

**Testimony of Amanda Korber
Supervising Attorney, Housing Law Unit
Legal Aid Society of the District of Columbia**

**Before the Committee on Housing and Executive Administration
Council of the District of Columbia**

Performance Oversight Hearing Regarding the District of Columbia Housing Authority

March 5, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the DC Housing Authority (DCHA) over the last year. This last year has been challenging for everyone, and we appreciate the amount of work it took DCHA to begin operating, in large part, remote. However, we have concerns with DCHA's operations, from its big picture redevelopment plans down to the daily functions of the voucher and public housing programs. This testimony will address three of those concerns.

First, to date DCHA has been unwilling to put its verbal commitments to protect residents' rights before and after redevelopment into writing, in a way that is enforceable by tenants. Second, we are concerned about the extraordinary delays (literally years) in transferring residents to new public housing units even after DCHA approves their reasonable accommodation requests. Third, while we understand operating virtually is challenging, our clients have had an impossibly hard time receiving transfer voucher and leasing up in units during the pandemic.

The Council Should Act to Ensure that Residents' Rights Are Protected and Enforceable During the Redevelopment Process

There is no dispute that much of DCHA's public housing stock is in deplorable condition and needs to be redeveloped. However, public housing residents should not pay the price, and should not lose any rights, because of the Federal and local governments' decades-long neglect of their properties. When DCHA first announced its redevelopment plans in 2019, Legal Aid was

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." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. 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.

hopeful that DCHA would put its commitments to its residents in writing – to rebuild every deeply affordable unit that it demolishes, to preserve residents’ rights throughout the process, and to ensure every resident has the right to return – in a way that tenants could enforce. Yet, to-date, DCHA has been unwilling to do so. We ask the Council step in and pass legislation to ensure residents have these protections. The Public Housing Preservation and Tenant Protection Amendment Act of 2020 (B23-0627), introduced last session, would go a long way in addressing these concerns. We urge the Council to reintroduce and pass that legislation.

The Council Should Require DCHA to Replace Every Unit of Deeply Affordable Housing it Demolishes

The District has been in the throes of an affordable housing crisis for years. In March 2019, the National Community Reinvestment Coalition concluded that DC experienced the highest intensity of gentrification in the country, with more than 20,000 Black residents displaced, between 2000 and 2013.² Presently, there are over 27,000 families sitting on the public housing waitlist, and more than 39,000 languishing on the voucher waitlist.³ These District families have been waiting decades for their chance to live in stable, affordable housing. It is obvious then that DC needs to be adding units of deeply affordable housing (i.e. housing affordable to families at 0 to 30 percent AMI), not demolishing them forever.

It is not clear how many units DCHA intends to demolish, and based on recent conversations, it seems like its plans in that regard may have changed dramatically over the course of the last year. What is clear and uncontroversial is that the Council should obligate DCHA to rebuild every deeply affordable unit it demolishes with a site-based, permanent subsidy. This will ensure that, at a minimum, the District does not lose any affordable housing through redevelopment.

The Council Should Require DCHA to Ensure That Public Housing Tenants Maintain Their Rights after Redevelopment

Tenants who live in public housing have a host of substantive rights under federal law. These rights include the right to grieve any adverse decision by the housing authority, rights around what those grievance procedures must look like, the right to comment on any changes to their lease, the right to transfer between properties, and even more basic rights, such as the right that tenants’ rents will never be more than 30 percent of their incomes, with an allowance for tenant-paid utilities. Additionally, because traditional public housing is owned and operated by a government actor, there are established legal mechanisms by which tenants in those properties can enforce any violation of their rights against the housing authority. However, many of the legal claims available to public housing residents are not available to tenants in redeveloped properties that are owned and/or operated by private, non-government entities.

² “D.C. has the highest ‘intensity’ of gentrification of any U.S. city, study says,” *available at* <https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/>.

³ See DCHA’s FY20 Responses to Pre-Performance Oversight Hearing Questions, at p. 16.

The Council should require DCHA to have regulations maintaining public housing tenants' rights after redevelopment and ensure that tenants can enforce those rights against any new owner, before allowing DCHA to proceed with demolition. This means rules requiring that tenants' rights are included in the affordability covenant, the ground lease, the Regulatory and Operating Agreement between DCHA and the developer, and the tenants' lease agreements. It also means requiring DCHA to name tenants as third-party beneficiaries to the Regulatory and Operating Agreement for purposes of enforcing any violation of their rights.

Every Public Housing Resident Should Have an Enforceable Right to Return to Redeveloped Properties

Every public housing resident should have the right to return to redeveloped properties. In the past, DCHA has promised that tenants would have this right. However, we and our partner organizations have seen many instances of new owners refusing to rent to returning tenants. This is often because new owners impose stringent screening criteria, such as minimum credit scores and onerous criminal background checks. This is antithetical to public housing's purpose, which is to serve as low-barrier, deeply affordable housing accessible to all low- and no-income residents.

The Council should require that DCHA extend the protections of Resolution 16-06 – the Relocation and Re-entry Policies for New Communities Initiative Developments – to all properties that it redevelops. Resolution 16-06 lays out the screening criteria that new owners can consider after redevelopment at New Communities Properties, and clarifies that the criteria can be no more stringent than DCHA's own criteria.⁴ These protections are necessary, and should apply to all properties that DCHA redevelops, whether they are redeveloped through New Communities, demolition/disposition, or the Rental Assistance Demonstration.

In addition to extending Resolution 16-06's protections to all public housing residents, DCHA must include the permissible screening criteria in its Regulatory and Operating Agreements with private developers and owners, and make tenants third-party beneficiaries to that Agreement so tenants can protect and enforce their own right to return. These protections will help ensure that DCHA does not make these same mistakes again, especially when it is undertaking such a large-scale transformation that will displace thousands of families.

DCHA Must Transfer Public Housing Residents to Safe Units More Quickly

Over the last year Legal Aid has worked with multiple public housing residents who have been waiting years to transfer units. Public Housing residents have the right to transfer units for multiple reasons, including because they need a different unit to accommodate their or a family member's disability, they are a survivor of domestic violence, or because of other public safety

⁴ The DCHA Board of Commissioners adopted Resolution 16-06 in March 2016. To date, DCHA has not extended its protections to any properties other than those governed by the New Communities Initiative.

concerns.⁵ DCHA often approves these transfer requests, and agrees that residents are in need of these transfers and legally entitled to them. In reality though, these approvals have little meaning because residents are waiting years to get the transfers they need to live safe and dignified lives. After years of languishing, many residents we talk to feel like their transfers are never going to come through.

To be honest, we do not know exactly why these transfers take so long, and its likely a problem with multiple causes. Is it because there are not suitable units available? Because so many public housing units are offline or uninhabitable? Or because DCHA needs to work on how it prioritizes its transfer list? Without knowing the exact cause of the problem, it is hard to propose solutions. Legal Aid encourages the Council to press DCHA on this issue, determine what the source of this years-long delay is, and require DCHA to fix it. The current status quo requires tenants to live in units where they are unsafe or that do not meet their needs, and in many instances the delay is likely in violation of DCHA's obligations under local and federal disability law.

DCHA Must Streamline Its Lease-Up Process for Participants in the Various Voucher Programs

Our clients who participate in various voucher programs through DCHA faced multiple obstacles during the last year when trying to lease-up in new units. Legal Aid appreciates that working remotely presents many challenges, and that DCHA had to pivot quickly during the public health emergency to perform its many functions virtually. However, a year into the pandemic, voucher participants are still facing many administrative challenges when they try to lease-up in new units, delaying their ability to move into safe housing by many months.

It is taking many months for voucher participants to even get their transfer vouchers – the first step when a program participant wants to find a new unit and relocate. Then, once a participant finds a new unit to move to, that landlord must submit a lease-up packet to DCHA. Once the lease-up packet is submitted, it is not clear how or when landlords and voucher holders will be contacted about its status. Multiple landlords our clients work with have told us that they never heard from DCHA, only to find out much later that the packet was rejected with no notice sent to either the landlord or the voucher holder. Legal Aid attorneys have had to send multiple emails over the course of many weeks, and sometimes still never get responses or figure out what is needed to move the lease-up forward. In addition to leaving our clients in unsafe housing conditions and/or the shelter system, this process also causes landlords to get frustrated and we often worry they will walk away.

We want to emphasize that these problems were encountered by program participants who had legal help and a Legal Aid advocate reaching out to DCHA and prospective landlords in an attempt to keep the process moving. Even with our assistance, tenants were unable to move into their new homes for months. This is unacceptable. We encourage the Council to ask DCHA about its challenges in leasing-up tenants during the public health emergency and require them to come up with solutions. Importantly, any new process DCHA develops should be transparent and publicly available to tenants and their advocates.

⁵ 14 DCMR § 6402.18

Conclusion

In sum, Legal Aid has three requests. First, that the Council step in and pass legislation that DCHA rebuilds any affordable housing it demolishes and protects residents' rights before and after redevelopment. Specifically, we urge the Council to reintroduce and pass The Public Housing Preservation and Tenant Protection Amendment Act of 2020 (B23-0627). Second, we ask that DCHA fix its public housing transfer process so that tenants are not waiting years for unit transfers they desperately need and are legally entitled to. Finally, DCHA must streamline its lease-up process to ensure that voucher program participants are able to quickly move into safe and stable homes.