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Testimony Before the District of Columbia Council
Committee of the Whole
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Public Oversight Hearing:
District of Columbia Auditor's Report, "Housing Code Enforcement: A Case Study of
Dahlgreen Courts"

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Good afternoon Chairman Mendelson, members of the Committee of the Whole, and staff. My name is Anne Cunningham. I am a Senior Policy 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 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. 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.

Thank you for holding this hearing regarding the Office of the District of Columbia Auditor (ODCA)'s *Housing Code Enforcement: A Case Study of Dahlgreen Courts*.² This valuable report confirms concerns that advocates and tenants have been raising for years: that DCRA does not hold landlords to enforcement timelines, does not consistently collect fines, is not transparent, and does not reliably keep data on inspections and enforcement actions. In this testimony, I will reiterate what we feel to be DCRA's three main problems. I will also highlight some smaller-scale, targeted solutions that ODCA and advocates endorse. We agree with ODCA's assertion that most of these solutions need to be compelled legislatively, given DCRA's institutional lack of interest in reform.³

Small, targeted changes alone will not turn DCRA into an agency that does high-quality housing code enforcement work, though. This Committee's relentless oversight efforts over the past two years have not meaningfully changed practices we see on the ground. We also have seen no discernible shift in DCRA's culture toward prioritizing tenant health and safety. As such, we reiterate our opinion that the Council needs to break up the behemoth that is DCRA and move housing inspections and enforcement functions to a much smaller agency. That agency must have a mission that is tightly centered around tenant protection and the preservation of DC's 180,000⁴ occupied rental units. A more narrowly-focused agency will attract leadership with a demonstrated commitment to the preservation of affordable housing and the health and safety of DC's tenants. For detailed recommendations regarding that proposed agency's layout and leadership structure, please refer to the testimony we delivered at the April hearing for the Department of Buildings Establishment Act.^{5,6}

In that testimony, we also outlined what we see as DCRA's three key problem areas, each of which is underscored by ODCA's findings:

1. DCRA has no culture of protecting tenants or preserving DC's housing stock.

This is evident on multiple fronts. In its response to this Committee's oversight questions earlier this year, DCRA listed its five "top priorities."

None of those priorities is directly connected to housing code inspection or enforcement activities.⁷ DCRA also consistently uses its discretion to grant

landlords great latitude in their responses to DCRA enforcement actions and deadlines. ODCA notes that this leniency enables landlords to put off repairs “for months and sometimes years” at tenants’ expense.⁸ Slumlords, like Sanford Capital, are well aware of this fact and exploit it. They decide, through cost/benefit analysis, that allowing their buildings to deteriorate is better for business than paying for upkeep. DCRA is merely a nuisance they factor into their analysis. In other words, DCRA’s lax enforcement practices mean savvy landlords are not deterred from violating the code, even after DCRA has become involved at one of their properties.

2. The agency fails to meaningfully collect and analyze inspections and enforcement data. ODCA speaks at length about DCRA’s inadequate recordkeeping and case tracking. Without such data, DCRA cannot implement a strategic, targeted approach to enforcement that maximizes the impact of its limited resources.⁹ Lack of data also means poor transparency. ODCA points out that DCRA has never been able to comply with DC’s FOIA laws.¹⁰ And, if DCRA is not consistently keeping even basic data about landlords and properties they have inspected, they cannot publish information in connection with those properties. Such data would be both beneficial to affected and prospective tenants, and would also be a deterrent. Finally, without good data, neither DCRA nor the Council can meaningfully

monitor the agency's performance. ODCA states that the Council does not know how well DCRA is protecting tenants.¹¹ Indeed, year after year, DCRA is unable to report data for nearly half of its Key Performance Indicators (KPIs) during budget oversight.¹² This is unacceptable.

3. DCRA's inspections and enforcement regime is neither strategic nor efficient.

We know DCRA does not have the data needed to develop strategic enforcement plans. However, DCRA also generally lacks a culture and structure for emphasizing strategic deployment of its resources. For example, DCRA could focus proactive inspections on landlords who are frequently the subject of tenant complaints, or on geographic areas with high incidences of childhood asthma or lead exposure. They do not.

ODCA lists a number of important, smaller-scale recommendations for addressing these issues:

1. Regarding the undue latitude DCRA gives landlords, we agree with ODCA's recommendation for explicitly-established timelines.¹³ We believe these timelines should be legislatively mandated, and that tenants should be able to file for injunctive relief against landlords who fail to adhere to NOV timelines. Similarly, we agree that DCRA should use the power it has to assess daily fines against landlords who do not timely remediate violations.¹⁴

Approaching cases with such urgency would elevate the importance of tenant health and safety. We also strongly support ODCA's recommendation that the DCMR be revised to allow DCRA to bypass the NOV stage of enforcement when enforcing against repeat-offender landlords or landlords who rent to vulnerable populations.¹⁵

2. We strongly support ODCA's recommendations for improving DCRA's data collection and reporting.¹⁶ We agree the Council should require DCRA to collect and report on data regarding all stages of enforcement. This will enable DCRA and the Council to better monitor DCRA's performance and, perhaps more importantly, will enable DCRA to implement a strategic proactive enforcement regime. To achieve this, we propose a detailed and legislatively-mandated annual reporting requirement. Legislation should also require DCRA to publish those reports and make them publicly available.
3. On the issue of DCRA's lack of strategic and efficient enforcement practices, ODCA states that DCRA does not report on trends and patterns of housing code compliance. We know this is partly due to the fact that DCRA simply does not collect or aggregate such data. As such, ODCA's recommendations in this area center on better data collection practices. We also recommend a dedicated agency branch for analyzing data and developing strategic enforcement plans. That division's leadership should include a public health

expert to ensure strategies are developed with a keen eye to improving public health.

Though we are in support of these and other ODCA recommendations, many could not be meaningfully accomplished under an agency, like DCRA, whose leadership lacks both bandwidth and mission-centered dedication to tenant protection and rental preservation.

We thank this Committee and its Chairperson for the ongoing attention you have paid to the problems at DCRA. Over the past year and a half, I have testified before this Committee six times on DCRA's failings. Yet little has changed. At this point, we all understand DCRA's problems, and should be confident in ODCA's conclusion—that DCRA's failure to consistently and effectively enforce the housing code jeopardizes the health and well-being of DC's tenants.¹⁷ We now hope to work together to establish a housing inspection and enforcement regime that works for DC tenants. That change should begin with the creation of a mission-centered rental protection agency, and should include legislation mandating the more targeted recommendations ODCA and advocates' have proposed.

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 Julie Lebowitz, Nancy Augustine, and Kathleen Patterson. “Housing Code Enforcement: A Case Study of Dahlgreen Courts.” September 24, 2018. *Available at* <http://dcauditor.org/wp-content/uploads/2018/09/DCRA.Dahlgreen.Courts.9.24.18.pdf>.

³ “Case Study” at 1.

⁴ We estimate DC’s occupied rental units to be in the 175,000-185,000 range based on 2010 population and rental housing data extrapolated to today, as well as on 2016 data showing the number of non-owner occupied housing units to be approximately 186,000. This, however, does not take in to account the number of unoccupied units. The number of unoccupied rental units in 2010 was 13,000 and demand for DC rental housing has increased since that time. (Use <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml> and input “Washington DC,” and <https://www.census.gov/quickfacts/fact/table/DC/PST045217> 2016 data.)

⁵ B22-0669 – Department of Buildings Establishment Act of 2018, *introduced* Jan. 23, 2018. *Available at* <http://lms.dccouncil.us/Download/39619/B22-0669-Introduction.pdf>.

⁶ Anne Cunningham and Kathy Zeisel, “Testimony Before the District of Columbia Council Committee of the Whole—Public Hearing: B22-669, Department of Buildings Establishment Act of 2018.” April 19, 2018. *Available at* <https://www.childrenslawcenter.org/testimony/testimony-department-buildings-establishment-act>.

⁷ 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. Rather, it is a goal related to improving the transparency of Housing Inspection enforcement. DCRA Oversight Question Responses, Feb. 15, 2018. Questions 61-62. *Available at* http://dccouncil.us/files/user_uploads/budget_responses/DCRA_Oversight_Final_-_PACKET.pdf.

⁸ “Case Study,” at 1.

⁹ ODCA reiterates this point, stating, “By not tracking outcomes, DCRA is unable to make sure that individual cases do not slip through the cracks, much less monitor trends over time, geography, ownership, or other characteristics of violations and enforcement.” “Case Study,” at 23.

¹⁰ *Id.* at 26.

¹¹ *Id.*

¹² In its responses to FY17 Oversight, DCRA lists about half of its 98 Key Performance Indicators (KPIs) as “not available” for FY16, FY17, and FY18. For FY18, DCRA reported data for only 5 of its 15 KPIs related to housing code enforcement. Of these 98 KPIs, 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%). 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. *See* DCRA Oversight Question Responses at 61-62. DCRA also removed 13 inspections and enforcement-related KPIs since 2014 without meaningfully explaining their removal as this Committee requested. *See Id.* at 57-60.

¹³ *See* “Case Study.” Recommendations 1-2 and 5-8.

¹⁴ *See Id.* Recommendation 12.

¹⁵ *See Id.* Recommendation 9.

¹⁶ *Id. at 27.*

¹⁷ *Id. at 30.*