

**Testimony of Beth Mellen Harrison
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**Before the Committee on the Whole & the Committee on the Judiciary & Public Safety
Council of the District of Columbia**

Public Oversight Hearing Regarding:

**“Agency Responses to Code Violations and
the Subsequent Fire at 708 Kennedy Street N.W.”**

November 18, 2019

On August 18, 2019, a fire consumed an illegal rooming house located at 708 Kennedy Street, N.W., killing a man and a 9-year-old boy and displacing other tenants in the building. In the fire’s aftermath, the District government discovered that a Metropolitan Police Department (MPD) officer had reported his concerns about conditions at the property five months earlier, in March 2019, to the Department of Consumer & Regulatory Affairs (DCRA) and Fire & Emergency Medical Services (FEMS). Despite the officer’s initial report and multiple attempts by the officer to follow up, DCRA never completed an inspection of the property and eventually closed out the case internally with no further action. The fire occurred only two days later.

The Legal Aid Society of the District of Columbia¹ appreciates the District government’s willingness to commission an independent review and investigation of the fire and the Committees’ willingness to schedule this public oversight hearing. Unfortunately, the investigation’s findings of systemic failures within DCRA are unsurprising. Legal Aid has appeared before the Committee of the Whole on twelve separate occasions over the past few years to share our concerns about DCRA’s fundamental failure to enforce the housing code and protect tenants in the District, including many of the same issues identified in this particular case. Legal Aid remains concerned that as a result of these systemic agency failures, far too many tenants in the District are living in substandard conditions that threaten the health and safety of their families.

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. 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, and our blog, www.MakingJusticeReal.org.

Fundamental agency transformation is challenging but the time for action is now. 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. The wide breadth of DCRA's mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. We urge the Committee of the Whole to move forward with passage of the Department of Buildings Establishment Act, B23-0091, and we look forward to continuing these discussions at the upcoming hearing on the Office of the Inspector General's prospective evaluation of the bill and its potential implementation. We also share a few specific recommendations for agency reform below.

The Problems with DCRA Identified in the Investigation of the Kennedy Street Fire Are Long-Standing

In past testimony, Legal Aid has shared problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles and delays in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, DCRA 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 were confirmed in a September 2018 report by the D.C. Auditor, which found that DCRA does not have sufficient inspectors, exercises leniency to landlords, does not target problem landlords, and has inadequate recordkeeping practices.² A similar review by the Office of Inspector General published in May 2019 and focused on collection of fines found that DCRA lacks written policies and procedures, does not follow regulatory requirements, and is unable to track enforcement data.³

The investigation of the Kennedy Street fire by Alvarez & Marsal Disputes & Investigations, LLC⁴ highlights specific examples of many of these same systemic failures. We expect the agency will come before the Committees at today's hearing and provide explanations for why systems failed in this individual case. But the systems failures in the Kennedy Street fire are the

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

³ District of Columbia Office of the Inspector General, *Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a Strong Internal Control Environment* (May 2019).

⁴ Alvarez & Marsal issued a comprehensive report on its investigation of the Kennedy Street Fire and the agencies' responses, based on interviews with numerous agency officials and a review of internal operating procedures and specific communications and actions taken with respect to 708 Kennedy Street, NW in the months between the MPD officer's initial complaint on March 22, 2019, and the fire on August 18, 2019. 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) ("Alvarez & Marsal Report").

same issues Legal Aid and other advocates, as well as prior government reviews of DCRA, have continued to bring before the Council. These include the following:

DCRA Fails to Follow Standard Operating Procedures

DCRA lacks standard operating procedures to guide agency enforcement of the housing code, and too often agency employees fail to follow the policies that do exist. Alvarez & Marsal found that many DCRA policies are informal and reflected only in emails and that DCRA only began formalizing many of its current policies *after* the Kennedy Street fire.⁵ In fact, because procedures were informal and unwritten, Alvarez & Marsal had to interview DCRA employees just to confirm what “policies” were in place.⁶ This lack of clarity on agency roles and functions contributes to many of the other problems identified below.

DCRA Fails to Track Housing Conditions Complaints Adequately

Because of its reliance on informal systems and its employees’ failure to use formal systems that do exist, DCRA fails to track housing conditions complaints adequately. The MPD officer attempting to draw concern to the Kennedy Street property emailed with nine different DCRA employees on five separate occasions. Yet none of these employees logged the complaint into the agency’s new pilot tracking system – a system in which the agency has invested significant public dollars.⁷ When an investigator finally visited the property, he failed to document or log his visit or follow-up communications with the property owner.⁸ The investigation was not tracked in any formal system but instead in an offline spreadsheet.⁹ The failure to track and document communications and responses is not simply a documentation issue; it allows housing conditions complaints to fall through the cracks.

DCRA Fails to Follow Through on Housing Conditions Complaints

Perhaps due in large part to its lack of formal policies and poor tracking systems, DCRA often fails to follow through on complaints about housing conditions. The Kennedy Street complaint was not even assigned to an investigator until the complaining MPD officer sent not one or two but *three* emails over the course of two months.¹⁰ The assigned investigator then conducted a limited investigation at best – he took photos of the front of the building but never gained access to the property, never obtained an administrative search warrant despite authority to do so, and never conducted relevant interviews of the complaining officer or tenants.¹¹ The investigation

⁵ *Id.* at 18-23.

⁶ *Id.* at 26.

⁷ *Id.* at 39.

⁸ *Id.* at 5. In the end, the investigator was unable to produce hard copies of any documents related to his investigation. *Id.* at 25.

⁹ *Id.* at 37.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5, 36.

was suspended without reassignment when the assigned investigator took on a new position, and then the case was closed out without any documentation, review, or approval.¹²

All of these agency failures went undetected, because DCRA does not maintain and its employees do not follow any centralized, documented, transparent, and accountable process for logging, tracking, and resolving complaints about housing code violations, making it impossible to monitor the agency's enforcement activities on a day-to-day basis.¹³ In fact, if the MPD officer had not followed up multiple times, *all evidence indicates DCRA never would have responded to the complaint about the Kennedy Street property at all.* Establishing and following standard operating procedures and formal tracking systems is not simply an abstract governance issue. For tenants attempting to report housing code violations, the result is inconsistent agency responses and too often a failure to follow through on their complaints.

DCRA Lacks Adequate Staffing to Enforce the Housing Code

DCRA also fails to follow through on housing conditions complaints because it lacks adequate staffing to do so. In explaining their failure to respond to communications about the Kennedy Street property, DCRA employees cited a “high volume of emails” received, “overwhelming” workloads, and being “too busy with administrative duties”.¹⁴ The District has approximately 165,000 renter-occupied housing units.¹⁵ Yet, DCRA's Housing Inspections and Housing Code Enforcement sections employ only 11 housing code inspectors, 4 housing code specialists, 3 other code specialists, and 3 contact representatives to perform this work.¹⁶ 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.¹⁷ This chronic understaffing appears to be a critical factor in the low quality of DCRA housing code inspections, as well as the lack of enforcement follow-up.

DCRA Fails to Take Responsibility for Tenant Health & Safety

At the most fundamental level, DCRA lacks an agency culture and mission focus on protecting tenant health and safety through vigorous enforcement of the housing code. Alvarez & Marsal found a “lack of responsibility and ownership of building safety issues across multiple agencies,”

¹² *Id.* at 5, 37.

¹³ *Id.* at 43, 48. Alvarez & Masal note that DCRA has no internal audit system

¹⁴ *Id.* at 33, 46, 54, 66.

¹⁵ American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2018 1-Year Estimates, *available at* <https://www.census.gov/acs/www/data/data-tables-and-tools/>.

¹⁶ Department of Consumer & Regulatory Affairs, *Responses to FY 2018 and FY 2019 to date Performance Oversight Questions* 109 (Feb. 19, 2019), *available at* <https://dccouncil.us/wp-content/uploads/2019/02/2019-Agency-Performance-Responses-DCRA-Combined.pdf>.

¹⁷ In Fiscal Year 2018, DCRA performed 12,226 housing inspections; in Fiscal Year 2017 the figure was 11,510 inspections. *Id.* at 135.

including DCRA.¹⁸ DCRA's initial failure to respond to the MPD officer's email about Kennedy Street illustrates this point. The DCRA Duty Officer who received the email noted that he did not respond because the complaint appeared to deal with business licensing issues, which are outside of his jurisdiction. As Alvarez & Marsal note, the email was titled "Serious Code Violations" and attached an incident report referencing "DCRA housing code violations."¹⁹ It is the job of the Duty Officer to respond to precisely these types of complaints, by assigning a housing code inspector to the case. But even if the Duty Officer had been right, his response is inexcusable. The agency charged with enforcing the District's housing code should have a mission and culture focused on tenant health and safety such that any employee who receives an email complaining about serious housing code violations ensures that complaint receives a response.

DCRA's Systemic Failures Require Systemic Change

Alvarez & Marsal's report concludes with a number of recommendations to address the systemic failures identified in DCRA's response to the Kennedy Street complaint. Legal Aid supports all of the report's recommendations, including those relating to the use of information technology to improve tracking of complaints and oversight of investigations. Two of the report's recommendations are in line with Legal Aid's past testimony and warrant special attention: ensuring that DCRA employs an adequate number of housing inspectors and implementing a robust, proactive inspections program. More fundamentally, Legal Aid continues to believe that the only way to effect the kind of transformation needed at DCRA is for the Committee of the Whole to move forward with Bill 23-0091, the Department of Buildings Establishment Act.

The Committee of the Whole Should Enact Legislation Mandating That DCRA Employ a Sufficient Number of Inspectors

DCRA simply does not employ enough inspectors to allow for vigorous enforcement of the housing code. Reducing the workload on overtaxed inspectors should improve the quality of the housing code inspections and enforcement process. Inspectors would have more time to prepare for and conduct each individual inspection, ensuring a comprehensive report. More inspectors would be available to conduct follow-up inspections promptly. Each inspector would have more time to work up cases and thoroughly but promptly prepare them for legal enforcement when landlords do not abate violations. Legal Aid's clients continue to experience problems with each of these aspects of the housing code inspection and enforcement process.

DCRA has under-staffed its housing inspections program for years. The Committee should move forward with legislation mandating a minimum ratio of housing inspectors compared to the number of renter-occupied housing units, to ensure that this problem does not persist. As Alvarez & Marsal recommend, the Committee should look at other urban jurisdictions to establish a relevant benchmark.²⁰ The Tenant and Homeowner Accountability and Protection

¹⁸ Alvarez & Marsal Report at 41.

¹⁹ *Id.* at 33.

²⁰ *Id.* at 66.

Amendment Act of 2019, which contains a number of proposals for DCRA reform, would mandate that the agency employ one residential housing inspector for every 2,000 residential housing units. This ratio is more in line with other jurisdictions:

- Boston, MA, which has over 170,000 renter-occupied housing units, employs 3 supervisors and 30 inspectors in its Inspectional Services Department.²¹
- 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.²²
- Minneapolis, MN, which has just over 90,000 renter-occupied housing units, employs 4 supervisors and 38 inspectors in its Department of Regulatory Services.²³
- 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.²⁴

As Alvarez & Marsal note, it also is critical that DCRA develop standard operating procedures and train all staff on these procedures.²⁵ Standard operating procedures should, among other items, ensure that all staff use formal, centralized tracking systems for complaints to ensure transparency and oversight.²⁶ Legal Aid believes this level of training, transparency, and oversight is only possible if the District continues to rely on agency employees to perform residential housing inspections, rather than outside contractors. As we have testified at prior hearings, we have serious concerns that DCRA's current plan to rely on citizen inspectors will only weaken an already troubled enforcement environment, by leading to lower-quality inspections, less consistency, and less follow through on enforcement.²⁷

The Committee of the Whole Should Enact Legislation Codifying and Strengthening the Proactive Inspections Program

Alvarez & Marsal also recommend that DCRA explore legislation to require mandatory inspections of rental properties every five to ten years and to use data mining and analytics to identify problem properties.²⁸ The Omnibus Tenant Protections Act of 2008, Bill 17-1037, introduced in November 2008, would have required the Mayor to inspect every rental housing

²¹ https://www.cityofboston.gov/images_documents/housing-inspectors_tcm3-34907.pdf.

²² <https://www.montgomerycountymd.gov/DHCA/community/organization.html>.

²³ <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.

²⁴ <https://www.buffalony.gov/Directory.aspx?did=84>.

²⁵ Alvarez & Marsal Report at 53, 66-67.

²⁶ *Id.* at 55, 64, 65.

²⁷ Written Testimony before the Committee of the Whole, Council of the District of Columbia, Public Oversight Roundtable Regarding District of Columbia's Office of Inspector General Report (June 25, 2019). <https://www.legalaiddc.org/wp-content/uploads/2019/11/Testimony-on-OIG-report-roundtable-6.25.19-revised-FINAL.pdf>

²⁸ Alvarez & Marsal Report at 68-69.

property in the District every two years. DCRA responded to this proposal by creating its own proactive inspections program, launched in August 2010. DCRA never codified the program in statutory or regulatory provisions and has revised its basic parameters several times over the intervening years. As currently envisioned, the goal of the proactive inspections program is to select properties randomly for scheduled inspections, ensuring that each of the approximately 4,300 rental housing properties in the District with 3 or more units is inspected every two years. For properties with 3 to 4 units, half of the units are inspected; for properties with 5 to 49 units, 30 percent are inspected; and for properties with 50 or more units, 15 percent are inspected.²⁹ DCRA utilizes contractors to perform these proactive inspections.³⁰

As Legal Aid has testified at prior hearings, we have seen many problems over the years with the implementation of this program. Although the program has been in operation for over nine years, many rental properties have only been inspected once. Our understanding is that until recently properties were chosen randomly for inspection, and DCRA has not used the program to target problem actors or properties. We have also seen properties receive certificates of compliance despite serious housing code violations, a problem that may be attributable to the quality of inspections by private contractors but also to the low percentage of units targeted in each building. Moreover, once a property receives a certificate of compliance, tenants sometimes encounter resistance when they contact DCRA to request a complaint-based inspection.

To ensure that the proactive inspections program is as effective as possible, its requirements should be codified by statute or regulation and strengthened:

- Agency inspectors, not contractors, should perform all proactive inspections.
- All residential buildings in the District (or at least all built before a certain year) should be inspected at least every 4 years.
- The agency should prioritize buildings with “risk factors,” such as a certain number of violations found during complaint or proactive inspections during a certain period, for more frequent proactive inspections every 2 years.
- The agency also should identify other factors that may indicate a problem property or neighborhood, based on prior research and analysis by the U.S. Department of

²⁹ DCRA, “Proactive Inspections,” *available at* <https://dcra.dc.gov/service/dcra-proactive-inspections>.

³⁰ DCRA does not appear currently to have the resources to implement a program of this scope. The District has approximately 13,995 renter-occupied housing units in building with 3-4 units; 17,670 such units in buildings with 5-9 total units; and 101,689 such units in buildings with 10 or more units. 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>. Conservatively, this amounts to over 27,500 inspections every two years. In recent years, DCRA reports conducting 3,000-4,000 proactive inspections every year. 2019 Agency Performance Oversight Responses, Department of Consumer & Regulatory Affairs, at 135.

Housing & Urban Development and similar sources, such as income, race, disability, and age of residents.

- The agency should ensure that proactive inspectors visit a substantial percentage of units in every building. Specifically, we recommend inspecting at least 50 percent of units for buildings under 25 units, at least 40 percent for buildings between 25 and 49 units, and at least 30 percent for buildings with 50 or more units.
- A “pass” on a proactive inspection should not be an impediment to subsequent complaint inspections, either for individual units or entire buildings.
- The agency should follow up on violations found during proactive inspections in the same way as a complaint-based inspection and refer an owner to enforcement if it does not abate the violations during the prescribed time period. Similarly, all proactive inspection data should be available publicly through PIVS.

The Committee Should Move Forward to Enact B23-0091, the Department of Buildings Establishment Act – and Should Strengthen the Proposal

Ultimately, Legal Aid continues to believe that a comprehensive approach to reforming housing code enforcement in the District is needed to fully address the problems identified at this and past hearings, including establishment of an independent rental housing inspections agency. Legal Aid supports moving rental housing inspections out of DCRA altogether, as envisioned by B23-0091, the Department of Buildings Establishment Act, and believes the Act should go even further.

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: the wide breadth of DCRA’s mission and its lack of a strong enforcement and consumer protection culture has impaired its efficacy. However, Legal Aid suggests that the Council go further and establish an independent agency specifically tasked with rental housing inspections and enforcement. Should the Council choose to proceed with the current framework for a Department of Buildings, as envisioned in Bill 23-0091, it should ensure that the Department’s structure and procedures will lead to an effective inspections and enforcement regime. 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 22-0669.³¹ We look forward to continuing these discussions at the upcoming hearing on the Office of Inspector General’s prospective evaluation of the bill and its potential implementation.

Conclusion

Thank you for this opportunity to testify about our ongoing concerns about DCRA’s lapses in enforcement. We look forward to working with members of the Committee of the Whole, staff, and other advocates to ensure that legislation addressing DCRA’s systemic failures can be considered and moved forward this Council period.

³¹ Written Testimony before the Committee of the Whole 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>.