



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**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**

Public Hearing Regarding Public Resolution 23-0123

**“Department of Consumer and Regulatory Affairs
Ernest Chrappah Confirmation Resolution of 2019”**

April 23, 2019

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the nomination of Ernest Chrappah to serve as Director of the Department of Consumer & Regulatory Affairs (DCRA).

Legal Aid provides advice, brief services, and representation to hundreds of low-income tenants in the District every year. Many of these tenants are living in substandard conditions, in homes with serious housing code violations that threaten the health and safety of their families. The longstanding failure of DCRA to enforce the housing code and protect tenants is an issue of critical importance to our client community.

Legal Aid is encouraged by several changes already underway at DCRA under Director Chrappah’s leadership, including the creation of working groups to examine and revise policies and procedures and the sharing of data to support this work and improve transparency. At the same time, we are concerned that some of Director Chrappah’s ideas for change – including a proposal to privatize housing code inspections – could do more harm than good.

Regardless of who serves as Director of DCRA, Legal Aid continues to believe that fundamental and comprehensive reform to the agency is needed to ensure that landlords comply with the housing code. The Committee should move forward with B23-0091, the Department of Buildings Establishment Act of 2019, to address these concerns.

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.

Regardless of Who Serves as Director of DCRA Fundamental Agency Reform Remains Vital and Ultimately Requires the Creation of a New Agency

During the past two years, Legal Aid has testified at ten prior Council hearings and roundtables about DCRA's fundamental failure to enforce the housing code and protect tenants in the District. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after inspections occur. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code. Many of the concerns raised by tenants and advocates in past testimony before this Committee, including by Legal Aid, were confirmed in a report last year by the D.C. Auditor.²

While the Auditor's report focuses on the current state of enforcement at DCRA and the leadership of former Director Melinda Bolling, it is important to note that the problems identified by the Auditor have been ongoing for years. It has been over ten years since the *Washington Post's* investigative series on the systemic failures in DCRA's rental housing inspection program, including a near total failure to cite violations or assess or collect fines against landlords.³ Through multiple directors, DCRA has continued to come up short at every step in the enforcement process.

At the end of the day, Legal Aid believes that many of DCRA's challenges with respect to rental housing inspections stem from a broken agency culture. DCRA does not have a clear sense of mission to enforce the housing code, and it brings neither a public health nor strategic perspective to its work. The focus of DCRA's overall mission is business development and regulation, and far too often it appears that landlord interests are trumping tenant interests in the realm of rental housing inspections. There are numerous steps DCRA could take to improve its inspections process and enforcement process. But without a transformation in agency mission and culture, we fear that real change never will be realized, and tenants throughout the District will continue to live in unsafe conditions.

Legal Aid has come to a similar conclusion as the many members of the Council who signed onto the Department of Buildings Establishment Act, B23-0091: the wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. Indeed, Legal Aid has suggested that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement.⁴ We

² Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* (Sept. 24, 2018).

³ Debbie Cenziper & Sarah Cohen, A Failure in Enforcement, *Washington Post*, Mar. 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/10/AR2008031003193.html>.

⁴ Legal Aid provided more detailed comments on how a new agency should be structured in our April 2018 testimony on the previously-introduced version of the Department of Buildings Establishment Act, Bill 22-0669. See Written Testimony before the Committee of the Whole

continue to believe that this change is desperately needed, regardless of who serves as Director of DCRA. That said, as long as rental housing inspections remain within DCRA, the work of its Director will have a significant impact on the health and safety of low-income tenants and the conditions in which they live.

Legal Aid Supports Steps Already Taken by Director Chrappah to Revise Policies and Procedures But Also Has Concerns About His Proposals for Privatization

Legal Aid is encouraged by steps already taken by Director Chrappah to examine and revise DCRA policies and procedures, including those around housing code inspections and enforcement. Legal Aid is participating in two working groups convened by DCRA for this purpose, one to address compliance and enforcement issues generally and one to look specifically at the proactive inspection program. Both groups have representatives for landlord and tenant interests, as well as high-level agency staff. We hope that DCRA will continue to invest the time and resources needed to make these working groups truly effective.

We also appreciate steps already taken by Director Chrappah and his senior leadership team to improve transparency and make data about the agency's operations publicly available. Through the working groups mentioned above, DCRA has shared data about inspections and enforcement, something that advocates have been seeking for years. Some of this same data also now is available online through the DCRA Dashboard. Even these initial steps already are shining a light on agency failures – for example, showing that the number of notices of infraction issued by DCRA for housing code violations declined by 60 percent from fiscal year 2017 to fiscal year 2018. The data available online remains quite limited and should be expanded to provide greater transparency.

Director Chrappah also has acted quickly to strengthen housing code enforcement by announcing that, effective May 1, 2019, the agency will issue notices of infraction instead of notices of violation, proceeding immediately to fine landlords for cited violations. Legal Aid supports tougher enforcement, and in many instances proceeding directly to a notice of infraction makes sense. We hope the agency will be committed to devoting sufficient resources to follow through on enforcement cases at the Office of Administrative Hearings (OAH) and to re-inspect units to ensure compliance, not just enforcement.

While these changes are positive, Legal Aid also is concerned that some of the changes proposed by Director Chrappah could do serious harm. For example, Director Chrappah's call to privatize housing code inspections is rife with potential problems. As described by Director Chrappah, DCRA would train and certify private citizens to perform housing code inspections through an online, on-demand platform. Director Chrappah has stated that privatization would create a pathway into the real estate industry and the middle class for private inspectors.

Council of the District of Columbia, Public Hearing Regarding Bill 22-0669 “Department of Buildings Establishment Act of 2018”, <https://www.legalaiddc.org/wp-content/uploads/2018/04/Legal-Aid-Testimony-re-B22-0669-FINAL.pdf>.

This proposal raises a host of questions. Will District residents feel comfortable inviting strangers who are not government employees into their homes to inspect? What liability will DCRA have for any negligent (or worse) behavior that occurs? How will DCRA maintain common standards and practices? What role will DCRA government inspectors play in a new regime? Can DCRA ensure that the same private inspector returns for follow-up inspections? Can DCRA ensure that private inspectors will appear at OAH hearings and take other steps needed for enforcement? When tenants raise claims against their landlords for housing code violations, will they be able to locate private inspectors to subpoena them to appear at hearings or produce documents? Can DCRA ensure those inspectors actually will show up for court and provide relevant documents?

In considering these types of changes, we urge Director Chrappah to proceed with caution, including taking the time (personally and through his senior leadership team) to study and analyze the existing housing code inspection process and to seek community and stakeholder input. As the Director acknowledged at the recent DCRA budget oversight hearing, successfully pulling off a program to privatize housing code inspections would be quite challenging. While fundamental agency reform is needed, changes that move in the direction of private industry are unlikely to address DCRA's underlying cultural problems or to bring the public health and strategic focus to housing code enforcement that DCRA currently lacks. We look forward to working with Director Chrappah to share and address our concerns about his proposal.

Conclusion

Thank you for this opportunity to share our thoughts on the nomination of Ernest Chrappah to serve as Director of the Department of Consumer & Regulatory Affairs. We are eager to continue working with the Council, DCRA, and other stakeholders to realize a more effective system of housing code inspections and enforcement.