

**Testimony of Beth Mellen Harrison
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**Before the Committee on the Whole
Council of the District of Columbia**

**Budget Oversight Hearing Regarding
the Department of Consumer & Regulatory Affairs**

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The coronavirus pandemic has drawn public attention to long-standing, systemic inequalities in the District. While African-Americans currently total only 46 percent of DC residents, they account for 76 percent of the deaths to date from coronavirus.¹ The roots of these disparate health outcomes run deep. As Mayor Muriel Bowser commented this past Sunday on ABC News' *This Week*, housing is one of several social determinants of health:

We have to look at the building blocks of health. Having safe housing, having access to clean water, having access to good food and quality education and good-paying jobs. Those are all of the things that lead to a healthy community.²

The administration describes the District's response to the pandemic as "a once-in-a-generation opportunity to thoughtfully build toward a more equitable, resilient, and vibrant city."³ A critical component to realizing that goal is ensuring that all District residents can live in safe, healthy, and habitable housing.

The Legal Aid Society of the District of Columbia⁴ welcomes this opportunity to share our thoughts about the performance of the Department of Consumer & Regulatory Affairs (DCRA)

¹ Executive Office of the Mayor, *Coronavirus Data – Total Deaths by Race*, available at <https://coronavirus.dc.gov/page/coronavirus-data>.

² ABC News, *This Week*, "A Nation Divided: Racial Disparities in the Pandemic" (May 24, 2020), available at <https://abcnews.go.com/ThisWeek/video/largely-african-americans-essential-work-dc-mayor-bowser-70858599>.

³ Executive Office of the Mayor, *ReOpen DC Overview*, available at <https://coronavirus.dc.gov/reopencdc>.

⁴ 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

and the administration's proposed FY2021 budget for the agency. Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many of these tenants are living in substandard conditions, with serious housing code violations that threaten the health and safety of their families. Lack of code compliance by landlords and under-enforcement by the District government both contribute to this public health challenge.

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.⁵ 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. Bill 23-0091, the Department of Buildings Establishment Act, provides the foundation for this fundamental transformation and should be a top priority for funding in this year's budget.

As long as rental housing inspections remain within DCRA, Legal Aid recommends that any new investments in the FY21 DCRA budget be targeted specifically to housing code compliance and enforcement, with sufficient transparency and accountability for this Committee to 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

The Mayor's budget increases overall funding for DCRA by nearly \$6 million, including an additional \$250,000 allocated to Residential Inspections (3080) and an increase of \$781,000 for Rehabilitation (3050).⁶ But there are some important caveats. The additional money in Residential Inspections, which amounts to a gain of one full-time equivalent employee (FTE), is offset by a cut of \$158,000 to Scheduling & Enforcement (3020), with a loss of two FTEs. These units work closely together to ensure that housing code inspections are scheduled and conducted and that violations are enforced. As to Rehabilitation, the proposed increase still does not bring funding for this unit to the level it was in FY18, before large cuts in FY19 and FY20. This unit helps to pay for DCRA to abate housing code violations when landlords refuse to do so.

Overall, the proposed budget reflects little new investment in housing code enforcement and compliance. In the face of several 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 disappointing. To cite one example, Legal Aid and other organizations have testified about the need to hire more residential inspectors to bring the

Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

⁵ Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on the Department of Consumer & Regulatory Affairs (March 3, 2020), available at <https://www.legalaiddc.org/wp-content/uploads/2020/03/DCRA-Oversight-FINAL-3.5.20.pdf>.

⁶ FY 2021 Proposed Budget and Financial Plan, Vol. 4 Agency Budget Chapters – Part 3, F-9 – F12 (May 18, 2020), available at <https://app.box.com/s/4f3epemwcd2073r910mcchqdkb47gmze>.

District’s ratio of inspectors to residential housing units in line with other jurisdictions.⁷ The budget does not propose this type of needed increase.

Also 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. The Mayor made a similar proposal last year, and the Council rejected it. Under current law, the Nuisance Abatement Fund is restricted to a single purpose – for the District government to abate housing code violations when landlords refuse to do so.⁸ The Mayor now proposes to expand the use of the Nuisance Abatement Fund to pay for inspections and any other expenses to “improv[e] the operations of the Department of Consumer & Regulatory Affairs.”⁹ 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.¹⁰ 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 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.

To Move Forward with Fundamental Agency Change, the Council Should Enact and Fund the Department of Buildings Establishment Act

In past testimony, Legal Aid has shared problems that we continue to observe in DCRA’s rental housing inspections program, all of which result in under-enforcement of the housing code. The vast majority of tenants that Legal Aid meets with each year are living with poor housing conditions. Our legal assistants conduct hundreds of home visits and inspections each year. Their reports back confirm conditions such as lack of heat, lack of utilities, defective appliances, infestation, leaks and water damage, mold, defective wiring, holes in walls and ceilings, defective door locks, and windows and doors that do not keep out the elements. Recent enforcement actions by the Office of Attorney General have confirmed numerous code violations

⁷ Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on the Department of Consumer & Regulatory Affairs (March 3, 2020), *available at* <https://www.legalaiddc.org/wp-content/uploads/2020/03/DCRA-Oversight-FINAL-3.5.20.pdf>.

⁸ D.C. Code § 42-3131.01.

⁹ Fiscal Year 2021 Budget Support Act of 2020, B23-0760, § 6011.

¹⁰ Funding in FY19 totaled \$6,058,705 and paid for 64 full-time equivalent positions. DCRA Performance Oversight Responses pg.13-14 (Feb. 18, 2020), *available at* <https://dccouncil.us/wp-content/uploads/2020/02/DCRA-FY19-to-FY20-Performance-Oversight-Pre-Hearing-Questions-and-Answers.pdf>.

at slum properties.¹¹ Many of the concerns about DCRA raised by tenants and advocates over the years have been confirmed by a string of recent government reports.¹²

In our oversight testimony this year, Legal Aid shared our own experience with continued problems working with DCRA.¹³ Even with new leadership in place for over a year, DCRA continues to struggle with the same long-standing problems, including poor communication and failure to support the private enforcement efforts of Legal Aid and other tenant advocates. Legal services attorneys and tenant organizers 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.

We also are concerned that DCRA’s inspections and enforcement data are trending in the wrong direction. First, the number of housing inspections conducted is trending down, from 7,955 in FY17 to 7,588 in FY19 and only 1,169 inspections conducted in the first quarter of FY 2020, the lowest of the last 13 quarters.¹⁴ Legal Aid is concerned that this trend may be the result of up-front triaging that DCRA is conducting when tenants call requesting an inspection, rather than actual repairs and abatement.

Second, the percentage of inspections where housing code violations are cited and subsequently repaired is trending down not up, with a much lower percentage of cited violations being

¹¹ *District of Columbia v. Terrace Manor, LLC*, 2016 CA 007767 (23rd Street & Savannah Street, SE); *District of Columbia v. Bennington Corporation*, 2018 CA 007253 B (4559 – 4569 Benning Rd SE; 4480 C Street SE); *District of Columbia v. Astor Limited Partnership*, 2019 CA 001845 B (5058 Astor Pl SE); *District of Columbia v. Vista Ridge Limited Partnership*, 2018 CA 007285 B (Forest Ridge and the Vistas).

¹² 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. Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts* (Sept. 24, 2018). 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. 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). 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. 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).

¹³ Written Testimony of Beth Mellen Harrison, Public Oversight Hearing on the Department of Consumer & Regulatory Affairs (March 3, 2020), available at <https://www.legalaiddc.org/wp-content/uploads/2020/03/DCRA-Oversight-FINAL-3.5.20.pdf>.

¹⁴ DCRA Agency Dashboard, *Inspections & Compliance*, available at <https://eservices.dkra.dc.gov/DCRAAgencyDashboard/index>.

repaired. DCRA’s data show that 50 percent of violations were repaired in FY17 and FY18, compared to only 30 percent for FY19.¹⁵ This also suggests that DCRA’s overall strategy of eliminating notices of violation and relying solely on notices of infraction is not having the intended effect of bringing more landlords into compliance with the housing code.

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 we believe the Act should go even further.¹⁶ We support the creation of an independent agency focused exclusively on residential housing inspections, led by a term-appointed Director removable only for cause, with high-level officials focused on public health and strategic enforcement, and with a deputy general counsel focused on rental housing enforcement and compliance.

We understand that enactment of the Department of Buildings Act will involve a significant cost to stand up a new government agency, and we appreciate that the Council faces difficult choices this fiscal year in an austere budget environment. Legal Aid nonetheless maintains that breaking up DCRA and creating a new agency focused on residential housing inspections is a critical step to realizing the Mayor’s goal of building a more equitable, resilient, and vibrant city, and more specifically to ensuring that all District residents live in safe, healthy, and habitable housing.

Other Changes in District Law to Protect Tenants and Ensure Housing Code Compliance and Enforcement Should Be Prioritized for Enactment and Funding

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. Many of our recommendations can be found in bills currently pending before this Committee.

The Committee Should Require DCRA to Employ Sufficient Inspectors and to Deploy Them in Court

As noted above, DCRA simply does not employ enough inspectors to allow for vigorous enforcement of the housing code. In explaining their failure to respond to communications about the Kennedy Street property where a fire last August killed two tenants, DCRA employees cited a “high volume of emails” received, “overwhelming” workloads, and being “too busy with

¹⁵ *Id.*

¹⁶ Legal Aid previously has testified about ways in which we would strengthen and improve the bill. See Written Testimony of Beth Mellen Harrison, “Bill 23-91, Department of Buildings Establishment Act of 2019 Office of Inspector General Prospective Evaluation of Bill 23-91 and Evaluation of DCRA Business Processes” (Dec. 10, 2019), available at <https://www.legalaiddc.org/wp-content/uploads/2019/12/Legal-Aid-Testimony-re-B23-0091-FINAL.pdf>.

administrative duties”.¹⁷ Bill 23-0394 mandates that the agency employ one residential housing inspector for every 2,000 residential housing units, and Legal Aid supports this ratio. Increasing the number of inspectors also is in line with provisions in Bill 23-0394 that would require all inspections to be performed by DCRA employees. Legal Aid also supports provisions in Bill 23-0394 requiring DCRA to attach inspectors to both the Housing Conditions Calendar (where tenants sue landlords for repairs) and the Landlord and Tenant Branch (where landlords sue tenants for eviction and tenants defend based on conditions) in D.C. Superior Court.

The Committee Should Require DCRA Inspectors to Inspect and Cite for Violations of the District’s Mold and Lead Laws

Legal Aid supports Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which squarely addresses gaps in current law by requiring DCRA to certify its inspectors in mold assessment and to issue notices of violation and impose penalties when landlords fail to comply with the mold law. Enacting this bill will allow tenants to request a single inspection from one agency that will cover both housing code violations and mold. For the same reason, Legal Aid supports amending the bill to require DCRA inspectors to be certified to inspect for and identify violations of DC’s lead hazard law. Tenants living with different types of housing conditions problems should not have to contact and coordinate with multiple agencies to obtain relief. Instead, DCRA inspectors should be qualified and authorized to inspect, cite, and enforce violations of the housing code, the mold law, and the lead hazard law.¹⁸

The Committee Should Enact Legislation to Strengthen the Basic Business License Process as a Tool to Ensure Code Compliance

Bill 23-0394 would clarify current law to require that landlords filing an eviction suit for possession or seeking to increase a tenant’s rent must have and show proof of a valid basic business license. We recommend strengthening the bill further by adding a provision that a landlord may not collect rent if the landlord does not hold a valid basic business license. Adding these penalties will create a more effective and complete enforcement structure to ensure that landlords comply with the law – not only by obtaining a license in the first place, but also by avoiding misconduct that would cause the landlord to lose the license. This change in the law must be coupled with efforts by DCRA to ensure that landlords that are repeatedly cited for code violations, do not abate code violations, and otherwise fail to comply with licensing requirements face a real threat of revocation or non-renewal of their license until these issues are addressed.

¹⁷ Alvarez & Marsal Report at 33, 46, 54, 66.

¹⁸ Legal Aid also supports Bill 23-0407, the Lead Hazard Prevention and Elimination Amendment Act of 2019, which lowers acceptable levels for lead exposure, extends the law’s protections to all tenants, creates a fund to help landlords bring properties occupied by low-income tenants into compliance, and provides tenants with a private right of action if their landlord does not comply.

The Committee Should Engage in a Comprehensive Review to Remove Discretion, Shorten Timelines, and Increase Penalties

Finally, the Committee should engage in a comprehensive review of current law, enacted but unfunded legislation, and pending bills to tighten timelines, increase penalties, and ultimately to remove discretion in the enforcement process. To incentivize voluntary compliance with the housing code, the District's enforcement system must ensure that violators face timely and strong penalties. The Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0317) contains many provisions strengthening District law to better ensure enforcement of and compliance with the housing code. When fully implemented, these changes should mitigate many of the longstanding concerns that Legal Aid and other tenant advocates have about DCRA's performance. However, the Act was not funded by the Council last budget season.¹⁹ These provisions also should be compared to similar provisions in Bill 23-0394 that would create tight, automatic enforcement timelines and would increase penalties for landlords that violate the housing code, particularly repeat violators.

Conclusion

Thank you for this opportunity to testify about our ongoing concerns about DCRA's lapses in enforcement. 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, along with any necessary initial funding, 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 2021 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.

¹⁹ The Fiscal Year 2020 Budget Support Clarification Amendment Act of 2019, Bill 23-0504, amended and enacted the provisions of the Act related to disclosure of ownership interests in corporate entities – Section 3 of the original Act - and clarified that these provisions have no fiscal impact, so those provisions of the Act have been able to go into effect.