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**Testimony of Eleni P. Christidis  
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**Before the Committee of the Whole  
Council of the District of Columbia**

**Public Hearing Regarding:**

**Bill 24-0947  
“Proactive Inspection Program Act of 2022”**

**November 3, 2022**

Legal Aid of the District of Columbia<sup>1</sup> submits the following testimony regarding Bill 24-0947, the “Proactive Inspection Program Act of 2022.” Legal Aid supports passage of the Proactive Inspection Program Act of 2022 but recommends amendments and careful oversight of the rule making and implementation process to ensure the program achieves its objective of significant housing code compliance and an enhanced quality of life for District renters and their families.

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<sup>1</sup> Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org).

Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Our attorneys and staff routinely hear from tenants experiencing the physical and mental health impacts of living with conditions such as mold; rodent, cockroach, and bedbug infestations; lack of heat or hot water; sewage overflows; peeling paint; and broken or inoperable appliances, outlets, windows, doors, and locks. Tenants living in poor housing conditions describe sleepless nights worrying about mice crawling into their infants' cribs, the loss of employment income because of housing conditions-related illness and doctor visits, and the anguish they feel wondering if their home is making their child sick. DCRA's well-documented failures<sup>2</sup> as the District's housing code enforcer created an atmosphere of desperation for tenants, suffering under poor conditions with little recourse, and of impunity for landlords, allowed to ignore complaints and let buildings fall into disrepair.<sup>3</sup>

For years, Legal Aid has testified about the need to legislate a proactive inspections program based on national best practices in advancing healthy housing.<sup>4</sup> DCRA's own proactive inspections program, launched in August 2010, was never codified into law and has shifted its basic parameters several times over the years. And Legal Aid found that

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<sup>2</sup> See, e.g., Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* (Sept. 24, 2018); Alvarez & Marsal Disputes & Investigations, LLC, *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD* (Oct. 25, 2019).

<sup>3</sup> For example, in past testimony to this Committee, Legal Aid shared the story of tenants living in two rent-stabilized multifamily buildings in Columbia Heights in deteriorated condition from years of landlord neglect. Both properties were inspected and fined by DCRA in the last few years, but neither was flagged for re-inspection to monitor mold and other conditions that persisted even after DCRA's involvement at the property.

<sup>4</sup> See, e.g., Written Testimony of Shavannie Braham and Beth Mellen Harrison, Performance Oversight Hearing on the Department of Consumer and Regulatory Affairs (March 8, 2018), available at <https://www.legalaiddc.org/media/675/download>; Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on "The Department of Consumer & Regulatory Affairs: What Issues Should the Committee Pursue?" (Feb. 6, 2019), available at <https://www.legalaiddc.org/media/645/download>; Written Testimony of Beth Mellen Harrison, Performance Oversight Hearing on the Department of Consumer & Regulatory Affairs (March 3, 2020), available at <https://www.legalaiddc.org/media/561/download>; Written Testimony of Beth Mellen and Eleni P. Christidis, Budget Oversight Hearing on the Department of Buildings (March 24, 2022), available at <https://www.legalaiddc.org/media/273/download>.

properties subject to proactive inspections were given certificates of compliance, despite obvious and serious housing code violations at the property.<sup>5</sup>

The Proactive Inspection Program Act of 2022 represents a watershed opportunity to shape the future of housing code enforcement in the District under the Department of Buildings (DOB). But, to truly leave the vestiges of DCRA behind, the Act should require DOB to prioritize properties at the greatest risk for substandard housing conditions and center tenants as the agency’s core constituents and stakeholders. While we support the bill, we recommend amendments to help the bill accomplish this objective.

Specifically, Legal Aid recommends:

- Giving greatest weight to health-based risk factors and demographic factors in the points-based Tier classification system.
- Requiring more frequent inspections of Tier 1 and Tier 2 properties, in line with other jurisdictions.
- Ensuring that the percentage of units sampled at a property does not limit DOB from inspecting additional units, or vacant units, particularly where indicators of more widespread problems are observed.
- Requiring outreach to tenants and ensuring notices and consent forms are provided in languages other than English as a matter of course.
- Clarifying that tenants may verbally consent to and affirmatively request inspections of their units, even if not pre-selected by DOB.
- Requiring that agency inspectors, not contractors, perform all proactive inspections.
- Adding additional protections for tenants who may be temporarily or permanently displaced due to landlord violations; and
- Requiring proactive inspections data to be published online in an easy-to-access format.

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<sup>5</sup> See, e.g., Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on “The Department of Consumer & Regulatory Affairs: What Issues Should the Committee Pursue?” (Feb. 6, 2019), available at <https://www.legalaiddc.org/media/645/download>.

## **The Tiered Enforcement Approach Should Prioritize Health- and Demographic-Related Risk Factors**

A key advantage of a data-driven proactive inspection program is that it can catch problem properties overlooked by the existing complaint-based system.<sup>6</sup> A past Director of DCRA, Linda Argo, testified in 2009 that “a complaint-based system is no longer sufficient if we want to maintain safe housing conditions for all residents, especially our most vulnerable.”<sup>7</sup> Legal Aid supports the Act’s proposed points-based classification system for this reason. Yet, to ensure that proactive inspections are successful in ensuring safe housing for all District residents, the Act should specify that health- and demographic-related risk factors be given the greatest weight.

People with low incomes who are members of racial and ethnic minority groups are disproportionately at risk of living in dilapidated and deteriorating housing, leading to increased exposure to asthma triggers – particularly mold, mice and other pests, and insufficient heat.<sup>8</sup> Repeated hospitalizations for childhood asthma are correlated with children residing in the census tracts with the highest proportion of crowded housing conditions, largest number of racial minorities, and highest neighborhood-level poverty.<sup>9</sup> A study published in 2022 of housing code enforcement in Boston, Massachusetts concluded that asthma triggers associated with housing conditions were more common, and government responses to correct conditions significantly slower, overdue, and less

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<sup>6</sup> See ChangeLab Solutions, “A Guide to Proactive Rental Inspections Programs,” at 5-6, available at [https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs\\_Guide\\_FINAL\\_20140204.pdf](https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs_Guide_FINAL_20140204.pdf).

<sup>7</sup> Testimony of Linda Argo, Public Roundtable on the Department of Consumer and Regulatory Affairs Proactive Housing Inspections Program (Dec. 16, 2009), available at [https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/DCRA%20520Proactive%2520Housing%2520Inspections%2520Program%2520%252012\\_16\\_09.pdf](https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/DCRA%20520Proactive%2520Housing%2520Inspections%2520Program%2520%252012_16_09.pdf).

<sup>8</sup> Evan Lemire, et al., “Unequal Housing Conditions And Code Enforcement Contribute To Asthma Disparities in Boston, Massachusetts,” *Health Affairs* (April 2022), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01403>.

<sup>9</sup> David E. Jacobs, “Environmental Health Disparities in Housing,” *American Journal of Public Health* (Nov. 28, 2011), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2010.300058>.

likely to result in a repair, in both racially diverse and low-income neighborhoods of Boston.<sup>10</sup> Legal Aid appreciates that the Act tacitly acknowledges the correlation between certain demographic features (e.g., “percentage of households with extremely low household income greater than the District average”) and poor housing conditions. Additional consultation with experts could help improve the definition of “vulnerable populations” so that it reflects characteristics demonstrated to be most strongly correlated with poor housing conditions.

Moreover, rather than leave the relative point-weight assignment entirely to DOB’s discretion, the Act should specify that of the eight factors currently listed, location within an area of vulnerable populations and above-average incidence of child lead blood levels should be given the greatest weight. Location within an area with an above-average incidence of child asthma rates should be added as an additional risk factor and given a similarly heavy weight.

### **The Act Should Require More Frequent Inspection of Properties and Greater Transparency Around Property Reclassification**

In general, Legal Aid supports the three-tiered classification system as a rational way to allocate limited resources to address the highest-need properties and the practices of “repeat offender” landlords. It is our hope that such a system will provide incentives for compliance.

Under the current Act, however, Legal Aid has concerns that the eight- and four-year reinspection and reclassification cycle for Tier 1 and Tier 2 properties may be too long and allow certain properties to go overlooked (particularly if the points-based classification system fails to adequately weigh health- and demographic-related risk factors when classifying properties).

Eight years significantly exceeds the reinspection frequency in most jurisdictions with a proactive inspections program. For example, Los Angeles and Baltimore County both require reinspection every 3 years; Boulder, Colorado requires inspections every 4 years (upon license renewal); Ann Arbor, Michigan every 2.5 years; Kansas City, Missouri every 2 to 4 years (depending on compliance); Grand Rapids, Michigan every 2, 4, or 6 years (depending on compliance); and Boston every 5 years for most properties.<sup>11</sup>

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<sup>10</sup> Lemire, *supra* note 8.

<sup>11</sup> ChangeLab Solutions, at 11, *supra* note 6.

One solution would be to increase the inspection frequency for Tier 1 properties to 5 years and for Tier 2 properties to every 3 years. This is more likely to incentivize landlords to perform routine maintenance on a more regular basis between inspection cycles.

The Committee should also consider what specific “triggers” will prompt a property’s reclassification to a lower tier. If this decision is left entirely to DOB, then DOB’s annual reporting requirement must include disclosure of any changes to DOB’s methodology of classifying properties. And, in addition to reporting the number of properties reclassified each year, DOB should be required to report *how* and *why* a property was reclassified (i.e., from which Tier to which Tier, the objective criteria relied on, and whether any discretion was exercised to deviate from those criteria).

### **The Sampling of Units Should Act as a Baseline, Not a Ceiling**

In the past, DCRA treated its random selection of units for proactive inspection more like a ceiling by refusing to inspect units beyond its pre-selected list for a given building.<sup>12</sup> Other jurisdictions, such as Seattle, take the approach that the sample percentage of units to be inspected operates as a baseline, with a certain number of violations per unit and/or a percentage of failed units per property triggering inspections of more units at the property, up to 100% of the units.<sup>13</sup> For example, if a visual inspection of the exterior structure of the property reveals problems with the roof, this automatically triggers inspection of the units likely affected by that condition. If an individual unit has structural deficiencies, like holes in the floor or a plumbing leak, this automatically triggers inspection of the units that are likely to be affected (i.e., the units adjacent to or below where the condition is observed).

The unit sampling requirement should also explicitly include the inspection of unoccupied units, as these units can harbor infestations and mold that then affect occupied units.

### **The Proactive Inspection Program Should Work in Tandem with Complaint-Based Enforcement**

The Act seems to already contemplate that the complaint-based and proactive inspections programs will operate hand-in-hand. Based on Legal Aid’s experience

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<sup>12</sup> See Written Testimony of Beth Mellen Harrison, Performance Oversight Hearing on the Department of Consumer and Regulatory Affairs (Feb. 20, 2015), *available at* <https://www.legalaiddc.org/media/796/download>.

<sup>13</sup> See Seattle Municipal Code § 22.214.050.G.

working with tenants, however, it bears repeating that a “pass” on a proactive inspection should *not* be an impediment to subsequent complaint-based inspections, either for individual units or entire buildings.

Similarly, we reiterate our recommendation – implicit in this Act’s requirement that DOB annually report data on proactive inspections’ abatement efficacy, enforcement escalation, and collections – that DOB follow up on violations found during proactive inspections in the same way as a complaint-based inspection, including referring landlords to enforcement when violations are not abated during the proscribed time period.

### **To Be Effective, the Proactive Inspections Program Must Gain Tenants’ Trust**

Ensuring that property inspections result in high quality data and high levels of tenant participation requires an outreach campaign and notice procedures that meet tenants where they are. Utilizing agency inspectors (as opposed to private contractors) will improve data quality and enhance trust. Legislative planning around how to protect tenants found to be living in illegal units will also ensure that the program is successful in achieving its stated goal without the unintended negative consequence of tenant displacement.

#### Outreach Efforts Should Focus as Much on Tenants as on Landlords

The Committee should require that a percentage of DOB’s planned communications efforts include outreach to tenants, tenant associations, resident advisory councils, and tenant organizers.

Tellingly, DCRA's self-identified “target audiences” of stakeholders for communicating its transition to DOB included no tenant groups.<sup>14</sup> The omission is emblematic of an agency mindset that sidelines tenants from every stage of enforcement. Currently, DOB has no established process for directly notifying tenants of inspections or of subsequent enforcement actions, either through mail or email. Failure to involve tenants means that DOB is often missing critical information about unabated conditions in its current enforcement efforts. Continuing DCRA's pattern of treating tenants as merely incidental to the enforcement process, rather than central to it, will ensure a similarly ineffectual outcome.

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<sup>14</sup> See Department of Buildings Transition Plan, Version 2.0 (Feb. 2022).

The Committee and DOB should leverage recent investments in eviction diversion efforts and work with the six community-based organizations funded by Access to Justice grants. These groups, in conjunction with Legal Aid and other tenant advocates, are deploying a model of intensive community outreach targeted toward neighborhoods and buildings with tenants at high risk of eviction and displacement. We are eager to partner with DOB, fold them into this eviction diversion effort, and help ensure successful implementation of a proactive inspections program.

#### Notices of Inspection and Consent Forms Should Be Inclusive of Limited- and Non-English Proficient Tenants

One of the key risk factors in the Act is if a property is located within an area with a higher-than-average percentage of vulnerable populations. As described by the Act, these areas may include people who are foreign-born or people who use English as a second language. To ensure tenant understanding and participation, and consistent with the requirements of the Language Access Act, notices of inspection and inspection consent forms should be provided in other languages as a matter of course.<sup>15</sup> To ensure that DOB provides notices and consent forms in non-English languages like Spanish and Amharic, the Act should specify that both forms are “vital documents” under the Language Access Act.<sup>16</sup>

#### Consent Requirements Should Be Flexible and Allow for Verbal Consent

As currently drafted, the Act contemplates that the Department will obtain written consent forms from pre-selected units ahead of time. Legal Aid supports the Department’s selection of random units (as opposed to a landlord’s selection of units for inspection). However, to maximize tenant participation and minimize delay or rescheduled inspections, the Act should make clear that tenants may verbally consent or opt-in to an inspection, even if their unit was not previously identified as a pre-selected unit. In the past, Legal Aid observed that DCRA’s proactive inspectors refused to inspect

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<sup>15</sup> See Office of Human Rights, Language Access Information Portal: Requirements and Resources for Covered Entities with Major Public Contact, *available at* <https://ohr.dc.gov/page/LAportal/coveredentity> (“A document is considered vital if it contains information that is critical to accessing [a] covered entity’s services, or if conveying the information is required by law. ... Vital documents include, but are not limited to ... consent, release, or waiver forms....”).

<sup>16</sup> See D.C. Code § 2-1931 et seq.



units that were not on the inspector's "list."<sup>17</sup> In at least one instance, a property passed inspection where a tenant with housing code violations was refused an inspection by the proactive inspectors.<sup>18</sup>

### Agency Inspectors, Not Contractors, Should Perform Inspections

To ensure quality control and accountability, Legal Aid strongly recommends that DOB employ agency inspectors and not rely on third-party contractors for its proactive inspections program. Historically, part of the problem with DCRA's proactive inspections program was the use of outside contractors, whose performance and adherence to DCRA's business process was inconsistent.<sup>19</sup> Boston, a jurisdiction that uses non-government inspectors, has yet to see a statistical improvement in its incidence of asthma-related housing complaints, which may be due in part to lenient standards and its use of non-government inspectors.<sup>20</sup>

### The Act Should Include Protections for Displaced Tenants

The Act as currently drafted anticipates the danger of landlord retaliation as a potential unintended consequence of a proactive inspections program. The Act should similarly anticipate and protect against the temporary and permanent displacement of tenants found to be living in "illegal" units (i.e., units that fail to meet the minimum space or facilities requirements to be deemed habitable or that were constructed illegally), which has been a serious problem with DCRA's enforcement process in the past.

DCRA placarding of uninhabitable units can lead to the permanent displacement of tenants if landlords never abate the relevant life-safety violations or do not abate the violations before a tenant's time-limited hotel accommodation runs out. In one instance, a tenant recalled being told by a DCRA inspector, "We can only fine [the landlord]; we can't make her fix anything." Other tenants were told by DCRA that rooms that they rented were not fit for human habitation and that they could no longer sleep in them,

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<sup>17</sup> See Written Testimony of Beth Mellen Harrison, Performance Oversight Hearing on the Department of Consumer and Regulatory Affairs (Feb. 20, 2015), *available at* <https://www.legalaiddc.org/media/796/download>.

<sup>18</sup> *Id.*

<sup>19</sup> *See id.*

<sup>20</sup> Lemire, at 570, *supra* note 8.

without any further recourse for the tenants or meaningful consequences for the landlords who had rented those illegal rooms out in the first place.<sup>21</sup>

To understand the extent of any unintended tenant displacement, the Act's annual reporting requirement should include data specifying when an inspection results in a rental unit being deemed uninhabitable. Similarly, abatement efficacy data should include a subset for the average length of time for violations to be abated for units deemed uninhabitable.

To protect against displacement, the Act could set out a schedule of daily fines triggered when a unit is deemed uninhabitable, specify that those fines be deposited into the Nuisance Abatement Fund, and require DOB to use Nuisance Abatement Fund dollars to abate emergency conditions and/or pay for extended hotel accommodations when landlords fail to correct these conditions. If a landlord is not able to reasonably correct the condition, the landlord should be required to pay for tenant relocation. The Act could either establish a separate Tenant Relocation Assistance Fund or specify that additional fines be directed to the Nuisance Abatement Fund, with a related requirement that those funds be used to pay for tenants' relocation, and greater funds provided to tenants who are permanently displaced. The permanent displacement of tenants due to a landlord's violation of the housing, building, or construction codes should also result in revocation of the rental business license for that unit.

#### Proactive Inspections Data Should Be Publicly Available

In addition to annual reporting to the Council, proactive inspections data must be made available to the public in an easy-to-find, easy-to-analyze format. One way to do this would be to create a property-level report (available through Scout on the Access DC website) that includes key proactive inspection metrics and information over multiple years, including:

- The property's age.
- Number of rental units.
- Classification Tier (over multiple years).

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<sup>21</sup> Written Testimony of Eleni P. Christidis, Performance Oversight Hearing on the Department of Consumer & Regulatory Affairs (Feb. 24, 2022), *available at* <https://www.legalaiddc.org/media/283/download>.

- Points-based score (over multiple years).
- Date(s) of past proactive inspection(s); and
- Year next due for re-inspection.

Making this information public and easy to access will better equip advocates, researchers, and the public at large to understand and monitor the implementation of the proactive inspection program, evaluate its effectiveness, and provide ongoing feedback to DOB and the Council.

### **Conclusion**

Legal Aid appreciates the opportunity to provide its recommendations on the Proactive Inspection Program Act of 2022. We are eager to see this long-awaited proactive inspection program codified into law. We look forward to collaborating with the Committee, DOB, and our community-based partners to ensure that the proactive inspection program achieves its objectives of improving the quality of life for District renters by realizing the law's guarantee of safe and healthy housing for all.