
Housing Code Enforcement: A Case Study of Dahlgreen Courts

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Executive Summary



What ODCA Found

The District's Department of Consumer and Regulatory Affairs (DCRA) could better protect tenants through more rigorous and timely enforcement of the housing code. The process for responding to housing code violation complaints allows landlords to put off remediation through extensions and delayed re-inspection. Even when fines are levied, they may not be sufficient to deter landlords from allowing conditions in their units to deteriorate. The District government is missing opportunities to protect tenants through other programs that relate to affordable housing.

This report uses Dahlgreen Courts as a case study that illustrates how the enforcement process can stretch into months. Residents of Dahlgreen Courts submitted numerous complaints to DCRA in December 2016 and DCRA responded with a whole-building inspection. Inspectors issued 24 notices of violation (NOVs) for 105 violations in 17 units and two common areas with potential fines of \$36,300. When the issues were resolved nearly eight months later, the landlord paid a fine of \$2,500 for violations in six units.

In addition to problems with the enforcement process itself, limited documentation and tracking contribute to a lack of transparency which impedes the accountability needed to consistently protect the health and safety of tenants in the District.

Current language in the District of Columbia Municipal Regulations (DCMR) allows but does not require much more rigorous enforcement of housing code violations while the current leadership of DCRA has signaled a preference to continue the current enforcement regime. To improve housing code violation outcomes for tenants and preserve a greater proportion of affordable housing stock requires significant change. DCRA could alter the process to shorten the time between the issuance of a NOV and the issuance of a NOI, improve transparency and accountability, and deter violations by increasing financial penalties and other improvements that do not require statutory change. And the D.C. Council could require even more significant protections by mandating faster and more effective enforcement actions. Failure to enforce the housing code effectively and consistently, whether due to insufficient language in the D.C. Code and DCMR or implementation choices made at the department level, jeopardizes the health and well-being of affordable housing residents of the District.

Why ODCA Did This Audit

ODCA initiated this audit at the request of Council Chairman Phil Mendelson to determine whether DCRA could better protect tenants through more rigorous and timely enforcement of the housing code, and whether recordkeeping, case tracking, and reporting and communication were adequate to foster effective Council oversight on the health and safety of tenants in the District.

ODCA recommends that the D.C. Council:

- Require revisions to the DCMR to reduce the Director's discretion with respect to the abatement period.
- Require DCRA to measure and report the time to cure as a whole, or the time between the initial inspection and issuance of a NOI or time to abatement.
- Increase the dollar value of fines, and either increase or eliminate the re-inspection fee.
- Require DCRA to improve its recordkeeping, case tracking, and reporting and communication, making such documentation available to the public.
- Examine other programs that touch affordable housing to find opportunities to increase protections of tenants.

And that DCRA:

- Revise its SOPs to clarify who, how, and when re-inspections are scheduled, and make the information public.
- Charge daily fines for violations, as currently allowed in the DCMR.

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Background

The District's Department of Consumer and Regulatory Affairs (DCRA) could better protect tenants through more rigorous and timely enforcement of the housing code. Under the current system, landlords are able to put off repairs for months and sometimes years. The D.C. Code and the District of Columbia Municipal Regulations (DCMR) both have broad and vague language about how enforcement should be carried out. The DCMR in particular gives substantial latitude to the Director of DCRA. DCRA has exercised this discretion to offer leniency to landlords at the expense of tenants. Because DCRA's enforcement process is technically in compliance with the law, and the Director has signaled little interest in making the reforms, the Council of the District of Columbia (D.C. Council) may need to compel changes in the process by making specific changes to the D.C. Code and requiring DCRA to promulgate conforming regulations.

The process to respond to housing code violation complaints allows landlords to delay remediation, or cure. Re-inspection of 30-day violations takes place at 45 days or more after the initial inspection. Extensions give the landlord extra time to respond before fines are imposed. Landlords can further delay response by appealing a notice of violation or a notice of infraction through the Office of Administrative Hearings (OAH). Perceived due process requirements add to the timeline, as do requests for delay of OAH proceedings.

Even when fines are levied, they may not be sufficient to deter landlords from allowing conditions in their units to deteriorate. Fines for housing code violations have been the same since 2005, aside from a recent increase in fines associated with the most serious violations. The Office of the Inspector General (OIG) is currently studying DCRA's effectiveness in collecting fines.

Beyond the operation of DCRA, other departments and programs that touch affordable housing in the District do not deter bad landlords from continuing to operate and expanding their holdings. The relevant agencies do not consider the track records of these landlords when making awards or establish a higher standard for their properties. These are missed opportunities.

The case of Dahlgreen Courts, a rental complex of nearly 100 units in the Brookland neighborhood of Ward 5, illustrates many of the problems. Residents of Dahlgreen Courts submitted numerous complaints to DCRA in December 2016 and DCRA responded with a whole-building inspection. Inspectors issued 24 notices of violation (NOVs) for 105 violations in 17 units and two common areas with potential fines of \$36,300. Upon the eventual resolution after almost eight months, the landlord paid a fine of \$2,500 for violations in six units. The specifics of this situation can be taken as illustrative of larger, longstanding management issues within DCRA, noted by tenants, advocates, the D.C. Council, the Mayor, and the local press.

The Dahlgreen Courts case also sheds light on related problems with housing code enforcement that add to the real and perceived failure of DCRA to protect tenants. Real-time information on the status of a complaint is generally unavailable to the public except through FOIA requests and reporting on trends and patterns of housing code violations is nonexistent. Information on complaints filed and actions taken by building, unit, building characteristics, violation type, time to cure, fines assessed, neighborhood, and property owner is unavailable at a point in time, over a period of time, and as trends over time.

Failure to enforce the housing code effectively and consistently, whether due to insufficient language in the D.C. Code and DCMR or implementation choices made at the department level, jeopardizes the health and well-being of affordable housing residents of the District. It suggests less than optimum deployment of District staff and resources. It also opens the door to loss of affordable housing because when landlords let conditions persist and deteriorate, they first push out the tenants who have the resources to go elsewhere, then eventually the most vulnerable tenants who do not have other housing options.

Objectives, Scope, and Methodology

Objectives

The purpose of this study is to:

- Evaluate and identify options to improve the housing code inspections process.
- Develop a timeline of DCRA and other agencies' actions related to Dahlgreen Courts.
- Assess whether the actions taken by DCRA staff were consistent with DCMR and the agency's own operating procedures.
- Determine whether recordkeeping, case tracking, and reporting and communication were adequate.
- Identify concrete steps that could address any program shortcomings identified in the review.
- Identify other functions of the D.C. government that could support DCRA's efforts to protect the health, safety, and quality of life of residents in affordable housing.

Following an overview of DCRA structure and operations, and the legal framework in which DCRA operates, the rest of the report is laid out to examine these issues in order. Recommendations appear throughout the report.

The problems and recommendations described here are consistent with many of the concerns and policy recommendations of the D.C. Council Committee of the Whole, in its FY 2018 Budget Report. Those recommendations focus on an internal review and planning process, including an assessment of information technology needs, outreach, and additional training for staff. The recommendations are listed in full in Appendix A.

Scope

The study period is December 1, 2016, to September 26, 2017, the date that this study was started.

One way that the Dahlgreen Courts case may be unique is the coincidence of lead issues, uncovered by DCRA staff during inspections related to other violations. Lead-related violations are issued by the Department of Energy & Environment (DOEE). The presence of lead necessitated a high level of coordination.

This study does not address several important issues related to Dahlgreen Courts and DCRA. First, the study does not assess the performance of Accela, DCRA's property database. However, the long-term plan for this organization should include improvements in information technology.¹

Another issue not addressed is whether Mission First, the owner and redeveloper of Dahlgreen Courts, used public funds appropriately, or whether it completed the renovation as promised. The fine collection process is beyond the scope of this evaluation; a separate study is underway. In October 2017, the OIG notified ODCA that it would "assess the efficiency and effectiveness of DCRA's processes for collecting fines, special assessments, and penalties attached to violations of laws and regulations under its jurisdiction."

¹ Indeed, the DCRA pre-hearing response to the Committee of the Whole's performance oversight questions (February 15, 2018), DCRA identified as the first of its top five priorities to "Improve Transparency of Housing Inspection enforcement by utilizing Accela to automate the inspection, re-inspection, and the Notice of Violation and Notice of Infraction workflows. By focusing on continued automation of the process, DCRA will be able to better track the inspections and the result of the inspection. This will increase transparency with regard to DCRA's housing code enforcement and will automate the inspection process, thereby decreasing the impacts of a manual process."

The focus of this study is the internal operations of DCRA, but not its interface with other agencies. DCRA Director Melinda Bolling has acknowledged that DCRA does not coordinate the timing of inspections with any other agencies, such as the District of Columbia Housing Authority (DCHA) and the Department of Housing and Community Development (DHCD). In the Dahlgreen Courts case, DCRA had to delay enforcement when inspectors uncovered possible lead violations. As noted, lead inspections are under the purview of DOEE.

Methodology

This study synthesizes findings from previous reports, testimony given at D.C. Council hearings and roundtables, budget documents, news stories, and the results of interviews with government employees and members of the community. These sources point to longstanding problems associated with many aspects of DCRA operations. D.C. Council Chairman Phil Mendelson requested that ODCA examine an aspect of DCRA and make recommendations to improve its operations. Among other issues, Chairman Mendelson was concerned about DCRA's failure to respond quickly and effectively to numerous housing code complaints at Dahlgreen Courts.

ODCA requested, and DCRA provided, numerous documents for review. These documents pertain to enforcement activities and communication at Dahlgreen Courts for the period December 1, 2016, through September 26, 2017, including policies and procedures, and organizational charts that are not readily available to the public.

Documentation of enforcement related to Dahlgreen Courts yielded Portable Document Format (pdf) files of 27 NOVs, and 50 pages of related activity logs. These documents should have provided a complete picture of enforcement activity at Dahlgreen Courts for the period beginning December 1, 2016. As discussed later, DCRA failed to provide complete documentation related to some of their enforcement activities during this timeframe. A detailed list of documents provided by DCRA appears in Appendix B.

Other evidence reviewed includes:

Testimony from a March 2017 performance hearing and a July 2017 roundtable, plus previous reports on DCRA, and press clippings. A list of specific sources consulted is included in Appendix C.

Tenant and advocate testimony reveals the perceptions of specific individuals who are concerned about the operations of DCRA. Evidence is anecdotal and sheds light on specific failures. It is not interpreted as necessarily typical. Testimony related to Dahlgreen Courts reveals the set of circumstances that left tenants living in substandard housing conditions for extended periods of time.

Director's testimony given at roundtables addresses many areas of D.C. Council concern. Some of it is directly related to Dahlgreen Courts, some to the complaint-based housing inspections process in general. On several occasions, Director Bolling was forthcoming about some of the weaknesses of the agency and the challenges of its mission.

The D.C. Code lays out the authority to enforce the housing code. The DCMR establishes general procedures that give substantial discretion to the director of DCRA. Comparison of provisions in the D.C. Code and DCMR with standard operating procedures and testimony revealed that the director could improve many aspects of housing code enforcement without further action by the D.C. Council.

This report was drafted, reviewed, and approved in accordance with the standards outlined in ODCA's Policy and Procedure Manual.

DCRA Structure and Operations

Housing code enforcement is carried out by the Property Maintenance Division² within the Housing Inspections program. DCRA is responsible for regulating business and ensuring compliance with construction codes. DCRA is budgeted along seven divisions. Residential Inspections (budget code 3080) is part of the Inspection group, along with building inspections and construction compliance.

The Housing Inspections program is a relatively small part of District government. The approved FY 2018 budget for residential inspections was just over 5 percent (\$3.2 million) of the total DCRA budget (\$60.1 million); see Figure 1. Funding for residential inspections in FY 2018 represented an increase of almost 50 percent over the actual FY 2017 budget (\$2.1 million), providing authorization for 13.5 more FTE's. The total number of authorized FTE's increased from 24.5 to 38.

Figure 1: DCRA Represents a Small Part of the Overall District FY 2018 Budget

DC gross budget (FY 2018)	\$13.9 billion	
DCRA (FY 2018)	\$60.1 million	4.3 % of gross budget
Residential inspections (FY 2018)	\$3.161 million	0.02 % of gross budget; 5.3% of DCRA budget

The proposed FY 2019 budget for DCRA keeps funding at a relatively steady level. The dollar value of the DCRA budget is proposed to increase by 0.5 percent over FY 2018 levels (to \$60.4 million), while residential inspections is proposed to decrease by 2.7 percent (to \$3.075 million). The DCRA share of the gross budget is proposed to fall slightly to 4.2 percent of the gross FY 2019 budget of \$14.4 billion.

Number of inspectors may not be sufficient. According to Director Bolling, on average, each inspector conducts 1,000 inspections annually. These inspections could be complaint-based, proactive, or for licensing purposes. To conduct 1,000 inspections annually, an inspector who worked the typical 250 days in a year, would have to conduct an average of four inspections per day, or one inspection every two hours. In addition to the inspection itself, this timeframe would have to include preparation, travel to the site, and related office tasks. According to the FY 2018 performance plan, DCRA conducted 11,510 residential inspections in FY 2017.³ The plan lists figures for earlier years as "not available."

ODCA could not find national standards for the number of housing inspectors employed by large, urban housing departments.⁴ The D.C. Council's Committee of the Whole FY 2018 budget report noted that "in comparable jurisdictions, such as Boston and Baltimore, in population, geographic size, and housing stock, there are 3 times as many housing code inspectors as the District." That report also noted that the number of inspectors in D.C. is inadequate.

"Since fiscal year 2009, the agency has slowly worked to restore staff levels in increments of 2-4 FTEs. The pace the agency has taken to restore staff levels for housing code inspectors has lagged behind the District's growing housing supply and strong rental demand. In the proposed FY 2018 budget, the agency is budgeted for 28 FTEs that only includes 16 actual housing code inspectors, the remaining staff being desk-bound contact representatives and program support staff."

2. Documents use "housing inspections" and "residential inspections" interchangeably.

3. Beyond the scope of this study, but also part of the responsibility of the residential inspections unit, DCRA conducted an additional 4,252 inspections as part of the proactive program.

4. ODCA used a conventional web search, and also checked with trade associations that serve housing inspectors.

According to American Community Survey 2012-2016 estimates, there are 131,919 renter-occupied housing units in multifamily buildings (i.e., with three or more units per building) in the District.

Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates. Table S2504: Physical housing characteristics for occupied housing units; Washington, D.C.

Note: Accounting for the margin of error, the District figures are 128,969 – 134,868.

DCRA FY 2017 Key Performance Indicators and Workload Measures capture very little of housing inspection performance.

DCRA's FY 2018 Performance Plan includes data on actual operations within the agency during FY 2017. Without knowing the demand for housing inspection services, such as the number of tenant complaints, the number of violations found, the number of units and buildings, these measures of the supply of housing inspections services are difficult to interpret.

One Key Performance Indicator (KPI) is related to DCRA's housing inspections program:

Percent of inspections resulted (with NOV or inspection reports) within 30 calendar days of initial inspection. FY 2017 actual: 95% (FY 2015 75%; FY 2016 97.9%; preceding years not provided)

No KPI addresses the time to resolution (or time to cure) as a whole, or the time between the initial inspection and issuance of an NOI (which would include the number of re-inspections and extensions).

By contrast, the Vacant and Blighted program has three KPIs:

- Percent of exempted properties that are re-inspected within 90 calendar days of receiving exempt status
- Percent of Notices of Infraction that are processed by the Office of Civil Infractions (OCI) within 30 calendar days
- Percent of Housing Notices of Violation that are referred to the Office of Civil Infractions within 60 days of re-inspection

These KPIs are somewhat better in that they contemplate different stages of the process. However, they also do not address time to resolution as a whole, or the time between the initial inspection and the issuance of a NOI.

Timeline of DCRA and other agencies' actions related to Dahlgreen Courts

A series of complaints made by residents of Dahlgreen Courts in December 2016 is the launching point for this study. The Dahlgreen Courts situation was brought to the attention of D.C. Council through repeated testimony of residents and advocates at several public forums. The situation also received coverage in the *Washington City Paper*. During this time, residents of Dahlgreen Courts and advocates claimed that DCRA was unresponsive to housing code-related complaints, allowing non-compliance to persist for months. They also expressed concerns related to follow-up, transparency, and coordination with other agencies.

Because DCRA does not track enforcement activities on an ongoing basis, i.e., across properties and time, it is not known whether the Dahlgreen Courts case is typical. At Dahlgreen Courts, inspectors found multiple violations in multiple units during an emergency building-wide inspection.⁵ The case resolved after more than seven months and the payment of \$2500 in fines. Even if it is an outlier, studying this case is useful because it reveals how the process can fail to achieve a quick resolution of housing code violations. Appendix D lists the disposition of the 30-day NOV's issued in December 2016.

⁵ Director Bolling stated that to the best of her knowledge, DCRA conducted two emergency, building-wide inspections in 2016.

The actual number of NOV's that DCRA issued at Dahlgreen Courts during the study period is unclear. DCRA provided documentation for 27 NOV's that inspectors issued in December 2016. Five were eliminated from study.* However, documents provided by OAH revealed that two additional NOV's were issued during this time period. These two additional NOV's were the basis of part of the fine eventually paid by Dahlgreen Courts. This study focuses on the subset of 24 NOV's that were issued to Dahlgren Courts in December 2016 and were supposed to be resolved in 30 days.

Yet another discrepancy in the total number of NOV's issued during this period arises from examination of PIVS data. PIVS lists 50 compliance issues with a completion date in the same general range as the NOV's provided by DCRA. (PIVS only lists a "completion date," of a case, rather than an initiation date.)

**Of the 27 NOV's provided by DCRA, one NOV was excluded because it was issued to the tenant. Three NOV's were excluded because they were not issued in December 2016. One NOV was excluded because the violation (failure to provide adequate heat) was to be remediated in one day.*

Dahlgreen Courts provides affordable housing in Ward 5.

Dahlgreen Courts consists of two buildings with 96 units in Ward 5, on 10th Street, N.E. (2504 and 2520). The property occupies 0.6 acres on a site just north of Rhode Island Avenue, a short walk from the Rhode Island Avenue Metro station on property that is designated as a historic landmark. The FY 2010 annual report of the Historic Landmark and Historic District Protection Act noted that "the building owner sought designation to take advantage of the federal preservation tax credits for rehabilitation as affordable housing." The property owners noted that program requirements were a factor in their handling of renovation, specifically with respect to dealing with surfaces painted with lead-based paint.⁶

Mission First acquired and renovated Dahlgreen Courts with substantial financial support from the District government. Mission First owns and operates Dahlgreen Courts through the Dahlgreen Courts LLC. Based in Philadelphia, Mission First has 1,066 units in 10 properties in the District. All projects in the District use public financial support (i.e. vouchers, loans, etc.).

Mission First purchased the property in 2010 for \$8.5 million after the Dahlgreen Courts Tenants Association assigned them its right to purchase the property under the D.C. Tenant Opportunity to Purchase Act (TOPA). In return, Mission First was supposed to renovate both buildings. Ribbon-cutting for the re-opened property occurred in May 2013. All 96 units were to be rented to low-income tenants.

The District government provided substantial financial support for the project. Through Dahlgreen Courts LLC, Mission First borrowed \$5,094,807 in Community Development Block Grant (CDBG) funds through the Department of Housing and Community Development (DHCD) in 2010. District of Columbia Housing Finance Agency (DCHFA) issued a tax-exempt bond for \$6.2 million.⁷ Combined, these programs provided \$11,294,807.

Additional funds for the project were provided from other sources. The property also receives indirect public financial support through two federal tax credit programs, each of which impose limitations related to use of the property. The Low-Income Housing Tax Credits (LIHTC) restricts use of the property to affordable units. Historic Rehabilitation Federal Tax Credits impose restrictions related to the physical condition of the property.

6. In response to one of the NOIs issued on the property, the property owner noted: "Dahlgreen Courts Apartments was originally constructed in the late 1920's. Upon concurrent inspections of the buildings by D.C.'s Department and Energy and Environment (DOEE) and DCRA inspection, DOEE has administered an Administrative Order to Dahlgreen Courts Apartments whereas the entire premises was presumed to contain lead-based paint. After acquisition and during the renovation of the project in 2011 and 2012, Lead-based paint testing of the Dahlgreen Courts buildings was completed. Lead-based paint was detected primarily on window frames, door frames, and doors. Many of these components with lead-based paint were required to remain due to Historic Tax Credit requirements. Lead-Safe Work Practices were used during the renovation process to stabilize and encapsulate lead paint with new paint." Similar language appeared in the responses to the other NOIs.

7. DCHFA lists Dahlgreen Courts on its multifamily portfolio as a non-risk sharing project. Risk sharing is when DCHRA and HUD share in the risk that the borrower might not be able to pay the mortgage. Risk sharing is provided through credit enhancement for mortgages of multifamily housing projects whose loans are underwritten, processed, serviced, and disposed of by HFAs. For reference, information on use of public funds to support the renovation of Dahlgreen Courts appears in Appendix E.

Renovation began in 2011. According to its website, Mission First committed to provide “upgrades, including new kitchens and bathrooms, new plumbing and HVAC, new windows, new roofs, and new elevators, while restoring and preserving historic elements. A new community room, exercise room, and business office were added as well for use by residents.” During the renovation, residents were temporarily relocated from one building to the other. Tenants have stated that they believe the renovations were not completed in full and with poor quality workmanship.

Mission First did not obtain lead clearance reports upon completion of the renovation. A particular irritant for residents is the failure of Dahlgreen Courts to get lead clearance reports prior to issuance of occupancy permits. This failure fueled some of the complaints from residents in December 2016. It also reveals multiple points at which DCRA or Dahlgreen Courts could have corrected the problem but did not. Because the buildings were constructed between 1927 and 1929, they were assumed to contain lead.⁸ At the time, DDOE (now DOEE) issued an administrative order stating as much and notifying the owner that lead-safe practices were required. Dahlgreen Courts should have gotten lead clearance reports at the conclusion of the project, before units were to be occupied. These reports were not obtained.

Nonetheless, Dahlgreen Courts obtained occupancy permits for the buildings on July 30, 2010.⁹ Only in 2017, when the lapse was again brought to the attention of Dahlgreen Courts and DCRA, did Dahlgreen Courts start the process to obtain lead clearance reports.¹⁰

Whether Dahlgreen Courts actually used lead-safe practices, and whether District agencies adequately enforced requirements related to lead-based paint is beyond the scope of this study. Dahlgreen Courts claimed to have used lead-safe practices during renovation, and that the lapse was in failing to get lead clearance reports. In a recent development, the tenants’ association filed a lawsuit in D.C. Superior Courts in March 2018.¹¹ One of the allegations states:

“As of the date of the filing of this Complaint, at least forty (40) tenants have tested positive for elevated levels of lead in their blood and/or Chronic Inflammatory Response Syndrome (“CIRS”) as a result of exposure to lead, mold and other biotoxins due to negligence and other breaches of Defendants’ duties to maintain habitable housing conditions, including, but not limited to, deficiencies resulting from cracks in the walls, ceilings and foundation of the buildings, shoddy workmanship, failure to properly dispose of lead-based paint and dust, water penetration into the units and buildings from the roof, windows and foundation, pest infestation and the resulting excrement in common areas and private units, raw sewage back-up emitting from the rental office, and standing water in the laundry room.”

The purpose of this section is to assess the actions of DCRA with respect to a series of violations at Dahlgreen Courts. The purpose is not to assess the actions of the Dahlgreen Courts landlord. Moreover, DCRA records do not allow ODCA to compare Mission First to other landlords in the city, or to establish whether this series of events was extreme. The information is included here as an example.

8. Per 20 DCMR § 3301.1: “The interior and exterior of dwelling units and child-occupied facilities are presumed to contain lead-based paint if constructed prior to 1978, and any paint that is deteriorated, chipping, peeling, or otherwise not in intact condition is considered to be a lead-based paint hazard and is prohibited.”

9. As part of a lawsuit filed in March 2018, the Dahlgreen Courts Tenants Association has alleged that the occupancy permits were not obtained until 2015.

10. As noted in the Final Order issued by OAH in July 2017, “Respondent provides no explanation as to why no lead clearance reports were obtained after the 2011-2012 renovation when Respondent was made aware that a significant number of surfaces in the building contained lead-based paint. Respondent only began to take action once DOEE filed an Administrative Order stating that the building was presumed to have lead paint even though Respondent knew about the significant presence of lead-based paint on the property for five years.”

11. Dahlgreen Courts Tenants Association v. Dahlgreen Courts LLC et al, 2018 CA 002066 B. Filed March 24, 2018.

A building-wide inspection conducted in December 2016 uncovered 105 violations; DCRA activity logs show that Dahlgreen Courts only resolved some of them, in some cases after several months. DCRA provided NOVs and related activity logs for violations found at Dahlgreen Courts in December 2016. The logs are geared toward internal use. The entries are hard to follow due to repetition, variations in the way that information is presented, and a lack of explanation. Nonetheless, these documents, along with additional documents provided by OAH and PIVS searches provide an approximate timeline as follows:

December 13, 21, 29, and 30, 2016: DCRA responded to complaints related to conditions in specific units in Dahlgreen Courts. The first inspection at Dahlgreen Courts occurred on December 13, 2016. DCRA conducted building-wide inspections shortly thereafter. Activity logs associated with most NOVs refer to building-wide inspections taking place on December 29, but some list the date as December 21, and December 30. Inspectors found 105 violations, related to walls and ceilings (peeling paint, cracks, holes, loose plaster, missing parts, separation and dampness); windows (frame with rotted, broken or missing parts or poorly fitting); cabinets and doors with broken or missing parts; lack of heat; poor quality workmanship, and other violations. December inspections resulted in the issuance of 24 NOVs, with violations to be addressed in 30 days.

December 19 and 30, 2016, and January 6, 2017: NOVs were mailed to Dahlgreen Courts, LLC, and the tenants of the affected units.

January 20, 2017: Ward 5 D.C. Council Member Kenyan McDuffie visited the property and found evidence of mouse infestation and lead-based hazards. According to a tenant, DCRA had not cited any violations related to the mouse infestation.

February 24, 2017: The first re-inspection was conducted on February 24, which was 58 days after the initial inspection. Inspectors found that Dahlgreen Courts had abated some violations. All violations in only one unit were found to be abated, although re-inspection of this unit occurred on April 28, due to a lead paint concern. DCRA scheduled another round of re-inspections for April 28.

April 14, 2017: Inspectors attempted to conduct walk-throughs of most units in preparation for the April 28 inspections.

April 28, 2017: DCRA carried out or attempted re-inspection related to all 24 NOVs. Inspectors were able to declare all violations abated on four NOVs.

Violations cited on another eight NOVs were eventually abated in May and July, bringing the total to 12.

For the other 12 NOVs, documentation ends prior to resolution; see Figure 2. In one case, the tenant's phone number was no longer in service. In other cases, the inspector had not been able to gain access to the unit because the tenant refused or was not home at the time. One unit was scheduled for re-inspection on September 26, 2017.

In June 2017, six of the NOVs were elevated to enforcement, i.e., DCRA issued NOIs, even though one of them had already been abated by then (in April). Two were abated in July. The abatement dates of the other three are not listed, but Dahlgreen Courts would have had to resolve them in order to conclude the case with OAH.

Figure 2: Activity Logs Reflect Only 12 of 24 NOVs Issued in December 2016 Were Eventually Abated

Date noted in activity logs as all violations abated					
Feb 24, 2017	April 28, 2017	May 26, 2017	July 6, 2017	July 21 or 28, 2017	Never listed as abated
CRM1700914	*CRM1700872, CRM1700879, CRM1700880	CRM1700549	CRM1700743, CRM1700861, *CRM1700746, *CRM1700744, CRM1700877	CRM1700875, CRM1700741	CRM1700915, *CRM1700598, CRM1700916, CRM1700873, CRM1700869, CRM1700870, CRM1700641, CRM1700560, CRM1700876, CRM1700917, *CRM1700542, *CRM1700075
* NOI issued June 21, 2017					

OAH acted on the NOIs in just over five weeks. The total time elapsed was 230 days or about 7.5 months. Figure 3 displays the timeline of OAH processing of the Dahlgreen Courts cases.

Figure 3: OAH Issued NOIs on June 21, 2017, and Cases Were Closed by July 28, 2017

June 21	July 5	July 28
DCRA served 6 NOIs, alleging violations of Title 14 of DCMR. DCRA sought fines totaling \$3,000.	Dahlgreen responded "Admit with Explanation" to all charges.	The final decision by OAH was issued. The fine was reduced from \$3,000 to \$2,500.

The D.C. Code and DCMR give the Director of DCRA broad latitude in enforcement of housing standards.

This section examines the authority laid out in the D.C. Code and DCMR. The next section considers whether DCRA practices, actual and as laid out in the Standard Operating Procedures (SOPs), are consistent with the D.C. Code and DCMR. It also looks at the range of options provided in the DCMR to reduce the time to cure and increase the costs of non-compliance—both of which would reduce the incidence of tenants living in substandard housing conditions.

Analysis is based on review of the Dahlgreen Courts cases, testimony given by tenants and advocates in 2017, comparison of the D.C. Code, DCMR and DCRA SOPs, and interviews with staff at DCRA and OAH.

While the Director of DCRA already has the authority to improve housing code enforcement by shortening the time to cure and creating greater deterrents, D.C. Council could take more concrete steps to make sure this happens by directing that the DCMR be revised to add standards and procedures. Revisions to the DCMR should reduce discretion in implementation of the housing inspections program, with respect to extensions and the sequencing

and timing of NOV and NOI. D.C. Council should also revise agency performance measures to include measures of responsiveness and transparency, such as days to re-inspection and total time to cure. DCRA should identify and request needed resources to carry out the functions that it currently does not have capacity to provide.

The D.C. Code allows broad authority and sets few parameters. The D.C. Code provides broad latitude to the District government to deal with “nuisance properties,” requiring compliance with procedures related to service of notice and access to properties when the landlord refuses entry.

Two sections of the D.C. Code are relevant to the housing code inspections process. Chapter 18 of Title 2 lays out the procedures for administrative review of civil infractions, applicable to a wide range of laws and regulations. The Code defines an infraction as “... any act or failure to act for which a civil sanction may be imposed under the provisions of this chapter, and with respect to which either the Corporation Counsel [D.C. Attorney General] or the United States Attorney for the District of Columbia is authorized to commence a criminal proceeding in the Superior Court of the District of Columbia, or for which another civil sanction may be imposed under any District laws or regulations.”¹² The process of appeal is implemented by the Office of Administrative Hearings. Provisions that relate to the enforcement activities carried out by DCRA are in D.C. Code Title 42, Real Property; Title 42, Real Property; Subtitle I, General; Chapter 31A, Abatement of Nuisance Property. Specifically;

- § 42-3131.01 establishes the authority for the District to correct violations and charge the property owners, when the property owners fail to take such action themselves.
- § 42-3131.02 authorizes the District to inspect properties, and if necessary, under an administrative search warrant.
- § 42-3131.03 requires notice of violations to be served, prescribing the manner in which notice is served.

The DCMR gives substantial discretion to the director of DCRA. Language in the DCMR is broad enough that current DCRA procedures are technically in compliance, yet implementation of those procedures results in outcomes that are not satisfactory. The relevant portions of the DCMR are, in effect, a general framework that provide substantial latitude to the Director of DCRA to design and carry out the housing inspections process. It gives many options for some parts of the process, while it is silent on other aspects of the process altogether. The Director of DCRA uses discretion to decide the strictness or laxity of enforcement. A key question for D.C. Council is whether the director exercises discretion consistent with the intent and purpose of the D.C. Code and DCMR today.

However, the general authority laid out in the Code provides the basis for relatively few provisions in the DCMR related to housing inspections. The legal framework for housing code enforcement pre-dates home rule, specifically law adopted in 1902 and amended in 1932 and 1947.

The authority of many provisions in DCMR dates back to the early 1900s, well before D.C. Home Rule. Section 489 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, 32 DCR 4450, 4482-83 amended several provisions within Title 14 DCMR and established the current system for dealing with housing violations. (Technical amendments were passed in 1989.) Several revisions refer only to amended text, so the preceding language is unknown. Changes to 14 DCMR § 102 introduce civil fines, penalties, and fees as *alternative* sanctions for an infraction. Changes to 14 DCMR § 107 pertain to appeals.

The DCMR, primarily in Title 12G (Property Maintenance Code) and Title 14 (Housing) lay out a general process for housing code enforcement and the service of notices of violation, both of which are carried out by DCRA.

¹² D.C. Code § 2-1801.02(2).

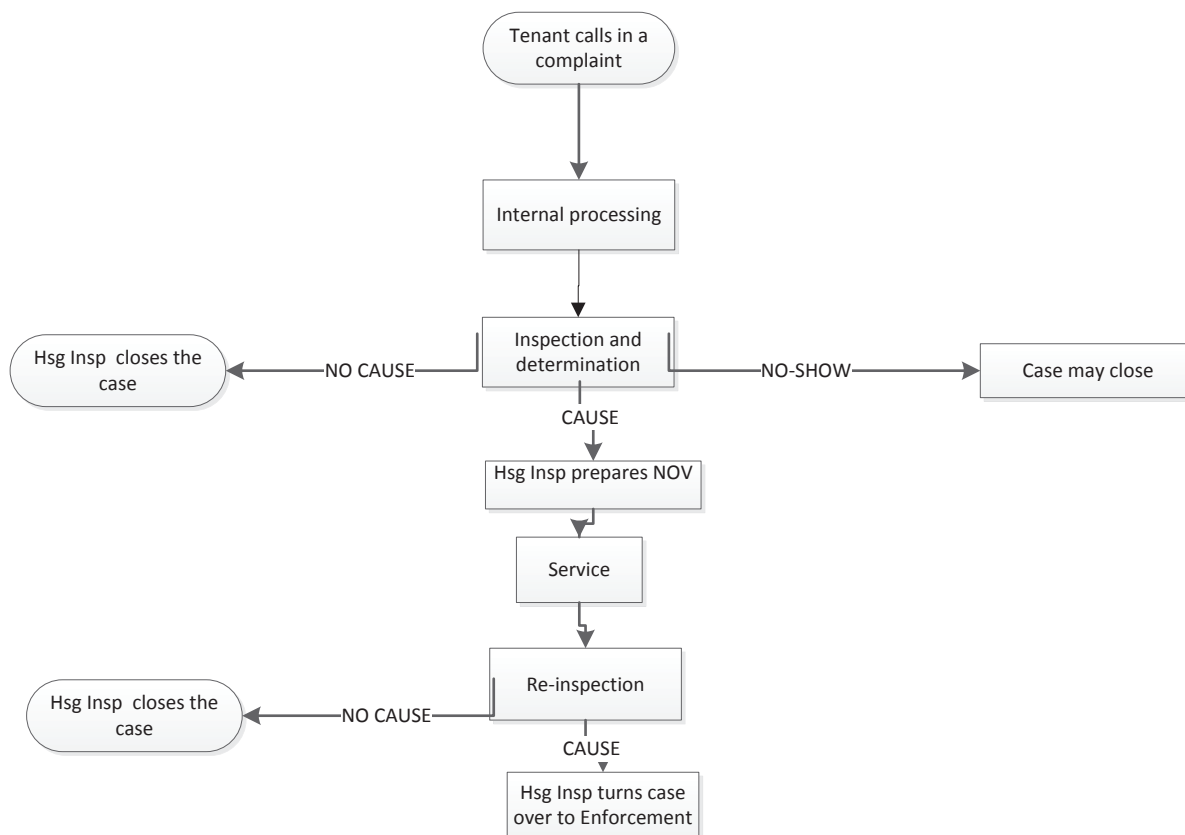
Decisions made by the current Director of DCRA about the housing inspections process provide leniency to landlords, primarily in two areas. The process (1) extends the time allowed to resolve violations (“time to cure”) and (2) does not provide sufficient deterrents to violations in the first place. These topics have been addressed at hearings and meetings held by the D.C. Council Committee of the Whole (COW). In response to questions raised by Chairman Mendelson and others, the Director of DCRA emphasized that DCRA is compliant with the DCMR, and that existing legal arrangements are sufficient.¹³ The director has also signaled reluctance to change the process. She has also implied that the current process is optimum, given the structure, staffing, and budget of the unit. These issues are examined below.

SOPs and actual enforcement practices do not minimize the time to cure.

SOPs created by DCRA describe the processes in place to enforce the Property Maintenance Code and Housing regulations. SOPs reflect the discretionary choices made by the director of DCRA. The main discrepancy between the SOPs and the DCMR is related to handling of extensions.

DCRA SOPs describe the resolution of housing code violations as a multi-step process. Many of the steps include a waiting period. When ODCA calculated the time elapsed, ODCA found that the minimum turnaround time from when a tenant calls in a complaint to payment of a fine (with no extensions), is more than five months. The chart below (Figure 4) depicts a simplified version of DCRA’s process to respond to rental housing complaints. A detailed version appears in Appendix F.

Figure 4: Lifecycle of a Housing Complaint



¹³. At a Committee of the Whole roundtable on July 12, 2017, Chairman Mendelson asked Director Bolling if the law was adequate to protect tenants. Director Bolling responded that yes, it is adequate as far as she knows.

ODCA analysis of DCRA SOPs found that a substantial component of the time to cure (i.e. the time from the initial complaint to elimination of the violation and/or payment of a fine) is the time between the issuance of a NOV (at the initial inspection) and the issuance of an NOI. There are primarily five issues:

1. The DCMR does not stipulate the period of time that a landlord has to abate a violation.
2. DCRA adds 15 days to the abatement period to allow for service. As a result, a 30-day violation, for instance, is not re-inspected until a minimum of 45 days has passed.
3. Internal processing can further delay re-inspection.
4. Extensions, which are not explicitly authorized in the DCMR, can add weeks to the timeline.
5. The DCMR does not require DCRA to issue a NOV before issuing an NOI.

The steps laid out below in Figure 5 are copied from the DCRA website¹⁴. This stylized accounting describes an overall enforcement process, from the initial complaint to the payment of fines, lasting 160 days or just over five months. Steps 5 and 6 do not align with SOPs. First, DCRA might schedule re-inspection within 30 days, but re-inspection does not occur until at least 45 days have passed. Second, the timeline does not consider extensions and multiple re-inspections.

Figure 5: Example Lifecycle of a Housing Code Inspection

	# days	cumulative (calculated by ODCA)
Step 1: Resident reports possible housing code violations to DCRA via 202-442-9557 or dca.housingcomplaints@dc.gov .	0	
Step 2: (48 hours to 10 days): DCRA Inspections Division schedules and conducts Initial Inspection	+10	10
Step 3: (within 48 hours after inspection): If violations exist, Inspector issues NOV for each violation. Each has a predetermined abatement period of 24 hours to 30 days.	+2	12
Step 4: (within 5 days after NOV written): Owner is served NOVs either by U.S. Mail or directly.	+5	17
Step 5: (with 24 hours to 30 days based on abatement period): DCRA schedules re-inspection of violation and determines if violations were abated.	+30	47
Step 6: (within 4 days of re-inspection) If violations cited still exist, Inspector sends case file with photos and NOVs to Enforcement Division.	+4	51
Step 7: (within 4 days of re-inspection) Depending upon severity of violations, Inspections Division may recommend city make repairs and bill owner.		
Step 8: (within 14 calendar days) Enforcement Division reviews file and creates Notices of Infraction which levy a fine against property owners.	+14	65
Step 9: (within 5 days) Owner is served NOIs via U.S. Mail or directly and a copy is forwarded to the Office of Administrative Hearing. In general, the NOI does not eliminate the need for the property owner to abate the violation. DCRA can issue multiple NOIs for the same violation until the issue is abated.	+5	70

¹⁴ <https://dca.dc.gov/service/lifecycle-housing-code-inspection>

Step 10: Owner either pays fines or appeals through the Office of Administrative Hearings (OAH).		
Step 11: (30 days to 3 months) If appealed, OAH schedules hearing on NOIs. For more information on the OAH process, visit the OAH Website.	90	160

Because the length of time to abate a violation is at the discretion of the director, failing to re-inspect in a timely manner is not in conflict with the DCMR. All five of these factors are explored in further detail below.

The DCMR does not specify the time to re-inspection. Following the issuance of a NOV, the next step in the enforcement process, and the prerequisite to the issuance of a fine through a NOI, is re-inspection. At re-inspection, the inspector returns to the property to determine whether the landlord has addressed the violation. This section focuses on 30-day violations because the NOVs issued at Dahlgreen Courts in January 2017 were all 30-day violations.

The director sets the policy governing time to re-inspection; neither the DCMR nor the SOPs stipulate the amount of time given to address specific violations. This means, for example, that the DCMR does not spell out that violation of 14 DCMR § 706.3 is a 30-day violation, even though the NOVs issued at Dahlgreen Courts in December 2016 treated it as such. On the other hand, the DCMR does establish that this particular violation triggers a \$100 fine.

SOPs refer to one-day and 30-day violations. The director has also sometimes designated violations for a seven-day turnaround.¹⁵

Recommendation 1

The D.C. Council should require DCRA to revise the DCMR to establish the abatement periods for violations, with authority given to the director to reduce the abatement period under specific circumstances that must be documented.

Recommendation 2

The D.C. Council should require DCRA to collect and report data on time to re-inspection.

DCRA adds 15 days to the initial abatement period to allow for service. Ostensibly, a 30-day violation is one in which the landlord initially has 30 days to eliminate the violation. However, according to SOPs (and consistent with the Dahlgreen Courts case), DCRA does not conduct re-inspections until 45 or more days after the initial finding of violation. An additional 15 days is built into the process to allow for service. The 30-day clock starts ticking at the point that DCRA assumes the property owner has received the NOV. Fifteen days is supposed to allow for delivery by U.S. Mail, and the possibility of return from undeliverable addresses. DCRA relies on service by mail, despite the availability of other means provided in the D.C. Code (§ 42–3131.03.) and the DCMR (12A DCMR § 113.2.1). The DCMR (12G DCMR § 107.3) offers several alternative methods for the service of notice. Service can be made in person, by email (if accompanied by notice posted conspicuously on the property), personal delivery to the last known address, if accepted by an employee at least 16 years of age, or as a last resort, simply posting a notice on the premises. Title 42 (§ 3131.03), as referenced from Title 14 (§ 105.6) provides similar options, but specifies that use of U.S. Mail is appropriate only if email, personal delivery, or delivery to the landlord’s place of business is not possible.¹⁶

¹⁵ Although Standard Operating Procedures refer to one-day and 30-day violations, Director Bolling said at a performance oversight hearing held by the Committee of the Whole in March 2017 that she had shifted some violations to a 7-day turnaround. The rationale and process under which she created this shorter timeframe is unclear.

¹⁶ The precedent for service by email has been set by OAH. OAH allows service by email when the parties agree to it (1 DCMR § 2841.15 and § 2841.16).

Recommendation 3

The D.C. Council should require DCRA to use a service delivery method other than the U.S. Mail.

Options include:

- Set up a process that allows DCRA to serve electronically. Such a process would require the owner or the agent (signatory on the BBL) to provide a working email address. Return receipt of an email could suffice as evidence of service.
- Interpret or revise 14 DCMR § 203 to mean that the agent must at all times have a working email address, advise of any changes within the same timeframe as changes to other contact information (7 business days), and monitor the email address regularly.
- Modify 16 DCMR § 3102 to include email as an acceptable mode of delivery of an NOI; to allow “return receipt” of email to serve as proof of service.
- Examine other provisions of DCMR and other processes within DCRA to ensure consistency, and/or find a better means to ensure the feasibility of using an email address.

Recommendation 4

DCRA should explore the use of delivery services (such as Federal Express) to serve. While the per-unit charge to deliver a notice is likely greater, it may be that the tracking services provided along with delivery would offset the cost.

Recommendation 5

The D.C. Council should require DCRA to re-inspect 30-day violations after 30 days, instead of 45. This could be achieved by reducing the allowance for service or starting internal processing and mail delivery service 15 days after the initial inspection, instead of waiting a full 30 days.

Failure to schedule re-inspections in a timely manner further lengthens the abatement period. SOPs are vague on the process to schedule re-inspections. The time to re-inspection is further lengthened when DCRA does not schedule re-inspections in a timely manner. Director Bolling acknowledged DCRA’s poor track record at a Committee of the Whole Roundtable held on July 12, 2017, but did not explain the cause. One explanation may be the vague discussion of the re-inspection scheduling process in the SOPs. Administrative support staff schedule all re-inspections, but the tracking procedures and the trigger to schedule re-inspection is unclear. Figure 6 illustrates how delays in re-inspections contributed to the lengthy time to cure for one NOV in Dahlgreen Courts.

Figure 6: A Lengthy Time to Cure for One NOV in Dahlgreen Courts

December 22, 2016: DCRA issued NOV CRM1700743 following initial inspection on December 21, 2016. Four violations were noted:

- 14 DCMR § 706.2 – Ceiling has crack(s)
- 14 DCMR § 706.2 - Wall has crack(s) with separation of parts
- 14 DCMR § 706.3. – Floor has crack(s)
- 14 DCMR § 706.4 – Floor has loose part(s)

The violations incurred a potential fine of \$400.

February 24, 2017: First re-inspection occurred 64 days later. This note refers to lead paint and DOEE as a justification for another follow-up on April 28.

April 14, 2017: (49 days later, and 113 days after the initial inspection): This date was scheduled, but the remark does not explain the results.

April 28, 2017: (14 days later, and 127 days after the initial inspection): A second re-inspection occurred and found that the violations were not abated.

July 6, 2017: (69 days later, and 196 days after the initial inspection): A third re-inspection found no violations. The entry refers to participation of OAG and DOEE, but it's not clear what representatives of these other agencies did at the site.

Because the violations in this unit were eventually abated, no fines were assessed.

Whether DCRA has adequate capacity in staffing and information technology to conduct re-inspections in a timely manner cannot be determined without a substantially more detailed study. DCRA's annual performance plan does not include the number of requests for inspection as one of its workload measures. ODCA was not able to find any other publicly available documents that report the number of requests for inspection. The Dahlgreen Courts case reveals one instance in which capacity was apparently inadequate; activity logs associated with the Dahlgreen Courts cases refer to delay caused by emergency deployment of inspectors to Sanford Capital properties. It is not known whether this situation is typical,¹⁷ but the practice has been noted by the Committee of the Whole. The May 2017 budget report noted that:

“Recently, the agency prioritized inspecting properties owned by Sanford Capital, by temporarily diverting all housing code inspectors to review the property owner’s 66-building portfolio. This approach is unsustainable and the agency should move away from addressing issues by way of crisis management. It’s fair to believe that Sanford Capital is not the only large property owner with substandard housing in the District.”

¹⁷ Director Bolling has referred to the anticipated use of predictive analytics in the near future, to plan proactively for variations in demand and reduce the need for complaint-based housing inspections. This strategy could potentially help DCRA deploy inspectors and other resources in a way that improves efficiency and effectiveness. However, predictive analytics is best at dealing with times of typical demand, not spikes.

Recommendation 6

DCRA should revise its SOPs to clarify who, how, and when re-inspections are scheduled. SOPs should also establish a target timeframe for re-inspections.

Extensions, which are not explicitly authorized in the DCMR, can add weeks to the timeline. Another source of delay between the initial inspection and issuance of a NOI relates to the practice of allowing the landlord additional time to address violations, apparently at the discretion of DCRA. Yet extensions are not authorized in the DCMR. With no legal framework, the Director unilaterally makes sure that DCRA grants extensions consistently and fairly. Language in the SOPs regarding criteria and procedures are both vague and contradictory.

ODCA was unable to determine how much this practice contributes to the typical time to cure because DCRA does not track the frequency or duration of its use of extensions.

Director Bolling testified at the July 17, 2017 COW roundtable that she made and changed policies on extensions, implying that DCRA does not have a formal process to enact or revise this policy. She gave an example of a broken appliance requiring a part that is still on order at the time of the re-inspection. ODCA is unable to assess the legitimacy of the claim of unavailability of parts.

Regarding criteria, SOPs stipulate that the property owner must demonstrate that work is in progress.

“Extensions are granted on a case by case basis if the property owner can show proof that work is in progress to come into compliance with the Housing Code requirements” (emphasis added).

In contrast, the DCRA website has somewhat different language, stating that:

“You may request additional time to correct the conditions specified in Notices of Violations... Extensions will not be granted unless you demonstrate that (a) you have been proceeding in good faith to correct the violations, and (b) there is good cause for the delay” (emphasis added).

Likewise, documentation on the need to request an extension in writing is contradictory. One section of the SOPs stipulates that the landlord must request an extension in writing.

“Extension requests must be submitted by the owner or representative in writing to the Chief Building Inspector, Department of Consumer and Regulatory Affairs...or by email to the attention of the Housing Inspector’s supervisor... Advise the customer to follow the process of submitting a written extension request.”

Similar language appears on the DCRA web page.

Elsewhere, SOPs imply that extensions are granted automatically, if the violation is not abated at the time of a first re-inspection.

“The re-inspection takes place to determine whether a property owner has abated the housing violations listed on the NOV. If the violations are not abated, a re-inspection is scheduled.”

The Dahlgreen Courts case suggests that DCRA does not follow its own documentation requirement. Records associated with Dahlgreen Courts did not include any written requests for extensions. Other than reference to lead paint inspections being conducted by DOEE, records did not include justification for the extensions.

The problem with deficient written records is discussed in greater detail in the next section. In short, the lack of clear and complete records undermines DCRA's ability to track individual cases. It also prevents the creation of a complete and durable record of activities by property. In turn, this keeps DCRA from detecting and analyzing trends across time and geography. Specific to extensions, criteria used to grant any one extension are unknown, much less the frequency of any specific criteria used to justify the granting of extensions, the frequency of allowing multiple extensions, or the frequency of granting extensions at all. With no written records, it is not possible to determine whether any individual extension is justified. DCRA should standardize and clarify its practices regarding extensions.

Recommendation 7

DCRA should provide complete and accurate information on the usual process of housing code compliance as it is actually carried out, including criteria used to determine and disclose the number of days allowed to the landlord to abate the violation.

Recommendation 8

The D.C. Council should require DCRA to revise the DCMR to allow extensions only when specific criteria are met, including clarifying the process for landlords to apply and DCRA to approve.

The DCMR does not require DCRA to issue a NOV before issuing an NOI. At the time of initial inspection and finding of noncompliance, inspectors issue NOVs that notify the landlord of potential fines. Following one or more re-inspections, fines do not become payable until a later stage in the process, when a NOI is issued. This gap lengthens the time to cure.

DCRA has used the flexibility in the DCMR to implement a housing code enforcement process that can lengthen the time to cure. The current practice is to issue a notice of violation upon finding noncompliance, regardless of the track record of the landlord or the building. If the violation is not abated after some interval of time, then a notice of infraction may be issued. However, the DCMR does not require DCRA to issue a NOV prior to issuance of a NOI. Several sections of the DCMR state that the code official can issue a notice of violation and notice of infraction simultaneously, or skip the notice of violation altogether and go straight to the notice of infraction. Specific code language is included in Appendix G.

Just as issuing a NOV first in all circumstances does not serve the public interest, skipping the NOV or issuing it simultaneously with the NOI in all circumstances is not in the public interest, either. Some landlords will respond quickly to abated violations without expedited enforcement.

Recommendation 9

The D.C. Council should require DCRA to revise the DCMR to combine the NOV and NOI or bypass the NOV altogether for properties that meet specific criteria. These criteria might include properties that house vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property subject to the complaint.

Recommendation 10

DCRA should implement KPIs that measure the time to cure as a whole, including the time between the initial inspection and issuance of a NOI or time to abatement. Indicators might include the average number of days to first re-inspection for 30-day violations; number and percentage of NOVs in which an extension was allowed; average number of days to cure; average number of days between issuance of a NOV and issuance of a NOI.

DCRA does not exercise its current authority to provide the strongest possible deterrent to housing code violations.

The deterrence value of DCRA's current housing code enforcement process is unknown. DCRA does not record resources used in enforcing the housing code or the incidence of housing code violations.¹⁸ Without this information, ODCA is unable to predict the effect of various options. It is also unable to recommend practices that would be effective in deterring unwanted outcomes.

Nonetheless, increasing the cost of noncompliance to property owners would likely reduce its incidence. Because DCRA does not publish data on housing code violations,¹⁹ landlords suffer no loss of reputation due to noncompliance with the housing code (unless the media or advocacy organizations publicize the situation). Prospective tenants should have access to this information when making their own housing decisions. Nor is the landlord prevented from operating the rental property as usual, entering into new financial arrangements with tenants, the District, or others, expanding operations or seeking renewal of a business license. Prospective tenants should have access to this information when making their own housing decisions.

Recommendation 10a:

The D.C. Council should limit business activity of problematic landlords (who meet defined criteria). This could include prohibiting landlords from entering into new rental agreements, requesting or receiving new financial support from any city agency, or renewing a business license.

Recommendation 10b:

DCRA should publish data on housing code violations by buildings and landlords, to allow tenants to make better informed decisions regarding their housing.

The primary cost of noncompliance is the payment of financial penalties. Housing advocates have argued that the fines are insufficient to deter landlords from violating the housing code. While they have not presented any concrete evidence to support this claim, it may be obvious that landlords would desist violating the housing code when the cost of doing so exceeds the benefit.

The fine collection process, per se, is beyond the scope of this evaluation because a separate study is underway. In October 2017, the Office of the Inspector General (OIG) notified DCRA that it would "assess the efficiency and effectiveness of DCRA's processes for collecting fines, special assessments, and penalties attached to violations of laws and regulations under its jurisdiction." Fines may become not payable if OAH finds that the violation has been

¹⁸ Official documents furnish figures for the annual budget for the unit and the number of FTEs. In public meetings, the Director has been able to provide the dollar value of fines actually assessed, although not matched to the number, type or timing of violations.

¹⁹ DCRA's annual performance plan does not include the number of housing code violations as one of its workload measures. ODCA was not able to find any other publicly available documents that report the number of housing code violations.

abated, or if enforcement is otherwise discontinued. Yet the failure to deter, including the low rate of collection has been cited as a concern of the COW, whose May 2017 budget report includes the following commentary:

“The Committee believes DCRA should be more stringent in citing, issuing and collecting fines from housing, zoning, and construction code violators. The number of fines issued versus the amount of funds collected is surprisingly low. The agency cited a myriad of obstacles ranging from statutory, regulatory, and administrative issues that slow the collection of these fines. The Committee looks forward to working with the agency to identify solutions to those challenges. The Committee also would like to see the agency exercise a greater willingness to refer habitual violators to OAG or even revoke licenses in the most rare and egregious incidents. Fines and other punitive actions are tools, to not only penalize but to deter bad actors and negligent behaviors, and should be used objectively to safeguard consumer protection in the District.”

The real monetary value of fines has been declining since 2005. The deterrence value of most fines has been eroding since 2005, when the current schedule of fines for most civil infractions was adopted (16 DCMR § 3201). The only exception related to housing code noncompliance is that fines for Class 1 infractions (the most serious) were doubled as of October 1, 2017. To keep up with inflation since 2005, the fines should be more than 25 percent higher.²⁰

Recommendation 11

The D.C. Council should significantly increase the dollar value of fines by at least 25 percent.

DCRA does not assess fines to the full extent allowed by the DCMR. The DCMR (14 DCMR 102.7) provides that, “In the event of any failure to comply with any provision of this subtitle, each and every day such violation continues shall constitute a separate offense.” (emphasis added). In the Dahlgreen Courts case, DCRA assessed a fine for each violation only once.

Recommendation 12

DCRA should charge a fine for each additional day that a violation persists, as currently allowed in 14 DCMR § 102.7. This measure could be limited to problematic properties or landlords.

The re-inspection fee is not adequate. The NOV states that “A \$90 re-inspection fee will be assessed for each re-inspection required.” The cost to collect and process this small fee could easily overwhelm the dollar value of the fee. DCRA could raise the fee to a level high enough to recoup the cost of re-inspection, plus administrative costs related to charging and collecting the fee.²¹

Recommendation 13

The D.C. Council should increase the re-inspection fee, or eliminate it altogether.

²⁰. Using the consumer price index (CPI-U), prices increased by 25.3% from 2005 to the third quarter of 2007.

²¹. Further study would be required to determine the actual cost of re-inspection.

DCRA does not calibrate enforcement practices according to the circumstances of the property or the track record of the landlord.

The housing inspections program does not differentiate enforcement practices of properties that house vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property subject to the complaint. Yet DCRA recognized Dahlgreen Courts as a problem property. In its response to the “admission with explanation” filed by Dahlgreen Courts, DCRA stated that Dahlgreen Courts:

“Has shown little regard for the law and what is more, it has shown little concern for its tenants. As DCRA has initiated numerous cases against Respondent prior to these consolidated cases, Respondent has a long history of failing to abate housing violations, forcing tenants to live in unsafe and unhealthy environments. Respondent does not deserve any leniency from this Court.”

This track record might make Dahlgreen Courts and other Mission First properties good candidates for a heightened level of scrutiny and a more rigorous approach to enforcement.

Recordkeeping, case tracking, reporting, and communication are not adequate to protect the health and safety of tenants.

Recordkeeping, tracking, reporting, and communication encompass DCRA’s internal systems to monitor and manage the flow of complaints, ensure resolution of cases, treat similarly situated properties consistently, and provide enough transparency to assure the public that it is executing its mission to keep residential rental properties and units healthy and safe. Those activities also allow D.C. Council to perform its oversight function.

The Dahlgreen Courts case, despite heightened scrutiny from D.C. Council, the press, housing advocates, and tenants, demonstrates that these systems are inadequate. Documentation is inconsistent and incomplete, follow-through is haphazard, recordkeeping is opaque, and external reporting is meager. Failure to effectively document and track enforcement activities contributes to ineffective and/or inconsistent enforcement, and impedes the ability of DCRA to improve enforcement activities.

DCRA provided a list of NOIs and copies of NOV’s (including related activity logs) from the Dahlgreen Courts case. This information is not readily publicly available. Details on the resolution of these cases are provided in Appendix D. ODCA analyzed these documents for internal consistency and completeness. ODCA also compared DCRA records to PIVS data and additional documents provided by OAH.

Recordkeeping systems fail to comprehensively and consistently capture enforcement activities. At a minimum, effective enforcement requires documentation of all enforcement activity in sufficiently accurate detail to allow case status monitoring and supervisory follow-through. DCRA documents pertaining to Dahlgreen Courts contained numerous gaps and inconsistencies. This study interprets these gaps and inconsistencies as evidence of both poorly executed documentation, and poorly executed enforcement activities.

Records do not provide a clear and durable record of enforcement activity. Property-by-property recordkeeping may be adequate for staff involved in a case while it is active. But it does not provide enough detail for someone outside of the agency to piece together events retrospectively. More importantly, it does not allow DCRA to do its job.

While a case is open, DCRA staff record activity in “activity logs.” The entries are created incrementally, and as a result, generally do not create a full narrative. A reader must be familiar with the process to be able to identify key milestones. As an example, Figure 7 shows the activity log that is part of the record of a single unit at Dahlgreen Courts. Several entries leave questions unanswered.

Figure 7: Activity Logs Do Not Provide a Clear and Durable Record of Enforcement Activity

12/22/2016	12/12/16: Spoke with [REDACTED] @ 2:25pm informing customer of inspection date 12/21/16. (AS) Scheduled per Supervisor Gamboa. Complaint: Building Wide	CWTAYLOR
12/22/2016	Tenant: [REDACTED] On 12-21-16 An Building Wide Inspection was conducted on the above unit and during the inspection there were multiple violations that has reason for CAUSE.	
01/26/2017		STURNER
02/17/2017	Reschedule (holiday)	STURNER
02/24/2017		CWTAYLOR
02/24/2017	On 2/24/17 An re-inspection was conducted on the above unit and during the inspection due to the lead Paint inspection(DOEE) the inspection will be conducted on 4/28/17 at the completion of their task.	
04/28/2017	On 4/28/17 an re-inspection was conducted on the above unit and during the inspection the violations that were picked up are NOT ABATED and will be referred to enforcement for further action.	
04/14/2017	Scheduled per Supervisor Gamboa.	AWILLIAMS
04/14/2017	Complaint: Building Wide On 04/14/2017 Inspector Derron Manning conducted this inspection.	
07/06/2017	Scheduled per Supervisor Gamboa.	DMANNING
	Complaint: Building Wide Tenant: [REDACTED]	

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- “Complaint: Building Wide” could mean that the unit was inspected as part of a building-wide check, rather than a call from the tenant. Or it could mean that the inspection of this unit led to a building-wide check.
- “Reason for CAUSE” would not be meaningful to someone not familiar with this particular legal term.
- A blank entry on 1/26/17 is unclear.
- The reference made to “Reschedule (holiday) on 2/17/17 is unclear.
- The entry on 2/24/17 refers to lead paint and DOEE, but it is not clear if a DOEE inspector was on site on this date or if a DOEE inspection would be needed.

An additional gap with the activity logs provided is that they do not consistently refer to the record identifier, known as a CAP.²² Among 24 NOVs examined for this study, only 10 listed a CAP. The CAP is the identifier that connects a NOV from DCRA to a NOI processed by OAH.

²² “CAP” is an acronym used in the Accela information system, which stands for Case, Application, or Permit. CAP refers to the basic record used to manage a process, such as a request for inspection.

Recordkeeping is incomplete. DCRA was unable to provide complete documentation related to enforcement activity at Dahlgreen Courts for the study period December 1, 2016, to September 30, 2017. DCRA provided documentation for 27 NOV²³, but OAH and PIVS²⁴ records reveal additional enforcement activity. ODCA examination of OAH case files revealed that DCRA issued two additional NOV^s during the study period, related to other units in Dahlgreen Courts.

PIVS listed a total of 50 property code compliance issues that appear to be in the same range as the records provided by DCRA. Specifically, these 50 issues listed “completion dates” in the same range, and had a similar “completion status.” As an example, Figure 8 below displays 11 PIVS records with a “completion date” of December 29 and 30, 2016. DCRA provided only five of them, as shown in the far right column. Either DCRA provided incomplete documentation, DCRA does not fully document its activity, or PIVS does not accurately reflect compliance activity.

Figure 8: PIVS and DCRA Code Compliance Issues Lists Differ for December 1, 2016, Through September 7, 2017

PIVS ID	Completion Status	Completion Date	Provided by DCRA
CRHS1700002	(blank)	12/30/2016	no
CRM1700879	Cause For Action	12/30/2016	yes
CRM1700880	Cause For Action	12/30/2016	yes
CRM1700883	Cause For Action	12/30/2016	no
CRM1700881	Cause For Action	12/30/2016	no
CRM1700825	Inspection Scheduled	12/29/2016	no
CRM1700878	Inspection Scheduled	12/30/2016	no
CRM1700732	NOV Served - Mail	12/29/2016	no
CRM1700873	NOV Served - Mail	12/30/2016	yes
CRM1700869	NOV Served - Mail	12/30/2016	yes
CRM1700870	NOV Served - Mail	12/30/2016	yes

Another problem of incomplete recordkeeping is that DCRA does not track outcomes of appeals to be heard by OAH. In the Dahlgreen Courts cases, NOIs were served on June 26, 2017. The final order was issued by OAH on July 31, 2017. Yet DCRA documentation on this case, sent from DCRA to ODCA on October 18, 2017, noted the status as “awaiting OAH decision.” By not tracking outcomes, DCRA is unable to make sure that individual cases do not slip through the cracks, much less monitor trends over time, geography, ownership, or other characteristics of violations and enforcement.

Information in PIVS bears little relation to the information captured in activity logs. PIVS data on enforcement activity at Dahlgreen Courts during the study period reflect that each NOV has a completion status of one of the following: case accepted; cause for action; NOV served – mail; abated; inspection scheduled; or case canceled. With few exceptions, these statuses do not match information in activity logs.

23. As noted previously, five were excluded from study in order to focus on 30-day violations stemming from initial inspections in December, 2016.

24. PIVS is a web-based system that allows individuals to look up regulatory and enforcement characteristics of specific properties. PIVS data, along with data of the Office of Tax Revenue (OTR), are supposed to serve as backup sources of correct addresses when an address does not populate automatically in Accela. PIVS data may be problematic, too; PIVS data for this period listed the NOV^s provided by DCRA, but it missed one of the two additional NOV^s provided by OAH.

For instance, activity logs provided by DCRA show that Dahlgreen Courts abated all violations related to 12 of the 24 NOVs issued in December 2016. PIVS records, recreated in Figure 9, only list the status of one of these NOVs as “abated,” although this notation was apparently entered two months prior to the corresponding entry in the activity log.

Figure 9: PIVS Entries Do Not Match Abatement Information in Activity Logs

Abated, per activity logs	ID	PIVS: completion status	PIVS: completion date
7/6/2017	CRM1700872	Abated	5/8/2017
4/28/2017	CRM1700743	Case Accepted	6/14/2017
7/6/2017	CRM1700861	Case Accepted	6/5/2017
7/6/2017	CRM1700746	Case Accepted	6/14/2017
7/6/2017	CRM1700744	Case Accepted	6/14/2017
7/21/2017	CRM1700875	Case Accepted	6/5/2017
7/28/2017	CRM1700741	Case Accepted	6/2/2017
2/24/2017	CRM1700914	Cause For Action	1/11/2017
4/28/2017	CRM1700879	Cause For Action	12/30/2016
4/28/2017	CRM1700880	Cause For Action	12/30/2016
5/26/2017	CRM1700549	NOV Served - Mail	1/6/2017

For all but one of the December 2016 Dahlgreen Courts NOVs provided by DCRA, PIVS lists a “completion date” prior to the final entry in the NOV activity logs, suggesting that DCRA does not update case information in PIVS.

Inspectors attempted to visit some units during the months of February through September 2017, with no discernable pattern of which units were attempted in which months, and how many times the inspector attempted before the record ends. PIVS lists completion dates for NOVs in December 2016 or January, May, or June 2017.

Existing recordkeeping practices do not allow either cross-sectional or longitudinal summary, much less the identification of patterns or point-in-time summaries. Director Bolling has said that DCRA is a property-based agency, and it does not perform well when trying to identify patterns across properties and landlords. As a result, DCRA cannot determine whether any specific case is exceptional, is part of a larger trend or pattern for the property owner, building type, Ward, time of year, or passage of time. DCRA also cannot report the level or nature of enforcement activity at any point in time or during a period of time, nor can it compare longitudinally across multiple points or periods of time. Without cross-sectional or longitudinal information, neither DCRA nor the D.C. Council can make informed decisions about the deployment of inspectors and use of resources.

DCRA does not have information technology in place that would allow this functionality. DCRA has not developed manual processes as a substitute. Manual processes would be relatively more time and labor intensive than digital recording, compiling, and collating of data. However, in the absence of technology, a manual process might be the only viable option.

Without adequate records, DCRA cannot reliably track cases, which leads to haphazard enforcement of the housing code. Housing code violations are enforced unevenly. The nexus between the nature of violations and the eventual disposition of each case is unclear. Among 24 NOVs issued in December 2016, only six led to a NOI, but it is not clear why these six specific cases were chosen for further enforcement. The incidence of lead, severity of violations, and duration until abatement (cure) for these cases are not notably different from the cases that were closed without fines.

This problem has not been limited to the Dahlgreen Courts case. The Committee of the Whole noted this concern in its May 2017 Budget Report:

“The Committee is also troubled about inspector’s lack of to [sic] report housing code violations in a standardized manner. The Committee has been made aware, in many instances that obvious violations of the code are missed, or left uncited. Inconsistencies in reporting can leave tenants vulnerable to negligent landlords and substandard housing conditions. Without proper documentation citing accurate violations, tenants may lack evidence necessary to protect their rights before a court or administrative hearing.”

Uneven enforcement is also the result of a case going cold, according to documentation, when an inspector is not able to gain access to a unit. As noted in the activity logs, the reason for a missed inspection appointment can be particular to the tenant, such as inability to get away from work to reschedule a previous commitment. Tenants also have the right to refuse entry. Lack of access can also be the result of the tenant moving out. In either case, enforcement stops. DCRA is unable to determine whether the landlord has abated the violation, unless the next tenant calls in a complaint.²⁵

While the housing inspections process contemplates treating all properties equally, the execution and results of the process appear to be unequal. The serious implication of this finding is that landlords might know or assume that fines are not a certain outcome of violations, further undermining the deterrence value of DCRA’s enforcement efforts.

Without adequate records, DCRA cannot report on enforcement activity or report on trends. Individuals outside of DCRA have very limited access to real-time or retrospective information on the status or resolution of individual housing-code complaints, much less trends or patterns. Limited information on previous housing code complaints is available through PIVS (<https://pivsservices.dcrd.dc.gov/PIVS/Search.aspx>). However, PIVS does not provide complete information on housing code enforcement activity.²⁶ Even if an individual knows to look up residential cases in PIVS, the listings are unintelligible. No key is provided, and no information is linked or sourced. Examples from the Dahlgreen Courts cases illustrate the gaps.

Example 1: Violations in this unit were originally cited on December 21, 2016. The last entry in related activity logs refer to a finding on July 6, 2017, that the violations had been abated. The landlord paid a fine in early August 2017. Yet PIVS reflects only that a case was accepted on June 14, 2017. This does not correspond to a date in OAH case files. The image below was recreated from PIVS data accessed on August 1, 2017.

2504 10TH ST NE # [REDACTED] WASHINGTON, DC 20018	[REDACTED]	3844 0816	CRM1700746	Compliance/ Housing/Routine Maintenance	Case Accepted	2017/06/14
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25. Housing advocates have suggested the possibility that some landlords purposefully keep vacant units in a poor state of repair until the entire building can be renovated to market-rate units. When this is the case, the city loses affordable housing.

26. Concerns with recordkeeping date back to at least 2005, when a DCStat report noted that, “Permitting and Inspections depend on five independent automated systems that are required to be integrated but are not,” and “There are eight data entry points (many re-entries) with no coordination or validation resulting in internal discrepancies and inaccuracies on the public DCRA web site.”

Example 2: Violations in this unit were originally cited on December 21, 2016. The last entry in related activity logs refer to a finding on April 2017 that the violations were still pending. The landlord paid a fine in early August 2017. Yet PIVS reflects only a status only that a case was accepted. The image below was recreated from PIVS data accessed on August 1, 2017.

2520 10TH ST NE, APT # [REDACTED] [REDACTED] WASHINGTON, DC 20018		3844 0820	CRM1700542	Compliance/ Housing/Routine Maintenance	Case Accepted	2017/06/21
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With very limited documentation of housing inspection activity, ODCA cannot assess the appropriateness of staffing levels and deployment. As noted earlier, KPIs do not capture measures of demand for housing inspection services, such as the number of tenant complaints, the number of violations found, the number of units and buildings inspected. Workload measures list the number of residential inspections conducted, as well as the number of proactive inspections (which are presumably conducted by the same unit). Workload measures do not include the number of re-inspections conducted, the number of NOIs issued from residential inspections, or any activity related to notification, interface, or reporting related to current cases.²⁷

The DCMR only requires initial notification to the tenant who submitted a complaint, but no follow-up. Tenants who submit complaints do not receive status updates.²⁸ Moreover, members of the public who try to obtain public records related to housing inspections (and many other DCRA functions) are forced to file a Freedom of Information Act (FOIA) request.²⁹ According to an Office of Open Government (OOG) advisory, as referenced by the COW FY 2018 Budget Report, DCRA has had a long history of not complying with FOIA law. It states that:

“the District’s FOIA laws have been in existence since 2001, and DCRA has not been able to comply with them since their inception. The opinion also found that DCRA has not complied with the requirement that public records not requiring a FOIA request for inspection be posted to the agency’s website.”

In addition to causing frustration for tenants and signaling lack of concern for residents, this policy forces tenants to be passive participants in the process, waiting for an indeterminate period of time for city officials to solve their problems for them. This is in conflict with the District’s commitment to transparency and accountability, as interested persons are unable to look up the status of a case or see what steps have been taken. Without information, tenants are unable to advocate for themselves. They are left waiting for DCRA to come through on a timeline that is unknown to them.

The Mayor and the D.C. Council do not receive regular reporting from DCRA on trends and patterns of housing code compliance. This failure represents a lack of transparency and accountability. The D.C. Council does not know how well DCRA is protecting tenants, some of whom are vulnerable and may be in need of protection by the D.C. government.

27. A 2005 DCStat report listed measures of activity that gauged performance of DCRA and that would provide a useful point of contrast, if DCRA were able to provide updated statistics. Without current statistics, Council has no way of knowing whether DCRA has improved its operations over time in these areas.

“Inspection and re-inspection of properties that continually fail to meet the basic housing codes add \$1.8 million in costs to the District”

“Just 4% of problem properties account for over 40% of the violation notices issued in FY2004.”

28. A housing advocate for the Latino Economic Development Center (LEDC) raised this concern at a 2016 oversight hearing.

29. At a Public Oversight Roundtable held by the Committee on Business, Consumer, and Regulatory Affairs (July 13, 2016), housing advocate with Bread for the City said that in his experience, tenants and advocacy groups can only get copies of NOV’s by filing FOIA requests.

Advocates, potential tenants, the press, and the public are not able to ascertain the track record of landlords.

Many properties are owned by limited-liability corporations (LLCs), and business licenses for the properties are held by LLCs. As a result, DCRA often cannot identify owners of multiple properties, much less identify when a single owner is behind multiple problem properties. At a July 2017 roundtable, Chairman Mendelson asked the Director of DCRA why the agency was able to identify such owners in the past. The Director replied that the method used to identify those owners was not efficient.³⁰ This response suggests that identifying those owners is possible, but is not a priority.

Recordkeeping is inconsistent, insufficient, and opaque. Records do not provide full information or reflect all activity. Follow-through on specific cases is inconsistent. Tracking across cases does not occur. An example of inconsistent records in the Dahlgreen Courts case is provided in Appendix H.

Inspectors should be able to use categories and/or develop standard language that can be cut and pasted. An ideal system would allow the recordation of metadata for each record, where the metadata would allow indexing by key characteristics. For instance, every record could contain identifiers by inspector, location, whether an initial or subsequent inspection, and the violations cited. With this information, DCRA could determine how often inspectors are visiting specific buildings, how often violations of each type occur and how often they are resolved by the first re-inspection, and whether specific inspectors tend to cite some violations more than others. Collection of these data would allow tracking over periods of time and the creation of aggregate data over periods of time, such as:

- Number of initial inspections conducted.
- Number of first re-inspections conducted.
- Number of second or subsequent re-inspections conducted.
- Dollar value of potential fines assessed.
- Dollar value of potential fines foregone.
- Actual minimum, maximum, and typical time to cure.
- All of the above in total and by type and severity of violation, building type, site, property owner or geography.

The Director has stated that online lookup in real-time is not within reach. Staff could be assigned to expedite processing, take ownership of cases, act as points of contact for the public, and monitor and report on activity. This level of attention could be limited to properties meeting specific criteria. These criteria might include housing vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property.³¹

Recommendation 14

The D.C. Council should require DCRA to standardize recordkeeping in activity logs. Standards should ensure the collection of enough information and the right type of information to be able to initiate each case appropriately and allow for inspectors to report on results of inspections and required next steps.

Recommendation 15

The D.C. Council should require DCRA to make inspections and case data available through the District's open data portal.

³⁰ In July 2017, Mayor Bowser asked Council to consider the Landlord Transparency Amendment Act. If enacted, the City would be able to subpoena ownership data for problematic properties. (Rental properties can be owned by LLC's, in which ownership is legally veiled.)

³¹ A variation on this approach have been suggested by a housing advocate (Sam Jewler, Bread for the City).

Recommendation 16

The D.C. Council should require DCRA to make information on pending and past cases available to the public.

Other functions of the D.C. government could better support the District's efforts to protect the health, safety, and quality of life of residents in affordable housing.

Many other District and federal agencies perform overlapping inspections, more so when public money is involved. With many agencies conducting inspections, the public, tenants, and property managers may be confused as to who is keeping watch. Sending inspectors from multiple agencies is also problematic because it could burden residents who may have to open their homes to representatives of multiple agencies. It might also not be the most cost-effective way to dispatch inspectors.

Many District programs and agencies that touch affordable housing do not consider the track record of the property owner when contemplating new arrangements (such as financial support). DCRA has a front-line role in protecting tenants, but other opportunities exist to ensure that problem landlords do not persist (or pressure landlords to comply) and expand their holdings within the District. It seems that these programs could be aligned to support housing code compliance, if nothing else, to consider whether a landlord or developer is a known problem. A stronger step would be to get them to make compliance with the housing code a condition of approval for financial support programs. Stronger still would be to add a mechanism that forces repayment (or some other financial penalty) if the landlord or developer fails to comply.

District programs and agencies that provide financial support for affordable housing do not include protection of tenants in their strategic objectives.

The Department of Housing and Community Development (DHCD) FY 2019 strategic objectives listed here recognize the importance of increasing and preserving affordable housing, but do not explicitly seek to protect tenants.

- Increase New Affordable Housing Opportunities.
- Preserve Existing Affordable Housing Stock.
- Promote community development activities.
- Create and maintain a highly efficient, transparent and responsive District government.

Similarly, the Office of the Deputy Mayor for Planning and Economic Development (DMPED) FY 2019 strategic objectives refer only to new housing opportunities.

- Deliver high-quality economic development and affordable housing opportunities that meet the needs of residents and the business community across all 8 Wards.
- Increase job creation in DC by attracting and retaining businesses, thereby growing tax revenue, particularly in Wards 7 and 8.
- Improve public engagement by creating more opportunities for community participation and feedback and by highlighting the economic climate and development of the District.
- Utilize tech innovation & open data to drive positive change and good government for D.C. residents.
- Create and maintain a highly efficient, transparent and responsive District government.

Finally, the mission of the District of Columbia Housing Finance Agency (DCHFA) is to provide and preserve affordable rental housing and home ownership opportunities in the District of Columbia. Yet published underwriting criteria for DCHFA housing programs do not include a check of the applicant’s track record or current violations within the District or neighboring jurisdictions. DCHFA does require that the proposed management company submit, “a listing of the firm’s current portfolio of properties under management and a five-year report of total units under management,” but with no related performance standards.³²

Recommendation 17

The D.C. Council should require programs that provide financial assistance to developers to consider applicants’ track records in complying with the housing code.

Recommendation 18

The D.C. Council should establish more stringent housing code enforcement standards for publicly supported affordable housing properties.

Recommendation 19

In the course of its oversight hearings, the Council should seek testimony on options to support the preservation of affordable housing in DCHFA, DCHD, and other agencies’ programs.

32. DCHFA also requires that the proposed management agent have adequate experience to operate the property, and agree to comply with federal and local fair housing and landlord-tenant laws.

Conclusion/Summary

Poorly executed documentation, inadequate tracking, and inconsistent enforcement activities (specifically, follow-up inspections and issuance of NOIs) contribute to a lack of transparency and accountability, and, most importantly, failure to protect the health and safety of tenants.

Problems at DCRA have long been a source of concern. A DCStat³³ executive briefing from 2005 “identified the myriad of tactical and strategic issues that have not been systematically addressed.” Many of the concerns identified then appear to persist at DCRA. A key finding related to service improvements was, “A subjective inspection process combined with limited accountability results in uneven reporting in District areas and opens the door to abuse.” In 2007, a newly-elected Mayor Adrian Fenty criticized DCRA, saying that the agency’s management, administration, and structure were substandard. Yet he did not plan to address this through any sort of reorganization.³⁴

District of Columbia officials identified high leadership turnover at DCRA as a concern more than 13 years ago. DCRA has had six directors since 2001, with an average tenure of less than three years³⁵ most coming in with a new Mayor.³⁶ While a change in leadership is an opportunity to take an agency in a new direction, turnover can undermine efforts to improve performance. This is because of the lack of continuity and follow-through which results from a change in administration. Turnover in leadership further reduces accountability because each Director can dismiss past problems as the fault of his or her predecessor, and/or policies of the previous Mayor. Because many core housing inspection processes are set by the Director, and each successive Director necessarily strives to distinguish him- or herself from the previous administration, reform efforts are likely to stall each time a new Mayor is elected. Moreover, staff has an incentive to “slow-walk” changes if they are perceived to be of temporary nature or priority.³⁷

Current language in the DCMR allows but does not require much more rigorous enforcement of housing code violations. The current leadership of DCRA has signaled a preference to continue the current enforcement regime. To improve housing code violation outcomes for tenants and preserve a greater proportion of affordable housing stock requires significant change. DCRA could alter the process to shorten the time between the issuance of a NOV and the issuance of a NOI, improve transparency and accountability, and deter violations by increasing financial penalties, among a long list of improvements that do not require statutory change. And the D.C. Council could require even more significant protections by mandating faster, more effective enforcement actions.

33. DCStat was an OCTO (Office of the Chief Technology Officer) program that compiled and made available for download, for the first time, a wide range of government operational data.

34. Michael Neibauer, “Fenty: ‘Everything’ wrong at DCRA, Washington Examiner, Apr 10, 2007, accessed at <http://www.washingtonexaminer.com/fenty-everything-wrong-at-dcra/article/84902>

35. The current director, Melinda Bolling, has led DCRA since July 14, 2015, after having previously served as DCRA’s General Counsel.

36. Two directors served under Mayor Anthony Williams.

37. The 2005 DCStat report noted that “High leadership turnover has contributed [to significant, systemic issues at DCRA] with false starts and conflicting direction within the Agency.”

Agency Comments

On July 16, 2018, we sent a draft copy of this report to DCRA for review and written comment. DCRA responded with comments on August 16, 2018. Agency comments are included here in their entirety, followed by ODCA's response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



August 16, 2018

Ms. Kathy Patterson
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005

RE: A Failure of Housing Code Enforcement: A Case Study

Dear Auditor Patterson,

DCRA welcomed the audit and continues to stress that DCRA has made significant changes to its Property Maintenance Division and enforcement processes and believes in its role of ensuring that residents reside in code compliance buildings. Moreover, we absolutely care about making sure residential properties and publicly-supported or subsidized housing for low income residents are safe, up to code, that landlords are responsive to repair and code issues, and that DCRA is quick to inspect to ensure units are suitable for our residents.

Mayor Bowser's budget requests show her agreement that more inspection resources are necessary and valued. A companion piece to the oft-stated value and large investments the Bowser Administration has made in building and preserving affordable housing is being sure that affordable housing is safe and livable. We certainly agree with the principle generally that many landlords put off repairs and we abhor any practices where landlords drive out low income residents so that they can regain possession of a vacant building for development.

District of Columbia laws require landlords to provide apartments that are in a safe and habitable living condition. The landlord has a duty to make all repairs necessary to make buildings and apartments habitable. DCRA's Property Maintenance Division (PMD) is responsible for inspecting all rental units in the District of Columbia. The PMD's scope of authority is established in D.C. Official Code §42-3509.08. This Code section lays out the mechanism for the inspections of rental housing.

Contrary to the Auditor's statement that DCRA could better protect tenants through a more rigorous and timely enforcement of the District of Columbia Property Maintenance Code, which consists of the International Property Maintenance Code as amended by the Property

Maintenance Code Supplement of 2013 (12-G DCMR), DCRA has made significant efforts to improve its enforcement of property maintenance violations. DCRA response was appropriate and that was not the case with this project.

After careful review of the Case Study, DCRA challenges some general conclusions and exaggerations provided. First, DCRA disagrees with the title of the Case Study “A Failure of Housing Code Enforcement: A Case Study”. A better title would be “Housing Code and Environmental Code Enforcement: A Case Study on Dahlgreen Courts”. Second, because the case study did not evaluate Department of Energy & Environment’s (DOEE) enforcement of the lead remediation issues at Dahlgreen Courts, one would read this Case Study and attribute all delays or responsibility for problems to DCRA. The statements provided – anecdotally – in the Case Study about DC Housing Finance Agency (DCHFA), Department of Housing and Community Development (DHCD) and DOEE demonstrate the limitations of the Study’s approach of honing in on DCRA, rather than suggesting how to improve a District-wide or interagency response.

DCRA suggests that the use of the Dahlgreen Courts project as the focus of a case study was inappropriate because it does not and did not represent DCRA’s typical enforcement of the property maintenance code, as the Study itself acknowledges. Nor does it represent the improvements DCRA has made during the Bowser Administration. The lead paint issues in a historic building like Dahlgreen Courts took precedence – as they should have. During the Dahlgreen Courts inspection, DCRA did in fact bifurcate the DCRA inspection process from the DOEE lead based paint enforcement and abatement. Moreover, based on the Dahlgreen Courts matter, DCRA has changed its enforcement process. Specifically, DCRA conducts inspections and re-inspections and issues fines if the violations have not abated, regardless of other agency enforcement actions that might be needed. Lastly, the Case Study statement that “DCRA Director Melinda Bolling has acknowledged that DCRA does not coordinate inspections with any other agencies” is inaccurate and misleading. In fact, DCRA works closely with DC Health, DOEE, Department of Public Works, and the Metropolitan Police Departments when conducting inspections. This misstatement should be removed.

We also have some methodological concerns, to the extent that tenant reports of “poor quality work” are not supported. The statement provided in the Case Study from the tenants may provide some guidance on their view of the construction; however, the construction was approved by DCHFA and DHCD. No additional evidence supports the claim that Mission First’s contractors used poor construction methods. Additionally, to hold DCRA responsible for enforcing poor construction that allegedly occurred in 2010 – 2012 is unfair. Until an expert provides evidence of poor, illegal or unsafe construction, any statements in the Case Study suggesting that should be removed.

Most of the recommendations are addressed to Council, when we think that reforms are in process and most of the matters discussed are quintessential Executive Branch functions, not

amenable to Council action. Specifically, the broad powers of the Executive are defined in DC Official Code §1-204.22, which grants authority to conduct the affairs of District agencies under her jurisdiction. Moreover, the Executive and her designee, the Director of DCRA, must continue to have discretion to extend the times for repairs, given the various levels of complexity for building repairs and timeframes for ordering parts, finding contractors, gaining access to units etc., That said, the ways in which discretion is granted can and should be more clearly articulated.

We agree that inspections and re-inspections can be more efficient. DCRA conducts approximately 1,000 inspections per inspector per year. In FY 17, through the Mayor's budget and the Council, DCRA was able to hire 11 (eleven) property maintenance inspectors and (1) one manager. With the increased number of inspectors, DCRA has been able to increase its inspections and re-inspections. We continue to use photographic evidence, submission of receipts and tenant verification by phone that repairs were made. However, the submission of receipts, photographic evidence and tenant verification does not necessarily support that the work was done and complies with the code. As indicated above, non-technical and/or non-expert verification can lead to confusion and misinformation. DCRA agrees that a tenant can provide basic information regarding conditions; however, technical experts are needed to determine the cause of the problem, whether the problem is a violation of the code, and whether the repairs brought the conditions up to code. Relying on tenant reports and submission of receipts may save time on sending people out, but it is not appropriate where the repairs cannot be verified by laypersons such as tenants or by photographs, as is the case with structural issues, electrical issues and many other issues.

We agree that a significant problem hampering inspections and repairs is when the tenants are not home, refuse notice, refuse access, or simply must reschedule based on their availability. We also agree that DCRA's rescheduling of inspections and re-inspections can affect timeliness; however, DCRA must remain flexible to accommodate owners, tenants, and emergency responses to other District residential buildings. Scheduling is an on-going concern of the Director and during the last three years, DCRA has improved in the scheduling, coordination, and notice of cancellations of inspections. Many residents still do not have access to e-mail or cell phones that could assist us in reaching the residents more quickly and more efficiently.

We reject the suggestion that service be made by FedEx because it is too costly and can be inefficient because the recipient must accept the service and be available at the delivery. Certified mail has been determined to be inefficient as well and provides no better service because there is no guarantee that a person will pick up the certified mail. The legal mailbox rule has been in place for decades and has legal support, presuming that what was mailed was in fact received. Also, regrettably, email – so efficient in many business matters – is not a perfect solution. Many people still do not have e-mail and e-mail service under current law also obligates the agency to physically post the property. However, we do agree that an active e-mail account for licensed property owners should be required, and DCRA

tracks emails for those who go through the portal, but any matters updated outside the portal cannot be confirmed by email. Further, DCRA cannot control whether the e-mail is received and read by the owner of the property. With those caveats, DCRA is continually looking at ways to improve service and to notice violations.

DCRA has made significant improvements in the overall management of the Property Maintenance Division. Those improvements include new management, staff changes, significant Accela upgrades, the adoption of more detailed Standard Operating Procedures (SOPs), rigorous staff training, and upgraded business workflows. As indicated, DCRA's mission is to ensure compliance.

Over the last two years, DCRA has implemented weekly and monthly training opportunities for all DCRA inspectors. Specifically, DCRA conducted over thirty (30) substantive trainings through the National Capital Region Code Academy. These trainings are substantive in nature. Contrary to the report's suggestion at page 19, extension requests are granted by management with the approval of the Chief Building Official (CBO) and the conflicts described are not in fact conflicts because DCRA provides ways in which to obtain an extension and the method to request the extension. Additional training on the granting of the requests is not necessary, because the CBO is knowledgeable on property maintenance violations and the time necessary to abate them. We believe this is a workable and fair system, as some repairs are of an emergency nature and must be completed immediately and requests for extensions would not be granted; in other cases, quick repair is simply impossible due to those many factors that the CBO appropriately may consider. The review of any extension request is on a case-by-case basis as stated in the Case Study. See, page 19. The CBO reviews the request and decides based on the type of work needed to address the violation, available material required and access to the unit to make the necessary repairs. As indicated, DCRA's mission is to ensure compliance.

We respectfully disagree that increasing fines would solve most issues relating to the repair, maintenance and inspection of property for housing code violations. The issuance of a fine, regardless of whether the landlord made the repair, does not squarely address the underlying problem of making landlords provide safe and habitable housing. Some landlords are simply bad actors who would build the cost of the fines into their budgets, and they challenge the imposition of any fine at OAH anyway, delaying needed repairs, and causing another round of conflict over collection of fines imposed. Other landlords sincerely want to comply with the many aspects of keeping a property up to code and struggle to find managers and contractors to help them in that work. We very much value the partnership of organizations such as Mission First that provide affordable housing to our low-income neighbors and that struggle with the many challenges of rehabilitating and maintaining historic multi-family properties. Cranking up fines will not make them more likely to provide habitable, safe housing; rather, a smoother and more efficient partnership and efficient processes will: that's what DCRA aims to provide.

Lastly, the Case Study statement that “DCRA failed to provide documents related to some of their enforcement activities during this timeframe” is incorrect and we respectfully ask that it be removed. DCRA was not advised that any information requests were outstanding. Moreover, the Case Study references on page 3 and Appendix B that DCRA does not compile certain records or does not have records is misleading. Not responding to a request is different than not having available records or being unable to compile records in a form sought by the audit team.

After careful review of the Case Study, DCRA would like to respond to the recommendations.

DCRA’S RESPONSE TO THE RECOMMENDATIONS:

Recommendation 1

The Council should require that the abatement period for violations be established in the DCMR with authority given to the director to reduce the abatement period under specific circumstances that must be documented.

This recommendation is addressed to the Council, but DCRA disagrees with the suggestion that Council should get involved in matters this various and technical. The Council’s role is to provide overarching legislative policy, not to direct the daily operations of a District agency. Moreover, if it is legislated, it removes Executive discretion to change abatement periods based on trends, landlord behaviors and DCRA business processes. DCRA does not need legislative authority to decrease or increase abatement periods. DCRA has the discretion to provide abatement periods based on the type of violation. That said, DCRA will consider providing more guidance, thus transparency, through regulatory changes or protocols/Standard Operating Procedures made publicly available.

Recommendation 2

The Council should require DCRA to measure and report this aspect of their operations. Key Performance Indicators (KPIs) only address the time from the initial inspection to issuance of a NOV or inspection report, and the speed in which the Office of Civil Infractions issues NOIs. No KPI captures time elapsed from issuance of a NOV to issuance of a NOI.

Although this recommendation is directed to the Council, DCRA objects to this recommendation. The Executive Branch, through the Office of the City Administrator, establishes the Key Performance Indicators. Establishing KPIs is an Executive function and should remain as such. Performance planning is the foundation for how the District operates and evaluates government agencies. At the beginning of each fiscal year, each agency develops a performance plan based on the Executive priorities. The KPIs provides metrics that meaningfully gauge their progress against goals. Yearly, DCRA establishes KPIs based on this process. The KPIs are public. Creating specific legislation for DCRA KPIs is neither tenable nor appropriate.

Recommendation 3

The Council should require the use of a service delivery method other than the U.S. Mail. The DCMR (12 DCMR G sec 107.3) offers several alternative methods for the service of

notice. Service can be made in person, by email (if accompanied by notice posted conspicuously on the property), personal delivery to the last known address, if accepted by an employee at least 16 years of age, or as a last resort, simply posting a notice on the premises.

Although this recommendation is to Council, DCRA objects to it, unless the Council chooses to remove the posting requirement that currently accompanies email notification, and requires all landlords and tenants to file working emails with DCRA and provide notice to landlords and tenants that email should be checked regularly as it will be the method of service delivery relating to repairs unless the tenant (not the landlord or property manager) opts out. As indicated above, DCRA does not agree with the suggested alternative service methods. Contrary to assertion stated in the Draft Case Study, DCRA cannot serve an NOI electronically. Although D.C. Official Code § 2-1802.05 allows electronic service of a notice on a respondent, DCRA cannot electronically deliver an NOI in the absence of a technical arrangement with the Office of Administrative Hearings (OAH) permitting DCRA to begin civil cases at OAH electronically. In accordance with 1 DCMR 2841.14, DCRA must file an NOI and its attachments “substantially in the form provided to the Respondent.” Thus, if DCRA provides an NOI to a respondent by mail, DCRA is then permitted to begin a case at OAH only by mailing an NOI to OAH. At the time of this writing, OAH does not permit DCRA to begin a case at OAH by filing an NOI electronically. For this reason, DCRA cannot deliver an NOI to the respondents via email because DCRA cannot satisfy the requirement stated in 1 DCMR 2841.14. DCRA agrees with the Auditor that the Office of Administrative Hearings (OAH) allows for service via e-mail for the parties’ convenience; however, this is only after DCRA begins a case at OAH and the parties appear at OAH (thus indicating that they were served). Moreover, we reject the suggestion that service be made by FedEx because it is too costly and can be inefficient because the recipient must accept the service and be available at the delivery. Certified mail has been determined to be inefficient as well and provides no better service because there is no guarantee that a person will pick up the certified mail. The legal mailbox rule has been in place for decades and has legal support that what was mailed was in fact received. DCRA disagrees that e-mail service is an effective alternative unless persons have adequate notice and an opportunity to opt out, because many people still do not have e-mail and e-mail service requires DCRA to also physically post the property. However, we do agree that an active e-mail account for licensed property owners should be required but DCRA cannot control whether the e-mail is received and read by the owner of the property. DCRA is continually looking at ways to improve service and notice of violations. This includes looking at proposed service requirement changes to the District of Columbia Municipal Regulations to include broadening the number of locations that a landlord could be served at and attempt multiple mailings. Lastly, the suggestion that service can be made in person or by personal delivery suggests that DCRA has staff to deliver mail. This is the equivalent of an unfunded mandate and it is outside DCRA’s mission to replace the United States Postal Service.

Recommendation 4

DCRA should explore the use of delivery services (such as Federal Express) to serve. While the per unit charge to deliver a notice is likely greater, it may be that the tracking services provided along with delivery would offset the cost.

Disagree. As indicated above, DCRA does not agree with the suggested alternative service methods. We reject the suggestion that service be made by FedEx because it is too costly and can be inefficient because the recipient must accept the service and be available at the

delivery. Certified mail has been determined to be inefficient as well and provides no better service because there is no guarantee that a person will pick up the certified mail. Furthermore, tracking is not a required aspect of successful service and should not become one as suggested by this Case Study. As we understand it, OAH itself requires undeliverable return letters as evidence of incomplete service.

Recommendation 5

The Council should require that at the time that the initial NOV is issued, re-inspection should take place in 30 days. Alternatively, start internal processing and mail delivery service 15 days after the initial inspection, instead of waiting a full 30 days.

Although this recommendation is addressed to Council, DCRA disagrees with recommendations that insert the Legislative Branch into day-to-day operations – a quintessential executive branch function. Furthermore, DCRA disagrees because re-inspections must be coordinated to accommodate scheduling that considers, the Owner’s, tenants’, and the inspector’s availability. Such coordination, does not does not always translate into meeting a firm 30-day standard. Moreover, as indicated above, setting reasonable deadlines for matters as complex as this is properly an Executive Branch function. Lastly, any legislative changes that do not work, must be corrected by another legislative change. Allowing the Executive Branch the discretion to change its Standard Operating Procedures can address areas of improvement without the legislative process.

Recommendation 6

DCRA should revise its SOPs to clarify who, how, and when re-inspections are scheduled.

DCRA agrees that an update to its SOPs is beneficial. Any changes to DCRA’s SOPs will consider the re-inspection scheduling. Re-inspections must be coordinated to accommodate scheduling that considers the Owner, tenant, and the inspector’s availability.

Recommendation 7

DCRA should provide complete and accurate information on the standard process of housing code compliance as it is actually carried out, including criteria used to determine and disclose the number of days allowed to the landlord to abate the violation.

DCRA agrees that it could be more transparent with its Standard Operating Procedures (SOPs) regarding inspections, re-inspections, and abatement criteria. However, DCRA suggests that the SOPs should be drafted to provide guidance to the inspectors and support staff. SOPs cannot be so restrictive and detailed as to contemplate every set of interacting code violations, needed repairs, market conditions for obtaining labor and parts for repair, and competing priorities – as when DCRA pulls resources to focus on some large project such as addressing the Stanford Capital properties that occurred at the same time as the issues at Dahlgreen Court. For example, the criteria for an abatement extension for an elevator replacement, lead based paint abatement, door knob replacement, and repairing a wall all require a different analysis in the abatement timeframe. DCRA disagrees that the criteria should be legislated because legislation does not allow for discretion, interpretation, and determinations based on the particulars of a case. SOPs are a guide to employees. They are not meant to establish binding timeframes that generate challenges to the occasional inevitable failures to meet deadlines. Lastly, the Property Maintenance Code has thousands of violations for which DCRA would have to enumerate timelines for repair – a herculean task, we suggest. DCRA believes that our time is best spent doing the inspections

rather than codifying every time frame for inspection and reinspection, so that units can be habitable and, in some cases, recertified for occupancy.

Recommendation 8

The Council should require revisions to the DCMR to eliminate extensions or allow only when specific criteria are met, including clarifying procedures for landlords and DCRA to follow, recording and tabulating information, and reporting findings.

While this recommendation is directed to the Council, DCRA disagrees that this is an appropriate subject for Council action. The DCMR is a set of regulations, implementing the broad policies of Council. Legislatively purporting to eliminate extensions will not reduce the need for extensions. Discretion in the enforcement of code is critical and is recognized as such by the current regulations contained in Title 12-A and Title 12-G of DCMR. This authority is crucial to fast and fair decisions that are reasonably responsive to the dynamics encountered with property maintenance code enforcement efforts. Inflexible mandates, may cause unintended consequences for compliant landlords who legitimately need additional time to abate a violation. Denying extensions and issuing fines do not ensure compliance or abatement of violations. As indicated above, DCRA seeks compliance by housing providers. Eliminating extensions does not provide the good landlords the opportunity to cure any known or existing violations.

Recommendation 9

The D.C. Council should require DCRA to revise the DCMR to combine the NOV and NOI or bypass the NOV altogether. These criteria might include properties that house vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property subject to the complaint.

Although this recommendation is addressed to the Council, DCRA is reviewing this recommendation to determine if the proposal is workable and whether it would have unintended consequences on big, medium, or small landlords.

Recommendation 10

DCRA should implement KPIs that measure the time to cure as a whole, or the time between the initial inspection and issuance of a NOI or time to abatement. Indicators might include the average number of days to first re-inspection for 30-day violations; number and percentage of NOVs in which an extension was allowed; average number of days to cure; average number of days between issuance of a NOV and issuance of a NOI.

We will consider the feasibility and usefulness of such a KPI as we work with the Office of Budget and Performance Accountability to determine KPIs.

Recommendation 11

The Council should significantly increase the dollar value of fines by at least 25 percent.

Although this recommendation is addressed to the Council, DCRA has no objection to it. DCRA agrees that the Council should increase the dollar value of fines. However, there is no data to suggest a dollar fine amount may be more effective if 25% higher. While DCRA has no objection to fine increases, expectations that an increased fine would have a beneficial effect on compliance is unwarranted. A good example of this phenomenon is

fine amounts for illegal construction. By City Council action, those fines were doubled from \$2000 to \$4000 per violation last year. So far there has been no demonstrable decrease in illegal construction because of the increase.

The Fine Increase Amendment Act enacted in 2018 authorizes an annual increase in fines in accordance with the consumer price index. Additionally, DCRA supports a change in definition of the term “repeat infraction” in 16 DCMR § 3201. DCRA recommends that an enhanced penalty should be triggered by a second or third issuance of an NOI instead of an enhanced penalty being triggered only after the issuance of a Final Order as is the current requirement. We caution, however, that increased fines will not fix a problem that is complex in nature, involving many players outside the agency and landlord.

Recommendation 12

DCRA should charge a fine for each additional day that a violation persists, as currently allowed in 14 DCMR 102.7.

DCRA disagrees with this recommendation, unless fines are automatic until proof is submitted that the problem has been fixed, even if reinspection takes plays several days hence. Without further provisions for such cessation of fine multiples, DCRA would be required to go out and inspect the property daily to provide evidence that the violation persists. Such reinspection would be overly burdensome, but we agree that with particularly irresponsible landlords (not the case here), and with problems that are particularly dangerous to tenants, shifting the burden to impose fines daily until proof is submitted of cure might help improve compliance.

Recommendation 13

The Council should increase and require the collection of a re-inspection fee, or eliminate it altogether.

DCRA disagrees. DCRA does bill and collect the \$90.00 reinspection fee but does suggest that the reinspection fee should be increased to cover the cost of re-inspection plus an administration fee.

Recommendation 14

The D.C. Council should require DCRA to standardize recordkeeping in activity logs. Standards should ensure the collection of enough information and the right type of information to be able to initiate each case appropriately, and allow for inspectors to report on results of inspections and required next steps.

This recommendation is directed at Council, but DCRA disagrees that the Council should require standardized recordkeeping in activity logs. This is a purely Executive Branch function. As indicated above in several responses, legislating a purported fix to a problem creates problems because it removes the flexibility to change a process that may turn out not to work. For example, if a Court or Director provides guidance on how to improve documenting a government function, DCRA could not make that change without legislation. DCRA’s activity log entries have been deemed an acceptable level of recordation by OAH and have been upheld by the Court of Appeals as acceptable evidence. That said, training for inspectors occurs regularly and we accept the suggestion to emphasize the importance of clarity of note taking regarding findings and next steps. That said, DCRA commits to

examining whether more standardized and transparent recordkeeping would be appropriate and will consider this topic a future training for inspectors.

Recommendation 15

The Council should require that inspections and case data be available through the District’s open data portal.

While this recommendation is addressed to Council, we suggest that it is unnecessary. DCRA does provide data regarding inspections. See, PIVS, <https://pivs.dcra.dc.gov/#!/searchHomePage>. Additionally, due to the funding provided by the Bowser administration, DCRA has improved our Information Technology systems. The Case Study mentions inconsistencies with what is seen on Property Information Verification System (PIVS) and what is presented in the inspector’s logs submitted to OAH as support for this recommendation. The PIVS is a resource where users may research real property, regulatory, and enforcement information on specific properties. PIVS is not designed to provide the level of detail to the public that the Case Study references, and we suggest that standards of open government – to which we are firmly committed -- do not necessitate that all case data be publicly available and online.

Over the last year, DCRA has made significant improvements to PIVS:

PIVS 1	PIVS 2
Created in 2008	Created in 2017
Built in old, unsupported Java framework	Built in modern Microsoft .NET framework
Initially created with only four informational tabs. Grew incrementally over time to include additional tabs via Internal and External versions for DC staff and public web users, respectively	Features 21 information categories (9 available on external version of PIVS)
Dated photos and maps	Links to modern map technologies (including Property Quest) with ability to zoom and filter easily
Information updated once daily from source systems	Information updated up to 3 times daily from source systems
Not usable on mobile devices	Usable on mobile devices
Limited capabilities to download and print	Easy to use capabilities to download and print information
Slow download speeds for addresses with many records	Faster download speeds for addresses with many records
No links to other web-based DCRA resources	Anchors the new DC Property and Permit Center comprehensive, integrated website

Recommendation 16

The D.C. Council should require that information on pending and past cases be made available to the public.

Although this recommendation is directed to the Council, DCRA agrees that information about cases should generally be public. DCRA would object to the extent it seeks to make further demands on DCRA. The OAH is the adjudicative body that provides information on the pending status of a case and the outcome. This information is available to the public (though not in a particularly user-friendly format, as it is not searchable by keyword on OAH's website). OAH is the agency that is authorized to distribute this information. As such, any reference or information supporting this recommendation should be removed from the Case Study, or OAH should be given an opportunity to comment on this recommendation. We agree that the OAH case portal is not fully searchable by topic and thus not as useful as it could be. That said, DCRA has no objection to OAH making its case portal more searchable and understandable by the public, if resources are available.

Recommendation 17

The D.C. Council should require programs that provide financial assistance to developers to consider applicants' track records in complying with the housing code.

Although this recommendation is directed to the Council, we certainly agree that the District should not repeatedly contract with and subsidize troubled contractors, at least without knowing what their track records are, both on the positive and negative side. We think, however, that this recommendation is inapposite in the case of Mission First, a very valued partner that tries diligently to rehabilitate, build and manage dignified, safe housing for our low-income residents, at a time when many developers in the District's hot real estate market would prefer to build housing that is too expensive for our low-income residents. The situation at Dahlgreen Courts must be distinguished from the Sanford Capital situation. DCRA agrees that addressing the issues of insufficient and dilapidated affordable housing is a multi-agency, District endeavor, one in which the Council plays a vital role in providing funding and oversight for programs relating to construction, rehabilitation, maintenance and enforcement. Certainly, in theory, the track record of a developer in complying with the housing code should be a consideration in granting additional funds or projects to that developer. We disagree that this particular development project would be affected, as Mission First is a valued partner with a strong track record of addressing code issues at properties it owns. If funds are available for such central record keeping about track records in code compliance, then DCRA would be happy to provide guidance and assistance in developing the program and the criteria for providing points, demerits or exclusions to owners or property managers with which DCRA has experience. DCRA agrees that the District is facing a significant affordable housing shortage. DCRA believes that an increase in enforcement, additional funding for small landlords, additional funding for affordable housing development, and additional funding for District programs can be the first step. DCRA would be happy to contribute to interagency solutions for being sure that track records of compliance or non-compliance are provided to the appropriate agencies, and to participating in solutions – as Mayor Bowser has proposed – for knowing the true owners behind the LLC structures provide guidance and assistance in developing the program and the criteria for those participating.

Recommendation 18

The D.C. Council should establish more stringent housing code enforcement standards for publicly supported affordable housing properties.

While this recommendation is addressed to Council, DCRA suggests that the standards are well known and satisfactory. We agree that issues of insufficient and dilapidated affordable housing merit a District response, including involvement from the Council. More stringent standards may nor may not be warranted, but simply changing standards does not magically make an aging stock of affordable safer and better. Rather, problems arise from many factors, including aging housing stock; uneven property management; a tight contracting market and delays in repairs; some rapacious “bad actor” landlords; delays on DCRA’s part that we have attempted to address through an intensive program of hiring more inspectors; delays at OAH; and a robust high-end housing market that commands the investment and energy of many potential owners, managers, and contractors, to the detriment of those working in the affordable housing sector. DCRA is of course willing to advise on appropriate changes to enforcement standards.

Sincerely,


Melinda Bolling
Director

ODCA Response to Agency Comments

We greatly appreciate the responses provided by the Department of Consumer and Regulatory Affairs (DCRA). We note that the administration agrees generally with 10 of the 18 recommendations, while not concurring with the actual process to bring about change.

The administration's cover letter asks that we change the report title and we have amended the title so that it now reads, "Housing Code Enforcement: A Case Study of Dahlgreen Courts."

ODCA agrees with the administration on the importance of the District's role in making sure that affordable housing is safe and livable, and doing so in a manner that allows transparency and accountability. The administration has acknowledged that it should more clearly articulate the use and justification of extensions, improve the efficiency of inspections and re-inspections, in part by revising SOPs, and make information about cases more readily available to the public. It sees housing enforcement as one of several tools to preserve affordable housing in the District. Moreover, the administration responded that it would consider eliminating the Notice of Violation (NOV) or combining it with the Notice of Infraction (NOI) as well as revising Key Performance Indicators (KPIs) to address the time to cure, issuing daily fines to problematic landlords, increasing the re-inspection fee, and participating in a multi-agency effort to document and consider the track record of landlords when deciding whether to provide financial support for subsequent projects.

The agency disagrees with our emphasis on actions that can be taken by the Council of the District of Columbia (Council). This report, however, was undertaken in response to a request made by Council Chairman Phil Mendelson that we assist the Committee of the Whole in its oversight of DCRA. Through its oversight of executive branch operations, the Council routinely asks the question: given this issue, what steps might the Council take to resolve problems and improve government services? It is in that spirit that we direct recommendations to the legislature.

Specifically, ODCA recommends that Council should standardize the abatement period for violations, require use of a service delivery method other than the U.S. Postal Service, aim for re-inspection of 30-day violations after 30 days rather than 45 days, eliminate or standardize extensions, measure and report on the time to cure, eliminate a separate NOV under specific circumstances, revise KPIs, increase financial penalties, standardize recordkeeping, make information on pending cases available, and align other agencies' programs with the objective of preserving affordable housing. It is true that many of these steps can be taken without legislation, and it is within the Council's prerogative to simply urge DCRA to address these issues directly, through administrative actions.

The administration rejected our recommendations to shorten the timeline for service. Several points bear direct response.

First, the administration objects to using FedEx because it would be too costly, as well as inefficient because the recipient must accept the service and be available at the delivery. Whether the cost of FedEx exceeds the cost of staff and other resources is an open question. Regarding efficiency, the Code (§ 47-2828) requires businesses operating residential buildings to have a Basic Business License (BBL). The BBL application states that, "All businesses must have an Agent who can receive legal documents for your business. This person must be a DC resident."

Second, the administration objects to the possibility of using email for service. Yet in raising these objections, DCRA stipulates the conditions needed to make it possible—require all landlords to file working emails with DCRA and require them to check that email address regularly and make a technical arrangement with OAH to begin civil cases at OAH electronically.

Finally, the administration objects to the possibility that service can be made by personal delivery because it “suggests that DCRA has staff to deliver mail.” ODCA does not recommend personal delivery. Rather the study observed that this provision exists in the DCMR.

Many of the administration’s comments point to opportunities to clarify portions of the text that could be misconstrued and we greatly appreciate the opportunity to provide that clarification. Specifically, we address DCRA responsiveness to requests for information and the recommendation to move the target for re-inspection from 45 days to 30 days. We also added recommendations in the final report regarding use of deterrents other than fines, and the desirability of a study to find options in other agencies’ programs to preserve affordable housing.

In its response to Recommendation 7, “DCRA should provide complete and accurate information on the standard process of housing code compliance as it is actually carried out, including criteria used to determine and disclose the number of days allowed to the landlord to abate the violation,” DCRA discusses the need to keep SOPs flexible, rather than prescriptive. However, this recommendation is not about SOPs. Rather, it is intended to encourage transparency, letting the public know how housing compliance is usually carried out and how DCRA determines the abatement period.

We agree with the administration’s response to our draft Recommendation 12, proposing the issuance of a fine for every day that a violation persists. We have modified this recommendation to suggest using this measure only for problematic properties or landlords.

We have removed the statement that DCRA does not collect a re-inspection fee. We have also modified Recommendation 13 to make it consistent.

While we recognize that the administration has improved PIVS, we disagree that it is adequate to achieve transparency and accountability. The records do not consistently reflect the current status of a case. ODCA was unable to determine if it reflects the status of any case in real time. Likewise, OAH records do not provide the status of violations prior to issuance of an NOI. These points are addressed in conjunction with Recommendations 15 and 16.

Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to the agency, have the potential to generate revenue and/or cost savings to the District, and/or help to advance the goals of the Department of Consumer and Regulatory Affairs, and the Mayor, as seen below.

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
1. The D.C. Council should require DCRA to revise the DCMR to establish the abatement periods for violations, with authority given to the director to reduce the abatement period under specific circumstances that must be documented.	No	No	FY18 DCRA Performance Plan Strategic Objective: "Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia." ¹
2. The D.C. Council should require DCRA to collect and report data on time to re-inspection.	No	No	FY18 DCRA Performance Plan Strategic Objective: "Create and maintain a highly efficient, transparent and responsive District government." ²

1. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>
 2. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
3. The D.C. Council should require DCRA to use a service delivery method other than the U.S. Mail.	No	Yes	FY18 DCRA Performance Plan Strategic Objective: "Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia." ³
4. DCRA should explore the use of delivery services (such as Federal Express) to serve. While the per-unit charge to deliver a notice is likely greater, it may be that the tracking services provided along with delivery would offset the cost.	Yes	No	
5. The D.C. Council should require DCRA to re-inspect 30-day violations after 30 days, instead of 45. This could be achieved by reducing the allowance for service or starting internal processing and mail delivery service 15 days after the initial inspection, instead of waiting a full 30 days.	No	No	
6. DCRA should revise its SOPs to clarify who, how, and when re-inspections are scheduled. SOPs should also establish a target timeframe for re-inspections.	No	No	Mayor's FY 2018 Budget Proposal: "\$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes. " ⁴

3. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

4. Mayor Bowser Presents Fiscal Year 2018 Budget Proposal. <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2018-budget-proposal>

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
7. DCRA should provide complete and accurate information on the usual process of housing code compliance as it is actually carried out, including criteria used to determine and disclose the number of days allowed to the landlord to abate the violation.	No	No	FY 2018 DCRA Performance Plan Strategic Objective: "Provide timely and efficient business processes to promote and improve the progression and business development of the District of Columbia." ⁵ AND OCFO 2017-2021 Strategic Plan: "Improve Transparency and Quality of Information." ⁶
8. The D.C. Council should require DCRA to revise the DCMR to allow extensions only when specific criteria are met, including clarifying the process for landlords to apply and DCRA to approve.	No	No	
9. The D.C. Council should require DCRA to revise the DCMR to combine the NOV and NOI or bypass the NOV altogether for properties that meet specific criteria. These criteria might include properties that house vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property subject to the complaint.	No	No	FY18 DCRA Performance Plan Strategic Objective: "Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia." ⁷

5. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

6. Office of the Chief Financial Officer Strategic Plan. https://cfo.dc.gov/page/office-chief-financial-officer-strategic-plan_rev

7. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
10. DCRA should implement Key Performance Indicators (KPIs) that measure the time to cure as a whole, including the time between the initial inspection and issuance of a NOI or time to abatement. Indicators might include the average number of days to first re-inspection for 30-day violations; number and percentage of NOVs in which an extension was allowed; average number of days to cure; average number of days between issuance of a NOV and issuance of a NOI.	No	No	Mayor’s FY 2018 Budget Proposal: “\$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes.” ⁸
10a. The D.C. Council should limit business activity of problematic landlords (who meet defined criteria). This could include prohibiting landlords from entering into new rental agreements, requesting or receiving new financial support from any city agency, or renewing a business license.	No	No	FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.” ⁹
10b. DCRA should publish data on housing code violations by buildings and landlords, to allow tenants to make better informed decisions regarding their housing.	No	No	FY 2018 DCRA Performance Plan Strategic Objective: “Provide timely and efficient business processes to promote and improve the progression and business development of the District of Columbia.” ¹⁰
11. The D.C. Council should significantly increase the dollar value of fines by at least 25 percent.	No	Yes	OCFO 2017-2021 Strategic Plan: “Manage a Fair and Equitable System to Fully Collect District Revenues.” ¹¹

8. Mayor Bowser Presents Fiscal Year 2018 Budget Proposal. <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2018-budget-proposal>

9. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

10. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

11. Office of the Chief Financial Officer Strategic Plan. https://cfo.dc.gov/page/office-chief-financial-officer-strategic-plan_rev

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
12. DCRA should charge a fine for each additional day that a violation persists, as currently allowed in 14 DCMR § 102.7. This measure could be limited to problematic properties or landlords.	No	Yes	FY18 DCRA Performance Plan Strategic Objective: "Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia." ¹²
13. The D.C. Council should increase the re-inspection fee, or eliminate it altogether.	No	Yes	FY18 DCRA Performance Plan Strategic Objective: "Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia." ¹³ AND OCFO 2017-2021 Strategic Plan: "Manage a Fair and Equitable System to Fully Collect District Revenues." ¹⁴
14. The D.C. Council should require DCRA to standardize recordkeeping in activity logs. Standards should ensure the collection of enough information and the right type of information to be able to initiate each case appropriately and allow for inspectors to report on results of inspections and required next steps.	No	No	Mayor's FY 2018 Budget Proposal: "\$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes. " ¹⁵

¹². Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

¹³. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

¹⁴. Office of the Chief Financial Officer Strategic Plan. https://cfo.dc.gov/page/office-chief-financial-officer-strategic-plan_rev

¹⁵. Mayor Bowser Presents Fiscal Year 2018 Budget Proposal. <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2018-budget-proposal>

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
15. The D.C. Council should require DCRA to make inspections and case data available through the District's open data portal.	Yes	No	FY18 DCRA Performance Plan Strategic Objective: "Create and maintain a highly efficient, transparent and responsive District government." ¹⁶
16. The D.C. Council should require DCRA to make information on pending and past cases available to the public.	Yes	No	
17. The D.C. Council should require programs that provide financial assistance to developers to consider applicants' track records in complying with the housing code.	No	No	Mayor's Accountability Report, Year 3: "Restructure reporting lines so that all agencies with affordable housing budgets are coordinating, sharing best practices and working together to meet the demand for affordable and subsidized housing." ¹⁷
20. The D.C. Council should establish more stringent housing code enforcement standards for publicly supported affordable housing properties.	No	No	Mayor's Accountability Report, Year 3: "Focus greater public subsidies on mixed-income developments coupled with greater accountability and clear delegation of responsibility to the agencies tasked with realizing these projects, at the same time, committing to taking better care of existing subsidized housing that residents are living in , while the New Communities program is refocused." ¹⁸

16. Department of Consumer and Regulatory Affairs FY 2018 Performance Plan. <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA18.pdf>

17. Mayor's Accountability Report, Year 3, https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/Accountability_Report_Year-3.pdf

18. Mayor's Accountability Report, Year 3, https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/Accountability_Report_Year-3.pdf

Recommendation	Cost to Agency to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency or District-Wide Goal Advanced by Recommendation
<p>21. In the course of its oversight hearings, the Council should seek testimony on options to support the preservation of affordable housing in DCHFA, DCHD, and other agencies' programs.</p>	<p>No</p>	<p>No</p>	<p>Mayor's Accountability Report, Year 3: "Focus greater public subsidies on mixed-income developments coupled with greater accountability and clear delegation of responsibility to the agencies tasked with realizing these projects, at the same time, committing to taking better care of existing subsidized housing that residents are living in, while the New Communities program is refocused." AND</p> <p>Mayor's Accountability Report, Year 3: "Restructure reporting lines so that all agencies with affordable housing budgets are coordinating, sharing best practices and working together to meet the demand for affordable and subsidized housing."¹⁹</p>

¹⁹ Mayor's Accountability Report, Year 3, https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/publication/attachments/Accountability_Report_Year-3.pdf

Appendices

Appendix A: Detailed Committee of the Whole Recommendations for DCRA in the FY 2018 Budget Report

Below are the policy recommendations in the D.C. Council of the Whole FY 2018 Budget report. The recommendations respond to a wide range of concerns with DCRA overall, some of which overlap with the problems identified in this study.

1. The Committee recommends that DCRA produce a briefing memorandum, regarding: 1) investigate the administrative, technical, and data capacity obstacles it faces in order to be compliant with the law; and 2) develop a preliminary scope of work, estimated budget, and anticipated timeline to satisfy the law.
2. The Committee recommends that DCRA develop a strategic plan, to do the following: 1) identify rental properties with a common owner that owns more than 20 units disbursed among more than two properties; 2) develop a plan and a timeline to assess (and if necessary inspect) such units to ensure compliance with the housing code; and 3) identify the authority necessary to prevent a recurrence of a similar situation.
3. The Committee recommends that DCRA developing a proactive outreach strategy to educate property owners, tenants, developers, and design professionals on not only the permitting process, but solutions to the most commonly encountered issues and frequently asked questions.
4. The Committee also recommends that DCRA develop an IT needs assessment that outlines, schedules, prices, and prioritizes each of the agency's IT projects/needs.
5. The Committee recommends that DCRA encourage continuing education and training opportunities for staff in the Permitting Operations Division, Regulatory Enforcement Administration, Inspections & Compliance Administration, Zoning Administration, Business & Professional Licensing Administration, and Green Building Division.

Appendix B: ODCA Requests and Documents Provided by DCRA

1. **ODCA Request:** List and status of NOVs, NOIs, civil penalties, etc., at Dahlgreen Courts under the purview of DCRA since December 1, 2016. Include reference to relevant sections of DCMR.

DCRA Response:

- Notice of Infraction # Q110511
- Notice of Infraction # Q110548
- Notice of Infraction # Q110549
- Notice of Infraction # Q110593
- Notice of Infraction # Q110594
- Notice of Infraction # Q110515

2. **ODCA Request:** Records of visits to Dahlgreen Courts carried out by DCRA staff. Include names, titles, dates, and the nature and purpose of the visits.

DCRA Response: Records of visits to Dahlgreen Courts: NOVs for 2520 and 2504 10th Street, NE, and the corresponding Activity Logs. The NOVs are signed by the Inspector and the Activity Logs identify who entered the information into the Activity Log.

- Standard Operating Procedures for the Housing Inspections Division
- Training Materials for the Housing Enforcement and Compliance Scheduling groups
- Organizational charts of the Housing Inspections Division – December 2016 and October 2017.
- Copies of Notices of Infraction and Activity Logs related to Dahlgreen Courts for the period December 1, 2016, to present.

3. **ODCA Request:** Records of communication within DCRA, and between DCRA and former and current tenants, advocates, and individuals employed by building management or ownership, regarding the physical condition or operations of Dahlgreen Courts. Include names, titles, dates, and the nature and purpose of the communication.

DCRA Response: DCRA does not compile records of these communications

4. **ODCA Request:** Records of communication between DCRA and staff in other District agencies regarding Dahlgreen Courts. Include names, titles, dates, and the nature and purpose of the communication.

DCRA Response: DCRA does not have records of these communications

5. **ODCA Request:** Policies and procedures, standard operating procedures, and other relevant written guidance for day-to-day operation of complaint-based housing code inspections and enforcement that were in effect on December 1, 2016 and any revisions made through the present.

DCRA Response:

- Inspections and Compliance, Permit and Housing Enforcement Manual
- Inspections and Compliance, Scheduling Inspections Training Manual

6. **ODCA Request:** Any agreements with other agencies (e.g. OAH, OAG, DOEE, DHCD) related to coordination of complaint-based housing code inspections and enforcement, including any Memoranda of Understanding.

DCRA Response: DCRA's MOU with OAG for FY 2017.

7. **ODCA Request:** A list of ongoing or recent, internal or external audits of the complaint-based housing code inspections and enforcement:

DCRA Response: DCRA did not have any responsive documents.

8. **ODCA Request:** A current organizational chart (annotated with any changes that have occurred since December 2016) of staff involved in complaint-based housing code inspections and enforcement that includes vacancies, staff names, titles, and dates of hire.

DCRA Response: Current organizational chart

- DCRA Organizational Chart (effective December 2016)
- DCRA Organizational Chart (effective October 2017)

Appendix C: External Sources Reviewed

External sources reviewed included previous reports on DCRA the testimony at D.C. Council roundtables and hearings, official documents, and press clippings.

Previous studies:

- Studies performed by KPMG, BBRC, CIR around 2005
- DCRA DC Stat/Executive Briefing (draft May 2, 2005)
- 2014 Business Regulatory Reform Task Force report

Council oversight:

- Committee of the Whole (COW) Budget Report (May 2017)
- Video of COW Roundtable (July 12, 2017)
- Video of FY 2017 performance measurement hearing, March 16, 2017, Committee of the Whole, http://dc.granicus.com/MediaPlayer.php?view_id=4&clip_id=3813
- District DCRA performance plan FY 2017, <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA17.pdf>
- Performance Oversight Hearing document, COW, DCRA (2017, likely for March hearing)

Mayor commentary:

- 2017 State of the District Address, Bowser <https://medium.com/@MayorBowser/state-of-the-district-address-2017-dfbf120f628a>

Official documents and information:

- Introduction of Landlord Transparency Amendment Act
- DCRA's web page, intranet page, miscellaneous documents
- FY 2017 DCRA approved budget, posted online, <http://openbi.dc.gov/QvAJAXZfc/opendocnotoolbar.htm?document=Userdoc%2FqcomVariableButton.qvw&Bookmark=Document\BM25>
- DCRA Budget Submission to Congress, FY 2018
- District DCRA performance plan FY 2017 <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCRA17.pdf>
- Housing Production Trust Fund web page, <https://dhcd.dc.gov/page/housing-production-trust-fund-advisory-board>
- Housing production trust fund (HPTF) annual reports, 2010-2015
- DCRA Administration Staff Manuals and Instructions for Staff, <https://dcra.dc.gov/page/administrative-staff-manuals-and-instructions-staff-0>

- DCMR
- Omnibus Regulatory Reform Act 1997
- Miscellaneous legal documents related to Sanford Capital
- Lifecycle of a Housing Code Inspection | DCRA, <https://dcra.dc.gov/service/lifecycle-housing-code-inspection>
- Property Information Verification System (PIVS), re Dahlgreen Courts
- OAH: miscellaneous procedural information and sample cases

ODCA reports:

- Admin Justice in DC: Recommendations to improve OAH, September, 2016, <http://www.dcauditor.org/sites/default/files/OAH%20Final%20Report.pdf>
- District Agencies Did Not Provide Sufficient Oversight of Private Development Projects and Have Not Collected Potentially Significant Fines, August 1, 2016
- Planning, Buying, and Implementing New Information Technology: A Case Study of the D.C. Business Center, February 9, 2017

News items:

General DCRA

- Report by local radio station WAMU on Bowser’s week-long DCRA residency, Aug 16, 2016 (http://wamu.org/story/16/08/16/mayor_bowser_kicks_off_week_long_review_of_dc_regulatory_agency/)
- City Paper, Bowser Seeks More Power to Subpoena Landlords, July 13, 2017, <http://www.washingtoncitypaper.com/news/housing-complex/blog/20867453/bowser-seeks-more-power-to-subpoena-landlords>
- Washington Examiner, Fenty: ‘Everything’ wrong at DCRA, Apr 10, 2007, <http://www.washingtonexaminer.com/fenty-everything-wrong-at-dcra/article/84902>
- Washington Examiner, D.C. taking steps toward addressing tenant grievances, Nov 9, 2008, <http://www.washingtonexaminer.com/dc-taking-steps-toward-addressing-tenant-grievances/article/103788>
- Washington Times, D.C. residents say consumer affairs panel has failed to follow law, Feb 29, 2016, <http://www.washingtontimes.com/news/2016/feb/29/dc-residents-say-consumer-affairs-panel-has-failed/>
- Washington Examiner, Fenty looking for change at DCRA, Dec 12, 2006, <http://www.washingtonexaminer.com/fenty-looking-for-change-at-dcra/article/76759>

Sanford Capital

- City Paper, Life Is Hell for Tenants of Giant D.C. Slumlord Sanford Capital, Feb 2, 2017, <http://www.washingtoncitypaper.com/news/article/20850914/life-is-hell-for-tenants-of-giant-dc-slumlord-sanford-capital>
- Washington Business Journal, D.C. Attorney General Karl Racine accuses Sanford Capital affiliate of using bankruptcy protection to avoid enforcement, Apr 7, 2017, <https://www.bizjournals.com/washington/news/2017/04/07/sanford-affiliate-accused-of-avoiding-enforcement.html>

- City Paper, Sanford Capital Blames D.C. for Tenants' Prolonged Hardship, April 28, 2017, <http://www.washingtoncitypaper.com/news/housing-complex/blog/20859715/sanford-capital-blames-dc-for-tenants-prolonged-hardship>
- Washington Times, District sues property management group for 129 code violations, <http://www.washingtontimes.com/news/2016/oct/27/district-sues-property-management-group-for-129-co/>
- Bloomberg summary of Sanford Capital, <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=225849531>
- City Paper, Sanford Capital Weighs Potential Buyers for Its Decrepit Terrace Manor Complex, <http://www.washingtoncitypaper.com/news/housing-complex/article/20868154/sanford-capital-weighs-potential-buyers-for-its-decrepit-terrace-manor-complex>

Dahlgreen Courts

- City Paper, Brookland Tenants Want to Know Where Their Complex's Multimillion-Dollar Rehabilitation Went Wrong, <http://www.washingtoncitypaper.com/news/housing-complex/article/20848849/brookland-tenants-want-to-know-where-their-complexes-multimilliondollar-rehabilitation-went-wrong>

Appendix D: Dahlgreen Courts Inspection Cases: 30-Day Violations

In December 2016, DCRA inspectors issued 24 NOVs to the landlord of Dahlgreen Courts. They found 105 30-day violations. The total in potential fines for these 30-day NOVs was \$35,300. Upon the eventual resolution after almost eight months, the landlord paid a fine of \$2,500 (about 7 percent of the potential fines) for 21 violations in five units.

Units	Initial insp/ date of NOV (2016)	Last notation in activity logs (2017)	Eventual resolution
K	12/29	2/24	Violations abated; no fine
E, I, N	12/29	4/28	Violations abated; no fine. (As noted below, second NOV in unit E was resolved on 7/6.)
F, P, Q	12/13	4/28	Violations not abated. \$2,600 fine, reduced to \$2100;
D	12/21	5/26	Some violations abated, record discontinued on others; no fine, two NOVs.
J	12/29	5/26	Record discontinued. No access on 4/28 or 5/26.
B	12/21	6/21	Record discontinued. Activity log ends on June 21 with notes of conditions
L	12/29	6/26	Record discontinued. No access on 2/24, 3/2, 4/28 or 6/26.
A, E, F	12/21	7/6	Violations abated; \$400 fine, three NOVs
Common	12/29	7/6	Violations abated; no fine, two NOVs
C	12/21	7/6	No resolution. Two NOVs. Bedbugs noted on 6/26, unit to be painted after bedbugs cleared. As of 7/6, no further action to be taken
G	12/29	7/6	No resolution. Tenant refused re-inspection on 7/6.
O	12/29	7/6	Record discontinued. No access on 4/28, 5/26 or 7/6
H	12/21, 12/29	7/28	Violations abated; no fine. Two NOVs
M	12/29	9/26	No resolution. Inspections on 2/28, 4/28; no access on 7/6. Two NOVs. Inspection scheduled for 9/26

Review of the documents provided by DCRA reveals some inconsistencies:

- In response to a request made on September 7, 2016, to provide a “List and current status of Notices of Violation, Notices of Infraction, civil penalties, etc. at Dahlgreen Courts under the purview of DCRA since December 1, 2016,” DCRA missed providing documentation for two of the NOVs that provided the basis of fines assessed in July 2017. These other NOVs were uncovered in OAH files.
- Two NOVs for a single unit (Unit D) reached different resolutions. Activity logs note no access to the unit on 2/24 or 4/28. The last notation on one NOV was a non-working telephone number on 5/12/17. The last notation noted on the other NOV was violations abated on 5/26.

Among the 12 NOVs that were not resolved, the last re-inspection attempts occurred on various dates from April 28 to July 6. Yet two of them were scheduled for follow-up in September.

Appendix E: Use of Public Funds to Support Dahlgreen Courts Renovation

Relevant notes from Dahlgreen Courts financial statements, as well as information on the Mission First website, describe the use of public funds to support the Dahlgreen Courts renovation.³⁸

Type	Amount	Agency	Note
LOAN	\$5,094,807	DHCD / CDBG	Purpose was to defray lender-approved costs associated with the acquisition of the property and related predevelopment costs
BOND MORTGAGE	\$6,200,000	DCHFA	Financed through tax-exempt bonds, issued through the New Issue Bond Program.

Loan terms:

- Date of borrowing: July 22, 2010. Due: June 1, 2045
- 1% per annum through June 1, 2011 with interest at 3% for the remaining term.
- Loan is secured by a fifth lien on the Property and is subordinate to senior mortgage held by Federal Home Loan Mortgage Corporation, Capital One, National Association, and the District of Columbia Housing Finance Agency.
- The loan is payable from 60% of surplus cash beginning the first day of the 31st month following June 1, 2011 and from 75% of surplus cash beginning the first day of the 138th month following June 1, 2011. Surplus cash is defined in the related Subordination Agreement.

Bond terms

- Began amortizing in July 2013 (subject to a 6-month extension), has a 35-year term and amortization period, and bears interest at an initial rate of 5.20% per annum (fixed)
- Annual debt service upon conversion to its permanent phase will be in an amount not to exceed \$385,031.

According to Mission First, total development costs were \$20.7 million. Additional sources of support:

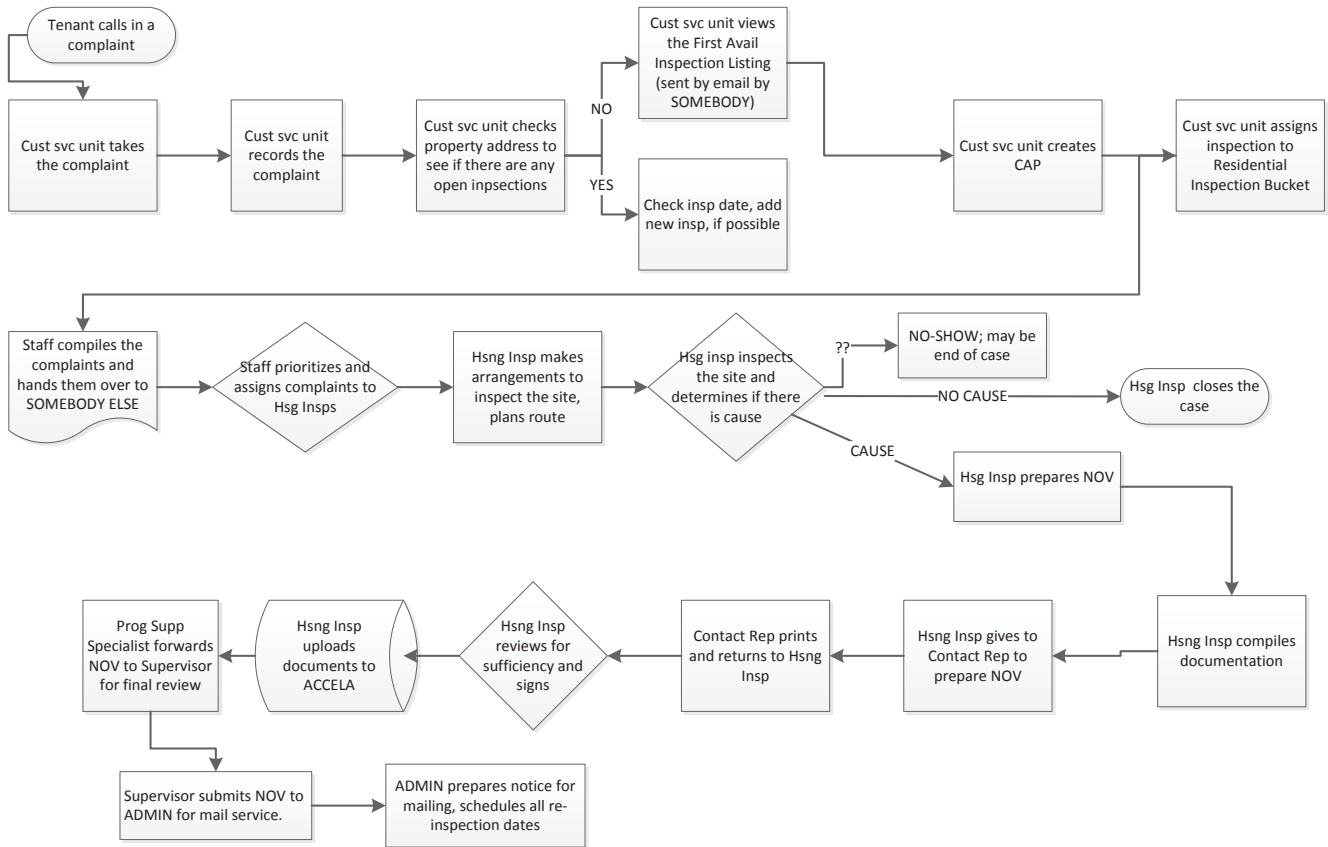
- Freddie Mac provided credit enhancement,
- Capital One provided the letter of credit during the construction period.
- DHCD provided acquisition and rehabilitation financing through the Housing Production Trust Fund.
- Raymond James provided low income housing and historic tax credit equity for the project.
- DMPED provided funding from the Neighborhood Investment Fund for predevelopment expenses.

³⁸ SOURCES: "Dahlgreen Courts LLC Financial Statements and Independent Auditors Report: December 31, 2016 and 2015." Prepared by Kozak, Pollokoff & Goldman, P.C., February 10, 2017. Downloaded November 29, 2017, <http://www.dacbond.com/dacContent/doc.jsp?id=0900bbc7801f58c9>.

"Dahlgreen Court Apartments | Mission First Housing Group." Accessed April 10, 2018, <http://missionfirsthousing.org/properties/dahlgreen-courts/>.

Appendix F: Detailed Complaint-Based Housing Inspection Process

ODCA constructed this flow chart below from SOPs provided by DCRA. It illustrates that the process includes many steps and numerous hand-offs within the program. It is not clear how the program keeps individual cases from falling through the cracks.



Appendix G: DCMR Does Not Require Issuance of a NOV Prior to Issuance of a NOI

Several sections of the DCMR state that a NOI can be issued simultaneously with or in lieu of a NOV.

12 G DCMR § 106.3: Code official authority. Whenever the *code official* has reasonable grounds to believe that a violation of the *Property Maintenance Code* exists, he or she is authorized to take the following actions either singly or in combination, in addition to imposing any other remedies or penalties otherwise available to the *code official* in the *Property Maintenance Code* or otherwise [emphasis added]:

1. Institute the appropriate proceeding at law or in equity to prosecute, restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of the Property Maintenance Code or of the order or direction made pursuant thereto;
2. Issue a notice of violation, which may afford the person responsible for the correction of the violation an opportunity to abate the violation;
3. Issue a notice of infraction, assessing a fine for the infraction;
4. Issue a combined notice of violation and notice of infraction;
5. Issue an order requiring a deposit of collateral for uncorrected violations;
6. Effect summary correction of the violation, or demolition of the structure, as authorized by law;
7. Refer the property to the Board of Condemnation of Insanitary Buildings (BCIB) for condemnation proceedings pursuant to D.C. Official Code §§ 6-902 et seq. (2012 Repl. & 2013 Supp.); or
8. Issue any other order or notice authorized to be issued by the code official.

12G DCMR § 107.1: Notice to owner or to person or persons responsible. In addition to other penalties authorized by statute or regulation, whenever the code official determines that there has been a violation of the Property Maintenance Code or has grounds to believe that a violation has occurred, the code official is authorized to serve one or more of the following notices or orders, which may impose a fine or other penalty, on an owner or the person or persons responsible therefore:

1. A notice of violation;
2. A notice of infraction;
3. A combined notice of violation and notice of infraction; or
4. Any other order or notice authorized to be issued by the code official.

14 DCMR § 105.3: Issuance of a notice of violation, notice of infraction, or combined notice of violation and notice of infraction pursuant to this section, prior to taking other enforcement action, is at the discretion of the code official. Failure to issue a notice of violation, notice of infraction, or combined notice of violation and notice of infraction shall not be a bar or a prerequisite to criminal prosecution, civil action, corrective action, or civil infraction proceeding based upon a violation of the Housing Regulations.

Appendix H: Mismatching DCRA Housing Code Enforcement Records

The following example illustrates the disconnect among activity logs provided by DCRA, and the impenetrability of verifying enforcement records, overall.

A NOI Q110549 fined the landlord for four violations in one unit of building 2520. According to document that DCRA sent to ODCA, milestones were as follows:

- Date received: June 6, 2017
- Date personally served: June 21, 2017
- Date filed with OAH: June 26, 2017

According to the NOI itself, the date of the infraction was April 28, 2017.

Records in PIVs do not obviously match up with this chain of events. Completion status of “Case Accepted” was listed on “Case Complete” date of May 22, 2017.

2520 10TH ST NE [REDACTED] WASHINGTON, DC 20018	[REDACTED]	3844 0820	CIN1700075	Compliance/ Housing/ Infestation	Case Accepted	2017/05/22
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About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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Thank you.