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Testimony Before the District of Columbia Council
Committee of the Whole and Committee on Judiciary and Public Safety
November 18, 2019

Public Hearing:
Public Oversight Hearing on Agency Responses to Code Violations and the Subsequent
Fire at 708 Kennedy Street N.W.

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Good afternoon Chairman Mendelson, Councilmember Allen, members of the Committees, and staff. My name is Kathy Zeisel, I am a Senior Supervising Attorney at Children's Law Center. I am a resident of the District, and I am testifying 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. We appreciate this opportunity to testify about the report and our concerns about DCRA.

Through our medical-legal partnerships with Children's National Hospital, Mary's Center and Unity Health Care, families are referred to us when the conditions in their homes are harming the health of their children. Through our work, we know that infestations, mold, and lead paint are just a few of the environmental factors in a home that can impact the health of the family living there. Cockroaches, mold, and mice exacerbate asthma and other respiratory conditions, and lead exposure can cause permanent damage to a child's development. These issues are not just housing conditions issues. A child who ends up in the emergency room for his asthma misses school, his parents miss work, and the visit increases healthcare costs.

It is our experience that our clients cannot rely on DCRA to address these issues in any meaningful way, and that has been consistent for the eleven years that I have been at Children's Law Center.

Both my colleagues and I have testified numerous times about our concerns with DCRA. Before I get into specifics on some of those, I want to take a step back to state that the goal of our housing code enforcement system has to be more than the letter of the law, though we are certainly far from that type of enforcement as well. Instead, we need to design a system that takes into account the true purposes of code enforcement, to ensure that DC residents live in safe and healthy housing. In order to do that, we need a system of government enforcement that is responsive, which can actually unmask slumlords and not just the LLCs they hide behind, and which can do strategic enforcement in a meaningful way.

Turning to the report at issue in today's hearing, this report does an excellent job of outlining some of the core concerns about DCRA and FEMS, though it does not go far enough. I would like to highlight a few key areas in the report that we strongly agree with including: inadequate qualifications and training requirements within DCRA¹; inadequate staffing in DCRA²; lack of oversight within DCRA³; the failure to prioritize investigations⁴; the inability to appropriately supervise licensed properties⁵ and the failure to supervise unlicensed properties⁶; and the lack of coordination across agencies.⁷

I will focus on these broad categories and look at some of our additional concerns next. The first category is the failure to have the needed number of adequately trained and qualified inspectors. The report recommends that DCRA benchmark

against other metropolitan governments to determine if DCRA is understaffed.⁸ We have done that already, and we know that DCRA is understaffed significantly as compared to other cities.⁹ For example, as of 2017-18, Baltimore has 1 inspector for every 1400 housing units,¹⁰ Philadelphia had 1 inspector for every 4500 properties, Des Moines had 1 inspector for every 2100 properties, Trenton had 1 for every 911 properties while DC had 1 for every 12,500 properties.¹¹

This failure to have enough inspectors is evidenced in DCRA's own data. Per the dashboard on its own website, DCRA conducted 448 fewer housing inspections in FY19 from FY18, which was already lower than FY17—even though the DC Council increased resources for housing code inspections in the budget.¹² No data is available on the dashboard on enforcement on these inspections.

As the report also notes, the requirements to be hired as an inspector are minimal, and then once trained, the training is barely adequate to ensure that the inspectors can spot the housing code violations, never mind do the deeper strategic work that is necessary.¹³ In the past year, DCRA has attempted to expand this pool of inspectors by training lay people through what is colloquially called the “uber inspector” program.¹⁴ We have serious concerns about this program. These are just people who want to do a few inspections and who have no real oversight or accountability. The training for these uber inspectors is even more inadequate than that of basic housing code inspectors to ensure that housing inspections are done in a

thorough and complete manner. Further, these inspections will be essentially unenforceable as it will be nearly impossible to subpoena these “uber-inspectors” to court.

Tenants should not have to call many agencies to have their housing conditions addressed even if we as a government have cited regulatory responsibility within different agencies. Housing code inspectors should be cross-certified in not only housing code inspections, but also in lead and mold inspection so that a tenant can make one call and have all the issues dealt with in one inspection. This would promote the professionalization of the inspectors and would address some of the serious customer service issues.¹⁵

In addition to the inadequate staffing of the basic housing code inspectors, one issue the report fails to look at is the lack of specialized inspectors. Children’s Law Center represents six families who were displaced in after a serious electrical fire in December of 2017. In the aftermath of that fire, we were told that DCRA does not have anyone on staff who can or will determine whether the electrical system in the property was illegally repaired or caused the fire because they do not have an electrical engineer who can do that. Even after we retained an expert in that area, DCRA was unable or unwilling to require the landlord to make the needed repairs. At this point, the property is under a receivership pursuant to an Office of Attorney General case, and it is our understanding that the faulty electrical system is still an issue that is in dispute.¹⁶ It is

our recommendation that DCRA also increase the availability of specialized inspectors to ensure that healthy safety issues can be dealt with appropriately.

DCRA also lacks an internal audit process to ensure oversight.¹⁷ This is consistent with the experiences we have had with DCRA over the past decade. Even if our clients get first inspections, second inspections are still rare, and enforcement is still virtually nonexistent. As recently as last year's oversight, DCRA could not report whether it even did any enforcement,¹⁸ and instead was referring tenant's to DC Superior Court to file their own complaints.¹⁹

The report also found that DCRA is unable to appropriately supervise licensed or unlicensed properties.²⁰ We concur that these are issues that need to be addressed. Too much of the housing code enforcement system relies on self-reporting by landlords, and this was only intensified by the recent changes to the NOI process.²¹ Our understanding of the current process is that after a tenant lodges a complaint, the landlord is notified by DCRA and if the landlord says the repair is made, then no inspection may be conducted.²² We agree that there could be stronger protections for tenants in these areas.

The reports finding that DCRA failed to prioritize investigations in the context of the Kennedy Street fire²³ is emblematic of DCRA's larger failure to use data in a meaningful way to do inspections strategically. Indeed, DCRA's proactive inspections remain problematic. After participating in an extensive working group process with

tenant advocates and landlord representatives, DCRA failed to make any significant changes to the process and it remains one that lacks teeth and is not effective to identify and prevent slumlords from operating in the city. To be effective, the proactive inspection process needs to consider additional types of data, including public health data, and needs to better track which properties are problem properties and which are not. In addition, enforcement needs to follow failed inspections in order to ensure that repairs are actually made.

Rather than treating all housing code violations equally, DCRA should focus on housing code violations which have greatest impacts on health and safety, defined broadly, of tenants. This could be imminent safety issues such as the Kennedy Street fire, but it should also include broader public health issues. We know, for instance, that children living in Wards 7 and 8 are twenty times more likely to go to the hospital for asthma than children living in Ward 3. While there could be many reasons for that, our work has generated data which confirms that housing conditions are a major trigger for these children—and we have found that resolving these housing conditions decreases emergency room visits and hospitalizations.²⁴ So, by addressing these violations, we are not only improving the health of individual children, increasing their days in school, and decreasing the overall stress on the family, but we are also bringing down one of the major cost drivers for Medicaid—asthma ER visits and hospitalizations.²⁵

We can do this on the tenant level as an organization, but DCRA could use this type of data to do meaningful strategic inspections and enforcement to make real changes for the health and safety of DC families. Instead, we are stuck in system of siloed government agencies who do not even cross train on the most basic of issues,²⁶ never mind sharing data to move forward innovative enforcement strategies. The report mentions the RFP for culture change that DCRA issued last year and is apparently moving forward on, but we believe that will not be sufficient.²⁷ We urge the Council to move forward with the Department of Buildings with the structure that creates a meaningful Tenant Protection Division and strategic enforcement that includes a public health lens.²⁸

In conclusion, there is much work to be done to ensure that we have an effective systemic housing code enforcement system in the city. It should not be the responsibility of tenants to find slumlords and conduct enforcement themselves. The tragedy at Kennedy Street is sadly yet just another illustration that DCRA is too broken to be repaired itself. DCRA must be broken up and we need a new agency with a real orientation and culture towards tenant protection that is adequately staffed, resourced, and trained and which has the legal tools it needs to do meaningful strategic enforcement to protect the health and safety of DC residents.

Thank you for the opportunity to provide this testimony.

Attachment 1: BUILD Health Infographic



Attachment 2: DCRA Notification of NOI/NOV Changes, April 1, 2019

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**DEPARTMENT OF CONSUMER &
REGULATORY AFFAIRS**

DCRA Announces Enforcement and Consumer Protection Enhancements

(WASHINGTON, DC) – The Department of Consumer and Regulatory Affairs (DCRA) is launching a series of efforts to strengthen consumer protection by streamlining its housing code compliance and enforcement activities.

Beginning in May, a Notice of Infraction (NOI), instead of a Notice of Violation (NOV) will be issued by housing inspectors whenever a housing code violation is not addressed. Along with speeding up the repair process, an NOI also includes an order to complete necessary repairs and a fine based on the type of code violations cited.

Over the last three fiscal years, a data analysis of nearly 30,700 housing and proactive inspections revealed that only about 3,400, where a violation was found, have been brought up to code using the NOV process.

"As a consumer protection agency, we know that rental housing units have a large and active client base demanding quality housing," said Acting DCRA Director Ernest Chrappan. *"Our goal is to ensure that tenants know that housing providers will be held accountable for housing code violations; especially repeat offenders."*

Other enhancements that will launch next month include inspectors using mobile tablets to access a housing provider's violation history, and relevant data, and submit inspection reports from the field; rental housing providers receiving electronic alerts for housing code violations; and a map visualization of housing code violations throughout the city available on the DCRA Dashboard.

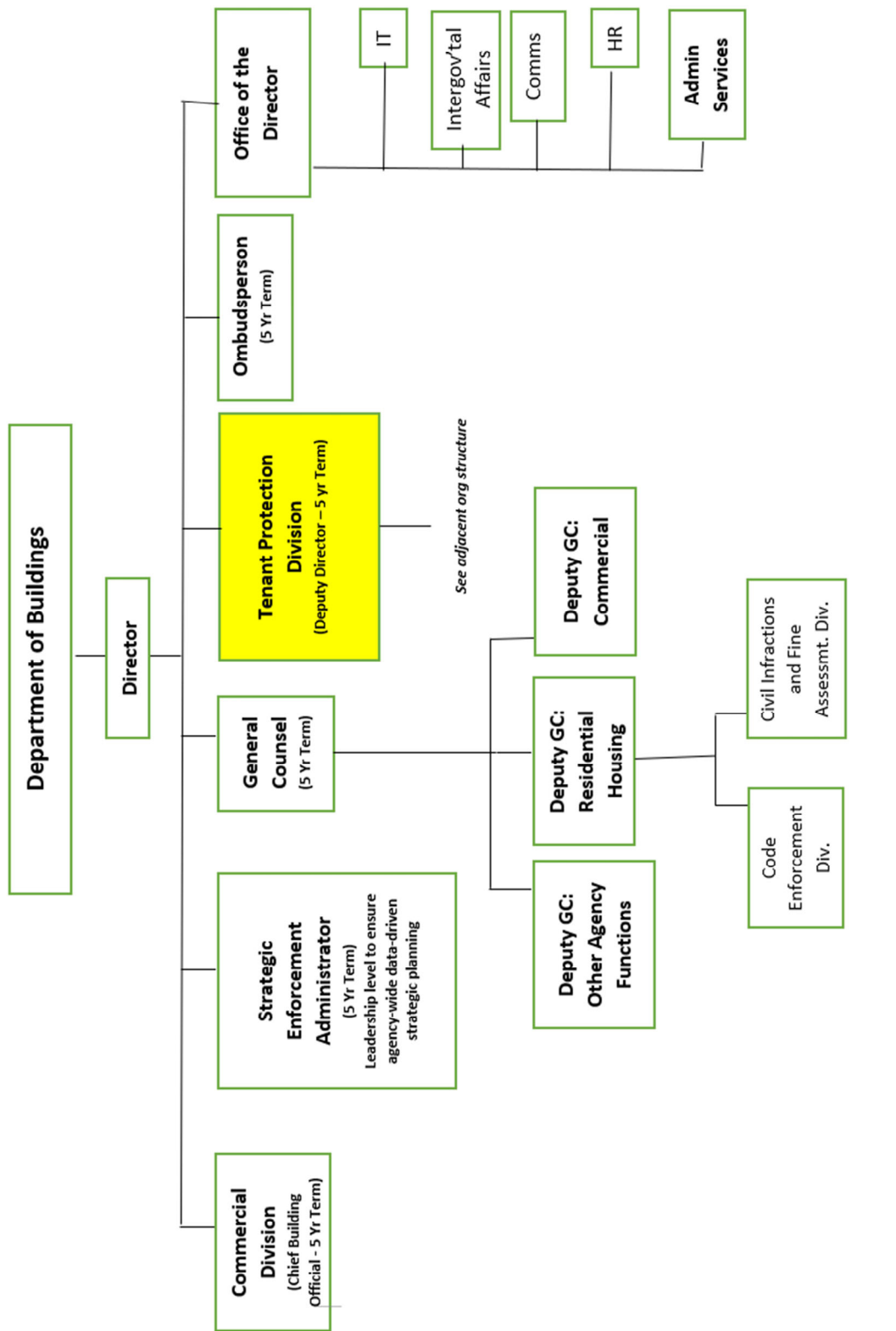
"These are important steps in our operational improvement that will ultimately improve housing conditions by accelerating compliance," said Acting Director Chrappan. *"This is part of our ongoing effort to simplify the agency's processes and become more efficient in leveraging data to reveal trends and minimize loopholes."*

There are more than 28,500 family rental units and apartment buildings licensed by property owners in the District. Enhanced data analysis will provide greater flexibility in targeting historically problematic properties. This effort combined with on-site reporting from inspectors and streamlined NOI process will strengthen the agency's ability to take effective enforcement actions to achieve greater levels of compliance.

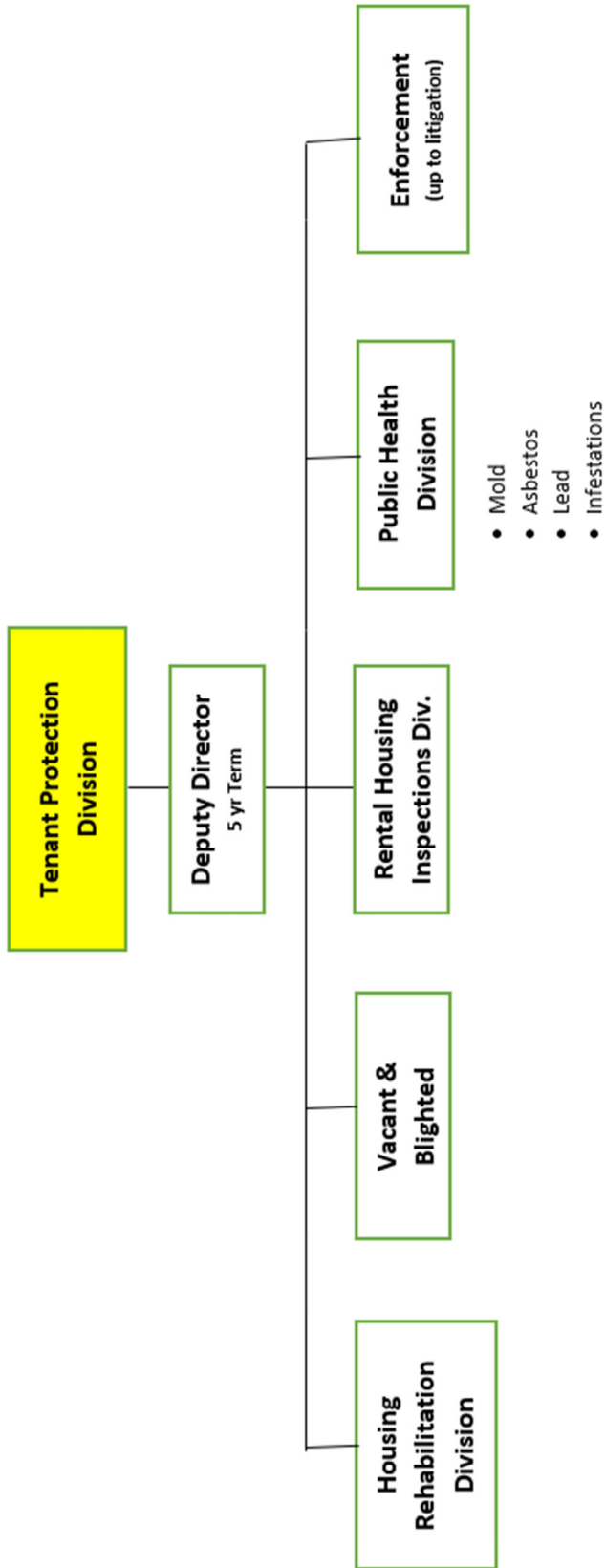
By adopting these process changes, the agency will transform itself into a digitally enhanced organization that provides timely and value added service to its customers.

If you have any questions regarding this communication, please contact DCRA's Communications Department at DCRACommTeam@dc.gov. DCRA actively uses feedback to improve our delivery and services; please take a minute to [share your feedback](#) on how we performed in our last engagement. [Subscribe](#) to receive DCRA news and updates.

Attachment 3: Advocates' Alternative Proposal for DOB Organizational Structure



Attachment 3: Cont'd



¹ Id. at 46

² Id. at 66.

³ Id. at 48.

⁴ Id. at 47.

⁵ Id. at 48.

⁶ Id. at 68.

⁷ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, October 25, 2019, Submitted by Alvarez & Marsal Disputes and Investigations LLC, <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/Review-Investigation-Code-Enforcement-Policies-Procedures-Inter-Agency-Communications.pdf> page 44.

⁸ Id. at 66.

⁹ See <https://www.childrenslawcenter.org/resource/do-cities-have-enough-housing-inspectors>

¹⁰ See also 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 It is our understanding there are 12-19 inspectors based on 2018 oversight data. 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.)

¹² This data is from the DCRA Dashboard, <https://eservices.dkra.dc.gov/DCRAAgencyDashboard/index>, on 11/14/2019. It is not clear if this data includes the court-ordered inspections from the Housing Conditions Calendar in DC Superior Court.

¹³ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, page 46.

¹⁴ See <https://dkra.dc.gov/page/inspection-training-program>. See also: <https://eservices.dkra.dc.gov/DocumentManagementSystem/Home/retrieve?id=Mayor%20Bowser%20Demonstrates%20New%20Pilot%20Program%20to%20Streamline%20Housing%20Inspection%20Process%20Press%20Release.pdf>

¹⁵ DCRA should also have cross-abilities to enforce in these areas along with the other agencies responsible for enforcement.

¹⁶ As a result of this case, several staffing and systems issues with the FEMS inspectors also came to light that are not addressed in this report. Because their role is only to determine if it was arson or not, they do not consider if it is negligence or ensure that the other tenants in the building are safe after an electrical fire that impacts only some of the tenants. In addition, due to the way their inspectors are staffed, it is the responsibility of the tenants to track down the inspectors individually and there is no central way to reach out to the inspectors to get information. It is our recommendation that the inspectors have a centralized customer service and way for tenants to reach them and to subpoena them as needed. For reference to the receivership case, see DC Superior Case, Docket No. 2018 CA 005830 B.

¹⁷ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, page 48.

¹⁸ See DCRA Oversight Packet 2018, page 57.

¹⁹ See Director Bolling's testimony during this Committee's 10/2/2017 DCRA Oversight Roundtable. See also, The Kojo Nnamdi Show, Director Of D.C.'s Department of Consumer And Regulatory Affairs. October 16, 2017, available at <https://thekojoannamdishow.org/shows/2017-10-16/director-of-d-c-s-department-of-consumer-and-regulatory-affairs-dkra>.

²⁰ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, pages 48 and 68.

²¹ See DCRA Email from April 1, 2019.

²² We do not know much about this process is going in real time. From reports we are hearing on the ground, landlords may be permitted to self-certify repairs are completed and inspectors may not go out in those instances, though we are not clear if this is the process in all cases. We would like to get additional information on this process through oversight.

²³ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, page 47.

²⁴ See <https://www.childrenslawcenter.org/BUILDHealthDC>

²⁵ Mold in the walls could be triggering your child's asthma attack. Here's what a new D.C. partnership is doing about it, Washington Business Journal, 8/28/19, <https://www.bizjournals.com/washington/news/2019/08/28/mold-in-the-wallscould-be-triggering-your-child-s.html?b=1566963755%5E21533096>

²⁶ *Review and Investigation of Code Enforcement Policies, Procedures, and Inter-Agency Communications Between DCRA, FEMS, and MPD*, page 44.

²⁷ Id. at 51.

²⁸ See attachment 3, DOB Proposed Structure.