



501 3rd Street, NW - 8th Floor
Washington, DC 20001
T 202.467.4900 - F 202.467.4949
childrenslawcenter.org

Testimony Before the District of Columbia Council
Committee of the Whole
June 10, 2021

Budget Oversight Hearing:
Department of Consumer and Regulatory Affairs

Elizabeth Oquendo
Senior Policy Attorney
Children's Law Center

Introduction

Good afternoon Chairperson Mendelson and members of the Committee of the Whole. My name is Elizabeth Oquendo, and I am a Senior Policy Attorney at Children's Law Center. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health, and a quality education. With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

A Budget for a True Community

Establishing the District's annual budget may be the Council's most important, and difficult, job. The budget funds the education of our children, supports our most vulnerable community members, and pays for the myriad services the District provides the public. The budget requires hard choices and tradeoffs in allocating limited dollars to the needs of District residents.

It is easy to get lost in the thousands of pages of spreadsheets and line items and hearing testimony. But come August, when the Council gives its final approval, the budget will define our priorities and who we are as a community. What will it say about us? Will it say, in the words of human rights advocate Pauli Murray, that we are a “true community ... based upon equality, mutuality, and reciprocity” – will it

“affir[m] the richness of individual diversity as well as the common human ties that bind us together”?¹

How do we build a budget for a “true community”? We start by recognizing that different members of our community have experienced the COVID-19 pandemic very differently. It has fallen hardest on Black and Brown members of our community:²

<p>30,000</p> <p>Nearly 30,000 of DC’s Black or Latinx residents have been infected with COVID-19 compared to just 10,000 white residents</p>	<p>5x</p> <p>Unemployment East of the River skyrocketed to five times the rate in neighborhoods in Wards 2 and 3</p>	<p>4+ months behind</p> <p>During the first six months of virtual school, at-risk students fell five months behind in math and four months behind in reading</p>
---	--	--

The stark disparities in the impact of COVID-19 have only exacerbated the deeply imbedded inequities these members of our community have long faced.³

A budget for a “true community” would honestly and aggressively confront these inequities. It would fund programs to allow students, especially at-risk students, and students with disabilities, to recover the learning they have lost and ultimately to

thrive in school. It would provide the behavioral health supports many students need to manage the stress and trauma they have experienced. It would prioritize the protection and care of children placed in foster care. It would support stable, healthy housing for families threatened by economic insecurity and dangerous housing conditions. And it would fund these pressing needs not by trading off social programs against each other, but by building a budget that creates a “true community” based on equity and justice.

Just a few months ago, Children’s Law Center presented testimony to this Committee about the Department of Consumer and Regulatory Affairs’ (DCRA) performance during FY21. Despite DCRA’s assertions that their use of data, algorithms, and user friendly webtools would create meaningful change for tenants, our clients have experienced more of the same. Just as in years past, we have seen how DCRA fails to protect tenants by struggling to perform its most basic functions including complaint based and proactive housing code inspections and meaningful enforcement. While DCRA touts its transparency initiatives and the numbers published on its dashboard to the Council as proof of agency turnaround, we know that tenants deserve more from DCRA than numbers on a webpage. Behind each data point DCRA shares on their dashboard is a District resident – a family – a child – living in health harming housing conditions. Each repair not made, each inspection not conducted, each missed opportunity for enforcement reinforces the same message to District tenants and

slumlords: DCRA cannot and will not protect tenants from health harming housing conditions. It is time to stop wasting critical District dollars on DCRA's tenant focused functions and ensure those dollars go towards funding the Department of Buildings Establishment Act.

Any Increase to DCRA's Budget Should Be Moved To Fund the Department of Buildings Establishment Act of 2020

Children's Law Center supports the full funding of the Department of Buildings Establishment Act. The Act creates a new agency – the Department of Buildings (DOB) – that will take over the following functions currently performed by the Department of Consumer and Regulatory Affairs (DCRA): the administration and enforcement of construction compliance, rental housing safety (including housing code inspections), and residential property maintenance activities.

According to the CFO's December 1, 2020, fiscal impact statement,⁴ the DOB Act will cost \$11.749 million in FY22.⁵ These costs relate to salaries for additional staff, supplies and equipment, information technology, office space, and relocation of existing DCRA staff. As the Act's Committee Report stated, "DCRA's record on housing code enforcement is bleak."⁶ Despite repeated efforts to reform the agency, DCRA's housing inspection program has been lax and unresponsive for years, leading to the loss of life⁷ and highly critical DC auditor reports.⁸ CLC, Legal Aid, and other advocates have urged the Council to create a Department of Buildings for years.⁹ Funding the Act will

create an agency that will actually do enforcement and collect fines, promote healthy housing conditions and thereby reduce government-funded healthcare costs, thus *saving* DC money in the long run. DOB will hopefully do a better job at imposing and collecting fines from landlords who have been the subject of enforcement actions; DCRA's performance has been dismal in this area.

The Council should fund the DOB by redirecting money that is currently budgeted to implement the Kennedy Street Incident Recommendations. Nearly two years ago, in August 2019, a fire in a Kennedy Street rowhouse needlessly killed two people, including a nine-year-old boy. The Auditors report released several months later showed repeated failures by DCRA which allowed that tragedy to occur. Included in the recommendations are changes to the violation reporting and tracking process, changes to inter-agency communication processes, and more stringent requirements for the closure of a case.¹⁰ The Mayor has proposed nearly \$1 million in funding for the Kennedy Street recommendations, however, the budget provides no details as to how that money will be spent.¹¹ It is unclear whether the recommendations listed above, others contained in the audit, or entirely new recommendations will be implemented with this million dollar investment. And even if it were funded, we have no confidence the money would go where it needs to go—to meaningful changes that will keep tenants safe.

We also have little confidence in any explanation from DCRA as to how that money will be used. In the past two years, for example, when DCRA has received money to increase housing code inspectors, DCRA did not increase the number of inspectors, and we do not know how those funds were ultimately utilized. We believe that those one-time implementation monies would be far better spent funding a new, responsive, trusted agency which this Council has already voted to create.¹²

Fund the Residential Housing Environmental Safety Amendment Act of 2020 to Ensure Tenants Can Receive Mold Inspections, Enforcement, and Enhanced Protection From Lead Paint-based Hazards

In December, the Council passed the Residential Housing Environmental Safety Amendment Act of 2020 to strengthen enforcement of DC's mold and lead laws. DCRA has never enforced DC's mold law and its housing inspectors do not inspect for mold contamination. The Act will require DCRA housing inspectors to obtain training and certification to conduct indoor mold inspections. It will require DCRA to issue a notice of infraction if a residential property has significant indoor mold growth and order the property owner to remediate the mold within a timeline set forth in the Act. The property owner may file an appeal to the Office of Administrative Hearings (OAH). The Act requires DCRA to maintain records and track data regarding its mold enforcement. (DOB will take over DCRA's mold enforcement once the DOB Act is funded and goes into effect.)

The Act also amends certain provisions of DC's lead-paint hazard laws:¹³

(1) The Act changes the threshold for what constitutes an “elevated blood level” under the law from 10 micrograms of lead per deciliter (u/dL) to 5 u/dL, which is the current CDC reference level;¹⁴

(2) the Act changes the threshold for what constitutes “lead-based paint” from 1.0 mg/f² to 0.7 mg/f², which is the standard currently used in Maryland;¹⁵

(3) the Act changes the threshold for what constitutes “lead-contaminated dust” to bring DC law in line with technical standards adopted by HUD in 2017 governing rental housing lead inspections; and

(4) the Act modifies the type of relocation expenses tenants are entitled to receive when lead abatement work is conducted in their apartment; tenants will also now be able to receive per diem food expenses and travel expenses in certain circumstances.

According to the CFO’s December 1, 2020, fiscal impact statement, Act 23-407 will cost \$14 million over the four-year financial plan, including \$12.427 million in DCRA costs, \$341,000 in DOEE costs, and \$1.318 million in OAH costs. The costs include hiring and training new DCRA inspectors and other personnel to enforce the mold law; additional DCRA office space, equipment, vehicles, and mold lab testing; adding a new OAH judge and two legal assistants to hear mold appeals under the Act; and hiring an additional DOEE compliance specialist to manage an expected increase in caseload due to the Act’s stricter lead thresholds. We urge the Council to fully fund Act 23-607 so that

District tenants can realize the benefits of stronger mold and lead protections in their homes as soon as possible.

Conclusion

I appreciate the opportunity to testify before you today and I welcome any questions the committee may have.

¹ Pauli Murray: Selected Sermons and Writings, page 210. *See* <https://www.facebook.com/paulimurrayproject/posts/true-community-is-based-upon-equality-mutuality-and-reciprocity-it-affirms-the-r/10153189445686943/> .

² *See* Children’s Law Center Annual Report – 2020 at 4, *available at* https://www.childrenslawcenter.org/sites/default/files/Final.childrens.law_.annual.report.2020..pdf . *See also* Letter from Mayor Bowser to Honorable Phil Mendelson, at 1 (May 18, 2020), *available at* <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC-GOVT-FY-2021-PROPOSED-BUDGET-VOLUME-1.pdf> (page 21) (recognizing the “distressing health disparities that exist across our nation and within our community”); Perry Stein, “Low Attendance and Covid Have Ravaged D.C.’s Poorest Schools – Fall Will Be About Reconnecting,” *Washington Post* (May 10, 2020), *available at* https://www.washingtonpost.com/local/education/in-dc-schools-spring-was-ravaged-by-covid-and-disconnection-fall-will-be-about-catching-up/2020/05/10/60ad1774-8b3f-11ea-8ac1-bfb250876b7a_story.html .

³ *See* President Obama’s commencement speech historically Black colleges and universities (May 16, 2020) (recognizing “the disproportionate impact of Covid-19 on our communities” and stating that “a disease like this just spotlights the underlying inequities and extra burdens that black communities have historically had to deal with in this country”), *available at* <https://www.nytimes.com/2020/05/16/us/obama-hbcu-speech-transcript.html?action=click&module=RelatedLinks&pgtype=Article> .

⁴ Government of the District of Columbia, Office of the Chief Financial Officer, Memorandum: Financial Impact Statement – Department of Buildings Establishment act of 2020, *available at*: http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%2023-91%20Department%20of%20Buildings.pdf .

⁵ The DOB Act imposes no costs in FY21.

⁶ Committee Report on B23-91, at 5, *available at*: https://lms.dccouncil.us/downloads/LIMS/41724/Committee_Report/B23-0091-Committee_Report2.pdf .

⁷ “On the morning of August 18, 2019, a fire in a row house at 708 Kennedy Street N.W. ultimately resulted in the deaths of Fitsum Kebede and Yafety Solomon. A report commissioned by the District in the wake of that fire found, among other things, that DCRA failed to respond to multiple emails over several months from a Metropolitan Police Department Officer who noted severe code violations at the

property, that the DCRA investigator who was assigned to the case never attempted to enter the property to document violations, and that the case was closed without adequate review. The report noted that a lack of internal communication, limited training, and job requirements for inspectors, and the lack of a clear process to prioritize serious code violations contributed to these failures.” Committee Report on B23-91 at 5.

⁸ Office of D.C. Auditor, “Housing Code Enforcement: A Case Study of Dahlgreen Courts,” September 24, 2018.

⁹ See, e.g.,

<https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/DOB%20Establishment%20Act%20of%202018%20-%20Hearing%20Testimony%20-%20Children%27s%20Law%20Cente....pdf> .

¹⁰ *Supra* Note 7.

¹¹ Mayor’s Proposed FY 2022 Budget and Financial Plan, Volume 4 Agency Budget Chapters – Part III, Operations and Infrastructure, at F-15.

¹² The Department of Buildings Establishment Act became law on April 23, 2021. See <https://lims.dccouncil.us/Legislation/B23-0091> .

¹³ These provisions were originally included in B23-407, a bill introduced in 2019 to strengthen DC’s lead laws. Act 23-607 does not include several important provisions of B23-407, including provisions that would require more comprehensive and more frequent lead inspections of DC rental housing units and better enforcement mechanisms to help ensure landlords comply with DC’s lead laws. The DC Council stated that it did not including these provisions in Act 23-607 because they would impose significant costs on small landlords and DOEE (e.g., cross related to additional inspection requirements) at a time when both the DC government and small landlords are facing financial constraints caused by COVID-19. The Committee stated it would take up these provisions again in 2021 after the conclusion of the pandemic.

¹⁴ DOEE and DC’s medical community have been using the 5 u/dL reference level for years, so this change in the law will have little practical effect.

¹⁵ This standard is used in housing inspections to determine whether lead-based paint is present in a home and requires remediation.