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Testimony Before the District of Columbia Council
Committee of the Whole
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Budget Oversight Hearing:
DC's Department of Consumer and Regulatory Affairs

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Introduction

Thank you, Chairperson Mendelson and members of the Committee of the Whole for this opportunity to testify regarding DCRA's budget for fiscal year 2020. My name is Anne Cunningham, and I am a Senior Policy Attorney with Children's Law Center¹ and a resident of the District. Children's Law Center fights so every DC child can grow up with a loving family, good health and a quality education. With nearly 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. We represent many children and families who live in rented homes in the District, and one component of our practice is representing tenant-families whose landlords are not complying with DC's residential housing code.² DCRA is the agency tasked with enforcing that residential housing code. Unfortunately, over the past decade we have observed an agency that deprioritizes this critical function, failing time and time again to protect DC's tenants and affordable rental housing stock.

Over the past year and a half, I have testified nine times regarding DCRA and the impact the agency's failures have on the low-income families my organization represents. My past testimonies³ contain detailed criticisms and concerns about DCRA, including that DCRA generally lacks a culture of protecting tenants and rental housing, that DCRA's approach to housing inspections and enforcement is neither strategic nor efficient, and that DCRA's inspections and enforcement regime is under-staffed and

under-resourced.⁴ I will be structuring today's testimony as a list of budget-related recommendations along the lines of these recurring themes.

Budget Recommendations

1. Amend, Pass, and Fund the Department of Buildings Establishment Act of 2019.⁵

Thank you, Chairperson Mendelson, for demonstrating your commitment to DCRA reform by re-introducing the Department of Buildings (DOB) Establishment Act. As you know, we strongly support this legislation's proposal to break DCRA into smaller pieces because DCRA's size, the extremely broad scope of its mission, and its lack of consumer protection culture have rendered the agency ineffective in enforcing DC's residential housing code. Nothing short of the creation of a totally separate agency with a new structure, focus, and culture will improve these persistent, endemic issues.

a. Recent Changes at DCRA will not Negate Need for DOB.

We are encouraged by facets of Director Chrappah's leadership in his first months at DCRA. For example, Mr. Chrappah has articulated a commitment to modernizing and leveraging technology to support efficiency and transparency within the agency. He has also convened workgroups in order to receive stakeholder feedback about improving the agency. If he incorporates these workgroups' ultimate recommendations, this initiative could have the added benefit of beginning to rebuild

long-broken communication and trust between the public and the agency. These are positive developments, and we are committed to continuing to partner with Mr. Chrappah and his staff in these efforts.

However, this improved leadership does not change our opinion that DCRA is too large and bears too many divergent functions to effectively fulfill all its duties. These positive proposed changes cannot meaningfully improve the fundamental issues that plague residential code enforcement. DCRA's problems have persisted for over a decade across many agency leaders and DCRA continues to lack a culture of protecting tenants. We provide detailed evidence of DCRA's broken culture in past testimonies,⁶ but the agency's proposed FY2020 budget shows that this fundamental problem persists.

b. Proposed FY2020 Budget Shows that DCRA Continues to De-Prioritize Residential Code Enforcement Relative to Other Agency Functions.

Although DCRA's overall proposed budget is increasing by about 11.3% or about \$6.9 million, few of these augmented resources are to be invested in residential code enforcement.⁷ Programs and Activities which are key to residential code enforcement, like "Enforcement," "Residential Inspections," "Customer Service," and "Rehabilitation," are receiving *reductions* to their budgets. These reductions are being proposed while Programs and Activities for DCRA's business-related functions are receiving substantial increases to their budgets, solidifying our firm belief that DCRA

prioritizes businesses at tenants' expense.⁸ By way of example the Permitting Division is receiving a boost of \$1.6 million.

Additionally, of DCRA's five top priorities, only one mentions housing code enforcement.⁹ DCRA's five 2019 "Strategic Objectives" have a very business-oriented focus.¹⁰ And of the 22 KPIs DCRA lists for measuring its progress toward meeting those Strategic Objectives, only two relate in any way to housing code inspections or enforcement and both of these jointly apply to construction code enforcement.¹¹

The final budgetary example of DCRA's disinterest in strengthening residential code enforcement is the Budget Support Act proposal to expand use of DCRA's Nuisance Abatement Fund to "improving the information technology systems and otherwise improving operations of the Department of Consumer and Regulatory Affairs."¹² DCRA's push to allow use of this abatement fund for non-residential, non-abatement purposes again highlights DCRA's ongoing institutional de-prioritization of residential code enforcement work relative to other areas.

c. Please Champion a Separate Tenant/Rental Protection Agency or Division.

Given the persistence of DCRA's problems over many years, and across many administrations, we are certain that nothing short of a major overhaul will bring meaningful reform to the agency and to housing code enforcement in the District. We continue to ask that you take your DOB proposal one step further, either by establishing a third agency or a separate division within DOB with a dedicated mission of protecting

tenants and rental housing. We testified at length regarding specifics surrounding this proposal during the bill's April 2018 hearing. Please see Attachments 1 and 2 for our depictions of both the bill's currently envisioned DOB organizational structure, and advocates' proposed alternative: a tenant/rental protection agency or division within DOB.¹³

2. Remove Language in the BSA Amending Permitted Uses of the Nuisance Abatement Fund.

As mentioned above, we are concerned by the Mayor's proposal, via the BSA, to amend permissible uses for the Nuisance Abatement Fund, which currently can be used to abate housing code violations.¹⁴ The proposed language essentially converts the Fund to a general-purpose fund for DCRA to tap into for anything it feels would "[improve] the operations of the [agency]."¹⁵ This has the potential to divert millions¹⁶ away from remediating conditions which put low-income families at risk of homelessness and severe health problems. Such a substantive change should not occur without a dedicated hearing. We and our partners have spoken in the past about ways to improve use of this fund—principally through better use of data to more strategically use these resources in the most urgent cases. If DCRA or this Committee are interested in exploring ways to improve the Nuisance Abatement Fund, we would be happy to work with your offices to that end. However, we strongly feel the BSA is not an appropriate avenue for effectuating such a substantive change.

3. Amend, Pass, and Fund the Indoor Mold Remediation Enforcement Act of 2019.¹⁷

Thank you, Chairperson Mendelson, for introducing the Indoor Mold Remediation Enforcement Act of 2109. This legislation requires DRCA to issue Notices of Violation (NOVs) and Notices of Infraction (NOIs) to landlords whose properties contain ten or more square feet of mold in an area affected from the same water source. It also requires all DCRA housing code inspectors become certified in mold inspection and remediation through the Department of Energy and Environment (DOEE).¹⁸ In doing so, the bill directly responds to critiques we have raised about the inefficiency of tenants needing to contact multiple agencies for enforcement of various aspects of the code related to their housing conditions.

The bill is well-drafted and appears to meaningfully address our concern with respect to mold inspections. However, we hope you will amend the legislation to cover lead¹⁹ and asbestos as well, so that all three are brought under one agency whose inspectors are licensed in each of these areas. Currently, these functions are overseen across multiple agencies. Lead inspections, just like mold, are conducted exclusively through the private market which is regulated by DOEE. Not only will directing a single government agency to inspect and enforce these issues remove barriers to access for tenants, but we also believe it will reduce overall costs. Under current practice, tenants are often forced to pay for their own inspection by a private company, with the

option of attempting to recover that cost from their landlord after the fact. In our practice we have seen how this process is particularly detrimental to low-income tenants (as well as low-income landlords). We applaud you for working to create equity in access to mold inspections, Chairperson, and hope you will do the same for lead, which similarly disproportionately impacts low-income families who tend to live in older housing that tends to be more poorly-maintained.

4. Fund and Implement the DCRA Omnibus Amendment Act of 2018.²⁰

We hope to work with this Committee to ensure the DCRA Omnibus Amendment Act of 2018 is fully funded and implemented in Fiscal Year 2020. While we enthusiastically support this legislation in its entirety, we are particularly eager for implementation of the corporate transparency component of this bill. Although DCRA's failings surrounding the notorious slumlord, Sanford Capital, extend far beyond this issue, one thing those cases made clear was that lack of corporate transparency makes enforcement against individual bad actors virtually impossible. CLC sees this regularly in the cases we litigate as well—our attorneys have no way of knowing when we are repeatedly going up against the same property owners as they are so frequently shrouded in multiple layers of opaque LLCs. The corporate transparency component of the DCRA Omnibus Amendment Act of 2018 will meaningfully improve our ability to hold slumlords accountable.

5. As We Await the Department of Buildings, Make Targeted, Transferrable Investments in DCRA's Housing Code Enforcement Regime.

Though we have been reluctant to encourage investment in an agency that has proven itself over and over again unable to execute even its most basic functions, DC tenants need a stopgap as we go through the process of establishing the Department of Buildings. To this end, we urge this Committee to legislatively mandate and fund additional housing code inspections and enforcement personnel at DCRA. As stated previously, the inspectors should be trained to inspect and cite for violations related to mold, lead, and asbestos. We believe such an investment will be easily transferrable to the new agency.

DCRA lacks the resources to do quality inspections, enforcement, and abatement.²¹ On a basic staffing level, DCRA employs approximately 12-19 housing code inspectors²² to handle the inspection needs of DC's approximately 163,000 occupied rental units.²³ This works out to approximately one inspector for every 9,000 to 13,500 units, one of the worst ratios in the country.²⁴ By way of comparison, Baltimore's ratio is about 1:1400, Minneapolis' is about 1:2200, Youngstown, OH is about 1:2900, and Buffalo's is about 1:1400.^{25, 26} (Att. 3 provides statistics for even more cities).²⁷

We would like to note our concern that DCRA does not appear to have brought on additional inspectors compared to last year even though they were funded for FY19 to expand their inspections force.²⁸ This is exactly why the DOB legislation must

explicitly *mandate* minimum ratios of inspectors and enforcement personnel to rental units.

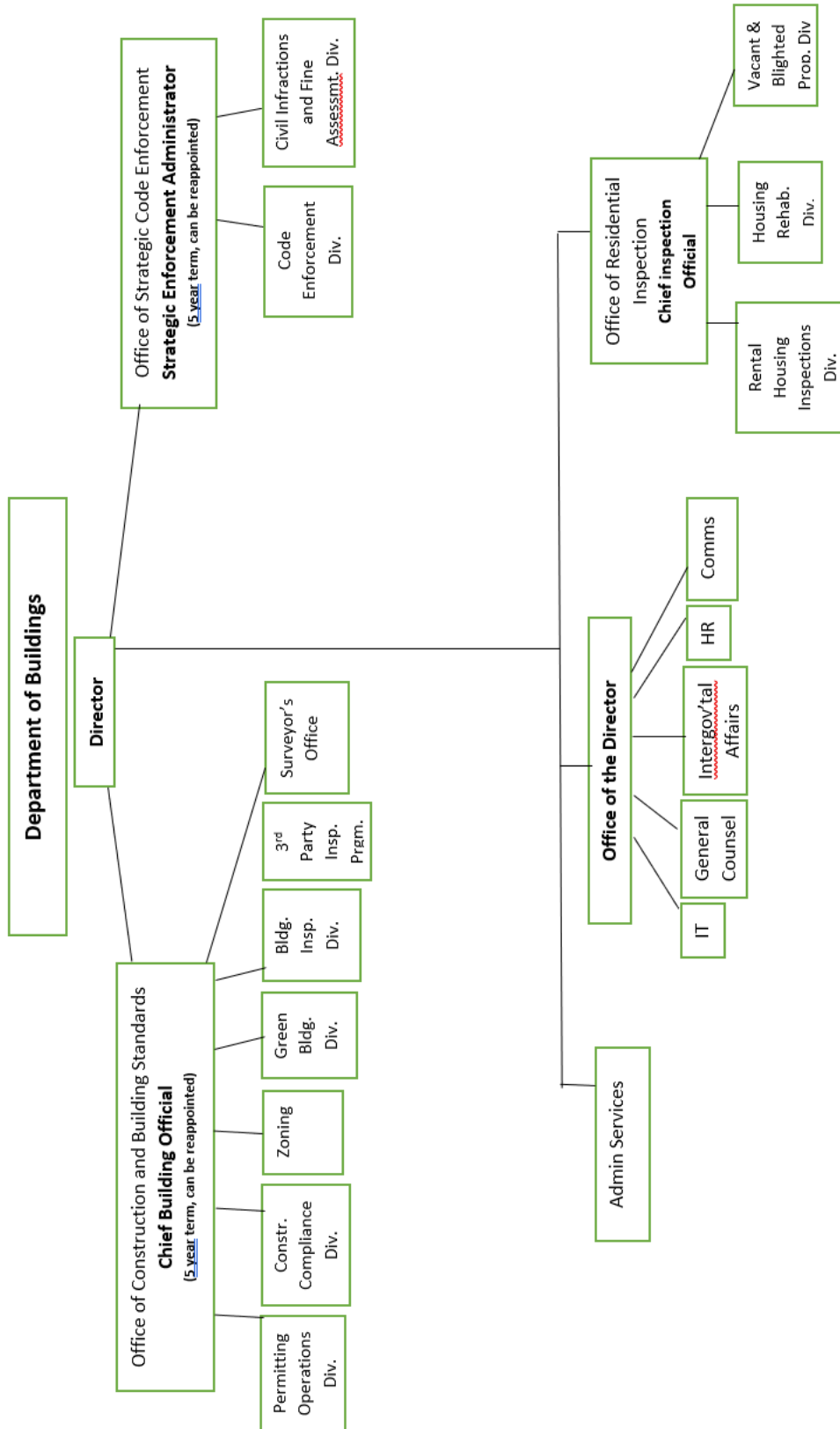
These statistics regarding insufficient inspectors are compelling. However, we also want to impress upon the Committee that a separate team at DCRA is responsible for carrying out enforcement against landlords who do not comply with inspectors' NOVs. Although we have less information about this team—due partly to DCRA's opaqueness around its organizational structure—we are confident it is similarly understaffed. Following up on unanswered NOVs is as critical a component of the enforcement process as inspections, so we hope you will similarly prioritize expanded staffing and training and reporting for that team.

Given years of failure across numerous administrations, we hope you will legislatively mandate many of the proposals we are suggesting today, including by defining minimum ratios of inspectors and enforcement personnel to residential housing units. Of course, legislatively mandating staffing levels must be coupled with sufficient funding to support that staffing.

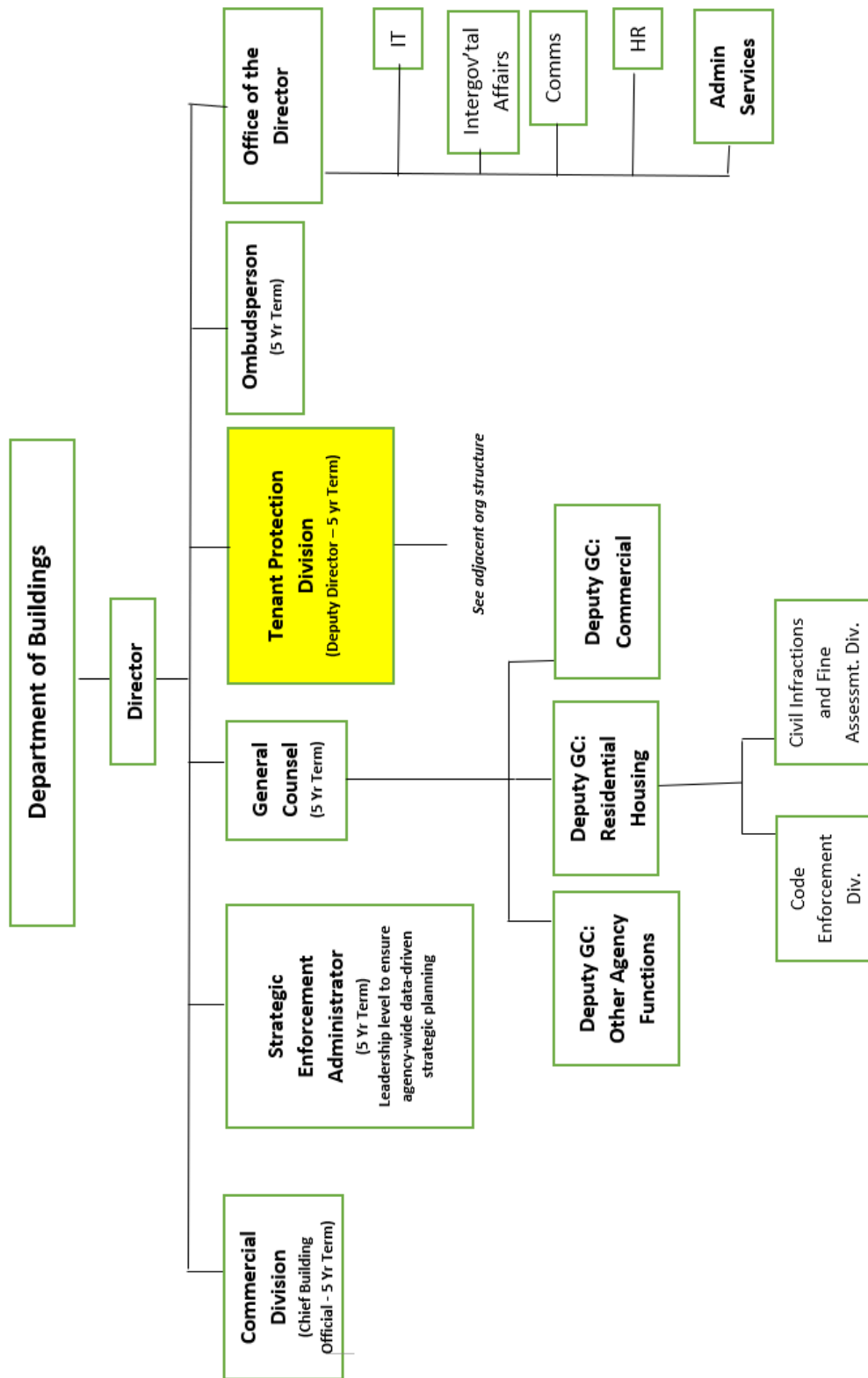
Conclusion

Thank you for this opportunity to testify. I would be happy to answer any questions.

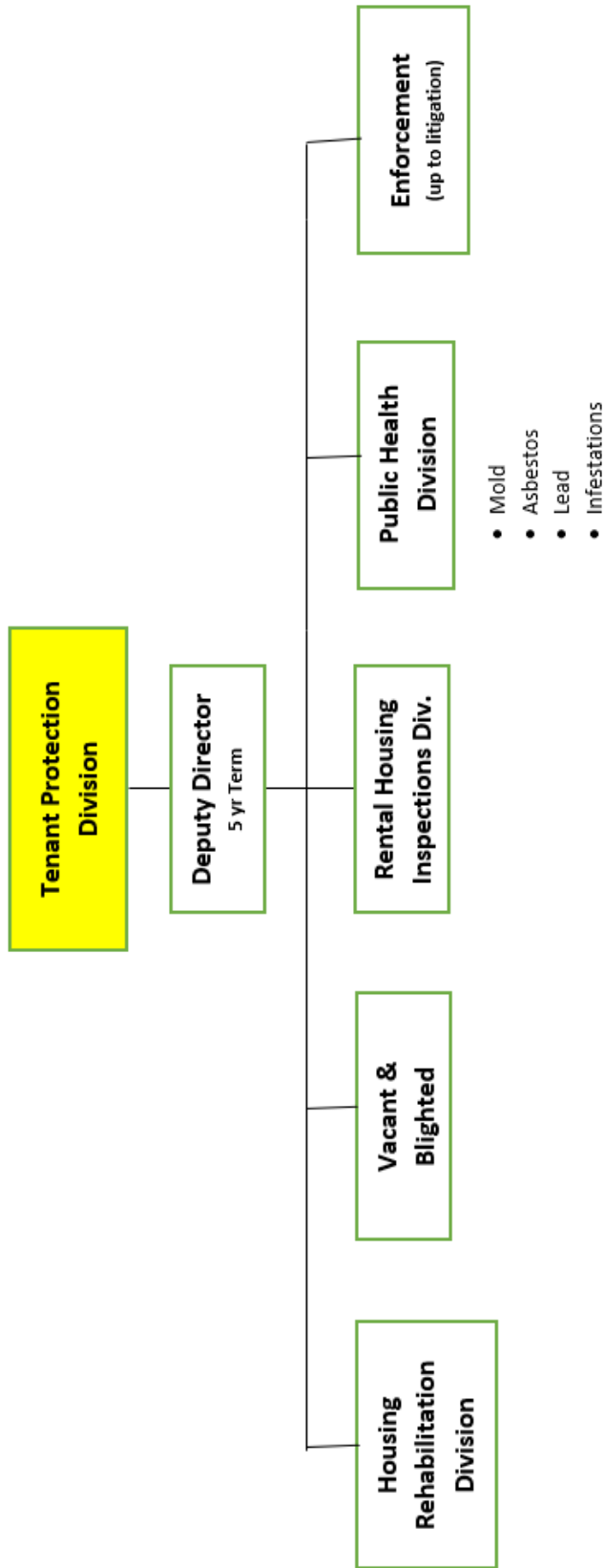
Attachment 1: DOB Organizational Structure as Currently Envisioned by B23-19



Attachment 2: Advocates' Alternative Proposal for DOB Organizational Structure



Attachment 2: Cont'd



Attachment 3: BUILD Health Infographic



PHILADELPHIA

270,000

Rental Properties

1 INSPECTOR
FOR EVERY
4.5K
PROPERTIES



TRENTON

9,119 Rental Properties

1 INSPECTOR
FOR EVERY
911
PROPERTIES



WASHINGTON

D.C. 187,000
Rental Properties

1 INSPECTOR
FOR EVERY
12.5K
PROPERTIES



The BUILD Health Challenge strengthens partnerships between community-based organizations, hospitals and health systems, local health departments, and others, to cultivate a shared commitment to moving resources, attention, and action upstream to drive sustainable improvements in community health. Since 2015, the BUILD Health Challenge has mobilized nearly 40 community-based partnerships to help address health problems using a bold, upstream approach.

¹ Children’s Law Center fights so every child in DC can grow up with a loving family, good health, and a quality education. Judges, pediatricians, and families turn to us to be the voice for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods--more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² Children’s Law Center frequently represents families whose homes’ poor conditions are so severe they harm the health of the children living in them. In those instances, the child’s pediatrician refers the family to us for legal representation to secure healthy, code-compliant conditions. In addition to our direct services work, we have attended the DCRA advocate meetings for over nine years, and have used those meetings as an opportunity to provide DCRA feedback about our concerns over that time. Unfortunately, the practices we see have remained largely unchanged since we started doing this work almost a decade ago.

³ Including today, Children’s Law Center has testified at nine hearings related to DCRA over the past 1.5 years. Those testimonies are available on our website. Listed chronologically from most recent to oldest: Feb. 2019 Performance Oversight Hearing: DC’s DCRA *at* <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/2-27-2019%20DCRA%20Performance%20Oversight%20-%20Children%27s%20Law%20Center%20FINAL.pdf>. Feb. 2019 Public Oversight Roundtable DCRA: What Issues Should the Committee Pursue? *at* <https://www.childrenslawcenter.org/testimony/testimony-public-oversight-roundtable-dcra-what-issues-should-committee-pursue>, Oct. 2018 Public Hearing on the DC Auditor’s Report *at* <https://www.childrenslawcenter.org/testimony/testimony-district-columbia-auditor’s-report-housing-code-enforcement-case-study>; July 2018 Public Hearing for DCRA Omnibus Act *at* <https://www.childrenslawcenter.org/testimony/testimony-slumlord-deterrence-amendment-act-2017-housing-rehabilitation-incentives>. Apr. 2018 Public Hearing for the Department of Buildings Establishment Act of 2018 *at* <https://www.childrenslawcenter.org/testimony/testimony-department-buildings-establishment-act>; Mar. 2018 DCRA Performance Oversight Testimony *at* <http://www.childrenslawcenter.org/testimony/testimony-performance-oversight-dcra>; Oct. 2017 Roundtable Testimony, *at* <http://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-tenant-housing>; and July 2017 testimony, *at* <http://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-housing-code-violations>.

⁴ Many of the concerns we have raised were confirmed in a report published by the D.C. Auditor this past September. Office of the District of Columbia Auditor, *Housing Code Enforcement: A Case Study of Dahlgreen Courts*. Sept. 24, 2018. Available at <http://dcauditor.org/report/housing-code-enforcement-a-case-study-of-dahlgreen-courts/>.

⁵ B23-091 available at <http://lms.dccouncil.us/Download/41724/B23-0091-Introduction.pdf>.

⁶ The Case Study published by the DC Auditor (ODCA) this past fall also confirmed what advocates have long reported anecdotally: that DCRA chooses repeatedly to use its discretion to show leniency to landlords and that tenants suffer while landlords indefinitely avoid fines and prosecution by the agency as poor conditions in their properties persist. Indeed, DCRA’s former director acknowledged this fact but repeatedly signaled “reluctance to change the process.” See ODCA’s report, *Housing Code Enforcement: A Case Study of Dahlgreen Courts*, at 15.

⁷ FY 2020 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part I, B-130; 2019 Agency Performance Oversight Responses Department of Consumer & Regulatory Affairs.

⁸ Id.

⁹ Its fifth stated goal is to “Strengthen Enforcement,” by accelerating the prosecution of NOIs for “habitual offenders and slumlords.” Though we are pleased that this goal (though *only* this goal) alludes to residential housing, we think DCRA needs to improve NOI enforcement across the board before it hones in on strategically targeting slumlords. Department of Consumer and Regulatory Affairs FY18 to FY19 YTD Performance Oversight Questions, Feb. 19, 2019, at p. 96-97. Available at <http://dccouncil.us/wp-content/uploads/2019/02/2019-Agency-Performance-Responses-DCRA-Combined.pdf>.

¹⁰ Id. at 126.

¹¹ Id. at 126-128. Though they are unnumbered, I refer to the 10th and 11th KPIs on this list.

¹² Fiscal Year 2020 Budget Support Act at 492-557. Available at <http://lims.dccouncil.us/Download/42120/B23-0209-Introduction.pdf> (see p. 29 of PDF).

¹³ Eventually, we hope this tenant/rental-protection agency will absorb all aspects of rental housing preservation which are currently being mismanaged by various DC agencies. My testimony for DHCD’s oversight yesterday includes examples, such as DHCD’s loss of the Lead-Based Paint Hazard Reduction Program Grant. “2019 Performance Oversight Hearing: DC’s Department of Housing and Community Development,” Feb. 26, 2019. Available at <https://www.childrenslawcenter.org/testimony/oversight-testimony-dhcd>.

¹⁴ D.C. Code § 42-3131.01.

¹⁵ BSA at line 550.

¹⁶ Funding for the Nuisance Abatement Fund in FY17 totaled about \$6.5M. DCRA Performance Oversight Responses at 10. Feb. 15, 2018, available at <http://dccouncil.us/wp-content/uploads/2018/10/DCRA-Oversight-Final-PACKET.pdf>.

¹⁷ B23-132 available at <http://lims.dccouncil.us/Download/41819/B23-0132-Introduction.pdf>.

¹⁸ Id.

¹⁹ Along these lines, we ask that you support Councilmember Allen’s Lead Hazard Prevention and Elimination Amendment Act of 2018. This groundbreaking legislation proposes critical reforms for DC’s approach to preventing childhood lead exposure via lead-based paint hazards in residential housing. The solutions proposed in the legislation target similar problems to what we have seen at DCRA, including inadequate enforcement and poor data collection and reporting, which have resulted in a hazy understanding of the scope of our lead exposure problems in DC. The bill also establishes a fund to fill in the void left by DHCD’s loss this past year of a \$4.1M HUD-sponsored Lead-Based Paint Hazard Reduction Program Grant, intended to provide lead remediation grants for landlords renting to low-income tenants. See B22-956, available at <http://lims.dccouncil.us/Download/40934/B22-0956-Introduction.pdf>. See also Morgan Baskin, “D.C. Chronically Failed to Spend Federal Funds to Remediate Lead Paint Hazards, HUD Says,” Feb. 21, 2019, available at www.washingtoncitypaper.com/news/housingcomplex/article/21048191/dc-chronically-failed-to-spend-federal-funds-to-remediate-lead-paint. See also FR-6200-N-12TC Lead-Based Paint Hazard Reduction Program, US Department of Housing and Urban Development at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=308148>.

²⁰

²¹ Before DCRA’s new Director, Ernest Chrappah, entered the agency, DCRA commented regularly on its resources but declined to request additional funding for expanding its capacity. In a recent meeting with advocates, Director Chrappah did not mince words and said DCRA needs, at a minimum, 60% more funding to run effectively. He said he’d ideally see \$100M over the course of the next several years for the agency which is now funded at approximately \$60M annually.

²² The organizational charts included in the Agency’s oversight responses are not entirely clear. They list 12 inspectors and six to seven “specialists” in their inspections and enforcement divisions. See DCRA Oversight Question Responses at 109.

²³ American Community Survey Data, Physical Housing Characteristics for Occupied Housing Units, 2017 1-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

²⁴ We would also note that in 2005, when DC had fewer rental housing units, DCRA employed 40 residential housing inspectors. Lydia Depillis, *Meet the New Boss: DCRA’s Nicholas Majett*, 1/18/2011, available at <https://www.washingtoncitypaper.com/news/housing-complex/blog/13121520/meet-the-new-boss-dcras-nicholas-majett>.

²⁵ See also David Whitehead. *DC Has a Slumlord Problem and Not Enough Inspectors to Solve it*. May 25, 2017. Available at <https://ggwash.org/view/63547/dc-has-a-slumlord-problem-and-not-enough-inspectors-to-solve-it>.

²⁶ Former DCRA Director, Melinda Bolling, previously testified that DCRA housing inspectors perform an average of 1,000 inspections per year. Assuming zero days of vacation or sick leave, this means inspectors do four inspections daily in addition to their other job functions, such as creating inspection reports and NOV’s as well as any follow-up work and other duties.

²⁷ Attachment 1 available at <https://buildhealthchallenge.org/blog/cities-right-number-housing-inspectors/>.

²⁸ Compare the organizational charts contained in DCRA’s 2018 and 2019 Oversight responses. 2018 available at <http://dccouncil.us/wp-content/uploads/2018/10/DCRA-Oversight-Final-PACKET.pdf>. 2019 available at <http://dccouncil.us/wp-content/uploads/2019/02/2019-Agency-Performance-Responses-DCRA-Combined.pdf>.