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Testimony Before the District of Columbia Council
Committee on Transportation and the Environment
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Introduction

Good morning, Chairperson Allen, and members of the Committee. My name is Makenna Osborn. I am a Policy Attorney at 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.

Poor housing conditions pose a serious risk to a child’s health. Children’s Law Center has first-hand experience with this issue. In our Healthy Together¹ program, primary care pediatricians refer a range of cases to Children’s Law Center, including cases where a child’s health is being harmed by poor conditions in rental housing. Healthy Together attorneys represent hundreds of tenant families every year who need us to force their landlords to remediate illegal and health-harming housing conditions.

The most serious cases we see often involve a landlord’s failure to ensure a tenant’s home is free from mold problems, pest infestations and water intrusion – as required by DC law² – exacerbating a child’s asthma and putting them at risk of lead exposure.

Unfortunately, health problems tied to poor housing conditions are more prevalent in underinvested, predominantly Black neighborhoods in DC. Children with asthma living in Wards 7 and 8 are **twenty times** more likely to end up in the ER for asthma than children growing up in wealthier Ward 3.³

The Department of Energy and Environment (DOEE) plays a critical role in fighting these hazards. DOEE's mandate includes conducting lead-based paint hazard inspections; supporting and funding remediation of lead-based paint hazards in homes of low-income residents;⁴ and responding to all cases of children with elevated blood lead levels.⁵ The agency is also responsible for receiving and responding to mold complaints from District residents, licensing mold professionals and implementing indoor mold remediation requirements in residential properties.⁶ While many of DOEE's programs impact healthy housing, my testimony will focus specifically on the agency's mold and lead work.

Children's Law Center wants to recognize that DOEE has long embraced healthy housing as part of its mission. We have been impressed by the hard-working staff in the Lead-Safe and Healthy Housing Division and the Residential Services Division who are responsive to our inquiries and concerns and open to meeting with stakeholders to solicit input. In recent years, DOEE has been active in the DC Healthy Housing Collaborative, of which Children's Law Center is a member.⁷ We greatly appreciate DOEE's consistent, sincere engagement with the work of the Collaborative and applaud the agency's

continued efforts to increase its role in ensuring DC's most vulnerable residents have healthy housing.

In my testimony today, I will discuss two broad topics: DOEE's responsibility over mold and lead hazards in DC homes, and the areas where stronger legislation, regulation and increased capacity are needed to improve DOEE's enforcement of DC's mold and lead laws.

Mold Hazard Abatement and Enforcement

Thanks to this Committee, DC has one of the most innovative mold laws in the country.⁸ The law was passed in 2014, making DC one of the first jurisdictions in the country to formally recognize mold as a significant health hazard and implement protections for tenants with mold in their homes. DOEE, charged with implementing and enforcing this law, has been a leader and has taken significant steps toward addressing mold hazards in the District. However, DOEE needs more qualified mold inspectors, ideally licensed mold assessors, to carry out this important work and the authority to enforce the law through fines for landlords who flout it.

DOEE's Mold Inspection Program Needs more Inspectors

DOEE has two full-time mold inspectors and is currently the only agency in the city conducting mold inspections. This program is important because many residents cannot afford the costs of a private inspection—which can exceed \$500—or to litigate to force their landlord to conduct one. Our understanding is that these mold inspectors are

struggling to keep up with high requests for their services—a testament to the import of this program to DC residents. Indeed, at last year’s budget hearing, DOEE’s director shared that DOEE needed three to five additional inspectors (on top of the one inspector they had at the time) to be able to handle the demand and need for mold inspections.⁹ To address this bandwidth issue, this Committee funded three additional full-time mold inspectors for FY23. However, according to the DOEE’s 2023 Performance Oversight Responses, DOEE still only has two full time mold inspectors.¹⁰ We ask that the Committee work to understand why these vacancies have yet to be filled and support the agency in swiftly expanding this important program’s capacity.

DOEE Must Finalize Regulations to Enable Enforcement of Mold Law

Unfortunately, once an inspection is completed, DOEE lacks the authority to penalize landlords who do not comply with its findings and recommendations. This is because even eight years after the mold law was passed, DOEE and the Mayor have still not finalized the regulations that would give DOEE authority to issue fines against landlords who fail to remediate documented mold hazards in a home. Regulations establishing fines for violations of the Act were proposed in August of 2022 and scheduled for adoption by the Director of DOEE last fall but stalled with the Mayor’s office.¹¹ According to DOEE, the regulations should be published as final soon but at the time of this Performance Oversight hearing, they have yet to appear in the Register. From our work on the ground, Children’s Law Center knows that the worst landlords often are

only motivated by their bottom line and enforcement with “teeth” is a necessary tool to protect the rights of tenants. For this reason, we ask that the Committee use its oversight power to determine where these regulations are currently stalled and get them published as expeditiously as possible so that DOEE’s inspectors can begin issuing fines for violations of the mold law.

Lead Hazard Identification, Abatement, and Enforcement

The Lead-Safe and Healthy Housing Division of DOEE oversees the District’s lead laws by conducting risk assessments for lead-based paint hazards; implementing and enforcing professional certification, accreditation and abatement requirements; and preventing, screening for and addressing childhood lead poisoning.¹²

DOEE Must Provide Case Management & Risk Assessment for Children with Elevated Blood Lead Levels of 3.5-4.9 ug/dL

DOEE plays a vital role in responding to cases of childhood lead exposure. To detect lead exposure early and prevent lead poisoning, all children who live in DC must be tested for lead, through a blood test, twice by the age of two.¹³ Under DC law, laboratories and providers that process these blood lead tests must report all blood lead level (BLL) results to DOEE within one week and must report any children with an elevated BLL to DOEE immediately.¹⁴ DOEE is required to conduct a risk assessment¹⁵ when a child has an *elevated BLL*, which under DC law is defined as 3.5 micrograms per deciliter (ug/dL) or above as of October, 2021.¹⁶ Unfortunately, although this threshold

changed over a year ago, DOEE is still only conducting risk assessments in cases where children have elevated BLLs of five micrograms per deciliter (5 ug/dL) or above.¹⁷

Our understanding is that DOEE currently lacks the capacity to conduct the number of risk assessments that would be triggered by assigning case managers to families with children who have EBLLs of 3.5-4.9 ug/dL. As a result, rather than connecting case managers with families and conducting risk assessments, the agency is sending notification letters with educational materials for mitigating lead hazards in the home. Written materials are inadequate. A risk assessment is needed to prevent the child's continued exposure to lead. We know that no level of lead in a child's blood is safe, and that any exposure can have a significant and lasting impact. This is why intervening at 3.5 ug/dL, as required by law, is crucial, and we ask that the Committee push DOEE to begin case management and risk assessment at this stage of exposure, rather than waiting until a child's BLL worsens to 5 ug/dL.

DOEE is Doing Important Prevention Work through DOB's Permitting Process, but More Staff are Needed

We have been excited to learn more about DOEE's integration into the Department of Building's construction and renovation permitting processes. This integration has allowed DOEE to more closely monitor and intervene when construction and renovations are likely to cause a lead-based paint hazard. This supports our collective shared goal of *preventing* children's exposure to lead hazards. We are concerned, however, that DOEE is understaffed and that lead risk assessors are being used to evaluate permit applications

rather than conducting risk assessments in cases where children have an elevated BLL of 3.5-4.9 ug/dL, as outlined above. We ask that the Committee ensure adequate funding for both important programs to operate at their full capacity.

Stronger Enforcement of DC's Lead Law is Needed

In November 2020, the DC Auditor issued a report highlighting the need to fix lead-based paint hazards in DC housing and urged DOEE to improve its enforcement process.¹⁸ The report found that while DOEE responded promptly to lead-based paint complaints and issued initial notices and administrative orders in a timely manner, “DOEE’s subsequent enforcement process was slow and failed to secure lead remediation in half of cases sampled during the audit scope.”¹⁹ The findings of this report aligned with Children’s Law Center’s on-the-ground experiences with DOEE’s enforcement process against non-compliant landlords. In response to the report, DOEE committed to improve its enforcement process in a number of respects. We urge the Committee to ensure DOEE follows through on this commitment and establishes a more aggressive and expedited process for enforcing compliance with DC’s lead laws.

DOEE’s Use of Local and Federal Funds for Promoting Healthy Housing

The Lead Hazard Reduction Branch of DOEE’s Residential Services Division provides technical and financial assistance to address lead hazards in DC homes. In FY21, DOEE showed strong leadership in the fight against lead hazards by applying for a U.S. Department of Housing and Urban Development (HUD) Lead Hazard Reduction Grant

to provide low-income DC families with children under six years old up to \$11,000 for the remediation of lead-based paint hazards in their homes.²⁰ In its first year with this HUD grant, DOEE struggled to administer grant funds because most residents seeking financial assistance with lead reduction were not households with young children—a requirement for use of the HUD grant. Our understanding is that of 305 residents that have applied to the Lead Hazard Reduction Branch for assistance, only 23 of those households have been found eligible to for the HUD grant. These numbers indicate that DOEE needs to assess why more qualifying families are not applying and change their outreach strategies to better reach that audience. We hope the Committee will ask the agency about how it plans to connect more eligible families with this valuable resource designated to protect the health of their children moving forward. The applicant demographics also highlight a need for additional funding sources to provide lead remediation assistance to low-income households in DC without young children.

In FY22 and 23, DOEE combined its HUD grant with approximately \$4 million in funds from the American Recovery Plan Act (ARPA) and \$300,000 in local dollars to operate a rebranded Energy Efficiency and Remediation Program (EERP) with flexibility to assist more DC residents and address more health-harming conditions in participant's homes. This was important because, while the cap of funding available through the HUD grant (\$11,000 per property) may be sufficient to, say, encapsulate²¹ deteriorating leaded paint, it is not sufficient to address any of the underlying issues that may cause continued

or repeated deterioration. For example—if walls are deteriorating because an old and dilapidated roof is leaking into the home, real remediation of the lead hazard includes a much more costly repair or replacement of the roof, in addition to freshly painted walls. We applaud DOEE’s innovative leveraging of multiple funding sources to improve the scope and quality of the lead remediation work it provides to low-income homeowners in the District. We encourage the Council and Mayor to support the Residential Services Division’s work with increased funding. The Division has applied for a one-year extension of the HUD lead grant, which it will best be able to use if it is paired with robust flexible funds.

Though we support increased funding for these programs, Children’s Law Center also wants to highlight that DOEE needs to be more strategic about how it spends its remediations funds. Right now, EERP operates on a first-come, first-served basis. We hope the Committee will explore using these limited remediation funds where they’re most needed—in homes with the most severe and health-harming conditions.

Lead-in-Water

Children’s Law Center is proud to support the work of Lead Emergency Action for the District (L.E.A.D.) and other organizational partners who are leading efforts around lead-in-water issues in DC. To that end, we support the draft legislation that would remove and replace all lead service lines in DC through a block-by-block neighborhood approach that will reduce inefficiencies and enhance equity, justice and

health. We would also encourage members of the committee who haven't done so to read the 2022 independent report evaluating DC Water's lead service line removal plan.²²

Because DOEE conducts and regulates lead hazard risk assessments, it is important that DOEE have at least one staff member with deep expertise around lead drinking water issues who can offer scientifically-informed guidance on this issue to the agency. It is our understanding that DOEE currently lacks somebody with this expertise. We encourage the Committee to confirm this fact and consider supporting the agency in hiring somebody with academic and experiential training around the variety of issues that pertain to lead-in-water.

Support the Reintroduction, Passage, and Funding of the Lead Hazard Prevention and Elimination Amendment Act

We were happy to learn that the Committee plans to reintroduce the Lead Hazard Prevention and Elimination Amendment Act of 2019, under the leadership of Committee Chair Allen. We urge the remaining members of the Committee to support the passage and funding of this important bill, which aims to *prevent* childhood lead exposure, rather than reacting after a child has already been exposed.

In 2019, the Committee considered a bill – the Lead Hazard Prevention and Elimination Amendment Act of 2019 (B23-407) – that would provide DOEE and DC families with stronger tools to prevent and eliminate lead-based paint hazards in rental housing.²³ The 2019 bill received broad support, including from the American Academy of Pediatrics (DC Chapter), Children's National Hospital, the Green & Healthy Homes

Initiative, Bread for the City, the Legal Aid Society, and Yachad.²⁴ In December 2020, the Council passed a part of B23-407 that updated several technical standards in DC’s lead laws, including the definitional thresholds for what constitutes lead-based paint and lead-contaminated dust.²⁵ But the Council, which understandably focused its legislative efforts on addressing the COVID-19 public health emergency, tabled other important aspects of B23-407, including provisions that would require more frequent and more effective housing inspections and more robust enforcement mechanisms to promote landlord compliance with DC lead laws.²⁶ The Committee stated that it would reconsider these provisions during a future Council Period.²⁷

We are excited the Committee plans to take up the remaining aspects of B23-407 during this Council Period and look forward to supporting the Committee and DOEE throughout that process. Reintroducing and passing this legislation would allow for new, proactive processes for DOEE to certify properties as lead-free. It would ensure that properties are tested for lead *before* a child is already exposed and suffers irreversible harms. The District cannot continue to allow its children to be the “canary in the coal mine” for lead. Between Chairperson Allen’s longstanding commitment to lead safety in the District and the Lead Safe and Healthy Housing Division’s support of more robust enforcement powers, this Council Period is a prime opportunity to strengthen the District’s lead laws.

Conclusion

Children’s Law Center commends DOEE, and its hard-working, dedicated staff, for their efforts in promoting healthy homes in the District. We hope our suggestions today will further these efforts. Thank you for the opportunity to testify, and I look forward to answering any questions you may have.

¹ Healthy Together is Children’s Law Center’s innovative medical-legal partnership which places attorneys at pediatric primary care health centers in collaboration with Children’s National, Unity Health Center, and Mary’s Center. We receive referrals from medical staff where we can help address a non-medical barrier to a child’s health and too often that is a housing conditions case.

² See D.C. Code § 8-241.01 *et seq.* (DC mold law), D.C. Mun. Regs. tit 14. § 801 (1900) *et. seq.* (DC Housing Code provisions on pest infestations), D.C. Code § 8–231.02(a) (DC lead law).

³ *Asthma Surveillance in DC Emergency Departments and Hospitals*, Children’s National, p. 13, (December 14, 2017), available at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj2z6bfmJ9AhUPFVkFHRBuBFYQFnoECCIQAO&url=https%3A%2F%2Fchildrensnational.org%2F-%2Fmedia%2Fcnhs-site%2Ffiles%2Fdepartments%2Fimpactdc%2F asthma-surveillance-in-dc.pdf%3Fla%3Den&usg=AOvVaw1N9LoXcqbqr5So7YPwivkh>; see also Morgan Baskin, Doctors Blame D.C.’s High Asthma Rates in Part on Poor Housing, *Washington City Paper*, (May 22, 2019), available at: <https://washingtoncitypaper.com/article/180182/doctors-blame-dcs-high-asthma-rates-in-part-on-poor-housing/>.

⁴ See D.C. Mun. Regs. tit 20, § 3300 (2013) (regulations implementing the Lead Hazard Prevention and Elimination Act).

⁵ D.C. Mun. Regs. tit 22_B, § 7301.3 (2013) (regulations implementing the Childhood Lead Poisoning Screening and Reporting Act).

⁶ See D.C. Mun. Regs. tit. 20, § 3200 (2016) *et. seq.*

⁷ The DC Healthy Housing Collaborative (DCHHC) is a multi-sector coalition seeking to address substandard housing conditions that contribute to significant health issues affecting District of Columbia residents. See Institute for Public Health Innovation, *DC Healthy Housing Collaborative*, available at: <https://www.institutephi.org/our-work-in-action/policy-health-systems-improvement/dc-healthy-housing-collaborative/>.

⁸ DC Law 23-0188, Air Quality Amendment Act of 2014; see also Beth Harrison, *Bill Passes to Address Mold in Rental Housing*, Legal Aid DC, (Jun 3, 2014), available at: <https://www.legalaiddc.org/blogs/bill-passes-to-address-mold-in-rental-housing>.

⁹ See Council of the District of Columbia, Committee on Transportation & The Environment, Fiscal Year 2023 Committee Budget Report, p. 80, (Apr. 21, 2022), available at: https://lms.dccouncil.gov/downloads/LIMS/49081/Committee_Report/B24-0716-Committee_Report9.pdf.

¹⁰ Department of Energy and Environment, 2023 Performance Oversight Pre-Hearing Questions Part II, p. 1, available at: <https://dccouncil.gov/wp-content/uploads/2023/02/DOEE-FY22-Performance-Oversight-Responses.pdf>.

¹¹ 69/32 D.C. Reg. 010407 (August 12, 2022).

¹² Department of Energy & Environment (DOEE), Environmental Services Administration, *available at*: <https://doee.dc.gov/page/environmental-services-administration>; Department of Energy & Environment (DOEE), Lead in the District, *available at*: <https://doee.dc.gov/lead>.

¹³ Department of Energy & Environment (DOEE), Every Child. Twice By Two., *available at*: <https://doee.dc.gov/twicebytwo>.

¹⁴ Department of Energy and Environment, Re: Lead Screening and Reporting Requirements in the District of Columbia, (Oct. 27, 2022), *available at*:

https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/DOEE-DHCF_Lead-Screening_Letter_to_Medicaid_Providers%20-%20signed%20TW.pdf.

¹⁵ D.C. Code § 8-231.01 (36): “Risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of conditions conducive to lead poisoning, including:

(A) The gathering of information regarding the age and history of the housing and occupancy by persons at risk;

(B) A visual inspection of the property;

(C) Dust wipe sampling, soil sampling, and paint testing, as appropriate;

(D) Other activity as may be appropriate;

(E) Provision of a report explaining the results of the investigation; and

(F) Any additional requirements as determined by the Mayor.

¹⁶ D.C. Code § 8-231.03(13): “Elevated blood lead level” means the concentration of lead in a sample of whole blood equal to or greater than 5 micrograms of lead per deciliter (µg/dL) of blood, or such more stringent standard as may be established by the U.S. Centers for Disease Control and Prevention as the appropriate level of concern, or adopted by the Mayor by rule.” The CDC adopted a reference value of 3.5ug/dL in Oct. 2021. See Centers for Disease Control and Prevention (CDC), *Childhood Lead Poisoning Prevention*, *available at*:

<https://www.cdc.gov/nceh/lead/news/cdc-updates-blood-lead-reference-value.html>.

¹⁷ Note, for example, in DOEE’s FY22 Performance and Accountability Report, the agency’s key performance indicator (KPI) related to childhood lead poisoning still uses 5.0 ug/dL as the metric. Department of Energy and Environment, FY 2022 Performance and Accountability Report, p.17, (Jan. 15, 2023), *available at*:

https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOEE_FY22PAR.pdf.

¹⁸ Office of the District of Columbia Auditor, *More Urgency Needed to Fix Lead-based Paint Hazards*, (Nov. 18, 2020), *available at*: <https://dcauditor.org/report/more-urgency-needed-to-fix-lead-based-paint-hazards/>.

¹⁹ *Id.* at 1.

²⁰ Department of Energy and Environment, 2022 Performance Oversight Pre-Hearing Questions Part I, p. 4, *available at*: https://dccouncil.gov/wp-content/uploads/2022/01/2022-DOEE-Performance-Questions-Answers_Final.pdf. A similar program was administered by the DC Department of Housing and Community Development (DHCD), but DHCD lost its federal funding after it failed to use most of its previously awarded funds. We applaud DOEE for stepping up to the plate and applying for a new HUD grant to reinstate this much-needed program.

²¹ “Encapsulation is the process that makes lead-based paint inaccessible by providing a barrier between the lead-based paint and the environment. This barrier is formed using a liquid applied coating (with or without reinforcement materials) or an adhesively bonded covering material.” See <https://apps.hud.gov/offices/lead/lbp/hudguidelines/Ch13.pdf>.

²² Betanzo, Elin and Attal, Noah, Independent Verification and Validation of DC Water’s Lead Free DC Lead Service Line Removal Plan: Final Report, (Sept. 2022), *available at*

<https://lims.dccouncil.gov/downloads/LIMS/51294/Introduction/RC24-0221-Introduction.pdf>.

²³ B23-407, *Lead Hazard Prevention and Elimination Amendment Act of 2019*.

²⁴ *Lead Hazard Prevention and Elimination Act of 2019: Hearing on B23-407 Before the Comm. on Transp. & the Env't.*, Council Period 23 (D.C. 2019); Buck Logan, Children's Law Center, Testimony Before the District of Columbia Council Committee on Transportation & the Environment, (November 18, 2019), available at; <https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Testimony-on-Lead-Bill-B23-407-11132019.pdf>.

²⁵ Council of the District of Columbia, Committee on Transportation & the Environment, Committee Report on B23-0132, p. 2-3, (Nov. 9, 2020), available at: https://lims.dccouncil.gov/downloads/LIMS/41819/Committee_Report/B23-0132-Committee_Report3.pdf; DC Law 23-0188, Air Quality Amendment Act of 2014.

²⁶ Council of the District of Columbia, Committee on Transportation & the Environment, Committee Report on B23-0132, p. 5, (Nov. 9, 2020), available at: https://lims.dccouncil.gov/downloads/LIMS/41819/Committee_Report/B23-0132-Committee_Report2.pdf.

²⁷ *Id.* at 6.