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Testimony Before the District of Columbia Council  
Committee of the Whole  
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Public Hearing:  
Budget Oversight Hearing  
Department of Consumer and Regulatory Affairs

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Good morning Chairman Mendelson and members of the Committee of the Whole. My name is Kathy Zeisel. I am a Senior Supervising Attorney at Children's Law Center<sup>1</sup> and a resident of the District. 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 nearly 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. Children's Law Center appreciates the opportunity to provide testimony during this budget oversight hearing for the Department of Consumer and Regulatory Affairs (DCRA).

As we have testified numerous times, many of the children and families that we represent each year live in terrible housing conditions and receive little from the Department of Consumer and Regulatory Affairs (DCRA) to ensure their ability to access safe and healthy housing, nor do we see DCRA protecting our clients on a systemic level by identifying problem landlords or properties and conducting effective enforcement actions against them.<sup>2</sup> As you know, many of the clients that we represent in housing conditions cases are referred to us by pediatricians who note that a child's housing may be triggering health harming effects. Some of those triggering health harming housing conditions have included walls covered with mold, serious water intrusion bringing ceilings down, peeling lead paint, and pest infestations, just to name a few. And, the city is paying for residents to live in some of these properties as many

of the worst housing conditions cases we see are where tenants are using the Rapid Rehousing subsidy.

During this unprecedented pandemic we are concerned about the tenants in terrible housing conditions who are feeling the brunt of shelter in place orders even more acutely. For families whose landlord has failed to remediate mold and has only been spray painting over water damage, what was once eight hours in a triggering environment has now turned into non-stop to allergens. Children who once spent the majority of their days in a school building and outdoors, are now forced to learn and live 24 hours a day in a home that is making them more sick by the minute. DCRA is available to conduct some inspections virtually. But for those families whose rental units have suffered years of neglect, have seen no proactive inspection, and whose landlord refuses to make repairs – those virtual inspections are not likely to make much of a difference at this time, especially when families are afraid to let people into their unit and increase their exposure to COVID-19. These are precisely the families who should have been able to rely on the Department of Consumer and Regulatory Affairs (DCRA) to create a culture of compliance over the years to ensure their ability to access safe and healthy housing. Instead, many of them are now likely stuck quarantining inside properties in deplorable conditions because our city continues lacks a strong tenant focused agency that holds landlords accountable and enforces the housing code,

which could have prevented some of these properties from declining into the state we find them in now.

It is not only in complaint-based inspections that DCRA continues to be problematic, but DCRA also continues to fail to do effective enforcement. This is not only failing to collect monies which the District desperately needs right now, but it creates a culture in which landlords do not respect the inspection process, rendering it ineffective even when inspections do happen.

As the District faces a recession and with over 100,000 applications for unemployment compensation filed since March 18<sup>th</sup>, preserving our affordable housing for tenants will be more important than ever.<sup>3</sup> We ask that the Council considers amending, passing, and funding the *Department of Buildings Establishment Act of 2019* and in the immediate term take any additional funding increases granted to DCRA and use them towards the cost of funding a new *Department of Buildings*. However, we understand that during this unprecedented pandemic, the Council needs more than just suggestions for increased expenditures. That's why we have also provided a section on potential revenue opportunities to consider as we look for opportunities to fund various priorities in our FY21 budget.

## **Amend, Pass and Fund Department of Buildings**

We have testified numerous times about the serious issues our clients have experienced with DCRA and the serious concerns we have about DCRA's culture and about the lack of enforcement by DCRA. We support the increase to DCRA's budget if this is to hire additional staff inspectors for either the complaint based or proactive inspection program, but we do not support the expansion of the residential inspector program.<sup>4</sup> It is our position that we should be moving to professionalize DCRA given the importance of housing code enforcement to ensuring safe, healthy, and affordable housing—something that has always been important, and is of growing importance in light of the public health emergency we currently face.<sup>5</sup> Given this, it is our recommendation that this \$250,000 be used to fund the *Department of Buildings Establishment Act of 2019*.<sup>6</sup>

The Mayor's FY21 proposed budget also allocates an additional \$200,000 investment in a DCRA customer relationship management system (CRM) in response to the Kennedy Street fire recommendations.<sup>7</sup> However, the initial inspection report found that although the system existed in its pilot form, one of the key issues was that nine DCRA employees failed to enter information into the CRM.<sup>8</sup> We are concerned that this increased expenditure in the CRM system will not be enough to fix the broken agency culture that led to employees failing to use the CRM system in the first place. It is our position that putting money into a computer system is futile without ensuring that good

data is put into it and that the data is subsequently used. More than a system upgrade, DCRA needs a culture upgrade so that its employees are trained on how to follow protocols and procedures with fidelity. We recommend that the \$200,000 investment in DCRA's CRM be appropriated to funding a new *Department of Buildings*.

**A DCRA compliance program should be effective enough generate fines through NOI's.**

An agency operating a truly effective housing code compliance program will not only benefit tenants, but will also collect the fines in order to ensure that landlords are compliant and with the benefit of generating revenue to assist in covering costs of the program.<sup>9</sup> For too long DCRA's broken culture has given landlords a pass, and they know they can ignore NOIs or make substandard repairs like drywalling over structural defects in order to continue to exploit tenants for financial gain. A good compliance program will smartly use fines as a necessary part of the enforcement regime. Now more than ever, agencies need to be leveraging any revenue generating capabilities.

DCRA's own dashboard shows that they have not collected fines for many of the NOI's that were issued in 2019.<sup>10</sup> A quick glance at the DCRA dashboard<sup>11</sup> shows that there are many NOI's which are marked as awaiting payment. These are valuable dollars to that would go into the District's general fund. We recommend that the

Council ask detailed questions about DCRA's ability to collect on these outstanding NOI's and what the agency's rate of payment has been on NOI's in the last fiscal year.

Further, we are concerned that the proposed FY21 budget shows a decreased commitment to residential housing code enforcement. Without enforcement, the system is weakened because it signals that there are no consequences for failing to provide safe and healthy housing. The \$158,000 cut to the Scheduling and Enforcement Unit and loss of two full time employees in that division concerns us given the ongoing problems the agency has with lack of enforcement.<sup>12</sup> It also raises questions about the need for increased enforcement software if there are cuts to personnel to actually do the enforcement actions. The modest increase in the budget for residential housing code inspections paired with the loss of two full time employees and a cut to the Scheduling and Enforcement unit does not signal to us that the agency is committed to turning around its culture and ramping up efforts to provide the tenant-focused service needed to create a fully functional residential housing code enforcement regime. That's why we believe the time is right to amend, pass and fund the *Department of Buildings Establishment Act of 2019*.

## **Revenue Opportunities**

As the District plans to recover from this recession we recognize that the Council needs solutions and not just demands for more funding. The Mayor's proposed FY21

budget used some smart tactics to bridge our revenue gaps and we support the Mayor's proposed solutions to increase revenue. However, we need to do more to ensure an equitable recovery for all DC residents, and we also support proposals that include repealing tax cuts that benefited our highest earners and look to other opportunities to raise revenue. We urge the Council to consider incorporating the revenue opportunities presented next to ensure we are able to provide children and families with the resources they will need to succeed during and after the pandemic.

#### *Eliminate Ineffective Tax Expenditures*

Eliminating ineffective tax expenditures is an efficient way to address the District's budget shortfall for FY21 and will avoid the short- and long-term harm to the city of cutting program budgets. The District currently offers a number of tax incentive programs that are purportedly designed to encourage business development in DC. These programs cost the District tens of millions of dollars every year but have not yielded any demonstrable economic benefits to the city.<sup>13</sup> In particular, the Council should consider eliminating both the Qualified High Technology Company (QHTC) tax expenditure program and the Qualified Supermarket tax expenditure program.

The QHTC tax expenditure program cost the District over \$45 million in FY2017. During its most recent statutorily-required review of DC's tax expenditures, the Office of Revenue Analysis (part of the Office of the Chief Financial Officer) concluded that



gains in DC's high tech sector cannot be attributed to the QHTC tax expenditure program, even though the program will continue to cost at least \$40 million per year in foregone revenue.<sup>14</sup> The report also found that a small number of large companies are "taking disproportionately large amounts of QHTC credits without evidence of commensurate economic benefit to the District" and noted that "it is not clear whether they engaged in any new economic activities because of the incentives."<sup>15</sup> For almost the entire lifetime of this program, more QHTC credits have been claimed by companies headquartered in Virginia than companies headquartered in D.C.<sup>16</sup>

The Qualified Supermarket tax expenditure program cost the District over \$5 million in FY2017. The laudable goal of this program is to incentivize the opening of new grocery stores in low-income parts of the city that suffer from limited access to affordable and nutritious food. Despite costing nearly \$30 million dollars in foregone revenue between 2010 and 2017, the Office of Revenue Analysis report concluded that the program "cannot be shown to have affected supermarkets' location decisions, generally, or produced economic or other benefits that would not have happened but for the incentives."<sup>17</sup>

These tax expenditure programs are costing the District tens of millions of dollars in foregone revenue every year and providing nothing in return.<sup>18</sup> There are many difficult decisions to be made during this budget cycle – but this is not one of

them. The Council should redirect these funds to support essential services to families suffering through the pandemic crisis.

### *Repurpose "Special Purpose" Funds*

The Council should also carefully examine opportunities for repurposing special purpose funds rather than cutting much-needed housing and public health services.

There are more than 250 active special purpose funds, which are funds established by statute to fund a particular government program using fees and assessments imposed on licensees and users of government services.<sup>19</sup> The total revenue in all these funds made up 5% (about \$800 million) of DC's total gross budget revenues in the previously approved FY20 budget.<sup>20</sup>

Many special purpose funds spend less than the revenues they raise in any given year and carry large and increasing fund balances. In 2017, for example, the total revenue collected by all DC special purpose funds exceeded their total expenditures by \$52 million.<sup>21</sup> The DC Auditor found that 37% of special purpose funds spent less than 50% of their total FY2013 through FY2017 revenues.<sup>22</sup> For "non-lapsing" special purpose funds,<sup>23</sup> this unspent money remains in the fund and is carried over to the next fiscal year. On a number of occasions in the past, the Council has transferred unspent special purpose funds to the General Fund so that the funds can be repurposed for other programs.<sup>24</sup>

Now, more than ever, is the time for the Council to repurpose any available special purpose funds to help plug budget gaps created by the economic fallout from the COVID-19 pandemic. This certainly includes transferring unspent funds in non-lapsing funds to the General Fund unless the funds are contractually committed to expenditures in future fiscal years or otherwise restricted or earmarked for vital government programs. It should also include a review of agency current fiscal year expenditures of special purpose funds to determine whether any savings or efficiencies can be identified to free up funds that could be transferred to the General Fund. Repurposing special purpose funds wherever possible would help promote a more just and equitable budget.

## **Conclusion**

We have an opportunity to create a budget that allows DC's children and families to remain safely in their homes this unprecedented public health emergency. As the Council considers the Mayor's proposed FY21 budget, we ask that you remember the children and families who are so affected by the substandard housing conditions they are sheltering in. Our city is long overdue for a tenant focused agency that ensures our affordable housing stock is livable and safe. We ask that the Council prioritize investments in amending, passing, and funding the *Department of Buildings*

*Establishment Act of 2019*. We appreciate the opportunity to testify today and we welcome any questions the Committee may have.

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<sup>1</sup> Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With nearly 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

<sup>2</sup> Children’s Law Center frequently represents families whose homes’ poor conditions are so severe they harm the health of the children living in them. In those instances, the child’s pediatrician refers the family to us for legal representation to secure healthy, code-compliant conditions.

<sup>3</sup> See @DOESDC, (May 20, 2020), District of Columbia Daily Unemployment Compensation As of May 19, 2020 100,588 New Claims Have Been Filed, [Tweet], Available at [https://twitter.com/DOES\\_DC/status/1262739175406788609/photo/1](https://twitter.com/DOES_DC/status/1262739175406788609/photo/1).

<sup>4</sup> In years prior, money given to DCRA to increase the number of its professional inspectors was reprogrammed. We would hope that this is not the plan for this year’s money.

<sup>5</sup> We support the amendment, passage, and funding of the *Indoor Mold Remediation Enforcement Amendment Act of 2019*, which would allow DCRA inspectors to be cross-trained to inspect for Mold. See Children’s Law Center. *Testimony Before the District of Columbia Council Committee of the Whole and Committee on Transportation and the Environment. Public Hearing: Bill 23-132: Indoor Mold Remediation Enforcement Amendment Act of 2019*, (Dec. 9, 2019), Available at <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/CLC%20Testimony%20for%20Dec.%209%20Hearing%20on%20Indoor%20Mold%20Bill%20B23-132.pdf>.

<sup>6</sup> There was a modest increase in the budget for residential housing inspectors of \$250,000.00. DCRA Proposed Budget FY21, Line 3080, p. 4.

<sup>7</sup> Mayor’s Office of Community Relations and Services, *Mayor Bowser Presents #DCHOPE Budget Proposal*, (Mar. 18, 2020), Available at <https://mocrs.dc.gov/release/mayor-bowser-presents-dchope-budget-proposal>.

<sup>8</sup> The 2019 Alvarez and Marsal Kennedy St Fire report detailed some of the DCRA’s bad documentation practices. DCRA employees failed to adequately document investigations activities and findings and that the nine DCRA employees who worked on the Kennedy St case did not enter any information into the Pilot CRM. See Alvarez and Marsal, *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-agency Communication Between DCRA, FEMS, and MPD*, (Oct. 25, 2019), Available at <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/Review-Investigation-Code-Enforcement-Policies-Procedures-Inter-Agency-Communications.pdf>.

<sup>9</sup> We do not want DCRA to issue NOIs and collect fines without merit, nor to do so without discretion. However, collecting fines that are justified is an important enforcement tool to ensure compliance with the system, and DCRA should not have the majority of their NOIs in a status indicating that they are unpaid for a variety of reasons as they appear to now per their online dashboard.

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<sup>10</sup> DCRA’s Dashboard displays each NOI and what status the NOI is in. You can see many are awaiting payment. See DCRA. *Infraction Balance with DCRA*, (Retrieved on May 26, 2020), Available at <https://eservices.dcradg.gov/DCRAAgencyDashboard/index>.

<sup>11</sup> *Id.*

<sup>12</sup> DCRA Proposed Budget FY21, Line 3020, p. 3.

<sup>13</sup> DC Office of Revenue Analysis, *Review of Economic Development Tax Expenditures*, November 2018, p. 8 - 18, (“Overall, the District’s economic development tax incentives support the District’s broad economic development goals as designed, however various issues with each of the incentives prevent an assessment of their effectiveness in meeting the respective incentive goals.”).

<sup>14</sup> *Id.* at p. 11-12.

<sup>15</sup> *Id.* at p. 12.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 14.

<sup>18</sup> *Id.* at 18. (“This report found that QHTC and Supermarket tax incentives are not well targeted, meaning many companies may be receiving benefits—sometimes very large sums, in the case of several large QHTCs—to do what they may have done without the incentive.”).

<sup>19</sup> For example, the Department of Consumer and Regulatory Affairs administers the “Basic Business License Fund,” which collects millions of dollars each year from business license fees; these funds are intended to defray the cost of operating DCRA’s basic business licensing system. See DC Office of Revenue Analysis, *DC Special Purpose Revenue Funds Report*, February 2015, p. 55 (OFA Report). Available at: <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Special-Purpose%20Report%202015.pdf>.

<sup>20</sup> Office of the Budget Director. *Budget 201*, January 2020. Available at: <https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/5e1f336250c19021ca91c618/1579103075310/DC+Budget+201+FINAL+-+1.10.20.pdf>; Government of the District of Columbia, *FY2020 Approved Budget and Financial Plan*, July 2019, p. 1-8. Available at: [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC\\_OCFO\\_Budget\\_Vol\\_1\\_0.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC_OCFO_Budget_Vol_1_0.pdf). See also <https://districtmeasured.com/2020/02/>.

<sup>21</sup> Office of the DC Auditor. *Elected Officials Create Special Funds But ‘Sweep’ Dollars for Other Purposes*, April 2019, p. 2 (2019 DC Auditor Report). Available at <http://dcauditor.org/report/elected-officials-create-special-funds-but-sweep-dollars-for-other-purposes/>.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> A non-lapsing fund’s unspent revenue is continuously available for use in subsequent fiscal years for the particular program in question. In contrast, any unspent revenue in a lapsing fund is automatically transferred to the General Fund at the end of the fiscal year.

<sup>24</sup> The DC Auditor found 72 instances of such repurposing, amounting to more than \$142 million in FY2013 through FY2017. *Id.* at 12. Although the DC Auditor’s report criticized this practice, transferring and repurposing unused or underutilized special purpose funds nonetheless offers an essential tool in the current budget emergency.