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Testimony Before the District of Columbia Council
Committee of the Whole
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Introduction

Good afternoon Chairman Mendelson, members of the Committee of the Whole, and staff. My name is Anne Cunningham. I am a Senior Staff Attorney at Children's Law Center¹ 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 more than 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. We represent many children and families who live in rented homes in the District, and one component of our practice is representing tenant-families whose landlords are not complying with DC's residential housing code.

I am pleased to testify today regarding performance of the Department of Consumer and Regulatory Affairs (DCRA), the agency tasked with enforcing that residential housing code. This is the third time this year I have submitted testimony to this Committee regarding the pervasive and persistent issues that have long plagued this agency. Issues which have meant a large hole in the place of rental housing code enforcement in DC.

As a result, my organization's medical partners at Children's National Health System, Unity Health Care, and Mary's Center send us referrals every day for children and families who are suffering because of unmitigated illegal housing conditions. Some

typical referrals include: a child who repeatedly visits the ER for out of control asthma because their landlord has not addressed the mold coating the walls and carpeting in their home; an infant who was bitten by a rat in her crib after a landlord ignored her mother's pleas for an exterminator; and young children living in a home with raw sewage leaking in to their living room. In most of these cases, families are providing their children with the necessary medications, but the housing conditions are so terrible that no medical treatment can be effective. After realizing their landlords won't respond to their requests for repairs, these families call on DCRA but get no real relief from the agency that is supposed to help them. My past testimonies detail the direct experiences my colleagues and I have had with DCRA's dysfunction and the impact that has had on our clients and their children.

We Have Long Been Unable to Depend on DCRA to Do Its Job of Enforcing the Housing Code

DCRA has been a poorly functioning agency since long before I began practicing housing conditions law five years ago. DC Superior Court's Housing Conditions Court was created about nine years ago through advocacy by legal services organizations that had given up on DCRA being a viable resource for addressing illegal conditions in rental housing. Our clients value having this venue, but because tenants can almost never depend on DCRA to follow up with recalcitrant landlords whom DCRA has ordered to make repairs, the Housing Conditions Court docket has become increasingly

overburdened. Tenants now have to wait several months for an initial hearing, and it can take more than a year to see results. Another downside to dependence on this court is that suing landlords is far more costly (to both landlords and tenants) and adversarial than having an agency step in to inspect.

During the October 2, 2017 roundtable, Director Bolling responded to concerns regarding DCRA's enforcement of the housing code by saying DCRA would begin a new initiative wherein the agency would refer residents requesting DCRA inspections to Housing Conditions Court. Two weeks later, Ms. Bolling repeated the same on the Kojo Nnamdi show, and also said she would be soliciting the help of the DC Bar Pro Bono Program and organizations such as Children's Law Center to represent tenants in that litigation.² These responses highlight DCRA leadership's inability and unwillingness to ensure the agency fulfills its key job of enforcing the housing code.

Data collection should be one of DCRA's integral functions. An agency like DCRA needs data to be able to build out a strategic, targeted plan for enforcement against insidious slumlords like Sanford Capital. Even more basic, though is the need for data to evaluate the agency's performance and identify areas which need improvement. Unfortunately, in meetings with advocates, in hearings, and in responses to oversight, DCRA repeatedly admits that it does not consistently collect even the most basic data regarding its operations.

I'd like to turn to the data DCRA reported for its 98 "Key Performance Indicators" (KPIs) in FY16, FY17, and FY18.³ Of these 98 KPIs, DCRA listed 55% as "N/A" in FY16, 44% as "N/A" in FY17, and 52% as "N/A" for FY18.⁴ How can an agency simply not collect or report on half of its "key" performance data? In FY18, DCRA reported data for only 5 of its 15 KPIs related to housing code enforcement.⁵ DCRA also appears to have removed 13 inspections and enforcement-related KPIs since 2014 without meaningfully explaining their removal as this Committee requested.⁶

The only data point that gets at the efficacy of OCI--the division of DCRA that is responsible for *all* enforcement post re-inspection--is the percent of NOIs processed by OCI within 30 calendar days. In FY16 and FY18, that KPI datum was "N/A." In FY17, OCI only met that goal in 27% of cases.

Finally, of the five "top priorities" DCRA lists in its oversight question responses, only one relates to residential housing inspections and enforcement, and it is not a goal that meaningfully addresses our broad-reaching and systemic concerns related to DCRA's long-time failure to enforce the housing code.⁷ Rather, it is a goal related to improving the transparency of Housing Inspection enforcement. While lack of transparency⁸ is certainly an ongoing problem at DCRA, we are distressed to learn that DCRA is not prioritizing any aspect of DCRA's largely defunct enforcement mechanisms.

The Department of Buildings

DCRA reform is long overdue. For this reason, we strongly support the leadership of Chairman Mendelson, along with nine other Committee members, in developing and introducing the Department of Buildings Establishment Act of 2018.⁹ This bill is a great start toward addressing some of DCRA's systemic breakdowns and improving outcomes for DC families who rent homes. Indeed, we hope the Council will go even further by creating either a standalone agency or a separate division within the Department of Buildings for all levels of housing code enforcement. We believe such an agency would provide a stronger foundation for protecting rental housing, which is the cornerstone of affordable housing in DC.

In addition to our recommendation that housing code inspections and enforcement be separated from other agency functions, we also propose a number of recommendations which will improve the likelihood of a reformed and effective agency:

- Like the Chief Building Official and the Strategic Enforcement Administrator, the leaders of the inspections and enforcement divisions should be protected from termination when administrations change.
- Addition of a public health division responsible for, among other priorities, policies related to treatment of mold, asbestos, and lead, and for bringing a public health lens to the development of strategic enforcement strategies.
- Inspectors should be trained and licensed to cite for mold, lead, and asbestos, so that tenants do not need to contact multiple agencies to address these issues.
- In-house attorneys should handle certain enforcement functions. Among other functions, these attorneys would review notices of violation and

notices of infraction for legal sufficiency before they are issued. Our understanding is that much enforcement is lost at the administrative hearing stage because slumlords' attorneys are challenging NOV's and NOIs on the basis of clerical errors and winning.

- Legislative language requiring a certain number of inspectors per capita or per occupied rental unit. Currently, DCRA has approximately 15 housing code inspectors while Baltimore has more than 90. The District is a larger city than Baltimore.
- Legislative language setting timelines for completion of inspections, re-inspections, and notices of infraction, as well as language regarding when extensions are to be permitted.
- Collaboration between inspectors and the office of civil infractions for the duration of the process. Feedback we have received from DCRA inspectors is that they lose all contact with cases after they complete their second inspection and submit an enforcement package to the Office of Civil Infractions. Their involvement would be a good "check" for ensuring processes are moving along as intended.
- The legislation should create permanent positions for agency housing code inspectors in both Housing Conditions Court and Landlord Tenant Court.
- Investment in technology which facilitates highly efficient execution of inspections and enforcement processes. Issuance of NOV's and NOIs should be as streamlined as DPW's process for issuing parking tickets. These processes should also prioritize transparency with consumers, such as making key documents readily available online. Finally, this technology should allow for more comprehensive data collection, which in turn should be used to inform a targeted inspection program directed at prioritizing buildings the data identify as 'high risk.'
- Finally, the agency should have highly detailed annual reporting requirements which, like the rest of the items on this list, are specific to housing code enforcement.

We look forward to continuing to work with you, Mr. Chairman, and the members of this Committee, toward maximizing this new Department's ability to truly enforce DC's residential housing code by incorporating these important specifications into the bill.

Requests for DCRA Pending Opening of Department of Buildings

While we await the establishment of the Department of Buildings, we ask this Committee to fund additional housing code inspectors at DCRA. Neighboring Baltimore, a smaller city than ours, has more than six times the number of inspectors we have--approximately 95 to our 15. Director Bolling has testified that each of her housing inspectors performs an average of 1,000 inspections per year. Assuming zero vacation days, this means inspectors do four inspections daily in addition to their other job functions, such as manually creating inspection reports and NOVs for each of those inspections in addition to all of their follow up work and other duties.¹⁰

We also hope this Committee will determine the duration of the vacancy for Program Manager of the Civil Infractions and Fine Assessments Division.¹¹ This is the Division responsible for all enforcement work which occurs following an inspector's identification of a landlord's failure to abate illegal housing conditions. If possible, we hope this Committee will ensure a highly qualified individual is hired in to this position as soon as possible.

Conclusion

Thank you for this opportunity to testify. I welcome any questions.

¹ 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 more than 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.

² The Kojo Nnamdi Show, Director Of D.C.'s Department of Consumer And Regulatory Affairs. October 16, 2017, *available at* <https://thekojonnamdishow.org/shows/2017-10-16/director-of-d-c-s-department-of-consumer-and-regulatory-affairs-dcra>.

³ DCRA Oversight Question Responses, Feb. 15, 2018 *at* 57-60. *Available at* http://dccouncil.us/files/user_uploads/budget_responses/DCRA_Oversight_Final_-_PACKET.pdf.

⁴ *Id.* DCRA has listed as “N/A”: 54 of the 98 KPIs for 2016 (55%), 43 of the 98 for 2017 (44%), and 51 of the 98 for 2018 (52%).

⁵ *Id.*

⁶ DCRA Oversight Question Responses *at* 61-62.

⁷ *Id.* *at* 71.

⁸ DCRA states that it will “Improve Transparency of Housing Inspection Enforcement” by “automat(ing) the inspection, re-inspection, and the Notice of Violation and Notice of Infraction workflows” through implementation of the inspection software Accela. By our understanding, Accela is a software that will automate the creation of inspection reports and subsequent enforcement documents, processes which inspectors currently complete manually. This shift should theoretically improve DCRA’s efficiency, but DCRA provides no explanation of how the software will improve transparency. Furthermore, we have serious doubts about DCRA’s ability to implement complicated software. *Id.* *at* 73.

⁹ B22-0669 – Department of Buildings Establishment Act of 2018, *introduced* Jan. 23, 2018. *Available at* <http://lims.dccouncil.us/Download/39619/B22-0669-Introduction.pdf>.

¹⁰ David Whitehead. *DC Has a Slumlord Problem and Not Enough Inspectors to Solve it*. May 25, 2017. *Available at* <https://ggwash.org/view/63547/dc-has-a-slumlord-problem-and-not-enough-inspectors-to-solve-it>.

¹¹ DCRA Oversight Question Responses *at* 73.