GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Public Hearing on

Bill 22-0919, the "Fair Condominium Withdrawal Amendment Act of 2018"
Bill 22-0949, the "Rental Housing Smoke Free Common Area Amendment Act of 2018"
Bill 22-0998, the "Rent Charged Clarification Amendment Act of 2018"
and
Bill 22-0999, the "Rent Charged Definition Clarification Amendment Act of 2018"

TESTIMONY OF
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Before the
Council of the District of Columbia
Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson

Monday, October 29, 2018,
10:00 AM
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, DC 20004

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 the Bowser Administration on Bill 22-0919, the "Fair Condominium Withdrawal Amendment Act of 2018;" Bill 22-0949, the "Rental Housing Smoke Free Common Area Amendment Act of 2018;" Bill 22-0998, the "Rent Charged Clarification Amendment Act of 2018;" and Bill 22-0999, the "Rent Charged Definition Clarification Amendment Act of 2018."

DHCD's mission is to create and preserve quality housing opportunities for low- and moderate-income residents and to revitalize underserved neighborhoods in the District of Columbia. The bills before us address these objectives in a variety of ways.

Today, I will begin my discussion with Bill 22-0949, the "Rental Housing Smoke Free Common Area Amendment Act of 2018." The Bowser Administration supports the intent of this bill to safeguard District residents from the dangers of second-hand smoke. However, it is unclear how or by which agency the prohibitions outlined in the bill would be enforced, especially because these prohibitions apply to private housing accommodations. The Executive looks forward to working with the Committee to refine the enforcement provisions in the bill.

DHCD administers portions of the "Condominium Act of 1976" and, along with the Department of Consumer and Regulatory Affairs and the Office of the Chief Financial Officer, plays a significant role in the formation, regulation, dissolution, and conversion of condominiums. Therefore, Bill 22-0919, the "Fair Condominium Withdrawal Amendment Act of 2018," is of interest to the Department. If enacted, this bill would

enable condominiums to withdraw property, including individual condominium units, after formation.

The staff from each of the District of Columbia agencies most engaged on these matters – DHCD, the Office of Tax and Revenue, and the Department of Consumer and Regulatory Affairs – have met and discussed the administration of this process and the possible outcomes as a result of the proposed legislation. After careful review, it is not immediately clear that this bill is needed, and we have concerns about its implementation and potential consequences.

Current D.C. Condominium Code allows a condominium to be terminated and one or more new condominium projects created, a practice commonly undertaken in the District. The Code also permits a declarant of a condominium to establish specific, withdrawable land when registering the condominium declaration. Notably, the Code only permits the designated land to be withdrawn before the conveyance of any unit to a buyer. This protects consumers and creditors, providing them security in the nature of their investment and collateral. Our neighboring jurisdictions adhere to this practice in their condominium laws.

The current bill seeks a third option, namely to withdraw units from a condominium such that the withdrawn units would be owned in fee simple, as tenants in common, by the owners of the withdrawn units. The original condominium would remain in place with only the remaining units and property. The percentage of common element ownership, voting power, and liability for common expenses would be reallocated in proportion to the respective percentages of those units.

The opportunities for this alternate process to create an advantage for consumers relative to the current options appear to be extremely narrow and its potential for

legally and practically awkward results seems far greater than can occur under the current system.

At a minimum, if any such proposal were to proceed, it would be necessary to consider a number of questions, such as:

- How would we assure that unit owners - both those of withdrawn units and those remaining in the condominium regime — receive the proper education, notice, and disclosure regarding the withdrawal and its impact on their property values, condominium governance and operation, and ownership rights?
- How would we handle owners who do not wish to withdraw or remain within the condominium when 80 percent of their neighbors have agreed to their unit being included in either portion?
- What is the proper notice and consent for mortgage lenders whose collateral would be significantly changed by the result of a withdrawal?
- What would the potential impact on the District's mortgage market be if units can be withdrawn in this manner?
- What impact would a withdrawal have on DHCD's condominium structural defect warranty program?
- As drafted, this bill appears to allow units to withdraw from a vertical condominium. How would the pragmatic aspects of separation be assessed and handled, such as easements, utilities, common elements, management, and repairs?
- How would the disparate tax impacts and potential windfalls and losses be treated for tax purposes?

– Would these transfers have recordation or transfer tax or fee implications?

The impacted agencies agree that as these and other necessary questions are answered in legislation or regulation, the opportunities for this alternate process to create any advantage for consumers relative to the current options will become even narrower or, perhaps, non-existent. We welcome the opportunity to meet with your staff to discuss the current process and this legislation further.

The final two bills for discussion today are Bill 22-0998, the "Rent Charged Clarification Amendment Act of 2018," and Bill 22-0999, the "Rent Charged Definition Clarification Amendment Act of 2018." The latter "Definition Clarification" bill simply updates the definition of "rent charged" to reflect the recent decision of the Rental Housing Commission in Gabriel Fineman v. Smith Property Holdings Van Ness-2016-DHCD-TP 30,842 Final Order After Remand. As such, I can express the Administration's support for this legislation.

The former bill contains the same update to the definition of "rent charged," but goes beyond this simple act of clarification and attempts to further update the broader context in which the definition of "rent charged" is used in the administration of the District's rent stabilization regime. We welcome and share the steadfast desire of this committee and, in particular, your desire, Chairwoman Bonds, to improve the District's rental housing and the statutes and regulations governing this important housing stock. After all, these are the housing accommodations that the majority of District residents call home. While we support this effort, the Rent Administrator and her staff have identified specific legal, administrative, and policy concerns with the current legislation that we have included with our written testimony. These range from technical clarifications that we believe would be necessary to properly administer the program

and achieve the intent of the Act, to concerns that some sections may be unconstitutional in violation of the right to contract. We would welcome the opportunity to discuss these issues and concerns with your staff before this legislation is considered further.

Thank you for the opportunity to testify today.

DHCD SECTION-BY-SECTION COMMENTS

RENT CHARGED CLARIFICATION AMENDMENT ACT OF 2018 (BILL B22-0999)

Section No.	Bill Line No(s).	DHCD Comment(s)
§ 206(e)(2)(A)	71-73	This section requires clarification; seems to contradict the statute of limitations in § (e)(2) by allowing a challenge to the basis for rent charged without giving a cutoff date.
§ 206(e)(2)(B)	74-76	The "base rent" nomenclature is inappropriate and § 103(4) should be repealed or updated. Base rent refers to a change in rent control law in 1985. If Council wants to keep the term, it could be amended to clarify that "base rent" is the rent charged for a unit on the effective date of the 2006 amendment when rent ceilings were abolished (August 6, 2006) or the initial rent charged a unit thereafter. The current subsection in Bill 22-0999 does not make sense. § 103(4) requires updating overall.
§ 206(a-[redacted])	77-81	As written, the provision appears to obsolete and requires clarification. Why is the section referencing April 30, 1985? *See* § 206(e)(2)(B) comments.
§ 206(a-2)(2)	87-92	The intent of this section is unclear. DHCD is looking for clarification.

Section No.	Bill Line No(s).	DHCD Comment(s)
§ 206(a-3)(▮)	99-102	The provision seems to address when a housing provider does not immediately implement a voluntary agreement or capital improvement surcharge. It creates a "use or lose" requirement for these rent adjustments. The provision may discourage a housing provider from making certain improvements. If the concern is an implementation delay, the issue could be addressed by disclosures showing pending increases. In a rent concession context, the 30-day limitation is unreasonable and does not give housing providers sufficient time to implement the increase or surcharge or any possible financing for improvements. DHCD recommends that Council consult with stakeholders to determine a reasonable timeframe.
§ 208(3)	133-135	This provision represents a significant administrative burden. The list of tenant rights and sources of technical assistance is too long to include in a rent increase notice. Instead of lengthening the form, DHCD recommends including a list of tenant advocates and CBOs.
§ 208a(b)	139-143	The phrase "is at least 10%" is unclear and appears to be arbitrary. What is the basis for the standard? What if a housing provider charges 9.8%? Does that mean the housing provider need not comply with the requirement?
§ 208a(c)(3)	150-151	DHCD is concerned this requirement may be unconstitutional in violation of the right to contract. The right to contract is supported by case law which grants housing providers and tenants the right to mutually agree to rent levels provided that the agreement does not violate the Rental Housing Act of 1985.

Section No.	Bill Line No(s).	DHCD Comment(s)
§ 208a(e)(■)(B)	158-160	The provision language conflicts with § 206(a-3)(■), which requires the housing provider to "use or lose" the rent increase within 30-days after the housing provider can first implement the rent increase.
§ 208a(e)(2)(A) & (B)	163-166	The 30-day implementation restriction is inconsistent with other possible competing housing provider demands. . For example, what if there is an estate issue preventing a housing provider from immediately implementing the rent charged or surcharge? This could potentially morph into a fair housing issue whereby housing providers will refrain from renting to the elderly. DHCD recommends that Council consult with stakeholders to determine a reasonable timeframe. Subsection (B) conflicts with the 3-year statute of limitations for challenging a rent adjustment.
§ 208a(f)(■)(A)	173	DHCD is concerned that a housing provider must "unconditionally" grant a rent concession. *See* § 208(c)(3) comments.
§ 2083(f)(1)(B)	174	DHCD recommends that the rent concession may be rescinded by mutual agreement between housing provider and tenant.
§ 2083(f)(2)	181	DHCD recommends that the last word "tenant" be replaced by "tenant or applicant."
§ 208a(h)	184-185	This provision requires clarification. DHCD recommends that the provision should add the same language as is required in the disclosure notice.

Section No.	Bill Line No(s).	DHCD Comment(s)
§ 208a(i)(1)	187	A timeframe to cure the violation is required.
§208a(i)(2)	188-191	The term "substantial violation" is ambiguous and requires definition or clarification. DHCD questions what situation would justify a lower amount? The provision requires clarification.
§ 213(1)(C)	198-203	Is this provision attempting to restrict the vacancy rate increase to rent concessions? DHCD perceives this provision will dissuade housing providers from renting to elderly tenants because there is no way to recoup rent levels once the elderly tenant vacates. DHCD recommends there is a need for the 30% level. The provision is confusing and requires clarity—it also does not address the rent concession issue.