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

Performance Oversight Hearing Regarding the Department of Buildings

February 22, 2024

Legal Aid DC¹ submits the following testimony regarding the Department of Buildings (DOB). We are pleased to see that under the leadership of Director Brian Hanlon, DOB has consistently expressed a commitment to advancing resident safety and quality of life and has shown an openness to the crucial oversight function that this Committee plays.

Nevertheless, looking back on the almost year and a half since DOB's inception as a standalone agency on October 1, 2022,² it is clear that most of the systems previously in place under the Department of Consumer and Regulatory Affairs (DCRA) remain largely unchanged. In collaboration with this Committee and stakeholders, DOB must fundamentally revamp its systems to become a resident-centered and results-oriented agency. This will entail: (1) developing a user-friendly complaint submission and tracking system that automatically notifies tenants at key junctures in the enforcement process;

¹ Legal Aid DC 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 92 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.

² See D.C. Law 23-269, Department of Buildings Establishment Act of 2020.

(2) adopting Key Performance Indicators (KPIs) geared toward accurately measuring how quickly housing code violations are abated; and (3) committing to resolving the current bottlenecks in the enforcement process.

To support DOB in making these changes, we ask that this Committee continue to investigate and hold additional oversight roundtables on the following topics: DOB abatement of housing code violations; DOB's policies and practices for dismissing, settling, or substantiating Notices of Infraction (NOI) at the Office of Administrative Hearings (OAH); and how DOB works with other agencies to enforce judgments, collect fines, and support other agencies' enforcement efforts against housing providers with outstanding NOIs, OAH final orders, and unpaid fines.

DOB Must Fully Implement this Committee's Recommendations to Fix DOB's Broken Inspection Process

Legal Aid reiterates our appreciation for the Committee's thorough investigation of DOB's housing code inspections process and our wish that DOB fully implement the recommendations in the Committee's report.³

Among the report's findings, the discovery that over half (56%) of the NOIs reviewed by the Committee were sent to an address where the property owner did not live or to someone other than the property owner or management company was illuminating and concerning. While Legal Aid agrees that proper notification of landlords is important both for obtaining relief for the tenant and ensuring the enforceability of NOIs sustained based on a landlord default, we also believe that email must remain a key component of speedy notification and service. Ideally, the Department of Licensing and Consumer Protection (DLCP) would solicit a valid email address from an applicant seeking or renewing a basic business license for rental housing on a form that contains a prominent disclosure that by providing this email address, the housing provider consents to service of NOIs and other important notices at this email address. This would promote a default opt-in to email service system. Then, DLCP would store the housing provider's email address in a database shared with DOB.

Among the other important recommendations contained in the report, Legal Aid particularly supports:

- Improving DOB's online intake form. In addition, the online intake form must be made accessible to Limited-English Proficient (LEP) customers. Legal

³ Council of the District of Columbia, Committee of the Whole, Report on the District's Housing Code Inspection Process: Broken and in Need of Repair (January 18, 2023).

Aid is happy to collaborate with DOB in beta testing an improved form design.

- Changing DOB's current policy, which requires tenants who request to reschedule an initial inspection outside the default 15-day window to submit a new complaint.
- Using in-person reinspection to verify alleged abatement of housing code violations.

With respect to this last point, and as detailed in our prior testimony,⁴ we share the Committee's concern that landlord-submitted proof of abatement is rife for falsification and abuse and is simply too unreliable as the primary means that DOB uses to confirm abatement. Photos can be taken at a distance or selectively framed or cropped to hide unabated violations. They are also not sufficient to prove, for example, that an appliance is working properly or that the underlying cause of a leak or water damage has been addressed. Other documents may similarly tell an incomplete story as to the completeness and adequacy of any work performed. Moreover, relying principally or exclusively on landlord-submitted verification cuts tenants – who have firsthand knowledge that may rebut the landlord's claim – out of the abatement verification process.

DOB Must Develop a Complaint Tracking System that Notifies Tenants at Key Junctures in the Enforcement Process

To achieve its stated goal of advancing resident health, safety, and well-being, DOB must transform itself into a resident-centered agency that integrates tenants into the enforcement process. One way to begin to do this, and to rebuild crucial trust that was lost under DCRA, is to automatically notify tenants at key steps in the enforcement process. This both lets the tenant know that enforcement is happening (even if the tenant is not seeing repairs being made) and gives the tenant an opening to let DOB know what her landlord is or is not doing to abate identified violations.

Here are some ways that DOB should add or enhance tenant involvement and notification at various points in the inspection and enforcement process:

- **Complaint Intake/Inspection Scheduling** – The point at which a DOB program support specialist schedules an inspection with the tenant is a

⁴ See D.C. Council, Committee of the Whole, Written Testimony of Eleni P. Christidis, "Public Oversight Hearing, Regarding 'The District's Housing Code Inspection Process: Broken and in Need of Repair'" (Jan. 18, 2024).

junction to ask follow-up questions about items on the complaint form that may be unclear (i.e., “What type of infestation are you experiencing?”) or that suggest an imminent life-safety concern (i.e., “You mentioned Ceiling/Roof Collapse – is that a *current* issue you are experiencing?”).

- **After the Inspection** – Some tenants report not receiving an inspection report or a copy of the NOI after the inspection. Providing the tenant with a copy of the inspection report, either by mail or email, should be a standard, automated practice.
- **At NOI Issuance** – Tenants should be specifically alerted when an inspection results in the issuance of an NOI. Automatically providing the tenant with a copy of the NOI helps them understand what violations were found and within what amount of time the landlord is supposed to make repairs.
- **At Deferred Enforcement** – If a landlord elects deferred enforcement, DOB should notify the tenant that the landlord has elected to voluntarily abate the violations within a proscribed amount of time, and the specific deadline by which the landlord will be expected to do so. This prepares the tenant to expect that her landlord will be scheduling maintenance workers or contractors to make repairs in her unit. If the deadline passes and a landlord has not completed the repairs, this is the perfect time to reach out to the tenant (perhaps with an automated survey that auto-populates the violations included in the NOI) to ask, violation by violation, whether the landlord has abated each violation.
- **At OAH Filing** – DOB should notify tenants when a case is filed at OAH. This lets the tenant know that despite not seeing repairs made, DOB is moving forward and escalating its enforcement action.
- **At Alternative Resolution or OAH Hearing Stage** – Similar to the deferred enforcement process, a tenant should know if a landlord is electing to engage in the Alternative Resolution Team (ART) process. Again, this lets a tenant know to expect repairs to be scheduled and that DOB is involved in monitoring the landlord’s compliance. This is another juncture at which DOB can send the tenant a survey (or call them) and ask, violation by violation, whether each violation has been abated, and if not abated, whether the item was simply not repaired at all or whether the repair was unsatisfactory.

Involving tenants at each point above will provide DOB with useful information that enhances its enforcement efforts. Moreover, there are likely ways to automate these

notifications, particularly to the extent tenants already provide DOB with their email address (or a mobile phone number) when submitting a property maintenance request (i.e., tenants can elect to opt in to notifications about the status of their complaint). Finally, including tenants in the enforcement process communicates to the tenant that they are a key stakeholder and participant in that process and in DOB's overall mission.

DOB Must Adopt KPIs that Accurately Measure How Often and How Quickly Housing Code Violations Are Abated

Legal Aid appreciates the Council's passage of Bill 25-0048, the Proactive Inspection Program Act of 2023, projected to go into effect on April 12, 2024. This law provides a framework for ensuring that all rental properties in the District are routinely inspected while prioritizing for more frequent inspection properties most likely to have code violations. This law also updates the annual reporting requirements originally put in place by the Department of Buildings Establishment Act of 2020. The new reporting requirements include complaint data, inspection data, violation data, fine collection data, abatement efficacy, enforcement escalation data, and collections escalation data.⁵

DOB should adopt KPIs that mirror the data DOB is required to report annually to the Council and to the Attorney General. Adopting KPIs that reflect real-life outcomes, like abatement efficacy and fine collection data, would better reflect DOB's efficacy and impact as an agency than its current KPIs. Currently, DOB's KPIs for housing code inspections (shown on the "Agency Performance" tab of its public dashboard) measure the percentage of inspections where violations were found for which an NOI is initiated within two days and DOB's completion of inspections within 15 days of a complaint. DOB does not have any KPIs that measure what percentage of violations are abated after issuance of an NOI (or before issuance of an NOI, for that matter), or how quickly violations are abated.⁶ Legal Aid previously calculated (by extracting from DOB's past oversight responses) an actual violation abatement rate of between 20%-27% for housing code violations found in complaint-based inspections (FY2021-FY2023). DOB publishes some abatement data on its public dashboard, but it is hard to find (it is under the "Inspections" tab as opposed to the "Violations and Abatement" tab) and hard to parse, as abatement data are separated out by fiscal year and ward but aggregated for all types of inspections (housing inspections, both complaint-based and proactive, are

⁵ See Bill 25-0048, Proactive Inspection Program Act of 2023, Sec. 8.

⁶ DOB's Performance Oversight Hearing Responses state that in FY23, DOB added a KPI, "Number of housing code violation(s) abated by property owners or DOB." But this KPI does not appear on the public dashboard, and DOB did not provide its performance with respect to this KPI in its pre-hearing oversight responses.

combined with all other types of inspections, such as vacant property and illegal construction). Disaggregating abatement data by program and making housing code violation abatement a core focus of DOB's internal and external measures of performance is essential to DOB orienting its operations toward its stated goal of achieving a better built environment for District residents.

DOB Must Take Responsibility for Addressing its Enforcement Bottlenecks

Last year, Legal Aid identified over \$70.5 million in fines from NOIs issued for complaint-based and proactive housing inspections from FY2019 to FY2022, based on data available on DOB's public dashboard.⁷ Currently (as of February 15, 2024), "pre-adjudication" uncollected fines for complaint-based and proactive housing inspections (FY2019-FY2024) total \$42,872,768, and "post-adjudication" uncollected fines for housing inspections from that same period total \$30,958,802 – over \$73.8 million in uncollected fines for housing inspection violations alone (this does not include illegal construction, vacant properties, or zoning fines).⁸ To its credit, DOB does currently publish on its public dashboard the fines and NOIs that have been transferred to central collections. However, of the fines transferred to central collections, there remain more than \$7.6 million in uncollected fines from NOIs for housing code violations issued from FY2020 to FY2022 alone. That means that tenants living in these properties may have not seen improved conditions for between over one and four years, nor were their landlords held to account in any meaningful way for failing to repair known violative housing conditions during that time.

Legal Aid also previously identified a large backlog of DCRA and DOB cases pending before OAH. DCRA and DOB cases filed in FY2023 totaled 10,272, and DCRA and DOB cases account for nearly 38% of OAH's currently identified "backlog" of cases.⁹ While OAH has used some of its newly funded positions to assist with addressing the backlog,¹⁰ the scale of the problem cannot be resolved by OAH alone. DOB must use the full

⁷ 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).

⁸ See DOB Public Dashboard, Enforcement, "NOI with Pending Balance," available at <https://dob.dc.gov/page/agency-performance-dob>.

⁹ See Office of Administrative Hearings, Performance Oversight FY2023-2024 Pre-Hearing Questions, at pp. 18, 40.

¹⁰ See *id.* at p. 41.

complement of its enforcement powers to resolve matters through deterrence or voluntary compliance.

This Committee Should Hold Additional Oversight Roundtables on DOB Abatement of Emergency Violations, DOB Enforcement Outcomes at OAH, and Cross-Agency Collaboration

This Committee's thorough inquiry into DOB's housing inspections process unearthed problems and yielded such fruitful insights and recommendations that it is worth replicating for other areas of DOB's operations.

Legal Aid encourages the Committee to hold further oversight roundtables focused on:

- DOB's abatement of emergency violations (including whether DOB could better utilize the Nuisance Abatement Fund to tackle violations that temporarily displace tenants);
- DOB enforcement outcomes at OAH (to what degree is DOB dismissing, settling, winning, or losing at OAH and why); and
- DOB's cross-agency collaboration to promote strategic enforcement.

On this last point, there continues to be an apparent lack of coordination between DOB and DLCP in enforcing existing Clean Hands laws, which would otherwise prevent landlords with outstanding fines from NOIs from obtaining or renewing business licenses to operate rental housing.¹¹ There also appears to be no coordination between DOB and the Rental Accommodations Division of the Department of Housing and Community Development to enforce the law that prohibits landlords of rent-controlled properties from increasing rents on units with confirmed substantial housing code violations.¹² DOB is not fully utilizing all the enforcement tools at its disposal, even though it has been shown that fines and voluntary compliance alone are not currently achieving materially improved conditions for residents within a timeframe that basic health and human safety demand.

¹¹ See D.C. Code § 47-2862(a)(1)(D).

¹² See D.C. Code § 42-3502.08(a)(1).

Conclusion

Thank you for this opportunity to testify about DOB's current performance and the ways it can develop new systems to regain the public trust and key performance measures aimed at advancing resident health, safety, and well-being. We look forward to opportunities to work with DOB and this Committee on specific initiatives and future oversight roundtables.