



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

**Budget Oversight Hearing Regarding the Department of Buildings**

**March 24, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to share our thoughts on ways to ensure that the new Department of Buildings (“DOB”) is adequately staffed and funded to protect District residents from unsafe and unhealthy housing conditions. To that end, it is crucial for this Committee to:

- (1) Fully fund the Residential Housing Environmental Safety Amendment Act of 2020 (Law 23-0188);
- (2) Ensure that DOB replenishes the Nuisance Abatement Fund with fines it collects and consistently spends down funds to abate life-safety violations that displace families from their homes, including when homes are placarded;
- (3) Urge DOB to adopt Key Performance Indicators (KPI’s) focused on timely abatement of housing code violations, while also disclosing data from each stage of the enforcement process; and
- (4) Approve a budget and pass complementary legislation to ensure DOB has enough inspectors to respond to complaint- and court-based inspection needs and to staff a robust proactive inspections program.

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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).

## **Ineffective Enforcement of the Housing Code Contributes to Tenant Displacement**

Year after year, Legal Aid and other community advocates have raised concerns that the Department of Consumer and Regulatory Affairs’s (“DCRA’s”) ineffective enforcement of the housing code contributes to the displacement of tenants.

In our recent Performance Oversight testimony, Legal Aid shared the story of Ms. D, who gave up on getting her landlord to make repairs, and ultimately moved, because she could not obtain an inspection from DCRA.<sup>2</sup> We shared the story of a tenant whose unit was placarded as uninhabitable and who was told by a DCRA inspector, “We can only fine [the landlord]; we can’t make her fix anything.” And we invited members of this Committee to visit two Columbia Heights properties where tenants have experienced severe and widespread mold for years, even while their landlord is seeking extraordinary rent increases of 34% and 64%. At the individual, building, and community-wide levels, DCRA’s lack of strategic enforcement of the housing code has meant that District tenants experiencing poor housing conditions have no effective recourse to ensure that their landlords provide housing that is safe, healthy, and up to code. As a result, many tenants feel they have no choice but to move, while others never get the opportunity to vindicate their right to habitable housing when they do find themselves at risk of eviction or facing an extraordinary rent increase.

Undoing DCRA’s culture of non-enforcement will take an investment in professionalizing and adequately staffing the housing inspections division of the new DOB. It also will take strong legislative directives and oversight to ensure that DOB uses its resources and enforcement tools to make sure conditions are actually abated, to place inspectors in court to assist with eviction prevention efforts, and to strengthen the proactive inspections program under DOB.

## **Housing Inspectors Must be Certified to Confirm the Presence of Mold**

Mold remains a persistent and primary concern among the hundreds of low-income tenants who seek Legal Aid’s assistance every year because of poor housing conditions. Mold and its causes, such as leaks or aging building exteriors, are especially common at chronically neglected “slumlord” properties, including several where Legal Aid is actively fighting extraordinary rent increases on behalf of low-income tenants. News and social media outlets have publicized the prevalence of mold at properties where tenants have organized over poor housing conditions.<sup>3</sup>

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<sup>2</sup> See D.C. Council, Committee of the Whole, Written Testimony of Eleni P. Christidis, “Performance Oversight Hearing Regarding the Department of Consumer & Regulatory Affairs” (Feb. 24, 2022), available at <https://www.legalaiddc.org/wp-content/uploads/2022/02/Testimony-before-the-Committee-of-the-Whole-regarding-the-DCRA-Eleni-Christidis.pdf>

<sup>3</sup> See, e.g., Amanda Michelle Gomez, “Landlords Receive Federal Funds for Rental Assistance, Even When Tenants Live in Poor Conditions,” Washington City Paper, July 15, 2021, available at <https://washingtoncitypaper.com/article/523476/landlords-receive-federal-funds-for-rental-assistance-even-when-tenants-live-in-poor-conditions/>

Exposure to mold has been linked to upper respiratory tract symptoms, coughing, and wheezing in otherwise healthy people, as well as a higher risk of developing asthma, and to asthma symptoms in people with asthma.<sup>4</sup> One in six District residents has asthma, a rate that is 50 percent higher than the national average.<sup>5</sup> Residents in Wards 5, 7, and 8 – and in particular low-income, children of color – are disproportionately affected.<sup>6</sup> Children living in these areas are approximately 20 times more likely to visit an emergency room and 10 times more likely to be hospitalized for asthma than children living in Northwest.<sup>7</sup> Doctors have identified mold and other poor housing conditions as one of the primary factors contributing to the District’s asthma epidemic.<sup>8</sup>

Almost ten years ago, a coalition of organizations that included Legal Aid worked with the Council to enact one of the strongest mold statutes in the nation, the Air Quality Amendment Act of 2014. Unfortunately, the law relies on private enforcement, with no government agency charged with inspecting, citing violations, and enforcing the law.<sup>9</sup> Legal Aid therefore advocated in strong support of Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which required 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.

Legal Aid continues to call for full funding to implement these provisions, now enacted as part of the Residential Housing Environmental Safety Amendment Act of 2020, Law 23-0188. The Chief Financial Officer estimated that implementation of the Residential Housing Environmental Safety Amendment Act would require \$3.9 million in the first fiscal year and \$14 million in the four-year financial plan.<sup>10</sup> The Mayor did not include this funding in her Fiscal Year 2023 budget, and Legal Aid calls on this Committee to add it.

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<sup>4</sup> See Centers for Disease Control and Prevention, “Basic Facts About Mold and Dampness,” available at <https://www.cdc.gov/mold/faqs.htm>.

<sup>5</sup> D.C. Asthma Coalition, available at <http://www.asthmafreedc.org/>

<sup>6</sup> Morgan Baskin, “Doctors Blame D.C.’s High Asthma Rates in Part on Poor Housing,” Washington City Paper, May 22, 2019, available at <https://washingtoncitypaper.com/article/180182/doctors-blame-dcs-high-asthma-rates-in-part-on-poor-housing/>

<sup>7</sup> *Id.*

<sup>8</sup> *See id.*

<sup>9</sup> While the law gave DCRA *discretion* to enforce mold regulations, from the beginning DCRA informed advocates and the Council that it would not exercise that discretion to cite for mold.

<sup>10</sup> Ofc. of the Chief Fin. Ofcr., Fiscal Impact Statement – Residential Housing Environmental Safety Amendment Act of 2020 (Dec. 1, 2020), available at [http://app.cfo.dc.gov/services/fiscal\\_impact/pdf/spring09/FIS%20Residential%20Housing%20Environmental.pdf](http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%20Residential%20Housing%20Environmental.pdf).

## **DOB Must Use the Nuisance Abatement Fund to Quickly Correct Life-Safety Violations that Displace Families**

Legal Aid often receives calls from frantic tenants who have just been ordered by DCRA to leave their home within 24-48 hours because it is not safe for them to continue to live there. This happens when DCRA placards a residence for a housing code violation that poses an imminent threat to health and safety.

While the Office of the Tenant Advocate provides *time-limited* hotel stays for families who are displaced due to placarding, this costly and temporary “fix” does not actually ensure that the problem gets corrected so the family can return home as soon as possible. Nor, in our experience, does DCRA take steps to ensure violations are abated before the hotel stay runs out.

Despite having a dedicated Nuisance Abatement Fund, in recent years, our attorneys have not seen DCRA use the Fund to quickly remediate life-safety violations so that families can safely return to their homes. In FY2022, the Nuisance Abatement Fund had a beginning balance of \$3,313,459, revenue of \$2,841,219, and expenditures of just \$1,629,025 – \$5,791,848 in FY2020 and \$3,703,624 in FY2021).<sup>11</sup>

Moving forward, DOB must deploy the Fund to abate life-safety violations that result in placarding, as well as other substantial health-safety violations that can result in constructive eviction and displacement of tenants. The Budget Support Act should specifically direct that fines collected by DOB for housing code violations go to the Nuisance Abatement Fund. DOB must also publicly report the number of rental units it placards each year, how much of the Fund it spends to abate violations, and how much it collects in fines and liens placed on placarded properties.

Further, the Council should enact legislation requiring the Department of Licensing and Consumer Protection to suspend or revoke the basic business licenses of landlords whose rental units are placarded by DOB, or in other situations (e.g., multiple violations over a certain period of time, failure to pay fines, etc.). Making this a requirement is necessary because while this discretion already exists, DCRA has declined to exercise it.

Together, these measures will minimize the harm to tenants forced out of their homes due to their landlord’s wrongdoing, hold violators accountable, and deter landlords from letting properties fall into such a dangerous state of disrepair in the first place.

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<sup>11</sup> See Dep’t of Consumer & Regulatory Affairs, FY21 to FY22 YTD Performance Oversight Questions (Feb. 22, 2022).

## **DOB Must Measure its Performance in Terms of Abated Housing Code Violations and Report Data on Each Stage of the Enforcement Process**

To ensure that DOB does not simply recreate the systemic failures of DCRA, DOB's key performance indicators (KPI's) must be tied to the actual, complete, and timely remediation of poor housing conditions in people's homes.

DCRA's current performance measures are not fully aligned with what should be its obvious and paramount goal – protecting residents from unsafe and unhealthy housing conditions. The agency's current KPI's are (1) the percent of housing inspections completed within 15 business days from the date requested and (2) the percent of housing NOI's initiated within 2 business days following inspections where violations were observed.<sup>12</sup>

The existing KPI's must be tightened and new KPI's added. DOB must shorten the target time frame for completing inspections from 15 business days to 5 business days. Further, it should adopt the following KPI's, which would grade DOB on how well it protects health and safety in rental housing:

- Percent of life-safety violations confirmed abated (100% abatement confirmed by re-inspection) within 72 hours of first inspection.
- Percent of notices of infraction (NOI) confirmed abated (100% abatement confirmed by re-inspection) within 35 days of first inspection.

These KPI's should be broken down and reported separately for complaint-based and proactive inspections. Further, the standard for abatement should not be landlord self-certification alone. DOB should adopt policies to that ensure that “confirmed abated” means actual reinspection of the property by an inspector (or by confirmation through the tenant, possibly via virtual inspection).

In addition, this Committee must gauge the effectiveness of DOB's strategic enforcement by demanding that DOB report key indicators from every stage of the enforcement process. DOB should report the following metrics to the Council, on at least a quarterly basis, broken down for both complaint-based and proactive inspections:

- Number of inspections
- Number of inspections resulting in NOI
- Number of NOIs for which fines are collected
- Total amount of fines collected
- Number of NOIs referred to Office of Strategic Code Enforcement

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<sup>12</sup> *Id.*

- Number of NOIs resolved by settlement agreement
- Number of NOIs resolved by judgment at OAH

DOB should also disclose what Memoranda of Understanding it executes with other agencies for purposes of data- and information-sharing. Together, this information will reveal whether DOB uses data to drive its enforcement strategy and, by seeing the relative volume of matters being handled by the Office of Residential Inspection and the Office of Strategic Code Enforcement, whether and at what stage the enforcement process is breaking down.

### **DOB Needs More Inspectors to Address Complaints and to Support a District-Wide Eviction Prevention Strategy**

The number of housing inspectors in the District continues to lag far behind those of other major cities and continues to fall short of the demand for prompt and professional enforcement that we see in our day-to-day work with tenants.

DCRA's FY22 Oversight Responses indicate that DCRA currently has 38 full-time in-house housing inspectors (and 17 contractor/resident inspectors).<sup>13</sup> Achieving a ratio of one inspector for every 2,000 to 3,500 rental units would bring the District in line with other major jurisdictions.<sup>14</sup> To get to that point, DOB should employ between 51 to 90 full-time housing inspectors dedicated to inspecting rental housing units. We think roughly doubling the current number of full-time inspectors to 75 is a good start and would put the District on track to achieving a ratio more consistent with its peers.

In addition to meeting the true community demand, new inspection and enforcement resources would allow for deeper collaboration between DOB and legal services providers and community-based organizations working to implement a new eviction prevention strategy. Last year, the Council (with leadership from Chairman Mendelson, Councilmembers Allen and Silverman, and others) made a significant investment in Access to Justice funding, including a new Eviction Diversion initiative. At the same time, the District put together a local Eviction Prevention Working Group, following up on two White House Summits held last summer on eviction diversion. Our working group meets weekly and includes representatives from legal services and

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<sup>13</sup> It is unclear from DOB's proposed budget how many full-time housing inspectors DOB will employ when it comes online. See Government of the District of Columbia, FY 2023 Proposed Budget and Financial Plan, Volume 4 (Department of Buildings), F-9. The proposed budget lists 41 Full-Time Equivalents for the entire Rental Housing Inspections Division, which, based on DOB's organizational chart, includes staff other than just inspectors. See Dep't of Consumer & Regulatory Affairs, *Department of Consumer & Regulatory Affairs Transition Plan – Version 1.0* (Dec. 2021).

<sup>14</sup> A survey conducted by the Children's Law Center and Legal Aid determined the following jurisdictions had the following ratios of housing inspectors to rental units: Montgomery County, Maryland (1:3,500); Cleveland, Ohio (1:3,359); Des Moines, Iowa (1:2,221); Trenton, New Jersey (1:2,063); Syracuse, New York (1:2,577); Rochester, New York (1:1,390).

rental assistance providers (including Legal Aid), the D.C. Superior Court, and government agencies that work with tenants, including the Department of Human Services, the Department of Housing & Community Development, and the Office of the Tenant Advocate.

Our cross-sector team has developed a framework document that outlines what a fully funded and effective eviction prevention effort would require. Our model focuses on intensive outreach to tenants through letters, phone calls, and in-person canvassing, coupled with connecting tenants to new and existing services and supports to help stabilize their housing.

Access to housing inspections and enforcement is a critical piece of this puzzle. We believe DOB could support our overall strategy in two specific ways:

- Connect tenants to housing inspectors in Court. Among our goals is for D.C. Superior Court to be able to provide direct access to inspectors for tenants who are in the eviction process. Inspection results would be sent directly to the Court, allowing any outstanding housing code violations to be addressed as part of any final case disposition. Housing code inspectors could monitor eviction hearings, just as legal services and rental assistance providers already do – a model that has been piloted with success in the Court’s Housing Conditions Calendar. D.C. Superior Court stands ready and able to make this model work in the Landlord & Tenant Branch where eviction cases are heard, but it will require a deeper investment in inspections and enforcement resources at DOB to ensure coverage and follow-through.
- Connect tenants to housing inspectors in the community. In partnership with the D.C. Bar Foundation, Legal Aid and five other legal services providers have put together a plan to use the new Access to Justice funding to work with six community-based organizations to deploy our model of intensive outreach. We plan to target neighborhoods and buildings with tenants at higher risk of eviction and displacement – in many cases, the very same communities and properties with the highest level of housing code violations and neglect. We could use our community outreach and engagement to connect more tenants to DOB, leveraging our increased presence on the ground.

Both of these approaches would require more resources for DOB to ensure that the agency can handle an increased volume of inspections and enforcement actions. We stand ready to partner with DOB and add them into our growing team.

### **The Committee Should Enact Legislation to 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. 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.
- 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 online to the public.

## **Conclusion**

To effectively protect public health and safety through enforcement of the housing code, DOB needs enough qualified inspectors to meet tenants where they are, whether in the community or in the courthouse. In turn, the Council must do its part, by passing legislation to ensure DOB is effectively using every tool at its disposal at every stage of the enforcement process. We look forward to working with members off the Committee of the Whole, staff, court personnel, and other advocates on these and related proposals to ensure DOB’s success.