what is the meaning of a "new tenant" and should previously existing co-living arrangements be able to benefit from the program?
- What, if any, penalty would there be and would program funds be recaptured if modifications are not made or a senior tenant did not move in?

Stated plainly, to assist the Department in making this program effective and make good use of District funds, the statute establishing the program should provide better definitions and statutory direction on who is to be served and how.

If the Council wishes to incentivize co-living among seniors, I ask that you defer action on this bill and work with us and the community to determine what a good "co-living" policy and program might be. From that basis, the necessary statutory changes, budget requirements, and regulatory direction will become clear.

On that note, we must recognize that at this juncture COVID-19 is still a developing pandemic that has, thus far, primarily killed or raised lasting health concerns for the older members of our community and those with underlying conditions. At this time, the disease appears to be spread most reliably by close, extended contact indoors and there is still no known vaccine. As such, we are still determining the implications of this disease for how we most safely house our vulnerable populations in this post-COVID-19 era. This is a further reason to defer action on this bill until a later date.

I now turn to B23-646, the "Keeping Cool Elderly Tenants and Tenants with a Disability Amendment Act of 2020". While this bill does not reference an explicit role for DHCD, it would place its requirements within the Rental Housing Act and therefore falls to the Department for a response.

On behalf of Mayor Bowser, let me start by saying we support maintaining the standard of indoor air quality and comfort of our elderly tenants and those with disabilities. We are only concerned that this bill does not appropriately establish such a standard nor does it anticipate the range of causes and solutions to the problem of an overheated rental unit. Only tenants that request equipment need receive it and, by only requiring the equipment be installed within two weeks, it does not require the landlord to address a dangerously overheated apartment as an emergency in a property that does not already have air conditioning service. Conversely, as a result of this bill, a housing provider might be required to install unnecessary equipment even when, due to the time of year or the presence of existing equipment outside the habitable room, the temperature does not and is not reasonably expected to exceed an unreasonable temperature. There also does not appear to be an established definition of what constitutes the acceptable "refrigerated air equipment" that must be present in each habitable room referenced in this bill, the Rental Housing Act, or elsewhere in the related code or regulations.

In this vein, I would like to draw your attention to the relevant sections of the District of Columbia Municipal Regulations (DCMR Section 14-510. Air Conditioning and 14-501 Heating in Residential Buildings).

These precedents already provide a general temperature standard with reference to the actual conditions in the unit and the outside. Thus, an alternative approach to what is proposed in the bill would be to add a more general provision to the existing code, specific to elderly and disabled tenants. Since the current air conditioning regulations only apply to those housing providers "who provides air conditioning as a service either through individual air conditioning units or a central air conditioning system" this alternative could simply state that air temperature must be able to be maintained at 15 degrees below outside temperature or air conditioning must be offered as a service (as described in DCMR 14-510) to every elderly tenant and tenant with a disability from June 1 to September 1.

This approach provides a clear and recognized standard for the landlord to meet without requiring them to refer to a different part of the code, install specific equipment "in each habitable room" regardless of need on an ad hoc basis, and to a different standard than current regulations for air conditioning that apply to other tenants. It would also allow housing providers to offer this service at a seasonably appropriate time and schedule installation and maintenance across their stock to minimize costs and disruptions.

To avoid discrimination against elderly and disabled tenants, in addition to the considerations in the current bill, you may wish to consider clarifying that the opportunity to lease a unit cannot be denied an elderly or disabled household on

the grounds that a housing provider does not wish to offer air conditioning. Another policy matter to consider is whether to provide different provisions and or financial assistance for smaller landlords to meet the requirements. Finally, you will want to make certain there is consideration of this requirement in reference to the Building Energy Performance Standards and other environmental and building requirements that housing providers must comply with. We look forward to working with you on finding a proper balance as this bill moves forward.

Thank you, Chairperson Bonds and the members of the committee for the opportunity to testify today. This concludes my testimony and I would now be happy to explore these matters further with you and answer any questions you may have.