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

**Performance Oversight Roundtable Regarding  
“Implementation of Law 23-269,  
the Department of Buildings Establishment Act of 2020”**

**February 16, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to share our thoughts about the implementation of Law 23-0269, the Department of Buildings Establishment Act of 2020. Legal Aid provides advice, brief services, and representation to hundreds of tenants in the District every year. Many are living in substandard conditions, with serious housing code violations that threaten the health and safety of their families. Under-enforcement of the housing code by the District government contributes to this public health challenge. In many ways, the pandemic has worsened this existing problem. Legal Aid increasingly is hearing from tenants whose landlords are engaging in abusive and illegal practices to push them out of their homes, including harassment and even constructive eviction through unsafe housing conditions.

The Department of Consumer & Regulatory Affairs (DCRA) has been a troubled agency for many years. Legal Aid supported the creation of the Department of Buildings (DOB) as an important first step in fixing the District’s broken enforcement system. We appreciate this Committee’s leadership in ensuring that the Department of Buildings Establishment Act of 2020 was enacted and funded. The creation of DOB remains a necessary step, but it will not be sufficient. This Committee should consider further changes to ensure DOB gets off the ground with a strong compliance and enforcement structure in place. Without additional changes, DOB risks merely replicating broken systems and structures from DCRA and failing to create meaningful change for families in the District living with housing code violations.

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<sup>1</sup> 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 90 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

## **This Committee Should Act Now to Ensure the Department of Buildings Opens Its Doors With Necessary Structural Changes Already in Place**

The Department of Buildings Establishment Act creates a timeline for DCRA to transition into two new agencies, with that process now set to be completed by October 1, 2022. One of the goals of breaking up DCRA was to disrupt the current agency culture. By focusing the new DOB on inspections, compliance, and enforcement, the hope was to build an agency culture and mission focused on public health and safety, with a particular focus on residential tenants. Another goal was to break down existing silos both within DCRA and between DCRA and other agencies, in order to serve District tenants and other customers more effectively.

Legal Aid is concerned that the transition plan documents put together by DCRA and the City Administrator do not appear to be aimed at achieving either of these goals. The organizational plan and chart released in December 2021 largely lifts DCRA's current structure for inspections and transplants it into the new DOB.<sup>2</sup> DCRA and the City Administrator claim that, "The DOB will inherit highly efficient programs and systems that were created, developed, and established by DCRA to improve and enhance the operational capacity of the agency and the staff's capabilities to perform their jobs. . . ," suggesting they have no intention of implementing any meaningful changes, despite a clear and well-documented track record of failure at DCRA.<sup>3</sup> The communications and strategic human capital plan released this month focuses on DOB's role in regulating construction activity and issuing permits, with housing code compliance and enforcement barely mentioned as part of the agency's mission. The list of target audiences and stakeholders for the DOB rollout focuses on businesses and trade groups, failing to mention tenants, tenant organizers, or other community-based organizations serving tenants.<sup>4</sup>

The time to focus on agency culture and structure for the new DOB is now, before the agency opens its door later this year. While Legal Aid will continue advocating for necessary changes until they are enacted, we believe strongly that this Committee can have the most impact by ensuring changes are put in place as part of the current transition planning process over the next eight months.

More specifically, DOB should begin operations with:

- an internal structure that breaks down silos and emphasizes public health,
- a commitment to employing a sufficient number of inspectors to ensure vigorous housing code enforcement, including a strong presence in the community and in court,

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<sup>2</sup> Dep't of Consumer & Regulatory Affairs, *Department of Consumer & Regulatory Affairs Transition Plan – Version 1.0* (Dec. 2021).

<sup>3</sup> Dep't of Consumer & Regulatory Affairs, *Department of Consumer & Regulatory Affairs Transition Plan – Version 2.0* 18 (Feb. 2022).

<sup>4</sup> *See id.* at 7-8, 9.

- a strengthened proactive inspections program, and
- a strengthened compliance and enforcement program that includes clear timelines and penalties.

### **DCRA’s Systemic Failures Require Systemic Change, With a New Department of Buildings and Other Changes in District Law to Ensure Landlord Compliance**

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 past hearings before this Committee and in several reports issued by the District government.<sup>5</sup> While the creation of the Department of Buildings is critical, other changes are needed to ensure that tenant health and safety are protected and that landlords actually comply with the law. First, this Committee should work with current DCRA officials and the City Administrator to ensure that DOB does not simply replicate DCRA’s existing structure, but instead that the new agency is structured from the beginning in a way that breaks down current silos between inspections and enforcement, as well as silos with other agencies, and that keeps a strong focus on public health. Second, we urge this Committee to consider introducing and enacting legislation this year incorporating the other recommendations below, to ensure that DOB opens its door with a strong compliance and enforcement structure in place.

#### The Department of Buildings Should Be Structured to Break Down Silos and Focus on Public Health

The Department of Buildings Establishment Act dictates the overall structure for the new DOB but also leaves the new agency with discretion as to how it operates within that overall structure. Legal Aid is concerned that DCRA and the City Administrator are not using that discretion to create a structure that breaks down silos and employs a public health lens.

First, the organizational plan and chart should do more to break down silos between inspections and enforcement. Housing code inspections will fall under the Chief Inspection Official, while the Strategic Enforcement Administrator will be responsible for all enforcement activities. The organizational plan and chart do not give any indications how these two high-level officials will collaborate and communicate, and instead reflect two separate departments with no apparent

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<sup>5</sup> See, e.g., 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)

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);

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

connection. A better structure would include a smaller Code Enforcement Division under the Chief Inspection Official, so that inspectors and enforcers can collaborate and communicate regularly, with the Strategic Enforcement Administrator focused on overall policies and strategic direction.

Legal Aid has seen countless examples over the years where housing code enforcement appears to break down because of a lack of continuity between DCRA's inspections and enforcement programs, which currently are broken apart within the agency. To cite a few:

- inspectors do not always include proper code citations in the notices of infractions they issue to landlords, leading to enforcement cases being thrown out when landlords appeal;
- enforcement officials do not ensure that inspectors perform reinspections in a timely manner or at all, leading to a shockingly-low repair rate; and
- communication and cooperation between inspections and enforcement breaks down, leading to a gross failure to use available tools such as daily fines for ongoing violations, double fines for imminent health and safety risks, and removal of basic business licenses for unrepaired conditions.

We fear that the current plan for DOB will replicate these existing problems, with separate silos for inspections and enforcement.

Second, the organizational plan and chart should make clear how DOB will collaborate with other agencies. More specifically, the Strategic Enforcement Administrator staff should include liaisons with other agencies, and DOB should establish memoranda of understanding so that these staff can use data captured by other agencies to inform DOB's strategic direction. For example, data on lead violations collected by the Department of Energy and the Environment and data on children diagnosed with asthma from the Department of Health could be used to prioritize certain properties for proactive inspections. This type of data-sharing and inter-agency collaboration should be built into DOB's structure from the beginning.

Finally, the Chief Inspection Officer staff should include a Public Health Division, staffed with public health professionals to focus specifically on mold, lead, and asbestos, as well as overall health consequences caused by housing conditions. Mold, lead, and asbestos in particular present particular health risks and have been ignored for years by DCRA. The Strategic Enforcement Administrator staff likewise should include a high-level public health official. Public health professionals could help inform how complaint-based and proactive inspections can identify hazards like mold, lead, and asbestos and then ensure proper abatement by landlords. This division also could monitor training and certification of all residential housing

inspectors for mold, lead, and asbestos, so that tenants can receive a full-scope inspection by contacting a single agency.<sup>6</sup>

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

We continue to fear that the District simply does not employ enough inspectors to allow for vigorous housing code enforcement. At last count, DCRA employed 25 inspectors responsible for housing code inspections. The organizational plan and chart for DOB released by DCRA and the City Administrator similarly shows 24 inspectors responsible for housing code inspections. The District currently has approximately 166,019 occupied rental units, meaning that DOB will employ one inspector for every 7,000 units.<sup>7</sup> This is wholly insufficient.

The Tenant and Homeowner Accountability and Protection Amendment Act of 2019, Bill 23-0394, would have mandated that DCRA employ one residential housing inspector for every 2,000 residential housing units, and Legal Aid supports this ratio. A report by the D.C. Auditor noted that other jurisdictions employ three times more inspectors than the District.<sup>8</sup> Legal Aid and the Children’s Law Center have conducted informal surveys and found the same.<sup>9</sup>

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, which Legal Aid supports. We previously have testified about our concerns that DCRA Director Ernest Chrappah’s citizen inspection program will only weaken an already troubled enforcement environment by leading to lower-quality inspections, less consistency, and less follow-through on enforcement. For example, when an inspection is conducted by a private citizen, DCRA must send a government inspector to re-inspect the conditions before the agency can take any enforcement action, because private citizen inspectors are not required to appear in any court or administrative hearing to

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<sup>6</sup> It is worth noting that the strategic human capital plan drafted by DCRA and the City Administrator lists two dozen areas of necessary training for DOB staff but fails to mention any training related to mold, lead, or asbestos, despite years of complaints from tenants about DCRA’s refusal to inspect for conditions like mold and lead.

<sup>7</sup> U.S. Census Bureau, “*American Community Survey Data Profiles – District of Columbia, Housing Characteristics*”, available at <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/> (last visited Feb. 15, 2022).

<sup>8</sup> D.C. Auditor Report, *supra*, at 5.

<sup>9</sup> 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 Legal Aid Society of the District of Columbia, “*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.

share their findings. There is no indication in the strategic human capital plan drafted by DCRA and the City Administrator that citizen inspectors will receive the same level of training as DOB employees or that any other steps are planned to improve this program.

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. These inspectors would be tasked with attending court sessions, performing inspections when directed to do so by the Court, preparing reports, and reporting back to the Court on the findings. While DCRA inspectors currently are connected to the Housing Conditions Calendar and present for hearings, they are not connected to the Landlord and Tenant Branch. Our longstanding experience representing tenants facing eviction suggests that the overwhelming majority of these tenants also have repair needs – and in many cases, substantial housing code violations – but typically do not raise these issues or get relief.

Legal Aid is one of the co-leads for the D.C. Eviction Prevention Working Group and is working closely with D.C. Superior Court and other legal services providers funded under the Civil Legal Counsel Projects Program to design an eviction prevention framework. One goal of this effort is to ensure that tenants who are sued for or at risk of eviction can be offered a full range of legal and non-legal supports to help stabilize their housing. Attaching inspectors to the Landlord and Tenant Branch would ensure that tenants have easy access to obtain an inspection, raise housing code violations defenses, and obtain needed repairs once they are in the court process.

DOB also should seek to provide these services more proactively to tenants at risk of eviction and other forms of displacement. Safe and habitable housing conditions are tied to housing stability, while substandard conditions often are used as a tool of displacement. One way for DOB to be on the ground and more trusted and available to residents is to employ a community-based approach, for example assigning teams to cover certain neighborhoods or wards. These teams could focus on outreach to tenants, community education, and building relationships with community-based organizations that frequently serve tenants.

#### The Committee Should Enact Legislation to Codify and Strengthen the Proactive Inspections Program

Legal Aid has testified before about the many problems we have seen over the years with the implementation of DCRA’s proactive inspections program. In 2020, Legal Aid and other organizations (including representatives from the D.C. Office of the Attorney General and Chairman Mendelson’s office) participated in a 12-week program organized by What Works Cities on lessons learned from proactive rental inspections programs across the country.<sup>10</sup> That program reinforced our belief that to ensure the District’s proactive inspections program is as effective as possible, its requirements should be codified and strengthened:

- Agency inspectors, not contractors, should perform all proactive inspections.

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<sup>10</sup> DCRA was invited to join the team of legal services providers and government officials from the District but declined to do so.

- 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 properties with known, individual 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 use publicly-available data about neighborhood characteristics – for example, the prevalence of asthma and other health outcomes – to target properties in certain areas of the District for more frequent inspections.
- 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 Enact Legislation to Strengthen the Basic Business License Process as a Tool to Ensure Code Compliance

Licensing requirements exist to ensure that businesses that provide goods and services to consumers are in compliance with the law. In the District, landlords are required to obtain a basic business license with a rental housing endorsement in order to rent out a property to tenants. Licensed landlords are required to allow DCRA and other government agencies to inspect their properties and must maintain their properties in compliance with the housing code as conditions of holding a basic business license.

Unfortunately, these legal requirements long have lacked sufficient enforcement mechanisms. For years, a landlord’s failure to obtain a basic business license, or even the revocation of a basic business license for housing code or other violations of the law, has been treated as a technical, paperwork issue. Unlicensed landlords have been allowed to increase rents and file suits in D.C. Superior Court to evict tenants for nonpayment of rent or other grounds.

Emergency and temporary legislation enacted by the Council and currently in place now require landlords to show proof of a current basic business license before evicting a tenant.<sup>11</sup> A similar provision is included in permanent legislation that soon may be enacted.<sup>12</sup> Legal Aid supports this change and believes it should be strengthened further, to require that landlords without a current basic business license can neither increase a tenant's rent nor collect current rent. 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. With licensing remaining with the Department of Licensing and Consumer Protection (what is left of the former DCRA) and inspections transferred to DOB, this will require communication and collaboration between the agencies. Deterrents enacted by the Council to ensure that unlicensed landlords do not enjoy certain benefits only work if landlords face a real threat of losing their license when they violate the law.

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

Finally, the Committee should review current law, enacted but unfunded legislation, and prior bills to create a comprehensive set of reforms 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. Against the backdrop of government reports showing that DCRA uses its current discretion to show leniency to landlords and fails to collect fines even when levied, the Committee should be removing discretion from the enforcement process whenever possible.<sup>13</sup> Ideally, this work would be done before the Department of Buildings launches, so that the new agency begins its work with a strong enforcement and compliance structure and culture in place.

The Department of Consumer & Regulatory Affairs Omnibus Amendment Act of 2018 (Act 22-0317) contained many such provisions. Among other changes, the Act would have created a mandatory 30-day abatement period and limit extensions granted to landlords, require DCRA to issue a notice of violation or infraction for certain types of serious, unabated housing code violations, and earmark fines levied on repeat housing code violators to go to the Nuisance Abatement Fund. Given the coming transition to a new Department of Buildings, the Act was not

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<sup>11</sup> See, e.g., Public Emergency Extension and Eviction and Utility Moratorium Phasing Temporary Amendment Act of 2021 (B24-0346, Act 24-168).

<sup>12</sup> See Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022 (B24-0096).

<sup>13</sup> Inspector General Report, *supra*, at 17.

funded by the Council, but the ideas nonetheless remain relevant.<sup>14</sup> 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. These provisions include creating a specific timeline for all of the steps in the inspection and enforcement process when housing code violations are found, requiring DCRA to notify the Office of the Attorney General of repeat housing code violators and requiring regular reviews of enforcement data by DCRA, with reporting to the Council.

### **Conclusion**

We look forward to working with members of the Committee of the Whole, staff, and other advocates to ensure that the Department of Buildings Establishment Act will be implemented with necessary agency changes in place and that other legislation addressing DCRA's systemic failures can be considered and move forward this Council period.

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<sup>14</sup> 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 and will provide helpful oversight over landlords in the District.