

**Testimony of Beth Mellen Harrison
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia**

**Before the Committee of the Whole
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs

March 27, 2019

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the Mayor’s proposed budget for the Department of Consumer & Regulatory Affairs. As this Committee is aware, Legal Aid continues to believe that because of DCRA’s chronic failure to protect tenants living in unsafe and unhealthy housing, the Council needs to take a comprehensive approach to reforming the agency.² This comprehensive approach should include removing housing code enforcement and inspections from DCRA’s responsibilities and establishing an independent rental housing agency to address housing code violations. As long as rental housing inspections remain within DCRA, Legal Aid recommends that any new investments in the FY20 DCRA budget be targeted specifically to housing code compliance and enforcement, with sufficient transparency and accountability for this Committee continue its oversight role.

Despite DCRA’s Longstanding Failures, the Mayor’s Budget and the Budget Support Act Fail to Prioritize Housing Code Enforcement & Compliance

While the Mayor’s budget increases overall funding for DCRA by nearly \$7 million, it reflects little if any new investment in housing code enforcement and compliance. In the face of two years of oversight hearings and roundtables by the Committee that have revealed serious challenges within DCRA and a systematic failure to invest in protection of tenant health and safety, this is indeed disappointing. In fact, in three critical areas, the Mayor’s budget and the Budget Support Act cut funding for housing code enforcement and compliance.

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 87 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, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on the Department of Consumer & Regulatory Affairs (Feb. 27, 2019), *available at* <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-DCRA-Oversight-Testimony-FINAL.pdf>.

First, funding for the Residential Inspections unit (3080) is cut by \$94,000, including a reduction of three full-time equivalent positions.³ We understand that the three positions will be shifted to the Scheduling & Enforcement unit (3020, two positions) and the Rehabilitation unit (3050, one position). While Scheduling & Enforcement and Rehabilitation undoubtedly will benefit from additional resources, we believe that Residential Inspections needs a substantial funding increase to hire new inspectors. The Mayor’s budget simultaneously invests over \$800,000 in new money in commercial building inspections and construction compliance, reflecting an ongoing lack of focus on tenant health and safety in favor of other concerns.⁴

Second, the budget includes a cut of \$665,000 in the Rehabilitation unit (3050) that helps pay for DCRA to abate housing code violations when landlords refuse to do so.⁵ We understand that this cut reflects expected reductions in Nuisance Abatement Fund revenue. Funds spent directly on abatement of housing code violations should remain a top priority for the agency, and this decrease is disappointing given the decision to invest new funds in other areas. We hope DCRA can explain how it will make up for this lost funding while still ensuring tenants of intransigent landlords can live in safe conditions.

Most concerning, the Budget Support Act would amend the statutory provisions establishing the Nuisance Abatement Fund to allow it to become a general-purpose fund to be spent as DCRA sees fit. Under current law, these funds are restricted to a single purpose – for the District government to abate housing code violations when landlords refuse to do so.⁶ The Mayor now proposes to expand the use of the Nuisance Abatement Fund to pay for inspections, informational technology systems, and any other expenses to “improv[e] the operations of the Department of Consumer & Regulatory Affairs.”⁷ Legal Aid strongly opposes this change, which would divert millions of dollars each year away from abating serious housing code violations and protecting tenant health and safety.⁸ We urge the Committee to strike this language from the Budget Support Act. Unfortunately, this proposal is one more indication that housing code enforcement and compliance will not be prioritized by DCRA without fundamental agency reform.

Because of DCRA’s longstanding failure to exercise its discretion to protect tenant health and safety, investments in the agency’s budget should be targeted toward specific directives that will

³ FY 2020 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part I, B-120 (March 20, 2019), *available at* https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC_OCFO_Budget_Vol_2.pdf.

⁴ *Id.* at B-119.

⁵ *Id.*

⁶ D.C. Code § 42-3131.01.

⁷ Fiscal Year 2020 Budget Support Act of 2019, B23-0209, § 2112.

⁸ Funding in FY17 totaled \$6,524,393 and paid for 58 full-time equivalent positions. DCRA Performance Oversight Responses pg.10-11 (February 15, 2018), *available at* <http://dccouncil.us/wp-content/uploads/2018/10/DCRA-Oversight-Final-PACKET.pdf>.

improve housing code enforcement and compliance. Legal Aid believes the following should be top priorities for the Committee in this regard as it reviews the Mayor's proposed budget.

The Committee Should Fund the DCRA Omnibus Amendment Act of 2018

The Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0616) strengthens District law to better ensure enforcement of and compliance with the housing code. Among other changes, the Act:

- Requires landlords to abate housing code violations within 30 days or less and limits extensions to cases where the landlord has taken all reasonable steps to meet the deadline;
- Requires that DCRA issues a notice of violation or infraction and notify the Attorney General for certain types of serious, unabated housing code violations;
- Requires expedited hearings when a landlord challenges a notice of violation or notice of infraction based on housing code violations;
- Earmarks fines levied on repeat housing code violators to go to the Nuisance Abatement Fund, which allows DCRA to abate longstanding violations ignored by landlords; and
- Requires corporate entities to disclose ownership and controlling interests, improving transparency for residential properties owned by private corporate entities.

When fully implemented, these changes should mitigate many of the longstanding concerns that Legal Aid and other tenant advocates have about DCRA's performance. The Mayor's budget does not appear to include any new funding specifically earmarked to implement the new Act. Legal Aid recognizes that the projected cost of the Act is quite high, at \$27 million over four years.⁹ While there may be reasons to question the analysis that went into this fiscal impact statement, one thing remains clear: DCRA requires additional resources to strengthen housing enforcement and compliance and protect tenant health and safety. Fully funding the new Act will allow the agency to invest critical resources in this area.

The Committee Should Increase Funding for Housing Code Inspectors

To the extent not already provided for by funding the DCRA Omnibus Amendment Act, the Committee should add new funding so DCRA can substantially increase the number of housing code inspectors it employs.

⁹ Fiscal Impact Statement – DCRA Omnibus Act of 2018, *available at* <http://lims.dccouncil.us/Download/38265/B22-0317-Fiscal-Impact-Statement1.pdf>.

The District has over 160,000 renter-occupied housing units.¹⁰ Yet, DCRA's Housing Inspections and Housing Code Enforcement sections employ only 14 housing code inspectors, 4 housing code specialists, and 3 contact representatives to perform this work.¹¹ This is simply insufficient. In recent years, DCRA has conducted approximately 12,000 residential housing inspections each year – meaning that each inspector is responsible for conducting 3 to 4 inspections each work day, as well as all of the preparation and follow-up stemming from each such inspection.¹² Legal Aid is concerned that the repeated problems we have seen with the quality of DCRA housing code inspections, as well as the lack of enforcement follow-up, is related to this chronic understaffing.

Other jurisdictions devote more resources to housing code inspection:

- Boston, MA, which has over 170,000 renter-occupied housing units, employs 3 supervisors and 30 inspectors in its Inspectional Services Department.¹³
- Montgomery County, MD, with almost 130,000 renter-occupied housing units, employs 5 managers, 2 support staff, and 25 inspectors in its Code Enforcement section.¹⁴
- Minneapolis, MN, which has just over 90,000 renter-occupied housing units, employs 4 supervisors and 38 inspectors in its Department of Regulatory Services.¹⁵
- Buffalo, NY, which has just over 65,000 renter-occupied housing units, employs 28 building inspectors, 3 building specialists, and other support and supervisory staff in its Permit & Inspection Services division.¹⁶

¹⁰ American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2017 1-Year Estimates, *available at* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>. All numbers for renter-occupied housing units in other jurisdictions that follow below are based on the American Community Survey data tables.

¹¹ DCRA Performance Oversight Responses pg.76 (February 15, 2018), *available at* <http://dccouncil.us/wp-content/uploads/2018/10/DCRA-Oversight-Final-PACKET.pdf>.

¹² In Fiscal Year 2018, DCRA performed 12,226 housing inspections; in Fiscal Year 2017 the figure was 11,510 inspections. 2019 Agency Performance Oversight Responses Department of Consumer & Regulatory Affairs at 135.

¹³ https://www.cityofboston.gov/images_documents/housing-inspectors_tcm3-34907.pdf.

¹⁴ <https://www.montgomerycountymd.gov/DHCA/community/organization.html>.

¹⁵ <https://www.minneapolisfed.org/publications/community-dividend/working-with-finite-resources-twin-cities-rental-housing-inspectors-reward-good-target-bad>. Updated figures provided by telephone interview with Department of Regulatory Services on March 25, 2019.

¹⁶ <https://www.buffalony.gov/Directory.aspx?did=84>.

- Youngstown, OH, with only 12,500 renter-occupied housing units, has 4 inspectors, 1 superintendent, and 1 inspection coordinator in its Property Code Enforcement section.¹⁷

The need for more inspectors is all the more acute because of policy changes under consideration by Interim Director Ernest Chrappah. DCRA currently is reviewing recommendations to issue notices of infraction instead of notices of violation, condensing the enforcement process.¹⁸ While Legal Aid welcomes this proposed change, we are concerned that it will not succeed unless DCRA can devote even more inspectors and other staff to monitor enforcement, for example by appearing and testifying at the Office of Administrative Hearings in infraction cases, performing follow-up inspections to ensure compliance, and monitoring the levying and payment of fines.

More inspectors are needed to enact another change recommended by Legal Aid and other advocates: to ensure that all proactive inspections are performed by agency employees. DCRA currently contracts with four to five outside inspectors to perform 3,000 to 4,000 proactive inspections per year.¹⁹ Legal Aid and others have seen longstanding problems with the proactive inspections program, including properties receiving certificates of compliance despite serious housing code violations, a problem that may be attributable to the quality of inspections by private contractors and to the heavy workload imposed. Bringing these inspections inside the agency, devoting sufficient resources to ensure high-quality inspections, and taking other steps to improve and codify the program – as detailed in Legal Aid’s performance oversight testimony – would help to address this problem.

Increased funding for inspectors also would allow DCRA to implement another change recommended by Legal Aid – to assign one or more inspectors to the Landlord and Tenant Branch of D.C. Superior Court, where eviction actions are heard. Based on Legal Aid’s experience representing hundreds of tenants in eviction cases each year through an office sited in the Branch, we believe that the overwhelming majority of tenants facing eviction for nonpayment of rent also have repair needs in their unit – and in many cases, substantial housing code violations.²⁰ Because most tenants are not represented by an attorney, however, many cases

¹⁷ https://youngstownohio.gov/property_code.

¹⁸ This was one of several recommendations from the D.C. Auditor in its recent report on DCRA. Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* 18 (Sept. 24, 2018), <http://dcauditor.org/report/housing-code-enforcement-a-case-study-of-dahlgreen-courts/>.

¹⁹ FY 2020 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part I, B-130; 2019 Agency Performance Oversight Responses Department of Consumer & Regulatory Affairs at 122.

²⁰ A study of Rent Court in Baltimore City found that nearly 80 percent of surveyed renters in court were living with serious housing code violations, and over 70 percent of those tenants had provided notice to their landlords of the conditions before coming to court. *Justice Diverted* 14-15 (Dec. 2015), available at http://www.publicjustice.org/uploads/file/pdf/JUSTICE_DIVERTED_PJC_DEC15.pdf. We expect a study in D.C. would find similar results.

end with tenants entering consent judgments that do not required the landlord to make necessary repairs. Making an inspector available to tenants in Court to tenants facing eviction might help achieve a fairer and more balanced settlement in these cases.

DCRA has under-staffed its housing inspections program for years. As Legal Aid testified at the recent performance oversight hearing, the Committee should consider passing legislation that would mandate a minimum number of housing inspectors for every 10,000 renter-occupied housing units, to ensure that this problem does not persist. The figures from other jurisdictions support at least doubling the current number of rental housing inspectors staffed at DCRA, from 14 to 28 and potentially up to 32, to provide one inspector for approximately every 5,000 renter-occupied housing units. DCRA remains far below this benchmark.

Conclusion

Legal Aid continues to support moving rental housing inspections out of DCRA altogether, and we are supportive of the Council's efforts to break up and restructure the agency, with B23-0091, the Department of Buildings Establishment Act, serving as the primary vehicle. We hope that the Council will pass restructuring legislation this year, so that by this time next year, the Mayor and the Committee will be discussing funding a newly-established agency with a more focused mission.

Until then, Legal Aid supports the targeted investments in DCRA's Fiscal Year 2020 budget recommended above to ensure the agency has sufficient resources to prioritize housing code enforcement and compliance and begin the process of correcting for years of neglect of tenant health and safety. We look forward to working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.