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Testimony Before the District of Columbia Council
Committee of the Whole and the
Committee of Facilities and Family Services
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Performance Oversight Hearing:
Department of Buildings

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Good afternoon, Chairperson Mendelson, Chairperson Lewis-George, and members of the Committee of the Whole and the Committee of Facilities and Family Services. My name is Kathy Zeisel. I am the Director of Special Legal Projects for Children's Law Center and a resident of the District. Children's Law Center believes every child should grow up with a strong foundation of family, health and education and live in a world free from poverty, trauma, racism and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners and pro bono attorneys – use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Introduction

Over the years, Children's Law Center has testified dozens of times about the Department of Consumer and Regulatory Affairs (DCRA) and its new successor agency, the Department of Buildings (DOB). At Children's Law Center, we work with hundreds of families each year who are referred to us or contact us because the housing conditions in their home are impacting their child's health. Healthy Together, our medical legal partnership, becomes involved in these cases through the placement of attorneys throughout the city at primary care pediatric clinics with Children's National, Unity Health Care, and Mary's Center. Through these partnerships, we are referred

many families where the medical staff identify health-harming legal needs of their patients. These include many housing conditions cases where the landlord has refused to make needed repairs and the child's health is being severely impacted as a result. We regularly represent parents in cases where medications are unable to control their child's asthma because the mold, mouse, and/or roach infestations in their homes are so significant that they must bring their children to the emergency room to be treated. Sometimes, families report infestations so severe that mice are eating through a child's medical equipment or are entering a child's bed or crib. It is through these cases that we meet tenants who need the services of DOB and its predecessor agency, but who are not being effectively served. We began to work on reform of DCRA many years ago—first with other legal services organizations and organizers, and later also as a member of the DC Healthy Homes Collaborative.¹

Our goal has always been for DC to have a housing code enforcement agency that meaningfully protects tenants from the health harms caused by landlords' failure to follow the law. Fulfilling this vision requires strong complaint-based and proactive enforcement regimes, firm follow-through where a landlord fails to remediate illegal conditions and a proactive enforcement program designed to result in landlords' *voluntary* compliance with DC's housing code. This work should be strategic and informed by public health data and detailed data about landlords' past behavior.

The Council and the agency know that these are elements for a successful housing code enforcement agency. So, after watching DCRA fail for years at this core mission, the Committee of the Whole decided to break it up and establish the new DOB—a move we strongly supported. That establishing legislation included detailed parameters we hoped would compel a cultural shift.² Unfortunately, our work with, and observations of, DOB over the past five months have made clear that the agency is not setting itself up to come closer to being an agency that meaningfully ensures that DC residents live in safe and healthy housing. Instead, it appears to be the same personnel moved over from DCRA, utilizing the same philosophy and same techniques. Because of this, our testimony raises many of the same concerns we raised in last year’s oversight, budget, and roundtable hearings about DOB. We look forward to our continued work with these Committees to hold DOB accountable to the promise it held at its creation.

Incremental Change at DOB

DOB Public Dashboard

Last week DOB launched a new Public Dashboard.³ We are encouraged that DOB wants to improve their Dashboard as the last iteration was more challenging to use, did not include complete data, and the data could not be downloaded (it had to be scraped). It appears that the new Dashboard’s data can now be downloaded, making it a more useful tool for systemic research and work around linkages between housing

conditions and health in the District. The Dashboard also now allows you to see how many fines have been assessed through a Notice of Infraction (NOI) and how many of those fines have been paid—an important metric for determining the agency’s enforcement efficacy. We appreciate this and other efforts DOB is making to be more transparent and to make its data publicly accessible.

We understand this iteration of the Dashboard is new, so we hope DOB will work quickly to improve it in some key ways. First, the design around the housing conditions elements of the Dashboard is not user-friendly for the average consumer/tenant. For example, the violations/abatement and enforcement sections are separated and have different designs, which means they have to be navigated in different ways. This is complicated and should be simplified. A tenant who has requested a DOB inspection or whose unit is undergoing a proactive inspection should be able to go to the Dashboard, look up their address, and easily and linearly track their dedicated inspection and enforcement process. A DC resident who is inexperienced with navigating webpages is likely to find accessing information about their housing code complaint very challenging.

Additionally, the Dashboard does not appear to comply with DC’s Language Access laws as we could find no way to access the data or information in any language other than English and there is no information about how to obtain help doing so. To

that end, we strongly recommend that DOB convene testing panels comprised of a wide range of residents, including non-native English speakers, to test their site.

Key Performance Indicators

It appears that DOB has attempted to add an important metric to its Key Performance Indicators (KPIs): “number of housing code violation(s) abated by property owners or DOB.”⁴ We are pleased to see the addition of a KPI addressing remediation of violations as this is something for which we have advocated for many years. However, reporting a *number* of abatements is a fairly meaningless statistic as what we should really be trying to highlight is the *percent* of violations that have been abated. In addition, this should be more than one KPI. Abatements completed by property owners and abatements completed by DOB are two very different things when assessing landlord compliance and enforcement efficacy. In addition to exploring other important metrics for future KPIs (outlined below), we hope the Committees will push DOB to share detailed information about the percent of violations that have been corrected so we may truly understand the success rate of DOB’s housing code enforcement work.

Areas for DOB Improvement

Children’s Law Center continues to believe that new leadership is needed to make DOB an agency that truly achieves the *outcomes* that are needed for DC’s tenants: habitable and healthy, code-compliant housing. As we discuss below, though we see

movement toward improved data transparency, we do not see reason to be optimistic that the most urgently needed changes are happening at the agency.

Key Performance Indicators Should Reflect the Most Important Aspects of Enforcement

KPIs should be what they sound like – core metrics that readily show us whether an agency is fulfilling its duty and its mission. Aside from the addition mentioned above, DOB’s KPIs for its housing conditions work are largely the same inadequate KPI’s that DCRA used – KPIs that primarily focus on whether inspections have taken place.⁵ 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, whether the housing inspection agency re-inspects, whether it pursues successful actions against the landlords if they do not make repairs, and whether the agency remediates serious housing code violations where landlords fail to do so in a timely manner. KPIs should also differentiate between complaint-based and proactive inspections and should measure whether DOB addresses the most serious, unsafe, and unhealthy code violations in a timely manner.

Some specific suggestions for additional KPI categories include:

1. Repairs reported and verified in complaint-based inspections within 30 days of NOI
2. Re-inspections conducted where repairs have not been verified or where repairs are in dispute in complaint-based inspection cases
3. Abatement conducted in safe and health violation cases in complaint-based inspection cases
4. Liens placed in abatement cases in complaint-based inspection cases

5. DOB enforcement conducted in OAH for non-compliance in complaint-based inspection cases
6. Percentage of fines collected for enforcement in complaint-based inspections within specified time after fine issued
7. Proactive inspections conducted
8. Repairs reported and verified in proactive inspection cases
9. Re-inspections conducted where no repairs verified in proactive inspection cases
10. Abatement conducted in health and safety violation cases in proactive inspection cases
11. Liens placed in abatement cases in proactive inspection cases
12. DOB enforcement conducted in OAH for non-compliance in proactive inspection cases
13. Rate of success in OAH cases for non-compliance
14. DOB enforcement conducted in OAH for non-compliance in proactive inspection cases
15. Rate of success in OAH cases for non-compliance
16. MOUs signed with other executive agencies for data sharing and collaboration with relevant programs

DOB Inspections Do Not Translate to Repairs

While DOB does not have these as KPIs now, we can try to assess some of these questions. We can see that even when DOB responds to conduct complaint-based inspections, the agency fails to do meaningful follow-up to be certain that repairs have happened. DOB's oversight responses show that among complaint-based inspections, there were 3,733 inspections resulting in violations in FY21 and 9,066 in FY 22.⁶ Of the 13,293 total complaint-based violations in FY21, only 1,889 were abated in the same year; and of the 20,544 total complaint-based violates in FY22, only 4,140 were abated in the same year.⁷ For FY23 thus far, there have been 2,903 inspections and 620 abatements.⁸ Most abatements must happen within 30 days or less.⁹

This means that even with the option to self-report abatement¹⁰ by landlords, DOB was unable to confirm that the repairs were made for the vast majority of violations found within 30 days or even within the same year.¹¹ And, since this data is based at least partly on self-reported repairs, it is not clear whether the repairs were properly done or long-lasting. A long-delayed repair is very problematic for a family living in unhealthy housing, and it is a real question whether this is truly a success for the agency when so many of the repairs occur after the fiscal year the violation is found in. This does not even address the question of whether the agency is truly finding the most serious violations in the city. These are concerning rates of abatement and should lead the agency to revisit their procedures, which they do not seem to be doing.

Furthermore, it is our understanding that in the current emergency NOI process, if a landlord abates a life and safety violation they are given a significantly extended window for abating their other violations, regardless of whether the tenant consents to this or not. There is no basis under DC Law for DOB to provide this type of extension and leave a tenant living with housing code violations for arbitrarily extended periods of time simply because a landlord repairs one violation. Instead, landlords should be required to repair all violations within the codified time frames or face penalties.

Enforcement and Negligible Collection of Fines

We are very concerned about the perspective on enforcement shared by Director Chrappah in his written testimony in advance of this hearing. In that testimony, the

Director implies that the Office of the Attorney General, the Office of Administrative Hearings, and the Real Property Tax Appeals Commission are at fault for the lack of effective enforcement by the agency.¹² This is extremely concerning to us. A major driver for the creation of the new agency was DCRA's failure to enforce the housing code. The Director's testimony does not show the new thinking and new approach to enforcement needed from this agency. DOB is statutorily responsible for enforcement of the housing code and should be the city's leader in this area.

This is highlighted by of our biggest longstanding concerns is the agency's failure to see the enforcement process all the way through. As with DCRA before it, DOB is not collecting the fines it assesses through its Notices of Infraction. Looking at the agency's new Dashboard, it appears that DOB and DCRA collected around \$317,000 of the over \$66 million in fines it assessed against landlords for fiscal years 2020, 2021, and 2022.¹³ In years past, we have objected to the fact that this data was not publicly accessible, so we do appreciate its availability. Unfortunately, it paints a grim picture of the agency's enforcement work. Failure to collect fines is a major barrier to voluntary compliance. Unscrupulous landlords in DC know that even if they violate the law and an inspector cites them for housing code violations, the city likely never will require them to pay those fines. This makes them less likely to remediate illegal conditions and even less likely to do so in a workmanlike manner.

In addition, the data highlights that some landlords have years of uncollected fines against them. These are some of the same landlords that we get calls from tenants living in deplorable conditions with children frequently ending up in the emergency room with asthma they cannot control due to the conditions of their home. Yet, DOB, and DCRA before it, provides the landlord little incentive to make repairs when fines going back years remain uncollected, the agency is not abating the violations, and there is no evidence on the dashboard that liens are being placed on the properties.

We recommend that in addition to providing oversight to the collection of fines, that the Council consider passing legislation redirecting fines collected into the nuisance abatement fund for DOB so that these fines collected can be used to abate housing conditions where landlords fail to do so in a timely manner.¹⁴ We would also like more information about how the abatement fund is currently used and how projects are prioritized within the fund.

Where are the Inspectors the Council Funded for FY23?

Last year, the Council funded DOB to hire an additional 29 FTE housing code inspectors.¹⁵ We applauded this important investment as it would have brought DC a little closer to comparable jurisdictions' ratio of housing code inspectors to rental housing units. Unfortunately, to our understanding DOB has not yet hired inspectors.¹⁶ We are also concerned that DOB has reclassified one of these housing code inspectors as a human resources specialist.¹⁷ As such, DOB continues to lack sufficient inspectors to

do effective proactive enforcement, respond to all complaints, and conduct the in-person re-inspections necessary for effective enforcement. We hope the Committees will work to understand what DOB has done with the money allocated for new housing code inspectors, determine the barriers that have prevented the agency from hiring those inspectors, and push the agency to prioritize hiring moving forward.

The Oversight Answers note that there are 17 resident inspectors in use the housing program.¹⁸ In prior years, these inspectors were not required to appear for any enforcement proceeding and it was our understanding that supervisors re-inspected in any cases that needed enforcement. We are not clear if this is still the case, but it is certainly an inefficient system if so, especially since they seem to be conducting a substantial number of inspections: 3,243 in FY22 and 1,221 thus far in FY23.¹⁹ In addition, we raise the same concerns we did in prior years, specifically, that tenants should be affirmatively given the option to opt out of having someone who is not a DC Government employee or under contract as such come into their home.

Public Health Analyst

Our understanding is DOB is in the final stages of hiring a Public Health Analyst. Having somebody with public health expertise in the agency is an important step toward more meaningful and strategic enforcement. However, it is not clear to us that this individual is being set up to do expansive, creative work to help plan and mold the direction of the agency's strategic enforcement of the housing code. We urge DOB and

these Committees to ensure this individual is integrated at the highest levels of the agency.

To do this work it will also be very important that the public health analyst have access to data from sister agencies and not just DOB data so they can assess, for example, the Department of Energy and Environment's (DOEE's) information about mold and lead hazards to inform targeted enforcement work that prioritizes proactive enforcement and use of DOB's abatement resources where they are most urgently needed.

Additional Recommendations

Formal Collaboration with Sister Agencies

Children's Law Center strongly supports the development of formal Memorandums of Understanding (MOUs) to enable data-sharing and coordination between sister agencies that deal with similar and overlapping issues, like DHS (which receives housing conditions complaints from its participants), DOEE (which enforces DC's mold and lead hazard laws), and DOB (the agency responsible for enforcing DC's Housing Code). The current system of referrals and communications between these agencies is ad-hoc and informal, allowing for many missed opportunities to support families living in health-harming and illegal housing conditions. These relationships should be formalized and expanded through appropriate MOUs. Without formal

MOUs we do not believe that these relationships will be developed, as evidenced by the lack of these relationships to this point with the prior agency or the current agency.

Pass and Fund the *Proactive Inspection Program Act of 2022*

A code enforcement regime that relies solely on complaints neglects many rental properties in serious need of repair because, in our experience, the tenants who tend to live in the worst quality housing are often the least likely to complain about illegal, health-harming conditions in their homes. The new DOB has made no progress in improving the proactive inspection programs. It still does not incorporate data from outside the agency and it does not use a strategic lens to consider how to do these inspections. In addition, it still suffers from an issue which both tenants and landlords have raised for years, namely that the agency does inspections based only tax lots and not based on apartment complexes. In DC, many properties are “garden-style” and are comprised of numerous street addresses/tax lots. To understand the problems (or lack thereof) at a single property, including common areas, it is important to inspect the entire property. However, DOB is unable to do this because it cannot identify which addresses comprise a single property in its databases.

To that end, in November, Children’s Law Center testified²⁰ in support of B24-0947, “The Proactive Inspection Program Act of 2022,” because establishing an improved proactive residential inspection program within DOB will be critical to

housing preservation and ensuring safe and healthy homes for DC children and families.

As written, the bill outlines a proactive inspections regime for DC that aligns with many PRI best practices.²¹ 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 because of a proactive inspection action.

In our testimony, Children’s Law Center outlined 14 additions and changes to further strengthen this important bill. We ask that the Committees reintroduce and pass the bill with the changes we advocated for in our testimony, and we thank the Committee of the Whole for its leadership on this important issue.

The Committees Should Hold DOB Accountable to its Strategic Planning and Data Reporting Requirements

The DOB Establishment Act required DOB to develop a three-year Strategic Enforcement Plan by January 1, 2022.²² We understand that DOB did not officially exist before October 1, 2022. Though we hope this Plan will be finalized as soon as possible, we also strongly feel that once the Public Health Analyst comes on board, they should have input into the development of this Plan.

The DOB Establishment Act also requires DOB to submit an Annual Enforcement Report by January 1st of each year.²³ This report is required to include reporting around DOB's progress with respect to its Strategic Enforcement Plan as well as very detailed information regarding DOB's enforcement activities.²⁴ This reporting requirement was included in the DOB Establishment Act so the Council could closely monitor the agency to make sure it was doing a meaningfully better job than its predecessor. We ask the Committees to urge DOB to submit its report promptly and hold a public oversight roundtable to discuss the report's findings.

DOB Should Affirmatively Inform Tenants About Actions

DOB provides landlords with notification about inspections and other actions by email, but it does not have any consistent policy or practice about doing so for tenants, even if tenants requested the inspection. Instead, tenants are expected to have the ability to request copies of the inspection, navigate the website, or sign up for access to SCOUT. The new DOB Dashboard may contain useful information, but, as discussed above, it is not easy for the average consumer to navigate to get information about violations and enforcement. However, signing up for SCOUT requires an email address and the ability to navigate the website as well. Instead, it would be more straightforward to gather the tenant's information (including email address if they have one) and directly provide them a copy of the report. It also does not provide them updates about the status of the case in OAH and upcoming court dates. Updates about

the status of the case could be emailed, texted, or mailed to the tenants in their native language.

Conclusion

In conclusion, many of the same problems that plagued DCRA persist at DOB. This is unsurprising, given that the agency has the same structure and leadership as its predecessor. The Committees must play an active role in making sure DOB does not continue to fail to meaningfully protect the health and safety of DC's tenants.

¹ This testimony is not meant to be on behalf of the Healthy Homes Collaborative. The DC Healthy Housing Collaborative (DCHHC) is a coalition of many organizations working together to improve the health of District of Columbia residents by making sure their homes are safe and free of harmful exposures such as pest, mold, and lead. More information is available here.

² See D.C. Law 23-269, the "Department of Buildings Establishment Act of 2020." Available at <https://code.dccouncil.gov/us/dc/council/laws/23-269>.

³ DOB, DOB Public Dashboard, *available at*: <https://dataviz1.dc.gov/t/OCTO/views/DOBPUBLICDashboard/Introduction>.

⁴ See DOB, The Department of Buildings FY2023 attachment with Strategic Objectives, KPIs, and Workload Measures, *available at*: <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOB23.pdf>.

⁵ See *Id.*

⁶ DOB, *FY22 to FY23 YTD Performance Oversight Questions*, p. 52. (February 23, 2023), *available at*: [https://www.dropbox.com/sh/a9c91dqy6nmas9t/AAAbiRGqHraB2Hy9qWk1YldFa/2.23.23%20OZ%20OP%20DOB%20Performance/DOB?dl=0&preview=DOB+FY+22+and+FY23+YTD+Pre-Hearing+Question+Responses+\(Final+with+Attachments\).pdf](https://www.dropbox.com/sh/a9c91dqy6nmas9t/AAAbiRGqHraB2Hy9qWk1YldFa/2.23.23%20OZ%20OP%20DOB%20Performance/DOB?dl=0&preview=DOB+FY+22+and+FY23+YTD+Pre-Hearing+Question+Responses+(Final+with+Attachments).pdf).

⁷ *Id.* at 53.

⁸ *Id.* at 52.

⁹ DOB has a new policy regarding emergency abatements wherein if landlord is cited for both a life and safety violation and other violations, if they abate the life and safety violation, they are given an extended timeline to abate the other violations regardless of what they are. This is done without any consultation with the tenant. This means the tenant must continue to live with what could be violations that significantly impact them in order to "reward" the landlord for abating something that put the tenant's life in danger and which should have required DOB to intervene in the first the place.

¹⁰ Landlords may submit 'proof of abatement' at this link on DOB's website: <https://dcra.kustomer.help/contact/abatement-tracking-BJbZLthgw>. The instructions state "If you have

completed full abatement of violations issued to you in a Notice of Infraction (NOI), enter all information requested here, and our team will work to verify it as quickly as possible.” CLC does not object to this so long as a DOB-employed inspector verifies with the tenant (and also through an in-person re-inspection) that the abatement has been completed in a workmanlike manner.

¹¹ Although DOB reports that they verify the self-certifications, it is our understanding this largely consists of reviewing photographs sent by the landlords. In our experience litigating these cases, it is nearly impossible to verify repairs solely by photographs without also speaking with tenants and property maintenance/owners. In our Housing Conditions Calendar cases, there are frequently disputes about whether repairs shown in photographs are complete and this necessitates another inspection by the Court’s assigned inspector.

¹² See Testimony of Director Chrappah for FY23 DOB Oversight Hearing, February 23, 2023, p. 11.

¹³ To find this data, we visited the DOB Public Dashboard, selected “enforcement,” then selected the “NOI with Pending Balance” option, selected only ‘housing-complaint’ and ‘housing-proactive’ from the dropdown labeled “Select Business Unit.” Then we compared the balance that resulted from the “paid” and “unpaid” options on the “select Payment Status” dropdown menu. See DOB, DOB Public Dashboard, available at: <https://dataviz1.dc.gov/t/OCTO/views/DOBPUBLICDashboard/Introduction>.

¹⁴ We have additional recommendations regarding the abatement fund, including that landlords should have to pay a penalty for having repairs made from the abatement fund (such as 5-10% above the cost of the abatement as fine or lien if the fine is not paid promptly).

¹⁵ Per the Committee, eight housing code inspectors were added in the Committee of the Whole’s initial budget, 12 more were added through the Local Budget Act, and 9 were added through the Budget Support Act. See Committee of the Whole Fiscal Year 2023 Budget and Corresponding Budget Support Act (April 21, 2023), available at

<https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/62606a3fc640af181295a34f/1650485824377/COW+FY23+Report++Draft++4.20.22.pdf>; See also Fiscal Year 2023 Budget Support Act of 2022, p. 107, available at: https://lms.dccouncil.gov/downloads/LIMS/49079/Signed_Act/B24-0714-Signed_Act.pdf.

¹⁶ We urge the Council to inquire about whether these funds have been reprogrammed. In the prior agency, funds intended for inspectors were reprogrammed into the budget and inspectors were never hired.

¹⁷ See DOB Oversight Questions at 59.

¹⁸ See DOB Oversight Questions at 51. This data is confusing as later it is stated that there are only 12 certifications held by the 17 resident inspectors to perform housing inspections. It is unclear what the other 5 resident inspectors are doing in the program if they are not certified. See *Id.* at p.56

¹⁹ See *Id.* at 56.

²⁰ Kathy Zeisel, Testimony Before the District of Columbia Council Committee of the Whole (November 3, 2022), available at: <https://childrenslawcenter.org/wp-content/uploads/2022/11/Zeisel-CLC-PROACTIVE-INSPECTION-PROGRAM-ACT-OF-2022-Testimony-1.pdf>.

²¹ Children’s Law Center thanks [Change Lab Solutions](#) for 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 also outlines important, evidence-based information regarding PRI best practices. See ChangeLab Solutions, *A Guide to Proactive Rental Inspections* (2022), available at: <https://www.changelabsolutions.org/product/healthy-housing-through-proactive-rental-inspection>.

²² See D.C Code § 10–562.01.

²³ See D.C Code § 10–562.02.

²⁴ For example: “violation data, detailing the violations identified and cited in the prior fiscal year and their status as abated or unresolved as of the date of the report;” details surrounding OAH judgments regarding challenges to Notices of Infraction; “abatement efficacy, detailing the number and nature of

abatement orders, the number of days taken to abate each order, the number of extensions granted by type of abatement order, the justification for each extension, and the location of each abatement order, and its status as abated or unresolved as of the date of the report;" and more. *See Id.*