



Testimony Before the District of Columbia Council  
Committee of the Whole  
November 3, 2022

Public Hearing on:  
B24-0947, THE "PROACTIVE INSPECTION PROGRAM ACT OF 2022"

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## **Introduction<sup>i</sup>**

Good afternoon, Chairperson Mendelson and members of the Council. My name is Kathy Zeisel. I am a 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.

Children's Law Center thanks the Council for breaking apart the Department of Consumer and Regulatory Affairs and establishing a Department of Buildings (DOB) in order to attempt to more meaningfully ensure that DC residents have safe and healthy housing. Establishing a proactive residential inspection (PRI) program within the DOB will be key for housing preservation as well as for ensuring *all* DC tenants live in healthy and safe homes.

### **Proactive Inspections Programs are Important and Effective**

A code enforcement regime that relies solely on complaints neglects many rental properties in serious need of repair. In addition, it finds problems only after they become significant issues and so fails to preserve and protect affordable housing. An effective PRI program is essential to ensuring that a city can detect health and safety

issues in housing, ideally before they become major capital repair issues, allowing residents to live in healthy housing and preserving affordable housing.

In our experience, the tenants who tend to live in the worst-quality housing are often the least likely to complain about illegal conditions in their rental homes. A well-planned and well-run PRI program will ensure that tenants who are low-income, who don't speak English, who are unfamiliar with their rights, or who fear landlord retaliation can equally enjoy the benefits of housing code enforcement. PRI also mitigates the strain that complaint-based inspections often bring to the landlord/tenant relationship. This is because PRI requires *all* rental properties in a given jurisdiction be inspected periodically for housing code violations, regardless of whether a complaint has been made.

PRI is an important mechanism for safeguarding housing stock. To provide just one example: a Harvard study estimates that, in the seven years following the establishment of Los Angeles's PRI program, "more than 90 percent of the city's multifamily housing stock [was] inspected and more than [1.5 million] habitability violations [were] corrected. The result [was] an estimated \$1.3 billion re-investment by owners in the city's existing housing stock."<sup>ii</sup>

Dozens of jurisdictions across the country have established PRI programs. While DC has long had a program, the program has not had clear positive outcomes. DCRA had only four contract inspectors working on the program, selection of which

inspections to do was opaque and did not appear to be done in a consistent way, and DCRA did not report successful enforcement or abatement outcomes from its proactive program. We are very pleased to support the work this Committee has done toward codifying a nuanced and thoughtful PRI program here in DC. Such a program will be a cornerstone of strategic enforcement for the new DOB.

### **Bill 24-0947 Should be Made Even Stronger**

The current draft of the bill outlines a proactive inspections regime for DC that aligns with many PRI best practices. It incentivizes landlords to voluntarily comply with the housing code by rewarding compliance through a tiered and staggered inspection timeline. It establishes an inspections program that prioritizes for inspection properties that are more likely to be in poor condition. It requires tenant consent for inspection of their unit to proceed. And it discourages landlord retaliation by creating a mechanism for reporting and fining landlords who retaliate against tenants as a result of a proactive inspection action.

We propose the following changes to further strengthen this bill:

#### Tiers and Classifications Should be Adjusted

1. **Property re-inspection and re-classification should take place every 1, 3, and 5 years, rather than every 1, 4, and 8 years.**<sup>iii</sup> In our experience, conditions can change quickly, and rental properties can deteriorate rapidly. Eight years is

simply too long to wait to inspect a property if we want to catch problems before they require major capital repairs.

**2. Certain conditions should cause tier one and two properties to be reclassified ahead of schedule and moved to a lower tier, including when:**

- a. **A property reaches a certain threshold of health and safety violations as a result of complaint-based inspections,**
- b. **A property is placed into tenant receivership pursuant to DC Code § 42-3651.01 et. seq.;**
- c. **A property fails a certain number of HUD's Real Estate Assessment Center (REAC) inspections, and**
- d. **A tier one or two property changes ownership.** The lower tiers reward a property owner's strong compliance track-record. If the property's ownership changes, the new owner should not benefit from being placed in a lower tier before demonstrating that they, too, will keep their property up to code. Currently, the bill does not contemplate a change in property ownership.
- e. **The Director uses their discretion to move a property to a lower tier.**

However, this should be a one-way ratcheting down without an option to move a property to a higher tier unless a formal appeal process is put into place in order to ensure transparency and equity in the process.

Building and Unit Selection Criterion Recommendations

3. **When determining which properties to inspect, the severity of housing code violations should be weighted more heavily than the number of violations found at the property.** Buildings with code violations that threaten or harm tenant health and safety should be prioritized for more frequent inspection than buildings with a greater number of more minor violations.
  
4. **Additional public health data aside from lead exposure<sup>iv</sup>—such as asthma rates and other markers of respiratory health—should be considered when determining which properties to inspect.** The evidence shows that housing conditions such as mold and infestation can exacerbate asthma and even *cause* individuals to develop the illness. By targeting areas, and even buildings, with high rates of conditions that are tied to housing conditions issues, we can practice precision public health and ensure our limited inspection resources have the greatest impact on the health of DC residents. **To that end, the bill should require that DOB’s public health official participate in the process for deciding what additional public health data should be factored in, and for determining the weight assigned to the specific tier selection factors.<sup>v</sup>**
  
5. **Unoccupied units should be included in the randomized sampling of units for proactive inspection.** We have found that owners often use unoccupied units as

a way of evading inspection of a property's worst units because these units do not enter the lottery for selection for inspection. However, the terrible conditions that pervade these units, such as mold or infestation, impact the surrounding units. In order to ensure a complete picture of a building's condition, unoccupied units should be in the sampling of property's randomly selected units.

6. **If certain conditions are found in a unit or common area, they should automatically trigger inspection of neighboring units even if those units were not randomly selected for inspection.** Conditions such as substantial ceiling damage, roof damage, mold, lead, and infestations are unlikely to be limited to just one unit and should be immediately addressed. The bill should require the Department to seek tenant consent to inspect adjoining units when these conditions are identified during an inspection. If the conditions found constitute an emergency, the Department may enter a unit on that basis by utilizing existing powers.

7. **If a threshold number of violations are found, additional units should be inspected.** If during a proactive inspection, a significant number of serious violations or if the same violations are found in the units inspected, then an additional 20% of units should be added to the inspection pool. If those units are found to have the same violations, then additional units should also be

inspected, possibly to include all units on the property. This is necessary to determine how widespread the violations are within the property and to determine the scope of abatement and/or enforcement. Such additional inspections may be scheduled in order to obtain additional consent from tenants.

#### Tenant Notice, Consent, and Receipt of Inspection Report

8. **The bill should require the Department to provide tenants a copy of the inspection report for their unit.** Codifying this is important because DCRA historically has not provided tenants copies of notices of infraction for proactive *or* complaint-based inspections and it is difficult for tenants to obtain these documents. Yet, for the agency, it is as easy as collecting email addresses while on site to provide the reports and/or simply mailing them to the address where they conducted the inspection. **Tenants should also be notified of any subsequent enforcement action** so that they may have the opportunity to participate as a witness. Both measures will increase tenants' trust and buy-in—critical components of any successful PRI program. This may also increase the effectiveness of enforcement by enabling witnesses to testify at the hearing stage about the unit's condition and the status of repairs.
  
9. **All tenants in the building should be notified of the proactive inspection, and tenants whose units were not selected for inspection should be permitted to**



**add their unit to the inspection list.** Currently, the bill only requires notification of tenants whose units were randomly selected. Notifying the whole building and creating a mechanism for non-selected tenants to ‘opt-in’ to the inspection allows the inspector to flag for remediation violations they may otherwise have missed. An ‘opt-in’ option will also be more efficient—for all parties—than requiring left-out tenants to file proactive complaints.

10. **Tenant consent forms should be provided by Landlord and DOB:** Under the bill’s current language, a tenant’s unit is removed from the inspection list if the landlord does not return their signed consent form to the Department. We worry that this creates an easy out for unscrupulous landlords who wish to avoid inspection of certain units. We ask that in addition to the landlord providing notice to the tenants, DOB also be required to mail notice to identified units with information about how tenants can provide electronic and mail in consent directly to DOB. Additionally, inspectors should be enabled to collect consent forms and/or electronic consent on the day of inspections. Consent forms must provide a way for tenants to indicate their preferred language of communication.
11. **Any forms landlords are required to provide tenants should be developed and provided by the Department and should comply with DC’s Language Access**

**Act.** Any forms provided by the Department to the tenant, including inspection reports, should comply with DC's Language Access Act.

Data Issues Should be Resolved and Public

12. **The Department should finally solve the technical problem of knowing what garden-style complexes exist in DC.** It is our understanding that DOB does not consistently consider garden-style rental property complexes—which include multiple tax-lot buildings under one ownership—as a single rental property. DOB instead sometimes counts them as many separate properties because that is how their computer system identifies them. From a PRI perspective this means portions of the same property could be on different proactive inspection timelines which is burdensome to the property owners and also prevents inspectors from having a complete picture of the health of a property. DOB should be required to identify these complexes and treat them as single properties for the purposes of PRI, abatement, and enforcement.
  
13. **Report to the Council should include specific building information:** As drafted, the legislation does not require DOB to report which buildings were inspected, only broad totals. We request that in addition to what is required in the legislation DOB report on which buildings were inspected; what violations were found; what, if any, enforcement action was taken; what, if any, abatement

occurred by building and not simply in the aggregate. In addition, the number of consents requested and received at each property and the manner of receipt (via owner or DOB) would be useful information to receive. This level of oversight is needed to ensure that the program is operating as the legislation is intended. The level of reporting currently requested by the legislation is not sufficient to ensure that the program is operating as required.

- 14. Finally, the bill should require the Department to make proactive inspections data publicly available.** Data is essential to measuring the success of the program, and it is also invaluable for research and initiatives that monitor the health of DC's housing stock and the well-being of DC's tenants. Such data should be open access data so that outside researchers can easily access it.

## Conclusion

In conclusion, incorporating these changes into the Proactive Inspection Program Act of 2022 will ensure DC has a meaningful and effective PRI program that truly works. Thank you for your time and for continuing to prioritize the health, safety, and well-being of DC's tenants.

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<sup>i</sup> We would like to thank [Change Lab Solutions](#) for lending us their assistance and expertise as we analyzed this important legislation. They have provided ongoing technical assistance for establishing and implementing PRI programs to numerous jurisdictions. Change Lab Solutions provides important,

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evidence-based information regarding PRI best practices here:

<https://www.changelabsolutions.org/product/healthy-housing-through-proactive-rental-inspection>.

<sup>ii</sup> Harvard Kennedy School, ASH Center for Democratic Governance and Innovation. Systematic Code Enforcement Program. Available at <https://ash.harvard.edu/news/systematic-code-enforcement-program>. Jan. 5, 2005. Accessed on Nov. 1, 2022.

<sup>iii</sup> In 2019, our colleagues at AOBA testified that they are strong supporters of proactive inspections and implied that they would be comfortable with a five-year proactive inspection timeline for tier 1 properties. See HR23-0103-Hearing Record at 59:

[https://lms.dccouncil.gov/downloads/LIMS/43107/Hearing\\_Record/HR23-0103-HearingRecord.pdf](https://lms.dccouncil.gov/downloads/LIMS/43107/Hearing_Record/HR23-0103-HearingRecord.pdf).

<sup>iv</sup> Additionally, the factor pertaining to lead exposure (line 75) should be changed to read 3.5 µg/dL (rather than 5 µg/dL) so that it aligns with current DC regulation regarding the blood lead reference value.

<sup>v</sup> This data will require memorandums of understanding with other DC agencies. We do not suggest that the PRI program wait for such data to be available, but rather that it be incorporated when it is available.