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***Before the Committee of the Whole
Council of the District of Columbia***

Budget Oversight Hearing Regarding the Department of Buildings

March 28, 2023

Legal Aid of the District of Columbia¹ submits the following testimony regarding the Department of Buildings (DOB). Every day, Legal Aid hears from District tenants dealing with unacceptable living conditions like lack of heat, leaks, mold, and pest infestations. Many of these tenants question why they see their rent increasing year after year while the conditions in their rental units stay the same or get worse. Many have resigned themselves to these conditions because they know that the city's answer to housing code enforcement is ineffectual and that landlords face no meaningful consequences for putting off repairs indefinitely.

¹ Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

The Mayor's proposed FY2024 budget would further undercut DOB's ability to effectively enforce the housing code by eliminating inspectors and key enforcement personnel.² DOB has so far failed to put in place a permanent Director and Strategic Enforcement Administrator, failed to deliver its strategic enforcement plan and annual report to the Council, and shown that DOB and its predecessor agency's track record in achieving abatement of housing code violations from FY2021 to FY2023 was around 20%-27%, if not lower.³

To avoid replicating the well-documented enforcement failures of the Department of Consumer and Regulatory Affairs (DCRA), the Council must continue to engage in oversight of the nascent DOB and be willing to shape DOB's enforcement powers and priorities through legislation. Otherwise, the monumental effort to break up DCRA will have been for nothing.

Legal Aid recommends that the Council:

- 1) Engage in ongoing oversight of DOB, particularly in the area of strategic code enforcement, with a focus on addressing DOB's failure to collect millions of dollars in fines;
- 2) Direct that fines from housing code infractions go to the Nuisance Abatement Fund and that those funds be used to abate life-safety violations that displace tenants;
- 3) Fully fund the Residential Housing Environmental Safety Amendment Act of 2020 (Law 23-0188);
- 4) Enact and fund the Proactive Inspection Program Act of 2023 (B25-0048); and
- 5) Reverse the Mayor's proposed budget cut and enact and fund legislation to ensure DOB hires enough inspectors to support both its complaint-based and proactive inspections programs, and to place inspectors in the Landlord and Tenant Branch of D.C. Superior Court.

² See Government of the District of Columbia, FY 2024 Proposed Budget and Financial Plan, Volume 4 (Department of Buildings) ("DOB FY2024 Budget").

³ See D.C. Council, Committee of the Whole, Written Testimony of Eleni P. Christidis, "Performance Oversight Hearing Regarding the Department of Buildings" (Feb. 23, 2023), available at <https://www.legalaiddc.org/media/3400/download>. See also Dep't of Buildings, FY22 to FY23 YTD Performance Oversight Questions (Feb. 23, 2023).

DOB's Ineffective Enforcement Has Left Millions of Dollars in Fines Uncollected That Could Be Used to Abate Life-Threatening Housing Conditions

DOB's website says it "collects all fines, penalties, and interest associated with violations adjudicated by [the Office of Administrative Hearings] and that "DOB places liens on properties when violators fail to pay outstanding fines and for the costs associated with the government correcting property violations."⁴ Yet, figures taken from DOB's new public dashboard (launched last month days before DOB's agency oversight hearing) show that DOB has yet to collect over \$70.5 million in fines from notices of infraction issued for complaint-based and proactive housing inspections from FY2019 to FY2022.⁵

While the availability of this data represents a step towards greater agency transparency, DOB has not yet accounted for its failure to collect such a staggering amount in fines. Despite this, among the Mayor's proposed reductions to DOB's FY2024 budget is the elimination of 4 FTE's within DOB's Civil Infractions and Fine Assessment Division – the very office charged with processing civil infractions, collecting fines, and placing liens on properties with unpaid fines.⁶

These millions of dollars in uncollected fines represent potential revenue that could be used instead to abate life-threatening or unsafe conditions. Legal Aid reiterates its call that the Budget Support Act direct that fines collected by DOB for housing code violations go to the Nuisance Abatement Fund, and that DOB be required to use the Fund

⁴ See Dep't of Buildings, "Enforcement Action," available at <https://dob.dc.gov/page/enforcement-action>.

⁵ See DOB Public Dashboard, "Enforcement" tab, available at <https://dob.dc.gov/page/agency-performance-dob> (accessed March 27, 2023). I retrieved this figure by selecting filters for FY2019, FY2020, FY2021, and FY2022; selecting, for Business Unit, "Housing-Complaint" and "Housing-Proactive"; and selecting, for Payment Status, "NOT PAID."

⁶ See DOB FY2024 Budget.

to abate life-safety violations that contribute to the placarding of residential units and the displacement of tenants.⁷

DOB's failure to collect fines sends the message that DOB does not take its enforcement obligations seriously. And it severely undermines the deterrent effect of a fine. Legal Aid recommends ongoing oversight over DOB's entire enforcement process, with a particular focus on the breakdown in DOB's collections effort, to include data on the number and total value of liens DOB places on properties and its success rate in collecting fines at each stage of the enforcement process.

The Council Must Investigate DOB's OAH Outcomes and Funnel Resources to Address the Backlog of DOB/DCRA Cases at OAH

As part of its ongoing oversight, this Committee must scrutinize whether DOB's current business practices are setting the agency up to succeed at the point of obtaining a favorable resolution or judgment when it brings cases before the Office of Administrative Hearings (OAH). DOB has not reported how often it succeeds, loses, dismisses, or settles cases brought before OAH, despite being required to do so in an annual enforcement report as part of the DOB Establishment Act. DOB's annual report is supposed to include fine collection data, such as "any reduction in fine amount due to an action by an administrative judge to reduce the assessed fine, adverse judgment at an administrative hearing, administrative settlement or dismissal by the Department...."⁸

To the extent DOB's failure to obtain judgments at OAH stems from a lack of sufficient evidence, greater tenant involvement could help supplement the record with evidence of current, unabated violations. Yet tenants report not being kept informed of enforcement actions after they contact DOB with a complaint. Legal Aid recommends that DOB's business process analysis and reengineering assessment (deliverables required by the DOB Establishment Act) include regular notification to the complaining tenant at each step of the enforcement process beyond the initial inspection. This must include, at a minimum, informing the tenant of the opportunity to present evidence of current housing conditions when a notice of infraction is before OAH for an evidentiary hearing.

⁷ The Council enacted but did not fully fund legislation to this effect. See, e.g., the Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018 (Law 22-287).

⁸ See the Department of Buildings Establishment Act of 2020 (D.C. Law 23-269) § 202(b)(3).

Additionally, OAH must be sufficiently staffed and resourced so that it may work through its reported backlog of 5,715 DCRA cases.⁹ DOB currently accounts for the largest share of agency filings at the Office of Administrative Hearings.¹⁰ Undoubtedly this backlog has created extraordinary delay between DOB issuing and ultimately collecting fines. As part of its ongoing oversight of DOB's enforcement breakdowns, this Committee should ask DOB whether it has a memorandum of understanding with OAH to facilitate the prompt transmission of final orders and collection of judgments. In Legal Aid's experience with other agencies, the post-adjudication handoff to the agency is often the site of a breakdown in the agency's business process. That may very well be the case here, given the large amount of outstanding fines.

DOB Fails to Utilize Other Tools to Achieve Enforcement

DOB is not utilizing other enforcement tools at its disposal that could more effectively achieve compliance in less time and with less strain on OAH's limited resources. These tools include partnering with its sister agency, the Department of Licensing and Consumer Protection (DLCP) to suspend or not renew housing business licenses for landlords who repeatedly fail to abate housing code violations, and partnering with the Rental Accommodations Division (RAD) to require landlords to make repairs before they may increase rents on rent-stabilized units with unresolved notices of infraction.

Housing Inspectors Must Be Certified to Confirm and Cite for Mold

Mold remains a persistent and primary concern among the hundreds of low-income tenants who seek Legal Aid's assistance every year. Although the Council passed the Residential Housing Environmental Safety Amendment Act of 2020 (Law 23-188), sections of the law requiring DOB inspectors to be certified in mold assessment and to issue notices of infraction for mold remain subject to appropriations. Funding Law 23-188 is a concrete way that the Council can ensure that DOB's efforts translate into improved public health outcomes in the District.

Exposure to mold has been linked to upper respiratory tract symptoms, coughing, and wheezing in otherwise healthy people, as well as a higher risk of developing asthma, and

⁹ See Office of Administrative Hearings, Performance Oversight FY 2022-2023 Pre-Hearing Responses.

¹⁰ See *id.*

to asthma symptoms in people with asthma.¹¹ One in six District residents has asthma, a rate that is 50 percent higher than the national average.¹² Residents in Wards 5, 7, and 8 – and in particular low-income, children of color – are disproportionately affected.¹³ Children living in these areas are approximately 20 times more likely to visit an emergency room and 10 times more likely to be hospitalized for asthma than children living in Northwest.¹⁴ Doctors have identified mold and other poor housing conditions as one of the primary factors contributing to the District’s asthma epidemic.¹⁵

Mold and its causes, such as leaks or aging building exteriors, are especially prevalent at chronically neglected “slumlord” properties, including several rent-controlled buildings where Legal Aid has worked closely with tenants in recent years. Year after year, local news media highlight stories of mold as among the conditions driving tenant displacement and ultimately contributing to the elimination of existing affordable, rent-stabilized units.¹⁶

A coalition of organizations that included Legal Aid worked with the Council to enact one of the strongest mold statutes in the nation, the Air Quality Amendment Act of 2014. Unfortunately, the law relies on private enforcement, with no government agency

¹¹ See Centers for Disease Control and Prevention, “Basic Facts About Mold and Dampness,” available at <https://www.cdc.gov/mold/faqs.htm>.

¹² D.C. Asthma Coalition, available at <http://www.asthmafreedc.org>.

¹³ 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/>.

¹⁴ *Id.*

¹⁵ *See id.*

¹⁶ *See, e.g.,* Amanda Michelle Gomez, “Landlords Receive Federal Funds for Rental Assistance, Even When Tenants Live in Poor Conditions,” Washington City Paper, July 15, 2021, available at <https://washingtoncitypaper.com/article/523476/landlords-receive-federal-funds-for-rental-assistance-even-when-tenants-live-in-poor-conditions/>; Morgan Baskin, “The Next Hottest Rental Strategy? Market to Housing Choice Voucher Holders,” DCist.com, March 20, 2023, available at <https://dcist.com/story/23/03/20/sam-razjooyan-housing-choice-voucher-holders-rent/>.

charged with inspecting, citing violations, and enforcing the law.¹⁷ Legal Aid therefore advocated in strong support of Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which required DCRA to certify its inspectors in mold assessment and to issue notices of violation and impose penalties when landlords fail to comply with the mold law.

Legal Aid continues to call for full funding to implement these provisions, which were enacted as part of Law 23-188. The Chief Financial Officer estimated that implementation would require \$3.9 million in the first fiscal year and \$14 million in the four-year financial plan.¹⁸ Since the Act's fiscal impact statement was amended in the FY2022 Budget Support Act, Mayor Bowser has neglected to fund it in her FY2023 and FY2024 budgets. Funding the Act will finally give District tenants recourse to DOB when their landlords fail to remediate mold.

The Council Should Enact and Fund the Reintroduced Proactive Inspections Program Act

A past Director of DCRA, Linda Argo, testified that “a complaint-based system is no longer sufficient if we want to maintain safe housing conditions for all residents, especially our most vulnerable.”¹⁹ A key advantage of a proactive inspection program is that it can catch unsafe properties where tenants with language barriers, with disabilities, or who fear retaliation are being underserved by the existing complaint-based system.²⁰ Yet DOB has not demonstrated that it is targeting these underserved populations and areas in a systematic way. And Legal Aid has observed problems in the past with

¹⁷ The law gave DCRA discretion to enforce mold regulations, but from the outset DCRA declined to exercise this discretion to cite for mold.

¹⁸ Ofc. of the Chief Fin. Ofcr., Fiscal Impact Statement – Residential Housing Environmental Safety Amendment Act of 2020 (Dec. 1, 2020), available at https://lims.dccouncil.gov/downloads/LIMS/41819/Other/B23-0132-FIS_Residential_Housing_Environmental.pdf.

¹⁹ Testimony of Linda Argo, Public Roundtable on the Department of Consumer and Regulatory Affairs Proactive Housing Inspections Program (Dec. 16, 2009), available at https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/DCRA%2520Proactive%2520Housing%2520Inspections%2520Program%2520%252012_16_09.pdf.

²⁰ See ChangeLab Solutions, “A Guide to Proactive Rental Inspections Programs,” at 13, available at https://www.changelabsolutions.org/sites/default/files/2022-11/A-Guide-to-Proactive-Rental-Inspections_FINAL_20221031A.pdf.

DCRA's proactive inspections program, such as inspectors' refusal to inspect units that were not on the inspector's "list," and the use of outside contractors, whose performance and adherence to agency business process was inconsistent.²¹

In 2020, Legal Aid and other organizations (including representatives from the D.C. Office of the Attorney General and Chairman Mendelson's office) participated in a 12-week program organized by What Works Cities on lessons learned from proactive rental inspections programs across the country. That program reinforced our belief that to ensure the District's proactive inspections program is as effective as possible, its requirements should be codified and strengthened.

Legal Aid supports passage of the Proactive Inspection Program Act of 2023 (B25-0048) and looks forward to working with the Committee to strengthen that bill, including by prioritizing for more frequent inspection buildings in neighborhoods with the highest demonstrated health-based risk factors and ensuring that agency inspectors, not contractors, perform all proactive inspections.

DOB Needs Enough Inspectors to Support the Complaint-Based Inspections Program and to Place Inspectors in Court

The Mayor's proposed budget would hobble DOB's ability to meet the demand for complaint-based inspections (which outnumber proactive inspections in FY2022 and so far in FY2023)²² by eliminating the equivalent of 11 full time employees from the Rental Housing Inspections Division.²³

Legal Aid appreciated the additional funds allocated in last year's budget to fund 29 new housing code inspector positions. It was discouraging to see that DOB failed to fill most of those positions,²⁴ and it is equally discouraging to see the Mayor reducing further the number of inspector positions. We continue to advocate that DOB employ one residential housing inspector for every 2,000 residential housing units, as originally

²¹ See Written Testimony of Beth Mellen Harrison, Performance Oversight Hearing on the Department of Consumer and Regulatory Affairs (Feb. 20, 2015), available at <https://www.legalaiddc.org/media/796/download>.

²² See Dep't of Buildings, FY22 to FY23 YTD Performance Oversight Questions (Feb. 23, 2023).

²³ See DOB FY2024 Budget.

²⁴ See Dep't of Buildings, FY22 to FY23 YTD Performance Oversight Questions (Feb. 23, 2023).

proposed in the Tenant and Homeowner Accountability and Protection Amendment Act of 2019 (Bill 23-0394).

Moreover, DOB should have enough inspectors to deploy at least four full-time to the D.C. Superior Court. Legal Aid's experience representing tenants facing eviction suggests that the overwhelming majority have repair needs in their unit, and in many cases these repair needs are for substantial housing code violations. Yet tenants without a lawyer typically do not raise these issues or get relief when they are in court. DOB's placement of one housing inspector in the Housing Conditions Calendar of the D.C. Superior Court has greatly facilitated tenants' access to quality inspections by an experienced DOB employee and has equipped the Court with critical expertise to assist judges in monitoring landlords' completion of needed repairs.

The model of attaching an inspector to the Court should be expanded to the Landlord and Tenant Branch. The Council should reintroduce legislation requiring DOB to attach inspectors to both the Housing Conditions Calendar and the Landlord and Tenant Branch.²⁵ In the last few years, we have observed the impact that placing Emergency Rental Assistance Program (ERAP) providers in the Landlord and Tenant Branch has had in helping tenants avoid eviction and giving the Court real-time information about a pending ERAP application or payment. Attaching housing inspectors to the Court could have a similar impact in facilitating tenants' raising of housing code violations defenses; obtaining inspections, repairs, and settlements or payment arrangements; and providing the Court with valuable information at a critical juncture in the eviction process.

Conclusion

While it is disappointing that the Mayor would propose cutting DOB's inspections and enforcement capacity so early in the agency's tenure, the Council can still make tangible improvements in District residents' health and wellbeing by funding a sufficient number of inspectors, enacting and funding key mold and proactive inspections legislation, directing funds toward abating life-threatening violations, and getting to the bottom of DOB's failure to effectively achieve housing code compliance and collect fines.

We look forward to working with members of the Committee of the Whole, staff, and other advocates on these and related proposals to ensure DOB's work measurably improves the health and quality of life for District renters and their families.

²⁵ See the Tenant and Homeowner Accountability and Protection Amendment Act of 2019 (Bill 23-0394).