

Testimony of Julie Becker
Legal Aid Society of the District of Columbia¹

Committee on Public Services and Consumer Affairs
Council of the District of Columbia

Department of Consumer and Regulatory Affairs
2010 Fiscal Year Budget Hearing

April 1, 2009

The Fiscal Year 2010 Budget Support Act contains funding for a critical new effort in housing code enforcement: proactive inspections of residential rental units. As I testified before this committee last month, mandatory regular inspections are an essential part of an effective system of code enforcement. Currently, DCRA performs rental housing inspections only on an ad-hoc basis and solely in response to tenant complaints. Proactive inspections would identify problems – and, ideally, require solutions – before the situation becomes a crisis.

Although we strongly support the concept of a per-unit fee for regular inspections, we have concerns about the system as proposed in the Act. The proposed legislation would funnel the new funding for these new inspections – a new biennial fee of \$35 per unit, to a maximum of \$2,000 per building – into the Nuisance Abatement Fund, a pool of money that to date has been subject to underuse, misdirection, and a woeful lack of transparency. We urge the Council, in enacting this new fee, to take steps that will ensure that the money is actually used to fund an active, effective inspection system.

1. Enactment of the fee must be accompanied by legislation requiring regular, systematic inspections of each rental unit.

We applaud the Mayor for proposing a funding system for proactive inspections – but funding is only part of the task. The greater part, and perhaps the most important, is putting in place the actual system for those inspections to take place.

Thus far, although DCRA has suggested that it intends to begin conducting proactive inspections, it has not made public any firm plan to do so. Nor is there anything in current law requiring the agency to conduct such inspections. We are concerned that, without a mandate in the law, the new funds designated for inspections will be captured for other uses, particularly in

¹ The Legal Aid Society 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.” Over the last 77 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, and public benefits.

light of the significant budget pressures currently facing the District. And, if that happens, the District's tenants will remain without any meaningful, workable system of code enforcement.

In connection with enacting this new inspection fee, we urge the Council to enact legislation *requiring* the city to conduct inspections of all rental units on a regular basis. The agency agrees – and experience in other cities has shown – that a periodic inspection system is far more effective for enforcing the housing code than the current complaint-based system. The Omnibus Rental Housing Amendment Act of 2009, introduced in January and scheduled for a hearing on June 4, 2009, includes precisely this provision. The Council should adopt this measure, either as part of the Budget Support Act, or as quickly as possible as part of the omnibus legislation.

2. The revenue from the per-unit fee should not go to the Nuisance Abatement Fund.

In directing the funds from the proposed fee to the Nuisance Abatement Fund, the Mayor's proposal significantly increases the danger that the money will not be used for its intended purpose, and will be spent in other ways. As this Committee has observed previously, the Nuisance Abatement fund is one of the least transparent, least accessible pots of money in the District's budget.² The fund has no regulations, no criteria for its use, no method of access, and virtually no accountability.

Nor does DCRA have a track record of using the Nuisance Abatement Fund effectively. Although the fund was designed to provide resources for the repair of emergency housing conditions, a recent *Washington Post* investigation revealed that in three years, only four percent of the fund's \$16.5 million was used for this purpose. Other expenditures from the fund include \$2.2 million on the development of a new computer system; \$1.6 million to repair single-family houses, some valued at \$500,000 or more; and \$7.3 million to school buses and police and fire department equipment.³

Given this background, we seriously question the wisdom of directing the new inspection fee to the Nuisance Abatement Fund. Not only does the fund have a history of misuse or non-use, its original purpose – to pay for the correction of housing code violations – is related to, but wholly distinct from, the goal of a proactive inspection system.⁴ Establishing a system of regular, proactive inspections requires hiring inspectors, increasing enforcement measures, and notifying landlords and tenants regarding the inspection – all tasks squarely within DCRA's daily responsibilities. There is no apparent reason why the funds raised by the inspection fee would not go directly to the agency, which would then be charged with using them to carry out a regular inspection process.

² Public Hearing on Bill 17-0729, "Abatement of Nuisance Properties and Tenant Receivership Amendment Act of 2008," Committee on Public Services and Consumer Affairs, June 23, 2008.

³ Cenziper, Debbie, and Sarah Cohen. "Fund Gives Tenants Little Relief," *Washington Post*, May 4, 2008, at A1.

⁴ The Nuisance Abatement Fund is established in D.C. Code § 42-3131.01(b), which provides as follows: "There is established in the District of Columbia, and accounted for within the General Fund, a separate revenue source allocable to provide authorization for the purpose of paying the costs of correction of any condition, and all expenses incident thereto, that the Mayor may order or cause pursuant to [this law]." D.C. Code § 42-3131.01(b)(1)(A).

3. DCRA must create and make public a specific plan for implementing a system of periodic inspections.

Finally, in connection with enacting this new inspection fee, we suggest that this Committee require DCRA to come forward, to the Committee and the public, with a specific and detailed plan of action regarding proactive inspections. DCRA has indicated more than once over the last year that it intends to implement such a system, and last month Director Argo testified before this Committee that a pilot program would launch on May 1. But the agency has yet to clarify important details regarding how the system will work and what tenants and landlords can expect from the new regime. Issues the agency must address include:

- The process for deciding which buildings to inspect each year (i.e. the “schedule” for inspections)
- The process for notifying landlords of inspections
- The process for notifying tenants of inspections
- The scope of inspections (including whether buildings will be inspected for building code and health code as well as housing code compliance)
- The process for follow-up when violations are found
- The contact or point person for the proactive inspection process

The agency also should detail how it intends to utilize existing employees to accomplish this task; how many additional inspectors and other personnel it will need to hire; and how quickly it plans to hire those individuals.

Representatives of the tenant community would be happy to work with the Committee and the agency to make a proactive inspection system a reality. We would gladly participate with DCRA in refining its plan and helping make sure it works for all those affected by the inspection process. We ask that the Council, in authorizing a new fee for inspections, similarly take steps to ensure that the new revenue goes to improving code enforcement in the District.

