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Testimony Before the District of Columbia Council
Committee of the Whole
July 3, 2018

Public Hearing:
Bill 22-573, Slumlord Deterrence Amendment Act of 2017
Bill 22-596, Housing Rehabilitation Incentives Regulation Amendment Act of 2017
Bill 22-615, Housing Code Enforcement Integrity Amendment Act of 2017

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**Introduction**

Good morning Chairperson Mendelson, Councilmembers Bonds, Silverman, White, members of the Committee of the Whole, and staff. My name is Anne Cunningham. I am a Senior Policy Attorney at Children's Law Center,[1] and I am a resident of the District. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With more than 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.

I appreciate this opportunity to testify about these three bills, which aim to improve tenant-related facets of DC's Department of Consumer and Regulatory Affairs (DCRA), and I want to thank each of you for the attention you are giving to this important issue. As you may know, Children's Law Center and other local housing advocates have long criticized DCRA's total failure to protect the health and safety of DC's tenants. Almost all of our clients live in rental housing, which means they should be able to turn to DCRA for help in the face of illegal, unhealthy housing conditions their landlords refuse to repair. Unfortunately, neither our clients nor those residing in DC's other 180,000 occupied rental units can depend on DCRA to do its job.[2] As a result, DC tenants—especially DC's low-income tenants—have limited options for holding their landlords accountable.

Our previous testimonies during this Committee's Roundtables and oversight give detailed descriptions of the ways in which DCRA fails the residents it was established to protect.[3]

**We need a Department of Buildings and a Tenant Protection Agency**

DCRA's problems run from the top of the agency all the way down and have persisted through several administrations. In our opinion, DCRA cannot be fixed. Chairperson Mendelson, we hope you will continue to press forward with your proposed solution of carving out of DCRA a Department of Buildings (DOB).[4] Of course, as you know, Children's Law Center and others hope you will go even further by creating a third "Tenant Protection" or "Rental Housing Protection" agency to safeguard vulnerable tenants and DC's affordable housing stock.[5] We believe a smaller, more narrowly focused agency will attract talented officials invested in tenant protection work, will minimize the risk of regulatory capture, and will generally result in more efficient and effective enforcement of DC's housing code.

The three bills proposed here today take important steps, but do not solve the problem of DCRA as a whole. We hope these bills are, with some amendments, either folded into the Chairperson's DOB legislation or passed rapidly as a stop-gap while the new DOB and tenant protection agency are established.

I will now discuss the bills themselves, including some ways we can make them more effective.

**Slumlord Deterrence Amendment Act**

As we understand it, the Slumlord Deterrence Amendment Act[6] requires DCRA to deny a Basic Business License (BBL) to a landlord who has been cited for more than five Class 1 infractions of the housing code in a 12 month period. It permits DCRA to issue or re-issue a license to that landlord when all those infractions have been cured for at least 12 months.

We strongly support this bill's intent to make it very difficult for slumlords to ignore poor housing conditions. This bill deters on two fronts. First, landlords would incur fines by operating a business without a license. Second, because slumlords will be unable to acquire new business licenses, they will be unable to purchase and profit from new properties. To achieve the intended result, we would not only need to prohibit the "slumlord" LLC from acquiring or renewing a housing BBL, but we also need to prohibit all owners of that LLC from acquiring BBLs to operate other properties. In DC, many apartment buildings are "owned" by an LLC established solely for that individual building. So, one person (or company) may own ten apartment buildings through ten different LLCs.

Unfortunately, there is no current mechanism for determining who owns an LLC in DC. So, this bill must include a component mandating disclosure of all individuals and businesses with an ownership interest in an LLC. This can be done through DCRA's corporation registration process. We also suggest requiring an LLC to

demonstrate that they have disclosed the LLC's ownership in order to renew a BBL. We think such legislation is critical to effective enforcement against slumlords, and we hope to work with you team, Councilmember Silverman, toward developing this legislative language.

We recommend incorporating an additional deterrent into this legislation: that landlords not be permitted to file for eviction while they are unlicensed.[7] This will also incentivize landlords to quickly make repairs. If you accept this suggestion, we do not believe it should take 12 months for the landlord to re-qualify for licensure. Rather, they should be eligible to reapply for their BBL once they have fully remediated the conditions in a workmanlike manner.

Finally, we suggest including other classes of infractions—perhaps that DCRA "shall deny a BBL to landlords who have been cited for more than five Class 1 infractions, ten Class 2 infractions, 20 Class 3 infractions, and 40 Class 4 infractions in a 12 month period."

**Housing Rehabilitation Incentives Regulation Amendment Act**

The Housing Rehabilitation Incentives Regulation Amendment Act[8] has a stated intent of limiting the enforcement discretion of DCRA. We have several recommendations for this bill:

1. We believe the *only* function of the proposed Abatement Fund should be abatement of un-remediated housing code violations[9] and ask that the other

two uses for the Fund be removed.[10] While we support the concept of giving a portion of conditions-related fines to affected tenants, the community's need for meaningful, targeted abatement of un-remediated housing code violations far outweighs this interest. The current Nuisance Abatement Fund is woefully under-resourced, and we would rather see supplemental funds and administrative resources go toward improving properties that are a threat to tenants' health and safety. For similar reasons, we do not support reimbursing landlords for inspection and re-inspection fees.

2. Additionally, we hope the use of this fund for abatement will be done in a targeted, strategic manner by prioritizing work on hazards to the health of the tenants and/or the public. The Nuisance Abatement Fund is currently administered in a disorganized and un-targeted manner, so we also suggest the following guidelines for any fund used to remediate conditions:
    a. Provide criteria for prioritizing use of the Fund. For example, by taking into consideration the potential impact of conditions on tenants' health and safety.
    b. *Require* use of the Fund in particularly egregious circumstances, for example, where the property faces a risk of condemnation or loss of federal housing subsidies.

c. Enable tenants to proactively request specific repairs in their homes through the Fund, with the agency making the ultimate decision of whether to use the Fund for the requested purpose.

3. One section piece of this bill requires referral of cases to OAG.[11] We are not sure whether the intent here was to delegate enforcement of the housing code entirely to OAG. Nevertheless, we recommend against separating inspections from enforcement, as this would be an inefficient and less effective approach. Indeed, what we heard from speaking with an inspector is that DCRA inspectors feel their work is already too divorced from the enforcement side of the agency.
4. That same section also needs to be clarified in some places if it is retained—who is making the referrals to OAG? If DCRA, how will they "effect summary correction of the violation"?[12] My understanding is that one intent of this section is to foster better communication between DCRA and OAG, thus enabling OAG to keep track of the most problematic properties in the city—data DCRA does not currently collect. We support this, but feel the bill should be more explicit regarding the manner and content of that communication between DCRA and OAG. We need to reiterate here that these functions would need to go to the new tenant protection agency as we cannot depend on DCRA to make such referrals. We further suggest that the

new agency would need to have a high-level strategic enforcement director to oversee systemic coordination and planning to truly resolve the problem of DCRA's enforcement failings as well as its failure to collect and communicate data to sister agencies.

5. This bill establishes some reporting requirements for DCRA related to the Housing Conditions Abatement Fund. Given DCRA's history, we are in strong favor of mandating annual reporting requirements for the agency, and we hope you will expand upon the proposed reporting requirements to include many additional data points.[13] DCRA should be required to publish this data somewhere accessible to the public, such as on their website. We also recommend requiring separate data be kept for Notices of Violation (NOVs) and Notices of Infraction (NOIs) (lines 81 and 82 require combined numbers, which is less informative).
6. Finally, in addition to Class 1, 2, and 3 infractions, we suggest also including Class 4 infractions which have been unabated for at least six months.[14]

**Housing Code Enforcement Integrity Amendment Act**

The Housing Code Enforcement Integrity Amendment Act[15] requires expedited hearing timelines at OAH when landlords appeal NOVs or NOIs. It also requires written documentation and reporting in instances where the administration grants an extension to abatement deadlines, and only permits extension of those deadlines in

cases of "good faith" efforts to abate or "good cause." Finally, if six months have passed without abatement, this bill requires the Mayor to correct the condition and charge the abatement cost to the landlord through real property taxes.

We appreciate the very real problem this legislation is attempting to address—that landlords who appeal NOVs and NOIs often do so for non-substantive reasons, just to slow deadlines for abatement and payment of fines. Putting the onus on OAH to implement this piece, rather than on DCRA, greatly increases the likelihood that these mandated timelines will actually be implemented.

However, a much larger issue which needs to be addressed is that DCRA does not regularly issue NOIs and it does not regularly enforce the NOIs it does issue. This means there is no real consequence for landlords who ignore DCRA orders to remediate. DCRA also does not re-inspect in a timely manner. Often, re-inspection happens weeks to months after the remediation deadlines they set for the landlord. Consequently, we do not have confidence in DCRA's ability to adhere to the piece of this bill prohibiting them from approving extensions to abatement deadlines.

That being said, we do hope this legislative language, with some tweaks, will be incorporated into any legislation that creates that new, separate agency for housing code enforcement. First, we hope you will include a requirement that DCRA notify tenants of the NOV and NOI appeals to OAH, and also give tenants the opportunity to testify at those hearings. This bill should also require DCRA to notify tenants of any

proposed abatement by DCRA. Second, we hope you will consider shortening the timeline for abatement from six months[16] to closer to three or four months before the Mayor is required to abate the conditions. Many code violations included in NOVs require remediation within a very short time frame—sometimes as quickly as one day. Six months is too long for a family with children to reside in unsafe, unsanitary conditions. Third, we recommend adding definitions for the terms "Notice of Violation" and "Notice of Infraction" to DCMR Title 14, § 199 as these terms are frequently referenced, but are not currently defined in the law.

Finally, because this legislation uses the Nuisance Abatement Fund, we hope you will add the provisions we outline above to ensure the Fund is used in a targeted, strategic manner that prioritizes abatement of conditions that are health and safety hazards.

**Conclusion**

We look forward to continuing to work with each of you toward creating a new agency that can protect DC's tenants. We also look forward to passing legislation like the three bills discussed here today both to make DCRA more accountable to tenants while the Chairman's legislation is pending, as well as to ensure that his legislation includes a number of important statutory mandates for the new DOB and/or Tenant Protection Agency.

Thank you for this opportunity to testify. I welcome any questions.

[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 advocate 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 more than 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] We estimate DC's occupied rental units to be in the 175,000-185,000 range based on 2010 population and rental housing data extrapolated to today, as well as on 2016 data showing the number of non-owner occupied housing units to be approximately 186,000. This, however, does not take in to account the number of unoccupied units. The number of unoccupied rental units in 2010 was 13,000 and demand for DC rental housing has increased since that time. (Use https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml and input "Washington DC," and https://www.census.gov/quickfacts/fact/table/DC/PST045217 2016 data.)

[3] *See* https://www.childrenslawcenter.org/testimony/testimony-department-buildings-establishment-act; https://www.childrenslawcenter.org/testimony/testimony-performance-oversight-dcra; https://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-tenant-housing; *and* https://www.childrenslawcenter.org/testimony/testimony-dcra-inspection-and-enforcement-housing-code-violations.

[4] B22-0669 – Department of Buildings Establishment Act of 2018, *introduced* Jan. 23, 2018. Available at http://lims.dccouncil.us/Download/39619/B22-0669-Introduction.pdf.

[5] As we discussed in our testimony at the hearing for the Department of Buildings, the new agency must include: a strong mission guided by a culture of tenant protection, a targeted strategic enforcement model that is informed by high-quality data and the perspective of a public health division, and funding for adequate inspectors and enforcement personnel, training, and technology.

[6] B22-0573 – Slumlord Deterrence Amendment Act of 2017, *introduced* Nov. 7, 2017. *Available at* http://lims.dccouncil.us/Download/39181/B22-0573-Introduction.pdf.

[7] Caselaw currently permits landlords to file for eviction even when they do not have a license. *See* Curry v. Dunbar House, Inc., 362 A.2d 686 ,690 (D.C. 1976).

[8] B22-0596 – Housing Rehabilitation Incentives Amendment Act of 2017, *introduced* Nov. 21, 2017. *Available at* http://lims.dccouncil.us/Download/39261/B22-0596-Introduction.pdf.

[9] *See* Id. at lines 58-62.

[10] This means removing lines 63-69 and 91-94.

[11] Id. *at* line 98.

[12] Id. *at* line 103.

[13] For example, the number of: complaints received, violations reported by inspector, violations abated, inspections identified as initial vs re-inspection, notices of violations broken down by neighborhood, abatement extensions granted and justifications for those extensions, NOIs issued, NOI appeals requested, dollars issued by fiscal year the NOI is issued, dollars collected by fiscal year the NOI is issued, and more.

[14] Having an unabated Class 1, 2, or 3 infraction for six months is not currently its *own* infraction of the housing code—this bill makes this an infraction. *See* Id. at lines 130-141.

[15] B22-0615 – Housing Code Enforcement Integrity Amendment Act of 2017, *introduced* Dec. 5, 2017. *Available at* http://lims.dccouncil.us/Download/39349/B22-0615-Introduction.pdf.

[16] Id. at line 40.