


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: Phil Mendelson, Chairman 

DATE: September 26, 2024

RE: **Request to Agendize for the October 1, 2024 Additional Legislative Meeting**

This memorandum is to request that the following measures be placed on the agenda for the October 1, 2024 Additional Legislative Meeting:

- **Emergency Rental Assistance Reform Emergency Declaration Resolution of 2024**
- **Emergency Rental Assistance Reform Emergency Amendment Act of 2024**
- **Emergency Rental Assistance Reform Temporary Amendment Act of 2024**

Affordable housing providers in the District are currently facing a financial crisis driven by ballooning rental arrearages. According to affordable housing providers, rent arrearages have grown so large that many properties are not bringing in enough revenue to pay mortgages and maintenance costs. While the full scale of unpaid rent in the District is not known precisely, a recent article in BisNow suggests that 20 mission-driven affordable housing providers with properties in the District have accrued a total of \$15 million per year in unpaid rent. The effects of this crisis cannot be understated. One affordable housing developer, Neighborhood Development Company, announced its decision to end operations in the District beginning September 30, 2024. Another affordable housing developer, E&G Group, is currently liquidating its properties in the District. Several non-profit developers report that this crisis is drying up access to capital to build more affordable units.

This crisis is being driven, in large part, by District laws regarding Emergency Rental Assistance Program (ERAP) funds and the eviction process. Currently, the law allows tenants to submit an unsworn declaration made under penalty of perjury to establish proof of eligibility for ERAP funds and requires the court to stay proceedings in eviction cases when a tenant submits an application for ERAP, even if the tenant is determined not to be eligible for ERAP or will not receive enough ERAP funds to cover the full amount of unpaid rent and the housing provider opts not to pursue a payment plan to cover the remaining arrearages. Additionally, because the ERAP application portal opens each quarter, tenants in numerous cases have been able to secure multiple stays in an eviction case, further delaying the ability of the housing provider to secure a writ while the rent arrearages continue to grow. Where eviction cases used to take 3 to 5 months from the date of filing to an eviction, they can now take a year or more. The provision requiring the court to stay proceedings in eviction cases when a tenant submits an application for ERAP has not only contributed to the lengthening of eviction case timelines, it has also contributed to a growing

backlog of cases in the Landlord and Tenant Branch of Superior Court, compounding the delays. In 2023, the pending caseload for the Landlord and Tenant Branch grew by 23%, with more cases pending than at any point in the past 10 years despite the number of filings being significantly less than prior to the COVID-19 pandemic.

To address these issues, my office has worked with affordable housing providers and the Department of Human Services to develop legislation that makes targeted changes that we believe will provide important relief to providers. Those changes include:

- Repealing a provision in the law that allows applicants for ERAP to self-attest to certain eligibility criteria; and
- Amending D.C. Official Code § 42-3505.01(r) to: give judges discretion as to whether to apply a stay to a particular case; limit the number of stays a court can apply for a pending ERAP application to one per case; and requiring the tenant to provide evidence that the application could result in sufficient rental assistance to pay the full amount of rent owed or, if not, requiring the tenant to provide a payment plan agreement with the housing provider to cover the remaining unpaid rent.

Without these changes, the financial crisis facing affordable housing providers will worsen, leading to foreclosures of affordable properties and causing lenders to avoid providing loans to affordable housing providers in the District. Importantly, foreclosures caused by this crisis would wipe out affordability covenants, which will reduce our already inadequate supply of affordable housing.

The draft measures are attached. Please call me or Blaine Stum if you have any questions at (202) 724-8092.

cc: All Councilmembers
Council Officers