

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
COMMITTEE REPORT**

1350 Pennsylvania Avenue, N.W., Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember Anita Bonds
Chairperson, Committee on Housing and Neighborhood Revitalization

DATE: February 23, 2018

SUBJECT: Report on B22-0099, the “Limited-Equity Cooperative Task Force Act of 2018”

The Committee on Housing and Neighborhood Revitalization, to which B22-0099, the “Affordable Cooperative Task Force Act of 2017” (which the Committee renamed as the “Limited-Equity Cooperative Task Force Act of 2018”) was referred, reports **favorably** on this legislation and recommends its approval by the Council of the District of Columbia.

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I. PURPOSE AND EFFECT

The purpose of B22-0099 is to establish a task force to provide comprehensive policy recommendations on how the District can assist in the formation of new limited-equity cooperatives, and how the District can help currently struggling limited-equity cooperatives improve their organizational structures and financial situations in order to become financially healthy cooperatives.

The bill requires that the Task Force include the following members:

- (1) Three residents, each of whom is currently a board member of a different limited-equity cooperative in the District;
- (2) One representative from a community-based organization that provides training, counseling, and client advocacy services to low to moderate income residents;
- (3) One representative from a property management company that manages cooperatives within the District of Columbia;
- (4) One representative from a development company that develops cooperatives in the District of Columbia;
- (5) One representative from a financial entity that specializes in the financing of limited equity cooperatives;
- (6) One attorney with significant experience working with limited equity cooperatives in the District of Columbia;
- (7) One individual who has conducted extensive research on cooperatives in the District of Columbia and elsewhere in the United States;
- (8) Other representatives as appointed by the Chairperson of the Committee on Housing and Neighborhood Revitalization; and
- (9) One representative from the Department of Housing and Community Development (“DHCD”).
- (10) One representative from the District of Columbia Housing Finance Agency (“DCHFA”).

Members of the Task Force shall serve without compensation and shall be required to work and/or reside in the District of Columbia. The Task Force meetings shall be open to the public, and DHCD shall provide administrative support.

Finally, the bill requires the Task Force to submit to the Council a report on its findings within 180 days of the effective date of the law. This report shall include recommendations on policy initiatives, legislative requirements, potential funding sources, the establishment of appropriate government oversight, and any other identified needs or requirements for the successful formation of affordable cooperatives in the District of Columbia.

A. Background

1. Structure of housing cooperatives

Housing cooperatives are corporations formed for the purpose of owning residential property, wherein residents who live on the property hold shares of the corporation that owns the

property.¹ Each shareholder is entitled to occupy a specific unit, has a vote in the corporation, and pays monthly fees (“carrying charges”).² Similar to other corporations, housing cooperatives are governed by boards of directors, who are elected by the cooperative members according to the cooperative’s bylaws.³ Housing cooperatives are legal entities, with the right to enter into contracts and take on debt.

Several sets of documents generally govern the operation of a housing cooperative. The bylaws and articles of incorporation relate to the cooperative corporation.⁴ The occupancy agreement, subscription agreement, and house rules dictate the relationship between each member shareholder and the cooperative.⁵ Finally, recognition agreements and regulatory agreements set out the relationship between the cooperative and entities such as government agencies and financial institutions.⁶

2. Limited-equity cooperatives

In a limited-equity cooperative (“LEC”), the purchase and resale price of a share is restricted. This restricts equity appreciation, but also helps maintain affordability. The formula for calculating resale price is normally included in the LEC’s bylaws.⁷ Equity appreciation is typically limited to either a flat amount or a small percentage increase from the purchase price to the resale price.⁸ Although restricting the resale price prevents members from building wealth (as one would with other homeownership models), it also preserves the affordability of the cooperative.

3. Limited-equity cooperatives in the District of Columbia

The D.C. government’s involvement in LECs began in the late 1970s, following the passage of the Rental Housing Act of 1977.⁹ The Rental Housing Act of 1977 included a provision requiring that tenants be given the first right to purchase their building if the owner decided to put it up for sale.¹⁰ With the assistance of subsidies from the District government, low and moderate income tenant associations were able to purchase their buildings and avoid displacement.¹¹ As a condition of the subsidies, restrictions were placed on the equity that could accrue, thereby ensuring that the buildings would remain affordable.¹²

¹ Julie D. Lawton, *New Ideas in Law and Legal Education: Limited Equity Cooperatives and the Economic Value of Homeownership*, 43 WASH. U.L. & POL’Y 187, at 201.

² *Id.* at 204.

³ *Id.* at 202.

⁴ National Association of Housing Cooperatives, *Glossary of Terms*, <https://coophousing.org/resources/general-cooperative-information/cooperative-principles-and-values/glossary-of-terms/>.

⁵ *Id.*

⁶ *Id.*

⁷ Lawton, *supra* note 1, at 97.

⁸ *Id.*

⁹ Coalition for Nonprofit Housing & Economic Development (hereinafter “CNHED”), *A Study of Limited-equity Cooperatives in the District of Columbia*, Spring 2004, at 5.

¹⁰ *See* D.C. Law 2-54.

¹¹ CNHED, *supra* note 9.

¹² *See* D.C. Official Code § 47-802 (11) (“The term ‘limited-equity cooperative’ means a cooperative required by a government agency or nonprofit organization to limit the resale price of membership shares for the purposes of keeping the housing affordable to incoming members that are low and moderate income.”).

In 2004, the Coalition for Nonprofit Housing & Economic Development produced a comprehensive report on the LECs in the District of Columbia.¹³ Among the report's findings was that the LECs in the District have served as affordable housing and have prevented displacement.¹⁴ Additional specific findings included that approximately 75% of the LEC units created in the District were still operating as such at the time of the study, and that nearly 80% of the LECs researched were in stable or excellent condition.¹⁵ However, the report also found that many existing LECs faced challenges that could put their future financial stability in jeopardy, and that many LECs had suffered from a lack of support, training, and technical assistance.¹⁶

B. Changes to the Bill as Introduced

The Committee made several changes to the bill as introduced. First, the Committee changed the title of the bill to speak more directly to the particular type of cooperative the Task Force will be charged with examining. In the same vein, the Committee Print adds definitions of "cooperative" and "limited-equity cooperative" to clarify the Task Force's mandate.

The Committee Print also includes several changes to the membership of the Task Force. These changes were primarily based upon recommendations provided by witnesses during the November 16, 2017 public hearing on the bill. Importantly, the Committee increased the membership of LEC board members from one to three, with the stipulation that each board member represent a different LEC. The Committee Print also provides for an attorney member with significant experience representing LECs, an individual who has conducted significant research on LECs, and a representative from the District of Columbia Housing Finance Agency.

In addition to providing definitions and adjusting the membership of the Task Force, the Committee Print also tasks DHCD with providing administrative support for the Task Force. Finally, the Committee Print clarifies that the Task Force will dissolve upon submitting the required report to the Council.

C. Committee Recommendation

Following the passage of the Rental Housing Act, the District of Columbia government often looked to the limited equity cooperative model as a tool in the effort to preserve affordable housing. In recent years, however, the number of LECs being created has dwindled. In the face of the current affordable housing crisis, it is imperative that the District of Columbia government fully consider and utilize all the tools at its disposal to help preserve and create affordable housing options for its residents. The formation of an Affordable Cooperative Task Force would help the District to effectively and efficiently identify the needs of existing cooperatives and create a strategy to facilitate the formation of new LECs.

For these reasons, the Committee recommends the approval of B22-0099.

¹³ CNHED, *supra* note 9.

¹⁴ *Id.* at 14-17.

¹⁵ *Id.* at 12-13.

¹⁶ *Id.* at 18-22.

II. LEGISLATIVE CHRONOLOGY

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| February 7, 2017 | B22-0099 is introduced by Councilmember Bonds. |
| February 7, 2017 | B22-0099 is referred to the Committee on Housing and Neighborhood Revitalization. |
| February 10, 2017 | Notice of Intent to Act on B22-0099 is published in the <i>District of Columbia Register</i> . |
| August 4, 2017 | Notice of Public Hearing on B22-0099 is published in the <i>District of Columbia Register</i> . |
| October 6, 2017 | Revised Notice of Public Hearing on B22-0099 is published in the <i>District of Columbia Register</i> . |
| November 16, 2017 | The Committee on Housing and Neighborhood Revitalization holds a public hearing on B22-0099. |
| February 23, 2018 | The Committee on Housing and Neighborhood Revitalization marks up B22-0099. |

III. POSITION OF THE EXECUTIVE

The Executive testified in favor of at the hearing on B22-0099, as follows:

Polly Donaldson, *Director, Department of Housing and Community Development*, testified in full support of the bill. She stated that DHCD supports the purpose and composition of the Task Force, and would enthusiastically participate in its work.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee on Housing and Neighborhood Revitalization did not receive testimony or comments from any Advisory Neighborhood Commissions on B22-0099.

V. SUMMARY OF TESTIMONY

The Committee on Housing and Neighborhood Revitalization held a public hearing on B22-0099 on November 16, 2017. The hearing testimony summarized below reflects opinions based upon the introduced version. A copy of the witness list is attached to this report; the video recording of the hearings (available online at <http://dccouncil.us/videos/archive/>) is incorporated by reference. A copy of submitted testimony is part of the hearing record and is available through the Office of the Secretary.

The following witnesses testified at the hearing:

Lolita Ratchford, *Federation of Limited Equity Cooperatives in DC*, testified in support of B22-0099 and offered 8 recommendations to improve the bill. Ms. Ratchford stated that the Federation recommends amending the bill to reserve at least three seats for limited equity cooperative board members, as well as one seat for an individual who has researched limited equity cooperatives in the District of Columbia. She also voiced concerns about the inclusion of a management company representative, and stated that the Task Force's report should include recommendations on management companies. Ms. Ratchford also offered recommendations on procedural aspects of the Task Force, including the method of decision-making, the need for a plan for implementation of Task Force recommendations, and ensuring that meetings are open to the public.

Scott Bruton, *Vice President for Housing Policy, Coalition for Nonprofit Housing and Economic Development*, testified in support of B22-0099. Mr. Bruton stated that his organization had published a study in 2004 on limited equity cooperatives in D.C., and shared some of the study's findings. He stated that, according to the report, active and engaged boards and members were a stronger indicator of a cooperative's success than were its age and size. Mr. Bruton also stated that CNHED has co-hosted an annual Co-op clinic for the past five years, in collaboration with Mi Casa and the Latino Economic Development Center. He provided several recommendations for amending the bill as introduced, including increasing the number of cooperative representatives on the Task Force from one to three; including a lawyer with significant experience representing limited equity cooperatives; and adding a representative who has conducted research on limited equity cooperatives in D.C. Mr. Bruton also provided suggestions for additional recommendations the Task Force should include in the report, such as how existing limited equity cooperatives can improve their ability to become healthy and how to ensure that limited equity cooperatives and their members receive training, technical assistance, and management support.

Elin Zurbrigg, *Deputy Director, Mi Casa, Inc.*, testified in support of B22-0099. She provided several recommendations regarding the membership composition of the Task Force. Specifically, she recommended including three cooperative board members, each from a different District cooperative to give voice to the diverse needs of existing cooperatives. She also recommended that the Task Force include an attorney with experience working with tenant purchase situations and cooperatives, as well as one researcher with knowledge of the District's cooperatives. Finally, Ms. Zurbrigg stated that she hopes any recommendations coming out of the Task Force will respect the autonomy of limited equity cooperatives, and that implementation of recommendations will not undermine cooperative by-laws.

Talia Brock, *Tenant Organizing Manager, Latino Economic Development Center*, testified in support of B22-0099. She stated that much of the Center's work is focused on assisting tenants navigate the Tenant Opportunity to Purchase Act (TOPA). Ms. Brock stated that going through the cooperative conversion process is the most powerful option available to tenants under TOPA, as it permits them to take control of every aspect of their building. She stated that while she believes many cooperatives are thriving, increasing the availability of ongoing support and technical assistance would likely benefit buildings that undergo coop conversion. Ms. Brock then provided three recommendations. First, she recommended that three spots on the Task Force be

reserved from current coop board members, each from a different cooperative. Second, she stated that the most common issues she sees are with management companies, and recommended that the Task Force take up the issue of management. Finally, she stated that Task Force should come up with an implementation plan, in addition to recommendations. Ms. Brock also stated that she believes members of LEDC's working group would be valuable additions to the Task Force.

Eva Seidelman, *Staff Attorney, Neighborhood Legal Services Program*, testified in support of B22-0099. She stated that LECs should be an essential element of the District's strategy for creating and preserving affordable housing. Ms. Seidelman also provided three recommendations regarding the Task Force membership. First, she recommended that three spots be reserved for cooperative board members, each from a different cooperative. Second, the Task Force should include an attorney who has experience representing LECs. Finally, Ms. Seidelman recommended that the Task Force include a researcher. In closing, Ms. Seidelman stated that while LECs provide members with long-term stability and homeownership opportunities, they also have special needs related to financial and technical assistance and support.

Judy Sullivan, *Government Relations Representative, National Association of Housing Cooperatives*, testified in support of B22-0099. She stated that the National Association of Housing Cooperatives views housing cooperatives as the economical form of homeownership, and strongly urges the Council to support this effort to pave the way for District families to purchase affordable homes. Ms. Sullivan also provided three recommendations. First, she suggested that the task force include three cooperative representatives from three different cooperatives. Second, she recommended that the task force include an attorney with significant experience representing LECs. Finally, she recommended that the task force include one representative with significant experience researching LECs. Ms. Sullivan closed by providing brief descriptions of housing cooperatives and LECs.

Don Plank, *Vice President of Associate Banking Services, National Cooperative Bank*, testified in support of B22-0099. Mr. Plank stated that National Cooperative Bank (NCB) was chartered by Congress in 1978 and provides banking services to cooperatives and other member-owned organizations. He stated that it is the leading lender of housing cooperatives in the country, and that it has provided more than \$10.4 billion to housing cooperatives since 2000, including \$37.4 million to LECs in the District. Mr. Plank stated that NCB emphasizes the need for continuing education for cooperative board members, with an emphasis on governance, financial management, and contractor oversight, as well as education for all current and potential cooperative members.

VI. IMPACT ON EXISTING LAW

Bill 22-0099 does not amend existing law.

VII. FISCAL IMPACT

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer. On January 30, 2018, the Chief Financial Officer, Jeff S. DeWitt, concluded that funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan. Implementation of B22-0099 will result in a cost of approximately \$60,000 to the Department of Housing and Community Development. This is the estimated cost of hiring a consultant to manage the Task Force, provide administrative support, and produce the report. The agency has enough funds to absorb this cost and will not require additional funding.

VIII. SECTION-BY-SECTION ANALYSIS

- Section 1 States the short title of B22-0099.
- Section 2 Provides definitions of the terms cooperative and limited-equity cooperative.
- Section 3 Establishes the Limited-Equity Cooperative Task Force.
- Section 4 Describes the membership of the Task Force.
- Section 5 Describes the duties of the Task Force.
- Section 6 Provides the sunset date.
- Section 7 Adopts the fiscal impact statement.
- Section 8 Provides the effective date.

IX. COMMITTEE ACTION

On February 23, 2018, the Committee on Housing and Neighborhood Revitalization held an Additional Meeting to consider and mark-up B22-0099. The meeting was called to order at 1:47 p.m. A quorum was present, which included Chairperson Bonds, Chairman Mendelson, and Councilmembers Nadeau and Trayon White. Chairperson Bonds provided an opening statement summarizing the provisions of the proposed bill. Chairperson Bonds then moved for approval of B22-0099 and opened the floor for discussion.

Councilmember Nadeau thanked Councilmember Bonds for her leadership on this issue. She stated that limited-equity cooperatives are an important part of the affordable housing spectrum, and that providing existing limited-equity cooperatives with technical assistance is both much-needed and appreciated.

Chairperson Bonds then moved for approval of the Committee Print and Report for B22-0099, with leave for staff to make technical and conforming amendments.

Committee members voted as follows:

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| Committee members voting in favor: | Chairperson Bonds, Chairman Mendelson, and Councilmembers Nadeau and Trayon White |
| Committee members voting against: | |
| Committee members voting present: | |
| Committee members absent: | Councilmembers Silverman and Robert White |

The meeting was adjourned 2:17 p.m.

X. ATTACHMENTS

- A. B22-0099 as Introduced
- B. Secretary's Memo
- C. Public Hearing Notice
- D. Agenda and Witness list
- E. Public/Executive Testimony
- F. Fiscal Impact Statement
- G. Legal Sufficiency Determination
- H. Committee Print of B22-0099