COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
DRAFT COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 4, 2018

SUBJECT: Report on Bill 22-317, the "Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018"

The Committee of the Whole, to which Bill 22-317, the "Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018" was referred, reports favorably thereon, with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

Bill 22-317, the "Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018"[1] was introduced by Councilmembers Charles Allen, Elissa Silverman and Robert White on June 6, 2017. The bill, as amended, includes provisions from Bill 22-596, the "Housing Rehabilitation Incentives Regulation Amendment Act of 2017", Bill 22-615, the "Housing Code Enforcement Integrity Amendment Act of 2017", Bill 22-684, the "Blighted Property Redevelopment Amendment Act of 2018", and Bill 22-910, the "Vacant Building Notification Expansion Amendment Act of 2018". Further, the bill includes a transparency provision which was derived from the introductions of Bill 22-381, the "Landlord Transparency Amendment Act of 2017" and Bill 22-905, the "Real Estate LLC Transparency Amendment Act of 2018".

[1] The title of the bill has been updated to reflect that the bill was introduced in 2017 but is being considered by the Council in 2018. Moreover, the title of the bill was amended to reflect the addition of multiple provisions to Bill 22-317.

As amended, Bill 22-317 will establish timelines for housing code violation hearings to be conducted at the Office of Administrative Hearings. Also, it will require property owners to abate a housing code violation within 30 days, and it includes safeguards as to when the Mayor can grant extensions to the 30-day timeline. Bill 22-317 will require an inspector to notify the Office of Attorney General of any Class 1, 2, 3, or 4 infractions that have not been abated within 6 months and it will also limit the enforcement discretion of the code official for repeat or unabated housing code violations. The bill creates a new notice of abatement and new penalties for housing code violations that have not been abated for 6 months or more.

In addition, the bill will amend the notification of vacant building requirements to require the Department of Consumer and Regulatory Affairs to provide notice to the affected Advisory Neighborhood Commission and to post the notice on a website that the public can access. The bill grants the Mayor discretion to reclassify a blighted vacant building as a vacant building for a period of no longer than 12 months if the building has met certain conditions and is undergoing renovations. Finally, the bill will require an entity filing to include the names and addresses of a natural person that has at least 10 percent ownership in the entity, or has less than 10 percent ownership in the entity but controls the financial decisions or day-to-day operations of the entity.

Notification of Vacant Buildings

Bill 22-317, as introduced, proposed to require the Department of Consumer and Regulatory Affairs (DCRA) to notify an affected Advisory Neighborhood Commission (ANC) of DCRA's initial determination that a building is vacant or blighted vacant. Further, the bill would also require DCRA to include in its final determination an analysis of any evidence proposed by the ANC and how that evidence factored into DCRA's final decision. The bill, as introduced, also required the Real Property Tax Appeals Commission (RPTAC) to notify the affected ANC of a hearing of an appeal by a property owner of DCRA's final determination of whether a building is vacant or blighted vacant.

The impetus of the introduction of Bill 22-317 was to address the issue of the lack of communication from RPTAC to notify the affected ANCs with respect to hearings held by RPTAC. There have been cases where RPTAC has overturned determinations made by DCRA without even notifying the community that there was a hearing on the matter. The lack of transparency of the date and time of the hearings has impacted the community's ability to track the matter. District residents also wanted to ensure that DCRA and RPTAC were taking their concerns under consideration.

The Committee believes that notification to the community of a building's tax status or any hearing on the matter should be made available to the public. The residents who live next to vacant and blighted vacant buildings should have every opportunity to voice their concerns to the District government. The Committee Print adopted the provisions of Bill 22-317, as introduced, that will require notice of DCRA's final determination and notice of a hearing held by RPTAC on DCRA's

final determination to be provided to the affected ANC. Also, the Committee Print will require the notice to be posted on DCRA's website for the public to view.[2]

The Committee believes that the provision requiring DCRA to consider evidence from an ANC before making a determination is unnecessary since DCRA already considers this evidence before making a determination. District law already requires DCRA to consider an ANC recommendation before a determination of whether a building is vacant or blighted is concluded.[3] Moreover, when determining whether a building is vacant, the Mayor has to consider the complaints made by residents.[4]

DCRA also raised concerns regarding the notice to the ANC and how it could impact the service of process requirements. Specifically, DCRA believed that any issues with the notice provided to the ANC could be challenged and could lead to an unnecessary delay in a building being designated as vacant or blighted. To address these concerns, the Committee made clear in the bill that the notice provided to the ANC shall be a courtesy copy and shall not serve as an official notice for legal purposes.

Bill 22-910 was introduced by Chairman Mendelson to address the concerns of District residents that believed that their buildings where being improperly designated as vacant or blighted vacant by DCRA. In addition, the residents did not believe DCRA was providing them with sufficient notice before posting the notice on their buildings. Residents also complained that the notice that is posted by DCRA is too difficult to remove. In fact, when it has been determined that the determination made by DCRA was done improperly instead of removing the notice DCRA sends another notice to post over the original notice. The amended notice provides that the building is exempt from being classified as vacant. In situations where the notice is not removed residents have complained that their buildings have been broken into and vandalized.

As introduced, Bill 22-910 provided that the notice of whether a building is vacant or blighted vacant is deemed to be served properly on the date when mailed by first class mail to the building owner. The bill required the notice to be placarded on the building not less than 30 days following notice by first class mail. Although no hearing was held on the bill, DCRA raised concerns that the bill would be unduly burdensome on its inspectors and would have a significant impact on the service of process requirements when an official notice is served to a building owner.

Taking into consideration both the concerns of the community and DCRA, the Committee determined, at this time, the best way to address this matter is to include a provision that requires DCRA to change the manner in which DCRA posts a notice on a building. The Committee Print provides that the notice posted on a building must be done using an adhesive that does not make it impossible for an individual to remove the notice. The adhesive to be used will be determined by DCRA. This is an important change since the Committee believes that if DCRA does not want to remove the notice after it has improperly classified a building then the agency should make it easier for a resident to remove the notice.

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[2] This provision was included in the introduced version of Bill 22-910.
[3] *See* D.C. Official Code § 1-309.10.
[4] *See* D.C. Official Code § 42-3131.05(5).

Blighted Property Redevelopment

Bill 22-684, as introduced, would have authorized the Mayor to reclassify a blighted vacant building as a vacant building when provided evidence that a property owner met the vacant building definition prior to final inspection. Under current law, DCRA is only allowed to grant exemptions solely for "vacant" buildings and not to "blighted vacant" buildings.[5]

A building being renovated may be exempt from being classified as vacant if is under active construction or undergoing active rehabilitation, renovation, or repair.[6] For a residential building the exemption is for one year and for a commercial building the exemption is for two years.[7] This allows a developer who is redeveloping a building to not be subject to the higher Class 3 property tax rate i.e. vacant real property tax rate.[8] The intent is of the exemption is to not penalize a developer who is renovating a building to put back into productive use.

The bill was introduced to address the issue small developers confront when they are working on a residential or small commercial building. Even though the project they are working on would meet the vacant property exemption requirements, the buildings are designated as blighted vacant because the doors and windows are boarded up or are secured through other means. The reason the small developers do not install the doors and windows until the end of the project is because they have a tendency to break during the project which could add significant costs. In short, even though they are redeveloping a building they are subject to the higher Class 4 property tax rate i.e. blighted vacant real property tax rate.[9]

The Committee believes that these restrictions are onerous on a small developer and has included the provisions of Bill 22-684 into the Committee Print. As with the intent of the vacant property exemption, a developer should not be penalized when they are trying to contain costs when renovating a building.

However, addressing the concerns raised by DCRA to ensure that the exemption is only provided to developers diligently pursuing the redevelopment of a blighted vacant building[10], the Committee made some minor changes that are reflected in the Committee Print. The Committee Print only allows the Mayor to reclassify a building if it is determined that the building: (1) is safe and sanitary and does not threaten the health, safety, or general welfare of the community; (2) complies with the vacant building maintenance standards; and (3) is secured with boards or other means of security. In addition, the exemption is only for 12 months.

Transparency

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[5] Letter from Melinda Bolling, Director of the Department of Consumer and Regulatory Affairs to Phil Mendelson, Chairman of the Council of the District of Columbia (September 24, 2018) (on file with the Committee).
[6] *See* D.C. Official Code 42-3131.06(b)(3).
[7] *Id.*
[8] A vacant building is taxed at the Class 3 real property tax rate which is $5.00 per $100 of assessed value.
[9] A blighted vacant building is taxed at the Class 4 real property tax rate which is $10.00 per $100 of assessed value.
[10] *Supra* note 5.

Bill 22-381 and Bill 22-905 were introduced to help prevent negligent business owners and management companies form operating multiple businesses without detection. As introduced, Bill 22-381 would have authorized the Mayor to issue subpoenas to building owners and operators if a DCRA inspection uncovered 10 or more violations in a unit in a building or 35 or more violations in a single building. The subpoena would have required building owners and/or operators to disclose all individuals or entities with at least five percent ownership interest in the building or management company. They also would need to disclose other properties that they own or manage in the District. Bill 22-905, as introduced, would require disclosure of all person with a financial interest in a limited liability company (LLC) or limited liability partnership (LP) seeking a basic business license with an endorsement for residential housing.

Recent news stories have come to light that have shown that negligent landlords operate in the District under the protection of the District's LLC law. Typically, a negligent landlord will own properties across the District under many different LLCs, because LLCs are not required to report their complete ownership to the District government as part of registration or renewal.[11] In turn, DCRA is unable to identify properties in the District that are owned or operated by the negligent landlord.[12] By requiring disclosure of the ownership behind an LLC when one building is identified to be in poor condition, DCRA will be able to identify other buildings under the same ownership and would be able to deploy inspectors to those buildings.[13]

The main difference between Bill 22-381 and Bill 22-905 is the method the District government would use to require disclosure of the ownership of a business entity. The question is whether the information should be disclosed after a subpoena is issued or whether the information should be disclosed when the LLC or LP is formed. Mr. Henley, who testified on behalf of the Legal Aid Society at hearing on Bill 22-381, believed that the upfront disclosure by the landlords as part of their registration requirements was the best way to get the requisite information.[14] He added that Bill 22-381 would require DCRA "to go through a cumbersome subpoena process to identify individuals who are flouting the law and subjecting their tenants to unsafe and unhealthy living conditions."[15]

Mr. Henley recommended that the District look at New York City's law regarding landlord disclosure requirements.[16] New York City's law requires building owners to annually submit a registration statement that identifies the owner's name, residence, and business address.[17] If the owner is a corporation or partnership, the registration statement must include the names and addresses of any persons with over a 25 percent share of the corporation or partnership.[18] Mr.

[11] Melinda Bolling, Director, Department of Consumer and Regulatory Affairs, Testimony before the DC Council Committee of the Whole, 8, November 9, 2017.
[12] *Id.*
[13] *Id.*
[14] Evan Henley, Staff Attorney, Housing Unit, the Legal Aid Society of the District of Columbia, Testimony before the DC Council Committee of the Whole, 1, November 9, 2017.
[15] *Id.*
[16] *Id.*
[17] N.Y.C. Admin. Code § 27-2098.
[18] *Id.*

Henley concluded that New York City's approach would allow DCRA to quickly identify and respond to problem landlords.[19]

The Committee agrees with Mr. Henley that the approach proposed by Bill 22-381 would inhibit DCRA's ability to quickly address problem buildings across the District. The Committee believes that upfront disclosure is the best way to address this issue. The Committee would have recommended the approach proposed by Bill 22-905 which mirrors New York City's law, however, Bill 22-905 is limited only to LLCs and LPs that are in the residential housing business.[20]

The Committee is aware of instances in which developers have been using multiple LLCs when renovating houses in the District, also known as house flipping.[21] Multiple homeowners in the District have faced significant problems with new homes that they have recently purchased that were illegally renovated. In one instance a company in Maryland used multiple LLCs to purchase more than a dozen homes in Columbia Heights and Petworth and all the LLCs had the same address.[22] These situations have made it a challenge for homebuyers in the District to find out whom they are buying from.[23] The Committee believes there needs to be more disclosure in these cases to protect homebuyers in the District.

The Committee Print takes a more expansive approach and amends the District's corporation law to require an entity filing to state the names and addresses (residence and business) of any natural person whose share of ownership of the entity exceeds 10 percent, and any natural person who controls the financial and day-to-day operations of the entity if his or her ownership share is less than 10 percent. This approach will prohibit any loophole in the law by protecting against an individual or business from selecting another business formation to avoid disclosing ownership or controlling participants of the business entity. As former Director Bolling testified at the hearing on Bill 22-381, District law allows "*other corporate entities*" not just LLCs to not report complete ownership to the District government.[24] The Committee believes upfront disclosure of all owners and controlling participants of all business entities in the District is necessary to protect District residents from unscrupulous actors.

Abatement Timelines and Notice of Abatement

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[19] *Supra* note 14 at 2. The Committee also reviewed regulations promulgated by the U.S. Department of Housing and Urban Development as it relates to programs administer by the Federal Housing Authority to examine who is determined to be a controlling participant of an entity and disclosure requirements. *See* 24 CFR Part 200.
[20] Bill 22-381, as introduced, would also be limited to building owners that have a basic business license with a housing endorsement.
[21] Typically, a developer who is flipping a house does not have a basic business license with a residential housing endorsement.
[22] Martin Austermuhle, *Flipped Off, In D.C.'s Thriving Market for Renovated Homes, It's Buyer Beware Part 1: Homeowner*, WAMU, https://wamu.org/projects/house-flipping/#/part1 (last visited December 2, 2018).
[23] Martin Austermuhle, *Flipped Off, In D.C.'s Thriving Market for Renovated Homes, It's Buyer Beware Part 3: City*, WAMU, https://wamu.org/projects/house-flipping/#/part3?scrollTo=part3#part3 (last visited December 2, 2018).
[24] *Supra* note 11.

Bill 22-615 was introduced to address two issues: (1) to reform the procedures for hearings on housing code violations; and (2) to require landlords to move quicker to abate housing code violations. As introduced, Bill 22-615 would require a housing provider to timely requests an appeal of a housing code infraction to the Office of Administrative Hearings (OAH) and would have required OAH to hold a hearing within 10 business days of receiving the appeal requests. The bill would codify DCRA's internal criteria for approving requests to extend the deadline to correct a housing code violation. Finally, the bill would require the Mayor to correct any Class 1, 2, or 3 infractions that have not been abated within 6 months. The Mayor would then assess the cost of correcting the violation to the property owner through real property taxes collected.

A major concern the Committee has heard is the length of time it takes DCRA to order a landlord to abate a housing code violation. The Office of the District of Columbia Auditor (DC Auditor) noted that District regulations do not stipulate the period of time that a landlord has to abate a violation, and extensions granted by DCRA are not explicitly authorized under District law or regulations.[25] Currently, the way DCRA approves extensions can add weeks to the timeline for a housing provider to abate a violation.[26]

Ms. Harrison, a housing attorney at the Legal Aid Society submitted written testimony on Bill 22-615 that stated that DCRA generally grants landlords 30 days to make non-emergency repairs.[27] She added that repairs of housing code violations are often delayed when DCRA grants extensions often time for no particular reason.[28] More concerning is that the extensions are granted without informing or consulting with the affected tenants.[29]

The Committee agrees that on to many occasions DCRA has granted an extension to abate a housing code violation without good cause. This oversight has provided landlords cover to not make the necessary repairs in a timely manner. District residents living in squalid conditions have suffered the most due to DCRA's lack of holding housing providers accountable. In the Dahlgreen Courts case, residents had to wait nearly eight months for housing code violations to be abated.[30] The Auditor wrote in its report that the process for responding to housing code violation complaints allows landlords to put off remediation through extensions and delayed re-inspections.[31]

In order to address the issues described above the Committee Print includes a provision of Bill 22-615 that provides that a property owner shall not have more than 30 days to abate a housing code violation. This provision is aligned to current DCRA policy. When a notice of violation is issued an inspector will provide an abatement period that can be anywhere from one to 30 days.

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[25] Julie Lebowitz and Nancy Augustine, Office of the District of Columbia Auditor, Housing Code Enforcement: A Case Study of Dahlgreen Courts 13 (2018) (on file with the Committee).
[26] *Id.*
[27] Beth Mellen Harrison Supervising Attorney, Housing Law Unit, Legal Aid Society of the District of Columbia, Testimony submitted to the DC Council Committee of the Whole, 6, July 3, 2018.
[28] *Id.*
[29] *Id.*
[30] Morgan Baskin, *DCRA Should Improve Its Enforcement of Housing Code Violations, D.C. Auditor Says,* Washington City Paper (September 24, 2018), https://www.washingtoncitypaper.com/news/housing-complex/article/21023684/dcra-should-improve-its-enforcement-of-housing-code-violations
[31] *Id.*

The Committee notes that this provision does not preclude the Mayor from requiring a housing provider to immediately abate a housing code violation if there is imminent danger.[32]

The Committee Print also only allows the Mayor to grant an extension only if a property owner has made reasonable and good faith efforts to abate the violation. Reasonable and good faith efforts include proof that the housing provider is conducting active construction or undergoing active rehabilitation, renovation, or repair to abate the violation. The language in the Committee Print is more restrictive than what was proposed in Bill 22-615. The Committee believes that the discretion granted to DCRA must be as limited as possible to ensure that landlords are held accountable.

With regards to appeals of notice of violations and notice of infractions to OAH, the Committee agrees that the timeline to hear these cases should be codified. The Committee contacted OAH and believes the timeline provided in the Committee Print will not only help expedite the processing of these cases, but also will not be a burden on OAH. Further, the Committee Print limits the authority granted to OAH to grant a request for continuance and provides that if the hearing is postponed that it cannot be postponed more than 30 days after the date the hearing was originally scheduled.

The Committee decided against adding a provision requiring the Mayor to abate a housing code violation if it was not abated within six months. The Committee agrees with former Director Bolling that mandating that DCRA abate any violation that is not corrected within six months would be cost prohibitive.[33] Although, the bill requires the funds to be reimbursed to DCRA through real property taxes the potential time it would take to recover those funds could be substantial especially if the property would have to go to tax sale.

Further, there is currently about $4 million in the Nuisance Abatement Fund (Abatement Fund). The Mayor may use monies in the fund to correct any housing code violation, however, the funds are limited and there probably is not enough money in the Abatement Fund to implement this provision.[34] The Committee plans to take a closer look at how the Abatement Fund is utilized. Many comments from the hearing on Bill 22-615 indicated that the Abatement Fund should be limited in its scope. The Committee will review whether DCRA is utilizing the monies in the Abatement Fund in a sufficient manner.

Another issue the Committee has discovered is that DCRA fails to provide landlords and tenants information on whether a housing code violation has been abated. The DC Auditor found that District regulations requires initial notification to a tenant who has submitted a complaint but does not require any follow-up.[35]

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[32] *See* D.C. Official Code 42-3131.01(c).
[33] Melinda Bolling, Director, Department of Consumer and Regulatory Affairs, Testimony before the DC Council Committee of the Whole, 10, July 3, 2018.
[34] *See* D.C. Official Code § 42-3131.01(a).
[35] *Supra* note 24 at 26.

Bill 22-596, as introduced, would establish a notice of abatement to let the landlord and tenants know that a housing code violation that was reported has been abated. The Committee believes this provision would bring more transparency to the work conducted by DCRA. It will also allow tenants to know whether a certain housing code violation has been abated or not. The Committee Print would also require the landlord to post the notice of abatement for 14 days, so it can be viewed by all residents.

Former Director Bolling testified against this provision because she believed that providing a landlord a notice of abatement may incentivize the landlord to make superficial repairs in order to evade further citation.[36] The Committee does not agree with this argument and believes DCRA needs to take the steps to ensure the inspections it is conducting are thorough. Under current law, DCRA does not have to provide any finality in the inspection process and this creates a tenuous situation for good landlords operating in the District.

Increased Penalties and Reporting Requirements

Bill 22-596, as introduced, would dedicate fines recovered from Class 2, 3, and 4 infractions that have not been abated within six months, and fines for repeat infractions pursuant to 16 DCMR § 3201.2 to a Housing Condition Abatement Fund. The monies in the Housing Condition Abatement Fund would be split accordingly: (1) 1/3 to the Nuisance Abatement Fund; (2) 1/3 to assist tenants impacted by impacted by the infractions listed above; and (3) 1/3 to reimburse housing providers for any inspection or re-inspection fees. Further, it would require a DCRA inspector to refer cases of Class 2, 3, and 4 infractions that have not been abated within six months to the Office of the Attorney General. Finally, it would limit the enforcement discretion of a DCRA inspector for repeat or unabated housing code violations.

Bill 22-596 was introduced to increase the penalties for housing providers that fail to abate a housing code violation in a timely manner. The Committee agrees with this provision and the Committee Print for Bill 22-317 provides that a Class 2, 3, or 4 infraction that has not been abated within six months would be reclassified as a Class 1, 2, or 3 infraction. The Committee hopes that the increase in the fine amounts will incentivize landlords to abate a housing code violation in a timely manner.[37]

However, the Committee does not believe that the funds from the newly created fines and the fines from repeat infractions should be deposited into a Housing Condition Abatement Fund. Ms. Cunningham, a lawyer with the Children's Law Center, testified at the hearing on Bill 22-596 that although the concept of giving a portion of the fines to affected tenants is commendable, the need to provide funding for targeted abatement of un-remediated housing code violations is more important.[38] Further, as noted above, the Abatement Fund is "woefully under-resourced" and any new monies should be used to supplement the Abatement Fund.[39] The Committee agrees that new

[36] Supra note 33 at 9.
[37] For the first offense: the fine for a Class 1infraction is $2,000; the fine for a Class 2 infraction is $1,000; the fine for a Class 3 infraction is $500; and the fine for a Class 4 infraction is $100. *See* 16 DCMR § 3201.1.
[38] CLC Testimony.
[39] *Id.*

monies should be dedicated to the Abatement Fund and in turn the Committee hopes DCRA would use those monies to proactively address housing code violations that are not being remediated by landlords.

Concerns were raised in the hearing on Bill 22-596 regarding mandating an automatic referral of cases of housing code violations that have not been abated within six months to the Office of Attorney General. The Committee understands that this provision was intended to create better dialogue between DCRA and the Office of Attorney General to address situations in which landlords are failing to make the necessary fixes to their buildings. The Committee supports this intent, so the Committee Print proposes to require the DCRA inspector to notify the Office of Attorney General whenever they come across a case where a Class 1, 2, 3, and 4 infraction that has not been abated within six months.[40] This will improve the communication between the two agencies regarding problem properties and it gives the Office of the Attorney General the discretion of whether or not they want to take further action on the matter.

Another issue that Bill 22-596 addresses is the lack of reporting from DCRA on problem properties. The DC Auditor noted that the Mayor and the Council do not receive regular reporting from DCRA on the trends and patterns of housing code compliance.[41] The Committee included in the Committee Print of Bill 22-317 a provision that requires DCRA to report to the Mayor and Council detailed information as it relates to Class 1, 2, 3, and 4 infractions that have not been abated within six months. This would bring more transparency to how DCRA addresses matters as it relates to landlords who fail to quickly remediate a housing code violation. It can also provide more insight on whether further action is required by the Mayor or the Council to address these situations.

Finally, as mentioned earlier in the report, DCRA is often provided too much discretion to ensure that a landlord is taken steps to address a housing code violation. The Committee Print addresses this issue by removing a DCRA inspector's discretion for issuing a notice of violation, notice of infraction, or a combined notice of violation and notice of infraction if he or she comes across a Class, 1, 2, 3, and 4 infraction that has not been abated within six months.

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[40] A Class 1 infraction is an egregious infraction that results from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to the health, safety, or welfare of persons within the District of Columbia; A Class 2 infraction is a serious infraction that results from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to the health, safety, or welfare of persons within the District of Columbia; A Class 3 infraction is an infraction that involves a failure to comply with a law or rule requiring periodic renewal of licenses or permits, or infractions that are serious and have an immediate, substantial impact on the health, safety, or welfare of persons within the District of Columbia; and A Class 4 infraction is an infraction that involves a failure to post required licenses or permits, or infractions that are minor, but have the potential to be hazardous to the health, safety, or welfare of persons within the District of Columbia. *See* 16 DCMR § 3201.1.

[41] *Supra* note 24 at 26.

II. LEGISLATIVE CHRONOLOGY

June 6, 2017	Bill 22-317, the "Notification of Vacant and Blighted Classification Amendment Act of 2017" is introduced by Councilmembers Allen, Silverman, and R. White and referred to the Committee of the Whole.
July 10, 2017	Bill 22-381, the "Landlord Transparency Amendment Act of 2017" is introduced by Chairman Mendelson at the request of the Mayor.
November 21, 2017	Bill 22-596, the "Housing Rehabilitation Incentives Regulation Amendment Act of 2017" is introduced by Councilmembers R. White, Nadeau, T. White, Bonds, Grosso and Allen and referred to the Committee of the Whole.
December 5, 2017	Bill 22-615, the "Housing Code Enforcement Integrity Amendment Act of 2017" is introduced by Councilmembers Bonds, Nadeau, R. White, and T. White and referred to the Committee of the Whole.
February 6, 2018	Bill 22-684, the "Blighted Property Redevelopment Amendment Act of 2018" is introduced by Councilmembers Silverman, Grosso, Nadeau, and Evans and referred to the Committee of the Whole.
July 10, 2018	Bill 22-905, the "Real Estate LLC Transparency Amendment Act of 2018" is introduced by Councilmembers Silverman, Nadeau, Allen, R. White, Cheh, and T. White and referred to the Committee of the Whole.
July 10, 2018	Bill 22-910, the "Vacant Building Notification Expansion Amendment Act of 2018" is introduced by Chairman Mendelson and referred to the Committee of the Whole.
June 9, 2017	Notice of Intent to Act on Bill 22-317 is published in the *DC Register*.
October 13, 2017	Notice of Public Hearing on Bill 22-317 is published in the *DC Register*.
November 9, 2017	The Committee of the Whole holds a public hearing on Bill 22-317 and Bill 22-381.
July 3, 2018	The Committee of the Whole holds a public hearing on Bill 22-596 and Bill 615.
July 12, 2018	The Committee of the Whole holds a public hearing on Bill 22-684.
December 4, 2018	The Committee of the Whole marks up Bill 22-317.

III. POSITION OF THE EXECUTIVE

Melinda Bolling, Director, Department of Consumer and Regulatory Affairs, testified on behalf of the Executive in support of Bill 22-381 and had concerns with Bill 22-317, Bill 22-596, Bill 22-615, Bill 22-684. Her testimony is summarized below.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Mark Eckenwiler, Commissioner, ANC 6C04, testified on behalf of ANC 6C in support of Bill 22-317. The Commission believes Bill 22-317 would bolster the role of ANCs in identifying properties eligible for vacant or blighted designation, as well as require notice to the ANCs of such designation and to any hearings before the Real Property Tax Appeals Commission.

He also testified on behalf of ANC 6C in support of Bill 22-684, however, the Commission recommended that the bill, as proposed, would benefit from a number of narrowing and clarifying amendments to ensure that a building is not exempt from being designated as blighted vacant only if its door and window openings are boarded shut.

V. SUMMARY OF TESTIMONY

A. The Committee of the Whole held a public hearing on Bill 22-317 and Bill 22-381 on Thursday, November 9, 2017. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Alejandra Monroy, Bilingual Housing Counselor, Central American Resource Center, testified in support of Bill 22-381. Ms. Monroy testified that Bill 22-381 will help protect tenants against retaliatory practices of landlords when tenants, specifically low-income immigrant tenants, complain about substandard living conditions. She recommended that the bill includes a clause that protects tenants in case their building closes due to extensive house code violations.

Evan Henley, Staff Attorney, Housing Unit, Legal Aid Society of the District of Columbia (Legal Aid), testified regarding concerns Legal Aid had with Bill 22-381 and recommend amendments. Mr. Henley testified while the goal of the legislation is commendable the more effective approach to require transparency would be to require all landlords to disclose ownership information as part of their registration requirements. According to Mr. Henley, the bill would require the Department of Consumer and Regulatory Affairs to go through a cumbersome subpoena process to identify individuals who are flouting the law and subjecting their tenants to unsafe and unhealthy living conditions.

Melinda Bolling, Director, Department of Consumer and Regulatory Affairs (DCRA), testified that the Executive supports increasing the speed and accuracy of vacant property identification with ANCs, however, it is concerned that Bill 22-317 may run counter to those goals by complicating a review process that already allows for ANCs to submit evidence. Further,

Director Bolling testified that the Executive does not support the bill in its current form but is ready to work with all interested parties to develop any alternatives to achieve the goals of the bill.

Director Bolling testified that Bill 22-381 would protect vulnerable residents and increase enforcement against landlord who do not provide code compliant units to their tenants. She added that the bill would enable DCRA to quickly find all properties owned by potentially negligent landlords since District law does not require LLCs or other corporate entities to report their complete ownership to the District government. In addition, she testified that Bill 22-381 would help prevent negligent property owners and management companies from operating multiple substandard buildings without detection.

B. The Committee of the Whole held a public hearing on Bill 22-596 and Bill 22-615 on Tuesday, July 3, 2018. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Daniel Palchick, AARP Legal Counsel for the Elderly (LCE), testified in support of Bill 22-596, but raised concerns regarding the creation of a new Fund that would be used to correct housing code violations, reimburse tenants who suffer from substandard housing, and reimburse inspection fees to property owners. Mr. Palchick testified that the mechanism of reimbursing tenants is too vague and the reimbursement of inspection fees to property owners would be a waste of resources. He added that the LCE does supports the reporting requirements in the bill.

Mr. Palchick testified in support of Bill 22-615 as it would correct the loophole of enforcement that is often created by DCRA when it fails to enforce its notices of violations. He added that the LCE supports the provision of the bill that allows DCRA to extend the abatement period, but only if the property owner made a good faith effort to abate the conditions and there is a good cause for the delay.

Anne Cunningham, Senior Policy Attorney, Children's Law Center (CLC), testified in support of Bill 22-596, however, raised concerns that the resources from the new Fund should only be allocated to remediate housing code violations. Ms. Cunningham stated that the Nuisance Abatement Fund is woefully under-resourced, and the supplemental funds and administrative resources should go towards improving properties that are a threat to tenants' health and safety. She added that the CLC recommends the provision in the bill that would automatically refer certain cases to the Office of the Attorney General (OAG) as it would be an inefficient and less effective approach. She recommended requiring the bill to improve the communication between DCRA and OAG regarding problematic properties. Finally, she testified that the CLC is in favor of the reporting requirements in the bill but proposed to make the reporting requirements more expansive.

Ms. Cunningham testified that the CLC appreciates the problem the legislation is attempting to address as landlords who appeal Notice of Violations and Notice of Infractions often do it just to slow deadlines and to delay payments of fines. In addition, she added putting the onus on OAH to implement this new timeline rather than DCRA increases the likelihood that these mandated timelines will be implemented.

Melinda Bolling, Director, Department of Consumer and Regulatory Affairs, testified that the Executive has concerns with Bill 22-596. She testified that disbursement of funds to impacted tenants would pose significant challenges that could result in disparate treatment of the most vulnerable tenants. Also, reimbursing landlords for re-inspection fees may provide a disincentive to keeping properties maintained at all times to avoid re-inspection fees. The Director also raised concerns regarding mandating referral of certain cases to the OAG as it would unnecessarily penalize landlords that are taking active steps to come into compliance. Director Bolling added that the creation of a new Notice of Abatement may be abused by property owners who intend to use it as proof of abatement in instances where repairs were superficial. She believed that the current Notice of Infractions system is the most efficient process for tracking Housing Code violations.

Director Bolling testified to the concerns the Executive has with Bill 22-615. First, she testified that limiting the abatement extension discretion as contemplated in the bill may lead to unintended consequences for residents. Also, requiring DCRA to abate any Class 2, 3, or 4 infraction that has not been abated within six months may provide a disincentive for landlords to fix the properties they own. Moreover, DCRA will incur significant up-front costs to do the work up-front only to be reimbursed much later through real property taxes.

Testimony Submitted for the Record

Beth Mellen Harrison, Supervising Attorney, Housing Law Unit, Legal Aid Society and Damon King, Senior Policy Advocate, Legal Aid Society (Legal Aid), submitted testimony in support of Bill 22-596 and Bill 22-615. With regard to Bill 22-596, they wrote that all the new fines collected should go to the Nuisance Abatement Fund. They also raised concerns regarding the automatic referral of certain cases to the OAG because housing code enforcement should be focused in a single, independent agency. Also, they added that the OAG is not best positioned to oversee day-to-day enforcement in routine cases. Legal Aid supports the reporting requirements, the Notice of Abatement, and new penalty provisions that are included in the bill.

Legal Aid supports the provisions in Bill 22-615 to restrict extensions, however, it believes that the requirements can be further strengthened. They wrote that landlords shall not just be required to demonstrate good faith efforts at repairs but that they have used all reasonable means to accomplish repairs by the deadline. In addition, Legal Aid was supportive of the provision that would require DCRA to abate a violation if it has not been abated by a landlord within six months. Also, Legal Aid added imposing the costs of the repairs on the owners as real property taxes should speed enforcement and would create a stronger deterrent.

C. The Committee of the Whole held a public hearing on Bill 22-684 on Thursday, July 12, 2018. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Rick Rybeck, Director, Just Economics LLC, testified that the District's vacant and blighted vacant real property tax policy is broken. He testified that the policy should be reformed to make sure it: (1) is fair; (2) is comprehensible to the average taxpayer; (3) promotes job creation;

(4) promotes affordable housing; and (5) minimizes the creation of vacant lots and blighted buildings.

Melinda Bolling, Director, Department of Consumer and Regulatory Affairs, testified that the Executive supports the creation of a limited, enforceable exemption for property owners pursuing the redevelopment of "blighted vacant" property but Bill 22-684, as drafted, sets the bar too low and creates opportunities for abuse by unscrupulous absentee property owners. The Director testified if the Council decides to go forward the bill should be modified to ensure that the exemption is time-constrained and limited to applicable owners who are diligently pursuing rehabilitation of these properties.

VI. IMPACT ON EXISTING LAW

Bill 22-615 amends the Office of Administrative Hearings Establishment Act of 2001 to establish timelines for housing code violation hearings before the Office of Administrative Hearings.

Bill 22-615 amends section 29-102.01 of the District of Columbia Code to require an entity filing made on or after January 1, 2020 to include the names, residence and businesses addresses of any natural person that has 10 percent ownership of the entity or has the ability to direct the day-to-day operations of such entity.

Bill 22-615 amends An Act to provide for the abatement of nuisances in the District of Columbia by Commissioners of said District, and for other purposes to dedicate certain fines to the Nuisance Abatement Fund. In addition, the bill grants the Mayor discretion to reclassify a blighted vacant building as a vacant building for a period of no longer than 12 months if the building has met certain conditions and is undergoing renovations. It amends the notice requirements for vacant buildings and require a courtesy copy of the notice to be mailed or electronically mailed to the affected Advisory Neighborhood Commission. Further, the bill requires the Real Property Tax Commission to mail or send an electronic copy of a notice of a hearing to the affected Advisory Neighborhood Commission.

Bill 22-615 amends section 908 of the Rental Housing Act of 1985 to provide that a property owner shall not have more than 30 days to abate a housing code violation, and to allow the Mayor to grant an extension only if the housing provider has made reasonable and good faith efforts to abate a violation.

Bill 22-615 amends section 105 of Title 14 of the District of Columbia Municipal Regulations to require an inspector to notice the Office of Attorney General of any Class 1, 2, 3, or 4 infractions that have not been abated within six months. It requires the Department of Consumer and Regulatory Affairs (DCRA) to report to the Mayor and the Council on information related to Class 1, 2, 3, or 4 infractions that have not been abated within six months. Also, it limits the enforcement discretion of the code official for repeat or unabated housing code violations. Further, the bill creates a notice of abatement that must be provided by DCRA to the landlord and must be posted by the landlord for all residents to view for 14 days.

Bill 22-615 amends Title 16 of the District of Columbia Municipal Regulations to establish new infractions for housing code violations that have not been abated within six months.

VII. FISCAL IMPACT

The attached December X, 2018 fiscal impact statement from the Office of Chief Financial Officer states that funds are not sufficient in the FY 2019 through FY 2022 budget and financial plan to implement Bill 22-317.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1 States the short title of Bill 22-317.

Section 2 Provides that a housing provider has 10 days to appeal a notice of violation or notice of infraction to the Office of Administrative Hearings (OAH). In addition, OAH has 30 days to schedule a hearing after receiving a request for a hearing and must issue a final order not more than 30 days after the date of the hearing. Also, OAH can grant a continuance but only on an affirmative showing of good cause.

Section 3 Requires that entity filings made on or after January 1, 2020 state the names and addresses (residential and business) of any natural person whose share of ownership of the entity exceeds 10 percent, and any natural person who controls the financial and day-to-day operations of the entity if his or her ownership share is less than 10 percent.

Section 4 An Act to provide for the abatement of nuisances in the District of Columbia by Commissioners of said District, and for other purposes.

subsection (a) requires the fines collected pursuant to 16 DCMR §§ 3201.1, 3201.2, 3305.1, 330.2, and 3305.3 be deposited into the Nuisance Abatement Fund.

subsection (b) allows the Mayor to reclassify a building as vacant instead of blighted vacant only if the building: (1) is safe and sanitary and does not threaten

the health, safety, or general welfare of the community; (2) complies with the vacant building maintenance standards; and (3) has secured the doors, windows, areaways, and other openings, with boards or other means of security, for not longer than 12 months and the owner submits a building permit application that certifies that these items will be replaced as part of the renovation of the vacant building.

subsection (c) clarifies that the Mayor shall post a notice on a vacant building but that the official notice is the notice that is mailed to the property owner. In addition, it provides that the notice posted on the vacant building shall not be posted by difficult to remove adhesive. Further, it requires a courtesy copy of the notice to be mailed or electronically mailed to the affected Advisory Neighborhood Commission and it has to be posted on a website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public. Finally, clarifies that the courtesy copy shall not be construed to satisfy the official notice requirements.

subsection (d) requires a courtesy copy of a notice of vacancy designation of a nonregistered vacant building to be mailed or electronically mailed to the affected Advisory Neighborhood Commission and it has to be posted on a website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public.

subsection (e) requires the Real Property Tax Appeals Commission to provide notice either by mail or by electronic mail to the affected Advisory Neighborhood Commission at least 15 days before any scheduled hearing of an appeal from a property owner on whether a building should be registered a vacant or blighted vacant.

Section 5 Provides that a rental housing provider shall only have 30 days to abate any condition that has resulted in the issuance of a notice of violation that was issued pursuant to an inspection of the housing accommodation. The Mayor mat extend the 30-day deadline only if the property owner has made reasonable and good faith efforts to abate the violation. Reasonable and good faith efforts include proof of active construction or undergoing active rehabilitation, renovation, or repair to abate the violation.

Section 6 Amends section 105 of Title 14 of the District of Columbia Municipal Regulations.

subsection (a) requires an inspector to notify the Office of Attorney General whenever he or she finds reasonable grounds to believe that there exists a violation of 16 DCMR §§ 3305.1(s), 3305.2 (uu), and 3305.3 (vvv). In addition, the inspector shall do one of the following: (1) issue a notice of violation; (2) issue a notice of infraction; (3) issue a combined notice of violation and notice of infraction; (4) issue any other order or notice authorized to be issued by the code official; or (5) effect summary correction of the violation, as authorized by law. Further, on or

before October 1 of each year, the Department of Consumer and Regulatory Affairs will be required to submit a report to the Mayor and the Council that details information related to a violation issued pursuant to 16 DCMR §§ 3305.1(s), 3305.2 (uu), and 3305.3 (vvv), or a violation issued pursuant to 16 DCMR § 3305.1 that has not been abated within six months. The report shall include the number of notifications that were provided to the Office of Attorney General, the number of notice of infractions and notice of violations that were issued, the total value of fines collected, and the number of summary corrections completed.

subsection (b) clarifies that subsection 14 DCMR 105.1a is exempt from the provisions set forth in subsection 14 DCMR 105.3.

Section 7 Amends Title 16 of the District of Columbia Municipal Regulations.

subsection (a) requires the Director of the Department of Consumer and Regulatory Affairs to issue a notice of abatement if a cited infraction has been successfully abated. In addition, the property owner shall post the notice of abatement in a location for residents to view for 14 days. The notice of abatement shall include a list of the infractions abated and the property owner's license or permit number.

subsection (b) creates a new Class 1, Class 2, and Class 3 infraction. It is a Class 1 infraction if a Class 2 infraction is not abated within 6 months, it is a Class 2 infraction if a Class 3 infraction is not abated within 6 months, and it is a Class 3 infraction if a Class 4 infraction is not abated within 6 months.

Section 8 Provides that this act is being approved subject to appropriation.

Section 9 Adopts the Fiscal Impact Statement.

Section 10 Establishes the effective date (standard 30-day congressional review language).

IX. COMMITTEE ACTION

X. ATTACHMENTS

1. Bill 22-317 as introduced.
2. Written Testimony.
3. Fiscal Impact Statement for Bill 22-317.
4. Legal Sufficiency Determination for Bill 22-317.
5. Comparative Print for Bill 22-317.
6. Committee Print for Bill 22-317.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : June 06, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, June 6, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Notification of Vacant and Blighted Classification Amendment Act of 2017", B22-0317

INTRODUCED BY: Councilmembers Allen, Silverman, and R. White

CO-SPONSORED BY: Councilmembers Gray, Grosso, and Nadeau

The Chairman is referring this legislation to the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services

Councilmember Elissa Silverman

Councilmember Charles Allen

Councilmember Robert C. White, Jr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To provide for the abatement of nuisances in the District of Columbia, by the Commissioners of said District, and for other purposes to authorize affected Advisory Neighborhood Commissions to submit information in support of designating a building as vacant or designating a vacant building as a blighted vacant building, and to require the Real Property Tax Appeals Commission to provide notice to affected Advisory Neighborhood Commissions of such cases as they are heard on appeal.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the "Notification of Vacant and Blighted Classification Amendment Act of 2017".

Sec. 2. An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 115; D.C. Official Code § 42-3131.01 *et seq.*), is amended as follows:

(a) Section 5 is amended as follows:

(1) Subparagraph (B) is amended as follows:

(A) Sub-subparagraph (ii) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(B) Sub-subparagraph (iii)(III) is amended by striking the phrase "paint." and inserting the phrase "paint; and" in its place.

(C) A new sub-subparagraph (iv) is added to read as follows:

"(iv) Evidence provided by the affected Advisory Neighborhood Commission, if any, in support of the considerations under this subparagraph.

(2) Paragraph (5) is amended as follows:

(A) Subparagraph (G) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(B) Subparagraph (H) is amended by striking the period and inserting the phrase "up; and" in its place.

(C) A new subparagraph (I) is added to read as follows:

"(I) Evidence provided by the affected Advisory Neighborhood Commission, if any, in support of the considerations under this paragraph.".

(b) Section 5a (D.C. Official Code § 42-3131.05a) is amended by striking the phrase "Notice of the initial vacant or blighted property determination shall also be posted on the vacant building" and inserting the phrase "Notice of the initial vacant or blighted property determination shall also be mailed electronically to the Office of the Advisory Neighborhood Commission and the affected Advisory Neighborhood Commission and posted on the vacant building" in its place.

(c) Section 6 (D.C. Official Code § 42-3131.11) is amended by adding a new sentence at the end to read as follows:

"In addition, the Mayor shall notify, by electronic mail, the Office of the Advisory Neighborhood Commission and the affected Advisory Neighborhood Commission of the designation.".

(d) Section 15 (D.C. Official Code 42-3131.15) is amended as follows:

(1) Subsection (a) is amended by adding a

new sentence at the end to read as follows: "The notice of final determination shall include reference to and evaluation of evidence, if any, provided by the affected Advisory Neighborhood Commission.".

(2) A new subsection (c) is added to read as follows:

"(c)(1) After receiving an appeal under subsection (b) of this section, the Real Property Tax Appeals Commission for the District of Columbia shall provide, by electronic mail, the Office of Advisory Neighborhood Commission and the affected Advisory Neighborhood Commission at least 30 days before any scheduled hearing on the appeal, the following information related to the building at issue:

"(A)(i) The owner's name; and

"(ii) Premises address, including square, suffix and lot numbers, and ward number;

"(B) The determination under review; and

"(C) The date, time, and location of the hearing.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

CARECEN
LATINO RESOURCE AND JUSTICE CENTER
Strengthening the Latino Community in the Washington, D.C. Area

Council of the District of Columbia
November 9, 2017

Testimony provided by: Alejandra Monroy, Bilingual Housing Counselor of the Central American Resource Center (CARECEN)

Good morning members of the Committee. Thank you for the opportunity to testify before you today. My name is Alejandra Monroy. I am a Bilingual Housing Counselor at the Central American Resource Center-CARECEN. Today, I would like to share with you my experience working with CARECEN's housing department.

Founded in 1981, CARECEN's mission is to foster the comprehensive development of the Latino community by providing direct services, while promoting grassroots empowerment, civic engagement, and human rights advocacy. CARECEN serves low-to-moderate-income Latinos in DC, who now make up around 10% of the overall population. CARECEN's participants are more likely to rent than own their homes; 64% of Central American immigrants are renters, compared to 34% of native born persons and 39% of other immigrants.

Over the past year I have been working with low income tenants of the District of Columbia. Many of them live in buildings of five or less units. In my experience, working with these cases is difficult because landlords often refuse to address our requests and look for ways to avoid making repairs, decline to provide appropriate paperwork on various issues, refuse to comply with the housing regulations, and impose high rent increases more than once a year. There have also been instances where my clients are charged with "repairs" and fees that are not in the lease agreement nor part of the tenants' responsibility. These are just some of the issues I have been dealing with landlords of buildings with five units or less.

As a result, my clients have to live in unlivable units and experience high levels of stress trying to figure out how to pay the rent increases imposed by the landlord two or three times a year. This past year I have encountered many cases where landlords threaten and intimidate tenants. Among threats made by the landlords include, but are not limited to, eviction, retaliation actions for exercising their rights, law suits, and reporting tenants to ICE. Working with these buildings can be quite frustrating and in many occasions unfruitful due to the landlords' lack of transparency about building conditions, ownership, and hiding

information available to the public. In addition, these landlords feel immune to the DC Housing laws and regulations mainly because they feel protected by the five or less unit building exemptions.

One of these landlords that I have dealt with throughout this past year is the owner of 5020 2ND ST NW. Tenants from his building not only endure threats and intimidation, but also put up with the landlord apparent lack of personal responsibility as owner of the property. Two of my clients could not bear the conditions of their units and the constant harassment from the landlord to pay higher rent and were forced to move out of their apartments. What is important to note here is that these clients are single immigrant mothers. One of them reported to me that her living room ceiling collapsed after years of minimal to no basic maintenance at the hands of the landlord. After asking the landlord to repair the ceiling, he began harassing my client and refused to get the work done on her unit. He made excuses – he said it was not his fault, requested my client move out of the apartment while the repairs were being done, and even blamed her for it. My client called me on several occasions extremely distressed after having conversations with the landlord. Eventually, my client could not take it anymore and left the apartment.

Regarding the other case, the landlord threatened my client with other consequences, such as eviction and reporting her to ICE, simply due to the fact that my client is an immigrant, if she continued to exercise her rights to get repairs done on her unit, and if she refused to accept the rent increase that the landlord requested. I am here to support bill B22-0381, the Landlord Transparency Amendment Act of 2017, because I believe that this legislation will protect our community against these kinds of landlords.

This bill must guarantee that tenants will be protected by ensuring that DCRA shares information with housing organizations and other entities, as well as ensure that DCRA lists all of the housing code violations in their inspection reports. This bill should also include a clause that protects tenants in case their building closes due to extensive housing code violations. Tenants should have the right to be relocated by the landlord while repairs are being done, as well as retain the right to take back possession of their units once the building is rehabilitated.

Thank you for giving me the opportunity to testify in support of Bill B22-0381 "the Landlord Transparency Amendment Act of 2017". Given my work with the Latino immigrant community, I can testify to the importance of passing this bill as a means to foster a strong, stable, and safe Washington, D.C., ensuring the wellbeing of our community and to continue to ensure that landlords do not take advantage of their tenants. Thank you for your time.

Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

Written Testimony of Evan Henley
Staff Attorney, Housing Unit
The Legal Aid Society of the District of Columbia

The Committee of the Whole
Council of the District of Columbia

Bill 22-381, Landlord Transparency Amendment Act of 2017

November 9, 2017

The Legal Aid Society of the District of Columbia[1] submits this testimony to recommend amendments to Bill 22-381, the Landlord Transparency Amendment Act of 2017 ("the bill"). The motivation for the bill—to allow the Department of Consumer and Regulatory Affairs (DCRA) to identify other problem properties owned by "bad actor" landlords and engage in inspection and enforcement regarding housing code violations—is commendable. However, Legal Aid believes that these efforts would be much more effective if the disclosures required by the bill, or similar ones, were required of *all* landlords as part of their registration requirements. DCRA should not have to go through a cumbersome subpoena process to identify individuals who are flouting the law and subjecting their tenants to unsafe and unhealthy living conditions. Creating front-end disclosure requirements is a far more efficient way of making this information readily accessible, and making such disclosures public would also allow tenants and prospective tenants to know more about their landlords and potential landlords. New York City offers a model that the District should follow regarding landlord disclosure requirements and how this information can be used.

As currently written, the bill allows the Mayor to subpoena records regarding ownership of an inspected property, and other properties in which the owners of the inspected property have an ownership or management interest. This subpoena power would be triggered where a DCRA inspection reveals that ten housing code violations exist in a single unit, or thirty-five violations exist in a single building.

The subpoenaed records would reveal two important pieces of information: 1) the individuals behind any business organization that owns and/or manages the property; and 2) what other properties these individuals own and manage. This information would allow DCRA to identify at-risk properties and the individuals who are responsible for the substandard conditions at these properties. With this information, DCRA could better target its inspection and enforcement efforts.

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[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." For 85 years, Legal Aid staff and volunteers have provided legal services to tens of thousands of the District's neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law. More information about Legal Aid is available at our website, www.legalaiddc.org, or on our blog, www.makingjusticereal.org.

In its current form, however, the bill will be of limited utility: the subpoena process unnecessarily delays and complicates the process to obtain this critical information; the violation threshold is too high and will not cover enough bad actor landlords; and there is no guarantee the information will be publicly shared. Adopting a registration requirement for owners and management entities akin to that in New York City would be a much more effective way to achieve the same policy objectives.

In New York City, owners must annually submit a registration statement which becomes publicly available and, among other things:

a) identifies the premises by street address and square and lot number;

b) identifies the owner by name, residence, and business address. If the owner is a corporation or partnership, the registration must include

1) the name and address of the corporation or partnership as well as the names, residences, and business addresses of the officers of the corporation and the general partner;

2) the names and addresses of any persons with over a twenty-five percent share of the corporation or limited partners with over a twenty-five percent share in the partnership;

c) designates a "head officer" who is responsible for the maintenance and operation of the rental units and is authorized to correct emergency conditions and make repairs;

d) provides a phone number at which an owner or officer can be reached at all times by the government (this phone number is not a public record).[2]

Adopting a law which comprehensively promotes transparency, like New York City, would allow DCRA to quickly identify and respond to problem landlords and would address the following problems with the current bill:

1. *Slow and cumbersome process.* When the subpoena power is invoked, there is sure to be a delay between the time that violations are found and when the subpoena is issued. Then, the entity will need time to respond. Finally, given that the records are demanded by subpoena, compliance against uncooperative landlords can only be enforced by bringing a judicial action. This will be overly time- and resource-intensive for an agency that is already overburdened.

Owners should be required to disclose ownership information up front, so that information is easily accessible. The subpoena process is unnecessarily cumbersome and puts a weighty burden on the District. Instead, the burden to report ownership information should be put on the landlord. This could easily be done not only when a landlord first registers a unit, but also when the landlord renews its basic business license or when ownership or management of a property changes. Once the information was stored in DCRA's database, other properties owned or managed by the individual(s) could be located with a few keystrokes following an inspection which revealed substantial housing code violations. DCRA could then quickly dispatch inspectors to those buildings to determine if the owners were neglecting those buildings as well.

Similarly, owners should be mandated to name a person responsible for maintenance and repairs, so that DCRA has an effective address to which it could send inspection reports and

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2 *See* NYC Admin. Code § 27-2098, attached as Attachment 1.

reliable contact information for when emergency repairs are needed. Legal Aid attorneys often encounter cases where landlords claim that they never received inspection reports (which are sent to the address for the owner on file with the Office of Tax and Revenue). Currently, landlords frequently provide the address for the building for this purpose or a distant corporate office, meaning that records get sent to an address which does not exist (because there is no unit number) or an office that is not responsible for making repairs.

2. *Underinclusive threshold for invoking the subpoena power.* The threshold the bill sets for DCRA to have subpoena power, ten violations in a unit or thirty-five in a building, is too high and makes no distinction based on the severity of violations. DCRA should be able to review more in-depth ownership information from any building where substantial violations are present.

For example, under the bill's current form, the District could not subpoena records from a landlord of a five-unit building where, in December, each unit had 1) severe water damage and daily flooding from a leaking roof; 2) no heat; 3) no working stove; 4) bedbugs; and 5) mice. Given the severity of these violations, it would be in the public interest for the District to quickly know who actually owned and managed this building, so that it could determine whether similar conditions existed in other buildings with the same owner or manager which had not yet been reported to or inspected by DCRA. Were the landlord required to disclose this information itself, inspections could be scheduled within days. Under the current language of the bill, the landlord could not be compelled to disclose ownership information *at all* because only five violations were found per unit, and only twenty-five violations in the building.

The District should have discretion to exercise its subpoena power whenever substantial violations are found, rather than being circumscribed by an arbitrary threshold. If ownership information must only be disclosed in response to a subpoena, then some threshold is needed. While a threshold is always somewhat arbitrary, as the example above shows, one that rests solely on a certain number of violations is especially so.

3. *Information Not Publicly Available.* Although the information obtained by subpoena will be of use to DCRA to target inspections and enforcement, it would be much more useful if a substantial portion of it were readily, and publicly, available to current and prospective tenants, other government bodies, and tenant advocates. Tenants could use the information about the "head officer" to know whom to contact when their complaints go unaddressed by property managers. Prospective tenants could check into how owners maintain not just the building they are considering, but other buildings with the same owner. Tenant advocates could build coalitions of tenants across buildings to demand change from owners who fail to adhere to the law. All of these actions would contribute to housing code compliance.

New York City provides an example of how government agencies can use and share this kind of information with the public to great effect. The Public Advocate, a government office, tallies the number of housing code violations at properties associated with each "head officer" and creates a list of the "100 Worst Landlords" in New York City.[3] DCRA should work with the Office

[3] *See* Public Advocate for the City of New York, *About the Watchlist*, https://advocate.nyc.gov/landlord-watchlist/criteria (last visited Nov. 6, 2017), attached as Attachment 2.

of Tenant Advocate or some other governmental body to create a similar list. This list would help to shame landlords into complying with the law.

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Thank you for this opportunity to share our thoughts regarding the Landlord Transparency Amendment Act. Legal Aid welcomes the opportunity to work with the Council to revise the bill and more comprehensively promote transparency regarding the ownership of rental housing in the District. Should the Council choose not to amend the bill, Legal Aid still urges passage of the bill in its current form, as it is an improvement over the status quo and will enable improved enforcement of the housing code.

ATTACHMENT 1

1 of 1 DOCUMENT

Administrative Code of the City of New York

**** Current through November 02, 2017 ****

NYC Administrative Code 27-2098

New York

Administrative Code of the City of New York

Title 27 Construction and Maintenance

CHAPTER 2 HOUSING MAINTENANCE CODE

SUBCHAPTER 4 ADMINISTRATION

ARTICLE 2 REGISTRATION

§ 27-2098 Registration statement; contents.

a. The registration statement shall include the following information:

(1) An identification of the premises by block and lot number, and by the street numbers and names of all streets contiguous to the dwelling, or by such other description as will enable the department to locate the dwelling. If the dwelling is a garden-type maisonette dwelling project required to register pursuant to paragraph four of subdivision (b) of section 27-2099 of this article, the owner who files the first registration statement with the department for such project shall list on the registration statement the street numbers for each dwelling in the project and shall designate an address by which the project dwellings are to be identified by the department.

(2) An identification of the owner by name, residence and business address. If the owner is a corporation, the identification shall include the name and address of such corporation together with the names, residences and business

addresses of the officers. If the owner of a multiple dwelling is a corporation, the identification shall also include the names and addresses of any person whose share of ownership of the corporation exceeds twenty-five percent. For the purposes of this subdivision, any person owning a share of a parent corporation shall be deemed to be an owner of a share of a subsidiary corporation equal to the product of the percentage of his or her ownership of the parent corporation multiplied by the percentage of the parent corporation's ownership of the subsidiary corporation. If the owner of a multiple dwelling is a partnership, the identification shall include the name and business address of such partnership together with the names and business addresses of each general partner and for each limited partner whose share of ownership of the partnership exceeds twenty-five percent, the names and business addresses of all such limited partners. If the owner is under the age of eighteen years or has been judicially declared incompetent, his or her legal representative shall file the registration statement.

(3) If the dwelling is a multiple dwelling, the name and address of a managing agent designated by the owner to be in control of and responsible for the maintenance and operation of such dwelling and to authorize, on behalf of the owner, the correction of any emergency conditions or the making of any emergency repairs for which the owner is responsible under the provisions of the multiple dwelling law or this code. To qualify for such designation, an agent shall be a natural person over the age of twenty-one years and shall reside within the city or customarily and regularly attend a business office maintained within the city. An owner or corporate officer who meets such qualifications may be designated to serve and registered as the managing agent.

(4) If the dwelling is a multiple dwelling or a one- or two-family dwelling where neither the owner nor any family member occupies the dwelling, the number of a telephone within the greater metropolitan area, as identified by the department, where an owner or officer, if the owner is a corporation, or the managing agent may reasonably be expected to be reached at all times. The telephone number contained in the registration statement shall not constitute a public record and shall be accessible only to duly authorized employees or officers of the department and used exclusively by such personnel in connection with an emergency arising on the premises for which the owner is responsible under the provisions of the multiple dwelling law or this code. The department may promulgate regulations to implement the provisions of this paragraph.

(5) If the dwelling is a one- or two-family dwelling and neither the owner nor any family member occupies the dwelling, the name and address of a natural person who is over the age of twenty-one years and a resident of the city, designated by the owner to receive service of notices, orders or summonses issued by the department.

(6) For the purposes of this section, a United States postal service mail delivery box, a mail delivery box maintained through a privately operated mail handling facility or the address at which any similar service is provided shall be deemed an invalid business address and the department shall not accept for filing any registration statement containing only such an address.

b. The registration statement shall be signed by the owner or, if the owner is a corporation, by any officer. In the appropriate case, either the managing agent or the designee described in paragraph five of subdivision a of this section shall sign the statement to indicate consent to the designation except that such consent is not required if an owner or officer of a corporation is registered as the managing agent.

c. The registration statement shall be filed on forms to be prescribed by the department and shall be accompanied by a filing fee of thirteen dollars. In the case of an owner previously registered with the department, no new filing fee shall be required for the filing of a supplemental registration.

d. The department may require that a multiple dwelling registration statement contain such other information, in addition to the information specifically required by this article, which it deems to be related to the ownership or management of such dwelling.

HISTORICAL NOTE

ATTACHMENT 2

(/)

Letitia James

Public Advocate for the City of New York

Landlord Watchlist

- View the Watchlist (http://landlordwatchlist.com)
- 100 Worst Landlords (/landlord-watchlist/worst-landlords)
- About the Watchlist (/landlord-watchlist/criteria)
- Landlord FAQs (/landlord-faq)
- Buildings in Rehabilitation (http://advocate.nyc.gov/buildings-in-rehabilitation)
- Tenant FAQs (/landlord-watchlist/tenant-faqs)
- Tenants' Rights (/landlord-watchlist/tenant-rights)
- Tenant Organizations (/landlord-watchlist/tenant-orgs)
- Methodology (/methodology)

About the Watchlist

The Landlord Watchlist

The Public Advocate's Worst Landlords Watchlist is an information-sharing tool intended to allow residents, advocates, public officials, and other concerned individuals to identify which property owners consistently flout the City's laws intended to protect the rights and safety of tenants.

The Watchlist includes the buildings owned by the New York City's 100 "worst" landlords. Landlords are ranked according to the number of violations issued to their buildings by the Department of Housing Preservation and Development and the Department of Buildings (DOB). The Watchlist also includes the 20 "worst" buildings for each borough, ranked according to the number of violations issued, regardless of ownership.

In addition to violation data, the Watchlist includes information from the City's Department of Finance (DOF) to identify buildings for which unpaid municipal debt was sold through the City's annual tax lien sale in either 2016 or 2015. This information is presented because inclusion in the tax lien sale is a recognized indicator of building distress.

Identifying the "Worst" Landlords

Individual buildings that meet the building selection criteria (see "Methodology" below) are then grouped according to the name of the "head officer" of that building, as registered with HPD, and the name of the head officer is considered the building's landlord. Landlords are then ranked according to the total number of violations for all of their buildings that made the building selection criteria. The 100 landlords with the most HPD violations and DOB violations are considered the "100 Worst Landlords in New York City."

Owners of multi-family residential buildings are required to register with HPD every year and provide information about the ownership of that building, including the name of the head officer. (To fail to do so is a violation of state law.) It is the responsibility of building owners to ensure that the building's registration is up to date and correct.

Worst Buildings by Borough

In addition to the buildings owned by the top 100 worst landlords, the top 20 worst buildings in each borough are included on the Watchlist, regardless of their ownership. Buildings that meet the selection criteria are ranked according to the total number of HPD and DOB violations issued to that building.

About the Data

HPD issues Housing Maintenance Code violations as part of its responsibility to enforce State and City laws and codes relating to housing quality and safety. HPD violations are classified according to their severity, with Class A being the least severe and Class C being the most severe. The Worst Landlord Watchlist only includes Class B and C violations. Examples of Class B violations include: failing to provide self-closing public doors or adequate lighting in public areas, lack of posted Certificate of Occupancy, or failure to remove vermin. Class C violations include: immediately hazardous violations such as inadequate fire exits, rodents, lead-based paint, and lack of heat, hot water, electricity, or gas. An owner has 24 hours to correct a C violation and five days to certify the correction to remove the violation.

DOB issues violations to building owners and contractors for infractions against the City's Construction Code, Zoning Resolution, or other applicable laws and regulations. DOB inspectors issue either ECB Notices of Violation or DOB violations.

The DOF administers the City's annual tax lien sale. When a property owner does not pay their property taxes, water bills, and other charges against their property, these unpaid charges become tax liens that may be sold in a tax lien sale. Each year, DOF sells tax liens for eligible properties. The list of properties for which liens have been sold is published by DOF every year.

Excluded Properties

Certain buildings may be excluded from the Watchlist if they are participating in a city-sponsored rehabilitation program. Buildings in the 7A program are excluded if they have been given a court-appointed administrator. Buildings in other HPD rehabilitation programs are excluded if they have received government financing within the past two years.

The Worst Landlord Watchlist does not exclude properties that may be vacant primarily there is no data source that would indicate whether or not an individual building is currently vacant.

Legal Disclaimer

Data for the Public Advocate's Worst Landlord Watchlist is obtained from open data sources from the New York City Department of Housing Preservation and Development (HPD) and the Department of Buildings (DOB), as well as the Department of Finance (DOF). These agencies are solely responsible for its accuracy. HPD data includes all violations issued through August 31, 2016 and DOB data reflects violation status as of September 6, 2016. For current status of violations or building information please visit HPD (www.nyc.gov/hpd (http://www.nyc.gov/hpd)) and DOB (www.nyc.gov/buildings (http://www.nyc.gov/buildings)).

Support w/ amendments

Written Testimony of Advisory Neighborhood Commission 6C[1]
Before the Committee of the Whole
on
Bill 22-31 (Stop Work Order Disclosure and Regulation Amendment Act of 2017) and
Bill 22-317 (Notification of Vacant and Blighted Classification Amendment Act of 2017)

Public Hearing
November 9, 2017

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

On behalf of ANC 6C, I appear before you this morning to offer testimony in support of Bills 22-31 and 22-327.

Bill 22-31 seeks to protect real-property purchasers (and, indirectly, to deter misconduct by owners) by requiring sellers to disclose any stop-work orders (SWOs) issued against a property during the seller's ownership or control.

ANC 6C fully endorses the goals of this legislation and respectfully offers three suggestions on how to ensure that those goals are met:

- **We recommend that the text at lines 46 and 50 be expanded to cover not only stop-work orders, but also Notices of Infraction (NOIs) and Notices of Violation (NOVs).** DCRA and other enforcement agencies routinely refuse to impose SWOs where illegal work is complete or has been voluntarily suspended, and instead issue NOIs and/or NOVs instead. Requiring the disclosure of such citations would prevent purchasers from receiving an incomplete picture of a property's violation history.

- **We recommend adding "or excavation" after "construction" in lines 46 and 51.** Illegal excavation can endanger adjacent private properties or intrude into public space outside the boundaries of a private lot. B22-31 should ensure that sellers disclose citations for such misconduct even if construction *per se* is not involved.

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[1] ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on November 8, 2017, with a quorum of 6 out of 6 commissioners and the public present, by a vote of 6-0.

- **We urge the Council to consider closing potential loopholes to "ownership or control."** The Council is familiar with the problem of LLCs and property development/resale in the District. Although we do not suggest specific revisions to the bill, we recommend that the Council closely examine whether an owner might evade the bill's requirements by the two-step process of a) a "laundering" transfer to a spouse or LLC, followed by b) a market sale in which the middleman seller has no obligation to disclose SWOs or other violations issued to the first owner.

Bill 22-317 would bolster the role of ANCs in identifying properties eligible for vacant or blighted designation, as well as require notice to ANCs of such designations and of any owner appeals to the Real Property Tax Appeals Commission (RPTAC).

ANC 6C supports this legislation and offers a number of suggested improvements:

- **The time for advance notice of RPTAC appeals should be enlarged.** As introduced, the bill requires notice only 30 calendar days in advance. (*See* line 67.) Because ANCs typically meet only once each month, 30 calendar days will be inadequate in many cases. The bill should either provide for 30 days ***excluding Saturdays, Sundays, and holidays*** (*cf.* D.C. Official Code § 1-309.10(b), governing agency notice in general) or 45 calendar days (*cf.* D.C. Official Code § 1-309.10(c)(2)(A), establishing ABC Board notice requirement).

- **DCRA should notify ANCs of any designation at the same time they notify an owner.** Lines 49-52 and 55-57 provide for notice to ANCs of any vacant or blighted designation, but do not state when that notice must be provided. We recommend inserting "at the same time" after "shall" in lines 51 and 55.

- **The bill should also provide for ANC notice in cases where a vacant/blighted determination is withdrawn by DCRA after administrative appeal.** After a vacant/blighted designation, an owner must first file an administrative appeal with DCRA before taking an appeal to RPTAC. In our experience, DCRA frequently accepts owners' untruthful claims of exemption (typically, that an unoccupied property is occupied) without notifying an ANC even where the ANC brought the property to DCRA's attention.

Finally, we note what appears to be a technical drafting error in B22-317. The reference at line 32 to "Subparagraph (B)" [of section 42-3131.05] should instead be to subparagraph (1)(B) of that section.

* * *

We thank you for the opportunity to provide testimony and welcome any followup questions the Committee may have.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Consumer and Regulatory Affairs

B22-31, the "Stop Work Order Disclosure and Regulation Amendment Act of 2017;"
B22-317, the "Notification of Vacant and Blighted Classification Amendment Act of 2017;" and
B22-381, the "Landlord Transparency Act of 2017"

Testimony of
Melinda Bolling
Director

Before the

Committee of the Whole

Council of the District of Columbia

November 9, 2017
Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman Mendelson, members, and staff of the Committee of the Whole. I am Melinda Bolling, Director of the Department of Consumer and Regulatory Affairs (DCRA). I'm here today to testify regarding three bills before the Council relating to the Department.

Those bills are:

- B22-31, the "Stop Work Order Disclosure and Regulation Amendment Act of 2017";
- B22-317, "the Notification of Vacant and Blighted Classification Amendment Act of 2017"; and
- B22-381, the "Landlord Transparency Act of 2017."

In my testimony today, I will briefly summarize each bill and explain the Executive's position on them.

B22-31, the "Stop Work Order Disclosure and Regulation Amendment Act of 2017"

First, I will discuss B22-31, the "Stop Work Order Disclosure and Regulation Amendment Act of 2017."

A. Background

B22-31 aims to alert homebuyers to potential problems with a property by requiring sellers to disclose whether a Stop Work Order had been issued during the time the seller owned the property. Sellers of residential real property must fill out the "Seller's Disclosure Statement" and provide the completed form to potential buyers. The required text for the form is set forth in 17 DCMR 2708.3. B22-31 would require that a question asking whether the seller knew of any Stop Work Orders issued for construction performed during the seller's ownership of the property be added to the form.

B. Analysis

DCRA supports the overall goal of making available as much information as possible to home buyers, so that they can identify any potential issues with a property before purchasing it. Ultimately, the information required as part of the Seller's Disclosure Statement is a civil requirement and would be enforced through civil proceedings rather than an enforcement action by DCRA or another District agency. Nonetheless, we are not certain if the disclosure of Stop Work Orders, on its own, will help to achieve the intended goal.

A Stop Work Order is issued to halt unpermitted or unsafe work. DCRA issues Stop Work Orders for a wide range of concerns: from performing unsafe underpinning work to simply working on a Sunday without an After-Hours Permit. A Stop Work Order, on its own, does not necessarily indicate anything about the quality of the work completed.

DCRA will not lift a Stop Work Order until the noncompliant work or condition is corrected. Although an active Stop Work Order would likely signal some cause for concern, a lifted Stop Work Order would actually indicate compliance with the Construction Codes. Consequently, disclosing, without context, the prior issuance of a Stop Work Order to a property may not help the buyer make a more informed decision.

C. Position of the Executive

The Executive strongly supports efforts to inform home buyers about the quality of the construction of their homes, but we believe that B22-31 may need some additional work in order to achieve that goal. The Executive would suggest revising the legislation to require that sellers disclose information more narrowly focused on the current condition of the property, such as whether the property has any *active* Stop Work Orders or cited code violations that have not been

abated. The Executive stands ready to work with the Committee, the real estate community, and any other stakeholders to help to ensure that the goal of better informing buyers is achieved.

B22-317, the "Notification of Vacant and Blighted Classification Amendment Act of 2017"

Next I will discuss B22-317, the Notification of Vacant and Blighted Classification Amendment Act of 2017.

A. Background

B22-317 would require DCRA to notify an affected Advisory Neighborhood Commission (ANC) by email of the agency's initial determination that a property is vacant or blighted. The bill would also require that DCRA include in its final determinations of vacant or blighted status an analysis of any evidence provided by an ANC and how that evidence factored into its final decision. Finally, 30 days before an appeal hearing, the Real Property Tax Appeals Commission (RPTAC) would be required to provide the affected ANC with information related to the property at issue.

B. Analysis

The Executive strongly supports any policies that will assist in the expeditious registration and designation of applicable properties as vacant or blighted. In this case, we are concerned that aspects of B22-317 may actually run counter to those goals.

Currently, when DCRA determines that a property is vacant, the agency notifies the property owner and provides the owner 30 days to submit a response asserting that the property is not vacant, or that it is eligible for an exemption. DCRA then completes a second inspection and makes a formal determination as to whether the property is vacant and/or blighted. The property owner then has the opportunity to request that DCRA reconsider its determination.

After an appeal or the period for an appeal has expired (15 days from the notice of initial determination), the agency has 30 days to prepare a written final determination and transmit it to the property owner.

If the owner believes that the agency's written final determination has classified the property as vacant or blighted in error, he or she may file an appeal with the Real Property Tax Appeals Commission (RPTAC). If the owner appeals the initial determination to DCRA and the final determination to RPTAC, the process can require months before the property will be appropriately classified as vacant or blighted and billed accordingly.

The Executive is concerned that B22-317 could further complicate the process to classify a property as vacant or blighted rather than simply supplementing the evidence that may be considered.

First, as written, the Bill would add to the requisite steps DCRA must take in order to notify a property owner that the agency believes a property is vacant or blighted. Currently, the agency must post physical notice at the property and transmit a letter to the property owner via first-class mail. If DCRA fails to complete either of those steps, property owners can—and often do—appeal the notice as insufficient to meet the Agency's statutory requirements. By adding a requirement to send e-mail notification to the Office of ANCs and the affected ANC to the requisite notice requirements, the legislation would actually be providing an additional item for the property owner to challenge when alleging that the determination is invalid due to insufficient notification.

Second, B22-317 would create two separate classes of ANC submissions that would require different treatment by the agency. The bill instructs that DCRA must consider evidence provided by the affected Advisory Neighborhood Commission and address that evidence in

writing if and when a final determination is rendered. Pursuant to DC Code § 1-309.01, an Advisory Neighborhood Commission would mean the entire Commission rather than an individual commissioner. In general, ANCs must meet and publicly vote on the adoption of a position taken on behalf of the entire Commission. Consequently, only evidence that is voted on and approved by the majority of an ANC would qualify to be addressed in a final determination.

For any evidence submitted by individual Commissioners, the agency would simply evaluate the evidence as it does for any complaint submitted by a neighbor. The Executive is concerned that creating two classes of evidentiary submissions for ANC members in this context may create confusion for ANCs and for DCRA.

Third, B22-317 does not establish timing guidelines to ensure that both the ANCs and District agencies are aware of a date certain that ANC evidence must be submitted in order to be eligible for consideration. Without guidelines, the Executive can foresee scenarios where a District agency has acted according to the strict letter of the law, but an ANC did not feel that it had an opportunity to submit evidence. For example, an ANC might submit evidence after DCRA has reached a final determination, but before the letter has reached the property owner or ANC.

Finally, B22-317 adds similar ANC notification requirements for RPTAC to follow during its appeals process as well.

DCRA is already working to implement a program which will allow ANCs to track the status of vacant property cases. This program is "311" for Vacant Property. When an ANC lodges a complaint through the 311 system, the system will provide a reference number, which will allow the complainant to track the status of the property as it progresses through the vacant

property designation process. That should help to improve transparency for ANC members who submit vacant property complaints.

Moreover, DCRA regularly considers evidence submitted by ANCs to set up and inform vacant property inspections. The law already provides opportunities for ANCs or others in the community to submit evidence that a property is vacant, which DCRA can—and does—consider in the classification and designation process.

C. Position of the Executive

The Executive strongly supports increasing the speed and accuracy of vacant property identification as well as improved communication with ANCs. We are, however, concerned that B22-317 may run counter to those goals by complicating a review process that already allows for ANCs to submit evidence. Although we do not support B22-317 in its current form, the Executive stands ready to work with the Committee, the ANCs, and any other stakeholders to help to develop any alternatives needed to achieve the goals of this legislation.

B22-381, the Landlord Transparency Act of 2017

Next, I will discuss B22-381, the "Landlord Transparency Act of 2017."

A. Background

B22-381 would authorize the Mayor to issue subpoenas to building owners and operators if a DCRA inspection uncovers 10 or more violations in an individual unit or 35 or more violations in a single building. To comply with the subpoena, building owners and/or operators would need to disclose all individuals or entities with at least a 5 percent ownership interest in the building or management company. In addition, those individuals or entities with at least a 5

percent ownership interest would need to disclose other properties that they own or manage in the District.

B. Analysis

This bill will enable DCRA to quickly find all properties owned by potentially negligent landlords. Currently, if DCRA wished to find out all the properties in the District that a negligent landlord owned, the agency would be unable to easily do so. A negligent landlord may own many properties across the District under many different LLCs. Because District law does not require LLCs and other corporate entities to report their complete ownership to the District government as part of registration or renewal, DCRA may not know which properties in the District are owned or operated by the negligent landlord.

This bill will help to prevent negligent property owners and management companies from operating multiple substandard buildings without detection. Once DCRA has identified one building in very poor condition, the agency should be able, through this legal process, to determine which other buildings may be operated in a similarly unsatisfactory manner by the same owner or operator. In turn, the agency will be able to deploy the new inspectors approved through the Fiscal Year 18 Budget to expeditiously schedule inspections at any relevant buildings disclosed through the subpoena process.

The agency is excited about the legislation's potential to help more efficiently and effectively identify buildings operated by negligent landlords.

C. Position of the Executive

Mayor Bowser is committed to the protection of vulnerable tenants and enforcement against landlords who do not provide code compliant units to their tenants. This legislation enhances the

District government's ability to achieve that goal, and, therefore, we urge the Council to pass B22-381 expeditiously.

Testimony Conclusion

Chairman Mendelson, thank you for the opportunity to testify on the bills before the Committee today. My staff and I would be happy to answer any questions at this time.

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B22-573, "Slumlord Deterrence Amendment Act of 2017"

B22-596, "Housing Rehabilitation Incentives Regulation Amendment Act of 2017"

and

B22-615, "Housing Code Enforcement Integrity Amendment Act of 2017"

Committee of the Whole
Chair, Councilmember Phil Mendelson

Testimony of Daniel B. Palchick, Esq.
AARP Legal Counsel for the Elderly

July 3, 2018

Legal Counsel for the Elderly's (LCE) mission is to champion the dignity and rights of seniors in Washington, DC. Our Alternatives to Landlord/Tenant Court for the Elderly Project, also known as the Alternatives Project, defends, protects and empowers District residents age 60 and over to live independently in the community. We accomplish this goal by integrating social work and legal principles to prevent the eviction of lower income elders and advocate for affordable, habitable and accessible homes.

The news surrounding Sanford Capitol has brought to light the horrific conditions that our most vulnerable residents were forced to live in. Both low income and senior tenants endured years of substandard housing. The District failed their residents by weak enforcement against property owners who failed to provide habitable housing to their tenants.

The bills proposed are a good start to prevent another Sanford Capitol. To increase effectiveness the three bills must work in concert with each other. Alone, the bills would not accomplish the goal of this committee. So while, LCE supports Bills 22-573, 22-596 and 22-616, much more is needed to ensure the safety of our District Residents.

B22-573, "Slumlord Deterrence Amendment Act of 2017"

The "Slumlord Deterrence Amendment Act of 2017" would deny basic business licenses to property owners who fail to maintain their property in accordance with the District of Columbia Housing Code. Specifically, property owners who have been cited for 5 Class 1 infractions pursuant to 16 DCMR § 3305 in a 12 month period. A property owner can't seek another license until after all the Class 1 infractions have been abated and 12 month have passed since the last infraction.

On its face, the bill is logical as the District should not be issuing licenses to those who knowingly and willfully violate the housing codes. However, in practice there is not much of an impact. The D.C. Court of Appeals has held that even if a property owners fails to obtain a business licenses as required, they can still sue a tenant for non-payment of rent, meaning they are entitled to the rent for that property.[1] Therefore, even if their license is revoked, the property owner could sue the tenant for rent owed and possession despite the unit being in violation of the housing code. If a property owner can collect rent and can sue for non-payment of rent, then having a license doesn't really matter.

The solution is to deny the property owner a right to sue for possession if they do not have a valid business license. This would motivate the property owner to make the repairs and make them quickly. Additionally the license should be terminated for both repeat Class 1 violations and Class 2 violations.

Under the current bill proposal, a property owner cannot get their license renewed until 12 months after the last infraction was cured. This could lead to property owners not registering their properties. Therefore, a property owner should be able to request a reinstatement of their business license once all infractions have been cured.

For B22-573 to deter slumlords, the enforcement mechanism must be strong enough to hurt the owner's bottom line. Under current law and the bill as drafted, slumlords face no real consequences when leasing substandard rental properties.

B22-596, "Housing Rehabilitation Incentives Regulation Amendment Act of 2017

The Slumlord Deterrence Amendment Act of 2017 ensures that negligent property owners cannot obtain business licenses. However, a denial of their license doesn't occur until after they have left their property in disrepair creating a dangerous environment for their tenants. The "Housing Rehabilitation Incentives Regulation Amendment Act of 2017" addresses how the District can take action to repair hazardous housing conditions.

The present bill seeks to create a self-sufficient fund, "Housing Condition Abatement Fund", to address housing code conditions. The fund is a collection of fines by The Department of Consumer and Regulatory Affairs (""DCRA") due to housing code violations.

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1 *Curry v. Dunbar House, Inc.*, 362 A.2d 686 ,690 (D.C. 1976)

Housing Condition Abatement Fund

The current proposition is for DCRA to administer the fund where 1/3 of the fund is used to summary correction of housing regulation violations, 1/3 to tenants who suffer from substandard housing, and 1/3 reimbursed inspection fee to property owners where a notice of violation (NOV) or a notice of infraction (NOI) were not issued. Dividing the release of the funds into thirds seems impractical. Too many questions would arise as to what tenants would receive money. Additionally, it is a wasted resource to reimburse property owners the inspection fee if they had to abate. It should not matter if they received a notice of abatement after re-inspection, the fact of the matter is that at the time they were providing improper housing.

When speaking with our clients, their number one concern is having needed repairs made. The concept of providing monetary relief through the fund does not address the real need of curing the housing violation. Therefore, the fund should be used solely for the purposes of making repairs.

The last issue is that mechanism of who receives the fund is vague. The bill might be better suited if there was a list of priorities regarding what the fund could be used for. For example, we often hear that the abatement fund in the past has been used to have a tenant's lawn mowed rather than repair a leaky roof. Housing code conditions that affect the health, safety, and welfare of the tenants should take precedence when seeking to use the abatement fund.

Reporting

LCE strongly supports the reporting requirements pursuant to the Bill. The success of the fund hinges on DCRA's ability to effectively enforce and collect fines issued against property owners. The bill as written the following items must be reported on an annual basis:

1. Number of referrals to the Office of Attorney General (OAG);
2. Number of combined notice of violations (NOV) and infractions (NOI);
3. Number of summary corrections completed;
4. Value of fines issued;
5. Value of fines collected;
6. Total amount of money deposited into the Abatement Fund;
7. Number of tenants who received reimbursement from the Abatement Fund; and
8. Number of owners that received reimbursement from the Abatement Fund.

Numbers 7 and 8 would be moot, if the fund only went to making the repairs rather than reimbursement to the tenant or the property owner. The other issue with what needs to be reported is number 2, line 81-83, of the bill. Specifically, OAG wouldn't issue Notice of Violations or Infractions. These would come directly from DCRA. Additionally, DCRA should report the number NOVs and NOIs separately. The Mayor and Council should know how often NOV are converted to NOIs and the reason as to when a NOV does not become an NOI. Too often our clients complain that DCRA will issue numerous NOV's for the same issues and never take the additional enforcement step which is to issue an NOI and litigate at the Office of Adminstrative Hearings. Finally, all notices should be issued to both the property owners and the tenants. This includes the Notice of Abatement. The current bill only requires that the property owner receive a Notice of Abatement. Tenant must have notice to challenge whether a repair has in fact been abated.

The success of B22-596 is dependent on the ability of DCRA to enforce the housing code. Enforcement has been a weakness of DCRA, but this bill in combination with the Housing Code Enforcement Integrity Act of 2017 will hopefully ensure its viability.

B22-615, "Housing Code Enforcement Integrity Amendment Act of 2017"

Too often, our clients complain that DCRA fails to enforce their notices. B22-615, the Housing Code Enforcement Integrity Amendment Act of 2017, seems to correct the loophole of enforcement that is often created by DCRA. The biggest complaint made is that after DCRA issues a NOV, the property owner unilaterally delays the re-inspection, resulting in a failure by DCRA to confirm whether the repairs were made in the abatement period as issued in the NOV. Put simply, when the NOV states that a violation shall be corrected in 30 days, DCRA does not re-inspect that repair was actually made and will defer to the property owner.

One of the strength of the bill is that is allows DCRA to extend the abatement period, but only if the Property owner made a good faith effort to abate the conditions and there is a good cause for the delay. Any request by the property owner to delay the abatement period must be provided to the tenant in order to dispute any misinformation regarding attempts to abate the property timely. In the past DCRA has habitually deferred to the property owner rather than following up with the tenant.

The only other issue with the bill is that it interchangeably uses the terms notice of violation and notice of infractions. There needs to be guidance as to what constitutes a notice of violation and notice of infractions. Additionally, any timing of when a repair must be abated should be whichever notices comes first, which is generally the notice of violation. In line 40 of the bill, a tax is imposed

on property owners who fail to correct the violations within 6 months. The 6 month clock should begin after the issuance of the first notice, which again would generally be the notice of violation.

DCRAs Role in Housing Conditions Calendar

While not listed in any of the bills, the role of Housing Conditions Calendar (HCC) should be included in the present legislation. The District of Columbia Superior Court has created a forum for tenants to seek repairs from their landlords. The function of the Court is fairly straightforward. Tenants can complete a pro se complaint with a number of repairs they wish to be addressed by their landlord. Hearings are scheduled every Monday in front of a Magistrate Judge. DCRA plays an integral role in these Court matters. There is an inspector from DCRA, who sits next to the Judge. She serves as essentially the expert as to what are housing violations. Normally the initial hearing is used as an opportunity for the landlord and tenant to set a time for the inspector to do an inspection and set a future hearing date for a status conference. From there the inspector will produce an inspection report which is forwarded to the Judge, the tenant, and the landlord prior to the future status conference. At the next Court date the inspection report is what controls what needs to be done and whether the landlord is making the necessary repairs. The inspection report created is only used for that Court proceeding, meaning a NOV or a NOI is not created even though the property owner may be in violation of the Housing Code.

The inspection report in itself does not allow DCRA to issue fines against the landlord or abate the problems themselves. In fact, when the matter is moved from DCRA's inspection and enforcement division to the Housing Conditions Calendar, the rest of DCRA seems to be uninvolved in the process. I was in Housing Conditions Court on Monday June 25, 2018. A pro se tenant had contacted DCRA prior to filing the HCC complaint. At the hearing, both the Judge and the inspector sitting next to the Judge told the tenant that because she filed a case with the Court, they would cancel her complaint with DCRA directly. The protections of the proposed bills would not apply then. Additionally, HCC does not have the authority to use the abatement fund to make needed repairs.

To remedy this situation, there should be a streamlined process meaning that rather than an inspection report in HCC, a Notice of Violation is issued and provided to the Judge. This notice should conform to other NOVS that are created when inspections are scheduled outside the Court process. With this in place, DCRA could institute fines against Landlords who fail to make the necessary repairs during the pendency of the Court matter and the proposed bills would still be in play to protect the tenant.

Conclusion

Thank you for introducing legislation that protects our vulnerable populations from residing in unsafe and unsanitary housing. You may reach me at (202) 434-2204 to discuss this testimony further.

Sincerely,

Daniel B. Palchick
Senior Staff Attorney

Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

Written Testimony of Beth Mellen Harrison
Supervising Attorney, Housing Law Unit

and

Damon King
Senior Policy Advocate

Legal Aid Society of the District of Columbia

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

Public Hearing Regarding:

Bill 22-0573
"Slumlord Deterrence Amendment Act of 2017,"

Bill 22-0596
"Housing Rehabilitation Incentives Regulation Amendment Act of 2017"

and

Bill 22-0615
"Housing Code Enforcement Integrity Amendment Act of 2017"

July 3, 2018

The Legal Aid Society of the District of Columbia[1] submits this testimony in support of three bills before the Committee today, B22-0573, the Slumlord Deterrence Amendment Act of 2017; B22-0596, the Housing Rehabilitation Incentives Regulation Amendment Act of 2017; and B22-0615, the Housing Code Enforcement Integrity Amendment Act of 2017. We urge the Committee to expand and further strengthen the current bills, as recommended below, to ensure that tenants in the District can live in safe, healthy housing, and that the District government is able to identify and take action against landlords who fail to maintain their housing to the standards of the housing code.

[1] The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 85 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

THE COUNCIL MUST ADDRESS DCRA'S CHRONIC FAILURE TO ENFORCE THE HOUSING CODE

While Legal Aid supports each of the three bills before the Committee today, we note at the outset that none of them will be effective without broader reforms to address chronic under-enforcement of the housing code. These bills should be considered as one piece of a more comprehensive approach to reforming housing code enforcement in the District. Specifically, Legal Aid supports moving rental housing inspections out of the Department of Consumer & Regulatory Affairs (DCRA) altogether, as envisioned by B22-669, the Department of Buildings Establishment Act. We have urged the Council to go even further, by either creating an independent agency focused exclusively on rental housing or amending B22-669 to ensure that the Department of Buildings' rental housing unit engages in robust inspections and enforcement efforts and does not simply replicate the current problems at DCRA.

In past testimony, we have highlighted problems that we continue to observe in DCRA's rental housing inspections program. Too often, tenants encounter obstacles in scheduling inspections, a variety of difficulties during the inspection process, and challenges obtaining reports after the inspection process. Even when violations are found, too often the agency fails to pursue fines and other remedies against landlords who have broken the law and also lacks strategic focus to target problem landlords. The result is under-enforcement of the housing code. We believe that an independent rental housing inspections agency is needed to fully address these problems.

Unfortunately, we have serious concerns that DCRA is capable of effectively carrying out any new initiatives, given its ongoing failure to implement its current mission. For example, all three pieces of proposed legislation are dependent on DCRA actually citing violations and collecting fines. Legal Aid continues to see far too many cases in which DCRA fails to cite landlords for violations, perform necessary re-inspections, assess fines, or collect fines, leaving tenants living in unsafe and unhealthy conditions. As we have noted in previous testimony, these problems are not new – indeed, they have persisted for over a decade.[2] Without more fundamental changes to DCRA, we fear that implementation of the many good ideas contained in these legislative proposals will be doomed from the start.

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[2] In the past year, Legal Aid has submitted testimony on five separate occasions about our substantial concerns regarding DCRA's management of rental housing inspections. *See* Testimony before the Committee of the Whole Council of the District of Columbia, Public Hearing Regarding Bill 22-0669 "Department of Buildings Establishment Act of 2018" (Shavannie Braham & Beth Mellen Harrison, April 19, 2018); Testimony before the Committee of the Whole Council of the District of Columbia, Budget Oversight Hearing Regarding the Department of Consumer and Regulatory Affairs (Evan Henley, March 29, 2018); Testimony before the Committee of the Whole Council of the District of Columbia, Performance Oversight Hearing Regarding the Department of Consumer and Regulatory Affairs (Shavannie Braham, March 8, 2018); Testimony to the Committee of the Whole Council of the District of Columbia, Public Oversight Roundtable on the Department of Consumer and Regulatory Affairs: Inspection and Enforcement of Tenant Housing (Evan Henley, October 2, 2017); Testimony before the Committee of the Whole Council of the District of Columbia, Public Oversight Roundtable on the Department of Consumer and Regulatory Affairs: Inspection and Enforcement of Tenant Housing (Evan Henley, July 25, 2017). The problems we see today echo the problems uncovered by the Washington Post ten years ago in its groundbreaking series *Forced Out*: *See* http://www.washingtonpost.com/wp-srv/metro/forcedout.

B22-573 SHOULD COVER MORE VIOLATIONS, PROVIDE STRONGER PENALTIES, AND REQUIRE FULL DISCLOSURE OF OWNERSHIP INTERESTS

The Slumlord Deterrence Amendment Act of 2017 (B22-573) would ensure that landlords with multiple, serious housing code violations are barred from obtaining or renewing a basic business license or obtaining a building permit. This new prohibition would apply to landlords with more than five Class 1 violations, and the bar would remain in place until one year after the landlord cures those violations.

Legal Aid supports the concept of ensuring that a landlord with serious housing code violations is not allowed to obtain or renew a basic business license or a building permit until those violations are cured. We recommend expanding the scope of the bill beyond its focus on Class 1 violations to include landlords with sufficient numbers of Class 2, Class 3, or Class 4 violations. Landlords with 10 Class 2 violations, 20 Class 3 violations, or 40 Class 4 violations in a 12-month period likewise should not be able to obtain or renew a basic business license or obtain a building permit.

At the same time, we have some concerns about a landlord being barred from obtaining a license or permit until a full 12 months have passed since the last violation was cured. This could result in many landlords remaining unlicensed and buildings unpermitted for long periods of time, placing them outside the regulatory and oversight system and potentially incentivizing further bad behavior. Instead, we recommend allowing a landlord to obtain a license or permit once all violations are cured. To balance this change and provide a further deterrent, however, new provisions should be added that a landlord that does not have a current, valid basic business license or building permit is barred from evicting any tenants.

Applying penalties to landlords can only be effective if District law is amended to require corporations and partnerships that own rental properties to disclose their ownership interests. Slumlord Sanford Capital illustrates the problem. While a single entity had ownership interests in dozens of rental properties – with a track record of running each of them into the ground – it was difficult to track this pattern, because each individual property was owned by a single-purpose limited liability corporation with undisclosed ownership interests. Requiring fuller disclosure of ownership interests in these entities will allow the District government and others to spot trends and intervene with slumlords earlier.

In New York City, owners must annually submit a registration statement which becomes publicly available and, among other things:

a) identifies the premises by street address and square and lot number;
b) identifies the owner by name, residence, and business address. If the owner is a corporation or partnership, the registration must include
1) the name and address of the corporation or partnership as well as the names, residences, and business addresses of the officers of the corporation and the general partner;

2) the names and addresses of any persons with over a twenty-five percent share of the corporation or limited partners with over a twenty-five percent share in the partnership;

c) designates a "head officer" who is responsible for the maintenance and operation of the rental units and is authorized to correct emergency conditions and make repairs;

d) provides a phone number at which an owner or officer can be reached at all times by the government (this phone number is not a public record).[3]

The Committee should add similar requirements to the current bill to ensure its effectiveness and, more generally, to promote broader transparency of property ownership interests and allow DCRA to quickly identify and respond to problem landlords.

Finally, we also recommend adding new provisions to require notice to tenants when a landlord is barred from obtaining a basic business license or building permit, including an explanation of the tenants' rights. DCRA typically fails to notify tenants of enforcement efforts involving their landlords. Tenants armed with this knowledge can better enforce their rights, further strengthening the deterrent effect of the penalties imposed.

Reporting requirements such as those found in the Housing Rehabilitation Incentives Regulation Amendment Act of 2017 (B22-596) should be added to this bill as well, for DCRA to report to the Mayor and the Council on the implementation of the new penalty provisions and the results.

B22-596 SHOULD FOCUS ON STRENGTHENING AND REFORMING THE NUISANCE ABATEMENT FUND

The Housing Rehabilitation Incentives Regulation Amendment Act of 2017 (B22-596) contains a variety of provisions to strengthen enforcement of housing code violations. First, the bill would direct fines paid by landlords for housing code violations into a special Housing Condition Abatement Fund administered by DCRA. The fund would be divided equally among three purposes: 1) to pay for repairs completed by the District government using the Nuisance Abatement Fund, to correct housing code violations when landlords refuse to do so; 2) to compensate tenant impacted by these violations; and 3) to reimburse landlords for inspection and other fees charged by DCRA if they ultimately are not cited for or abate cited violations.

While Legal Aid supports the concept of directing these fines to benefit tenants – rather than the money simply going into the general fund – we have concerns with the current proposal. Designing a system to compensate affected tenants could be a complicated undertaking; we fear it would take resources away from inspection, enforcement, and other critical and more basic tasks that DCRA still is unable to perform effectively. DCRA instead should use all available resources to ensure that landlords perform repairs, and to step in and make those repairs when landlords fail to do so. For similar reasons, we do not support reimbursing landlords for fees paid to the agency under any circumstances. Instead, we recommend that all fines collected go

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3 *See* NYC Admin. Code § 27-2098.

to the Nuisance Abatement Fund, and in turn that the Council enact necessary changes to that Fund to make it more effective.

The Nuisance Abatement Fund currently is used in a manner that at times can appear to be haphazard and unfocused. Grass is cut at vacant properties, while more serious conditions at other properties go unaddressed. Millions of dollars may be spent on a single property, while dozens of other properties receive no repairs. The Omnibus Tenant Protections Act of 2008 (B17-1037) contained several suggested changes to strengthen the Nuisance Abatement Fund, all of which are still needed today:

- Provide a set of criteria for prioritizing use of the Fund, for example giving weight to the tenants' circumstances, the severity of the violations in terms of tenant health and safety, and the potential loss of affordable units if violations are not corrected, including termination of any applicable housing subsidies;

- Require the Fund to be used in certain particularly egregious circumstances, for example where violations pose a health and safety risk, the landlord has ignored multiple notices of such violations, and the property faces a risk of condemnation or loss of housing subsidies; and

- Allow tenants to submit information requesting that the Fund be used to correct particular violations, and require DCRA to investigate these requests to determine if the Fund should be used for those purposes.

Second, the current bill requires any duly-designated agent of the District government to refer cases of housing code violations to the Office of the Attorney General for review and to issue a notice of violation or notice or notice of infraction or to order repairs to be made by the District government. Legal Aid has questions about how this provision is supposed to work. From the wording, we are not clear if it is the Office of the Attorney General, DCRA, or some other entity then would be issuing citations or making repairs. While we have serious concerns about DCRA exercising any of these powers, as noted, we also believe that housing code enforcement should be focused in a single, independent agency focused exclusively on rental housing. We would have concerns about any proposal that would disperse these functions across multiple agencies.

The Attorney General can and should play an important role in housing code enforcement. During the past few years, the Office of the Attorney General has filed strategic enforcement cases targeting multi-unit buildings that have fallen into serious disrepair. These cases not only have achieved important results for individual tenants, they also have helped to set a new standard for the price to be paid by slumlords who willfully neglect their properties. At the same time, we do not believe the Office of the Attorney General is best positioned to oversee day-to-day enforcement in routine cases.

Finally, the bill contains several other provisions to improve enforcement, all of which Legal Aid supports:

- Requirements for DCRA to report to the Mayor and Council on the implementation of the bill's new policies and the results. DCRA needs to increase transparency across a range of issues related to its rental housing inspection program; the requirements in this bill would be a good start.

- New details for a Notice of Abatement – issued by DCRA when a landlord repairs housing code violations – to require that a landlord has abated the condition and taken all reasonable steps to ensure it does not recur. These new requirements should help to ensure that Notices of Abatement are only issued when a violation truly has been abated.

- Amends current District regulations governing Class 1, 2, 3, and 4 violations based on housing conditions, providing that a violation left uncorrected for six months will move up into the next higher class of penalties. This change should provide stronger deterrents for landlords who allow violations to go on uncorrected.

B22-615 SHOULD BE STRENGTHENED TO FURTHER RESTRICT LANDLORD EXTENSIONS AND ALLOW REPAIRS TO BE CHARGED AS TAXES SOONER

The Housing Code Enforcement Integrity Amendment Act of 2017 (B22-615) would effect three main changes. First, the bill would strengthen enforcement by expediting landlord appeals of citations for housing code violations. Legal Aid has observed that when DCRA does pursue enforcement, landlord appeals can result in lengthy administrative delays. Expediting these appeals by requiring a final decision within 10 business days from the Office of Administrative Hearings will ensure that fines and penalties provide a meaningful deterrent.

Second, the bill would restrict the ability of landlords to obtain extensions of time to correct cited violations. DCRA generally grants landlords 30 days to make non-emergency repairs; extensions of this timeframe should be rare. Unfortunately, far too often, repairs of housing code violations are delayed when DCRA grants extensions to landlords. In our experience, this sort of ad hoc granting of extensions to landlords is far too common, often without even informing or consulting with the affected tenants. This bill would restrict extensions to situations in which the landlord has made good faith efforts to make repairs following the issuance of a citation and has shown good cause for needing an extension.

Legal Aid has seen many examples of extensions to landlords unnecessarily delaying critical repairs. In Ms. S's case, for example, a DCRA inspector took approximately twenty pictures of her unit, documenting numerous violations. While the landlord was cited for over $4,000 in fines for failure to make repairs and exterminate, DCRA never actually enforced these fines. Rather, the landlord repeatedly requested deadline extensions to make repairs, which were granted without DCRA informing or seeking input from Ms. S. Ultimately, Ms. S, with Legal Aid's assistance, filed a Housing Conditions case in D.C. Superior Court and took on responsibility for enforcement herself. Only then did the landlord make repairs.

While Legal Aid supports the bill's provisions to restrict extensions, we believe those requirements can be strengthened further. Landlords should be required to demonstrate not just good faith efforts at repairs but that they have used all reasonable means to accomplish repairs by

the deadline and still require an extension. Moreover, further extensions should be denied once either the landlord has received two notices of violation or infraction for the same violation and still not made repairs, or the landlord has failed to correct a violation within 90 days, unless extraordinary circumstances are demonstrated.

Finally, the bill would require the District to repair violations that are not corrected by the landlord within six months and to assess the cost of any such repair as a real property tax. This six-month timeframe should be a maximum; for violations that are more severe and/or represent an imminent threat to tenant health and safety, housing providers should receive less time. Under current law, the District government already has authority to repair violations when landlords do not, using the Nuisance Abatement Fund. However, the costs of such repairs are only assessed as a tax lien, collectible when a property is sold. Imposing the costs as real property taxes should speed enforce and create a stronger deterrent, and we support that change.

CONCLUSION

We appreciate the opportunity to testify in support of the three bills pending before the Committee today. As the Council moves toward committee mark-ups, we would be happy to continue to work with you to implement the above recommendations.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Public Hearing on

B22-573, the "Slumlord Deterrence Amendment Act of 2017;"
B22-596, the "Housing Rehabilitation Incentives Regulation Amendment Act of 2017;"
and
B22-615, the "Housing Code Enforcement Integrity Amendment Act of 2017"

Testimony of
Melinda Bolling
Director

Before the

Committee of the Whole
The Honorable Phil Mendelson, Chairman
Council of the District of Columbia

July 3, 2018
9:30am
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman Mendelson, Councilmembers, and staff. I am Melinda Bolling, the Director of the Department of Consumer and Regulatory Affairs (DCRA). I'm here today to provide the Executive's testimony on three bills. The first is Bill 22-573, the "Slumlord Deterrence Amendment Act of 2017." This bill would deny basic business licenses and building permits to rental property owners who neglect their properties. The second is Bill 22-596, the "Housing Rehabilitation Incentives Regulation Amendment Act of 2017." This bill would create a Housing Condition Abatement Fund, mandate referrals of repeated housing violations to the Office of the Attorney General, require the issuance of a Notice of Abatement to property owners that corrected violations, and create new fines if conditions in violation of the Housing Code are left unabated for six months or more. The third and final is Bill 22-615, "the Housing Code Enforcement Integrity Amendment Act of 2017." This bill would provide for expedited hearings for Housing Code violation appeals and require that the District abate Class 1, 2, and 3 infractions that have not been corrected within six months.

The Executive supports the intent of each bill and looks forward to working with Council to make adjustments that will allow us to reach our shared goals of increasing landlord accountability and improving the stock of affordable housing throughout the District.

I. Background

Before delving into the substance of the three housing-related bills under consideration, I will provide some background on DCRA's current enforcement efforts and recent improvements. As you know, the District has experienced recent challenges involving landlords who fail to maintain their properties to an acceptable standard, but Mayor Bowser has made very clear that she is committed to holding landlords accountable.

Over the past year, DCRA has made significant changes to the housing enforcement regime in response to egregiously unlawful landlord behavior. For these repeat offenders, DCRA instituted a policy that drastically reduced the time period for correcting abatements from 30 days for violations that did not threaten life and safety to a period of seven days.

The most egregious and high-profile offender has been Sanford Capital. What we have learned from our experience with Sanford and other property owners is that in certain circumstances, fines – even fines as high as hundreds of thousands of dollars – do not always incentivize responsible landlord behavior or swiftly remedy violations. We agree with the Council that more tools are needed, and DCRA has been working diligently to identify and implement methods to improve and modernize both traditional, complaint-based housing enforcement, as well as proactive property maintenance enforcement in the District.

To achieve this objective, DCRA has partnered with the Lab @ DC ("Lab") to create algorithms that will improve the inspections process. DCRA expects that each algorithm will yield improvements in inspection efficiency and effectiveness. The Complaint-Based Algorithm uses data to prioritize inspections of properties that are most likely to have life-safety violations, rather than simply relying on the length of time from the last property inspection. This complaint-based algorithm leverages not just DCRA's data, but also data provided by the Office of Tax and Revenue, District of Columbia Geographic Information System, and other non-DCRA inspections conducted at rental properties around the District.

The Proactive Inspections Algorithm was deployed in November 2017 and optimizes how DCRA prioritizes and schedules the units it proactively inspects for code violations and licensing. The algorithm improves DCRA's scheduling of inspections, in particular, automating the Department's current random method of inspection as well as incorporating a risk basis into

their compliance-based scheduling. The proactive inspections algorithm is designed to get inspectors to properties **before** conditions arise that start negatively impacting tenants.

Both algorithms are in the final stages of their testing phases. Based on the scientific analysis of the data collected, DCRA will take the next steps to continue implementing these programs and optimizing staff resources. These projects are public and information about them is available on the Open Science Framework (OSF) website. (https://osf.io/anwf9/.)

Additionally, DCRA has made improvements to the Notice of Infraction (NOI) process. We have begun transitioning the NOI process from paper to a modern, software-based system that will increase the agency's efficiency and turnaround time for serving NOIs. In turn, the agency believes this investment will accelerate the abatement process and the improvement of tenants' living conditions. DCRA also recently began accepting cash, check, and credit cards for payments of NOIs at the agency's cashier counter. The agency is moving to include credit card and check payment options into our online format.

Moreover, the agency has distributed mobile inspection units to inspectors. These tablets allow inspectors to import photographs and file reports from the field. These photographs and reports automatically upload to the larger Accela database when the inspector is back in the office. This is one of many steps the agency is taking to make enforcement more efficient and modernize our inspection efforts. As a result, enforcement actions will be quicker and more transparent.

Lastly, as I have testified before, DCRA has a strong working relationship with the Office of the Attorney General. Based on this relationship, we have streamlined internal operations to make it easier to identify, discuss, and elevate grossly negligent landlords to OAG for additional prosecutions.

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As the City Administrator recently explained to Council, the Mayor and DCRA continue to explore additional policy changes that will improve DCRA's enforcement efforts. As I have already mentioned, our experience with Sanford Capital and other landlords made clear that even very high fines and liens on the property do not always serve as an effective incentive to abate violations found during inspections. As the City Administrator stated at a previous hearing, the Executive is exploring expedited rent receivership legislation as a remedy to this problem.

This proposal would allow landlords 30 days to cure a housing code violation, with an additional 10-day notice of receivership. Rents collected through receivership would be used by DCRA to abate housing code violations at a property and to allow DCRA to recoup funds expended for said abatement.

In addition, to most effectively abate conditions impacting safety and habitability, we are exploring the possibility of infusing the nuisance abatement fund with additional resources from the rent receivership and directing a portion of the fine revenue to the nuisance abatement fund. We will also allow rent receivership to be used to satisfy fines levied. This also serves to further incentivize proactive private abatement. We expect to introduce legislation to advance this concept in the fall. Now, I would like to turn to the bills we are discussing today.

II. "Slumlord Deterrence Amendment Act of 2017"

DCRA is constantly evaluating existing practices and their effectiveness in holding landlords accountable and ensuring that housing in the District is safe, habitable, and code-compliant for all. We appreciate the Council's focus on these issues and want to contribute to the discussion by offering insight into the execution of these ideas.

First, mandating a one-year waiting period for renewal of a basic business license since the last abatement cure was completed may create severe unintended consequences for tenants. If

a landlord's business license came up for renewal during that time period and was unable to be renewed, then the landlord would not legally be allowed to collect rent. This would result in the landlord having fewer resources to conduct maintenance and make repairs to the property. In this scenario, the property would likely fall into more decay, triggering additional housing code violations. Given this potential consequence, DCRA has serious concerns that this bill could result in worse outcomes for tenants, including possible displacement of tenants in situations where properties fall into serious disrepair. We are certain this was not the Council's intent and would like to continue discussions about productive ways to hold landlords accountable when they are unmotivated by fines.

Additionally, current corporation law will require review of thousands of historical business records to determine member interest in properties, as envisioned under the bill. This, combined with the need for an IT system upgrade and additional staff training to implement the bill, entails a significant cost.

III. "Housing Rehabilitation Incentives Regulation Amendment Act of 2017"

Housing Condition Abatement Fund

Bill 22-596, the "Housing Rehabilitation Incentives Regulation Amendment Act of 2017" would create new Housing Code infractions for failure to abate housing code violations for a period of longer than six months. Funds from the associated fines would then be funneled into a newly created Housing Condition Abatement Fund. As proposed in the Bill, the resources in the Fund would be split evenly between three uses:

1. The correction of housing violations through deposits into the currently existing Nuisance Abatement Fund;

2. Disbursement to tenants impacted by housing code violations that have not been abated within six months; and
3. Reimbursement of any inspection fees, re-inspection fees, or other fees charged to landlords who have abated housing code violations.

DCRA is concerned about the provisions to disburse funds to impacted tenants and to reimburse landlords.

First, identifying impacted tenants on a "proportional basis," as would be required in the bill, poses significant administrative challenges that could ultimately result in disparate treatment of the most vulnerable tenants and may not allow the agency to treat all buildings or tenants the same. The bill would lead to confusion about the disbursement of funds, given the methods of citations and how agency infrastructure tracks violations by property. For example, determining what portion of the fund is appropriate to distribute to a tenant who had five minor violations versus a tenant that had one quickly resolved life-safety violation would be difficult, especially if they were in the same apartment complex. The impact of Housing Code violations on tenants are often multifaceted and complicated. Given this, we do not believe the agency would be easily able to implement this provision of the bill, as currently written. We are interested in further discussions with the Council on how to best accomplish the important goal of ensuring, in an equitable manner, that tenants have a safe, code-compliant spaces to live.

Additionally, the Executive is concerned that the provision that would reimburse landlords for re-inspection fees may provide a disincentive to keeping properties maintained at all times to avoid re-inspection fees. Currently, DCRA inspects a property and only re-inspects a property in instances when violations of the Property Maintenance Code have been identified. The re-inspection fee serves as an incentive to keep properties maintained so that a re-inspection

is not necessary. Removing this incentive could result in worse outcomes for tenants if landlords believe any fees incurred will later be reimbursed. It is also important to point out that reimbursing all landlords for inspection fees, re-inspection fees, and all other fees would entail a very significant amount of reimbursements. Without any limitation on these reimbursements, it is very likely that the amount of owed reimbursements would outstrip the resources available in the Fund created by the bill. This would result in landlords expecting reimbursements that may not materialize. We urge the Council to carefully consider all of the potential unintended consequences and implications of this provision.

Required Referral to the Office of the Attorney General (OAG)

The agency also has concerns about the provision which would mandate referrals of Housing Code violations persisting longer than six months to the Office of the Attorney General. DCRA and Mayor Bowser have a strong working relationship with the OAG and believe it is important to elevate systemic and egregiously neglectful landlord behavior for prosecution. However, the agency is concerned that the language mandating referrals may lead to situations where a landlord actively working towards compliance is unnecessarily penalized. DCRA needs to retain the ability to continue working with cooperative, well-meaning landlords that are taking active steps to come into compliance, without having to make an unnecessary OAG referral. Moreover, the combined notice of violation and notice of infraction required by the bill may impact a landlord's option to appeal the notices. DCRA believes it is important for landlord appeal rights to remain in place and recommends that the Council take this into consideration.

Notice of Abatement

DCRA would like to continue discussions about the new Notice of Abatement process that is proposed in the bill. The agency is concerned that providing a Notice of Abatement would

complicate the enforcement process. Currently, citations and abatements are tracked by address and inspection visit, not by each individual charge. This system is in place to streamline the inspection and citation process so that a single NOI may contain citations for several noncompliant conditions in a single unit. To issue a Notice of Abatement for individual conditions as they are abated would be burdensome, detract from time and resources used for enforcement, and be difficult to integrate into a system built to accommodate tracking multiple conditions at a single property.

For an owner with several minor issues, with a combination of life-safety and routine maintenance issues or an owner that only partially abates the conditions cited, the agency would not be able to issue a Notice of Abatement for each condition abated because the document would reference an NOI with more than one noncompliant condition.

Finally, the Executive is concerned that a Notice of Abatement may be abused by property owners who intend to use it as proof of abatement in instances where repairs were superficial. A landlord may make a superficial repair that seems to pass an initial re-inspection, only to have the condition re-surface a few days or weeks later. Providing an owner with a Notice of Abatement may provide an incentive to make superficial repairs with the ability to evade further citation if it becomes clear later that the repairs did not sufficiently abate the violation. DCRA believes that the current NOI system is the most efficient process for tracking Housing Code violations. We encourage the Council to fully consider the potential unintended consequences of the proposal to create a new Notice of Abatement process.

IV. "Housing Code Enforcement Integrity Amendment Act of 2017"

Finally, while DCRA has implemented a policy to limit abatement extensions and decrease the abatement period to seven days for landlords that allow multiple life-safety

violations and squalid living conditions, we are concerned that limiting abatement extension discretion as contemplated in Bill 22-615, the "Housing Code Enforcement Integrity Amendment Act of 2017," may lead to unintended consequences for residents. Requiring DCRA to abate any Class 1, 2 or 3 infraction that has not been abated within six months may provide a disincentive for landlords to fix the properties they own. We have seen that large fines and liens do not always motivate landlords to abate life-safety violations. We do not believe that assessing the abatement costs via real property taxes will motivate landlords to abate properties in a timely fashion because the taxes would be assessed at a much later date. We are also concerned that if the failure to pay these taxes leads to a tax sale, it could displace the very tenants whose housing we are trying to bring into safe, habitable conditions.

In addition, requiring DCRA to abate a condition after six months will incur significant up-front costs to the agency, which would only be reimbursed much later through real property taxes. In the case of a tax sale, it could take an extended period of time before the agency is reimbursed. This will have significant budget implications that we urge the Council to consider.

In contrast, an expedited rent receivership program would ensure the District is repaid for abatements quickly, keep residents in their housing, and motivate negligent landlords, because it limits their ability to collect any money on the property or transfer the property via sale.

V. Conclusion

Chairman Mendelson, DCRA and Mayor Bowser share the Councils' urgency and appreciate your focus on the important issues of ensuring housing in the District is code compliant and taking strong enforcement actions against non-compliant landlords. We look forward to working with you and your colleagues to continue to improve our processes and make

our enforcement as effective as possible. Thank you for the opportunity to testify on Bill 22-573, Bill 22-596, and Bill 22-615. I am available to take your questions.

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Just Economics

BLIGHTED PROPERTY REDEVELOPMENT AMENDMENT ACT

B22 -0684

Committee of the Whole

July 12, 2018

Rick Rybeck, Director of Just Economics LLC

1669 Columbia Rd., NW, Suite 116, Washington, DC 20009 (202) 439-4176

I am Rick Rybeck, Director of Just Economics, LLC. I advise communities about how to harmonize economic incentives with public policy objectives for job creation, affordable housing, transportation efficiency and sustainable development. I am an attorney with a master's degree in real estate and urban development.

Problems associated with vacant lots and blighted buildings have existed in many neighborhoods for years. These properties pose a serious safety risk as they attract drug users, arsonists and other criminals. They are also psychologically depressing. Furthermore, they deprive the District of opportunities for badly-needed housing and jobs.

I commend the Council for grappling with this problem. I was a staff member for the Honorable Hilda Mason when the Council first introduced higher property tax rates for vacant and blighted properties in 1990. The problems associated with this approach have prevented its successful implementation since that time, as pointed out in a report by Dr. Daphne Kenyon for the DC Tax Revision Commission, "*Real Property Tax Classification in Washington, DC.*" See http://docs.wixstatic.com/ugd/ddda66_7e055c0324c7fa709eff78a44065f104.pdf . I will briefly explain why this policy fails and conclude with a different approach that has proven more successful where it has been applied.

OUR GOAL:

Most people want a system of taxes and fees that fairly distributes the costs of providing public goods and services. Furthermore, we want these taxes and fees to avoid (to the greatest extent possible) creating burdens on families and businesses to the point where families and businesses suffer hardship or move out of the District. In short, we want a system that:

- Is Fair
- Is Comprehensible to the Average Taxpayer
- Promotes Job Creation
- Promotes Affordable Housing
- Minimizes the Creation of Vacant Lots and Blighted Buildings

THE PROPERTY TAX AND ITS RELATION TO JOB CREATION, AFFORDABLE HOUSING AND BLIGHTED PROPERTY

If property owners allow their buildings to deteriorate, their building assessments fall and so do the taxes on those buildings. But, if property owners improve their buildings, assessments rise and so do the taxes on these buildings. Essentially, the property tax is upside-down. It rewards bad behavior and punishes good behavior.

How serious are these upside-down incentives. After all, most DC property taxes range between 1% and 2% of value. At first blush, this doesn't seem like much. After all, DC sales taxes typically range between 5% and 7%. But this comparison is misleading. A sales tax is paid only once. A property tax is paid each and every year that an improvement adds value to the property.

Collapsing years of property tax payments into a single payment (like a sales tax) shows that the property tax on building values can have the economic impact of a sales tax of between 10% and 20% on building construction labor and materials. If I urged the Council to impose a 10 to 20 percent sales tax on construction labor and materials, you'd tell me that this was a horrible proposal. Yet, without realizing it, this is the impact of the property tax on building values.

The property tax contains economic incentives and disincentives that are upside-down and they are a significant cost barrier to the affordable construction, improvement and maintenance of buildings. In 1990, instead of rectifying this fundamental problem, the DC Government decided to impose a punitive tax on vacant land and buildings. The District has been pursuing this approach unsuccessfully since that time.

WHY IS THE VACANT PROPERTY PENALTY TAX A FAILURE?

During the 1980s and early 1990s, people were painfully aware of the proliferation of vacant lots and boarded-up buildings – both in the downtown and in the neighborhoods. Something needed to be done. A small group of churches and non-profits suggested that land speculation was at the root of the problem. They proposed a fundamental reform of the property tax system that would reduce the profits from land speculation. (Their approach will be discussed at the end of this testimony.) Real estate speculators, who make windfall profits from the status quo and who contribute generously to political campaigns, were not happy about this fundamental reform. They suggested that a more "targeted" reform would be just as effective. The "targeted" reform would impose an additional property tax payment on the owners of vacant properties as a way to create an economic incentive for development. Unfortunately, this was "feel good" legislation. It gave the appearance of doing something while actually doing very little. Here are just a few of the problems:

- The legislation creating the "vacant property classification" was very long and complicated. It is almost impossible to understand. Compliance is going to be difficult if neither the general public nor the enforcing agencies can understand the law. According to Dr. Kenyon, collection rates for vacant property taxes are often well below 50%.
- It was initially up to the Department of Finance and Revenue (DFR) to create a list of vacant properties. This was not within their traditional practice. Their job was to assess each and every property according to its market value. But that's very different than determining which properties are "vacant." The responsibility for identifying vacant and blighted property has since been shifted to the Department of Consumer & Regulatory Affairs, (DCRA).
    - Vacant land is easy to identify. But vacant buildings are not. (Vacant land, initially included in the penalty tax from 1991 until 2009, is no longer subject to the vacant property penalty tax.)
    - How is "vacant" defined as applied to buildings?
        - It's OK (even necessary) for properties to be vacant for some amount of time in order for people and businesses to be able to move in and move out. But how long is too long to be vacant? Whatever time is selected will be somewhat arbitrary.

        - Once DFR has identified vacant buildings that have been vacant for too long, it must then apply the many exemptions.
        - As soon as DFR has compiled a list of vacant buildings subject to the penalty tax, the list becomes obsolete because time has passed and other conditions may have changed.
    - In 1991, DFR was only applying the penalty tax to vacant land because it had not yet conquered the complexity of applying it to vacant buildings. Yet, after applying the exemptions, DFR found that the number of vacant properties qualifying for at least one exemption (5,648) outnumbered the number of vacant properties subject to the penalty tax (3,200).
    - DFR ultimately decided to send a questionnaire to property owners requiring that they self-report vacant property. There were fines and penalties for failing to respond or for responding untruthfully.
    - Making all taxpayers respond to a long and complex questionnaire when most of the properties were exempt anyway proved both difficult and unpopular. (Perhaps, when the Council created this vacant property penalty tax in 1990, they forgot that similar legislation had been introduced and defeated in the early 1980s, precisely because it was not administratively practical.
- There were numerous exemptions to the vacant property tax. Exemptions included:
    - Property that was for rent or sale. (How difficult is it for a speculator to put a "For Sale" sign in the window?
    - Surface parking lots were exempted even though stand-alone surface parking lots in a downtown are classic examples of land speculation.
    - Buildings damaged by fire. At first blush, this makes sense. Why punish property owners who have suffered from an unavoidable tragedy. It took several years for DFR to apply the vacant property penalty tax to buildings. But when that happened, the number of structure fires increased dramatically. Land speculators who owned vacant buildings were willing to torch buildings to avoid the penalty tax. (After all, it's the land that appreciates in value, not the buildings.) Fires in vacant buildings endanger lives and neighboring properties. They cost taxpayers enormous sums for firefighting. Surely no Councilmember intended this result, but it happened.
    - As a result of numerous exemptions and the removal of vacant land, when Dr. Kenyon wrote her 2012 report, there were only about 1,213 properties subject to the vacant property tax out of 182,357 total properties in the District.

A penalty tax on vacant property is a well-intentioned, but misguided policy. It assumes that vacant, blighted properties are a discrete category of real estate. In reality, vacant and blighted buildings are simply the end result of a long process of disinvestment which occurs over many years. As a result, they are not sensitive to short-term tax changes that are constantly in flux because they are difficult to understand and administer.

WHAT'S THE ALTERNATIVE?

Some cities have successfully turned the upside-down property tax right-side up. This can be accomplished by reducing the tax rate applied to privately-created building values while

increasing the tax rate applied to publicly-created land values. This approach could be called the **"universal tax abatement program"** because it would reduce tax rates on all structures.

A lower tax rate on buildings makes them cheaper to construct, improve and maintain. This is good for residents and businesses alike. It will also increase employment because businesses are paying less rent and can devote more resources to production and sales. Also construction-related activity will increase. And this increase is not limited to new construction. Activities will increase regarding building improvements and maintenance as well.

Surprisingly, a higher tax rate on land value will help reduce land prices. The price of land is based on the expectation of ownership benefits. Taxing land values diminishes the benefits of land ownership and therefore lowers land prices.

Thus, shifting the tax off of building values and onto land values will make both buildings and land more affordable -- without any increase in government spending or any loss of government revenues. Even if the tax shift is revenue-neutral with regard to the property tax, it will be revenue-positive for the District. Once vacant lots and boarded-up buildings are returned to residential or commercial uses, they will generate more sales, income and other taxes as well.

IS THERE EVIDENCE THAT A UNIVERSAL ABATEMENT WILL WORK?

San Francisco used this approach after the 1906 earthquake. There were no federal disaster relief funds to help San Francisco rebuild. The Mayor and City Council eliminated the property tax applied to building values. However, they maintained the tax on land values. This encouraged the owners of downtown land to rebuild (or to sell to others who would). The more valuable the land, the more intensively it needed to be developed to pay for the land tax. San Francisco was rebuilt rather quickly as a vibrant and compact city.

Pittsburgh began to tax buildings less than land in 1913. This helped facilitate the rise of Pittsburgh as a center for manufacturing. During the Great Depression, when many cities' assessment rolls fell by 30 percent and even 40 percent, Pittsburgh's assessment roll declined by only 11 percent. Pittsburgh's relatively high tax on land values discouraged land speculation. Unlike the other cities, Pittsburgh did not experience a speculative boom and bust in land prices prior to the 1929 crash.

During the 1970s, Pittsburgh faced a budget crisis. The Mayor proposed a wage tax to balance the budget. It would have cost the average Pittsburgh household about $200 per year. City Councilmembers feared that workers would flee Pittsburgh for the suburbs. So they balanced the budget by increasing the land tax instead. This cost the average Pittsburgh household only $80 per year because most of the higher tax on land value was paid by landowners in Pittsburgh's central business district. Shortly afterwards, Pittsburgh's downtown experienced a revitalization known as Renaissance Two, when many corporate headquarters moved into downtown Pittsburgh. This was contrary to the nationwide trend of central city decline and the flight of residents and businesses to the suburbs. But it is totally consistent with the economic impact of reducing taxes on building values while increasing taxes on land values.

Harrisburg, Pennsylvania's state capital, was very distressed in the early 1970s. In 1972, Hurricane Agnes caused the Susquehanna River to flood the downtown, wiping out many businesses. And Harrisburg also experience the flight of families from the city to the suburbs that was occurring nationwide. Harrisburg adopted this tax reform in 1975. Over the next 15 years, Harrisburg was transformed from one of the most distressed cities of its size to one of the best. The number of vacant properties in the downtown was reduced from several thousand to just a few hundred during this time.

One of the best examples of the impact of this tax reform occurred in McKeesport, PA. Like many steel towns outside of Pittsburgh, its steel plant closed down during the 1970s. Building permits declined and the city was distressed. In response, McKeesport reduced the tax rate applied to buildings and increased the tax rate applied to land. During the three years following this reform, the number and value of building permits increased dramatically. Would this have happened anyway? Clairton and Duquesne are similar steel towns nearby. Like McKeesport, their steel plants had shut down and they were also experiencing steep declines in the number and value of building permits. However, when McKeesport reformed its property tax, Clairton and Duquesne did not. Building permits in Clairton and Duquesne continued to decline while they were rising in post-reform McKeesport. When Clairton and Duquesne noticed what had happened in McKeesport, they also adopted the reform. And building permits rose in each of these cities after this tax reform was adopted.

Most people think that the property tax is one tax. In reality, it is two taxes. It's a tax on privately-created building values and it's a tax on publicly-created land values. Buildings are privately produced and maintained by their owners. Owners can also disinvest and cause building values to decline. Unlike buildings, land is not produced. Land values are typically immune from the actions of individual landowners. Instead, they reflect what the surrounding community has done to make particular sites productive or unproductive as places to live or do business.

Buildings and land react very differently to taxation. Some people have wondered why more building owners don't engage in energy-saving retrofits. After all, these investments reduce utility costs. Of course, an initial investment must be made and that investment is "paid off" by lower utility costs over time. But making energy-saving improvements adds value to the building – and this leads to higher assessments and higher property taxes. As a result, the property tax applied to building value pushes out the pay-off period for energy-saving improvements farther into the future, rendering many such investments uneconomical. This is yet another example of why the traditional property tax is counter-productive.

If the District were to reduce the property tax on building values, it could lower their costs by up to 10% to 20%. If taxes were increased on land values, it would help keep rising land prices in check also. While this reform would not make market-rate housing affordable for the very poor, it would still help them indirectly. First, it would create more entry-level jobs and boost incomes. Second, housing assistance typically makes up the difference between 30% of a family's income and the market-rate price of housing. If the market-rate price of housing declines (or rises less quickly), then a given amount of housing assistance appropriated by the government will help more families than would otherwise be possible.

NO GOOD DEED GOES UNPUNISHED

Clearly, there are many policies and programs necessary to uplift our distressed communities. Better schools, improved public safety and better public transit are a few examples. But under the status quo, any success in these objectives will result in higher land prices and rents. The intended beneficiaries will be displaced. Tax dollars spent to help the poor end up enriching affluent landowners instead.

However, if a universal tax abatement is implemented, more of the community-created land values will be returned to the public sector, resulting in less land-price inflation and lower rents. Thus, while these other policies and programs are necessary, they are less effective (or even counter-productive) unless our upside-down property tax is turned right-side up. Two graphics are attached. One illustrates the status quo. The other shows the benefits of recycling publicly-created land values,

In 1990, when I was a staff member for the Honorable Hilda Mason, I obtained assessment data for the District. My father and I ran a simulation comparing the impact of a split-rate tax to the traditional property tax for Tax Year 1992. The hypothetical split-rate tax raised the same revenue as the traditional tax. However, it reduced taxes in middle- and low-income neighborhoods. It reduced taxes in neighborhood commercial districts as well. A summary of the results are attached. (NOTE: "Class 4" property in 1992 was commercial property.)

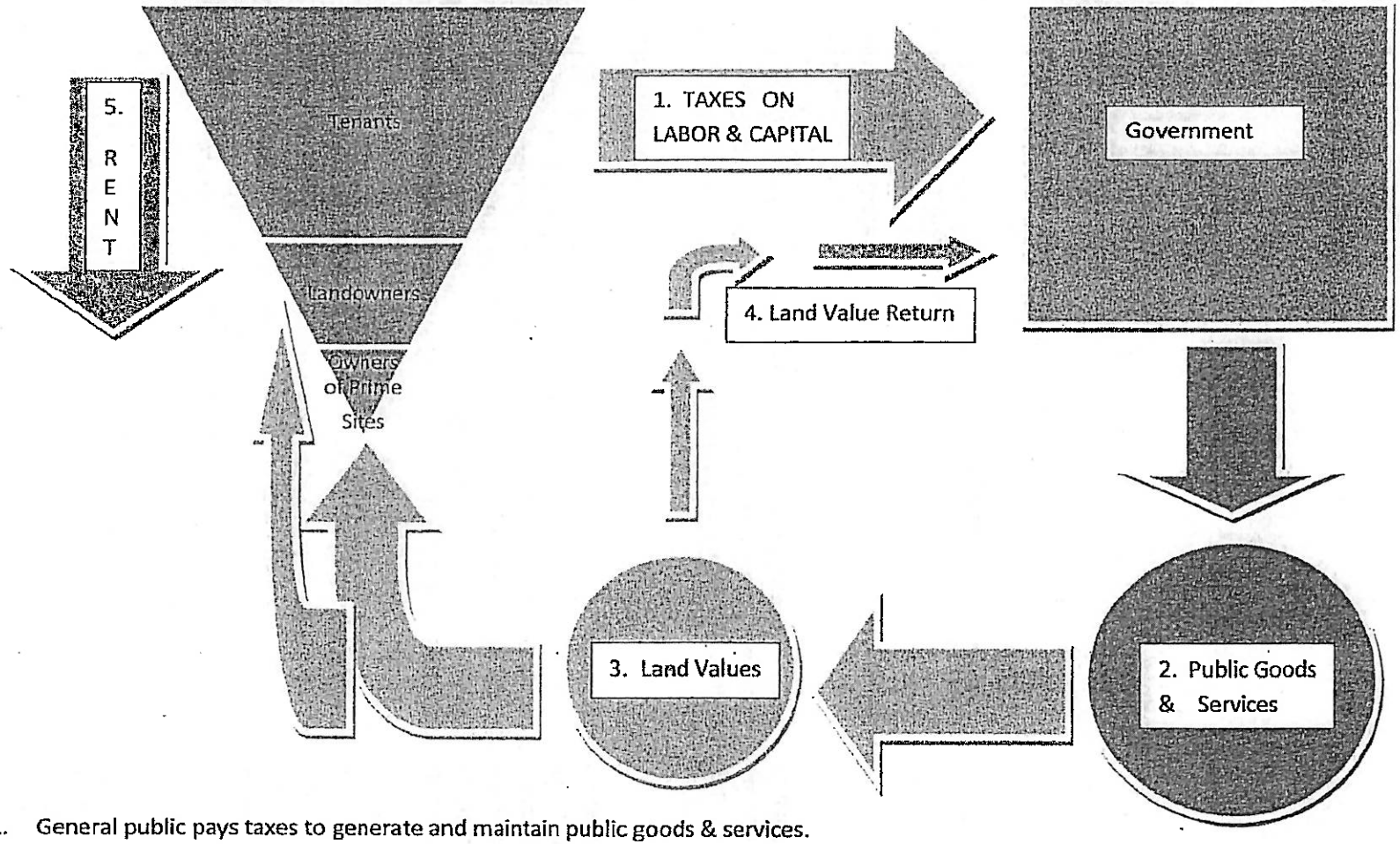
HOW SHOULD THE COUNCIL PROCEED?

Obviously, property assessments have changed considerably in DC since 1990. However, the point is that good public policy, if carefully designed and implemented, can be good politics as well. I am available to help the District modernize its property tax system so that it can:

- Be Fair
- Be Comprehensible
- Promote Job Creation
- Promote Affordable Housing
- Minimize the Creation of Vacant Lots and Blighted Buildings

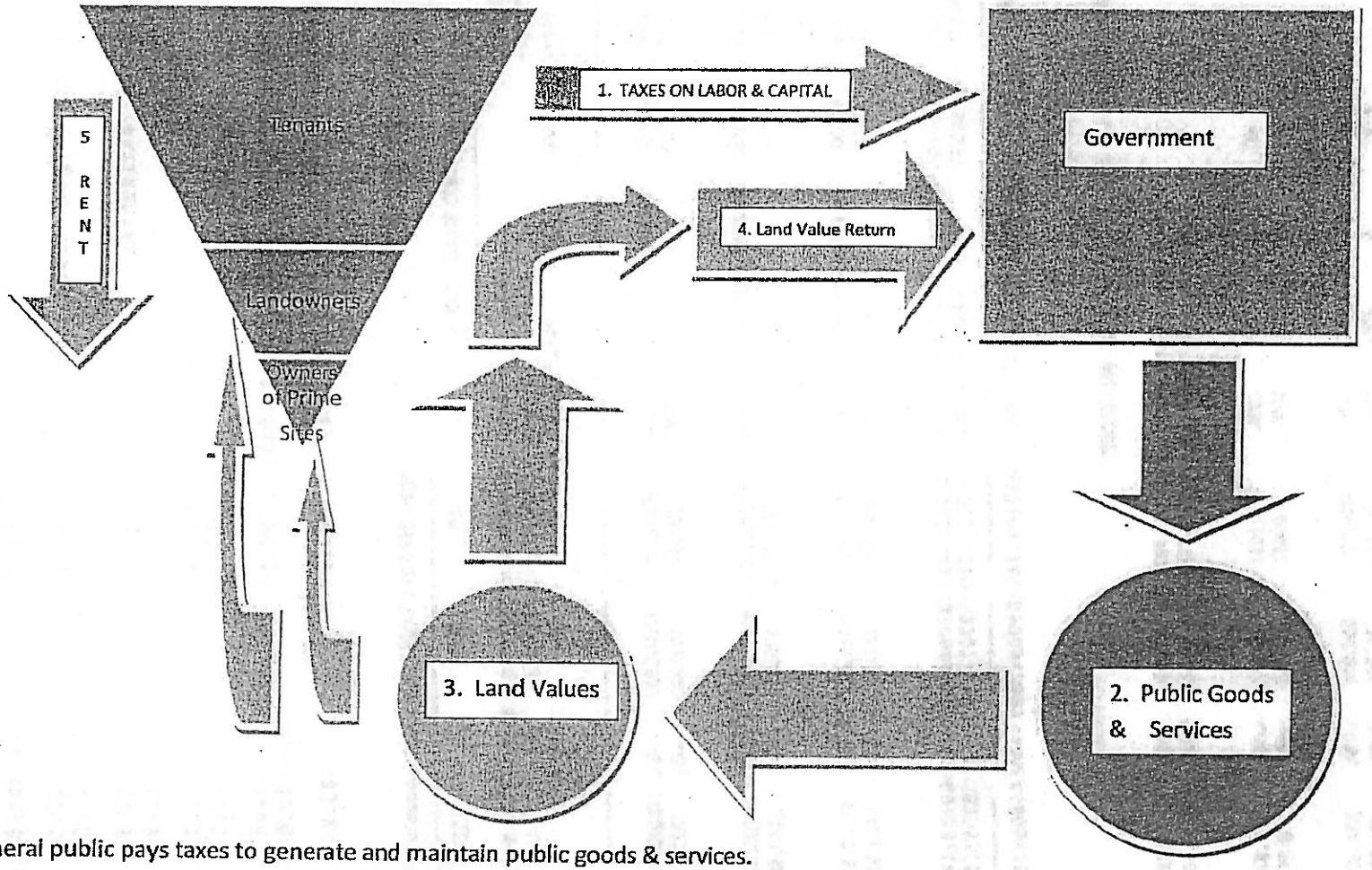
Thank you for considering my testimony.

LAND VALUE CREATION & CONSEQUENCES



1. General public pays taxes to generate and maintain public goods & services.
    a. Owners of prime sites contribute less than others because most of their taxes are passed through to tenants and consumers.
2. Governments use taxes to produce public goods & services
3. Benefits of many public goods & services are capitalized into higher land values, mainly on prime sites. ("Location, location, location!")
4. Land Value Return: User fees plus access fees (land taxes). Typical property tax returns only 1% or 2% of publicly-created land value.
5. Most land values created by government are windfalls to owners of prime sites who charge premium rents to tenants for the right to access these public goods and services. NOTE: Tenants pay twice for government services. Once in taxes & again in land rent.

LAND VALUE RECYCLING FOR SUSTAINABILITY & EQUITY



1. General public pays taxes to generate and maintain public goods & services.
   a. Owners of prime sites contribute more than before. Land value return fees are <u>not</u> passed through to tenants and consumers.
   b. Taxes on labor and capital can be reduced as a result of recycling publicly-created land values. (See step 4)
2. Governments use taxes to produce public goods & services
3. Benefits of many public goods & services are capitalized into higher land values ("Location, location, location!")
4. More robust user fees and access fees return more publicly-created land values to the public. (Taxes on building values can be reduced.)
5. Reduced windfalls to private landowners reduce land prices and reduce land rents from tenants to landowners. Reduced taxes on buildings make buildings more affordable, so tenants get more value for the building rents that they pay.

1992 TAX BURDEN COMPARISON

1991 DC Rates Versus Hypothetical Split Rates

		DC 1991 Rates	Hypothetical Split Rates
Class 1	(Owner-Occupied Residential)	$0.96	B = $0.65 L = $1.30
Class 2	(Rental Residential)	$1.54	B = $0.95 L = $1.90
Class 3	(Hotel / Motel)	$1.85	B = $1.25 L = $2.50
Class 4	(Improved Commercial / Industrial)	$2.15	B = $1.45 L = $2.90
	(Vacant Commercial / Industrial)	$2.15	$3.29

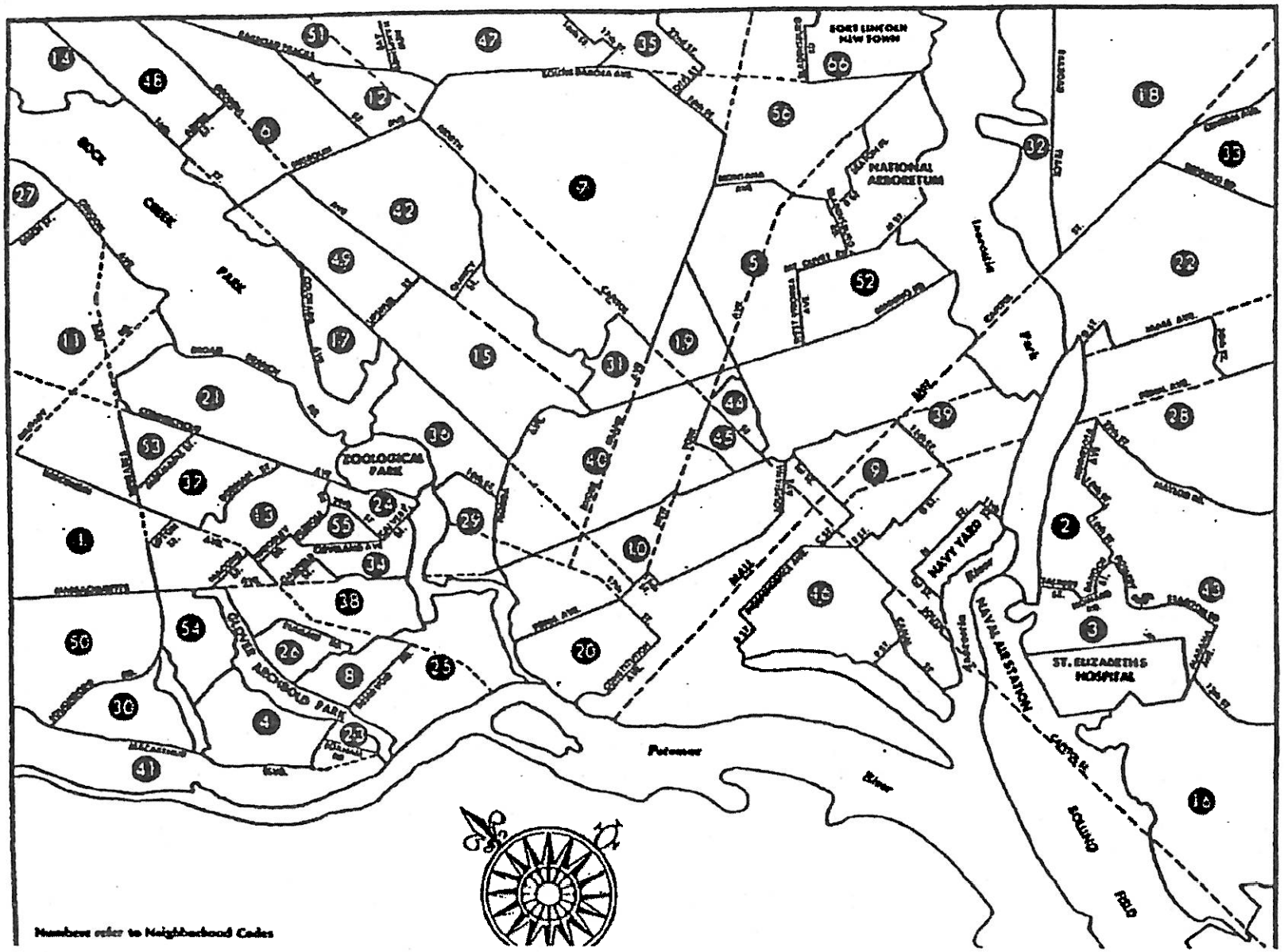
			ASSESSED 1990 VALUES ($000s)				Hypo 1992 Tax Liabilities (less homeowner deduction) in $000s					
							"I"	"II"		"III"		
1	2	Number Properties 3	Land 4	Bldg 5	Total 6	Land As % of Total 7	'90 Assmts '92 Calc 8	'90 Assmts '91 Rates 9	Change from "I" 10	Split-Rate B=L/2 11	Change from "I" 12	Change from "II" 13
Class 01												
	IMPROVED	68809	3861408	7863284	11724692	33%	95638.178	92740.051	-3%	81183.018	-15%	-12%
	VACANT	570	28625	0	28625	100%	283.388	274.800	-3%	372.125	31%	35%
Class 02												
	IMPROVED	47290	1893368	3880119	5773487	33%	92375.792	88911.700	-4%	72825.123	-21%	-18%
	VACANT	2091	60419	0	60419	100%	966.704	930.453	-4%	1147.961	19%	23%
Class 03												
	IMPROVED	147	698107	929972	1628079	43%	31747.561	30119.462	-5%	29077.325	-8%	-3%
	VACANT	23	24056	0	24056	100%	469.092	445.036	-5%	601.400	28%	35%
Class 04												
	IMPROVED	7813	9606704	8423315	18030019	53%	384039.401	387643.405	1%	400732.482	4%	3%
	VACANT	8848	1764557	0	1764557	100%	37585.070	37937.982	1%	58053.935	54%	53%
Totals		135591	17937245	21096690	39033935	46%	643105.165	639004.887	-1%	644003.368	0%	1%

AVERAGE PROPERTY DATA FOR EACH CLASS, IMPROVED AND VACANT

Class 01											
	Improved	56	114	170	33%	1.390	1.348	-3%	1.180	-15%	-12%
	Vacant	50	0	50	100%	0.497	0.482	-3%	0.653	31%	35%
Class 02											
	Improved	40	82	122	33%	1.953	1.880	-4%	1.540	-21%	-18%
	Vacant	29	0	29	100%	0.462	0.445	-4%	0.549	19%	23%
Class 03											
	Improved	4749	6326	11075	43%	215.970	204.894	-5%	197.805	-8%	-3%
	Vacant	1046	0	1046	100%	20.395	19.349	-5%	26.348	28%	35%
Class 04											
	Improved	1230	1078	2308	53%	49.154	49.615	1%	51.290	4%	3%
	Vacant	199	0	199	100%	4.248	4.288	-1%	6.561	54%	53%

Neighborhood Codes

1 American University Park
2 Anacostia
3 Barry Farms
4 Berkley
5 Brentwood
6 Brightwood
7 Brookland
8 Burleith
9 Capitol Hill
10 Central
11 Chevy Chase
12 Chillum
13 Cleveland Park
14 Colonial Village
15 Columbia Heights
16 Congress Heights
17 Crestwood
18 Deanwood
19 Eckington
20 Foggy Bottom
21 Forest Hills
22 Fort Dupont Park
23 Foxhall
24 Garfield
25 Georgetown
26 Glover Park
27 Hawthorne
28 Hillcrest
29 Kalorama
30 Kent
31 LeDroit Park
32 Lily Ponds
33 Marshall Heights
34 Mass. Ave. Heights
35 Michigan Park
36 Mount Pleasant
37 North Cleveland Park
38 Observatory Circle
39 Old City #1
40 Old City #2
41 Palisades
42 Petworth
43 Randle Heights
44 R.L.A. (N.E.)
45 R.L.A. (N.W.)
46 R.L.A. (S.W.)
47 Riggs Park
48 Shepherd Park
49 16th Street Heights
50 Spring Valley
51 Takoma Park
52 Trinidad
53 Wakefield
54 Wesley Heights
55 Woodley
56 Woodridge


FORT LINCOLN NEW TOWN
NATIONAL ARBORETUM
ZOOLOGICAL PARK
ROCK CREEK PARK
NAVY YARD
NAVAL AIR STATION
ST. ELIZABETHS HOSPITAL
Potomac River
Numbers refer to Neighborhood Codes

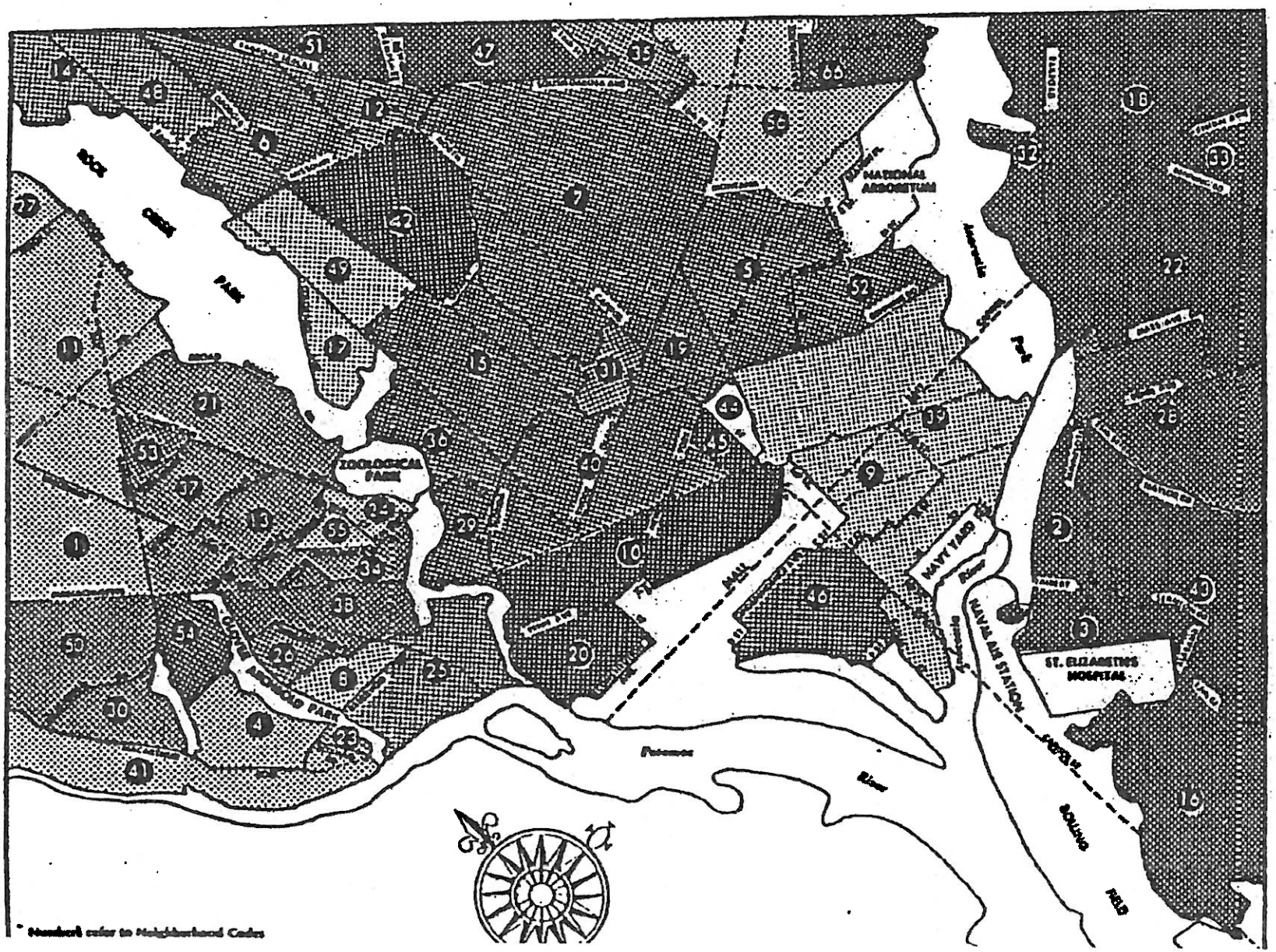
Map #1

CLASS 1 IMPROVED:

(1990 Assessments – Homestead Deduction) X Split Tax Rates ($0.65/$100 on Building Value)
($1.30/$100 on Land Value)

Compared to

(1990 Assessments – Homestead Deduction) X 1992 Tax Rate ($0.96/$100 on Total Value)



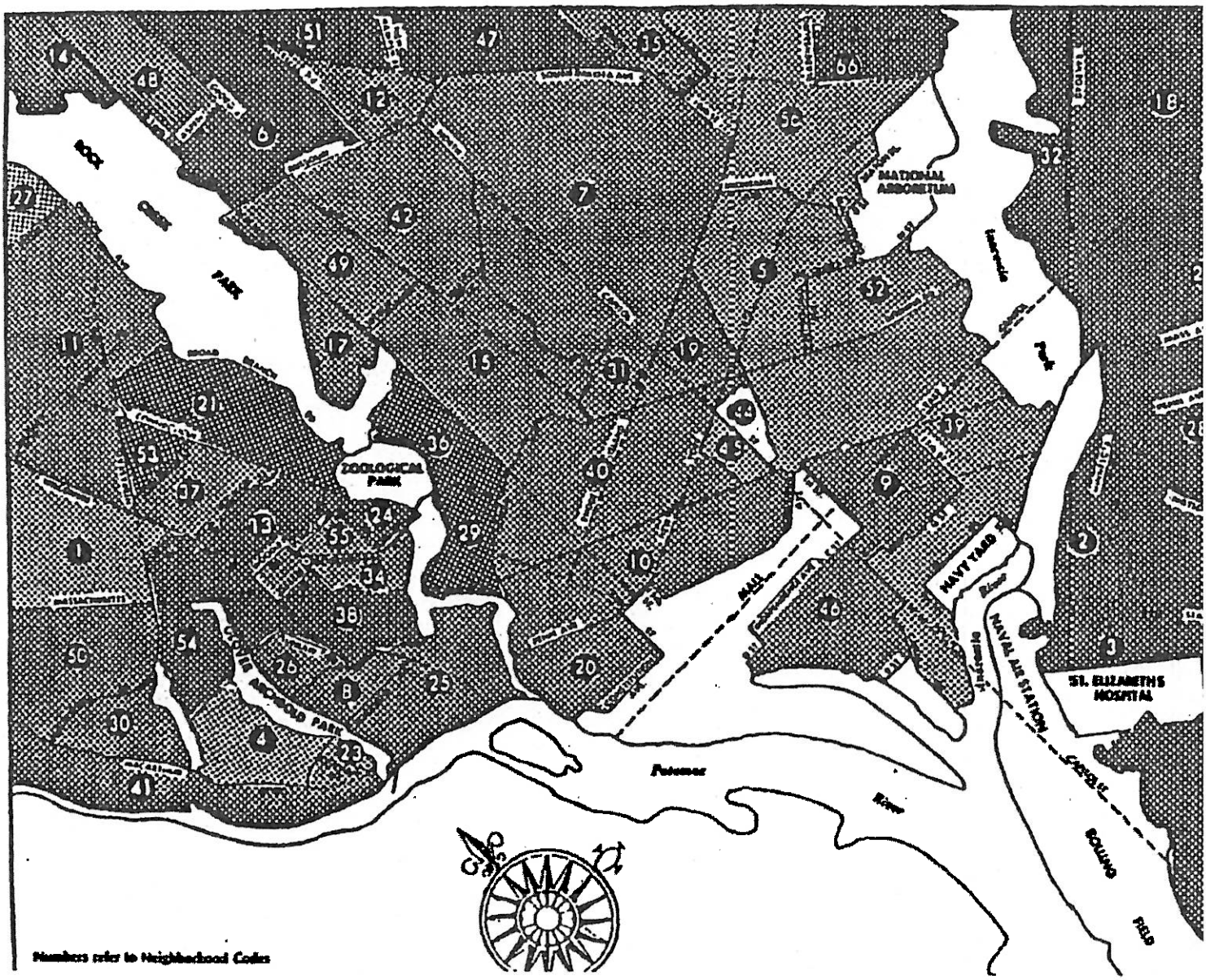
Map #2

CLASS 2 IMPROVED:

1990 Assessments X Split Rate ($0.95/$100 on Building Value) ($1.90/$100 on Land Value)

Compared to:

1990 Assessments X 1992 Tax Rate ($1.54/$100 on Total Value)



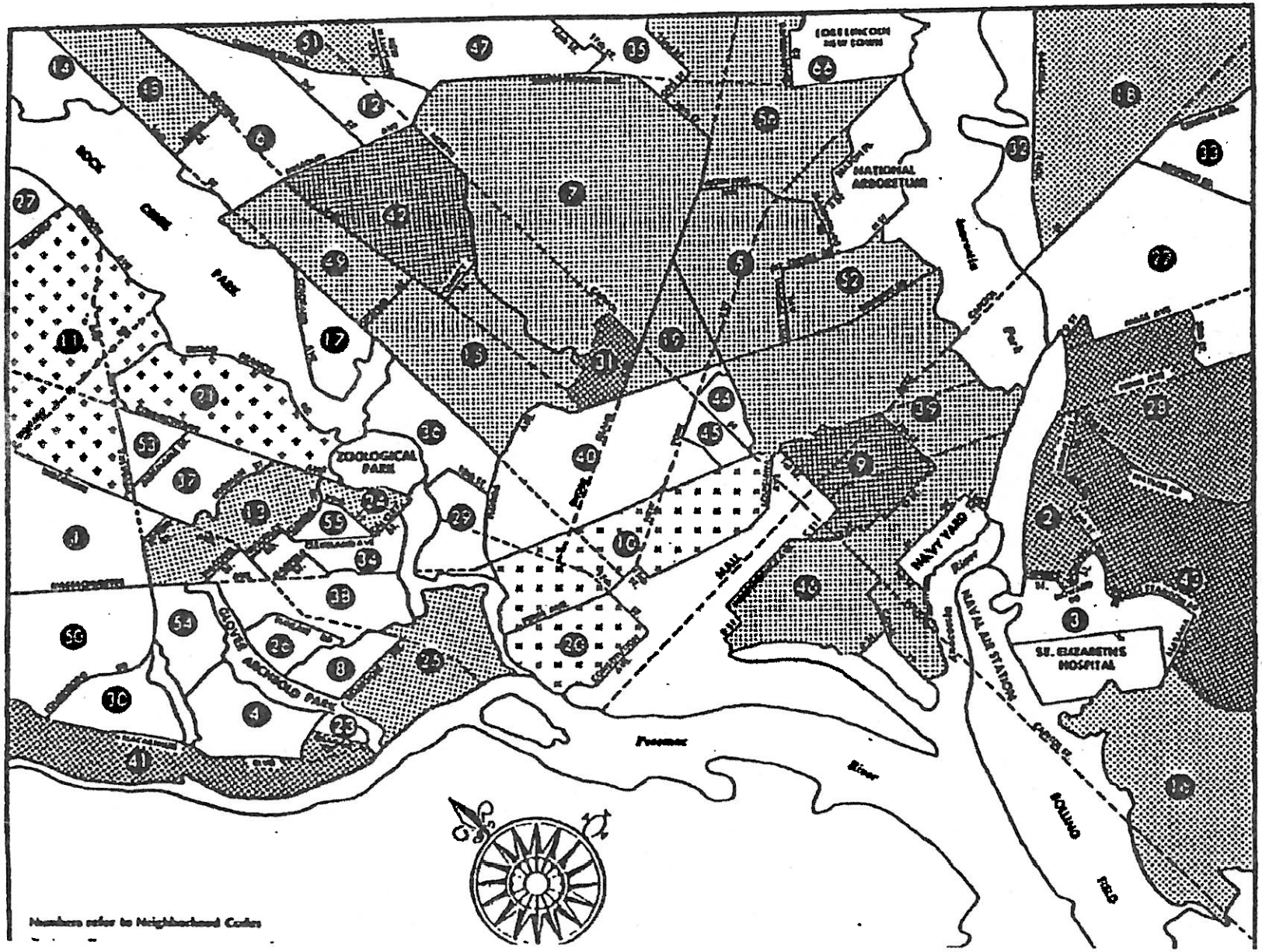
Map #3

CLASS 4 IMPROVED:

1990 Assessments X Split Tax Rates ($1.45/$100 on Building Value)
($2.90/$100 on Land Value)

Compared to

1990 Assessments X 1992 Tax Rate ($2.15/$100 on Total Value)



Written Testimony of Advisory Neighborhood Commission 6C[1]
Before the Committee of the Whole

Public Hearing on
Bill 22-683, Substandard Construction Relief Amendment Act of 2018
Bill 22-684, Blighted Property Redevelopment Amendment Act of 2018

July 12, 2018

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

ANC 6C writes to state its support for the overall objectives of Bills 22-683 and 22-684. As detailed below, we believe each bill would benefit from changes to address issues left unresolved and/or to tailor the text more narrowly to the issues under consideration.

Bill 22-683

Bill 22-683 would amend D.C. Official Code § 6-1406, the statute prescribing civil and criminal penalties for violations of the Construction Codes.

New subsection 6-1406(e)(1) would require the finder of fact—typically an Office of Administrative Hearings judge—to order a violator to a) repair resulting damage done to an adjacent property or b) pay restitution at the discretion of the adjacent property's owner.

New subsection (e)(2) makes clear that such an award does not prevent the aggrieved owner from pursuing a civil action for relief against the violator. At the same time, it bars double recovery by requiring that the amount of any resulting judgment be reduced by the value of any restitution or repairs made by the violator.

ANC 6C supports the goal of Bill 22-683, which is to streamline the process for making the owner of a damaged adjacent property whole, potentially saving that owner the trouble and expense of pursuing private litigation.

The bill does not, however, resolve several important issues likely to arise. These include

- **Manner of proving physical damage to adjacent property:** The parties to an OAH proceeding concerning a Construction Codes violation are DCRA and the

[1] ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on July 11, 2018, with a quorum of 6 out of 6 commissioners and the public present, by a vote of 6-0.

violator, but not any aggrieved third party. The owner of a damaged adjacent property is not, as far as we are aware, legally entitled to notice of these proceedings, nor are such third parties granted standing to participate.

Thus, it is unclear whether the injured next-door owner would even be aware of an OAH case, let alone participate in it. And it is likewise unclear to us whether DCRA would, on its own, have the information or motivation necessary to prove physical damage to the adjacent property.

- **Time and manner of the adjacent property owner's notification and involvement**: It is unclear when and how the injured next-door owner would become aware of any award under section 6-1406(e)(1) and thus know of his or her entitlement to repair or restitution.

- **Noncompliant violators and disputes with aggrieved parties**: If a violator fails (or simply refuses) to make the neighbor whole, what is the mechanism for enforcing the OAH award? Would an injured property owner have standing to re-open the OAH proceeding, even without DCRA's assistance or support?

  Similarly, suppose the violator and injured owner disagree over the quality of any repairs made or, alternatively, over the amount of restitution due. (Absent direct involvement by the adjacent owner in the OAH proceedings **before** the award, the OAH judge would only be able to order restitution in the abstract and not in a specific amount.) Would the aggrieved neighbor be able to litigate such issues before the original OAH judge? If not, by what mechanism would the award be enforced (other than by DCRA, whose motivation may be lacking)?

- **Retroactivity**: Would this bill affect only those violations that take place after the law's effective date, or would it also apply to any open, unresolved OAH case pending at the time the law takes effect?

- **The LLC problem**: If the violator is an LLC that subsequently dissolves or declares bankruptcy, what would the impact be on any award to the adjacent property owner?

Bill 22-684

Bill 22-684 would allow the Mayor—in practice, DCRA—to declare a vacant building not "blighted vacant" in certain circumstances even if doorways, windows, and other openings are not secured with permanent materials. Specifically, DCRA could avoid a "blighted vacant" finding if a) the owner installs temporary measures (such as plywood covering) and b) submits a building permit application promising to replace those measures with permanent features.

Based on testimony from earlier Council hearings, we understand the concern to be that contractors often wish to delay installation of permanent replacement doors and windows until after demolition and heavy construction phases are complete—and that waiting to do so unfairly subjects such properties to a "blighted vacant" finding by DCRA. *See* D.C. Official Code § 42-3131.05(1)(B)(ii) & (iii)(I).

ANC 6C agrees with the spirit of this bill, which would allow such construction to proceed in an appropriate sequence without the owner having to risk incurring the punitive 10% "blighted vacant" tax rate. However, we believe the language would benefit from a number of narrowing and clarifying amendments.

First, the bill overlooks the fact that a building may qualify as "blighted vacant" even if it is properly sealed with temporary or permanent doors, windows, etc. For instance, a building may be declared "blighted vacant" because of graffiti or loose bricks/rotting wood features that may pose a safety hazard. *See* § 42-3131.05(1)(B)(iii)(II). Under the language of the bill, DCRA could simply ignore such other violations when determining "blighted vacant" status so long as door and window openings are boarded shut.

Second, the bill refers simply to "openings … secured by boards" (line 37) without requiring that such temporary measures be "weather-tight" and effectively protect "against entry by birds, vermin, and trespassers."

Last, the bill uses the term "renovation" (line 39) in reference to the required permit application. We believe it would be clearer to refer simply to the scope of work contemplated by the requested permit.

Accordingly, ANC 6C recommends that the text at lines 36-39 of the bill be replaced with the following:

> (C) The Mayor may, for purposes of determining whether a vacant building is a blighted vacant building, consider doors, windows, areaways, and other openings to be adequately secured by boards or other non-permanent measures if
>
> (i) all such openings are weather-tight and secured against entry by birds, vermin, and trespassers, and
>
> (ii) the owner submits a building permit application certifying that these non-permanent measures will be replaced with permanent materials as part of the scope of work.

* * *

We thank you for the opportunity to provide testimony and welcome any questions the Committee may have.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Public Hearing on

B22-683, the "Substandard Construction Relief Amendment Act of 2018;"
and
B22-684, the "Blighted Property Redevelopment Amendment Act of 2018"

Testimony of
Melinda Bolling
Director

Before the

Committee of the Whole
The Honorable Phil Mendelson, Chairman
Council of the District of Columbia

July 12, 2018
9:30am
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman Mendelson, Councilmembers, and staff. I am Melinda Bolling, the Director of the Department of Consumer and Regulatory Affairs (DCRA). I'm here today to provide the Executive's testimony on two bills. The first piece of legislation I will discuss is Bill 22-683, the "Substandard Construction Relief Amendment Act of 2018." This bill would amend the D.C. Code penalties for violations of the Construction Code to require an award of restitution or repair for damage caused to neighboring property owners who are negatively impacted by substandard construction. The second piece of legislation is Bill 22-684, the "Blighted Property Redevelopment Amendment Act of 2018." This bill would permit the Mayor to reclassify a "blighted vacant" property as simply "vacant" if the property owner submits a permit application and boards up the windows and doors.

The Executive appreciates the Council's attention to these important subjects. Striking an appropriate balance between encouraging development and preserving neighborhoods is no small challenge, and we look forward to working with Council to achieve positive outcomes.

I. "Substandard Construction Relief Amendment Act of 2018"

DCRA is committed to protecting the health, safety, and well-being of District residents and takes seriously the enforcement of our Construction Codes. In the current real estate climate, development in the District continues to boom, bringing with it both positive effects and challenges. DCRA does everything possible within its enforcement authority to ensure that construction in the District is safe and code-compliant. We know that even despite best efforts, things sometimes go wrong during construction projects, and there needs to be accountability for the consequences of negligent construction. We understand that not all residents who are harmed by negligent contractors are in a position to pay out of pocket for an attorney and sue for damages. The Executive supports the Council's intent to create a new avenue of recourse for

neighbors who suffer property damage as a result of construction code violations. We would like to discuss some implementation concerns and provide suggestions to strengthen and clarify this legislation so that it can best achieve positive outcomes.

First, it is important to explain what DCRA inspectors do, and what they do not do. DCRA inspectors are critical to the oversight of construction projects in the District and to holding owners, developers, and contractors to the safety standards and practices embodied in the Construction Codes. DCRA takes this responsibility seriously.

Since the start of FY17, the agency has added three new Illegal Construction inspector positions. We also expanded Illegal Construction inspection hours in FY17 to include Saturdays, Sundays, and holidays, as well as extended hours during the week. DCRA inspectors are now on duty from 6:00 a.m. to 9:30 p.m., Monday through Friday and 7:00 a.m. to 3:30 p.m. on Saturdays, Sundays, and holidays. These improvements have translated into an increase in illegal construction inspections, from 1,822 inspections in FY16 to 2,584 inspections in FY17.

DCRA has also made improvements to the Notice of Infraction (NOI) process. We have begun transitioning the NOI process from paper to a modern, software-based system that will increase the agency's efficiency and turnaround time for serving NOIs. These technology improvements, staff and hours expansions, and enhanced management have enabled DCRA to issue significantly more NOIs and stop work orders for illegal construction violations. In the first three quarters of FY18, DCRA has issued 593 stop work orders, compared to 415 in all of FY16 and 396 in all of FY17. In the first three quarters of FY18, DCRA has issued 582 NOIs for illegal construction, in comparison to 215 in FY16 and 189 in FY17.

DCRA conducts three types of inspections relevant to construction projects:

1. Property Maintenance inspections;

2. Illegal Construction inspections; and

3. Permit-based inspections.

For each of these three inspection types, an inspector visits the property and performs an assessment of what they see. Inspectors look at whether the property is in violation of any Property Maintenance Codes and make sure that any construction work is within the scope of an issued permit. For permit-based inspections, the inspector confirms that the construction work has been performed in compliance with the plans and drawings approved by DCRA and that the completed work adheres to all applicable Codes. Our inspectors are trained to identify Code violations and to review whether construction work matches the permitted plans.

However, DCRA inspectors are not qualified to assess damage, attribute causation, apportion liability, or design corrective actions in a dispute between two neighboring property owners. In most instances, especially for complaint-based inspections, a DCRA inspector can only report on what they see when they gain access to the property. They certainly cannot speak to the condition of the property – or the neighbor's property – before the work commenced. To place DCRA inspectors in the middle of such disputes would be problematic and counter to the agency's mission to be a neutral body enforcing the Construction and Property Maintenance Codes. As drafted, the Executive believes that Bill 22-683 could rely on DCRA inspectors to make determinations about property conditions that are outside the scope of their qualifications and the agency's mission. With these facts in mind, DCRA has identified several issues with Bill 22-683, as drafted, and would encourage the Committee to consider clarifying revisions.

First, we have concerns about the bill because it is vague as drafted and could be construed to implicate DCRA. It is unclear whether the intent of the bill is to simply offer property owners who experience property damage due to adjacent construction a choice of

remedies, or to create additional responsibility for DCRA under the law. Assuming the intent is simply to offer a choice of remedies, the Committee should consider adding clarifying language to the bill, which DCRA would be happy to work with the Committee to develop.

In part, the lack of clarity in the bill is due to the lack of definition of "factfinder." Though a reasonable interpretation of the bill is that the "factfinder" is a judge or jury, the bill would benefit from the addition of a clarifying definition. Otherwise, the bill might be understood to give DCRA inspectors responsibility that they are not equipped to carry out. In some cases, it may be obvious that a property in pristine condition is damaged by construction next door. In the great majority of cases, however, there will be difficult questions of causation and liability for property conditions, especially given the close quarters and age of much of the District's row housing stock. DCRA is not appropriately situated to "determine that a violation covered by this section has resulted in physical damage to adjoining or abutting property." The evidence needed to prove liability and to fashion a corrective plan or decide how much an injured party is owed would best come in the form of expert testimony. We encourage the Council to clarify that DCRA inspectors are neither the factfinder nor expert witnesses for purposes of this bill.

We also believe that the bill should be clarified to specify that the new sanction it creates is applicable only to judicial proceedings conducted in Superior Court and filed by the Office of Attorney General. Administrative hearings for civil infractions are limited in nature and only permit the Administrative Law Judge to impose monetary sanctions and suspension of licenses as penalties for civil infractions. The bill being considered today would require that a neighbor be ordered to perform repairs or pay for the damages, at the election of the aggrieved property owner. We believe that this exceeds the powers that are granted to an Administrative Law Judge.

Under the current Code, a Construction Code violator may be subject to a fine not to exceed $2,000, or imprisonment up to 90 days, or both, for each violation. This is in addition to any civil fines, penalties, fees, and remedies pursuant to the Civil Infractions Act. None of these sanctions are mandatory, but the proposed repair-or-restitution penalty is mandatory, as drafted. We believe that the bill should be revised to make this penalty discretionary to be consistent with existing DCRA penalties. This allows the penalty to be utilized in cases where the proof establishes a basis for the repair-or-restitution.

Finally, as drafted, the bill is silent as to how restitution amounts would be calculated and proven, as well as whether the District or the aggrieved neighboring property owner would be responsible for the costs associated with establishing this evidence. Additionally, the bill does not specify the manner in which a restitution award would be paid, held, or disbursed to the aggrieved property owner. The District of Columbia could be in a position to bear substantial litigation costs and expert witness fees likely involved in such a proceeding, and we urge the Council to fully consider the budgetary concerns involved.

II. "Blighted Property Redevelopment Amendment Act of 2018"

Bill 22-684, the "Blighted Property Redevelopment Amendment Act of 2018," would amend the definitions section of the Nuisance Property Code to create a broad exemption from properties being classified as "blighted vacant." Neighborhood stabilization and combating blight are of the highest priority for the Executive, and Mayor Bowser understands that a delicate balance must be struck between incentivizing redevelopment of blighted properties and penalizing property owners whose properties are in continuous states of disrepair.

We note that the current Code provides property owners a number of exemptions from the "vacant" designation, but that the Council did not extend these exemptions to owners of

"blighted vacant" properties when that portion of the Code was enacted. The Executive believes that any measures the Council considers to make the ownership of blighted vacant property in the District of Columbia less onerous should be approached with great caution, and with due consideration for the broad range of circumstances that lead to ownership of blighted buildings.

Before turning to the substance of Bill 22-684, I will provide some background on DCRA's efforts to inspect and classify "vacant" properties and "blighted vacant" properties, as well as the complexities surrounding these classifications and exemptions. In 2016, the Executive worked with the Council to pass Mayor Bowser's "Department of Consumer and Regulatory Affairs Community Partnership Amendment Act of 2016," a bill that limited vacant property registrations to property owners, relatives, or authorized agents of the owner, to prevent the mistaken application of higher vacant property tax rates. This was prompted after an investigation into a homeowner whose property had been registered as "vacant" by her mortgage company, unbeknownst to her. DCRA learned that many mortgage companies had been routinely registering properties as vacant, without the owner's knowledge or permission, in an attempt to obtain properties in gentrifying neighborhoods through foreclosure. The Community Partnership Act has helped curtail this predatory practice, and we thank the Council for working with us to recognize this problem and move the Mayor's legislative solution forward.

Additionally, as an integral part of the Mayor's efforts to hold owners of vacant and blighted vacant property accountable, DCRA's Vacant Building division conducts initial survey inspections. In FY17, DCRA conducted 6,032 initial survey inspections. Through these survey inspections, DCRA determined that 1,624 of those buildings qualified as vacant, and that 387 qualified as blighted vacant. Thus far in FY18, DCRA has conducted 4,203 initial survey inspections, classifying 1,694 buildings as vacant, and 431 buildings as blighted vacant.

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DCRA publishes quarterly and annual lists of vacant and blighted vacant properties on its website and transmits an up-to-date list to the Office of Tax and Revenue on a weekly basis [https://dcra.dc.gov/page/vacant-building-reports]. DCRA meets with OTR quarterly to review "vacant" and "blighted vacant" properties, and DCRA has been working closely with OTR to improve coordination. Properties classified as "vacant" on the tax rolls are subject to 5 times the regular property taxes, while properties classified as "blighted vacant" are subject to 10 times the normal property taxes.

The Office of Tax and Revenue reports that in FY17, it billed $11,708,909.80 in property taxes for properties classified as vacant, and collected $9,525,361.60 of those taxes. For blighted vacant properties in FY17, OTR billed $5,053,199.72 and collected $2,561,437.60 of that tax revenue. In the first half of FY18, OTR billed $8,512,577.13 in vacant property taxes and collected $4,873,182.87. OTR billed $5,904,414 in blighted vacant property taxes and has thus far collected $1,946,018.19.

Turning to the substance of Bill 22-684, the Executive supports the creation of a limited, enforceable exemption for property owners diligently pursuing the redevelopment of "blighted vacant" property. As drafted, however, we believe this bill sets the bar too low and creates opportunities for abuse by unscrupulous absentee property owners.

In its current form, the bill permits the Mayor to designate a "blighted vacant" building as merely "vacant" if the building is boarded up and an owner submits a building permit application. The bill imposes no time constraints. The bill also does not specify the type of building permit an owner must obtain. This would allow derelict property owners, some of whom are likely holding the building in a long-term strategy to reap a windfall from the housing market, to simply board up the openings and apply for a building permit to cut their property tax

liability in half. For an absentee owner who views their property solely as an asset, the cost of boarding up windows and doors in an otherwise unsafe, insanitary, or dangerous building, and then applying for a permit, would be negligible compared to the windfall they would realize in the form of property tax relief. Meanwhile, a boarded up eyesore could persist indefinitely, dragging down neighboring property values, and inviting crime and vandalism.

Additionally, Bill 22-684 offers an exemption only for redevelopment purposes, and does not take into account other circumstances that lead vacant properties to become blighted, such as probate proceedings or extreme economic hardship. For example, as drafted, this Bill affords no opportunity for family members to seek relief during an extended probate of a deceased family member's home. If the Council believes that "blighted vacant" property owners should be afforded exemptions, the Executive urges the Council to consider more broadly the situations that lead to blight, in a manner that the current Code already affords for vacant property owners.

The Nuisance Property Code, already provides a mechanism for exempting vacant property owners from the obligation to register, registration fees, and amplified property taxes that come with a vacant property designation. The structure for exemptions encompasses a number of situations: for example, properties actively being marketed for sale are exempt (1 year for residential properties, 2 years for commercial properties), and properties subject to probate proceedings are exempt for up to 2 years.

The existing exemptions in the Code contain specific, limited, time-constrained exemptions from a vacant property designation, for properties under "active construction or undergoing active rehabilitation, renovation, or repair, and there is a building permit to make the building fit for occupancy that was issued, renewed, or extended within 12 months of the required registration date." The time period for this exemption begins from the date the initial

building permit was issued. The exemption period is limited to one year for a residential property and two years for a commercial property. Residential projects are eligible for one six-month extension if the owner can demonstrate that the building is undergoing active rehabilitation, renovation, or repair and substantial progress has been made toward making the building code-compliant and fit for occupancy.

DCRA keeps track of these exemptions on an annual basis. In FY17, 581 owners of vacant properties received exemptions from that designation because of ongoing construction, 293 received exemptions because they were actively being listed for sale or lease, 80 received exemptions for probate proceedings, and 29 received hardship exemptions. Thus far in FY18, 320 vacant properties received exemptions from that designation because of ongoing construction, 240 received exemptions because they were actively being listed for sale or lease, 16 received exemptions for probate proceedings, and 11 received hardship exemptions.

If the Council determines that "blighted vacant" property owners should now be entitled to seek exemptions from that designation, the Executive urges the Council to modify its approach to mirror the existing exemptions for "vacant" property owners. This could be accomplished by making the existing, time-constrained, limited exemptions applicable to owners of properties classified as "blighted vacant" who are diligently pursuing rehabilitation of these properties. We believe that working within the existing system of exemptions will be easier for property owners to understand and for the Mayor to implement and enforce. We also believe that timetables are necessary to strike a balance between encouraging redevelopment of blighted properties and penalizing property owners who have blighted property.

V. Conclusion

Chairman Mendelson and members of the Council, the Executive and DCRA appreciate the Council's focus on protecting D.C. residents from substandard construction and creating workable, measured exemptions for property owners diligently working in good faith to restore blighted properties to productive use. We look forward to working together with the Council to improve these legislative efforts so they can be implemented to achieve our shared goals. Thank you for the opportunity to testify on responsible development in the District and Bill 22-683 and Bill 22-684. I am available to take your questions and look forward to continuing discussions on workable solutions to these issues.

Bill 22-317, "Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018"
Committee of the Whole
Comparative Print

The Office of Administrative Hearings Establishment Act of 2001
(D.C. OFFICIAL CODE § 2-1831.01 *ET SEQ.*)

§ 2-1831.06a. Housing code violation hearings.

"(a) A housing provider shall have 10 days from the receipt of any notice of infraction or notice of violation for a housing code violation to request a hearing before the Office.

"(b)(1) The Office shall schedule a hearing not more than 30 days after the receipt of a request for a hearing.

"(2) The Office may grant a request for continuance but only on an affirmative showing of good cause, provided, that the hearing may not be postponed more than 30 days after the date the hearing was originally scheduled.

"(c) The Office shall issue a final order not more than 30 days after the date of the hearing.".

(D.C. Official Code § 29-102.01)

§ 29–102.01. Entity filing requirements.

(a) To be filed by the Mayor pursuant to this title, an entity filing shall be received by the office of the Mayor, and shall comply with this title, and satisfy the following:

(1) The entity filing shall be required or permitted by this title.

(2) The entity filing shall be physically delivered in written form unless and to the extent the Mayor permits electronic delivery of entity filings in other than written form.

(3) The words in the entity filing shall be in English and numbers shall be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The entity filing shall be signed by or on behalf of a person authorized or required under this title to sign the filing.

(5) The entity filing shall state the name and capacity, if any, of each individual who signed it, either by or on behalf of the person authorized or required to sign the filing, but need not contain a seal, attestation, acknowledgment, or verification.

"(6) For entity filings made on or after January 1, 2020, the filing shall state the names, residence and business addresses of any natural person whose share of ownership of the entity:

"(A) Exceeds 10 percent; and

"(B) Does not exceed 10 percent, provided, that the person:

"(i) Controls the financial or operation decisions of such entity; or

"(ii) Has the ability to direct the day-to-day operations of such entity.".

(b) If a law other than this title prohibits the disclosure by the Mayor of information contained in an entity filing, the Mayor shall accept the filing if it otherwise complies with this title, but the Mayor may redact the information.

(c) When an entity filing is delivered to the Mayor for filing, any fee required under this chapter and any fee, tax, or penalty required to be paid under this title or law other than this title shall be paid in a manner permitted by the Mayor or by that law.

(d) The Mayor may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

(e) Any record filed under this title may be signed by an agent.

An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes.
(D.C. OFFICIAL CODE § 42-3131.01 *ET SEQ.*)

§ 42–3131.01. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition.

(a)(1) Except as provided in paragraphs (2) and (3) of this subsection, whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner provided in § 42-3131.03, to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the Mayor of said District, why he should not be required to correct such condition, then, and in that instance, the Mayor of the District of Columbia is authorized to: Cause such condition to be corrected; assess the fair market value of the correction of the condition or the actual cost of the correction, whichever is higher, and all expenses incident thereto (including the cost of publication, if any, herein provided for) as a tax

against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of the District, and collect such tax in the same manner as general taxes in said District are collected; provided, that the correction of any condition aforesaid by the Mayor of said District under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same.

(1A) The Mayor may request the Office of Administrative Hearings to issue, and the Office of Administrative Hearings may issue, a final order converting a special assessment lien to an administrative judgment. The Mayor may then cause the final order to be entered as a judgment against the owner in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(2) Whenever the owner of any vacant building, as defined in § 42-3131.05(5), shall fail to enclose the doors, windows, areaways, or other openings of the property, the Mayor may immediately enclose the property to meet the standard described in § 42-3131.12. Subsequent to the enclosure, the Mayor shall give the owner notice as prescribed in § 42-3131.03.

(3) Summary correction of certain violations without prior notice to the owner is authorized pursuant to subsection (c)(1) of this section.

(b)(1)(A) There is established in the District of Columbia, and accounted for within the General Fund, a separate revenue source allocable to provide authorization for the purpose of paying the costs of correction of any condition, and all expenses incident thereto, that the Mayor may order or cause pursuant to subsection (a) of this section and for the purposes of demolishing or enclosing a structure under subchapter II of Chapter 31C of this title. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Mayor.

"(2A) Notwithstanding paragraph (2), fees collected for a repeat infraction pursuant to 16 DCMR §§ 3201.1 and 3201.2, or for a failure to timely abate a violation pursuant to 16 DCMR §§ 3305.1(s), 3305.2(uu), and 3305.3(vvv) shall be deposited to the fund.".

(B) There is established within the fund established by subparagraph (A) of this paragraph an account in which fees and penalties collected under § 6-916(b), shall be deposited, to be expended for the purposes set forth in § 6-916(b).

(2) There shall be deposited to the credit of the fund such amounts as may be appropriated for the fund or for the purposes of the fund; grants, donations, or restitution from any source to the fund or to the District of Columbia for the purposes of the fund; interest earned from the deposit or investment of monies of the fund; if an accounting is made in accordance with, and subject to, § 47-1340(f), amounts assessed and collected as a tax against real property under subsection (a) of this section including any interest and any penalties thereon, or otherwise received to recoup any

amounts, incidental expenses or costs incurred, obligated or expended for the purposes of the fund and funds collected pursuant to subchapter II of Chapter 31C of this title; all fees and penalties collected under § 6-916(b) (to be deposited in the account established under paragraph (1)(B) of this subsection) recoveries from enforcement action brought by the Office of the Attorney General on behalf of the District of Columbia or District of Columbia agencies for the abatement of violations of Chapters 1 through 16 of Title 14 of the District of Columbia Code of Municipal Regulations, excluding funds obtained through administrative proceedings; and all other receipts of whatever nature derived from the operation of the fund.

(3) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year, and there are authorized to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be necessary for the capitalization of the fund.

(4) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Council a report of the financial condition of the fund, and any other special purpose revenue funds or capital project funds used for nuisance abatement activities, and the results of the operations and collections for the fiscal year. The report shall include an itemized accounting of all unrecovered taxes and penalties, the names of delinquent property owners, the nature of corrected building violations, and a detailed accounting of each expenditure. All funding sources shall be separately listed.

(c)(1)(A) The Mayor may order the summary correction of housing regulation violations or violations of the Construction Codes where there is imminent danger, as determined by the Mayor.

(B) Except in the case of a vacant building, the Mayor shall promptly notify the owner or authorized agent that the correction is ordered within a specified time period; provided, that the Mayor is authorized to take emergency action, including putting in temporary safeguards, without prior notification when the Mayor determines there is imminent danger due to an unsafe condition and immediate emergency action is necessary to alleviate the danger.

(C) Any person ordered to take emergency measures or actions shall immediately comply with any notice or order. Where notice is provided under this section, if at the time of the notice, the owner is engaged in a good-faith effort to make the necessary correction, the Mayor shall not commence corrective action unless and until the owner interrupts or ceases the corrective effort or the Mayor determines that emergency repairs or temporary safeguards are required.

(D)(i) The owner or authorized agent shall be notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner or address is unknown, or cannot be located, notice shall be provided by conspicuous posting on the property.

(ii) The Mayor may assess all reasonable costs of correcting the condition and all expenses incident to the corrective action as a tax against the property.

(iii) A tax placed against a property pursuant to this subsection shall be carried on the regular tax rolls and collected in the same manner as real estate taxes are collected.

(iv) The Mayor shall provide an opportunity for review of the summary corrective action without prejudice to the Mayor's authority to take and complete that action.

(E) Monies in the fund established by subsection (b)(1) of this section shall be available to cover the costs of the summary corrections authorized by this subsection.

(F) For the purposes of this paragraph, the term:

(i) "Good faith effort" means one that is likely to cause the correction of the condition at least as soon as it could be corrected by the Mayor.

(ii)(I) "Imminent danger" means:

(aa) There is an immediate danger of the failure or collapse of a building or other structure that endangers life;

(bb) When any structure or part of a structure has fallen and life is endangered by the occupation of the structure;

(cc) When there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors, the presence of toxic fumes, gases, or materials; or

(dd) When the health or safety of occupants of the premises or those in the proximity of the premises is immediately endangered by an insanitary condition or the operation of defective or dangerous equipment.

(II) The term "imminent danger" may also include:

(aa) A vacant building, as defined in § 42-3131.05(5);

(bb) The interruption of electrical, heat, gas, water, or other essential services, when the interruption results from other than natural causes; or

(cc) The presence of graffiti.

(1A) The Mayor may request the Office of Administrative Hearings to issue, and the Office of Administrative Hearings may issue, a final order converting a special assessment lien to an administrative judgment. The Mayor may then cause the final order to be entered as a judgment against the owner in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(2) For the purposes of this subsection, the presence of graffiti shall be deemed to be a housing regulation violation.

(3) In the case of graffiti which does not constitute a life-or-health threatening condition, but which constitutes a nuisance, the Mayor may order the removal of the graffiti within a specified time period and, subject to 7 days' notice to the owner or an authorized agent in the manner provided under paragraph (1) of this subsection and an opportunity for review of the order, the Mayor may remove the graffiti if the owner does not comply.

(d) The Mayor may charge any property owner whose property is the subject of corrective action, as provided in subsection (c) of this section, or any property owner who receives a notice to correct wrongful conditions pursuant to § 6-804(c) a fee to cover the administrative costs incurred by the District of Columbia in its efforts to provide that the violation be corrected. The Mayor may assess this fee as a tax against the property, may carry this tax on the regular tax rolls, and may collect this tax in the same manner as real estate taxes are collected.

(e) The Mayor may defer or forgive, in whole or in part, any cost or fee assessed pursuant to §§ 42-3131.01 to 42-3131.03 with respect to any qualified real property approved pursuant to § 6-1503.

§ 42–3131.05. Definitions.

For the purposes of this subchapter, the term:

(1)(A) "Blighted vacant building" means a vacant building that is determined by the Mayor to be unsafe, insanitary, or which is otherwise determined to threaten the health, safety, or general welfare of the community.

(B) In making a determination that a vacant building is a blighted vacant building, the Mayor shall consider the following:

(i) Whether the vacant building is the subject of a condemnation proceeding before the Board of Condemnation and Insanitary Buildings;

(ii) Whether the vacant building is boarded up; and

(iii) Failure to comply with the following vacant building maintenance standards:

(I) Doors, windows, areaways, and other openings are weather-tight and secured against entry by birds, vermin, and trespassers, and missing or broken doors, windows, and other openings are covered;

(II) The exterior walls are free of holes, breaks, graffiti, and loose or rotting materials, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint; or

(III) All balconies, porches, canopies, marquees, signs, metal awnings, stairways, accessory and appurtenant structures, and similar features are safe and sound, and exposed metal and wood

surfaces are protected from the elements by application of weather-coating materials, such as paint.

"(C) Provided that the Mayor may determine that a vacant building is not blighted if:

"(i) The vacant building is safe and sanitary, and does not threaten the health, safety, or general welfare of the community;

"(ii) The vacant building complies with the vacant building maintenance standards provided under subparagraph (B)(iii) of this paragraph; and

"(iii) The doors, windows, areaways, and other openings are weather-tight and secured by boards or other means of security for not longer than 12 months and the owner submits a building permit application that certifies that these items will be replaced as part of the renovation of the vacant building.".

(1A) "Commercial unit" means a building, or part of a building, zoned for commercial purposes under the zoning regulations of the District of Columbia.

(2) "Dwelling unit" means a room, or group of rooms forming a single unit, designed, or intended to be used, for living and sleeping, whether or not designed or intended for the preparation and eating of meals or to be under the exclusive control of the occupant. The term "dwelling unit" shall not include a room, or group of rooms forming a single unit, in a hotel or motel licensed in the District of Columbia, actively operating as a hotel or motel.

(2A) "Fit for occupancy" means ready for immediate occupancy by a tenant without more than minor cosmetic changes.

(3) "Occupied" means:

(A) For purposes of a dwelling unit, the use of one's residence in improved real property on a regular basis; and

(B) For purposes of a commercial unit, use consistent with zoning regulations, for which there is a current valid certificate of occupancy, and (i) paid utility receipts for the specified period, executed lease agreements, or sales tax return, or (ii) other evidence of use of the building that the Mayor may require by rule.

(4) "Owner" means one or more persons or entities with an interest in real property in the District of Columbia that appears in the real property tax records of the Office of Tax and Revenue, and a tax sale purchaser under § 47-1353(b) or the purchaser's assignee, as applicable, except where the owner of record is challenging or appealing the vacant status of the real property for the same period.

(4A) "Real property" means real property as defined under § 47-802(1).

(4B) "Related owners" or "related ownership" exists when a deduction for a loss from the sale or exchange of properties between taxpayers would be disallowed under section 267 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 78; 26 U.S.C. § 267); provided, that the exclusion under section 267(a)(1) for a loss in a distribution in a complete liquidation shall not apply.

(5) "Vacant building" means real property improved by a building which, on or after April 27, 2001, has not been occupied continuously; provided, that in the case of residential buildings, a building shall only be a vacant building if the Mayor determines that there is no resident for which an intent to return and occupy the building can be shown. When determining whether there is a resident, the Mayor shall consider the following:

(A) Electrical, gas, or water meter either not running or showing low usage;

(B) Accumulated mail;

(C) Neighbor complaint;

(D) No window covering;

(E) No furniture observable;

(F) Open accessibility;

(G) Deferred maintenance, including loose or falling gutters, severe paint chipping, or overgrown grass; and

(H) The dwelling is boarded up.

§ 42–3131.05a. Notice by mail.

(a) Notice shall be deemed to be served properly on the date when mailed by first class mail to the owner of record of the vacant building at the owner's mailing address as updated in the real property tax records of the Office of Tax and Revenue. ~~Notice of the initial vacant or blighted property determination shall also be posted on the vacant building.~~

"(b) The Mayor shall cause notice also to be posted on the vacant building; provided, that the official notice for legal purposes shall be the notice mailed pursuant to subsection (a) of this section. Unless the Mayor knows with certainty that the vacant building is not eligible for exemption pursuant to section 42-3131.06, the notice shall not be posted by difficult to remove adhesive.

"(c) A courtesy copy of a notice required by subsection (a) of this section and shall be mailed or electronically mailed to the Advisory Neighborhood Commission in which the vacant property is located, and shall be posted on an internet website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public. A courtesy copy required by this subsection shall not be construed to satisfy the requirements of subsection (a) of this section that notice be properly served by mail.".

§ 42–3131.11. Notice of vacancy designation and right to appeal.

(a) The Mayor shall identify nonregistered vacant buildings in the District, excluding vacant buildings identified in § 42-3131.08, and blighted vacant buildings. The owner shall be notified that the owner's building has been designated as a vacant building or as a blighted vacant building and of the owner's right to appeal.

"(b) A courtesy copy of notice required by this section shall be mailed or electronically mailed to the Advisory Neighborhood Commission in which the property is located, and shall be posted on an internet website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public.".

§ 42–3131.15. Administrative review and appeal.

(a) Within 15 days after the designation of an owner's building as a vacant building, the determination of delinquency of registration or fee payment, the denial or revocation of registration, or the designation of a vacant building as a blighted vacant building, the owner may petition the Mayor for reconsideration by filing the form prescribed by the Mayor. Within 30 days after receiving the petition, the Mayor shall issue a notice of final determination.

(b) Within 45 days after the date of the notice of final determination under subsection (a) of this section, an owner may file an appeal with the Real Property Tax Appeals Commission for the District of Columbia on the form prescribed by the Mayor; provided, that the notice of final determination under subsection (a) of this section shall be a prerequisite to filing an appeal with the Real Property Tax Appeals Commission for the District of Columbia.

"(c) After receiving a notice of appeal from an owner as required under subsection (b) of this section, the Real Property Tax Appeals Commission for the District of Columbia shall provide by mail or electronic mail to the Advisory Neighborhood Commission in which the vacant building is located at least 15 days before any scheduled hearing on the appeal, the following information related to the property at issue:

"(1) The name of the owner of the property, and the property address, to include the square, suffix, and lot numbers;

"(2) The determination under review; and

"(3) The date, time, and location of the hearing.".

§ 42–3509.08. Inspection of rental housing.

(a) Notwithstanding any other law or rule to the contrary, for the purpose of determining whether any housing accommodation is in compliance with applicable housing rules or construction code rules, the Mayor may enter upon and into any housing accommodation in the District, during all reasonable hours, to inspect the same; provided, that if a tenant of a housing accommodation does not give permission to inspect that portion of the premises under the tenant's exclusive control, the Mayor shall not enter that portion of the premises unless the Mayor has:

(1) A valid administrative search warrant pursuant to subsection (d) of this section which permits the inspection; or

(2) A reasonable basis to believe that exigent circumstances require immediate entry into that portion of the premises to prevent an imminent danger to the public health or welfare.

(b) Any person who shall hinder, interfere with, or prevent any inspection authorized by this chapter shall, upon conviction thereof, be punished by a fine not exceeding $100, by imprisonment for a period not exceeding 3 months, or both.

(c) The Mayor may apply to a judge of the District of Columbia for an administrative search warrant to enter any premises to conduct any inspection authorized by subsection (a) of this section.

(d) A judge may issue the warrant if the judge finds that:

(1) The applicant is authorized or required by law to make the inspection;

(2) The applicant has demonstrated that the inspection of the premises is sought as a result of:

(A) Evidence of an existing violation of the housing regulations, codified in Title 14 of the District of Columbia Municipal Regulations, the construction codes, codified in Title 12 of the District of Columbia Municipal Regulations, or other law; or

(B) A general and neutral administrative plan to conduct periodic inspections relating to issuance or renewal of housing business licenses or for conducting fire or life safety inspections;

(3) The owner, tenant, or other individual in charge of the property has denied access to the property, or, after making a reasonable effort, the applicant has been unable to contact any of these individuals; and

(4) The inspection is sought for health or safety-related purposes.

"(e) A property owner shall not have more than 30 days to abate any condition that has resulted in the issuance of a notice of violation in connection with issued an inspection carried out pursuant to this section.

"(f) The Mayor may extend the deadline for a property owner to abate a violation pursuant to subsection (e) of this section only if the property owner has made reasonable and good faith efforts to abate the violation. Reasonable and good faith efforts include proof of active construction or undergoing active rehabilitation, renovation, or repair to abate the violation.".

(14 DCMR § 105)

105 HOUSING AND CONSTRUCTION CODES VIOLATIONS

105.1 Whenever a duly designated agent of the District finds reasonable grounds to believe that there exists a violation of a provision of this subtitle or a provision of the International Property Maintenance Code, as amended by the District of Columbia Property Maintenance Code

Supplement in title 12 of the District of Columbia Municipal Regulations, he or she may, either singularly or in combination:

(a) Issue a notice of violation, which may afford the person responsible for the correction of the violation an opportunity to abate the violation;

(b) Issue a notice of infraction, assessing a fine for the presence of the violation;

(c) Issue a combined notice of violation and notice of infraction;

(d) Issue any other order or notice authorized to be issued by the code official; or

(e) Effect summary correction of the violation, as authorized by law.

"105.1a Notwithstanding any other provisions of this section, whenever a duly designated agent of the District finds reasonable grounds to believe that there exists a violation of 16 DCMR §§ 3305.1(s), 3305.2(uu), or 3305.3(vvv), he or she shall notify the Office of Attorney General of the matter and may, either singularly or in combination:

"(a) Issue a notice of violation, which may afford the person responsible for the correction of the violation an opportunity to abate the violation;

"(b) Issue a notice of infraction, assessing a fine for the presence of the violation;

"(c) Issue a combined notice of violation and notice of infraction;

"(d) Issue any other order or notice authorized to be issued by the code official; or

"(e) Effect summary correction of the violation, as authorized by law.".

"105.1b On or before October 1 of each year, the Department shall submit a report to the Mayor and the Council that details, with respect to subsection 105.1a, the number of notifications that were provided to the Office of the Attorney General, the number of notice of infractions and notice of violations that were issued, the total value of any fines collected, and the number of summary corrections completed during the prior year.".

105.2 A notice of violation or order shall direct the discontinuance of the illegal action or condition or the abatement of the violation.

105.3 Except as provided in subsection 105.1a, ~~I~~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.

105.4 Each notice of violation shall:

(a) Be in writing:

(b) State the nature of the violation;

(c) Indicate the section or sections of this subtitle or the International Property Maintenance Code, as amended by the District of Columbia Property Maintenance Code Supplement being violated;

(d) Allow a reasonable time for the performance of any act required by the notice; and

(e) Be signed by the Director or the Director's authorized agent.

105.5 Each notice shall be served upon the person or persons responsible for correcting the violation described in the notice.

105.6 Service of the notice may be effected upon the owner of the premises by those methods outlined in section 3 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (34 Stat. 114; D.C. Official Code § 42-3131.03 (2010 Repl. & 2011 Supp.)).

(16 DCMR § 3100 *ET SEQ.*)

3104 ABATEMENT OF INFRACTIONS

3104.1 The Director shall monitor and verify the abatement of all infractions.

3104.2 The requirements of this section shall apply to respondents who have admitted an infraction, admitted an infraction with explanation, or were found to have committed an infraction in a decision of an ALJ.

3104.3 A respondent subject to this section shall be required to certify that each infraction listed on the NOI has been abated, subject to penalties for false statements under §404 of the D.C. Theft and White Collar Crimes Act of 1982, D.C. Code §22-2405 (2001).

3104.4 The Director may request a respondent subject to this section to complete and submit to the Director a Notice of Verification certifying that an infraction has been abated.

3104.5 A Notice of Verification certifying abatement of an infraction shall include the following:

(a) A list of all infractions cited;

(b) The name of the person in violation;

(c) The respondent's license or permit number;

(d) A complete description of the actions taken to abate the infraction;

(e) The respondent's signature; and

(f) Any other information that the Director may require.

3104.6 The Director may, at any time, request that a respondent provide additional information pertaining to the verification of an abated infraction.

3104.7 The Director shall issue an additional NOI after reinspection, if the Director determines that the cited infraction continues to exist.

3104.8 A respondent's failure to certify that an infraction has been abated as required in the decision of the ALJ may be referred to the Office of Compliance for appropriate action.

"3104.9 If the Director has determined that the cited infraction has been successfully abated and the respondent has taken all reasonable steps to ensure the infraction does not reoccur, the Director shall issue a notice of abatement and provide it to the respondent. The Notice of Abatement shall be conspicuously posted by the respondent for residents to view for 14 days.

"3104.10 A notice of abatement issued pursuant to this section shall include at least the following information:

"(a) A list of the infractions abated; and

"(b) The respondent's license or permit number.

"3104.11 Receipt of a Notice of Abatement for an infraction shall preclude the infraction from serving as the basis of a violation under §§ 3305.1(s), 3305.2(uu), or 3305.3(vvv).".

3305 HOUSING INSPECTION DIVISION INFRACTIONS

3305.1 Violation of the following provision shall be a Class 1 infraction:

(a) Any flagrant, fraudulent, or willful violation by a housing provider of any of the Housing Regulations, Subtitle A of Title 14 DCMR, that constitutes an imminent danger to the health or safety of any tenant or occupant of a housing unit or housing accommodation, or that imminently endangers the health, safety or welfare of the surrounding community including, but not limited to, the interruption of electrical, heat, gas, water, or other essential services when the interruption results from other than natural causes;

(b) Section 1 of An Act To authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, approved Mar. 1, 1899 (41 Stat. 1218; D.C. Official Code § 6-801) (failure to secure or repair an unsafe structure);

(c) Section 3 of An Act To authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, (D.C. Official Code § 6-803) (attempting to repair after expiration of allowed period, or interfering with authorized agents);

(d) Section 4 of An Act To authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, (D.C. Official Code § 6-804) (allowing a nuisance to exist on any lot or parcel of land in the District of Columbia which affects the public health, comfort, safety and welfare of citizens);

(e) 14 DCMR § 103.2 (removal of placard by an unauthorized person);

(f) 14 DCMR § 402.4 (permitting a sleeping facility to be located in a room with a furnace, open flame, space heater, domestic water heater, or gas meter);

(g) 14 DCMR § 404.4 (failure to obtain a permit for building alterations and conform to requirements of the International Code Council (ICC) International Building Code and Title 12 of the District of Columbia Municipal Regulations, the Construction Codes Supplement of 2003);

(h) 14 DCMR § 704.1 (permitting to exist on premises a foundation or structural member that fails to provide a safe, firm and substantial base and support for the structure at all points);

(i) 14 DCMR § 901.1 (failure to maintain fire extinguishing equipment in an operable condition);

(j) 14 DCMR § 901.2 (failure to maintain fire proofing or fire protective construction in a good state of repair);

(k) 14 DCMR § 902.1 (failure to maintain an egress facility in a good state of repair);

(l) 14 DCMR § 902.3 (failure to maintain a fire door in an openable condition);

(m) 14 DCMR § 902.4 (failure to maintain a public or exit corridor free of obstruction);

(n) 14 DCMR § 904.1 (failure to maintain a fire alarm system in an operable condition);

(o) 14 DCMR § 904.4 (failure to properly install a smoke detector or otherwise comply with the Smoke Detector Act of 1978, effective June 20, 1978 (D.C. Law 2-81; D.C. Official Code § 6-751.01 et seq.);

(p) 14 DCMR § 1115.4 (permitting the employment of a food handler afflicted with a communicable disease);

(q) 14 DCMR § 1201.1 (failure to maintain an office or agent in the District of Columbia); ~~or~~

(r) 14 DCMR § 1401.1 (permitting the use of a structure for other than a one-family dwelling without a valid Certificate of Occupancy); or~~.~~

"(s) Any provision listed in § 3305.2 that has not been abated within 6 months of the issuance of a violation.".

3305.2 Violation of any of the following provisions shall be a Class 2 infraction:

(a) 14 DCMR § 103.3 (permitting the occupancy of an apartment or tenement thirty (30) days or more after the posting of a placard);

(b) 14 DCMR § 104.1 (refusal to permit any designated agent of the District entry into the premises);

(c) 14 DCMR § 104.4 (refusal to permit inspection of premises);

(d) 14 DCMR § 400.1 (permitting the occupancy of any habitation in violation of 14 DCMR, Chapter 4);

(e) 14 DCMR § 400.7 (renting a habitation in a building in which noxious gases or offensive odors are generated by a commercial activity);

(f) 14 DCMR §§ 402.1 to 402.3 (failure to comply with occupancy requirements);

(g) 14 DCMR § 403.1 (unlawful use of uninhabitable rooms);

(h) 14 DCMR § 500.1 (failure to provide adequate heating, ventilating, or lighting facility);

(i) 14 DCMR § 501.2 (failure to provide and maintain a heating facility capable of maintaining a temperature of seventy degrees Fahrenheit (70 [degrees] F.) in a building or part of a building used for habitation);

(j) 14 DCMR § 501.4 (failure to supply sufficient heat);

(k) 14 DCMR § 501.6 or 501.7 (failure to comply with the inspection, correction of defects and certification requirements);

(l) 14 DCMR § 510 (failure to comply with a requirement concerning air conditioning maintenance);

(m) 14 DCMR § 600.1 (failure to provide required facilities, utilities and fixtures);

(n) 14 DCMR § 600.3 (failure to provide utility service);

(o) 14 DCMR § 606.3 or 606.4 (failure to comply with the inspection, correction of defects and certification requirements);

(p) 14 DCMR § 701.3 (failure to use a repair material of suitable kind or quality, or to perform or repair in a workmanlike manner);

(q) 14 DCMR § 702.2 (failure to maintain smoke pipe or chimney which is adequately supported and free from leakage or obstruction);

(r) 14 DCMR § 702.4 (permitting to exist on premises a chimney on which the total area of all flue openings exceeds the net area of the flue);

(s) 14 DCMR § 707.1 (failure to comply with the requirements concerning the removal and repainting of loose or peeling wall covering or paint on interior surfaces);

(t) 14 DCMR § 707.3 (permitting an unlawful quantity of lead to be present on an interior or exterior surface of a residential premise);

(u) 14 DCMR § 707.5 (failure to remove peeling or flaking paint and to make the surface tight on inaccessible exterior surfaces);

(v) 14 DCMR § 707.6 (failure to obtain compliance certification from DCRA prior to refinishing that the conditions affecting the surface has been abated in accordance with these regulations);

(w) 14 DCMR § 707.7 (failure to comply with an order to abate issued pursuant to the provisions of 14 DCMR Section 707.4);

(x) 14 DCMR § 708.5 (failure to install or maintain required porch balustrade or other guard);

(y) 14 DCMR § 903.1 (failure to maintain an exit or emergency light in an operable condition);

(z) 14 DCMR § 903.2 (failure to maintain a lighted exit or emergency light);

(aa) 14 DCMR § 904.2 (failure to provide or maintain a sign concerning the operation of the local fire alarm system at each striking station);

(bb) 14 DCMR § 904.3 (failure to properly post and maintain a sign concerning fires);

(cc) 14 DCMR § 905.1 (permitting a rag or refuse material to be deposited or remain in a dwelling);

(dd) 14 DCMR § 905.2 (failure to maintain premises free of combustible refuse or debris, accumulated grease, or oil spillage);

(ee) 14 DCMR § 905.3 (permitting the accumulation of combustible junk);

(ff) 14 DCMR § 906.2 (permitting the installation or maintenance of a heating or cooking facility in violation of District law);

(gg) 14 DCMR § 906.5 (failure to connect an oil heater to a flue or install an oil heater in compliance with the Fire Prevention Code);

(hh) 14 DCMR § 906.5 (permitting the placement of ashes in a combustible receptacle, or on or against a combustible material);

(ii) 14 DCMR § 906.7 (failure to maintain an incinerator, shaft, spark arrestor or hopper door in a fire-safe condition);

(jj) 14 DCMR § 906.8 (failure to maintain a gas meter room free from combustible material or to properly ventilate a gas meter room);

(kk) 14 DCMR § 1001.1 (failure to designate a manager or other person who is responsible for the premises);

(ll) 14 DCMR § 1001.2 (failure of the designated manager to reside on the premises and have complete charge of the premises);

(mm) 14 DCMR § 1003.4 (failure to ensure access to a rooming unit at any reasonable hour);

(nn) 14 DCMR § 1004.3 or 1114.1 (failure to conspicuously color a preparation used for exterminating vermin, or store such a preparation in a container clearly labeled "POISON");

(oo) 14 DCMR § 1004.3 or 1114.2 (permitting a container of poison to be placed with a receptacle containing a food substance);

(pp) 14 DCMR § 1111.1 (permitting the storage or display of food or drink which is not protected from contamination);

(qq) 14 DCMR § 1113.3 (permitting the storage or service of shellfish from a source not approved by the U.S. Public Health Service);

(rr) 14 DCMR § 1114.3 (permitting the use of a substance containing poison to clean or polish eating or cooking utensils);

(ss) 14 DCMR § 1205.1 (failure to maintain elevators in good working order);

(tt) 14 DCMR § 1301.1 (failure to designate a manager or other person who shall superintend the operation of a hotel or motel); or

"(uu) Any provision listed in § 3305.3 that has not been abated within 6 months of the issuance of violation.".

3305.3 Violation of any of the following provisions shall be a Class 3 infraction:

(a) 14 DCMR § 220.1(b) (failure to pay reinspection fee for routine housing inspections);

(b) 14 DCMR § 400.2 (failure to advice the tenant of the maximum number of occupants permitted in the habitation);

(c) 14 DCMR § 400.3 (renting or offering to rent a habitation that is not clean, safe, and free of vermin and rodents);

(d) 14 DCMR § 400.4 (owner fails to provide and maintain the required facilities, utilities and services);

(e) 14 DCMR § 400.8 (permitting the use of a structure as a tenement unit or tenement house);

(f) 14 DCMR § 405.2 (permitting more than fifty percent (50%) of the total habitable space in a room having a sloping ceiling);

(g) 14 DCMR § 405.3 (failing to comply with a requirement concerning ceiling height in a habitable room);

(h) 14 DCMR § 405.4 (habitable room does not have a minimum clear head room of six feet eight inches (6 ft. 8 in.) under pipes or other construction projects);

(i) 14 DCMR § 406 (permitting the subdivision of a habitable room in violation of 14 DCMR § 406);

(j) 14 DCMR § 404.1 (permitting any room with more than fifty percent (50%) of any exterior wall area to be used as a habitable room);

(k) 14 DCMR § 404.3 (failure to comply with the requirements of this section when altering any building in existence prior to June 9, 1960);

(l) 14 DCMR § 404.5 (areaways constructed on buildings erected after June 9, 1960, does not comply with requirements of the International Code Council (ICC) International Building Code and Title 12 of the District of Columbia Municipal Regulations, the Construction Codes Supplement of 2003 and Zoning Regulations);

(m) 14 DCMR § 500.2 (failure to properly or safely install, or maintain in a safe and working condition, a required facility);

(n) 14 DCMR § 501.1 (failure to provide and maintain adequate eating facilities);

(o) 14 DCMR § 501.3 (providing a heating facility that does not permit the temperature to be maintained at or below the maximums established by 14 DCMR § 501.3);

(p) 14 DCMR § 502 (failure to comply with a lighting requirement for habitable rooms);

(q) 14 DCMR § 503.1 (failure to maintain a yard surrounding a habitation free of light obstruction);

(r) 14 DCMR § 504.1 (failure to provide or maintain adequate bathroom lighting);

(s) 14 DCMR § 505.2 (failure to provide or maintain required artificial illumination of a hallway or stair);

(t) 14 DCMR § 506.1 (failure to provide required natural or mechanical ventilation for each habitable room);

(u) 14 DCMR § 506.3, 506.4, 506.5, 506.8, or 506.9 (failure to comply with a requirement concerning the ventilation of habitable rooms);

(v) 14 DCMR § 506.7 (failure to provide or maintain required openable area in case of mechanical ventilation failure);

(w) 14 DCMR § 506.10 (permitting a prohibited recirculation of air);

(x) 14 DCMR § 506.11 (permitting air from prohibited locations to be drawn into a habitable room);

(y) 14 DCMR § 509.1 (permitting a prohibited obstruction of ventilation);

(z) 14 DCMR § 600.2 (failure to properly install each facility, utility, or fixture);

(aa) 14 DCMR § 600.4 (failure to maintain in a safe and good working condition a facility for cooling, storing, or refrigerating food);

(bb) 14 DCMR § 601 (failure to comply with a requirement concerning plumbing facilities);

(cc) 14 DCMR § 602.1 (failure to provide a lavatory, water closet and bathing facilities for each dwelling unit);

(dd) 14 DCMR § 602.2 or 602.3 (failure to provide a sufficient number of bathing facilities);

(ee) 14 DCMR § 606.1 or 606.2 (failure to comply with a requirement concerning water heating facilities);

(ff) 14 DCMR § 701.1 (failure to maintain all structures located on a premise in a sanitary and structurally sound condition);

(gg) 14 DCMR § 702.1 (failure to maintain a roof so that it does not leak, and so that rain water is properly drained there from);

(hh) 14 DCMR § 702.6 (failure to provide a flue opening with a flue crock, or with a metal or masonry thimble);

(ii) 14 DCMR § 705.6 (permitting to exist on premises a window, window frame, door, or door frame which does not completely exclude rain and substantially exclude wind);

(jj) 14 DCMR §§ 708.1 to 708.4, §§ 708.7 to 708.9, or § 708.11 (failure to comply with a requirement concerning stairways, steps, guardrails, or porches);

(kk) 14 DCMR, Chapter 8 (failure to comply with a requirement concerning the cleanliness and sanitation of premises occupied for residential purposes);

(ll) 14 DCMR § 800.9 (premises creates a danger to the health, welfare or safety of the occupants, public and/or constitute a public nuisance;

(mm) 14 DCMR § 800.10 (serious prohibited vegetative growth, for example, grass or weeds exceeding ten inches (10 in.) in height, creating a harbor for rodents, or shrubbery that is a detriment to the health, safety, or welfare of the public);

(nn) 14 DCMR § 800.13 (serious accumulation of trash, rubbish, or garbage in or on any premises shall constitute an insanitary and unhealthy condition);

(oo) 14 DCMR § 900.2 (failure to afford protection against accident to a person in or about premises on which there is an unoccupied or uncompleted building);

(pp) 14 DCMR § 901.3 (failure to submit fire inspection report or correct cited violations);

(qq) 14 DCMR § 905.4 (permitting the accumulation of combustible junk);

(rr) 14 DCMR § 907.1 (failure to properly notify the Fire Department of a fire);

(ss) 14 DCMR § 1003.1 or 1003.2 (failure to provide an entrance door lock or key thereto);

(tt) 14 DCMR § 1003.3 (failure to retain a duplicate key);

(uu) 14 DCMR § 1005.4 (failure to maintain clean and sanitary bedding);

(vv) 14 DCMR § 1005.5 or 1005.6 (failure to provide required clean linens and towels);

(ww) 14 DCMR § 1103.1 or 1103.3 (operating a boarding house without first qualifying for a Manager's Certificate);

(xx) 14 DCMR § 1104.1 (permitting a sleeping facility to exist in a room where food is prepared, served, or stored, or where utensils are washed or stored);

(yy) 14 DCMR § 1104.2 (permitting the use of a room for sleeping without required ceiling clearance over floor area);

(zz) 14 DCMR § 1104.5 (failure to maintain clean and sanitary bedding);

(aaa) 14 DCMR § 1104.6 or 1104.7 (failure to provide required clean linens and towels);

(bbb) 14 DCMR § 1106 or 1107 (failure to comply with a requirement concerning the construction, maintenance, or ventilation of rooms in which food or drink is stored, prepared, or served, or in which utensils are washed or stored);

(ccc) 14 DCMR § 1109 (failure to comply with a requirement concerning food preparation or dishwashing facilities);

(ddd) 14 DCMR § 1110 (failure to comply with a requirement concerning storage or handling utensils or the use of kitchens);

(eee) 14 DCMR §§ 1111.2 to 1111.4 (failure to comply with a requirement concerning the storage or handling of food);

(fff) 14 DCMR § 1112 (failure to comply with a requirement concerning refrigeration equipment or the refrigeration of food or drink);

(ggg) 14 DCMR § 1113.1, 1113.2, or 1113.4 (failure to comply with a requirement concerning food, drink, service of milk, or the construction of cream dispensers);

(hhh) 14 DCMR § 1116 (failure to comply with a requirement concerning employee cleanliness);

(iii) 14 DCMR § 1117 (failure to comply with a requirement concerning lavatory facilities);

(jjj) 14 DCMR § 1118.2 (failure to keep a soiled linen, coat, or apron in a vermin-proof container);

(kkk) 14 DCMR § 1201.2 (failure to submit a timely notification to the Director of any change in the appointment of a general agent, manager or attorney);

(lll) 14 DCMR § 1205.3 (failure to comply with the Elevator Code when altering, repairing or replacing elevator service);

(mmm) 14 DCMR § 1302 (failure to comply with a requirement concerning registration of occupants);

(nnn) 14 DCMR § 1303 (failure to comply with a requirement concerning room keys);

(ooo) 14 DCMR § 1304 (failure to comply with a requirement concerning the cleaning and maintenance of hotel or motel rooms);

(ppp) 14 DCMR § 1305 (failure to comply with a requirement concerning the posting of permissible occupancy rates);

(qqq) 14 DCMR § 1304 (failure to comply with a requirement concerning the maximum permissible occupancy of hotel or motel rooms);

(rrr) 14 DCMR § 1308 (failure to comply with a security requirement concerning high density use of hotel or motel rooms);

(sss) 14 DCMR § 1307, 1309, or 1310 (failure to comply with a requirement concerning the high density use of hotel or motel rooms);

(ttt) 14 DCMR § 1311 (failure to comply with a requirement concerning the high density use of hotel or motel bathroom facilities);

(uuu) Violation of any provision of the Housing Regulations of the District of Columbia, 14 DCMR, Chapters 1 through 14, which provision is not cited elsewhere in this section, shall be a Class 3 infraction; or.

"(vvv) Any provision listed in § 3305.4 that has not been abated within 6 months of the issuance of a notice of violation.".

* * *

DRAFT COMMITTEE PRINT
Committee of the Whole
December 4, 2018

A BILL

22-317

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Office of Administrative Hearings Establishment Act of 2001 to establish timelines for housing code violation hearings; to amend section 29-102.01 to require an entity filing to include the names and addresses of a natural person that has at least 10 percent ownership in the entity, or has less than 10 percent ownership in the entity but controls the financial decisions or day-to-day operations of the entity; to amend An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes to dedicate certain fines to the Nuisance Abatement Fund, to grant the Mayor discretion to reclassify a blighted vacant building as a vacant building for a period of no longer than 12 months if the building has met certain conditions and is undergoing renovations, to amend the notice requirements for vacant buildings, to require a courtesy copy of a notice of a vacant building to be mailed or electronically mailed to the affected Advisory Neighborhood Commission, to require the Real Property Tax Appeals Commission to mail or electronically mail a notice of a hearing to the affected Advisory Neighborhood Commission; to amend the Rental Housing Act of 1985 to provide that a property owner shall not have more than 30 days to abate a housing code violation, and to allow the Mayor to grant an extension only if the housing provider has made reasonable and good faith efforts to abate a violation; to amend section 105 of Title 14 of the District of Columbia Municipal Regulations to require an inspector to notify the Office of Attorney General of any Class 1, 2, 3, or 4 infractions that have not been abated within 6 months and to limit the enforcement discretion of the code official for repeat or unabated housing code violations; and to amend Title 16 of the District of Columbia Municipal Regulations to require the issuance and posting of a Notice of Abatement, and to establish new infractions for housing code violations that have not been abated for 6 months or more.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Department of Consumer and Regulatory Affairs Omnibus Amendment Act of 2018”.

Sec. 2. The Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq*.), is amended by adding a new section 6a to read as follows:

"Sec. 6a. Housing code violation hearings.

"(a) A housing provider shall have 10 days from the receipt of any notice of infraction or notice of violation for a housing code violation to request a hearing before the Office.

"(b)(1) The Office shall schedule a hearing not more than 30 days after the receipt of a request for a hearing.

"(2) The Office may grant a request for continuance but only on an affirmative showing of good cause, provided, that the hearing may not be postponed more than 30 days after the date the hearing was originally scheduled.

"(c) The Office shall issue a final order not more than 30 days after the date of the hearing.".

Sec. 3. Section 29-102.01 of the District of Columbia Official Code is amended by adding a new paragraph (6) to read as follows:

"(6) For entity filings made on or after January 1, 2020, the filing shall state the names, residence and business addresses of any natural person whose share of ownership of the entity:

"(A) Exceeds 10 percent; and

"(B) Does not exceed 10 percent, provided, that the person:

"(i) Controls the financial or operation decisions of such entity; or

"(ii) Has the ability to direct the day-to-day operations of such entity.".

Sec. 4. An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 115; D.C. Official Code § 42-3131.01 *et seq.*), is amended as follows:

(a) Section 1(b) (D.C. Official Code § 42-3131.01(b)) is amended by adding a new paragraph (2A) to read as follows:

"(2A) Notwithstanding paragraph (2), fees collected for a repeat infraction pursuant to 16 DCMR §§ 3201.1 and 3201.2, or for a failure to timely abate a violation pursuant to 16 DCMR §§ 3305.1(s), 3305.2(uu), and 3305.3(vvv) shall be deposited to the fund.".

(b) Section 5(1) (D.C. Official Code § 42-3131.05(1)) is amended by adding a new subparagraph (C) to read as follows:

"(C) Provided that the Mayor may determine that a vacant building is not blighted if:

"(i) The vacant building is safe and sanitary, and does not threaten the health, safety, or general welfare of the community;

"(ii) The vacant building complies with the vacant building maintenance standards provided under subparagraph (B)(iii) of this paragraph; and

"(iii) The doors, windows, areaways, and other openings are weather-tight and secured by boards or other means of security for not longer than 12 months and the owner submits a building permit application that certifies that these items will be replaced as part of the renovation of the vacant building.".

(c) Section 5a (D.C. Official Code § 42-3131.05a) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) Subsection (a) is amended by striking the last sentence.

(3) New subsections (b) and (c) are added to read as follows:

"(b) The Mayor shall cause notice also to be posted on the vacant building; provided, that the official notice for legal purposes shall be the notice mailed pursuant to subsection (a) of this section. Unless the Mayor knows with certainty that the vacant building is

not eligible for exemption pursuant to section 42-3131.06, the notice shall not be posted by difficult to remove adhesive.

"(c) A courtesy copy of a notice required by subsection (a) of this section and shall be mailed or electronically mailed to the Advisory Neighborhood Commission in which the vacant property is located, and shall be posted on an internet website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public. A courtesy copy required by this subsection shall not be construed to satisfy the requirements of subsection (a) of this section that notice be properly served by mail.".

(d) Section 11 (D.C. Official Code § 42-3131.11) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) A new subsection (b) is added to read as follows:

"(b) A courtesy copy of notice required by this section shall be mailed or electronically mailed to the Advisory Neighborhood Commission in which the property is located, and shall be posted on an internet website maintained by the Department of Consumer and Regulatory Affairs that is accessible to the public.".

(e) Section 15 (D.C. Official Code § 42-3131.15) is amended by adding a new subsection (c) to read as follows:

"(c) After receiving a notice of appeal from an owner as required under subsection (b) of this section, the Real Property Tax Appeals Commission for the District of Columbia shall provide by mail or electronic mail to the Advisory Neighborhood Commission in which the vacant building is located at least 15 days before any scheduled hearing on the appeal, the following information related to the property at issue:

"(1) The name of the owner of the property, and the property address, to include the square, suffix, and lot numbers;

"(2) The determination under review; and

"(3) The date, time, and location of the hearing.".

Sec. 5. Section 908 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3509.08), is amended by adding new subsections (e) and(f) to read as follows:

"(e) A property owner shall not have more than 30 days to abate any condition that has resulted in the issuance of a notice of violation in connection with issued an inspection carried out pursuant to this section.

"(f) The Mayor may extend the deadline for a property owner to abate a violation pursuant to subsection (e) of this section only if the property owner has made reasonable and good faith efforts to abate the violation. Reasonable and good faith efforts include proof of active construction or undergoing active rehabilitation, renovation, or repair to abate the violation.".

Sec. 6. Section 105 of Title 14 of the District of Columbia Municipal Regulations is amended as follows:

(a) New subsections 105.1a and 105.1b are added to read as follows:

"105.1a Notwithstanding any other provisions of this section, whenever a duly designated agent of the District finds reasonable grounds to believe that there exists a violation of 16 DCMR §§ 3305.1(s), 3305.2(uu), or 3305.3(vvv), or any violation of 16 DCMR § 3305.1 that has not been abated within 6 months, he or she shall notify the Office of Attorney General of the matter and may, either singularly or in combination:

"(a) Issue a notice of violation, which may afford the person responsible for the correction of the violation an opportunity to abate the violation;

"(b) Issue a notice of infraction, assessing a fine for the presence of the violation;

"(c) Issue a combined notice of violation and notice of infraction;

"(d) Issue any other order or notice authorized to be issued by the code official; or

"(e) Effect summary correction of the violation, as authorized by law.".

"105.1b On or before October 1 of each year, the Department shall submit a report to the Mayor and the Council that details, with respect to subsection 105.1a, the number of notifications that were provided to the Office of the Attorney General, the number of notice of infractions and notice of violations that were issued, the total value of any fines collected, and the number of summary corrections completed during the prior year.".

(b) Subsection 105.3 is amended by striking the phrase "Issuance of" and inserting the phrase "Except as provided in subsection 105.1a, issuance of" in its place.

Sec. 7. Title 16 of the District of Columbia Municipal Regulations is amended as follows:

(a) New subsections 3104.9, 3104.10, and 3104.11 are added to read as follows:

"3104.9 If the Director has determined that the cited infraction has been successfully abated and the respondent has taken all reasonable steps to ensure the infraction does not reoccur, the Director shall issue a notice of abatement and provide it to the respondent. The notice of abatement shall be conspicuously posted by the respondent for residents to view for 14 days.

"3104.10 A notice of abatement issued pursuant to this section shall include at least the following information:

"(a) A list of the infractions abated; and

"(b) The respondent's license or permit number.

"3104.11 Receipt of a Notice of Abatement for an infraction shall preclude the infraction from serving as the basis of a violation under §§ 3305.1(s), 3305.2(uu), or 3305.3(vvv).".

(b) Section 3305 is amended as follows:

(1) Subsection 3305.1 is amended as follows:

(A) Paragraph (q) is amended by striking the phrase "; or" and inserting a semicolon in its place.

(B) Paragraph (r) is amended by striking the period and inserting the phrase "; or" in its place.

(C) A new paragraph (s) is added to read as follows:

"(s) Any provision listed in § 3305.2 that has not been abated within 6 months of the issuance of a violation.".

(2) Subsection 3305.2 is amended as follows:

(A) Paragraph (tt) is amended by striking the period and inserting the phrase "; or" in its place.

(B) A new paragraph (uu) is added to read as follows:

"(uu) Any provision listed in § 3305.3 that has not been abated within 6 months of the issuance of violation.".

(3) Subsection 3305.3 is amended as follows:

(A) Paragraph (uuu) is amended by striking the period and inserting the phrase "; or" in its place.

(B) A new paragraph (vvv) is added to read as follows:

"(vvv) Any provision listed in § 3305.4 that has not been abated within 6 months of the issuance of a notice of violation.".

Sec. 8. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 9. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.