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NOTES

THE DISTRICT OF COLUMBIA RENTAL HOUSING ACT OF 1977: THE EFFECT OF RENT CONTROL ON THE RENTAL HOUSING MARKET

Although there is no constitutional right to housing of a minimum quality¹ at reasonable prices, local governments have created such a right by enacting rent control legislation designed to permit only reasonable rent increases. Attempting to maintain rents at levels affordable by low-income tenants, the District of Columbia City Council enacted the Rental Accommodations Act of 1975² to combat a shortage of low-income housing, inflation in construction and operating costs of housing, and strong demand for the renovation of older, lower-cost housing for middle and upper income occupancy.³ While the imposition of rent control to protect low-income tenants is certainly a praiseworthy objective, the Rental Accommodations Act has been criticized by many for its failure to analyze completely the problem of low-income tenants and its discouragement of rental stock renovation and expansion. The D.C. City Council, ignoring many of these criticisms, reenacted rent control in the Rental Housing Act of 1977.⁴

The first rent control laws appeared during the post World War I housing shortages. Since 1919, many rent control statutes have been enacted at various times to meet temporary housing shortages.⁵ The

1. *Lindsey v. Normet*, 405 U.S. 56 (1972). The Court rejected the contention that the need for housing of a particular quality is a fundamental interest:

We do not denigrate the importance of decent, safe and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.

Id. at 74.

Since 1949, however, the official policy of the federal government has been to attain a decent home and suitable living environment for every family. This goal was established in the preamble to the Housing Act of 1949, 42 U.S.C. § 1441(a) (1970).

2. D.C. Code §§ 45-1631 to 1674 (Supp. IV 1977) (to be superseded by Rental Housing Act of 1977, Act No. 2-118, 24 D.C. Reg. 5334 (1977)).

3. J. BLACK, PROSPECTS FOR RENTAL HOUSING PRODUCTION UNDER RENT CONTROL: A CASE STUDY OF WASHINGTON, D.C. 7 (ULI Research Report No. 24, 1976).

4. Act No. 2-118, 24 D.C. Reg. 5334 (1977).

5. *E.g.*, Emergency Commercial Space Rent Control Law of 1945, ch. 3, 1945 N.Y. Laws; An Act Relative to Rent Control, ch. 434, § 1, 1953 Mass. Acts 338.

broadest of these was national regulation of rents during and after World War II.⁶ From 1953, when the last federal act terminated, until 1968, New York City was the only jurisdiction to have rent control. Several jurisdictions in Massachusetts established rent review boards in 1968 and 1969 to handle tenant grievances and complaints.⁷ In 1970, the state legislature passed an enabling act authorizing local jurisdictions to enact local rent control ordinances.⁸ In 1971, the federal government imposed a ninety day freeze on wages, prices, and rents followed by a milder form of control.⁹ The subsequent federal decontrol of rents, wages, and prices in 1973 precipitated the current wave of local rent controls.¹⁰ Although proponents claimed that rent controls were enacted to prevent rent gouging during emergency housing conditions, these second generation controls¹¹ are actually an attempt to provide housing of a minimum quality at reasonable prices for low-income families.¹²

6. Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23 (1942).

7. See *Fiscal Pressures on the District of Columbia: Hearing on Rent Control Before the Sen. Comm. on the District of Columbia*, 94th Cong., 2d Sess. 37 (1976) [hereinafter cited as *1976 Hearing*] (material submitted by Monica Lett, Center for Urban Policy Research, Rutgers University). Voluntary rent review boards were established in Boston and Brookline, Massachusetts in 1968 and 1969, respectively.

8. Massachusetts Rent Control Enabling Law, ch. 842, 1970 Mass. Acts 732.

9. President Nixon imposed the freeze pursuant to the Economic Stabilization Act of 1970, §§ 202, 203, 12 U.S.C. § 1904 (1970). The freeze was imposed in response to a 4.0% inflation rate and reduced the rate, for the three month freeze, to 1.9%. The freeze, imposed on August 15, 1971, was replaced by a system of wage and price guideposts with both mandatory standards and compliance required by law. This system was in effect until January 11, 1973, when it was modified to a predominantly quasi-voluntary form under which the standards were to be self-administered. E. SHAPIRO, *MACROECONOMIC ANALYSIS* 258 (3d ed. 1974).

10. *1976 Hearing*, *supra* note 7, at 37 (material submitted by Monica Lett). Following the lifting of wage and price guideposts in 1973, the cost of living rose abruptly. Consequently, on June 13, 1973, a second freeze, to run 60 days or less, was imposed. SHAPIRO, *supra* note 9, at 258-59.

11. These controls have been delineated as "second generation" rent controls because they are peace-time economic controls as opposed to war related emergency controls. See Blumberg, Robbins, & Baar, *The Emergence of Second Generation Rent Controls*, 8 *CLEARINGHOUSE REV.* 240 (1974) [hereinafter cited as Blumberg]. For a complete list of state and local rent controls, see W. KEATING, *RENT AND EVICTION CONTROLS: A SELECTED ANNOTATED BIBLIOGRAPHY* (1976). See generally, *1976 Hearing*, *supra* note 7, at 36-38 (material submitted by Monica Lett).

12. Mr. Howensteine of the U.S. Department of Housing and Urban Development attributes this use of rent controls to a developing concept of social housing for low-income groups with education and other services deserving government support, since low-paid workers with large families and tenants on fixed incomes cannot afford to pay rents for adequate housing. *1976 Hearing*, *supra* note 7, at 71 (statements of Irving Welfeld & J. Howensteine). Originally conceived as a short-run solution to a temporary housing shortage, rent control has become a means of reducing the disparity between the incomes of low-income tenants and rents for code-quality housing. *Id.* at 74 (statement of Dr. George Sternlieb).

In addition to the expressed goal of maintaining rents at levels affordable to low-income tenants, rent control attempts to maintain a minimum quality in housing by concurrent enforcement of housing codes.¹³ These goals, however, are inherently inconsistent, since landlords must have adequate rental income to maintain the minimum standards required by housing codes, and rent control by its very nature restricts rental income. State and local governments have attempted to balance these competing goals by permitting rent increases that reflect maintenance, repair, or other legitimate costs, while prohibiting increases that yield the landlord a high rate of return.¹⁴ Unfortunately, it is difficult to set a rate of return that both places rents within the reach of low-income families and attracts sufficient investment capital into the housing market to alleviate the low-income housing shortage.¹⁵

Prior to the 1970's, disinvestment¹⁶ in the housing market, as well as

When it first imposed rent control in 1973, the District was faced with the problem of providing an adequate supply of suitable housing for its large low and moderate income population in the face of decreasing financial assistance for this purpose from the federal government, heavy inflation in housing costs, and a decreasing ability to finance existing public service programs from tax resources. As Sterling Tucker, D.C. City Council vice chairman noted: "[T]he shortage of decent housing at moderate rents has reached crisis proportions in this metropolitan area." *Rent Control Act of 1973: Hearing on H.R. 4771 Before the Subcomm. on Public Health, Education, Welfare, & Safety of the Sen. Comm. on the District of Columbia*, 93d Cong., 1st Sess. 20 (1973) [hereinafter cited as *1973 Hearing*] (statement of Sterling Tucker, vice chairman, D.C. City Council).

13. The District requires a dwelling unit to be in substantial compliance with the Housing Regulations before any rent increase can be granted for the unit. D.C. Code § 45-1644 (Supp. IV 1977). For methods of enforcing code compliance, see *1976 Hearing*, *supra* note 7, at 62-64 (material submitted by Monica Lett).

14. The rate of return for rental housing property is generally found by dividing the net rental income from the housing by the landlord's capital investment or the fair market value of the housing. In the District, assessed value is used for capital investment in the calculation. D.C. Code § 45-1644 (Supp. IV 1977); *accord*, Rental Housing Act of 1977, Act No. 2-118, § 212(b). Net rental income is the excess of rental income over the expenses of maintaining the rental property. These expenses include property taxes, management fees, depreciation, and other operating expenses such as payroll, painting and decorating, repairs, utility costs, and insurance.

15. If the rate of return in the rental housing market is less than that in other investment markets of comparable risk, investment capital will flow to the other markets. Thus, in controlling the rate of return in the housing market, governing bodies exert influence on the flow of investment capital and on the long-term housing stock.

The low-income housing shortage is also worsened by the conversion of rental housing into condominiums. The District has restricted the landlord's right to convert his property by requiring that he give the current tenants an opportunity to purchase their units at a price which represents a bona fide offer of sale prior to selling the units to other purchasers. D.C. Code § 45-1661 (Supp. IV 1977); *accord*, Rental Housing Act of 1977, Act No. 2-118, §§ 601-604.

16. "Disinvestment" is used to indicate the outflow of investment capital from the rental housing market through reduced maintenance and repair on dwelling units.

the failure of the market to attract additional investment capital, was not serious because rent control was imposed only in response to temporary emergency conditions¹⁷ which caused a shortage of rental housing, an increase in rent costs, or both. Since these conditions were temporary,¹⁸ rent control and the resulting investment problems were temporary. In the 1970's, rent control has been imposed in response to the similar rental housing shortages and rising rents, but these recent problems have more permanent origins, such as increased maintenance and repair costs caused by rising labor and energy costs. Consequently, rent control and the resulting investment problems have acquired a permanency of their own.

In its reenactment of rent control in the Rental Housing Act of 1977,¹⁹ the D.C. City Council has recognized these problems and made substantive changes in the statute without sacrificing its original goal of providing adequate housing at prices affordable to low-income families. The purpose of this article is to interpret and evaluate these changes through an analysis of their legal implications and to discuss their potential impact on the D.C. rental housing market.

I. THE RENTAL ACCOMMODATIONS ACT OF 1975

In 1973, the United States Congress authorized the District of Columbia to implement rent control if, after public hearings, the City Council found either serious overcrowding or increasing rents.²⁰ In response to public hearings which established that a serious housing shortage existed

17. See Blumberg, *supra* note 11, at 242. Rent regulations must be based on an emergency to meet the prerequisite of the due process clauses of the fifth and fourteenth amendments. These conditions have generally been linked to wartime, and have existed temporarily since they are caused by a temporary situation. See *Block v. Hirsh*, 256 U.S. 135 (1921); *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170 (1921).

18. The concern of governing bodies is that during such conditions, landlords will become rent-gougers, extracting unreasonable rates of return from their investments. See Blumberg, *supra* note 11, at 246.

19. Act No. 2-118, 24 D.C. Reg. 5334 (1977).

20. District of Columbia Rent Control Act of 1973, Pub. L. No. 93-157, § 3, 87 Stat. 624 (1973). The Act authorizes the Council:

to determine whether a situation exists in the District of Columbia by reason of the shortage of leased or rental residences which is causing serious overcrowding or increasing rents which are contrary to the public health, safety, and general welfare of the tenants and the District of Columbia. If the Council makes such a determination then the Council is authorized to adopt such rules as it determines necessary and appropriate to regulate and stabilize rents in the District of Columbia.

Id.

in the District,²¹ the City Council enacted Regulation 74-20²² on August 1, 1974. The regulation rolled rents back to 112.32% of their February 1, 1973 levels when the federal wage, price, and rent controls lapsed,²³ but permitted rent increases to offset inflationary cost increases occurring since federal decontrol. Subsequent rent increases were permitted only on a showing by the landlord of serious financial hardship caused by the regulation.²⁴

Many of the features of Regulation 74-20 were incorporated in the 1975 Rental Accommodations Act. Under this Act, which became effective November 1, 1975, a maximum allowable rent was calculated for each dwelling unit and increases are allowed only under limited circumstances,²⁵ including a negative cash flow after consideration of debt service.²⁶ Although the Council established 8% as the maximum allowable rate of return,²⁷ the statute does not permit landlords to include debt service as an operating expense in calculating the rate of return.²⁸ This

21. See 1973 Hearings, *supra* note 12, at 20 (statement of Sterling Tucker, vice chairman D.C. City Council), 28 (statement of Ernest Withers), 43 (statement of Gilbert Hahn, Jr.), 69-70 (statement of Robert Stumberg). Mr. Stumberg reported that a study showed a vacancy rate in the rental housing market below 2% for the District when it was approximately 5.6% nationally. HUD defines a critically low vacancy rate as 3% for low and moderate income housing. HUD Handbook, RHA 7100.0 Ch. 6 (Housing and Relocation), § 3(c) (Oct. 1968).

Rent control, the energy crisis, a tightening of the mortgage market, and the national economy have all played a part in discouraging new building. DEVELOPMENT ECONOMICS GROUP, CENTER FOR URBAN POLICY RESEARCH, & KROOTH AND ALTMAN, RENT CONTROL IN THE DISTRICT OF COLUMBIA 71-74 (1977) [hereinafter cited as DEVELOPMENT ECONOMICS GROUP]; 1973 Hearing, *supra* note 12, at 58-59 (statement of John T. O'Neil, Building Owners & Managers Association). Mr. O'Neil notes the significant number of abandoned housing units in the District, citing the disparity between the low incomes of tenants in some areas of the District and the rents necessary to maintain the dwelling units at code quality as the cause of abandonment, as well as the movement to conversion of dwelling units to condominiums. *Id.*

22. 21 D.C. Reg. 289 (1974). This regulation was signed into law on August 1, 1974, and was extended on an emergency basis until its replacement by the Rental Accommodations Act of 1975.

23. Regulation 74-20, § 5(b), 21 D.C. Reg. 292 (Aug. 6, 1974).

24. *Id.* § 7(b), 21 D.C. Reg. at 296.

25. Rent increases are permitted for capital improvements and for changes in related services or facilities supplied by a landlord. D.C. Code §§ 45-1645 to 1646 (Supp. IV 1977).

26. D.C. Code § 45-1649(a) (Supp. IV 1977). A negative cash flow occurs when outgoing operating expenses exceed incoming rental receipts.

27. D.C. Code § 45-1644(a)(3) (Supp. IV 1977).

28. D.C. Code § 45-1644(a)(3) (Supp. IV 1977). If this were not the case, landlords managing heavily mortgaged properties would be able to pass debt service on to tenants, while those managing properties unencumbered by debt would charge lower rents for comparable units. Instead, landlords are forced to accept different rates of return for comparable units. Debt service, however, has been treated in this manner because it is the

reduces the landlord's actual rate of return, in some cases to nothing.

The Council further narrowed landlords' discretionary use of their property by requiring that they give tenants an opportunity to purchase their units before converting the property to a cooperative, condominium, or to some other use.²⁹ In addition, approval from the Rent Administration³⁰ was required before a landlord could rehabilitate a rental unit. The Administrator had to consider the impact of the rehabilitation on the tenants and determine that it would be in their interest before approval would be given.³¹ After it was rehabilitated, a unit could be leased at 125% of its previous rent.³² Aware of the dampening effect that these restrictions might have on renovating housing stock, the Council attached an expiration date to the Act of two years after its implementation.³³

Although the District's rent control legislation was enacted in response to a housing shortage, evidence presented at the congressional hearings indicates that the shortage was used as a pretext to provide adequate housing for low-income families.³⁴ This use of rent control is in direct conflict with decisions of the United States Supreme Court. In 1921 in *Block v. Hirsh*,³⁵ the Court upheld the District's first rent control law on

most difficult cost element with which to contend. It is an outlay of cash, of which failure to pay can result in foreclosure, and the amount of which varies from nothing to as much as 70% of gross income, depending on the years and terms of financing and/or refinancing. See DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 120, 128.

29. D.C. Code §§ 45-1661 to 1662 (Supp. IV 1977).

30. The rent administrator, appointed by the mayor, is the head of the Rental Accommodations Office and is responsible for administering the Rental Accommodations Act of 1975. D.C. Code §§ 45-1633 to 1634 (Supp. IV 1977).

31. D.C. Code § 45-1650 (Supp. IV 1977).

32. *Id.*

33. D.C. Code § 45-1631 § note (Supp. IV 1977). Faced with expiration of the Rental Accommodations Act of 1975 on October 31, 1977, without a replacement bill yet enacted, the Council enacted emergency legislation extending the life of the Rental Accommodations Act for 90 days. 24 D.C. Reg. 5334 (1977).

34. See note 12 *supra* (statement of Sterling Tucker, vice chairman, D.C. City Council). Evidence developed by the Development Economics Group supports this hypothesis. The group found that,

despite the incongruity of housing demand and supply, housing consumers in the District generally were in a more advantageous position at the onset of controls, when rents are compared to incomes, than they were in 1960. Moreover, they were far better off than the residents of other large central cities in 1974 and were on a par with adjacent, more affluent, neighboring suburbs . . . in Virginia and Maryland.

DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 111. Since the District's white-collar population comprised 56% of its total population in 1974, comparable to the national average, *id.* at 97-99, a large portion of the population probably had no need for rent control.

35. 256 U.S. 135 (1921).

the ground that the extreme shortage of vitally necessary housing was a matter that affected the public interest. The regulation of rents was justified to prevent rent gouging by landlords seeking to take advantage of the housing shortage created by the sudden influx of people to Washington during World War I. The Court subsequently retreated from the broad public interest rationale, justifying regulation of rents solely on the emergency police power.³⁶ However, it is sufficient that a rent control act be introduced with a declaration of emergency, since legislative declarations concerning emergency conditions are "entitled . . . to great respect."³⁷

The most vigorous criticisms of the Rental Accommodations Act of 1975 have been directed at the limitation that the Act places on a landlord's rate of return. Landlord groups and economists maintain that the 8% limitation discourages new investment in the District rental housing stock.³⁸ The limitation, coupled with the exclusion of debt service as an operating expense, encourages investors to place their funds in investments with the same risk as the housing market but with higher profit rates.³⁹

Tenants have criticized landlords for decreasing maintenance on dwelling units.⁴⁰ But the decreased maintenance has been caused by the inability of landlords to pass costs on to their tenants dollar for dollar. Under the Rental Accommodations Act of 1975, the only mechanism available to landlords for passing costs on to tenants, labeled a pass-through mechanism, was the hardship petition.⁴¹ Administration delays

36. *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922). In *Levy*, the Court expanded states' police power to control any business during an emergency. The District of Columbia Court of Appeals recently rejected landlord's claims that the District's rent control statute is an unconstitutional use of the city's police power. The court asserted that rent control is a valid means of dealing with the housing shortage. *Apartment & Office Bldg. Ass'n v. Washington*, 381 A.2d 588, 590 (D.C. 1977).

37. 256 U.S. at 154.

38. See notes 73-74 & accompanying text *infra*; 1973 *Hearing, supra* note 12, at 24-28 (statement of David L. Greenlee, Chairman, Residential Property Management Committee, Washington Board of Realtors), 58-67 (statement and material submitted by John T. O'Neil, Building Owners & Managers Association).

39. See DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 122. Investors also shift capital to investments with comparable rates of return but with less risk. For example, investors shifting capital from a rental housing market with a profit limitation of 8% could obtain a comparable rate of return with little risk by investing in United States or municipal bonds.

40. See 1976 *Hearing, supra* note 7, at 2-7 (statements of George Norrington & Merlin Beil), 7-10 (statement of Patricia Wells), 11-19 (statement of Flaxie Pinkett).

41. D.C. Code § 45-1649 (Supp. IV 1977).

caused a backlog of petitions⁴² and rendered the mechanism ineffective. Consequently, the condition of the District housing stock has been steadily deteriorating since Regulation 74-20 was enacted.⁴³

II. THE DISTRICT OF COLUMBIA RENTAL HOUSING ACT OF 1977

The Rental Housing Act of 1977, which became effective March, 1978, is a politically necessary extension of rent control⁴⁴ enacted in response to the same inflationary pressures that prompted Regulation 74-20 and the Rental Accommodations Act of 1975. The Rental Housing Act continues the 8% rate of return limitation and the exclusion of debt service as an operating expense.⁴⁵ Nonetheless, the statute attempts to correct the lack of a pass-through mechanism by giving landlords the option of a rent increase in the first year based on the number and type of utilities included in the rent or a rent increase granted after a hardship hearing.⁴⁶ The Rent Administrator may grant a hardship increase when, after consideration of debt service, a rental unit produces a negative cash flow. The increase, which may raise the landlord's rate of return above 8% (ignoring debt service), will be sufficient to create a .25% positive cash flow.⁴⁷ This treatment of debt service, identical with that of the Rental Accommodations Act of 1975,⁴⁸ makes it possible for the landlord to have little or no return on his rental investment. Realizing that increases in operating and maintenance costs may not conform to the limitations of the increases, the Rental Housing Act authorizes the Rent-

42. COMMITTEE ON HOUSING AND URBAN DEVELOPMENT, COUNCIL OF THE DISTRICT OF COLUMBIA, SECOND REPORT ON BILL 2-152 at 6 (September 22, 1977) [hereinafter cited as SECOND REPORT ON BILL 2-152]; DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 122. Because a permanent Rent Administrator was not appointed until April 11, 1977, a serious backlog developed and persisted. Because of the backlog, the City Council amended the Rental Accommodations Act of 1975 to permit the Rent Administrator to hire staff outside Civil Service requirements and to delegate authority to hear and make final decisions on petitions to hearing examiners employed by the Rental Accommodations Commission. SECOND REPORT ON BILL 2-152, *supra*, at 6-7.

43. See 1976 Hearing, *supra* note 7, at 5-6 (statements of George William Worrington & Merlin Beil) 9 (statement of Patricia Wells, Institute of Real Estate Management), 17 (statement of Flaxie Pinkett).

44. Following decontrol of the District's rental housing stock, the "first thing" District residents would do, according to Irving Welfeld of the U.S. Department of Housing and Urban Development, is hang the mayor. 1976 Hearing, *supra* note 7, at 93.

45. Act No. 2-118, § 212, 24 D.C. Reg. 5334 (1977).

46. *Id.* §§ 206(a),(c).

47. *Id.* § 212(c). When the Rent Administrator is making his decision, he must consider the degree of hardship which the request will place on the tenants of the rental unit.

48. See notes 26-28 *supra*.

al Accommodations Commission⁴⁹ to determine if annual rent increases are warranted and, if so, the amount of the adjustments allowable.⁵⁰ The adjustment, however, may not exceed the rate of change in the Consumer Price Index for the preceding twelve months.⁵¹

Restrictions on a landlord's ability to convert his property into a cooperative, condominium, or to another use are not changed by the Rental Housing Act of 1977.⁵² The statute, however, places increased limitations on a landlord's ability to rehabilitate his rental property. Prior to substantial rehabilitation or demolition of a rental unit, the landlord must pay relocation assistance to displaced tenants.⁵³ Following rehabilitation of a unit, under both the old and the new statutes, the rent may be raised to 125% of its previous level,⁵⁴ but under the Rental Housing Act of 1977, the tenant who was evicted has an absolute right to lease the unit at the higher rent.⁵⁵ Recognizing that the conditions which prompted the imposition of rent control are long-term, the District Council has expanded the life of the Rental Housing Act of 1977 to three years, ending on September 30, 1980,⁵⁶ rather than the two years to which the Rental Accommodations Act was limited.⁵⁷

Perhaps the major difference between the 1975 and 1977 Acts is the incorporation of a rent supplement program in the Rental Housing Act that provides a rent subsidy to qualifying low-income families. If the rent

49. The Commission consists of nine members appointed by the Mayor and is evenly divided between landlord, tenant, and neutral members. The Commission makes rules and procedures for the administration of rent control and decides appeals from the decisions of the Rent Administrator. Act No. 2-118, §§ 201-202.

50. *Id.* § 206.

51. The use of the Consumer Price Index indicates recognition of the role of inflation in rent increases and protects the landlord. It does not, however, solve the problem of the disparity between the low income of many tenants and the rents they must pay.

52. Compare Act No. 2-118, §§ 601-605 with D.C. Code §§ 45-1661 to 1662 (Supp. IV 1977). For a discussion of this restriction, see note 29 & accompanying text *supra*. Because rent control has reduced the profitability of rental property ownership, a number of apartment building owners have sold their rental properties to converters or have attempted to convert the buildings themselves. *Rental Accommodations Act of 1975: Hearing and Disposition on H. Con. Res. 399 Before the Subcomm. on Commerce, Housing, & Transportation of the House Comm. on the District of Columbia, 94th Cong., 1st Sess. 321 (1975)* [hereinafter cited as *1975 Hearing*] (material submitted by Development Economics Group). George Steinlieb complains that restrictions placed on conversions and sales of rental properties have reduced the attributes of ownership. *1976 Hearings, supra* note 7, at 74 (statement of Dr. George Sternlieb).

53. Act No. 2-118, §§ 801-803.

54. D.C. Code § 45-1650(a) (Supp. IV 1977); Act No. 2-118, § 704.

55. Act No. 2-118, § 707.

56. *Id.* § 906.

57. Rental Accommodations Act of 1975, Law 1-33, title IV, § 404, 1975 D.C. Code Legis. & Admin. Serv. 74.

exceeds 35% of the combined gross income of all persons residing in the rental unit,⁵⁸ the household qualifies for a rent supplement limited to 15% of the unit rent.⁵⁹ This rent supplement program is the Council's only serious attempt at reducing the rent/income disparity that low-income families face and at solving the shortage of quality housing for these families.

III. THE ACT'S POTENTIAL IMPACT ON THE SHORTAGE OF LOW-INCOME HOUSING

A. Rent Control

Except when rent control is imposed as an element of an overall system of wage and price controls, the Supreme Court has ruled that rent controls are justified only under temporary emergency conditions⁶⁰ when the demand for rental housing exceeds the supply. These conditions to date have been caused by the exigencies of wartime.⁶¹ The Court reconsidered the first District rent control statute in *Chastleton Corp. v. Sinclair*,⁶² and stressed that "[i]f about all that remains of war conditions is the increased cost of living, that is not in itself a justification" for rent control.⁶³ Nevertheless, proponents of rent control in the District have cited the protection of low-income tenants adversely affected by inflation as one of the major reasons for concluding that rent control is the most appropriate response to the rental housing shortage.⁶⁴ Although courts have consistently held that an emergency is a necessary prerequi-

58. Act No. 2-118, § 301(a)(3). The tenant must have resided in the rental unit for 12 consecutive months, the total assets of the household cannot exceed \$10,000, and no person residing in the rental unit can be receiving monetary assistance under the Aid to Families with Dependent Children Program or any other public assistance program which the Mayor specifies. *Id.* § 301(b)(1).

59. *Id.* § 302.

60. *Block v. Hirsh*, 256 U.S. 135 (1921). The Court warned, however, that the bar to evictions was non-confiscatory only as a temporary response to an emergency situation. "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change." *Id.* at 157.

61. New York City has been the exception, having had rent control since World War II. Park Adikes questions whether an emergency has existed for 25 years. 1976 *Hearing*, *supra* note 7, at 21 (statement of Park T. Adikes, Director, Savings Banks Association of New York State). *See* note 66 *infra*.

62. 264 U.S. 543 (1924).

63. *Id.* at 548.

64. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 115. Other reasons cited included: Rent control prevents arbitrary evictions and excessive rent increases in a tight housing market and the poor who cannot pay should not have to do without. *Id.* at 115. *See generally* 1973 *Hearing*, *supra* note 12, at 20 (statement of Sterling Tucker, Vice Chairman, D.C. City Council), 28 (statement of Ernest Withers, President, Washington Area Federation of Tenants Associations).

site to rent regulation,⁶⁵ they have given great deference to a legislative finding of emergency, no matter how pro forma it appears.⁶⁶ In *Chastleton*, the Supreme Court noted the respect due a legislative finding of emergency, but emphasized that "a Court is not at liberty to shut its eyes to an obvious mistake" when the validity of the law depends on the accuracy of the declaration.⁶⁷ Current rent control statutes might be defended on the ground that the temporary dislocation of supply and demand in the rental market has created a housing emergency for low-income tenants. This defense rests on the questionable presumption that low-income families will be able to afford equivalent housing at equivalent rents after the rental market returns to equilibrium. Neither the Rental Accommodations Act of 1975 nor the Rental Housing Act of 1977 are defensible on this basis because they are a response to permanent increases in energy and labor costs. The District rental statutes were enacted on a finding of emergency, but it is unlikely that the District could establish that an emergency existed when it enacted rent control or at any time subsequent.⁶⁸ The Council's purpose was simply to protect low-income tenants from cost-induced rent increases that they could not afford.

While stabilizing rents, however, the District's rent control program does not differentiate between low-income tenants and tenants able to pay rising rents, but presumes that all tenants are poor and all landlords rich.⁶⁹ This places the burden of providing quality housing on landlords alone when taxpayers as a group should bear the burden. In addition, rent control has been employed on the presumption that temporary excess rental housing demand has driven rents and rates of return to

65. *Stoneridge Apts., Co. v. Lindsay*, 303 F. Supp. 677 (S.D.N.Y. 1969); *Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972); *Lincoln Bldg. Assoc. v. Barr*, 1 N.Y.2d 413, 135 N.E.2d 801, 153 N.Y.S.2d 633 (1956); *Warren v. Philadelphia*, 387 Pa. 362, 127 A.2d 703 (1956).

66. Courts will generally not question these declarations of emergency. See *Amsterdam-Manhattan, Inc. v. City Rent & Rehabilitation Administration*, 15 N.Y.2d 1014, 207 N.E.2d 616, 260 N.Y.S.2d 23 (1965), *aff'g* 21 App. Div. 2d 965, 252 N.Y.S.2d 395 (Sup. Ct. 1964) (*mem.*), *aff'g* 43 Misc. 2d 889, 252 N.Y.S.2d 758 (Sup. Ct. 1964) (*mem.*) (upholding the existence of a housing emergency in New York City 20 years after it was declared). *But see Birkenfeld v. City of Berkeley*, 49 Cal. App. 3d 464, 122 Cal. Rptr. 891 (Dist. Ct. App. 1975). In *Birkenfeld*, the court struck down a municipal rent control ordinance finding that no emergency existed. Since the ordinance failed to include a definite termination date, the court concluded that it created a permanent emergency.

67. 264 U.S. at 547.

68. See note 34 *supra*.

69. At 1975 Hearings before the House Subcommittee on Commerce, Housing, and Transportation, material was cited "dispelling myths about profiteering landlords." 1975 *Hearing, supra* note 52, at 303 (material submitted by Cogan, Holt & Associates).

excessive levels, allowing rents to be stabilized without depriving landlords of fair rates of return.⁷⁰ Rent increases in the District were caused not by excess demand but by increased costs. Since these costs were rising simultaneously with rents, profits did not rise to excessive levels.⁷¹

A major criticism of rent control is that it is being administered in an environment in which all housing cost inputs are not controlled, as they were in the 1971 national ninety-day freeze on prices, wages, and rents.⁷² Currently, rents are controlled in the District and other metropolitan areas without parallel restrictions on costs. Unless a mechanism is incorporated in rent control to pass along all increases in maintenance and operating expenses, landlords' rates of return will decline. Economic theory, supported by a number of studies,⁷³ indicates that declining profit margins for landlords cause short-run housing disinvestment through deferred and reduced maintenance. This leads to deterioration and abandonment of rental units. The long-run effect of rent control is to discourage capital investment for the expansion and renewal of the housing stock and to worsen the housing shortage.⁷⁴

A landlord's rate of return can be maintained if a rent adjustment mechanism is included in rent control legislation to permit the landlord to pass increases in maintenance and operating expenses directly to tenants.⁷⁵ Various rent adjustment mechanisms are in use in different cities, all with advantages and disadvantages.⁷⁶ The District, however, had no adjustment mechanism in the Rental Accommodations Act, which has led to a continuous decline in landlords' rates of return.⁷⁷ In *Apartment*

70. 11 URB. L. ANN. 319, 329 (1976).

71. See 1973 Hearing, *supra* note 12, at 58, 60, 67 (statement of John T. O'Neil, Building Owners & Managers Association).

72. See note 8 *supra*; 1975 Hearing, *supra* note 52, at 264 (statement of Ernest T. Eiland, Chairman, D.C. Board of Equalization and Review).

73. 11 URB. L. ANN. at 329 n.51. See generally FRASER INSTITUTE, RENT CONTROL, A POPULAR PARADOX (1975). The essays by distinguished economists collected in this book contain a common message that in every country examined, the introduction and continuance of rent control, restriction, or regulation, has done more harm than good in rental housing markets. *Id.* at 63.

74. 11 URB. L. ANN. at 329. See generally 1976 Hearing, *supra* note 7, at 2-17 (statements of George William Norrington, Merlin Beil, Patricia Wells, & Flaxie Pinkett).

75. Although the rent adjustment mechanism will help to solve the problems of rent control, it will do nothing to lessen the rent/income disparity that low-income families face.

76. Typical rent adjustment methods include automatic pass-throughs, operating cost indices, and the individual building petition method. All have disadvantages, including administrative difficulties and time lags. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at ix, x.

77. *Id.* at 114.

& Office Building Association v. Washington,⁷⁸ Regulation 74-20 was challenged for failure to include a workable adjustment mechanism. The District of Columbia Court of Appeals ruled that "a workable [adjustment] mechanism is a necessary concomitant of a rent control program" and that the mechanism must provide prompt cost pass-through procedures. The court held that the provision for hardship petition to maintain an 8% rate of return did not constitute an adjustment mechanism.⁷⁹ The District government, however, ignored the court's order by enacting the Rental Accommodations Act of 1975, permitting rent increases only through hardship petitions to maintain an 8% rate of return or to create a positive cash flow. The Rental Housing Act of 1977, however, in addition to granting rent increases in 1978, permits the Rental Accommodations Commission to make annual adjustments not to exceed the change in the Consumer Price Index for the previous twelve months.⁸⁰ If this adjustment is made annually, it will fulfill the requirement of a workable adjustment mechanism. Since the Commission is insulated from the electorate,⁸¹ political pressures should not inhibit it from making annual increases. Any increase that is made will almost certainly be a compromise, since the Commission is equally balanced between tenant, landlord, and neutral members.⁸² The increases, however, must be made promptly to satisfy the "workable" requirement of *Building Association*.

Although the Rental Housing Act provides a more workable pass-through mechanism, the rate of return limitation of 8% is not changed. Rent control legislation must permit landlords to obtain a reasonable rate of return.⁸³ Otherwise, the controls are invalid as "a taking [of property] without due process of law."⁸⁴ The minimum rate of return that will not

78. 343 A.2d 323 (D.C. 1975).

79. *Id.* at 330-31, 332-33.

80. Unfortunately, the CPI is not a totally accurate representation of the landlord's cost increases because housing comprises only one-third of the index. Consequently, the greatest influence in the behavior of the CPI, and in rent adjustments in the District if made by the Commission pursuant to changes in the CPI, will be caused by the remaining two-thirds of its components—food, clothing, transportation, and a host of other diverse items. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 27.

81. The members of the Commission are appointed by the Mayor with the advice and consent of the City Council. Act No. 2-118, § 201(a).

82. *Id.*

83. *Block v. Hirsch*, 256 U.S. 135 (1921).

84. *Id.* at 156. The District of Columbia Court of Appeals, in November, 1977, rejected landlords' contentions that the District rent control statute denied due process. The court found that the 8% rate of return was not unreasonable and that the statute provides a number of mechanisms to pass on increased costs to tenants. *Apartment & Office Bldg. Ass'n v. Washington*, 381 A.2d 588, 591 (D.C. 1977).

be a deprivation of due process has been called the "line of confiscation."⁸⁵ Where that line is drawn at any time depends on the risk of the business, the inflation rate, and the prevailing interest rate.⁸⁶ For this reason, the District of Columbia Court of Appeals in *Karrick v. Cantrill* held that a rent-controlled apartment house must be allowed to earn a return at least equal to the prevailing mortgage interest rate.⁸⁷ Although local financial institutions are not currently making loans for rental housing, a representative of a local institution stated that if the institution were to make such loans, they would include 9.5%-9.75% interest.⁸⁸ If this rate marks the line of confiscation, the rental bills, by limiting returns to 8%, deprive landlords of property without due process of law.⁸⁹

The District's choice of 8% as the appropriate rate of return was an arbitrary choice based on political compromise.⁹⁰ The goal of rent control is to stabilize rents by eliminating abnormal profits created by excessive rental housing demand, but only to the point at which the rate of return is still adequate to encourage housing market investment.⁹¹

85. *Kennedy Bros. v. Sinclair*, 287 F. 972, 977 (D.C. Cir. 1923).

86. *Federal Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942); *Willcox v. Consolidated Gas Co.*, 212 U.S. 19 (1909).

87. 277 F. 578, 582 (D.C. Cir. 1922). The court concluded that any rate of return would be confiscatory unless it equaled the return on investments of comparable risk. The court approved the then recent New York Supreme Court case of *Hirsch v. Weiner* in which the New York court said: "The investor in real estate, if building of houses is to be encouraged, should at least get as much income from real property, with all its attendant trouble, as the investor in mortgages on realty and franchises." 116 Misc. 312, 321, 190 N.Y.S. 111, 116 (App. Term 1921).

88. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 78. Financial institutions are currently hesitant to lend on multi-family rental housing in the District, regardless of the neighborhood, building condition, or quality of management. One lending institution has stated that it will make no new loans on residential rental property while the District has a system of rent control. Another lender stated that even though new construction is exempted from rent control, the climate established by rent control is very discouraging and there is no guarantee that at a future date, rent control will not be imposed on a building exempt when constructed. *Id.* at 77.

89. Administrative delays in processing hardship petitions may result in constitutional difficulties. *See Housing & Dev. Administration v. Community Hous. Improvement Program, Inc.*, in which the New York City Civil Court said that "the administration of these [rent control] laws has resulted in wholesale deprivation of property without due process of law, as well as denial of equal protection." 83 Misc. 2d 977, 985, 374 N.Y.S.2d 520, 527 (Civ. Ct. N.Y. 1975).

90. The Council's original rent control bill limited a landlord's rate of return to 7%. Mayor Washington, in vetoing the original bill, insisted that the limitation be increased to 8% "to avoid a rate which can be held to effect the confiscation of property without compensation but also to provide reasonable incentives for the maintenance of existing housing and the provision of additional housing resources." 1975 *Hearing*, *supra* note 52, at 60 (report of the City Council, veto message of Walter E. Washington).

91. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 116.

Unfortunately, this point is impossible to determine with any degree of accuracy⁹² because of the difficulty of determining the basis for a fair rate of return.⁹³

The real problem with the rate of return limitation is its effect on the housing stock: An 8% return generally will cover debt service in the District, even in the most heavily mortgaged buildings, but is far below what is necessary to attract investment capital into the District,⁹⁴ since investments of comparable risk generally yield a minimum of 10-15% after consideration of debt service.⁹⁵ The City Council, in an attempt to provide an incentive for landlords to renovate low-income neighborhoods, exempted newly constructed dwelling units from rent control.⁹⁶ Nevertheless, financial institutions remain hesitant to lend on multi-family rental housing in the District because there is no guarantee that at a future date, rent control will not be imposed on buildings exempt when constructed.⁹⁷ No new construction or renovation will be undertaken without financing. Renovation is also discouraged by the limitations placed on substantial rehabilitation which have been expanded in the Rental Housing Act.⁹⁸ The relocation assistance that landlords must provide to displaced tenants, while protecting current tenants, discourages renovation of the rental stock.

In summary, the rent control approach to providing quality housing for low-income families is a direct interference with the supply side of the housing market and reduces the efficiency of that market.⁹⁹ Decontrolling the District rental market would restore the efficiency of the market and attract investment funds to eliminate the housing shortage. Unfortunately, decontrol is not a politically attractive solution for the City

92. *Id.* at 116, 125.

93. Rates of return may be based on market value of the property, replacement value of the property, assessed value of the property, or the owner's equity in the property. For a discussion of the various bases, see *id.* at 125.

94. *Id.* at viii.

95. *Id.* at 122. See note 39 *supra*. Specific examples of alternative investments of comparable risk are difficult, if not impossible, to give because rates of return and risks of specific investments vary with changing economic conditions and the needs and wants of society.

96. Rental Accommodations Act of 1975, § 202(a)(5), D.C. Code § 45-1642(a)(5) (Supp. IV 1977); Rental Housing Act of 1977, Act 2-118, § 205(a)(3), 24 D.C. Reg. 5334 (1977).

97. See note 88 *supra*.

98. See notes 53-55 & accompanying text *supra*.

99. Rent control perpetuates shortages, encourages immobility, deemphasizes consumer preferences for different types of housing, fosters dilapidation of housing stocks, erodes production incentives, and distorts land-use patterns and the allocation of scarce resources. See FRASER INSTITUTE, *supra* note 73, at 63.

Council.¹⁰⁰ In addition, decontrol alone would not provide adequate housing for low-income families.

A politically painless move that the District could make quickly is luxury decontrol.¹⁰¹ Apartments renting above a certain amount or constituting the top portion of all units in terms of rents would be decontrolled.¹⁰² This would aid in restricting the benefits of rent control to low-income tenants rather than including the affluent who can better afford rent increases. Further, the housing market is a filtering process whereby affluent tenants discard their current units for new housing, and the discarded units filter down to lower-income tenants.¹⁰³ Including affluent tenants under rent control lessens their desire for newly constructed units and the filtering process is slowed, worsening housing conditions for all tenants. Luxury decontrol would revitalize the filtering process. Arguably, while the District seeks to preserve low and moderate income housing, luxury decontrol would encourage substantial rehabilitation in order to raise rents to luxury levels, thereby reducing the supply of low and moderate income housing. The number of tenants, however, who can afford luxury rents is limited. Once the needs of these tenants are met, luxury rents will stabilize and the incentive to rehabilitate will lessen.

B. Subsidies

Since a negative cash flow is a consequence of the inability of low-income tenants to afford minimum quality housing,¹⁰⁴ a system of subsidies for low-income tenants would attain the goals of rent control while

100. See 1976 Hearing, *supra* note 7, at 81 (statement of Dr. George Sternlieb), 93 (statements of Irving Welfeld & J. Howensteine).

101. For a discussion of luxury decontrol, see DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 149-52.

102. Which apartments to exempt from rent control under luxury decontrol is a political decision to be made through the legislative process. The decision, nevertheless, will be based on considerations of tenant incomes at various rent levels, the scope of exemptions necessary to encourage new construction, and political costs and benefits to incumbent political figures.

103. DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 150.

104. Under the District's rent control statutes, landlords are permitted rent increases only when rental units are in substantial compliance with the District's Housing Regulations. Rental Accommodations Act of 1975, § 204(e), D.C. Code § 45-1644(e) (Supp. IV 1977); Rental Housing Act of 1977, Act No. 2-118, § 208, 24 D.C. Reg. 5334 (1977). In many cases, low-income tenants are unable to pay a rent sufficient to maintain a unit in this minimum condition, much less afford the landlord a reasonable return on his investment. See 1976 Hearing, *supra* note 7, at 14, 18-19 (statement of Flaxie Pinkett). An Apartment & Office Building Association survey, in support of this hypothesis, found that 96% of the buildings with negative cash flows are in the \$200 or less rent category. 1975 Hearing, *supra* note 52, at 557 (material submitted by Elizabeth Roistacher).

affecting the housing market in a more rational manner. The subsidy is paid directly to the consumer, who is responsible for obtaining housing.¹⁰⁵ As rents rise, additional investment capital would be attracted to the housing market and the housing stock would expand¹⁰⁶ until the demand is satisfied and landlords' rates of return fall to a level comparable to that of other investments of similar risk. In addition, housing subsidies enable the tenant to exercise a greater freedom of choice, subject only to the character, age, and location of the housing stock.¹⁰⁷ A program of housing subsidies could best be effectuated through the use of housing stamps, similar to food stamps in that the stamps would represent an obligation on the District's part to pay the landlord the face value of the stamp.¹⁰⁸

The rent supplement program of the Rental Housing Act of 1977 implements a rent subsidy plan in the District. Unfortunately, the program is restricted in its scope. In order to qualify, a household must spend more than 35% of its income for rent, and the rent must not exceed guideline rents based on the number of persons in the household.¹⁰⁹ No one residing in the household may be receiving assistance under the Aid to Families with Dependent Children program or any other public assistance programs which the mayor may specify, and the rental unit cannot

105. Under District rent control statutes, landlords are forced to subsidize households of affluent as well as low-income families living in controlled housing. *See generally* 1975 *Hearing, supra* note 52, at 114 (statement of Irving M. Kriegsfeld), 258 (statement of James G. Banks), 300 (material submitted by Cogen, Holt & Associates).

106. The following factors will inhibit an increase in supply: high interest rates, excessive construction costs, unavailability and high costs of land, and better return on investment in the suburbs than in the city. *See* Blumberg, *supra* note 11, at 246.

107. *See* D. MANDELKER, HOUSING SUBSIDIES IN THE UNITED STATES AND ENGLAND 12 (1973).

108. *See generally* DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 137-38. Mr. Welfeld finds it strange that the government makes up the disparity between income and the price of food with food stamps rather than controlling the prices at which food can be sold by supermarkets but yet controls the prices at which rental housing may be offered by landlords. 1976 *Hearing, supra* note 7, at 92 (statement of Irving Welfeld).

109. Act No. 2-118, § 301(d). A tenant is ineligible to receive rent supplements if the rent being paid exceeds:

Number of Non-Elderly or Non-Handicapped Persons Residing in Unit	Rent Being Paid Per Month
1	170
2	205
3	307
4	340
5	374
6	409

be operated or subsidized in any way by the District or federal governments.¹¹⁰ After a household has met these restrictions, a subsidy of not more than 15% of the rent is paid monthly to the household.

The traditional guideline has been that a household should spend no more than 25% of its income for housing.¹¹¹ Under the supplement program of the Rental Housing Act, this is not the controlling guideline because a family receiving a 15% rent subsidy can spend more than 25% of its income for housing. Restriction of the supplement to those apartments charging less than the guideline rents could render the program ineffective. If apartments are available only at rents above the guideline rents, the supplement program will have little effect in providing housing for low-income families. Furthermore, the program will be more difficult to administer than a housing stamp program because it requires the District to maintain dwelling unit rental records as well as tenant income records while a stamp program would require the maintenance of only income records.

The major criticism of a subsidy program is that it would be prohibitively expensive.¹¹² The District could bear the expense by decontrolling the rental housing stock and imposing a windfall gains tax on landlords.¹¹³ The proceeds from this tax as well as increased property tax revenues caused by the rise in property values would be used to fund the subsidy program. Luxury decontrol, however, is a more likely alternative politically, and will also increase property tax revenues by increasing property values in high rent areas.

In addition, the District should lobby for an expansion of the federal government's housing programs. The Housing and Community Development Act of 1974¹¹⁴ provides limited low-income housing subsidies. The Department of Housing and Urban Development (HUD) contracts

110. *Id.* §§ 301(b)(1), (3). This interfaces the rent supplement program with other District and federal public assistance and housing programs.

111. See DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 103.

112. *Id.* at 138. In addition, housing subsidies are criticized on the ground that, without rent control, much of the subsidy will be absorbed by the rent increases with little improvement in the housing situation of the tenant. This has not occurred to date in a HUD program entitled the Housing Allowance Program. Little or no visible effect on the overall housing market has been observed that places the blame for rent increases on the program. Price increases which did occur were determined to be part of general inflationary trends. *Id.* at A-18-19.

113. A windfall gains tax is a heavy tax on excess profits. What rate of profit is excessive would be a decision for the City Council to make. With profits limited, however, many of the detrimental effects of rent control, such as disinvestment, are still likely. See *id.* at 142.

114. 42 U.S.C. § 5301 (Supp. V 1975).

directly with the owner of existing new or rehabilitated units to pay the difference between the fair market rent for a unit and 25% of the tenant's income.¹¹⁵ HUD also administers a rent supplement program that enables low-income families to rent new and rehabilitated housing financed with HUD or Federal Housing Administration assistance.¹¹⁶ The supplemental payment is the difference between the fair market rent for the unit and 25% of the tenant's income.¹¹⁷ Because of their current limited scope, these programs are ineffective in alleviating the low-income housing shortage.¹¹⁸

III. CONCLUSION

Through the enactment of the Rental Housing Act of 1977, the District of Columbia City Council has made another attempt to provide adequate housing for low-income families. While recognizing this goal but not the inconsistency inherent in rent control as a means of providing adequate housing for low-income families, the Council did not respond to the danger of rent control. In continuing the limitations of the program imposed in the Rental Accommodations Act of 1975, the City Council ignored the effect of rent control of discouraging capital investment in the District's housing stock. The continuation of the 8% rate of return limitation exclusive of debt service in the Rental Housing Act indicates the Council's willingness to bow to political pressures rather than to face economic realities.

Incorporation of a rent adjustment mechanism and a rent subsidy program were necessary improvements in the rent control program. Incorporation of a rent adjustment mechanism, even one subject to arbitrary decisions by the Rental Accommodations Commission and to the shortcomings caused by being limited by the Consumer Price Index, is a response to the need of landlords to recoup their operating expenses that should slow disinvestment in the District's housing stock. Foremost of the changes, however, is the move to a rent subsidy in the rental supplement program. Even with its current restrictions, the program implicitly recognizes the inability of low-income families to afford ade-

115. 42 U.S.C. § 1437(f) (Supp. V 1975).

116. *Id.*

117. *Id.*

118. For fiscal years 1975 and 1976, the District was allocated § 8 funds for approximately 1200 units. In a city with a rental housing stock of 180,000 units, this represents less than a 1% increase in the housing stock, without allowance for losses from demolition or conversion to non-rental housing uses. See DEVELOPMENT ECONOMICS GROUP, *supra* note 21, at 139-41.

quate housing and initiates an economically rational and socially just method of providing housing.

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