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

Public Hearing Regarding:  


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The Legal Aid Society of the District of Columbia\(^1\) supports moving rental housing inspections out of the Department of Consumer and Regulatory Affairs (DCRA), as envisioned by B23-0091, the Department of Buildings Establishment Act. We urge the Council to go even further, either by creating an independent agency focusing exclusively on rental housing inspections and enforcement, or by amending the current bill to create a tenant protection division within the Department of Buildings with a focus on public health and consumer protection. These changes are critically necessary to ensure that tenants in the District are not forced to live in unsafe, unhealthy conditions, and that affordable housing is not lost through neglect.

Legal Aid has appeared before the Committee of the Whole on thirteen 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. Fundamental agency transformation is challenging but the Council cannot afford to continue to wait.

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 this Committee to move forward with passage of the Department of Buildings Establishment Act. We also share a few specific recommendations for agency reform below.

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\(^1\) 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 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.
Problems with DCRA Are Long-Standing and Well-Documented

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 over the years have been confirmed by recent government reports. In September 2018, the D.C. Auditor issued a report that focused on enforcement lapses at a property known as Dahlgreen Courts as a case study of agency failures at DCRA. In May 2019, the Office of Inspector General issued a report that focused on one step in the enforcement process – the collection of fines once DCRA has cited violations and issued civil infractions – and detailed how fine collection breaks down. Most recently, in October 2019, a District-commissioned investigative report by Alvarez & Marsal found that systemic breakdowns caused DCRA to fail to respond to reports of housing violations before a fire destroyed the property at 708 Kennedy Street, N.W. and killed two tenants.

While these government reports have focused on the current state of enforcement at DCRA and the leadership of former Director Melinda Bolling and current Director Ernest Chrappah, it is important to note that the problems identified in these reports 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. The Post’s conclusions were based on a review of thousands of court records and agency documents. DCRA Director Linda Argo responded at the time by assuring the public that the agency would provide more training to employees and develop a system to better track inspections and re-inspections. These promises have been echoed by subsequent directors, but meaningful reform remains elusive.

Among the problems identified by tenants, advocates, and government investigators:

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1. DCRA Fails to Adopt and Its Employees Fail 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. The Office of Inspector General found that DCRA’s Office of Civil Infractions did not have any written policies or procedures governing its work and that employees were inconsistent on certain practices as a result. In its April 2019 written response to the OIG report, DCRA stated that it recently had adopted standard operating procedures, but no copy ever was produced. Several months later, Alvarez & Marsal found the same problem – that many DCRA policies on inspections and enforcement were informal and reflected only in emails, and that DCRA had only begun formalizing many of its current policies after the August 2019 Kennedy Street fire. This lack of clarity on agency roles and functions contributes to many of the other problems identified below.

2. DCRA Fails to Track Housing Conditions Complaints & Enforcement Activities

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. Alvarez & Marsal found that the Metropolitan Police Department officer attempting to draw concern to the Kennedy Street property had 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. The investigator failed to document or log his visit to the property or follow-up communications with the property owner and tracked his work in an offline spreadsheet. The Office of Inspector General similarly found that DCRA’s internal computer system does not contain accurate information on fine collection and does not allow DCRA to track fine payment or pursue violators who do not pay. The D.C. Auditor reported that DCRA’s internal recordkeeping practices result in incomplete, inaccessible, and inconsistent information about enforcement. To cite a few examples, DCRA fails to provide current information on individual enforcement actions, to track key performance indicators on the length and results of its enforcement activities, or to track which landlords or properties have problematic records.

3. 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 tortured path of the Kennedy Street complaint illustrates the point – the case was not assigned to an investigator for two months, the investigation was limited at best and was suspended when the investigator took on a new job, and then the case was closed out without any review or approval. All of these agency failures went undetected because DCRA does not maintain and its employees do not

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6 D.C. OIG Report at 4-5, 6-7.
8 Id. at 5, 25, 39.
9 Id. at 11-13.
10 D.C. Auditor Report at 6, 21-27.
11 Alvarez & Marsal Report at 4-5, 36-37.
follow any centralized process for logging, tracking, and resolving complaints about housing code violations. The Office of Inspector General similarly found that inconsistencies in DCRA’s policies and procedures for collecting fines mean that violators likely can escape any consequences of failure to pay. As a result, tenants encounter inconsistent agency responses and, too often, a failure to follow through on their complaints.

4. 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”. The District has approximately 165,000 renter-occupied housing units. Yet, DCRA’s Housing Inspections and Housing Code Enforcement sections employ only 23 housing code inspectors to perform this work, or one inspector for every 7,000 units. As the D.C. Auditor noted in its report, other jurisdictions employ two to three times more inspectors per 1,000 renter-occupied units. 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.

5. DCRA Lacks a Culture or Mission Focused on 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. The D.C. Auditor found that DCRA shows leniency towards landlords and allows violators to escape consequences by extending timelines for landlords to abate violations; not pursuing fines and other penalties, even when ongoing violations are documented; and, in general, not creating sufficient deterrents to bring problem landlords into compliance with the housing code. In the case of Dahlgreen Courts, DCRA cited 105 violations and issued 24 notices of violation with potential fines.

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12 Id. at 43, 48. 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.
13 D.C. Auditor Report at 17.
14 Id. at 33, 46, 54, 66.
16 D.C. Auditor Report at 5. A survey by Legal Aid found that Minneapolis, MN employs one inspection staff person for every 2,000 units, Montgomery County, MD employs one person for every 4,000 units, and Boston employs one staff person for every 5,000 units. See Written Testimony 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 Children’s Law Center has done a similar survey of additional jurisdictions and found similar ratios.
17 Id. at 12-20.
totaling $36,300. Although only half of these notices of violation were resolved as abated, the only penalty the landlord faced – over seven months later – was fines totaling $2,500 on three notices of infraction filed.\textsuperscript{18} Alvarez & Marsal similarly found a “lack of responsibility and ownership of building safety issues across multiple agencies,” including DCRA.\textsuperscript{19}

**Legal Aid Continues to Experience Problems Working with DCRA**

Even with new leadership in place for over a year, DCRA continues to struggle with the same long-standing problems, including poor communication. A recent client story illustrates our ongoing challenges in receiving timely, reliable information from the agency.

Legal Aid currently represents a client who lives in a building that has been placarded by DCRA for uninhabitable living conditions. When a building is placarded, tenants are ordered to vacate the building until repairs are completed. Our client has been displaced from her home for nearly a year.

Recently, our client reported that tenants appear to be living in the building again. In court, the landlord has questioned whether the building ever was closed by DCRA. Having heard about these developments, the Legal Aid attorney representing the client reached out to DCRA in an attempt to confirm the status of the building.

The Legal Aid attorney initially spoke with an employee who relayed contradictory and confusing information, first suggesting our client could move back in, then noting she could not determine the status of the building in DCRA’s computer and would need to speak with an agency employee who was on leave, because he was the only one who knew. The employee then referred us to a different, high-level official. Our attorney attempted to call this official five times and left three separate voicemails but never received any response. Eventually the DCRA official’s assistant referred our attorney to a different agency employee, who confirmed the building in fact remains closed.

However, because the landlord continued to question our claim that the building remains closed, the court then required that we subpoena a DCRA official with knowledge to come to an upcoming court hearing. Because DCRA requires that we subpoena the agency, not any particular employee, we were concerned that the wrong witness might appear in court. After serving the subpoena, we attempted to follow up with two high-level officials to seek their assistance in identifying the appropriate contact at the agency. We have yet to receive any

\textsuperscript{18} Id. at 9.

\textsuperscript{19} Alvarez & Marsal Report at 41. 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 explained 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,” issues that fall directly under the Duty Officer’s responsibility. Id. at 33.
response to that email, and so far our follow-up contacts with the Office of General Counsel have not resulted in any further clarity.

While this example is mundane, it also is commonplace. Even when Legal Aid attorneys are in court working to enforce the housing code through private legal action, we often find it difficult to obtain the information that we need from DCRA.

**Recent Changes at DCRA Implemented by Director Chrappah Raise New Concerns**

Through multiple directors and internal efforts at reform, DCRA continues to come up short at every step in the enforcement process. Recent changes implemented by Director Ernest Chrappah have raised new concerns.

Legal Aid was pleased to participate in two working groups convened by Director Chrappah and his staff earlier this year to focus on proactive inspections and enforcement and compliance more generally. Unfortunately, after several initial meetings, DCRA disbanded the working groups with little to show for our efforts. We are unaware of any tangible changes to the proactive inspections program, despite both tenant and landlord representatives setting forth numerous recommendations for change, including many points of agreement. The only resulting changes to enforcement and compliance more generally have been the two policies described below, neither of which were endorsed fully by the working group. Legal services attorneys and tenant organizers also have tried to reinstate regular meetings with the agency director and senior staff – meetings which took place quarterly under the prior director – to no avail.

Legal Aid also is concerned about the results of two recent changes in enforcement policies. Earlier this year, DCRA announced that, effective May 1, 2019, it would issue notices of infraction instead of notices of violation, proceeding immediately to fine landlords for cited violations. Legal Aid welcomed this announcement but cautioned that it would only succeed if DCRA committed sufficient resources to follow through on enforcement cases and to inspect and re-inspect units to ensure compliance, not just enforcement. The initial reports we have heard from the field raise questions about whether the new regime is effective. It is our understanding that DCRA has been calling landlords ahead and then cancelling inspections whenever the landlord self-reports compliance, even if DCRA is unable to reach the tenant to confirm.

More recently, DCRA announced a new program to train and deploy citizen inspectors to perform housing code inspections through an online, on-demand platform. Legal Aid has previously testified before this Committee about our concerns that this program will only weaken an already troubled enforcement environment by leading to lower-quality inspections, less consistency, and less follow through on enforcement. Once again, the initial reports we have received are not encouraging. It is our understanding that private inspectors have not proven willing to inspect units during evening or weekend hours, as promised. DCRA also is not requiring private inspectors to be available to provide testimony in court, should that prove necessary. We already have heard initial reports that judges at the Office of Administrative Hearings have expressed skepticism about the reliability of private inspector findings.
We hope that the Committee will ask and that DCRA will provide full data on its new NOI approach and private inspector program during the upcoming Council oversight process, so that both changes can be evaluated fully. Legal Aid remains concerned that the current director not only has failed to correct DCRA’s longstanding systemic failures but also has committed significant agency time and resources to misguided policy changes that will only further weaken enforcement.

**DCRA’s Systemic Failures Require Systemic Change**

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.

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 importance of tenant health and safety is lost among other agency functions. Indeed, 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.

Whether through an independent Tenant Protection Agency or a Tenant Protection Division within the Department of Buildings, we support the following recommendations to strengthen the bill and ensure that current challenges with enforcement are not replicated.\(^{20}\)

\(^{20}\) The attached charts show the proposed agency structure under the current bill versus our recommended structure for 1) a tenant protection agency, or 2) a tenant protection division within the Department of Buildings.
1. **Appoint a Director With a Five-Year Term Only Terminable For Cause**

The director of the agency should be appointed for a five-year term and should only be able to be terminated for cause. Insulating the director from political pressures will help to ensure a strong and independent enforcement culture.

2. **Create Separate Public Health and Enforcement & Compliance Divisions**

The Department of Buildings Establishment Act already calls for the creation of a Strategic Enforcement Administrator to oversee enforcement activities for the entire agency. But to be effective, enforcement and compliance must be interwoven into all agency subdivisions and functions, with enforcement specialists working side-by-side with the inspectors who find the violations and the contractors who fix them when enforcement fails to bring about compliance. Creating a separate enforcement and compliance division under the director will ensure that an enforcement and compliance culture informs the work of the inspections and rehabilitation divisions. For similar reasons, a separate public health division headed by a public health official will help to ensure that policies and practices regarding inspections, rehabilitation, and enforcement all are viewed through a public health lens.

3. **Create a Deputy General Counsel for Rental Housing**

When initial enforcement efforts fail, cases must be turned over to the agency’s attorneys and legal support staff to pursue administrative and court action. To ensure that rental housing enforcement remains a top priority, the Office of General Counsel should include a division focused solely on issuing infractions, imposing fines, and initiating administrative and court action in rental housing cases. This division also would work closely with the Strategic Enforcement Administrator to refer appropriate cases to the Office of the Attorney General.

**Other Changes in District Law Are Needed to Protect Tenants and Ensure Compliance**

Wherever housing code enforcement activities are housed, other changes are needed to ensure that tenant health and safety are protected and that landlords actually comply with the law. Legal Aid has testified about these proposals in greater detail at prior hearings:

1. Ensure DCRA employs enough government inspectors and other staff to carry out its enforcement and compliance mission. We recommend a ratio of one inspector for every 2,000 rental housing units in the District.

2. Codify and strengthen the proactive inspections program, including by using agency inspectors (not contractors), increasing the frequency and breadth of inspections, and targeting inspections based on prior violation records and other risk factors.
3. Require DCRA to provide inspectors in the Landlord and Tenant Branch of D.C. Superior Court, to ensure that tenants have easy access to the inspections process and can enforce their right to habitable housing.

4. Enact Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, to require DCRA inspectors to inspect, cite, and enforce violations of the District’s mold law, and expand the bill to include lead hazards.

5. Fully fund and implement the Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018 (Law 22-0287), which establishes tighter timeframes and increases penalties for abatement and enforcement of housing code violations.

**Conclusion**

Thank you for this opportunity to testify about our ongoing concerns about DCRA’s lapses in enforcement and our support for Bill 23-0091, the Department of Buildings Establishment Act. We look forward to working with members of the Committee of the Whole, staff, and other advocates to ensure that this and other legislation addressing DCRA’s systemic failures can be considered and moved forward this Council period.
Org Structure of Department of Buildings Under Bill 23-0091 (Figure 1)
Tenant Protection Agency

Director
5 yr term

Strategic Enforcement & Compliance Administration
(5 yr term)
Leadership level to ensure agency-wide data-driven strategic planning

General Counsel

Tenant Protection Division
Deputy Director (5 yr term)

Ombudsman
(5 yr term)

Office of the Director

Deputy GC: Residential Housing

Deputy GC: Other Agency Functions

Code Enforcement Div

Civil Infractions and Fine Assessment Div

See Figure 3 below

See Figure 3 below

Advocates' Vision for Org Structure of Tenant Protection Agency (Figure 2)
Advocates’ Vision for Org Structure of Tenant Protection Division (Figure 3)

Tenant Protection Division

- Director
  - 5 year Term

- Housing Rehabilitation Div
- Vacant and Blighted Div
- Rental Housing Inspections Div
  - Includes: Complaint-Based Proactive
- Public Health Div
  - Includes: Mold Asbestos Lead
- Enforcement & Compliance Div
Advocates’ Vision for Org Structure of Department of Buildings with Tenant Protection Division (Figure 4)