

1 A PROPOSED RESOLUTION

2 _____
3 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
4 _____

5 To declare the existence of an emergency with respect to the need to amend the Rental Housing
6 Act of 1985 to enact a moratorium on the Mayor’s issuance of a Certificate of Assurance,
7 which guarantees a housing provider a property tax credit against any losses incurred as a
8 result of an expansion of the District’s rent stabilization program.

9 RESOLVED, BY THE COUNCIL DISTRICT OF COLUMBIA, That this resolution
10 may be cited as the “Certificate of Assurance Moratorium Emergency Declaration Resolution of
11 2020”.

12 Sec. 2. (a) The District’s modern rent stabilization laws date from 1973, and were
13 rewritten in 1975, 1977, 1980, and 1985. Over the years, the District has reauthorized rent
14 stabilization with the staunch belief that the availability of affordable housing is critical to
15 neighborhood stability, the maintenance of a diverse population, and a healthy District economy.
16 The Rental Housing Act of 1985 generally limits rent stabilized apartments to rental buildings of
17 5 units or more built before 1976.

18 (b) Within the Rental Housing Act of 1985 a provision for the Certificate of Assurance
19 (D.C. Code § 42–3502.21.). Certificates of Assurance may be issued by the District for any
20 building exempt from the Rental Housing Act if any law expanding rent stabilization or “any
21 future District of Columbia law limiting the amount of rent which a housing provider can
22 lawfully demand or receive from a tenant” is passed by a Council at any time thereafter.
23 Possession of a Certificate issued by the Mayor would entitle the affected housing providers to a
24 property tax credit equal to the difference in the stabilized rent that the housing provider

25 actually receives and the rent the housing provider could have received with a market rate rent.
26 This benefit applies as long as the property is used as housing accommodation.

27 (c) The legislative history of the Certificate of Assurance provision shows that little, if
28 any, public discussion occurred before the Certificate of Assurance provision became law.
29 When the Rental Housing Act was marked up in the Committee on Consumer and Regulatory
30 Affairs, the Certificate of Assurance was not a part of the Committee Print, nor was it discussed
31 in the Committee Report. The Certificate of Assurance made its first appearance in an
32 “Amendment in the Nature of a Substitute” introduced and passed at First Reading. The record
33 at Second Reading shows robust statements were made by councilmembers for and against the
34 Certificate of Assurance. Councilmember Carol Schwartz, who championed the provision,
35 wrote in memos and statements that the business and financial communities at the time did not
36 have confidence in the constancy of the District’s rent stabilization laws and that Certificates of
37 Assurance would function as a “permanent guarantee” of “permanent protection from rent
38 control” that would protect the developers’ interests. Among those statements was a concern by
39 Councilmember Hilda Mason that the Certificate of Assurance “... attempts to tie the hands of
40 future legislators” and was illegal and unenforceable. Despite these concerns, the Rental
41 Housing Act passed the Council unanimously. This record reveals that the 1985 Council
42 ultimately chose to bind future legislatures to a poorly-conceived, loophole-riddled provision
43 riddled that prioritizes the financial benefit of housing providers at the expense of future
44 democratic accountability and the housing security of future residents.

45 (d) This provision has sobering implications for the District’s ability to ever expand rent
46 stabilization. The fiscal impact of Certificates of Assurance, should rent stabilization ever be
47 expanded, is crippling. Chief Tenant Advocate Johanna Shreve testified on September 14, 2020

48 that a \$500 differential between market rate and stabilized rents in the 43 buildings that have
49 already submitted applications for Certificates of Assurance would cost the District upwards of
50 \$43,000,000 per year should the District expand rent stabilization without first addressing the
51 Certificate of Assurance provision. Additional Certificate of Assurance applications will
52 certainly be submitted by housing providers as the profile of this provision increases and as the
53 District considers passage of additional rent stabilization legislation. If the Certificate of
54 Assurance provision is not addressed, the estimated cost to the District will increase
55 exponentially.

56 (e) Of singular concern is the fact that the Certificate of Assurance provision does not
57 impose constraints on the tax credit that eligible housing providers may claim. The housing
58 provider is able to make their own determination as to the appropriate credit without input from
59 the District. If the Mayor disagrees with the housing provider on the appropriate credit, the only
60 remedy identified is to “sue the owner in the Superior Court of the District of Columbia to
61 recover any excess credit together with interest thereon at the rate of 18% per year from the date
62 that the Mayor filed to recover such excess credit.” Housing providers who owe real estate taxes
63 to the District are not prohibited from applying for, and receiving, the tax credits available under
64 the Certificate of Assurance provision.

65 (f) There are also significant loopholes in the law that would permit housing providers to
66 acquire Certificates of Assurance for pretextual purposes. The law states that housing providers
67 may apply for a Certificate of Assurance “upon issuance of a building permit.” The law does not
68 specify the type of building permit a housing provider must acquire to apply for a Certificate.
69 This lack of specificity functions as a loophole that allows housing providers to apply for a
70 Certificate without growing the District’s housing stock by constructing new housing or

71 substantially rehabilitating existing housing, as legislatively intended by the Rental Housing Act
72 of 1985. Additionally, the Certificate of Assurance provision does not specify that the building
73 permit must be for construction on the building containing rental units. Therefore, under the law,
74 a housing provider could apply for a Certificate after receiving a building permit for a cosmetic
75 improvement or to construct a new shed on the property. This loophole could be used by housing
76 providers who learn about Certificates of Assurance years after their development has been
77 constructed and want to avoid potential future impacts of expanded rent stabilization.

78 (g) The Council has recently learned that despite all of the advantages of the Certificate
79 of Assurance to housing providers, no Certificate has ever been issued to a housing provider by
80 the District in the past 35 years. This fact demonstrates a historical lack of developer buy-in to
81 the incentive and challenges assertions that developers who invested in the District of Columbia
82 after 1975 did so due to this provision. However, because of renewed interest in the Certificate of
83 Assurance, the Department of Housing and Community Development has received 43 new
84 requests in the past 10 months for Certificates.

85 (h) The District is acting to address the lack of specificity in the Rental Housing Act as
86 pertains to the process for housing providers to request a Certificate of Assurance. In order to
87 fulfill the law, the Department of Housing and Community Development is developing a
88 proposed form for the certificate to be reviewed prior to its first use. According to the provision,
89 the review is required to “ensure that the form will be legal, valid and enforceable, contain the
90 terms provided for herein, and otherwise further its intended purpose of stimulating the addition
91 of rental units to the District’s housing stock.” A review of the statute and the existing
92 regulations has also revealed that regulations are required to administer the assurance provided
93 by the certificate were it to be required. Once the form is complete, the Department of Housing

94 and Community Development will bring the matter to the Council as for consultation and
95 consideration.

96 (i) Therefore, in order to “untie the hands” of this Council, the “Certificate of Assurance
97 Moratorium Emergency Amendment Act of 2020” places an emergency moratorium upon the
98 issuance of any Certificates of Assurance by the Mayor. A moratorium is also necessary given
99 the COVID-19 public health emergency. The current economic crisis affects both tenants who
100 have experienced a loss of income and are unable to pay their rent in part or in full and landlords.
101 Tenants have expressed a pressing need for affordable rents, but that need cannot be considered
102 without first addressing the Certificate of Assurance provision. Housing providers, facing
103 revenue shortfalls, may appeal en masse to the District government for relief by applying for
104 Certificates of Assurance for pretextual purposes through one of the many identified loopholes in
105 the law. Therefore, the Council requires time to deliberate the wisdom and shortcomings of the
106 Certificate of Assurance provision. With a moratorium in place, the Council will have the
107 opportunity through permanent legislation to deliberate fully the wisdom of whether to expand
108 rent stabilization to more buildings and if so, to carefully decide where to draw the line
109 concerning which buildings should qualify for rent stabilization.

110 Sec. 3. The Council of the District of Columbia determines that the circumstances
111 enumerated in section 2 constitute emergency circumstances making it necessary that the
112 Certificate of Assurance Moratorium Emergency Amendment Act of 2020 be adopted after a
113 single reading.

114 Sec. 4. This resolution shall take effect immediately.