

# CITY OF CHARLOTTESVILLE

*"A World Class City"*

## Human Rights Commission

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April 4, 2021

Charlottesville City Council and City Manager

P.O. Box 911

Charlottesville, Virginia 22902

Dear Mayor Walker, Council Members, and Mr. Boyles:

I write today on behalf of the Human Rights Commission, Charlottesville DSA, Equity Center, Legal Aid Justice Center, Piedmont Housing Alliance, Charlottesville Low-Income Housing Coalition, Public Housing Association of Residents, and the Charlottesville Redevelopment Housing Authority to strongly urge you to allocate adequate funding to provide attorneys to tenants in eviction proceedings.

As you saw from the material shared by Charlottesville DSA at the most recent budget meeting, outcomes for tenants are dramatically different when they have lawyers than when they do not. Data from other states strongly supports the conclusion that tenants with lawyers are far more likely to remain housed if they have counsel.<sup>1</sup> That data also points to another conclusion: an investment in providing tenants lawyers is good for the economy and good for the city.

We are heartened by your willingness to commit meaningful funding towards legal defense for tenants facing eviction this budget cycle, as we know there is currently some money in the budget to provide funding for this purpose.

However, the scope of the eviction crisis that will follow the expiration of the eviction moratorium (and beyond) requires that you fully fund these efforts to give tenants in eviction proceedings a fair shot at remaining in their homes. As you no doubt know, evictions have devastating impact for families, particularly low-income families, and for communities.

The current \$117,000 appropriation would allow the Legal Aid Justice Center to only support roughly one in three low-income tenants facing eviction each year. That means approximately 200 tenants annually would face eviction without legal protection.

To ensure every low-income tenant facing eviction has an attorney, City Council must commit at least \$460,000 to its eviction defense program to cover legal aid attorneys and an outreach worker. Additional funding—for a program coordinator or other staff—could improve program outcomes, too.

The estimate for cost is based on several assumptions. There are approximately 700 evictions in Charlottesville each year, according to pre-pandemic data pulled from the Virginia Court Data Project.

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<sup>1</sup> See Addendum, National Coalition for the Civil Right to Counsel, "Effectiveness of /need for right to counsel for eviction cases," available at <http://civilrighttocounsel.org/>, April 2, 2021

According to John Pollock, Coordinator of the National Coalition for a Civil Right to Counsel, in roughly 50 percent of evictions in the first year of a RTC program, the tenant does not respond to efforts to appoint counsel. Mr. Pollock also shared that many cities have adopted an income cutoff to determine eligibility to free counsel. In most cities that have adopted an income cutoff, that threshold has been set at 200% of the poverty guideline--often also the threshold for legal aid services. In other cities, roughly 80 percent of tenants in eviction proceedings are below that standard income threshold and thus eligible to be appointed counsel. If those numbers hold true for Charlottesville, that leaves approximately 300 tenants in need of representation in the first year. Those numbers should increase after the first year, as outreach efforts and publicity push the default rate lower.

According to the Legal Aid Justice Center, a legal aid attorney can manage approximately 100 cases each year. That suggests LAJC would need to hire three full-time legal aid attorneys to administer this program. Each attorney would cost approximately \$120,000 per year, including benefits. The current \$117,000 allocation—which City Manager Boyles suggested was a "placeholder" figure at a past Budget Session—would fund the salary and most benefits for one attorney, who could handle approximately one-third of the 300 annual eviction cases. The Legal Aid Justice Center has agreed to consider hosting this program provided that (i) the program is financially sustainable, and (ii) LAJC retains appropriate control over how their staff is deployed.

For a more detailed cost analysis specific to Charlottesville, City Council might consider consulting with Stout Risius Ross, LLC, an advisory firm specializing in right-to-counsel cost-benefit analyses.

In addition, we ask the Council to commit to providing representation in subsidy termination cases as well. That category of cases would include an administrative proceeding to terminate a tenant's Section 8 voucher. The loss of such a subsidy would have profound ramifications for a tenant and their family for many years to come. Other cities that have provided a right to counsel in eviction proceedings have also covered subsidy termination cases. Charlottesville should do so, as well.<sup>2</sup>

We appreciate that Council is willing to consider this proposal this year. Please recognize the urgency of the need for this program and fund it fully. We are eager to continue our collaboration to execute such a program successfully.

Sincerely,



Mary Bauer  
Chair, Human Rights Commission

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<sup>2</sup> We do not have data from the Charlottesville Redevelopment and Housing Authority on how many Section Eight voucher holders are cut off each year, though we would be eager to work with City Council to determine the legal aid capacity it would require to assist tenants in these profoundly important hearings.



## **Effectiveness of / need for right to counsel for eviction cases**

*Last modified 4/1/21*

### **Results from enacted right to counsel programs**

Of the eight cities to enact a right to counsel, three have been in place long enough to have collected data about the impact:

- [New York City](#), the first to provide such a right and the city with the most evictions in the country, has seen 86% of tenants remaining in their homes while the eviction filing rate has dropped by 30%. Additionally:
  - Representation has risen from 1% to 38%;
  - Evictions have dropped 41%, including 15% drop in 2019 alone; ○ Eviction filings have dropped by 30%, including 20% drop in 2019 alone; ○ Default judgments have dropped 34%;
  - Requests by tenants to bring their cases back to the Housing Court calendar on an emergency basis in order to dispute a judgment, request additional time, or raise legal issues previously not addressed have dropped by 38%.
  - New York City housing court judges have [testified](#) that the right to counsel has made their courts more efficient and just.
- [San Francisco](#), which enacted a right to counsel in 2018, saw a 10% filing rate drop in just one year, and two-thirds of all represented tenants are staying housed.
- [Cleveland](#), which enacted a right to counsel in 2019 and launched implementation in summer 2020, released a report on the first six months of the program that found 93% of those represented avoided eviction or involuntary move, 83% who were seeking additional time to move were able to get it, and 89% of those seeking to mitigate damages were able to do so.

### **Results from past studies**

- A [Massachusetts pilot](#) examining tenants who received full representation to those who were given day-of legal assistance found that the full representation tenants stayed in their units twice as often, saved four times as much on rent, and paid nothing to their landlords on average, compared to over \$600 for the tenants with limited legal assistance.
- A [California study](#) found that tenants with full representation stayed in their units three times as often as those receiving limited legal assistance or no legal assistance, and none of the full representation tenants paid their landlords anything, compared to over 50% of tenants with

limited assistance. When tenants did have to move, the fully represented tenants were given twice as long to do so.

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- In [Hennepin County Minnesota](#), represented tenants were twice as likely to stay in their homes, received twice as long to move if necessary, and were four times less likely to use a homeless shelter than those without counsel. The rate of tenants who won or settled their cases was 96% for those with counsel but only 62% for those without counsel. Most dramatically, 78% of represented tenants left with a clean eviction record, compared to 6% of unrepresented tenants.
- A [Denver study](#) found that the small number of tenants able to secure counsel remained in their homes 70-100% of the time, compared to only 32% of unrepresented tenants.
- In D.C., pilots established by the Expanding Access to Justice Act found that tenants without counsel were twice as likely to be found in breach of lease, three times as likely to be subjected to writ of possession, and seven times more likely to wind up with consent judgment (which is significantly less favorable than a settlement agreement).
- In [Chicago](#), a data analysis revealed that tenants represented by legal aid attorneys avoided eviction 78% of the time, compared to only 38% for unrepresented tenants.
- [Stout](#), a financial analysis company that has produced extensive right to counsel reports in a number of cities, has consistently found that a right to counsel leads to more than 90% of tenants avoiding disruptive displacement. And Stout has also consistently found that a right to counsel saves millions more than it costs up front. For instance, in Philadelphia, they found that a \$3.5 million investment in right to counsel would yield \$45 million in savings.

### **Other justifications for right to counsel**

It is impossible to overstate how critical the right to counsel is, both before and during COVID-19. Eviction cases implicate virtually every basic human need a family can have: safety, mental and physical health, child custody, employment, education, and so on. Yet the massive imbalance of power between landlords and tenants in the courtroom has led to the evictions process becoming a pro forma procedure devoid of due process that nearly always yields the same result regardless of the facts or law. In Baltimore, where only 1% of tenants had representation prior to the passage of a right to counsel, a [study](#) found that 80% of tenants had a potential defense to eviction but only 8% actually successfully did so without representation. And during COVID-19, peoples' lives are literally at risk when they lose their housing, because [studies](#) have shown evictions during the pandemic spread disease and cause death. Plus the COVID-19 protections put into place by the federal and state governments, such as moratoria and rent relief, only become fully effective with the provision of counsel. Many tenants without counsel will be unable to secure rental assistance, or will secure it only to have their landlords evict them anyway, or will not know that the eviction violates a moratorium. The right to counsel is what makes these other protections meaningful.

Additionally, due to decades of inequalities in our housing system, communities of color and [lowincome women](#) feel the impacts of eviction the most — Black women in particular. [Black women](#) are more than twice as likely to have evictions filed against them as white people. Less than half of Black and Latinx families [own their homes](#) compared to 73 percent of white families. Black and

Latinx tenants are also [twice as likely](#) as white tenants to report that they have little to no ability to make rent each month. Longstanding systemic income and wealth inequality also put communities of color and women at [higher risk of eviction](#).