



Testimony Before the District of Columbia Council

Committee of the Whole

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Budget Hearing:

Department of Buildings

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Good morning Chairperson Mendelson and members of the Council. My name is Kathy Zeisel and I am DC resident and a Senior Supervising Attorney at Children's Law Center, which fights so every DC child can grow up with a stable 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.

The budget the Mayor proposed for the Department of Buildings (DOB) shows no vision and no desire to ensure that DC residents live in safe and healthy housing. We are making recommendations regarding the budget and the Budget Support Act that we believe will strengthen the DOB so that it can ensure that DC residents have safe and healthy housing. Today, we want to raise six specific areas of focus: (1) the inadequate of number of inspectors; (2) the need for more enforcement staff; (3) the lack of funding for specific public health and data personnel; (4) the key performance indicators (KPIs) for the agency should be specific and hold the agency accountable for all functions; (5) DOB should be required to report quarterly to the Council and to provide open data publicly; (6) the BSA should include a provision to direct fines collected to the Nuisance Abatement Fund and to provide notice to tenants of enforcement proceedings.

**75 Inspectors Should be Included in the Budget for DOB**

The FY23 budget continues the trend of significantly under funding DC for housing inspectors, both for complaint based and proactive inspections.<sup>i</sup> Regardless of whether a few were added or not, and it seems they were possibly added in FY22, DC does not have enough inspectors in the FY23 budget. In comparison to other localities, DC has a higher ratio of inspectors to the amount of rental housing of the cities we looked at, with about 1 inspector for every 6100-7000 units of rental housing.<sup>ii</sup>

Nationally, Rochester is considered to have done an excellent job in redesigning how they do housing code inspections. They have only about 58,000 rental units and they have 45 housing inspectors on staff, which is 16 fewer than they had previously due to budget cuts, putting them at a current ratio of 1:1400. In comparison, DC has many fewer inspectors for our approximately 180,000 rental units.

In the other cities we surveyed, the ratio of housing inspectors largely ranged from 1:2200-1:3500, but several that were at the higher end had experienced budget cuts leading them to downsize inspectors or otherwise expressed a need for additional inspectors.<sup>iii</sup> Based on this research, we recommend DC start with 75 inspectors for both proactive and complaint based inspections. It may be that additional inspectors are needed, especially specialized inspectors, but this would allow an adequate number to have a community-based inspection solution.

### **Additional Enforcement Personnel are Needed**

We are concerned that this budget appears to fund DOB enforcement at a lower level than it was previously funded at DCRA. It is a little difficult to make a direct comparison, but when the amount of funding is considered along with the organizational structure proposed in the documents sent to the Council, there does not appear to be sufficient resources for enforcement.<sup>iv</sup> We recommend that enforcement personnel who report to the Director of Strategic Enforcement be embedded within the inspection units in order to help oversee the inspection process and coordinate strategy. We also recommend that enforcement staff be increased given the increase of inspectors we are recommending in order to handle the volume of enforcement that will be needed.

Relatedly, the Office of Administrative Hearings is likely to need increased staff to hear the increased volume of cases from the Department of Buildings.

### **A Data-Driven, Public-Health Focused Agency Requires Additional Positions**

Third, as we have previously testified DOB should approach housing code enforcement in a data driven, public health focused way. In order to do that, several positions that are not currently funded are needed. First, a high level public health position within the Strategic Enforcement branch is necessary to ensure that someone with the appropriate expertise in public health and health equity is available to help

guide the strategic enforcement strategy, analyze the data, work with the proactive inspection team, and to have a public health lens on the healthy housing work of the agency. We also recommend that there be liaisons in this office with relevant agencies , including DLCP, DOEE, DOH, DC Fire, DCHA, DHCD, and OAG, to coordinate with the relevant licensing bodies, inspectors, abatement and enforcement entities on actions and to coordinate on exchange of data. This should include coordinating to identify landlords, to conduct strategic inspection and enforcement actions, and to abate and put liens on properties as needed. One of the big gaps now in enforcement is that there simply is no coordination even though each of these entities may be responsible for an aspect of enforcement related to the housing code or a directly parallel or related provision of the law.

For example, coordination with DOEE will be required when there are concerns about violations of the lead law and lead testing is required in housing inspections, both in proactive and complaint-based inspections. Or, when there are permitting issues around demolition of a pre-1978 property for construction there should be coordination between the agencies regarding inspection, lead safe practices, and permitting. This should be done in systemic way rather than ad hoc between inspectors. In addition, there are likely to be construction issues that branch between DOEE, DLCP, and DOB and it would be beneficial to have a liaison to ensure a smooth process exists.

From the tenant's perspective, they are all DC government and the failure to coordinate only leads to a messy and time consuming failure to enforce the law against problem landlords. We propose that the DOB be the coordinating agency for healthy housing enforcement and data.<sup>v</sup> As such we anticipate that at least two to three positions would be needed for data and enforcement coordination.

We also reiterate our recommendation that one liaison position be funded immediately to ensure that memorandums of understanding with other executive agencies are developed now, including DLCP, DOEE, DOH, DC Fire, DCHA, DHCD, and OAG, so that the relationships are in place when the agency starts. Specifically, we ask that there be coordination with respect to inspections, enforcement, data, and where relevant, abatement and remediation. As an example, DC Department of Energy and Environment (DOEE) currently does inspections for lead and mold, two highly relevant conditions for healthy housing, and both of which could be violations of the housing code. In addition, DOEE has funding to abate lead paint, for weatherization (which can be helpful for certain remediation), roof repair, and some federal funding that can be used to bridge other cases. In the past, DCRA rarely made connections to DOEE's (and previously DHCD's) lead abatement program. But, DOB can and should be a leader in connecting tenants and landlords to the program as inspectors are on the front lines of seeing peeling paint and other lead hazards.<sup>vi</sup>

## **Key Performance Indicators (KPIs) Should be Precise and Well-Defined**

Given the serious performance issues at DCRA and the lack of serious change management happening in the planning for DOB, we strongly recommend KPIs that encompass all the main functions of housing code enforcement. Since the agency has a narrow focus, the KPIs can be broader to cover these. The current KPIs do not incentive DCRA to do anything except inspect because that is the only standard for which they are measured.<sup>vii</sup> If we want to actually measure outcomes that are meaningful, we need to measure not only whether inspections happen, but also whether repairs are made within a reasonable time after violations are found, the timeliness of those repairs, whether the housing inspection agency re-inspects, whether it pursues successful actions against the landlords if they do not make repairs, and if they remediate serious housing code violations where landlords fail to do so in a timely manner. KPIs should also include measuring whether DOB addresses the most serious unsafe and unhealthy code violations in a timely manner.

We recommend that the complaint based and proactive inspection KPIs be measured separately so that the programs can be both be assessed. Detailed KPIs are common in other jurisdictions for housing inspection units.<sup>viii</sup> In the current data, it is nearly impossible to break apart how each program is doing in most instances. Some specific suggestions are:

1. Property Maintenance (Housing) inspections that are completed within 15 business days from date of request
2. Property Maintenance (Housing) Notices of Infraction (NOI) that are initiated within 2 business days following inspections where violations were observed.
3. Repairs reported and verified in complaint based inspections
4. Re-inspections conducted where no repairs verified in complaint based inspection cases
5. Abatement conducted in safe and health violation cases in complaint based inspection cases
6. Liens placed in abatement cases in complaint based inspection cases
7. DOB enforcement conducted in OAH for non-compliance in complaint based inspection cases
8. Amounts collected for enforcement in complaint based inspections
9. Proactive inspections conducted
10. Repairs reported and verified in proactive inspection cases
11. Re-inspections conducted where no repairs verified in proactive inspection cases
12. Abatement conducted in safe and health violation cases in proactive inspection cases
13. Liens placed in abatement cases in proactive inspection cases



14. DOB enforcement conducted in OAH for non-compliance in proactive inspection cases
15. Amounts collected for enforcement in complaint based inspection cases
16. MOUs signed with other executive agencies for data sharing and collaboration with relevant programs

### **DOB Should be Required to Provide Open Data and to Report to the Council**

The current legislation requires annual reporting, but we suggest that the Council not wait a full year to determine if DOB is working. Instead, we recommend that the agency provide quarterly reporting to the Council on its KPIs and/or the detailed list of information above so that the Council can monitor the agency. Furthermore, we recommend that the agency be required to provide the data on a public facing data site so that researchers and others who use this data to understand healthy housing issues in the city can access it easily.<sup>ix</sup>

### **BSA Should Permit Fines Collected Should go to Nuisance Abatement Fund**

With respect to enforcement, the Council has an opportunity to ensure that the new agency has sufficient funds for abatement in instances where landlords fail to remediate. We recommend that the Council create a mechanism for some or all of the fines collected to be directed back to the agency in this year's Budget Support Act, with

a portion of those fines going to the Nuisance Abatement Fund. This is necessary because when landlords fail to remediate, it is important that tenants not be forced to live in unhealthy housing while enforcement action is pursued, which could take years in court. Instead, the agency should remediate and then place a lien on the property. The change in the BSA is needed in order to ensure there are adequate funds available to do these repairs and that the fund is continuously funded through a mechanism other than the budget. In fact, we recommend that landlords be charged a penalty if abatement funds are used to make the repairs and that the Council attach this as part of the BSA language if possible.

In the same spirit of helping DC better collect fines and utilize them, we also ask that the BSA require that tenants be notified in writing of NOIs issued, any self-certifications that repairs were completed, and of enforcement proceedings so that they can have an opportunity to participate if they so desire. This could aid DC in being more successful when it does bring enforcement actions.

### **Conclusion**

We ask that the Council act to ensure that the Department of Buildings is meaningfully different than DCRA. In order to do that, the Council needs to fund 75 total inspectors at the agency to start with, to increase the enforcement staff of the agency, to increase the staff for public health and dedicated liaisons with other agencies

for data and program management, and to utilize the BSA to ensure that fines collected go to the abatement fund so that there are adequate funds to ensure that needed repairs can be made.

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<sup>i</sup> The actual number of housing code inspectors proposed for FY23 is a bit confusing. In the Department of Consumer and Regulatory Affairs Transition Plan: Version 1.0 December 2021, Initial Timeline, Organizational Plan, and Organizational Charts Only, p26, it appears that there are 26 inspectors proposed for DOB (25 inspectors and a supervisor plus a program manager and two enforcement officers). Proactive inspectors are not listed separately, so this is either a significant decrease in the number of inspectors from DCRA or they are not captured here. The FY23 budget does not create separate line items for the housing code inspectors and proactive inspectors at FTEs, just a total amount for housing code inspectors. Director Chrappah’s testimony references the addition of new staff, but those staff appear to have already been hired in FY22 at DCRA rather than being new DOB staff, though again it is hard to draw a direct line in the way the budgets are presented.

<sup>ii</sup> We are not totally clear on the exact number of full time inspectors that DC currently has employed, but accounts for the range of 25-29 inspectors for the 179,657 units of rental housing in the 2022 census numbers per the ACS data.

<sup>iii</sup>

<u>City</u>	<u>Ratio of Inspectors to Properties</u>
Montgomery County	1:3,500
Cleveland	1:3,359
Des Moines	1:2,221
Trenton	1:2,063
Syracuse	1:2,577
Rochester	1:1,390
Washington DC	1:7,186

<sup>iv</sup> See Department of Consumer and Regulatory Affairs Transition Plan: Version 1.0 December 2021, Initial Timeline, Organizational Plan, and Organizational Charts Only and Department of Buildings Transition Plan: Communications and Strategic Human Capital Plan Only, February 2022.

<sup>v</sup> With respect to tenant-initiated cases in DC Superior Court, at a minimum, the reports created by the DOB housing code inspector in DC Superior Court should be tracked for data purposes. It is our understanding these are not tracked, and when we looked up cases that Children’s Law Center has in Housing Conditions Calendar in DC Superior Court where the DCRA Inspector has conducted inspections, these inspections were not listed in the Landlord Violations tool on DCRA’s website even though violations were cited in the reports.

<sup>vi</sup> Given the recent revelations about the DHCD program and the Mayor’s plan to increase funding to that program, it is important that there be MOU’s to ensure an adequate referral pipeline and oversight by as many eyes as possible. See Ashley Clarke and Amy DiPierro, *“If They Don’t Hurry, I Might Have to Sell My Home”*: This Repair Program Has Kept D.C. Families Waiting for Years, 3/1/22, <https://dcist.com/story/22/03/01/dc-house-fix-accessibility-dhcd/>. In addition, the DOEE lead remediation

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program was listed in at-risk status for the federal funding and is in need of additional referrals into the program. DOEE 2022 Oversight Answers, Attachments p202.

<sup>vii</sup> The two KPIs that are relevant are: Percent of Property Maintenance (Housing) inspections that are completed within 15 business days from date of request and Percent of Property Maintenance (Housing) Notices of Infraction (NOI) that are initiated within 2 business days following inspections where violations were observed. Neither of these get to whether the actual issue was resolved for the tenant.

<sup>viii</sup> For some examples of other KPIs, please see: NYC (note that relevant KPIs are in both the Department of Buildings and the Department of Housing Preservation and Development):

<https://www1.nyc.gov/site/cpr/agency-performance/agency-performance-reports.page> and Collinsville, IL, page 10: <https://www.collinsvilleil.org/home/showpublisheddocument/1547/637336122837900000>;

Glendale, CA, p6, <https://www.glendaleca.gov/home/showpublisheddocument/52558/637057793633970000>; Boston, MA, [https://www.cityofboston.gov/images\\_documents/ISD%20-%20FY11%20Q2%20Web\\_ver4\\_tcm3-24022.pdf](https://www.cityofboston.gov/images_documents/ISD%20-%20FY11%20Q2%20Web_ver4_tcm3-24022.pdf);

<sup>ix</sup> New York City provides an excellent example of open data access in this realm, see:

<https://www1.nyc.gov/site/hpd/about/open-data.page>. Cincinnati also provides interactive data: <https://insights.cincinnati-oh.gov/stories/s/Code-Enforcement/eb9h-rrpu/>.