The Committee of 100

on the Federal City

Testimony to the Committee on Housing and Executive Administration

June 24, 2022

B24-0430: Limited Equity Cooperative Advisory Council Act of 2021

B24-0431: Limited Equity Cooperative Property Tax Assistance Amendment Act of 2021

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My name is Andrea Rosen and I'm speaking today on behalf of the Committee of 100 on the Federal City. Thank you, Chair Bonds and Committee members, for the opportunity to testify about the two LEC bills that are the subject of this public hearing.

We are encouraged that the Committee on Housing is taking steps to provide new government support for sustaining and creating Limited Equity Cooperatives. Converting affordable rental housing to LECs is recognized locally and nationally as a critical strategy for countering the displacement that has so often occurred when neighborhoods attract new investment, and property owners seek to sell or redevelop a building that existing tenants call home. LECs not only preserve affordable housing for individual households, they preserve **community**, physically and culturally. "LECs represent household, neighborhood, and District-wide assets."[1]

While the oldest extant LEC in the District (in Ward 7) dates from 1958[2], LECs took off during the 1970s; by 1980, some 3,000 units were under or seeking cooperative ownership.[3] Like DC's rent control laws (1974-75), LECs were a product of collective action to gain self-determination amidst mass evictions, condominium conversions, and rapid gentrification in neighborhoods like Adams Morgan, Capitol Hill, and Dupont Circle, and poor conditions in Columbia Heights.[4] The Tenant Opportunity to Purchase Act (TOPA), passed as part of the Rental Housing Conversion and Sale Act in 1980, gave tenants "who would otherwise be involuntarily displaced" by a change in ownership a lever for not only securing their homes but gaining a measure of control over them.

The District has continued to experience waves of gentrification, so the need for LECs has only grown. It is not coincidental that LECs are present in greater numbers in the neighborhoods that have experienced the most gentrification over the past two decades, because most LECs are created through TOPA; TOPA is triggered when buildings are put up for sale; and buildings are put on the market when a neighborhood's fortunes are on the upswing. As Drs. Kathryn Howell and Scott Bruton, authors of *Creating and Sustaining Limited Equity Cooperatives in the District of Columbia*, noted in their 2020 research report: "Tenant associations hoping to

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[1] Howell and Bruton, *Creating and Sustaining Limited Equity Cooperatives in the District of Columbia* (Feb. 2020), pg. vi

[2] Naylor Gardens with 700 units has operated as a cooperative since 1958.

[3] Howell and Bruton, *Creating and Sustaining Limited Equity Cooperatives in the District of Columbia* (Feb. 2020), pg. 6. Their source: "low-Income Tenants Buy Their Apartments," *Washington Post* (11/9/80).

[4] Howell and Bruton, *Creating and Sustaining,* pg. 4

purchase their buildings through TOPA continue to face intense pressure for their members to take buyouts to leave their homes . . . resulting in a loss of community and residential and rent level stability."[5]

Bill 24-0431: Limited Equity Cooperative Property Tax Assistance Amendment Act of 2021

Both the *District of Columbia Limited Equity Cooperative Task Force Final Report* (October 2019) and the CNHED report recommend eliminating property taxes paid by LEC shareholders as an imperative for stabilizing LECs and the finances of their shareholders.[6] [7] Working with thin margins, LECs have found it difficult to manage property tax bills that rise precipitously. Making the current five-year property tax abatement permanent would buffer LECs and their shareholders from the ever-rising market valuations of the land upon which LECs sit--which is appropriate, given that the overarching goal of keeping the units affordable means that LEC shareholders do not realize equity that comes from increases in market value.

It has been argued that in lieu of a property tax exemption, LEC shareholders claim the Homestead deduction, which would reduce the assessed value of their homes by $78,700, resulting in a savings of $668.95.[8] In areas of the city where assessments are low, this deduction could represent a significant reduction, but in higher-valued areas, with higher assessments, this deduction will only take the edge off.

If the District can forgo the revenue from the Homestead deduction—also available to and enjoyed by people at the highest end of the income and assets continuum—would it be a significant loss to the government to also forgo the residual property tax from LEC shareholders? The CFO's office estimated in 2019 that the forgone tax revenue from 99 LECs would be approximately $1.4 million a year.[9] If one divides that by an estimated 4,400

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[5] Howell and Bruton, *Creating and Sustaining* (pg. v)

[6] *District of Columbia Limited Equity Cooperative Task Force Final Report*: "Preserving Existing LECs: ***Recommendation #1:*** Provide full property tax abatement for all LECs. ***Issue:*** The District Government provides ongoing property tax exemption for a variety of charitable, religious, and educational organizations that serve the community. However, D.C. law limits property tax exemptions for LECs to a five-year period. The property tax exemption should be reviewed and modified to provide ongoing tax exemption for well performing LECs that house low-income families, similar to the exemptions provided to other low-income housing and social services providers. Co-ops not performing well, would need to put together a strategic performance plan with actionable steps towards implementation to qualify for the tax-exemption."

Howell and Bruton (published by CNHED), *Creating and Sustaining Limited Equity Cooperatives in the District of Columbia*: "**Goal 1: Support the acquisition, rehabilitation, and long-term viability of buildings that represent a broad range of incomes and experiences**. **Objective 5:** Improve the predictability of long-term costs to LECs regardless of the changes to the neighborhood. Strategy 1: Eliminate the five-year sunset of property tax abatements for LECs with affordability covenants at 80 percent of AMI or below in which 75 percent of the board meets annual training requirements through DHCD or its nonprofit designee." (pp. viii and 55)

[7] It should be noted that the bill omits the operational benchmarks for a permanent abatement that the DC LEC Task Force and CNHED recommended. The Task Force would extend it to all well-performing LECs ; while CNHED specified LECs with 80% AMI affordability covenants and a well-trained board.

[8] Residential property taxes are levied at $0.85/$100 of value. This reduction was current as of October 2021.

[9] The above figures were gleaned from 6/5/22 email correspondence with Deborah Freis, Director of Fiscal and Legislative Analysis Office of Revenue Analysis, based on a list of 99 LECs that the DC Council Limited Equity Task Force provided. The estimate assumed that all households earned less than 80% AMI. Co-ops are taxed at the building level, not the unit level. Some of the buildings were tax exempt at the time, but those exemptions were set to expire, so the taxes payable thereafter were used in the calculation. Where the properties were not exempt, then-current annual tax collections were

LEC units (the statistic published in the LEC Task Force Final Report), that works out to $318 per unit annually after the Homestead deduction.[10]

Tax credits / abatements / exemptions are used by the Federal and District government to incentivize a range of actions by individuals, nonprofits, and businesses. See, for examples, the long list of entities that DC exempts from real property tax at https://code.dccouncil.us/us/dc/council/code/sections/47-1002 .

- We are not fans of all property tax abatements that have been granted by the District, but we believe that making permanent the property tax exemption for LECs as outlined in B24-0431 is a reasonable extension of existing tax policy, and that if abatements are to be lifted, they be lifted elsewhere, given the direct benefit of LECs to affordable housing, community stability, and self-determination.

We assume that the sponsors of the bill support a means test (of below 80% AMI for individual households in buildings that dedicate at least half of the units to households with such incomes)[11] because data is lacking about how many units in any given building are occupied by shareholders earning more than 80% AMI. It seems unlikely that many residents who could afford market-rate options (i.e., residents with incomes above 80% AMI) would choose to buy into a coop that sharply limits return on investment.

- Still, we suggest the Committee augment the bill's mandates with additional guardrails. The New York City example is instructive: According to a *Bloomberg.com* article entitled "New York's Real Estate Breaks Are Now a Rich-Kid Loophole," the well-to-do in Manhattan *are* cadging units in geographically desirable LEC buildings that were originally dedicated to housing low-income residents, taking advantage of both their somewhat-below-market prices and capped property taxes.[12] Their income may qualify them, but they are using assets or gifts, which are not part of the equation, to make these purchases. Moreover, resale limits in some buildings have expired, or are not enforced, making the investments more attractive.

B24-0430: Limited Equity Cooperative Advisory Council Act of 2021

The 2020 CNHED report identified the greatest barriers to LEC success as:[13]

1. Technical assistance providers play critical roles in the successful exercise of TOPA rights and in the creation and long-term sustainability of LECs—there is a shortage of TA providers.
2. Lack of consistency and transparency in funding application processes, regulatory timelines, and government priorities create hurdles to community cohesion during LEC conversion.

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used with the assumption that any homestead exemptions that were currently being claimed on the property would have been factored in.

[10] https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf, pg. 6

[11] Please note a technical concern: Bill 24-0431's statement of purpose says that the bill makes "the property tax abatement for LECs permanent for LELC members whose household income is less than 80% AMI in LECs where at least 50% of the LEC's households are also less than 80% AMI." But the language in the bill itself does not nail down the "below 80%" income for qualifying households, and I have not been able to find the language that serves this purpose in existing code.

[12] https://www.bloomberg.com/graphics/2021-nyc-taxes-hdfc-coops/

[13] *Creating and Sustaining* (pp. vi-vii)

3. Difficulties accessing acquisition and renovation financing options cause significant barriers to the creation of new LECs and the sustainability of existing LECs.
4. There are few proactive tools for the creation of new LECs in the District.

In light of the technical and financial challenges confronting prospective and present LEC shareholders, we think an "LEC Bureau" for residents might be as great a priority as a Council-facing advisory body.

But focusing on the bill before you to create a Limited Equity Cooperative Advisory Council to the Council, we believe the composition should be rethought. The proposed membership of the LEC Advisory Council comes directly from the membership prescribed for the DC Limited Equity Cooperative Task Force by the Act of 2018 that created it (B22-0338), although in practice the Task Force membership did not match.[14]

- It would be instructive to have Task Force members weigh in from their experience about optimal composition. The CNHED report recognizes roles for DHCD, OAG, resident-owners, organizers, legal services providers, and technical assistance providers (aka Community Based Organization, or CBO) in making policy. Our immediate thought is that a greater proportion of the Advisory Council should be resident-owners, as they are the ultimate stakeholders, and they need the strength derived from numbers. Not all of the LEC resident representatives need be LEC *board* members. A second CBO slot to cover both pre- and post-purchase technical assistance would also be useful.

- Finally, perhaps the number of unspecified "other representatives" that can be appointed by the Housing committee chair should be capped, since unlimited appointments could shift the balance of power on the Advisory Council. Ideally, adjustments in representation should be done in a deliberative, public manner.

[14] As listed in the Task Force's Final Report, the Task Force membership was short three members: two residents and one other, possibly the representative from a financial entity that specializes in the financing of LECs.