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Testimony Before the District of Columbia Council  
Committee of the Whole  
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Budget Oversight Hearing:  
*Department of Buildings*

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## **Introduction**

Good morning, Chairperson Mendelson 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.

At Children's Law Center, we work with hundreds of families each year who are referred to us by their pediatric medical provider<sup>1</sup> or contact us because conditions in their home are negatively impacting their child's health and well-being. These include many cases where the family's landlord has refused to make needed repairs to address health-harming housing conditions. We regularly represent families when 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. It is through these cases that we meet tenants who need

the services of the Department of Buildings (DOB) to compel landlords to comply with DC's housing code.

### **Goals for the Department of Buildings**

Children's Law Center began to work on reform of DOB's predecessor, the Department of Regulatory and Consumer Affairs (DCRA) many years ago—first with other legal services organizations and organizers, and later also as a member of the DC Healthy Housing Collaborative.<sup>2</sup> 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 a strong complaint-based inspection regime, firm follow-through when a landlord fails to remediate illegal conditions and a proactive enforcement program designed to increase landlords' *voluntary* compliance with DC's housing code. This work should be strategic and informed by data on public health data and landlords' past behavior.

After watching DCRA fail for years at this core mission, the Committee of the Whole, led by Chairperson Mendelson, decided to break it up and establish the new DOB—a move we strongly supported.<sup>3</sup> That establishing legislation included detailed parameters we hoped would compel a cultural shift. Unfortunately, based on our clients' experiences with DOB over the past six months, Children's Law Center is concerned that the agency is still not operating in a way that will meaningfully ensure that DC residents live in safe and healthy housing. We want to acknowledge that DOB's Office of Strategic

Code Enforcement (OSCE) is forming a working group of stakeholders to provide feedback and perspective to the agency regarding its enforcement policies. This is an encouraging step, and we thank the agency for inviting our organization to participate in that group. However, more needs to be done to have DOB fulfill its mission. My testimony today will focus on areas where Children’s Law Center believes the FY24 budget and Budget Support Act (BSA) can strengthen DOB’s ability to protect tenant families in DC.

### **Invest in Well-Trained, Professional Housing Code Inspectors**

As this Committee noted during the budget process last year, “human capital is what drives agency performance. Without adequate staff support, even the most well-designed programs cannot reach their full potential.”<sup>4</sup> Recognizing that the Mayor’s FY23 proposed budget “d[id] not adequately invest in inspection staff for [DOB],” the Council appropriated funding for DOB to hire an additional 29 Full Time Equivalent (FTE) housing code inspectors,<sup>5</sup> increasing the number of housing code inspectors funded in FY23 to 56.<sup>6</sup> We applauded this important investment as it would have brought DC closer to achieving a ratio of one inspector for every 2,000 to 3,500 rental units in line with comparable jurisdictions.<sup>7</sup> To get to that point, DOB would ideally have between 59 and 104 full-time professional inspectors – meaning those employed by DOB rather than the independently contracted resident inspectors<sup>8</sup> the agency has also started using to fill gaps in demand – dedicated to inspecting rental housing units.<sup>9</sup>

Unfortunately, according to the responses DOB submitted to the Committee before its performance oversight hearing last month, as of February 2023, the agency has 25 vacant full-time inspector positions in the Rental Housing Inspections Division and only 24 filled inspector positions.<sup>10</sup> Children’s Law Center is disappointed by DOB’s failure to fill the mission-critical rental housing inspector positions intentionally added by this Committee.<sup>11</sup> As a result, DOB continues to lack sufficient inspectors to respond to all tenant complaints and conduct the in-person re-inspections necessary for effective enforcement, let alone engage in proactive inspections. Instead of maintaining the FY23 funding level for housing inspectors and working with DOB to fill vacant positions as soon as possible, the Mayor’s FY24 proposed budget cuts eleven FTEs from the Rental Housing Inspections Division.<sup>12</sup> That would decrease the division’s staff by 20% to a total of 50 FTEs for all positions, not just inspectors. We hope the Committee will again take leadership on this issue and restore funding for the eleven FTEs, determine the barriers that have prevented DOB from hiring all its funded rental housing inspectors so far in FY23 and work with the agency to establish an actionable plan for filling those positions.

In addition to having enough inspectors, effective housing code enforcement requires inspectors who are well-trained in relevant best practices and technical standards, including identifying health-harming code violations.<sup>13</sup> Therefore, Children’s Law Center encourages the Committee to fund the portions of the Residential Housing Environmental Safety Amendment Act of 2020, enacted as Law 23-0188, which remain

subject to appropriation.<sup>14</sup> These provisions would require DOB housing inspectors to be certified in mold assessment, through the Department of Energy and Environment (DOEE), and authorize them to enforce DC's mold law against landlords. Currently, DOB's housing inspectors are not trained to identify mold and whenever a tenant complains to an inspector about mold or an inspector observes mold in a home, they must refer the possible mold to DOEE. Therefore, a rental unit may have two inspection and enforcement processes going on at one time with two separate agencies and sets of staff. While DOEE does a commendable job conducting mold assessments, it simply does not have the resources to do all the mold inspections in the city, and tenants who call DOB should not have to wait for another agency to come and inspect for mold.<sup>15</sup> The Chief Financial Officer previously estimated that fully implementing DOB's shared responsibility for mold inspections would require \$3.9 million in the first fiscal year and nearly \$14 million over the four-year financial plan.<sup>16</sup> To use our resources most efficiently and ultimately build a seamless healthy housing system in DC, the Committee should fund DOB housing inspectors becoming certified mold assessors.

### **Invest in Enforcement and Fine Collection**

DOB is statutorily responsible for enforcement of the housing code, including through the assessment and collection of fines when landlords do not remediate identified violations.<sup>17</sup> A major driver behind the creation of DOB was DCRA's repeated failure to see the enforcement process all the way through.<sup>18</sup> Unfortunately, Children's

Law Center remains deeply concerned that 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 only collected around \$317,000 of the over \$66 million in fines assessed against landlords for fiscal years 2020, 2021, and 2022.<sup>19</sup> While we appreciate the new transparency of making this data publicly available, it paints a grim picture of the agency's enforcement work.

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. The data also highlights that some landlords have years of uncollected fines against them.<sup>20</sup> These are some of the same landlords our clients repeatedly contact us about because their children are ending up in the emergency room with asthma they cannot control due to the deplorable conditions of their home. Yet, DOB 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.

DOB's enforcement teams need to be fully staffed to correct the agency's chronic lack of enforcement and effectively deter landlords from violating DC's housing code. Therefore, Children's Law Center was very disappointed to see that the Mayor's budget proposes to eliminate four FTEs from the Civil Infractions and Fine Assessment Division

of DOB's Office of Strategic Code Enforcement.<sup>21</sup> Furthermore, the over \$65 million in uncollected fines for housing code violations is money that could and should be going to the effective, professional remediation of health-harming housing conditions in tenants' homes through the Nuisance Abatement Fund.<sup>22</sup> We recommend that the Committee restore funding for the four eliminated FTEs in the Civil Infractions and Fine Assessment Division and engage in robust oversight of how housing code violations are enforced by DOB to determine why most fines remain uncollected and how DOB, in collaboration with other relevant agencies like the Office of Administrative Hearings, can remove barriers to fine collection and successful abatement. In this year's difficult fiscal landscape, DC cannot afford to leave such a large source of possible revenue untapped.

**Pass and Fund the *Proactive Inspection Program Act of 2023***

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 that both tenants and landlords have raised for years, namely that the agency does inspections based only on 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 2022, Children’s Law Center testified 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.<sup>23</sup> As written, the bill outlines a proactive inspections regime for DC that aligns with many proactive rental inspection (PRI) best practices.<sup>24</sup> 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 inspection of 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.

PRI is an important mechanism for safeguarding housing stock and would save the District and its residents a significant amount of money over time. 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>25</sup> Children’s Law Center greatly appreciates that Chairperson Mendelson continues to make proactive inspections a priority for the Council by reintroducing the legislation early in the new Council Period.<sup>26</sup> We ask that the Committee pass the Proactive Inspection Program Act of 2023, with the changes Children’s Law Center has recommended to strengthen the bill, and fully fund it.<sup>27</sup>

## **Conclusion**

Thank you for the opportunity to testify today. I welcome any questions the Committee may have and look forward to working with the Committee to ensure that DOB develops into an agency that meaningfully and proactively protects the health and safety of DC’s tenants.

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<sup>1</sup> Our innovative medical legal partnership, Healthy Together, places Children’s Law Center attorneys at primary care pediatric clinics throughout the city with Children’s National, Unity Health Care, and Mary’s Center.

<sup>2</sup> DC Healthy Housing Collaborative (DCHHC): Healthy Housing is a Human Right, *available at*: <https://www.dchealthyhousingcollaborative.org/>

<sup>3</sup> DC Code § 10-561.01. Establishment of the Department of Buildings.

<sup>4</sup> Council of the District of Columbia, Committee of the Whole, Fiscal Year 2023 Committee Budget Report, p. 74, (April 21, 2023), *available at*: <https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/62606a3fc640af181295a34f/1650485824377/COW+FY23+Report+-+Draft++4.20.22.pdf>.

<sup>5</sup> Per the Committee, 8 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* Council of the District of Columbia, Committee of the Whole, Fiscal Year 2023 Committee Budget Report, p. 75, (April 21, 2023), *available at*: <https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/62606a3fc640af181295a34f/1650485824377/COW+FY23+Report+-+Draft++4.20.22.pdf>; *See also* DC Law 24-0167. Fiscal Year 2023 Budget Support

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Act of 2022, p. 107, available at: [https://lims.dccouncil.gov/downloads/LIMS/49079/Signed\\_Act/B24-0714-Signed\\_Act.pdf](https://lims.dccouncil.gov/downloads/LIMS/49079/Signed_Act/B24-0714-Signed_Act.pdf).

<sup>6</sup> Per the Committee, prior to the additional 29 inspectors, the proposed FY23 budget included 27 residential housing inspectors, bringing the total to 56. Council of the District of Columbia, Committee of the Whole, Fiscal Year 2023 Committee Budget Report, p. 74, (April 21, 2023), available at: <https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/62606a3fc640af181295a34f/1650485824377/COW+FY23+Report+-+Draft++4.20.22.pdf>.

<sup>7</sup> A survey of comparable jurisdictions conducted by Children’s Law Center and Legal Aid determined that those jurisdictions the following ratios of housing inspectors to rental units: Montgomery County, Maryland (1:3,500); Cleveland, Ohio (1:3,359); Des Moines, Iowa (1:2,221); Trenton, New Jersey (1:2,063); Syracuse, New York (1:2,577); Rochester, New York (1:1,390).

<sup>8</sup> DOB’s 2023 Performance Oversight responses noted that there are 17 resident inspectors in use the residential housing program. In prior years, these inspectors were not required to appear for any enforcement proceeding and supervisors had to re-inspect in any cases that needed enforcement, which is an inefficient system, especially considering the substantial number of inspections resident inspectors are currently conducting - resident inspectors conducted 3,243 housing inspections in FY22 and 1,221 thus far in FY23. DOB FY22 to FY23 Performance Oversight Responses, response to Q27, available at: [file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20\(Final%20with%20Attachments\).pdf](file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20(Final%20with%20Attachments).pdf); To learn more about DOB’s Resident Inspector Program visit: Department of Buildings (DOB), Resident Inspector Program, available at:

<https://dob.dc.gov/node/1616641#:~:text=Put%20simply%2C%20DOB%20trains%20District%20residents%20to%20perform,trained%20inspectors%20whenever%20they%20successfully%20complete%20an%20inspection>.

<sup>9</sup> This calculation is based on the DC Policy Center’s estimate that there are currently 207,421 rental units in DC. D.C. Policy Center, *Appraising the District’s Rentals – Landscape of Rental Housing*, (April 1, 2020), available at: <https://www.dcpolicycenter.org/publications/appraising-the-districts-rentals-chapter-ii/>.

<sup>10</sup> DOB FY22 to FY23 Performance Oversight Responses, response to Q2, available at: [file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20\(Final%20with%20Attachments\).pdf](file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20(Final%20with%20Attachments).pdf).

<sup>11</sup> While DOB reported employing 53 rental housing inspectors in FY23 in its response to Question 27, the agency also reported that it had only filled four of the 29 new positions, and converted one more to a human resources position. DOB FY22 to FY23 Performance Oversight Responses, response to Q27 and Q34, available at: [file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20\(Final%20with%20Attachments\).pdf](file:///C:/Users/natas/Downloads/DOB%20FY%2022%20and%20FY23%20YTD%20Pre-Hearing%20Question%20Responses%20(Final%20with%20Attachments).pdf). Additionally, we urge the Council to inquire about whether any funds designated for the 29 additional inspectors have been reprogrammed. In the prior agency, funds intended for inspectors were reprogrammed into the budget and inspectors were never hired.

<sup>12</sup> Mayor’s Proposed FY 2024 Budget and Financial Plan, Volume 4 Agency Budget Chapters – Part III, Human Support Services, Operations and Infrastructure, Financing and Other, Enterprise and Other, p. F-9.

<sup>13</sup> See Change Lab Solutions, *Up to Code: Code Enforcement Strategies for Healthy Housing*, p. 9, (2015), available at: <https://www.changelabsolutions.org/sites/default/files/Up-to-Code-Enforcement-Guide-FINAL-20150527.pdf>; “[I]nspectors primarily examine homes for problems that could get them in trouble. For example, if residents of an inspected building are injured from a collapsed ceiling or fire, the inspector could lose [their] job or face other repercussions. On the other

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hand, when a child suffers from asthma attacks based on poor ventilation, there is [likely] no negative impact on the inspector.” The National Municipal Policy Network, *Housing Code Enforcement*, available at: <https://localprogress.org/wp-content/uploads/2013/09/Housing-Code-Enforcement-1.pdf>.

<sup>14</sup> DC Law 23-188 Sec. 5. Residential Housing Environmental Safety Amendment Act of 2020. See also Office of the Budget Director, Quarterly Report: Legislation Passed Subject to Appropriation, p. 1, (January 13, 2023), available at <https://dccouncil.gov/wp-content/uploads/2023/01/2023-1-13-Subject-to-Funding-Legislation-quarterly-report.pdf>.

<sup>15</sup> Office of the Chief Financial Officer, Fiscal Impact Statement – Residential Housing Environmental Safety Amendment Act of 2020, p. 1, (December 1, 2020), available at: <https://lims.dccouncil.gov/downloads/LIMS/41819/Other/B23-0132-FIS-Residential-Housing-Environmental.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> DC Code § 10-561.07(a)(5). Establishment of the Department of Buildings.

<sup>18</sup> Council of the District of Columbia, Committee of the Whole, Committee Report on Bill 23-91, p. 2, (December 1, 2020), available at: <https://lims.dccouncil.gov/downloads/LIMS/41724/Committee-Report/B23-0091-Committee-Report2.pdf>.

<sup>19</sup> 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 Department of Buildings (DOB), Public Dashboard, available at: [https://dataviz1.dc.gov/t/OCTO/views/DOBPublicDashboard/VacantProperties?%3AshowAppBanner=false&%3Adisplay\\_count=n&%3AshowVizHome=n&%3Aorigin=viz\\_share\\_link&%3Aembed=yes&%3Atoolbar=no](https://dataviz1.dc.gov/t/OCTO/views/DOBPublicDashboard/VacantProperties?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3Aembed=yes&%3Atoolbar=no).

<sup>20</sup> *Id.*

<sup>21</sup> Mayor’s Proposed FY 2024 Budget and Financial Plan, Volume 4 Agency Budget Chapters – Part III, Human Support Services, Operations and Infrastructure, Financing and Other, Enterprise and Other, p. F-10.

<sup>22</sup> DC Code 42-3131.01. Abatement of Nuisance Property.

<sup>23</sup> 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>.

<sup>24</sup> Children’s Law Center thanks ChangeLab 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. ChangeLab 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>.

<sup>25</sup> Harvard Kennedy School, ASH Center for Democratic Governance and Innovation. *Systematic Code Enforcement Program*. (January 1, 2005), available at: <https://ash.harvard.edu/news/systematic-code-enforcement-program>.

<sup>26</sup> B25-0048, Proactive Inspection Program Act of 2023.

<sup>27</sup> 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>.