AN ANALYSIS OF AUSTIN'S 2-5-2 REPEAT OFFENDER PROGRAM AND EFFORTS TO ADDRESS DANGEROUS RENTAL PROPERTIES

A REPORT PREPARED FOR THE NORTH AUSTIN CIVIC ASSOCIATION

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EXECUTIVE SUMMARY

Austin faces a tremendous challenge in the form of deteriorating rental properties with dangerous and substandard conditions. The victims of these conditions are low-income tenants and neighborhoods. To help create safe living conditions for tenants, the Austin City Council adopted the 2-5-2 Repeat Offender Program (ROP) in October 2013.[1] Rental properties with multiple code violations that trigger the ordinance must register with the City, pay a $100 fee, and post notices at the property. The ordinance authorizes code officials to conduct a "periodic" comprehensive inspection of each repeat offender property once a year, along with follow-up inspections for any outstanding violations.

This report analyzes the effectiveness of the Repeat Offender Program, building on prior work the Clinic conducted in 2013, which culminated in the publication of a report titled *Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin*.[2] This report concludes that the Repeat Offender Program falls short in three major areas:

1. The City is failing to effectively <u>identify</u> unsafe rental properties under the Repeat Offender Program;
2. The City is not engaged in effective <u>monitoring</u> of code violations at repeat offender properties; and
3. The City does not have appropriate <u>enforcement</u> mechanisms in place to:
   - swiftly address dangerous conditions at repeat offender properties;
   - cover regulatory costs; and
   - impose appropriate sanctions against these properties when compliance does not occur.

➢ Identification of Unsafe Properties

[1] Austin, Texas, Ordinance No. 20130926-012, at 12, *available at* http://www.austintexas.gov/edims/document.cfm?id=198274.

[2] Heather K. Way et al., *Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin*, 20 (2013), *available at* https://www.utexas.edu/law/clinics/community/Rundberg problemproperties.pdf.

The Repeat Offender Program has four key weaknesses when it comes to identifying unsafe rental properties.

1. **The Repeat Offender Program is a complaint-driven program, relying primarily on tenant complaints to identify problem properties.** As we noted in our earlier report, along with a white paper on rental registration ordinances, studies have shown that complaint-based code enforcement systems fail to capture many properties with code violations, including those with serious and life-threatening conditions.

2. **Delayed inspections are a problem at ROP properties.** The Code Department's response time for conducting an initial inspection in response to a citizen complaint is significantly longer for ROP properties (12.6 days) than it is for other types of code violations (1.89 to 3.57 day city-wide average). The Code Department is also delaying the comprehensive inspections allowed for under the ROP ordinance until the end of the one-year registration term.

3. **The ROP ordinance is biased towards very large rental properties, with very few smaller rental properties qualifying under the ordinance.** Of the 29 ROP properties, 69% consist of 50-plus units. Only 2 of the ROP properties consist of single-family homes, while 21% of all Austin rental units are single-family homes. Many of the problem properties identified by the North Austin Civic Association are duplex and quad-plex units, which have not made it onto the City's ROP list.

4. **The City is failing to register many problem properties that should be qualifying as repeat offenders under the ROP ordinance.** From November 2014 to May 2015, the Code Department added only one rental property to the ROP list. In our review of data for rental properties that had received citations or BSC referrals in 2014, we found several properties with major and repeated habitability issues that should have qualified for the Repeat Offender Program under both the prior and current version of the ROP ordinance.

➤ <u>Monitoring of Repeat Offender Properties</u>

The City has inadequate systems in place to allow for the effective monitoring of repeat offender properties and other problem rental properties. We identified three major deficiencies in this area:

1. **The Code Department's database, according to Code staff, is cumbersome and does not allow for effective processing of data and creation of reports involving ROP properties**. For example, code staff reported to us that they are unable to run reports from the database showing which properties qualify as repeat offender properties. They are also unable to run a report that distinguishes rental properties from non-rental properties, or residential from commercial properties. The database is also not synced with other government database systems relating to problem properties in the city. This creates a huge impediment to information sharing, collaboration, and strategic code enforcement.

2. **The Code Department is not meeting the online reporting requirements in the ROP ordinance**. The ordinance requires the Department to "develop an online reporting tool that is publicly accessible for residential rental properties that have received notices of violation but have not complied in a timely manner (including properties that are not registered). The online tool should provide the current status of those cases (Municipal Court, Building and Standards Commission, or other enforcement track)."[3] This Department has not developed this online reporting tool.

3. **The Code Department has not been providing the detailed quarterly reports to Council required by the ordinance.**

➢ Enforcement System for Repeat Offender Properties

We found a number of issues with the City's enforcement policies and procedures governing repeat offender properties.

1. **The City is failing to enforce the registration requirement for repeat offender properties.** Many owners of repeat offender properties are failing to register in a timely manner, if at all, after receiving a registration notice from the Code Department. As of May 2015, only 19 of the 29 repeat offender properties had properly registered, with 9 of the properties out of compliance since at least November 2014.

2. **We found long delays in the resolution of code violations at ROP properties.** Most ROP owners are not addressing code violations by the deadline listed in the Notice of Violation and, the City is not holding them accountable when they fail to meet these deadlines. Property owners soon realize that they can ignore initial NOVs without any penalties or other consequences.
   - The average time for Code Department staff to conduct a follow-up inspection after the repair deadline had passed for ROP properties is 83 days.
   - The average time to address a code violation at ROP properties is 159 days—not counting the many complaints that have still not been resolved.
   - The Code Department's stated target for FY 2015 is an average 90 days from complaint to voluntary compliance. In contrast, San Antonio's average voluntary compliance rate for housing violations in 2011 was 29 days and Dallas's compliance rate was 33 days.

3. **The City is still failing to take swift and aggressive enforcement actions against rental property owners who repeatedly fail to fix dangerous building conditions.** When the City of Austin finally brings any kind of enforcement action against a problem property, it is typically after the passage of multiple warnings and "second chances" for the property owner to address the dangerous building conditions.

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[3] Austin, Texas, Ordinance No. 20130926-012, Part 4(B) (parens in original, but emphasis added).

We identified 283 code complaints linked to the 29 ROP properties since the inception of the ROP program. Only 6 ROP properties have received code citations for building-related conditions (a total of 11 citations, 6 of which led to a fine that was paid). The other 23 ROP properties have not received any citations related to building conditions.

When the Code Department does refer a case to the BSC (7 BSC orders have been issued against ROP properties), there is often a long delay before the code issues are actually heard by the BSC, leaving tenants exposed to dangerous living conditions for many months. We also found several instances of properties that have failed to respond to BSC orders, posing on-going safety risks to the tenants who remain in the units.

4. **The Repeat Offender Program imposes a strain on city resources and, ultimately, the taxpayers. Very few of the costs imposed by problem properties in Austin are paid for by the owners.** For ROP properties, the only fee that the City charges is a $100 registration fee, regardless of the size of the property. The City also collected $3,001 in citation fines against ROP properties from October 2013 to April 2015. These fees and fines in no way reflect the City's costs of operating the ROP program or the time the City has spent monitoring and enforcing code violations at these properties.

➢ <u>Recommendations</u>

In the Report, we have identified a number of policies that would help improve the City's identification, monitoring, and enforcement of code violations at repeat offender properties. A table with a summary of these recommendations follows:

Area	Recommendation	Who
Identification	Conduct inspections of ROP properties immediately upon the registration of each ROP property.	Code Department
Identification	Adopt a comprehensive rental registration program to ensure all rental properties (with exceptions for newer properties) are subject to some form of routine inspection to identify conditions that jeopardize the health and safety of tenants.	City Council
Identification	Adopt a High Impact Landlord Program that utilizes objective criteria to identify high volume owners of smaller-sized problem properties in Austin.	City Council
Identification	Require code officers to issue Notices of Violations for dangerous code violations that code officers observe while traveling through a neighborhood.	City Manager and Code
Identification	Meet regularly with neighborhood associations to assist in the identification of problem properties.	Code Department
Monitoring	Develop an online tool through which the public can	City Manager

	access detailed information about all repeat offender properties and other rental properties, including the outcome of code reports, regardless of whether the properties have registered.	and Code Department
Monitoring	Revamp the city's code database to facilitate internal and interdepartmental monitoring of problem properties, to allow code inspectors to do their jobs more efficiently, and to eliminate needless administrative costs for analyzing and sharing code information. The database should allow for properties to automatically be placed on a repeat offender list when they qualify under the ordinance.	City Manager and Code Department
Monitoring	Create detailed quarterly code reports that will allow the Code Department, City Council, and the public to monitor the effectiveness of the ROP and other code enforcement actions against rental properties.	Code Department
Enforcement	Swiftly conduct follow-up inspections of properties with identified health and safety violations and then ensure that the owners are held to the deadlines listed in NOVs and BSC orders, unless there is a compelling reason for an extension. Follow through with graduated civil fines or criminal citations for property owners that fail to comply with NOVs, and with Chapter 54 lawsuits against owners who violate BSC orders.	City Legal and Code Department
Enforcement	Implement swift and aggressive enforcement measures against ROP properties that fail to timely register, including graduated administrative fines based on the number of days late, and then criminal citations or even BSC action against properties that refuse to register.	City Legal and Code Department
Enforcement	Continuing our recommendation from our prior report, the City should more aggressively prosecute its laws against egregious code violations through the use of Chapter 54 actions, which allow for injunctive relief in addition to penalties.	City Legal
Enforcement	Conduct a deeper investigation into the issues raised by code staff regarding delays in enforcement of citations at the Municipal Court and with prosecutors' hesitancy to pursue fines for code violations.	City Council
Enforcement	Implement a community prosecutor initiative similar to the one in Dallas and Seattle, starting with a pilot program in the Rundberg area, to focus on neighborhood-based enforcement actions against problem properties.	City Council

Enforcement	Create a specific set of performance goals for ROP properties and then regularly assess progress towards these goals	City Manager and Code Department
Enforcement	Hire an outside organization to audit the Code Department to assess ways in which the Department can more efficiently monitor and enforce code violations against repeat offender properties.	City Manager
Enforcement	Adopt full-cost recovery policies to recover the enforcement costs imposed by ROP properties and other problem properties, including: a graduated inspection fee for ROP properties based on the number of units and a fee for re-inspections of units.	City Council and Code Department