Testimony of
The Hon. Kathy Patterson
D.C. Auditor

before the

Council of the District of Columbia
Committee of the Whole

Public Oversight Hearing on the District of Columbia Auditor’s Report

Housing Code Enforcement: A Case Study of Dahlgreen Courts

Wednesday, October 31, 2018
Room 412
The John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, DC 20004
Good morning Chairman Mendelson, Councilmembers, and members of the staff. I am Kathy Patterson, Auditor of the District of Columbia. I am joined today by the principal author of the report that is the focus of today’s hearing, Dr. Nancy Augustine, who has served as a consultant to ODCA and is a member of the faculty of George Washington University’s Trachtenberg School of Public Policy and Public Administration.

The report, *Housing Code Enforcement: A Case Study of Dahlgreen Courts*, followed a request by you, Mr. Chairman, that the Office of the D.C. Auditor conduct one or more reviews of the operations of the Department of Consumer and Regulatory Affairs (DCRA) and make recommendations on how the agency could improve its operations. Issues of housing code violations at Dahlgreen Courts had been a matter of public record based on testimony and press accounts, and we determined that a deeper dive into a single case could provide a substantial amount of information of value to the Committee and to the agency.

Through this audit we sought to determine whether DCRA could better protect tenants through more rigorous and timely enforcement of the housing code, and whether recordkeeping, case tracking, and reporting and communication were adequate to foster effective Council oversight on the health and safety of tenants in the District.

I would like to provide an overview of our findings, and summarize the recommendations we made to the Council, and to the agency.

Our bottom line: the Department of Consumer and Regulatory Affairs (DCRA) could better protect tenants through more rigorous and timely enforcement of the housing code. We found in the case study that the process for responding to housing code violation complaints allows landlords to put off remediation through extensions and delayed re-inspection. We found that even when fines are levied, they may not be sufficient to deter landlords from allowing conditions in their units to deteriorate. Failure to enforce the housing code effectively and consistently, whether due to insufficient language in the D.C. Code and DCMR or implementation choices made at the department level, jeopardizes the health and well-being of affordable housing residents of the District.

A failure to effectively enforce the housing code, as noted in the report, “opens the door to loss of affordable housing because when landlords let conditions persist and deteriorate, they first push out the tenants who have the resources to go elsewhere, then eventually the most vulnerable tenants who do not have other housing options.”

In addition to problems with the enforcement process itself, limited documentation and tracking contribute to a lack of transparency. That absence of transparency impedes the accountability needed by this Committee and the public to consistently ensure the health and safety of tenants in the District.

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

Current language in the District of Columbia Municipal Regulations (DCMR) allows but does not require much more rigorous enforcement of housing code violations. To improve housing code violation outcomes for tenants and preserve a greater proportion of affordable housing stock will require significant change. DCRA could alter the process to shorten the time between the issuance of a Notice of Violation (NOV) and the issuance of a Notice of Infraction (NOI), improve transparency and accountability, and deter violations by increasing financial penalties and other improvements that do not require statutory change. And the D.C. Council could require more significant protections by mandating faster and more effective enforcement actions.

The housing inspection program is a relatively small part of District government operations, with a budget in FY2018 of just over $3 million, or .02% of the District budget. The FY2018 budget for housing inspections included a significant increase in staffing, adding 13.5 FTEs for a total of 38 staff. Even so, this Committee expressed its concern with the number of housing inspectors, noting in the FY18 budget report that “in comparable jurisdictions, such as Boston and Baltimore, in population, in geographic size, and housing stock, there are three times as many housing code inspectors as the District.”

Dahlgreen Courts consists of two buildings with 96 units in ward 5 on 10th Street NE, a short walk from the Rhode Island Avenue Metro station. The property is designated as a historic landmark. It was acquired in 2010 by Mission First, based in Philadelphia, and operating as the Dahlgreen Courts LLC, Mission First renovated the property and it was re-opened in May 2013. All 96 units were to be rented to low-income tenants. Mission First has more than a thousand units in 10 properties in the District and all have received public financial support. Additional details on the District support is included in the report on page 7.

The D.C. Code sets out the authority to enforce the housing code. The D.C. Municipal Regulations establish general procedures that give substantial discretion to the Director of DCRA. Our comparison of provisions in the Code and DCMR with standard operating procedures and testimony indicate that the director could improve many aspects of housing code enforcement without further action by the D.C. Council. At the same time, the current agency leadership has signaled a preference to continue the current enforcement regime.

As we note in the report, “a key question for the D.C. Council is whether the director exercises discretion consistent with the intent and purpose of the D.C. Code and the DCMR today.” The corollary question is whether the Council, assuming you wish to see stronger code enforcement, wishes to act by changing the provisions in the law, or continue pressing the Executive Branch to use its current authority for more stringent enforcement. Our recommendations represent a combination of the two: recommendations to DCRA to better utilize its existing authority and bring about more stringent enforcement, and recommendations to the Council to remove agency discretion by mandating certain specific steps that could result in more effective enforcement.
We recommend that the Council:

- Require revisions to the DCMR with respect to correcting housing code violations so that there is a specific time limit for addressing specific violations and the overall process takes far less time.

This encompasses several of the recommendations contained in the report, including re-inspection at 30 days rather than 45 days for 30-day violations; allowing extensions only when specific criteria are met, and either combining the Notice of Violation and Notice of Infraction, or bypassing the NOV entirely for properties that meet specific criteria. Amendments to the D.C. Code that require revised regulations is a step that would effectively reduce the director’s discretion on the timeliness of enforcement. (Today the regulations do not specify the time between inspection and re-inspection. The agency’s written procedures refer to one-day and 30-day violations, and the director has referred to "7-day violations" but there is no documentation of that option.)

- Require DCRA to measure and report the “time to cure” as a whole; that is, the time between an initial inspection and issuance of a Notice of Infraction, or time to abatement.

- Significantly increase the dollar value of fines by at least 25 percent and either increase or eliminate the reinspection fee. The DCMR now permits the agency to issue a fine for each day a violation persists, but in the Dahlgreen Court case DCRA assessed a fine for each violation only once, not per day.

- Act to limit business activity of problem landlords (those who meet defined criteria). This could include prohibiting landlords from entering into new rental agreements, requesting or receiving new financial support from any city agency, or renewing a business license.

We were not able to assess the deterrence value of DCRA’s current housing code enforcement because the agency does not record the incidence of violations. The fine collection process is the primary method of deterrence and witnesses have testified that they believe fines today are insufficient to deter housing code violations. Nor does DCRA distinguish among practices of properties that house vulnerable populations, owners with a poor track record, and owners who receive or have received financial support from the District government for the building or property subject to the complaint. Record-keeping, case tracking, reporting, and communication are not adequate to protect tenant health and safety.

- Require that DCRA standardize recordkeeping with standards that include sufficient information to be able to institute each case appropriately and allow inspectors to report on the results of inspections and required next steps. Further, require DCRA to make inspection and case data available through the District’s open data portal, and make available to the public information on both pending and past cases.

We also made a series of recommendations to the Council that were outside the scope of DCRA operations, but relevant to the issue of preserving affordable housing. We recommend that the Council:
- Require all District programs that provide financial assistance to developers to consider an 
  applicant’s track record in complying with the housing code. This obviously will require better 
  data collection and record-keeping to enable a sister District agency to check with DCRA when 
  considering an applicant for financial support.

- Establish more stringent housing code enforcement standards for publicly supported affordable 
  housing properties.

- To assist in using the government’s own leverage to secure better housing code enforcement 
  and preserve existing affordable housing, use oversight hearings to seek testimony on additional 
  options within programs operated by the D.C. Housing Finance Agency and Department of 
  Housing and Community Development, and other agencies beyond DCRA.

In addition to these recommendations directed at the Council, we also outlined recommendations for 
the Department itself, including performance measures that capture the actual time to resolution of 
violations; use of existing agency authority to increase fines; use of alternative delivery services rather 
than the U.S. Postal Service; and revisions to clarify standard operating procedures on re-inspections. 
All of the report’s recommendations are included in the attached report excerpt.

We were very pleased with the response that DCRA Director Melinda Bolling made to the series of 
recommendations contained in our report. I note that even in many of the instances where we directed 
recommendations to the Council, the director indicated that DCRA would take action on those issues 
and that it was their preference that they be permitted to do so without additional legislative direction. 
Specifically, the agency response to our draft report indicated the agency’s willingness to address the 
issues encompassed in Recommendations 1, 3, 5, 6, 7, 9, 10, 12, 14, 16, and 17. It is our hope that this 
hearing today affords the agency the opportunity to give the Committee an update on the status of 
adopting part or all of each of these recommendations. We will also provide an update on the status of 
each recommendation in the annual recommendation compliance report we will issue after the first of 
the year.

This concludes my testimony and we would be happy to respond to your questions.
Summary of Report Recommendations

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

<table>
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<tr>
<td>1. The D.C. Council should require DCRA to revise the DCMR to establish the abatement periods for violations, with authority given to the director to reduce the abatement period under specific circumstances that must be documented.</td>
<td>No</td>
<td>No</td>
<td>FY'18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”</td>
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<td>2. The D.C. Council should require DCRA to collect and report data on time to re-inspection.</td>
<td>No</td>
<td>No</td>
<td>FY'18 DCRA Performance Plan Strategic Objective: “Create and maintain a highly efficient, transparent and responsive District government.”</td>
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<td>3. The D.C. Council should require DCRA to use a service delivery method other than the U.S. Mail.</td>
<td>No</td>
<td>Yes</td>
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<td>4. DCRA should explore the use of delivery services (such as Federal Express) to serve. While the per-unit charge to deliver a notice is likely greater, it may be that the tracking services provided along with delivery would offset the cost.</td>
<td>Yes</td>
<td>No</td>
<td>FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”3</td>
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<td>5. The D.C. Council should require DCRA to re-inspect 30-day violations after 30 days, instead of 45. This could be achieved by reducing the allowance for service or starting internal processing and mail delivery service 15 days after the initial inspection, instead of waiting a full 30 days.</td>
<td>No</td>
<td>No</td>
<td>Mayor’s FY 2018 Budget Proposal: “$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes.”4</td>
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<td>6. DCRA should revise its SOPs to clarify who, how, and when re-inspections are scheduled. SOPs should also establish a target timeframe for re-inspections.</td>
<td>No</td>
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Housing Code Enforcement: A Case Study of Dahlgreen Courts
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<td>7. DCRA should provide complete and accurate information on the usual process of housing code compliance as it is actually carried out, including criteria used to determine and disclose the number of days allowed to the landlord to abate the violation.</td>
<td>No</td>
<td>No</td>
<td>FY 2018 DCRA Performance Plan Strategic Objective: “Provide timely and efficient business processes to promote and improve the progression and business development of the District of Columbia.” AND OCF 2017-2021 Strategic Plan: “Improve Transparency and Quality of Information.”</td>
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<td>8. The D.C. Council should require DCRA to revise the DCMR to allow extensions only when specific criteria are met, including clarifying the process for landlords to apply and DCRA to approve.</td>
<td>No</td>
<td>No</td>
<td>FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”</td>
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<td>9. The D.C. Council should require DCRA to revise the DCMR to combine the NCV and NOI or bypass the NCV altogether for properties that meet specific criteria. These criteria might include properties that house vulnerable populations, owners with a poor track record, and owners who receive or received financial support from the District government or other public sources for the building or property subject to the complaint.</td>
<td>No</td>
<td>No</td>
<td>FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”</td>
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| 10. DCRA should implement Key Performance Indicators (KPIs) that measure the time to cure as a whole, including the time between the initial inspection and issuance of a NOI or time to abatement. Indicators might include the average number of days to first re-inspection for 30-day violations; number and percentage of NOVs in which an extension was allowed; average number of days to cure; average number of days between issuance of a NOV and issuance of a NOI. | No                            | No                                                        | Mayor’s FY 2018 Budget Proposal: “$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes.”
| 10a. The D.C. Council should limit business activity of problematic landlords (who meet defined criteria). This could include prohibiting landlords from entering into new rental agreements, requesting or receiving new financial support from any city agency, or renewing a business license. | No                            | No                                                        | FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”
| 10b. DCRA should publish data on housing code violations by buildings and landlords, to allow tenants to make better informed decisions regarding their housing. | No                            | No                                                        | FY 2018 DCRA Performance Plan Strategic Objective: “Provide timely and efficient business processes to promote and improve the progression and business development of the District of Columbia.”
| 11. The D.C. Council should significantly increase the dollar value of fines by at least 25 percent. | No                            | Yes                                                       | OCFI 2017-2021 Strategic Plan: “Manage a Fair and Equitable System to Fully Collect District Revenues.”

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<td>12. DCRA should charge a fine for each additional day that a violation persists, as currently allowed in 14 DCMR § 102.7. This measure could be limited to problematic properties or landlords.</td>
<td>No</td>
<td>Yes</td>
<td>FY18 DCRA Performance Plan Strategic Objective: “Provide thorough and efficient property maintenance and construction inspections, within the specified timeframes, to improve safety and development in the District of Columbia.”&lt;sup&gt;12&lt;/sup&gt; AND OCFO 2017-2021 Strategic Plan: “Manage a Fair and Equitable System to Fully Collect District Revenues.”&lt;sup&gt;13&lt;/sup&gt;</td>
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<td>13. The D.C. Council should increase the re-inspection fee, or eliminate it altogether.</td>
<td>No</td>
<td>Yes</td>
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<td>14. The D.C. Council should require DCRA to standardize recordkeeping in activity logs. Standards should ensure the collection of enough information and the right type of information to be able to initiate each case appropriately and allow for inspectors to report on results of inspections and required next steps.</td>
<td>No</td>
<td>No</td>
<td>Mayor’s FY 2018 Budget Proposal: “$2.5 million for DCRA to hire additional housing inspectors, increase the number of vacant and blighted properties abated, and improve internal business processes.”&lt;sup&gt;15&lt;/sup&gt;</td>
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<td>15. The D.C. Council should require DCRA to make inspections and case data available through the District’s open data portal.</td>
<td>Yes</td>
<td>No</td>
<td>FY18 DCRA Performance Plan Strategic Objective: “Create and maintain a highly efficient, transparent and responsive District government.”</td>
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<td>16. The D.C. Council should require DCRA to make information on pending and past cases available to the public.</td>
<td>Yes</td>
<td>No</td>
<td>Mayor’s Accountability Report, Year 3: “Restructure reporting lines so that all agencies with affordable housing budgets are coordinating, sharing best practices and working together to meet the demand for affordable and subsidized housing.”</td>
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<td>17. The D.C. Council should require programs that provide financial assistance to developers to consider applicants’ track records in complying with the housing code.</td>
<td>No</td>
<td>No</td>
<td>Mayor’s Accountability Report, Year 3: “Focus greater public subsidies on mixed-income developments coupled with greater accountability and clear delegation of responsibility to the agencies tasked with realizing these projects, at the same time, committing to taking better care of existing subsidized housing that residents are living in, while the New Communities program is refocused.”</td>
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<td>20. The D.C. Council should establish more stringent housing code enforcement standards for publicly supported affordable housing properties.</td>
<td>No</td>
<td>No</td>
<td>Mayor’s Accountability Report, Year 3: “Focus greater public subsidies on mixed-income developments coupled with greater accountability and clear delegation of responsibility to the agencies tasked with realizing these projects, at the same time, committing to taking better care of existing subsidized housing that residents are living in, while the New Communities program is refocused.”</td>
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<td>21. In the course of its oversight hearings, the Council should seek testimony on options to support the preservation of affordable housing in DC-IF, DCHD, and other agencies' programs.</td>
<td>No</td>
<td>No</td>
<td>Mayor’s Accountability Report, Year 3: “Focus greater public subsidies on mixed-income developments coupled with greater accountability and clear delegation of responsibility to the agencies tasked with realizing these projects, at the same time, committing to taking better care of existing subsidized housing that residents are living in, while the New Communities program is refocused.” AND Mayor’s Accountability Report, Year 3: “Restructure reporting lines so that all agencies with affordable housing budgets are coordinating, sharing best practices and working together to meet the demand for affordable and subsidized housing.” 19</td>
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