COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW
Washington, DC 20004

MEMORANDUM

TO: Nyasha Smith, Secretary to the Council

FROM: Chairman Phil Mendelson, Councilmember Anita Bonds, and Councilmember Mary Cheh

DATE: February 28, 2022

RE: **Notice of intent to move an amendment in the nature of a substitute at the March 1, 2022 Legislative Meeting**

This memorandum serves as notice that I intend to move an amendment in the nature of a substitute (ANS) for Bill 24-96, the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022" at the Legislative Meeting scheduled for March 1, 2022. The ANS:

- Explicitly lists examples of extenuating circumstances under § 16-1501(c)(2) to assist the Court in interpreting whether to waive the license requirements (lines 58-60);

- Amends § 16-1502(a) to require a housing provider or their agent to serve a summons on the tenant at least 30 days before the initial hearing in an eviction case, as opposed to 7 days before the trial (line 70). This language was approved by the Council in prior emergency and temporary measures;

- Adds a new subsection (b) in § 16-1502 that would require the housing provider or their agent to submit a photograph of the summons with a readable time stamp if the summons is served by posting a copy on the premises (lines 80-82). This language was approved by Council in prior emergency and temporary measures;

- Amends new § 509(e) of the Rental Housing Act of 1985 to authorize the Court to provide copies of all records sealed under the Act to the named tenant, tenant's counsel, or a person considering representing the tenant and authorized to access the record (lines 190-207). As currently drafted, the legislation only provides tenants and their counsel with a copy of the order to seal an eviction record, not the record itself; it also stipulates that the records can only be accessed by opening—that is, fully unsealing—the record. To diligently represent their client in a current eviction, attorneys must have access to a client's sealed records for past eviction filings; this information can be critical to mounting a defense for the tenant. Requiring that such a record be unsealed before it can be accessed by a tenant's counsel not only puts that tenant's privacy at risk, but also places an extreme administrative burden on the court, tenants, and attorneys. This amendment will significantly reduce this burden, as well as the delays tenants and attorneys may have experienced in accessing these records if unsealing were required;

- Increases the cap on tenant application fees from $35 to $50 and allows annual increases on the cost starting in 2024 to account for inflation (lines 266-271). The cost of tenant screening services can vary significantly, but many services cost more than $35. For instance, the American Apartment Owners Association provides screening service packages that range from "Basic," which costs to $19.95, to "Gold," which costs $49.95. Those "Gold" package includes significantly more information than the "Basic" package, some of which housing providers may want to screen for. Other services such as Cozy, E-Renter, and First Advantage also cost in excess of $35;

- Clarifies that simply receiving information from a credit agency that includes prohibited screening criteria is not a violation if the prohibited information was not specifically requested by the housing provider and is not used as the basis of an adverse action (lines 297-301). Credit reporting agencies and tenant screening companies have indicated that they cannot filter out certain information from their reports, such as evictions older than 3 years from other jurisdictions. This amendment is necessary to ensure housing providers are not held liable for receiving this information, given the limits of what Credit reporting agencies and tenant screening companies can do;

- Requires a statement of the right to file a complaint with the Office of Human Rights in the written notice of an adverse action so that applicants can access this information at the moment when they are most likely to need it (lines 311-313);

- Amends new § 510(g)(3) to ensure that the law does not prohibit the use of tenant screening criteria required by the federal government by housing providers such D.C. Housing Authority (lines 323-324);

- Creates a scale of penalties for violating Section 510 based on the number of units a housing provider owns, an approach consistent with Section 6 of the Fair Criminal Record Screening for Housing Act of 2016 (D.C. Official Code § 42-3541), and provides a six-month grace period for housing providers starting on the applicable date of the act (lines 329-353);

- Strikes new subsection (g) in § 2-1402.21 and redesignates new subsection (h)(lines 394-412). The source of income language in the Engrossed version of the bill was flagged as particularly problematic by numerous housing provider organizations. For instance, as drafted the subsection would prohibit housing providers from screening a tenant receiving an income-based subsidy a unit based on credit issues or non-payment of rent that occurred before the receipt of the subsidy. By removing these criteria from consideration entirely, housing providers would have few tools to assess the suitability of the tenant.

A copy of the proposed ANS is attached. Please call me or Blaine Stum if you have any questions at (202) 724-8092.