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

Public Hearing
On
B23-361, the "Equal Access to Changing Tables Amendment Act of 2019";

B23-499, the "Housing Provider Repeated Violation Enhancement Amendment Act of 2019";

B23-394, the "Tenant and Homeowner Accountability and Protection Amendment Act of 2019"

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

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Room 412
John A Wilson Building

1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman Mendelson, Councilmembers, and staff. I am Ernest Chrappah, the Director of the Department of Consumer and Regulatory Affairs (DCRA). I am here today to testify on three pieces of legislation: B23-361, the "Equal Access to Changing Tables Amendment Act of 2019", B23-499, the "Housing Provider Repeated Violation Enhancement Amendment Act of 2019"; and B23-394, the "Tenant and Homeowner Accountability and Protection Amendment Act of 2019".

"Equal Access to Changing Tables Amendment Act of 2019"

Let me first discuss B23-361, which is the "Equal Access to Changing Tables Amendment Act of 2019." We support the intent of this bill and believe that all parents, regardless of their gender, should have safe and convenient access to baby changing stations in the District. Many fathers like myself would appreciate the convenience of having a changing station in men's restrooms, just as my wife has in women's restrooms. With that said, DCRA has a few recommendations that I would like to share, with the aim of making the legislation more effective and workable.

First, the proposed legislation includes a requirement that existing establishments and places of public accommodation that are being "substantially renovated" must add diaper-changing accommodations as detailed in the legislation. The legislation defines "substantially renovated" as, "the construction, alteration, or repair of toilet facilities where the work requires a permit and the construction cost is $10,000 or more." For practical purposes, it would be helpful to make this definition a bit more specific, noting whether the $10,000 threshold includes both labor and materials.

Second, the bill mandates that owners of all newly constructed or substantially renovated business establishments and places of public accommodation shall provide these changing stations

for both women, men, and gender-neutral restrooms on each floor. While the intention here is good, the current language is overly broad, forcing the requirements on businesses such as nightclubs, where, because of age restrictions, changing stations would not be needed. Our recommendation is to include an exemption, similar to the one included in a similar piece of legislation passed by the Illinois General Assembly, which exempts industrial buildings, nightclubs, and bars that do not permit anyone under the age of 18.[1]

Third, the proposed legislation states that the Director of DCRA, or a designee, may exempt a public building from the diaper-changing requirements if an installation would not comply with District or federal laws relating to access to persons with disabilities, or would be infeasible due to spatial or structural limitations. As DCRA already has the authority to render interpretations of the Construction Codes and make such determinations, we believe these sections are redundant, but we do not have any objections to the current language.

"Housing Provider Repeated Violation Enhancement Amendment Act of 2019"

Let me now discuss B23-499, the "Housing Provider Repeated Violation Enhancement Amendment Act of 2019". DCRA strongly believes receivers should be an option when landlords prove incapable or unwilling to meet their obligations to their tenants. However, I have a few concerns with bill 23-499 that I would like to note. First, it is unclear from the bill who is responsible for the appointment of the receiver and what role, if any, DCRA will have in the appointment.

Second, the bill does not specify whether the Notices of Infraction (NOIs) must simply be issued, or if the owner must be found liable, in order for the violation to count as one of the three

[1] 410 ILCS 35/18, The Equitable Restrooms Act; 2019.

instances within the 18-month period laid out by this bill. The bill also does not address what happens if any of the NOIs are dismissed.

Third, the terms "flagrant," "fraudulent," and "willful" are not defined. As such, it's unclear how violations would be determined to be flagrant, fraudulent, or willful, especially since intent is not a component of any housing code violations. I would now like to turn your attention to a bill that we believe that, while sharing the intent of the bill before us, would be a better means to achieving the goal of B23-499. Bill 23-14, the "Landlord Accountability Through Expedited Receivership Amendment Act of 2019," that was submitted by Mayor Bowser to the Council on January 7, 2019, will strengthen and expedite the rent receivership process to hold landlords accountable for living conditions that pose serious threats to the health, safety, and/or security of District tenants. Although the legislation that was introduced by the Office of the Attorney General (OAG) is substantially similar, there are sections to our bill that we believe are important to mention.

First, the Mayor's bill aims to clarify the basis for the appointment of a Housing Receiver by amending Section 502 of the Tenant Receivership law. This section of the code lays out the framework for the D.C. Superior Court to appoint a receiver. One of the ways a receiver can be appointed is when a property owner has shown a "pattern of neglect" that "poses a serious threat to the health, safety, or security of the tenants" for a period of 30 consecutive days. The Mayor's bill clarifies what constitutes a "pattern of neglect" and details the violations that would rise to the level of a "serious threat to the health, safety, or security of the tenants." These violations would include: (1) vermin or rat infestation; (2) filth or contamination; (3) inadequate ventilation, illumination, sanitary, heating or life safety facilities; (4) inoperative fire suppression or warning equipment; (5) inoperative doors or window locks; or (6) any other condition that constitutes a

hazard to tenants, occupants, or to the public. This detailed list makes the process less subjective for our inspectors and clarifies which violations rise to the level of a "serious threat" that would be grounds for a receivership being appointed by the D.C. Superior Court.

Second, the Mayor's bill includes a provision that allows the Mayor and relevant District agencies to submit a written request to the Office of the Attorney General (OAG) to petition the Superior Court to appoint a receiver. The OAG would be given five (5) business days to either file a petition for receivership or notify the Mayor that OAG is declining the petition. We believe this is an important amendment and allows the Executive, most notably, DCRA, the ability to flag or bring forth a negligent property owner before the Court so that a receiver can be appointed. Since DCRA is the agency that handles inspections and issues citations for violations, it should also have the opportunity to elevate specific instances that rise to the level of needing a receiver. Unfortunately, the similar bill proposed by the OAG does not include this provision.

Third, the Mayor's bill shortens the statutory time for the Court hearing on the receivership petition from 30 days to 10 business days. This provision was added to allow these petitions to get in front of the Court on a much shorter timeframe. This shortened timeframe will allow for abatement to be ordered by the Court and give some relief to those tenants who are being negatively affected by the actions or inactions of a negligent property owner.

Fourth, we have proposed that the Superior Court be required to monitor the execution of a landlord's plan to abate housing code violations. The bill details how the Court will monitor and hold the landlord accountable as it oversees the execution of the mandated plan to abate the violations of the housing code that prompted the receivership. The bill gives the Court the ability to order the property owner to cover the costs of abating the housing violations, reimburse the

District government for any abatement the District has already performed, pay any fees associated with relocating the displaced tenants, and pay the administrative costs of the receiver appointment.

Fifth, the Mayor's bill defines owner as any person or entity who has legal title to the rental property or is charged with caring for it. This clarification is important as it defines who the Court can order to contribute funds in excess of the rents to abate violations, as briefly mentioned earlier in my testimony.

DCRA worked closely with the Housing and Community Justice Section of the OAG to identify these necessary improvements included in the Mayor's bill. As learned from recent, high-profile receivership proceedings, the current process takes too long, petitioners encounter too many obstacles, and landlords often know how to work the current system to their advantage in Superior Court. The Mayor's proposed amendments will hold these landlords more immediately and more directly accountable and will incentivize them to proactively abate violations. DCRA believes the Mayor's bill deserves a public hearing to properly debate the merits of what we have proposed and hear from the general public and expert witnesses on other possible solutions to this ongoing issue.

"Tenant and Homeowner Accountability and Protection Amendment Act of 2019"

Finally, I will now discuss B23-394, "Tenant and Homeowner Accountability and Protection Amendment Act of 2019."

DCRA shares many of the overarching goals behind this bill, given that the bill seeks to protect tenants and homeowners from a variety of dangers, such as known hazards and potential bad actors. We look forward to working with the Council to better ensure that residents in the District are safe from known threats and that mechanisms are in place to protect tenants and homeowners to the greatest extent possible. While we applaud the Council's efforts in this regard and agree with several aspects of the bill, in some ways this bill does not take into account the way

DCRA is currently organized and how many of our procedures work. Much of this bill is either redundant with current organization structures, processes, and procedures already in place, or would complicate established processes that are working well. I would like to raise specific concerns and recommendations we have with various sections of the bill, in sequential order.

Concerns and Recommendations

Section 2

Regarding Section 2 ("Contractor Insurance"), Section 2(a)(1) requires an applicant to provide "proof of financial responsibility" with each application for a permit for construction or demolition where the estimated cost is greater than $10,000. In turn, Section 2(f) defines "proof of financial responsibility" as "documentation from an insurance company licensed to do business in the District that the licensed contractor or business is insured to conduct business in the District." While DCRA is not opposed to the requirement in Section 2(a)(1), the bill is silent as to the type or amount of insurance that the licensed contractor or business must have. Our recommendation is to define the amount of insurance required as ten times the cost of the project.

Section 4

Section 4 ("Mandatory inspections for residential permits") would require DCRA inspectors to inspect construction sites to determine whether work has taken place within a six month period. If work has not begun, or if it has been suspended or abandoned, the site's permit would become null and void. DCRA has three concerns with this section. First, while I believe the bill's intention is to limit the requirements in this section to residential permits, the changes this bill makes to the D.C. Code do not make that clear. Second, the bill does not define key terms such as "residential," "suspended," or "abandoned." Additionally, because "residential" is not defined, it is unclear whether commercial projects that include residential elements would be

subject to this new requirement. Our suggestion is to use the definition for "residential" that is used in the International Residential Code (IRC) or the International Building Code (IBC). As for the terms "suspended" and "abandoned," it is unclear what would constitute suspension or abandonment, or how long work must be suspended or abandoned in order for a permit to be nullified. There are also situations where construction work is suspended to perform work on an adjoining neighbor's property to protect it from damage, we recommend Council insert a provision to ensure the permit is not nullified in this case. Third, this new mandate would require DCRA to conduct a significantly higher number of inspections, which would have implications for our employees as well as a financial impact. If Section 4 were to become law, it would need to include funding for additional inspectors and supervisors.

Section 6

Section 6 ("Bond increases") requires that permitted parties update the estimated cost of construction to ensure that the final bond on construction is 10% of the costs of construction. Specifically, this section states that "[p]rior to an issuance of certificate of occupancy, the declarant must submit a final accounting of cost and update the bond or letter of credit to reflect 10% cost of construction or conversion." DCRA has two concerns with this requirement. First, it would slow down the issuance of certificates of occupancy considerably. DCRA's standard timeline for issuing a certificate of occupancy is 10 business days, which is something I am striving to reduce. Adding this new requirement would of course hinder the goal of issuing these certificates more quickly. Second, this mandate would require DCRA to hire additional staff to audit construction projects in order to ensure that the final bond on construction is 10% of the costs of construction.

Section 7

Section 7 ("Housing Code Inspections and Enforcement") raises four significant concerns.

First, Section 7(a)(1) requires that all inspectors performing inspections be employed by DCRA. As you are aware, DCRA has implemented a Resident Inspection Training Program that trains participants, many of whom are District residents, to become vacant building, illegal construction, and housing inspectors. The program aims to allow participants to earn extra income while helping the agency keep pace with the District's growing demand for inspectors. Participants who complete and pass the appropriate training exams are able to work as independent contractors or compete for full-time positions, when available. As of January 13, 2020, DCRA has certified 167 total resident inspectors. Specifically, DCRA has approved 103 inspectors to work on illegal construction; 17 inspectors to work on property maintenance (housing) inspections; and 47 inspectors to work on vacant properties. This has had a positive impact on the number of inspections that are able to take place across the District. Given that the program has already greatly increased our inspection capacity—a goal the Council supports—taking away this flexibility seems like a step in the wrong direction.

Second, Sections 7(a)(3) through (5) require that all DCRA inspectors be trained, certified, and licensed as professional inspectors of lead, mold, and asbestos. As you are aware, DCRA inspectors are not currently trained to conduct these types of inspections and tasking them with these new responsibilities would cause the agency's inspectors to be spread too thin. Indeed, the Council often expresses concerns that the agency has too many responsibilities, but this bill proposes tasking our inspectors with even more duties. Moreover, these requirements would duplicate work that is already being performed by the Department of Energy and Environment (DOEE).

DOEE is already responsible for the inspection and remediation processes for lead, mold, and asbestos. We should ensure that these processes are as streamlined as possible for District

residents. Requiring DCRA inspectors to be trained, certified, and licensed in these areas would produce a redundancy with DOEE's already-existing work, which could result in confusion and an extra layer of bureaucracy for those residents seeking assistance.

Third, Section 7(b) seeks to create a new "Rental Housing Inspections Division" at DCRA which would observe certain protocols regarding Notices of Violation. DCRA has two concerns with this subsection. As an initial matter, to a large extent these protocols reference an enforcement process that no longer exists, as DCRA only issues Notices of Violation for proactive inspections—for everything else, we issue Notices of Infraction, which include fines, if violations have not been addressed by the owner during the first inspection. I should also note that we have a triage process where landlords get electronic notifications to address an issue before the first scheduled inspection date. Because Notices of Violation are now only issued as part of our proactive inspections program, Section 7(b) is not an accurate reflection of the Department's current processes. Moreover, DCRA recently realigned and optimized its Building Department so that there is a Housing Division within the Department and is run by a Program Manager for Housing Inspections. As a result, creating a new "Rental Housing Inspections Division" would be redundant and unnecessary.

Fourth, Section 7(c)(1) requires that "[a]t a minimum, there shall be one residential housing inspector for every 2,000 occupied residential housing units." This is problematic for several reasons. The bill does not define the term "occupied" and DCRA does not keep track of resident occupancy status. According to a March 2018 D.C. Policy Center Housing Report, there are an estimated 303,950 total housing units in the District of Columbia. If we assume an 80% occupancy rate, this means there are 243,160 occupied housing units. If DCRA were required to have one housing inspector for every 2,000 occupied residential housing units, we would need 122 housing

inspectors. DCRA currently employs 25 full-time housing inspectors, so in order to meet the requirement under Section 7(c)(1), we would need to hire almost 100 new housing inspectors. DCRA must be funded at the appropriate level for the number of additional inspectors along with the legal and administrative staff necessary to support their work if this becomes law.

Section 9

Section 9 ("Office of Code Enforcement duties and powers") raises five significant concerns.

First, Section 9(a) seeks to establish a new "Office of Code Enforcement" within DCRA consisting of a Code Enforcement Unit and a Civil Infraction and Fines Assessment Unit. This structure already exists within DCRA as it relates to code enforcement and civil infractions, so allow me to briefly explain the way our office is set up. DCRA currently has an Office of Civil Infractions (OCI). The OCI is responsible for coordinating and providing quality assurance for DCRA's issuance, service, and tracking of Notices of Infractions to property owners and licensees, as well as the filing of NOIs with the Office of Administrative Hearings (OAH) for adjudication. Given the functions and responsibilities of OCI, creating a new "Office of Code Enforcement" would be unnecessary and redundant.

Second, while Sections 9(b)(1) through (3) reference property owner "extensions," currently the only situation in which an "extension" might be provided is if an owner indicates that he or she is making repairs, in which case we may schedule the inspection for a date after the repairs are expected to be completed. DCRA does not provide extensions to property owners after an inspection has occurred. In addition to referencing "extensions," I have a general concern that Section 9 references an outdated version of DCRA's enforcement process. I want to make clear that DCRA does in fact currently keep tenants abreast of enforcement actions that impact them by

providing them with a copy of the Notice of Infraction. Additionally, on our website you will soon be able to track the status of an enforcement action, such as a Notice of Infraction.

Third, Section 9(b)(4) requires that DCRA "[p]rovide a copy of any Notice of Infraction to the OAH at the time of service on the owner of the property." While DCRA shares the desire to speed up the adjudication process, I do want to note that this subsection runs contrary to OAH's rules and to the Civil Infractions Act concerning service.

Fourth, Sections 9(c)(1) and (2) require that a newly established "Civil Infraction and Fines Assessment Unit" within DCRA review each Notice of Infraction for legal sufficiency and represent DCRA in all appeals at OAH. As previously mentioned, DCRA's Office of Civil Infractions already handles most of the functions the proposed "Civil Infractions and Fines Assessment Unit" would conduct with the exception of legal sufficiency reviews which is a function that is typically performed by licensed attorneys. Attorneys in DCRA's Office of General Counsel currently represent the agency at OAH. In short, it is unnecessary and redundant to create a new Unit when all of the functions of that unit are currently being appropriately performed by the Office of Civil Infractions and the Office of the General Counsel.

Fifth, Section 9(c)(3) requires that DCRA file a lien within ninety days of filing a Notice of Infraction with OAH or within ninety days of a final order from OAH. However, there is already a mechanism for filing liens within thirty days of a final order from OAH, and DCRA is statutorily prohibited from filing liens until we have the Final Order. As a result, Section 9(c)(3) is actually less stringent than the current practice.

Section 10

Section 10 ("Strategic Housing and Health Official") seeks to establish a "Strategic Housing Health Official" for DCRA who would be appointed by the Mayor. This position sounds very

similar to the DC Partnership for Healthy Homes administered by DOEE. The DC Partnership for Healthy Homes, which was spearheaded by DOEE's Lead and Healthy Housing Division, consists of a broad coalition of District agencies and some of the District's most prominent medical providers, managed care organizations, non-profits, and environmental health professionals. Participating health providers and social service agencies serve as front-line responders who refer dangerous situations to DOEE's Lead and Healthy Housing Division. Because this already exists, it is not clear what problem Section 10 would solve that is not already addressed by an existing agency or program.

Section 12

Section 12 ("Zoning regulations") raises two significant concerns. First, Section 12(a) would require the Office of the Zoning Administrator to "make public all opinions and rulings related to zoning regulations in guidance letters and determination letters." DCRA currently post these documents online and has been doing so for almost ten years. Specifically, there are over 550 determination letters available online dating back to 2011. Moreover, we recently revamped our website to make it easier for the public to search for these documents. Posting documents prior to ten years ago may not be possible, and the cost of doing so would likely outweigh any benefits. Second, Section 12(c)(4) states that "[t]he Office of the Attorney General may represent residents in appeals of decisions made by the Department regarding interpretation and application of code and zoning regulations." This is problematic for several reasons, chief among them that the Office of the Attorney General currently provides legal advice to the Board of Zoning Adjustment. As a result, representing residents in appeals of decisions made by the Department would be a conflict of interest.

Section 13

Section 13 ("Testing before the sale of property") would require sellers to provide a sworn statement by a licensed contractor listing information about a slew of environmental risks, including ventilation and temperature control, mold/mildew, pests, the use of pesticides, toxic chemicals/hazardous waste, asbestos, lead-based paint, lead in drinking water, radon, and carbon monoxide. This section raises three concerns. First, Section 13 would place a substantial burden on sellers, who would have to pay for a licensed contractor to attest to this information. Second, the bill does not give DCRA any enforcement mechanism to hold property owners who fail to provide this sworn statement accountable. Third, much of this information is already captured by the Seller's Disclosure Statement. In fact, last November, DCRA published a Notice of Proposed Rulemaking amending the Real Property Seller's Disclosure Statement to include disclosure information related to lead plumbing and water systems and will be publishing a Notice of Final Rulemaking soon.

Section 14

Section 14 ("Protection of solar installations") would require that DCRA "not issue or approve a permit for any construction where the construction will infringe on an existing installation of solar panels on adjacent and adjoining properties." DCRA's concern with this language is that it is overly broad and would significantly restrict development in the District, impacting affordability and the sustainability benefits associated with density. Moreover, existing zoning regulations developed by DCRA are already much more nuanced. For example, 11 DCMR 330.7(g) states that "an [altered or added] roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator." A suggestion to improve Section 14 might be to create a remediation process for adjacent owners

where one owner already has solar panels installed and the other wishes to build or construct on their own property. The process could allow the owner doing the construction to reimburse the solar panel owner for lost revenue and sunken costs, and require the owner doing the construction to make a community solar purchase in the name of the homeowner whose solar panels are being affected.

Section 15

Section 15 ("Establishment of the District of Columbia Construction Commission") would establish a five-member Construction Commission appointed by the Mayor, along with an executive director and full-time staff that includes investigators. DCRA's primary concern with this section is that the bill is silent as to what the Commission would be charged with doing. Moreover, it would diminish the role of the Chief Building Official and create a shadow organization with no accountability to DCRA. If the intention is to weed out bad actors and raise standards as they pertain to contractors, our recommendation would be to expand an existing trade board to include general contractors. This would ensure that the individuals engaged in this trade have the specialized skills and training required to perform general contracting services for the public. Having general contractors regulated by a trade board also provides oversight and a mechanism through which consumers can file complaints. This section could also be amended to allow the Code Official to suspend or revoke professional licenses (including general contractors) for cause, with appeal rights to the trade board.

Conclusion

Chairman Mendelson and members of the Council, thank you for the opportunity to testify today. I look forward to answering any questions you may have.