

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

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A REPORT PREPARED FOR THE NORTH AUSTIN CIVIC ASSOCIATION

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INTRODUCTION

This report analyzes Austin’s current programs and policies for addressing dangerous building conditions at rental properties, with an emphasis on Austin’s 2-5-2 Repeat Offender Program (“ROP”).¹ The report builds on prior work conducted in 2013, culminating in the publication of a report titled *Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin*.²

As discussed in the Clinic’s prior report, Austin faces a tremendous challenge in the form of deteriorating multifamily properties with dangerous and substandard conditions. In North Austin and Austin at large, this challenge is exacerbated by a large stock of older and poorly maintained multifamily housing. Close to 62 percent of Austin’s apartment units (approximately 83,000 units) are located in Class C properties, and at least 43 percent of Austin’s multifamily housing stock was built prior to 1974. Adding to this challenge, Austin has a long-standing culture of lax code enforcement, in which owners of substandard buildings face little in the way of repercussions for allowing their properties to deteriorate and generate unsafe living conditions.

To help combat the proliferation of dangerous rental units, the Austin City Council adopted the 2-5-2 Repeat Offender Program in October 2013.³ The ordinance attempts to identify and target enforcement actions against rental properties with recurring code violations.

Section 1 of the report provides a brief overview of the Repeat Offender Program. The next sections of the report analyze the effectiveness of the City of Austin’s current policies and programs for addressing dangerous conditions at rental properties—in particular the Repeat Offender Program—according to three of the nationally-recognized elements of an effective code enforcement program:⁴

- **Identification:** With the Repeat Offender Program in place, is the City effectively and efficiently identifying substandard rental properties and, in particular, the city’s most dangerous properties? (Section 2)
- **Monitoring:** With the Repeat Offender Program in place, is the City allowing for effective monitoring of code violations at problem rental properties? (Section 3)

¹ Austin, Texas, Municipal Code § 4-14 (2015), available at https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-14REREPR.

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>.

³ Austin, Texas, Ordinance No. 20130926-012, at 12, available at <http://www.austintexas.gov/edims/document.cfm?id=198274>.

⁴ See, e.g., Phyllis Betts, *Best Practice Number Ten: Broken Windows—Strategies to Strengthen Housing Code Enforcement and Approaches to Community-Based Crime Prevention in Memphis* (Apr. 2001); Alan Mallach, *Meeting the Challenge of Distressed Property Investments in America’s Neighborhoods* (Local Initiatives Support Corporation), 47, 58-64.

- Enforcement: Does the City have appropriate mechanisms in place for properties in the Repeat Offender Program to: (1) swiftly address dangerous conditions at the properties; (2) cover regulatory costs; and (3) impose appropriate sanctions against these properties when compliance does not occur? (Section 4)

The report concludes in Section 5 with policy recommendations to improve Austin's code enforcement policies for rental properties, with a focus on reforms to improve the effectiveness of the Repeat Offender Program.

This report was prepared for the North Austin Civic Association ("NACA") by faculty and students in the Entrepreneurship and Community Development Clinic at the University of Texas School of Law. The Report reflects the legal research and opinions of the authors only, not any official position of the Law School or the University of Texas.

The report was prepared after multiple meetings and conversations with city staff and neighborhood leaders, review of code enforcement records, and extensive independent research. We would like to extend a special thanks to the staff of the Austin Code Department for their cooperation and assistance throughout our research. We would also like to thank the North Austin Civic Association for inviting us to assist them with this research project.

SECTION 1. OVERVIEW OF THE REPEAT OFFENDER PROGRAM

Scope of the Repeat Offender Program

To help combat the proliferation of dangerous rental properties in Austin, the Austin City Council adopted the 2-5-2 Repeat Offender Program in October 2013.⁵ The ordinance attempts to identify and target enforcement actions against rental properties in the city with the worst code issues by focusing on repeat offenders. Under the current version of the ordinance (which was amended in December 2014), a repeat offender is defined as a multifamily or single-family rental property that meets any of the following conditions:

- (1) two or more separate notices of violation are issued for the same property within a consecutive 24 month period and the owner of the property fails to correct the violations within the time frame required by the code official;
- (2) five or more separate notices of violation are issued on separate days for the same property within a consecutive 24 month period regardless of whether the owner of the property corrects the violations within the time frame required by the code official; or
- (3) two or more citations for conditions that are dangerous or impair habitability are issued for the same property within a consecutive 24 month period.⁶

Each property that qualifies as a repeat offender under the ordinance must register with the City of Austin and remain registered until none of the conditions listed above occur for two years. If a repeat offender property comes off the registration list but becomes subject to the registration program again as a result of additional code violations, the property must register for a minimum of five years.⁷

Once a property triggers the registration requirements, the Code Department is supposed to send a written notice to the landlord that registration is required, and the landlord then has 14 days to register. A landlord subject to the ROP may not lease a rental property without registering.⁸

In order to register for the program, the ordinance states that landlords must submit a registration application and an annual registration fee,⁹ which is currently set at \$100 via a separate ordinance. Failure to register is a separate offense for each day that the property is not registered, with a fine not to exceed \$2,000 a day.¹⁰

⁵ Austin, Texas, Ordinance No. 20130926-012, at 12, available at <http://www.austintexas.gov/edims/document.cfm?id=198274>.

⁶ Austin, Texas, Municipal Code § 4-14-3 (2015), available at https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-14REREPR.

⁷ *Id.* at § 4-14-31.

⁸ *Id.* §§ 4-14-4; 4-14-30.

⁹ *Id.* at §§ 4-14-20; 4-14-32.

¹⁰ *Id.* at § 4-14-53.

The landlord of a repeat offender property is required to disclose several items in the registration form, including the name and address of the registered agent for the owner, if the owner is an entity, as well as a telephone number that will be answered 24 hours a day in the event of an emergency. Additionally, the landlord is required to post signs in English and Spanish on the outside and common areas of the property (or in the kitchen if a single-family unit) listing the emergency phone number of the property and information on how to report code violations to the City.¹¹

ROP registration is supposed to give city officials an additional tool to incentivize property owners to keep their units safe and code compliant. In especially egregious cases involving repeat and severe violations or lack of compliance, the Code Department can suspend and ultimately revoke a landlord's registration, thereby barring the landlord from leasing the property until the landlord addresses the dangerous conditions.¹²

The ROP ordinance allows code officials to conduct a "periodic" comprehensive inspection of the repeat offender property once a year, along with follow-up inspections. Areas subject to inspection include all building exteriors, all exterior and interior common areas, vacant dwelling units, and occupied dwelling units if the tenant gives consent or the Code Department obtains a valid search warrant. At least two days prior to the inspection, the landlord is required to give notice to the tenants of the upcoming inspection.¹³

The Code Department has decided to inspect each repeat offender property at the end of the registration period. The Department started conducting the first round of comprehensive inspections in March this year.

Properties that are required to register under the ROP can be found on the Code Department's website both in list form as well as in an interactive Repeat Offender Map.¹⁴ As of April 2015, there were 29 properties listed. Most properties listed (69%) are large apartment complexes with 50-plus units. Two single-family properties and five duplexes are on the ROP list. Ideally, this online information allows prospective renters to identify problem properties that are in the ROP and use that information to inform their housing decisions.

The ROP requires new owners to re-register a property on the repeat offender list within 30 days of transfer of ownership to ensure the Code Department has accurate contact information for property owners. In addition, the ROP ordinance provides that a property may be removed from the list after a change of ownership if the new owner remedies all violations within 90 days of the ownership transfer.¹⁵ As a matter of policy, the Code Department states that it conducts a full walk-through of a property before removal from the list to ensure the owner has actually remedied all violations.

¹¹ *Id.* at §§ 4-14-20; 4-14-33; 4-14-34

¹² *Id.* at §§ 4-14-50; 4-15-51.

¹³ *Id.* at §§ 4-14-40; 4-14-41.

¹⁴ http://www.austintexas.gov/sites/default/files/files/ROPList_4-13-2015.pdf;

<http://austin.maps.arcgis.com/apps/SummaryViewer/index.html?appid=20874ab537454f988f6675f0a70b17f1>

¹⁵ Austin, Texas, Municipal Code § 4-14-7 (2015).

December 2014 Changes to the Repeat Offender Program

In December 2014, the Austin City Council amended the ROP ordinance to broaden the reach of rental properties covered by the Program.¹⁶ The original version of the ordinance limited the registration requirement to properties with multiple code issues that were dangerous or impaired habitability. According to code staff, the “habitability” standard for the notices of violations hindered the Code Department’s ability to identify the appropriate properties for the registration requirement. The standard forced code staff to manually sift through each violation that had been issued and determine which of those violations related to the property’s habitability. According to staff, this process required many hours of administrative work. Code personnel reported to us that the removal of the habitability standard has allowed staff to more quickly identify the repeat offender properties that must register under the ordinance.

The December 2014 ordinance amendments also extended from 12 months to 24 months the time period for code violations that trigger the registration requirement.¹⁷ Lastly, the amendments added the requirement of an annual fee for properties on the registration list.

¹⁶ Austin, Texas, Ordinance No. 20141120-003.

¹⁷ *Id.*

SECTION 2. IDENTIFICATION OF CODE VIOLATIONS

This section analyzes the Repeat Offender Program in terms of how well it helps the City of Austin identify the community's most dangerous and most problematic rental properties. Identification of these properties enables a city to be more strategic in how it deploys its enforcement resources—and facilitates collaborative efforts of city departments to target and remediate the worst code violations.

We found four key issues with the Repeat Offender Program when it comes to identifying dangerous and other problem rental properties.

1. The program is a complaint-driven program, relying primarily on tenant complaints to identify problem properties.
2. The response time for conducting an initial inspection in response to a citizen complaint appears to be significantly longer for ROP properties than it does for other types of code violations. Moreover, the Code Department is delaying the comprehensive inspections allowed for under the ordinance until the end of the registration term.
3. The program is biased towards very large rental properties, with very few smaller rental properties qualifying under the ordinance.
4. The City's list of registered properties is leaving out many problem properties that should be qualifying as repeat offenders under the ordinance.

These issues are discussed in further detail below.

Complaint-Driven Program

In our prior report, we called out a major deficiency with Austin's code enforcement program: the reliance on a complaint-based system that fails to identify the city's most egregious code violators.¹⁸ This deficiency continues.

The long-standing reactive nature of Austin's code enforcement program came to light in 2012 in the widely-covered case of Woodridge Apartments, where a second-story walkway collapsed, displacing dozens of tenants. According to coverage by the Austin American-Statesman, the City had visited the property 33 times over a prior 28 month-period to respond to tenant complaints but was unaware of the substandard condition of the walkways until after the collapse. None of the tenant complaints had pertained to the walkways, so the walkways were never inspected until after the collapse, when code inspectors finally conducted a comprehensive inspection of the complex, finding 760 code violations in 84 units.

An upside of the Repeat Offender Program, which was enacted in part as a response to the Woodridge Apartments incident, is that the comprehensive inspections should eventually

¹⁸ Addressing Problem Properties, *supra* note 2, at 28-29, 68-69.

identify major code violations at the registered properties—beyond just those violations reported by tenants. The inspections should thus capture dangerous building conditions at properties like Woodridge, where tenants have filed multiple valid code complaints against the property.

However, if tenants or neighbors do not complain about a rental property multiple times, the property will not make it into the Repeat Offender Program. Dangerous properties where tenants or neighbors are too afraid to file complaints remain unidentified by the Code Department. 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.¹⁹ This underreporting of violations is due in large part to tenants' fear of landlord retaliation for reporting violations, as well as unawareness of how to report violations.

Delayed Inspections

We identified two issues regarding delayed inspections for ROP properties. First, the response time for conducting an initial inspection in response to a citizen complaint appears to be significantly longer for ROP properties than it does for other types of code violations.

As part of our analysis of the Repeat Offender Program, we obtained code records for all 29 ROP properties and conducted an in-depth analysis of the code complaints at the following 10 ROP properties, including two in the NACA boundaries:

1124 Rutland Drive (NACA)	1630 Rutland Drive (NACA)
5112 1st Street	2201 Willow Street
9435 Middle Fiskville Road	6905 Wentworth Drive
1300 Southport Drive	1512 Wheless Lane
7200 Duval Street	1302 Parker Lane

For these ten properties, code staff conducted an initial inspection within an average of 12.6 days of a citizen complaint. This average response time is significantly longer than the average response time across all categories of code violations, as presented by the Code Department in its public performance measures. The Code Department's performance measures from October 2014 to April 2015 show an average of 1.89 to 3.57 days between assignment of a code complaint and initial inspection.²⁰ This data suggests that Code takes

¹⁹ Heather K. Way, et al, *An Analysis of Rental Property Registration in Austin* (July 2013), Appendix 1, available at <https://www.utexas.edu/law/clinics/community/An%20Analysis%20of%20Rental%20Property%20Registration%20in%20Austin.pdf>.

²⁰ *Performance Measures: Average Number of Days from when Code Compliance Complaints are First Assigned to Inspectors Until First Response*, [austintexas.gov](http://www.austintexas.gov/budget/eperf/index.cfm?fuseaction=home.PerfMeasure&DEPT_CD=CCD&DIV_CD=1CCI&GP_CD=1CID&MEASURE_ID=7022), http://www.austintexas.gov/budget/eperf/index.cfm?fuseaction=home.PerfMeasure&DEPT_CD=CCD&DIV_CD=1CCI&GP_CD=1CID&MEASURE_ID=7022. The City averages we use here are measured from the date a complaint was assigned, whereas, our calculations for ROP properties here are measured from the date a complaint was made. From our review of code records, the assignment to an inspector typically happens on the same day or the next day after a complaint is made. Thus, even taking into account

more time to inspect health and safety building conditions at repeat offender properties, on average, than it does other properties.

A second issue we identified in regards to delayed inspections for ROP properties relates to the comprehensive inspection called for under the ROP ordinance, which the ordinance refers to as a “periodic inspection.” As mentioned above, an upside of the Repeat Offender Program in terms of identifying dangerous properties is that the ordinance gives the Code Department the authority to conduct a comprehensive inspection of both the exterior and interior of ROP properties once a year. These inspections enable the Department to identify dangerous building conditions beyond those reported by the tenants.²¹ While the ordinance does not specify when the inspection is to be conducted, the Code Department has elected to conduct the first inspection nine to twelve months after the City registers a property as a repeat offender. For example, the Solaris apartment complex located at 1516 Burton Drive was required to register on April 1, 2014, but did not receive a comprehensive inspection by code staff until March 30, 2015.²² Code staff stated that this delay allows property owners more time to remedy violations.

We believe that postponing the comprehensive inspections to the tail end of the registration period is problematic. If a property has dangerous conditions beyond those initially reported in the complaint, the conditions could remain undetected for up to a year while the tenants remain in the property. An up-front inspection at the time of registration allows for the Code Department to identify much earlier the full extent of dangerous conditions at a property. The Department can then notify and work with the property owner early on as to what corrective actions need to be taken to make the property safer. The Department can also identify what types of case management resources or other city departments may be needed to assist with making the property safe.

Bias Toward Large Properties

Another issue with the ROP is that it is biased towards very large rental properties. The median ROP property size is 16 buildings and 129 units, with 69% of ROP properties consisting of 50-plus units.²³ In contrast, only 16.4% of all Austin rental housing units are contained in properties with 50-plus units.²⁴ There are also just two single-family properties on the ROP list, while 21% of all Austin rental housing units are single-family homes.²⁵ Yet,

the additional time it takes for a code complaint to be assigned to an inspector, there is still a large discrepancy between inspection response times at ROP properties and other properties in Austin.

²¹ Austin, Texas, Municipal Code § 4-14-41 (2015).

²² Rudy Koski, *It's not a nudge but a 2x4 for code violators in Austin*, myFOXAustin (March 30, 2015), available at <http://www.myfoxaustin.com/story/28652230/its-not-a-nudge-but-a-2x4-for-code-violators-in-austin>.

²³ Repeat Offender List (April 13, 2015), available at https://austintexas.gov/sites/default/files/files/ROPList_4-13-2015.pdf.

²⁴ The United States Census Bureau estimates that, of the 185,737 total renter-occupied housing units in the City of Austin, 30,476, or 16.4%, consist of 50 or more units. United States Census Bureau, *Tenure by Units in Structure*, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_B25032&prodType=table.

²⁵ *Id.*

many of the problem properties identified by the North Austin Civic Association are duplex and quad-plex units.

This bias towards larger properties is to be expected given the complaint-driven nature of the program and the scope of the ROP ordinance. The larger a property, the more likely there will be at least one unit with code violation notices or citations, and the more likely there will be at least one tenant willing to report a code violation. In contrast, the smaller a property, the less likely that the property will trigger the requisite number of code violation notices or citations in the two-year catchment period.

Failure to Identify Eligible Properties for ROP

Another issue we discovered with the Repeat Offender Program is that the Code Department appears to not be adding properties to the Program that are eligible under the ordinance. From November 2014 to May 2015, Code added only one rental property to the Repeat Offender Program. This is puzzling to us; we do not understand why more properties were not added over the course of this six-month period. Based on historical data, surely more than one property qualified under the ordinance during this timeframe.

When we reviewed 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. The Code Department, however, has not added these properties to the Repeat Offender Program. These properties include:

- 1127 E. 52nd Street: Small multifamily complex with multiple structural and property violations according to code inspectors, including a stairway support system showing signs of deterioration and cracking; overhead support joist buckling; damaged door; electrical supply cable installed too close to gas supply; foundation compromised; and frame of structure sustained fire damage. Multiple notices of violation issued in 2014 remained unaddressed as of April 2015.
- 5609 Cougar Drive: Small multifamily complex with numerous code issues identified by code inspectors in 2014 relating to substandard decks, balconies, doors, and stair treads. Two notices of violation were issued; issues not addressed until 2015 after the case was referred to the Building and Standards Commission for intervention.
- 5203 Woodland Oaks Court: Duplex inspected by Code in August 2013. Code issued separate citations in September 2013 and May 2014 for, respectively, lack of hot water and lack of furnace.
- 9606 Carson Creek Blvd.: Duplex inspected by Code in September 2013 in response to reports of bed bugs, a water leak, and black air duct filters. Notices of violation issued in September 2013 and November 2014.
- 1600 Brownie Drive: Small multi-family where inspectors found numerous violations including doors not closing and locking properly, leaking water, broken floor, missing

smoke alarms, electrical violations, windows unable to open, and human waste flowing in back of property from broken pipe. Multiple notices of violations sent in 2014.

- 5020 Manor Road: Multifamily complex where inspectors found leaking toilet, improper electrical wiring, and leaking roof. Multiple notices of violations issued in 2014.
- 2425 Cromwell Circle: Small multifamily complex where inspectors found walls buckled and substandard foundation. Multiple notices of violation sent in 2014.

SECTION 3. MONITORING VIOLATIONS

In this section, we evaluate how effectively the City is allowing for monitoring of code violations at problem rental properties by city staff, the public, and policymakers such as the Austin City Council. **Overall, we found that the City has inadequate systems in place to allow for the monitoring of problem rental properties.**

Database Issues

One of the key tools for effectively monitoring code violations is a database that incorporates the three core components listed below.²⁶ **The City's databases for monitoring code violations fail to effectively incorporate any of these components.**

Core components of an effective database for monitoring code violations

1. A database should allow a city to quickly assess which properties are most at-risk, by pooling basic information about property conditions, including code violations, zoning, utility shut-offs, fire reports, and police reports—thus enabling a city to deploy the necessary resources before the property conditions worsen.
2. A database should help a city identify where problem properties are concentrated, thus enabling the city to target the most at-risk neighborhoods.
3. A database should allow for the sharing of information across government departments and other stakeholders to facilitate collaboration.²⁷

According to code staff, a major encumbrance to the effective monitoring of code violations at problem rental properties is the City of Austin's database system. Code staff reported to us repeatedly that their database is very cumbersome and prohibits investigators from processing data and running reports efficiently. This leads to a drain on city resources and impedes the Department from effectively monitoring progress towards enforcement goals.

We came across the same issues in conducting research for this report. For example, in an open records request, we asked for a list of rental properties that had been referred to the Building and Standards Commission (BSC) in 2014. Code staff told us that the most efficient way to compile this information was for staff to read through past BSC meeting minutes to identify the properties. Apparently, there is no report that can be run from the City's database that could identify properties referred to the BSC, and also no online reporting option to determine the status of those properties at the BSC. According to code staff, the

²⁶ Business and Professional People for the Public Interest, *How Can Municipalities Confront the Vacant Property Challenge*, 4, available at http://www.bpichicago.org/documents/HowCanMunicipalitiesConfronttheVacantPropertyChallenge_AnIntroductoryGuide-1.pdf.

²⁷ *Id.*

database also does not allow for staff to run reports of notices of violations that are not resolved in a timely manner, thus creating huge barriers for compiling the list of ROP-eligible properties.

We also asked the Code Department for a list of rental residential properties with citations from 2014. Code staff reported to us that they had no way of running a report from the code database that would distinguish rental properties from non-rental properties, or residential from commercial properties. As a result, we ended up obtaining a list of all properties with citations from 2014 and then classifying all of these properties using visual images from Google Maps and other online data.

Another issue is that the database is 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. For example, the City's Municipal Court database is not synced with the Code Department database, so the Code Department cannot easily access and track data regarding the outcome of municipal court actions such as the fines assessed or fines that remain unpaid. The code database is also not synced with other city databases such as the Police Department's or Water Utility Department's databases. As a result, the Code Department is unable to identify and monitor properties that may have code issues related to water cut-offs or criminal nuisance issues.

Lack of Public Access to Code Data

In terms of providing for publicly-accessible information on repeat offender properties, the 2-5-2 Repeat Offender ordinance states:

Code Compliance Department should also 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).²⁸

The information that Code provides to the public on repeat offender properties does not meet these standards in the ordinance. The Code Department provides no information online about properties that have received notices of violations but have failed to comply in a timely manner other than a simple chart and map of the 29 properties that the City has registered. Even for these 29 registered properties, there is no information on the current status of the cases.²⁹ While there is a "Search Complaints, Licenses and Permits" tool on Code's website, it provides no information regarding code complaints or violations.³⁰ If someone enters the address for a ROP property, the only information that the individual can

²⁸ Austin, Texas, Ordinance No. 20130926-012, at 1 (Part 4(B)) (parens in original, but emphasis added).

²⁹ AustinTexas.gov, *Repeat Offender Program*, <http://www.austintexas.gov/departments/repeat-offender-program>

³⁰ AustinTexas.gov, *Public Search*, https://www.austintexas.gov/devreview/a_queryfolder_permits.jsp.

see is that the property is registered in the program (meaning that the City added the property to its repeat offender list, not that the property owner completed the registration paperwork). In contrast, this online tool provides pages of detailed information regarding building permits tied to a particular property.

If a resident contacts 3-1-1 for information on a violation she or he has reported, 3-1-1 personnel can only inform the resident that the violation is “complete.” The 3-1-1 system has no further information pertaining to the status of code complaints. Even more troublesome is the fact that “complete” does not mean the violation has been addressed; it simply signifies that 3-1-1 has transferred the report to Code.

The public has no way of obtaining the status of code cases against a repeat offender property or other code cases involving problem properties other than by submitting a request to the City under the Public Information Act. And relying on Public Information Act requests can be quite tedious, as we discovered when trying to discern the status of multiple code complaints and violation notices sent to property owners. We had to mine through binders of documents, including code reports and minutes of Building and Standards Commission meetings, to discern the status of the cases.

Best Practice: Online Code Data

Many cities around the country provide online data concerning code violations, such as the status of a complaint. Many of these sites also provide mapping tools for locating problem properties and link a range of data concerning properties. Cities with online code data include:

Dallas, Texas ³¹	San Antonio, Texas ³²
Montgomery County, Maryland ³³	Los Angeles, California ³⁴
Seattle, Washington ³⁵	San Francisco, California ³⁶
Nashville, Tennessee ³⁷	New Orleans, Louisiana ³⁸
Seattle, Washington ³⁹	Portland, Oregon ⁴⁰
San Diego, California ⁴¹	Baltimore, Maryland ⁴²

³¹ <http://www.epicdallas.org>. The Dallas website portal is a collaborative effort of local nonprofit organizations and the City of Dallas.

³² <https://webapps1.sanantonio.gov/codecomplaints2/index.aspx/index.aspx>

³³ http://www6.montgomerycountymd.gov/apps/DHCA/pdm_online/pdmfull.asp

³⁴ <https://www.ladbsservices2.lacity.org/OnlineServices/>

³⁵ <https://data.seattle.gov/Community/Code-Violation-Cases/dk8m-pdjf>

³⁶ <http://dbiweb.sfgov.org/dbipts/>

³⁷ <http://www.nashville.gov/Codes-Administration/Property-Standards/Code-Enforcement/E-RFS-Public-Site-Codes-Violation-History.aspx>

³⁸ <http://www.nola.gov/code-enforcement/find-a-blighted-property/>

³⁹ <http://www.seattle.gov/dpd/toolsresources/Map/default.htm>

⁴⁰ <http://www.portlandmaps.com>

⁴¹ <http://opendsd.sandiego.gov/web/cecases/>

⁴² http://cels.baltimorehousing.org/Search_On_Map.aspx

The small amount of information regarding ROP properties that is available to the public via Code's website is outdated or updated too infrequently. The current ROP list (as of June 1, 2015) was most recently updated on April 13, 2015, but before this update, the list had not been updated since November 19, 2014. In addition, as of June 1, 2015, Code had still not updated the link to the ordinance or the informational flyer on its website⁴³ to reflect the changes to the Repeat Offender Program that went into effect on January 1, 2015, such as the removal of the "habitability standard" or the extended 24-month time frame.

Reports to City Council

Austin's 2-5-2 ordinance requires the Code Department to report to City Council quarterly with a report that addresses the following items related to ROP properties:

- (1) Number and percentage of rental properties registered;
- (2) Number and percentage of rental properties that received a periodic inspection;
- (3) Number and percentage of properties that received periodic inspections and violations were found;
- (4) Number and percentage of properties that timely complied with a Notice of Violation;
- (5) Number and percentage of properties that received periodic inspections and no violations were found.⁴⁴

Since the ordinance was implemented in October 2013, six of these reports should have been submitted to Council. We were unable to find any such reports online (they are not listed on the ROP website), and so we are unaware of whether the Code Department has complied with this requirement.

⁴³ AustinTexas.gov, *Repeat Offender Program*, <http://www.austintexas.gov/department/repeat-offender-program>; http://www.austintexas.gov/sites/default/files/files/Code_Compliance/Code_Compliance_ROP_Flyer.pdf.

⁴⁴ Austin, Texas, Ordinance No. 20130926-012, Part 4.

SECTION 4. ENFORCEMENT

In the words of problem property expert Allan Mallach, when it comes to maintaining property standards, enforcement is “the central issue.”⁴⁵ This section of the report analyzes whether the City has appropriate enforcement mechanisms in place for properties in the Repeat Offender Program.

Background

An effective code enforcement program will ensure that property owners are held accountable for violations found on their properties. The end goal of enforcement is repairing the violations and improving the conditions at properties; however, fines and citations are often necessary intermediary steps toward this goal. Three of the key measures for an effective enforcement system are: (1) swiftly addressing dangerous conditions at the properties; (2) covering regulatory costs; and (3) imposing swift and aggressive sanctions against these properties when compliance does not occur.⁴⁶

In our prior report, one of the core issues we identified and discussed in conjunction with Austin’s code enforcement program is the laissez-fair approach towards problem property owners. In particular, we called out the lack of enforcement infrastructure in the City Attorney’s Office and failure to take swift and aggressive measures against the most egregious code violators.⁴⁷

The main deficiencies we focus on in this report are: (1) the City of Austin’s failure to enforce the registration requirement against repeat offender properties; (2) the City’s long delays in resolving code violations at repeat offender properties; (3) the City’s continued failure to take swift and aggressive enforcement actions against repeat offender properties; and (4) the City’s failure to recover enforcement costs imposed by repeat offender properties.

Some key stats we found regarding ROP properties, several of which are discussed in more detail below:⁴⁸

- Number of ROP properties that have failed to register with the City as of May 2015: 10 out of 29
- Number of code complaint records linked to the 29 ROP properties since inception of program in October 2013: 283+
- Number of citations issued against ROP properties for building-related conditions since inception of program: 11 citations against 6 properties.
- Amount collected from citations against ROP properties for building-related conditions: \$3,001.
- Number of ROP properties not receiving any citations for building-related conditions: 23

⁴⁵ Mallach, *supra* note 4, at 58.

⁴⁶ *Id.* at 47, 58-64.

⁴⁷ Addressing Problem Properties, *supra* note 2, at 15-16, 30-31.

⁴⁸ The last four figures here are drawn from our analysis of 80 code complaints at 10 ROP properties, while the remaining figures are for all ROP properties.

- Number of ROP properties with BSC orders in 2014: 7
- Average number of days from complaint to final resolution of code violation (for violations that have been resolved): 159
- Average number of code inspector contacts with each ROP property per code complaint: 7
- Percentage of follow-up inspections that occurred more than 5 days after the Notice of Violation deadline: 60%
- Average number of days that Notice of Violation follow-up inspections occurred after the repair deadline: 83

Repeat Offender Properties Failing to Register with City

A major issue with the ROP is that owners are failing to register in a timely manner, if at all, after receiving a registration notice from the Code Department. And when property owners refuse to register, the Code Department has been slow to issue penalties against the properties and to bring the owners into compliance with the registration requirements. These issues are emblematic of the City's overall approach to code enforcement.

As noted above, the ROP ordinance requires qualifying property owners to register with the Code Department when their property receives a certain number of violations in a 24-month period. According to the ROP ordinance, "the code official may allow a landlord up to 14 days to register the rental property" after receipt of written notice.⁴⁹ Registration includes submission of a registration fee and submission of a registration application that includes the owner's emergency contact information and information on the owner's registered agent (to facilitate service of process).⁵⁰

The Code Department places a qualifying property on the City's ROP list regardless of whether the owner completes the registration process. The Code Department reports on its website that all eligible properties have "registered," but this classification is confusing because it does not mean that the property owner has submitted the required registration paperwork or registration fee. Instead, the City's classification of a property as "registered" means that the City has simply added the property to its registration list.

As of November 2014, 31 rental properties were listed on the Code Department's repeat offender list. This list was later reduced to 28, as a result of several properties changing ownership or successfully appealing their qualification as a repeat offender. When we spoke with Austin Code Department in February 2015, only 8 of the 28 repeat offender property owners on the November 2014 list had submitted the required registration paperwork. The other 18 property owners had failed to submit the required paperwork, even though at least three months had passed since they had received notice to register. Code issued 10 warnings and 5 citations in response to the low registration rate.

⁴⁹ Austin, Texas, Municipal Code § 4-14-4 (2015), available at https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT4BUREPERE_CH4-14REREPR.

⁵⁰ *Id.* at § 4-14-20.

As of May 2015, an additional property had been added to the City’s list (bringing the total number of properties on the City’s ROP list up to 29), but only 19 property owners had registered. Ten properties still remained out of compliance with the registration application requirement. Between February and May, Code issued an additional two citations for failure to register.

Compliance with the ROP Application Requirement

	City’s Repeat Offender List	Properties Registered Via Required Application	Properties that Failed to Register	Citations Issued
February 2015	28 properties (on list since at least November 2014)	8	20	5
May 2015	29 properties (all but one on list since at least November 2014)	19	10	2

Long Delays in Resolution of Code Violations at Repeat Offender Properties

From our in-depth analysis of code logs at ROP properties, we found long delays in the resolution of code violations at ROP properties. The persons who suffer the most as a result of these delays are the tenants.

Some of our specific findings:

- For the 80 complaints relating to the 10 ROP properties we analyzed, the average time to address a complaint was 159 days—not counting the many complaints that have still not been resolved.
- The median time to resolution was 136 days.
- The Code Department’s stated target for FY 2015 is an average 90 days from complaint to voluntary compliance.
- San Antonio’s average voluntary compliance rate for housing violations in 2011 was 29 days and Dallas’s compliance rate was 33 days.⁵¹

Even though Code has added staff over the past couple of years, the Code Department reports that the average time from complaint to voluntary compliance for all code violations has actually increased steadily each year, from 55 days in 2010 to 123 days in 2014.⁵²

⁵¹ City of Dallas Presentation, *FY 2010-11 ICMA Benchmarking Results*, at slides 11-12, available at http://www3.dallascityhall.com/committee_briefings/briefings0912/QOL_FY1011ICMABenchmarkingResults_092412.pdf (adding the average days from complaint to inspection to the average days from inspection to voluntary compliance).

⁵² *Performance Measures: Average number of days from when Code Compliance complaints are first reported until non-judicial compliance or admin/judicial transfer*, available at

Delays in Follow-Up Inspections: One particular area we explored in depth is how long it takes for inspectors to follow up on cases where inspectors have issued a Notice of Violation (NOV) against an ROP property for a confirmed code violation. We discovered from the 80 case logs we examined at ROP properties that the Code Department frequently fails to follow up with ROP property owners in a timely manner following the expiration of the deadline set forth in the NOV.

As background, when the Code Department inspects a property in response to a complaint, an inspector sends the property owner a Notice of Violation detailing any violations that are discovered. The NOV, which is essentially a warning, gives the property owner a deadline for remedying the violation (typically ranging from 1 to 30 days depending on the severity of the violation). A code officer then conducts a follow-up inspection of the property to determine if the violation was corrected. If the violation is fixed, the case is closed; if not, the Code Department can take further enforcement actions.

In 60% of the cases we reviewed at ROP properties, code inspectors conducted the follow-up inspection of the property more than five days after the expiration of the NOV deadline for remedying the violation. For cases where the inspection occurred after the NOV deadline, the average time for the follow-up inspection after the repair deadline had passed was 83 days.

Case Illustration: 7200 Duval Street

On October 1, 2014, a tenant reported an on-going flea and rat infestation in her apartment, along with bed bugs. A code inspector confirmed the violation on October 4th. Code issued a Notice of Violation to the owner on November 6, 2014. Code did not follow-up until more than **four months** later, on March 19, 2015, by contacting the manager to confirm that pest control treated the unit. There is no notation in the log indicating that the tenant was ever contacted to confirm whether the violation had been addressed.

In addition to the delays in the follow-up inspections, we found that most ROP owners are not addressing the code violation before the expiration of the NOV deadlines and are not being held accountable for failing to remedy violations within a reasonable timeframe. Property owners likely realize pretty quickly that they can violate initial NOV's without any penalties or other consequences.

Case Illustration: 2200 Willow Creek Drive

In June 2014, a tenant at 2200 Willow Creek (an ROP property) submitted a code complaint for flooding and mold in a living room and bedroom. A code inspector visited the property 13 days after the complaint, and observed “the carpet was still wet.” The inspector issued an NOV informing the property owner that she had 30 days to remedy the problem. The owner signed the certified mail receipt for that NOV on July 8, according to the Code Department’s records, so the remedy was due by August 7, 2014. Despite the severity of the problem, the Department made no further contact with the property until October 28, 2014—**136 days after the initial complaint, and 82 days after the NOV deadline**. The code records note that by October 2014 the tenant had moved out of the unit—quite possibly because of the uninhabitable living conditions in the unit.

Failure to Take Swift and Aggressive Enforcement Actions Against Repeat Offenders Who Do Not Address Dangerous Conditions

We found that the City is still failing to take swift and aggressive enforcement actions against rental property owners who repeatedly violate the code and fail to fix dangerous building conditions. The swift use of fines and penalties is a critical component of an effective code enforcement program. According to one prominent expert on problem properties, “[W]hatever the regulation, there must be sanctions, which are typically in the form of financial penalties or fines. If a landlord, after being given adequate notice and time to comply, fails to comply with a legitimate and reasonable requirement, the regulation becomes meaningless.”⁵³

Case Illustration: 8001 W State Hwy 71

In **June 2013**, code inspectors identified unsafe stairways and walkways in multiple buildings at the Settlers Creek Apartment Complex, at 8001 W. State Hwy 71. The Code Department sent the owner a Notice of Violation in July. Code staff called the owner on September 19th and gave the owner until September 24th to obtain permits to fix the violations or else be cited for violations. The owner did not respond to the notice, and Code responded by sending yet another series of Notices of Violations in December 2013—six months later. The case was then heard by the BSC in January 2014, which ordered the property to repair the violations in 60 days or else pay a penalty of \$1,000 per day per building. The code logs show a follow-up inspection was not conducted until April 2014, when a resident called complaining that the second floor decking was wobbly and that the violations were still pending. Code next went out to inspect the property in October 2014 and found that the deficiencies had still not been addressed. That is the last inspection that appears in the code logs. The code logs we received for the property state that the violations had not been cleared as of **April 15, 2015—almost two years after the initial inspection and 15 months after the BSC order**.

⁵³ Mallach, *supra* note 4, at 63.

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. And for properties with dangerous conditions, oftentimes a year or longer can pass between the time the dangerous conditions are identified and then heard at the Buildings and Standards Commission. See the case illustrations above and below for examples.

Low Usage of Citations: A key enforcement tool available to the Code Department for repeat offenders with more minor code violations is the use of criminal citations, which are heard by the Municipal Court. However, the Code Department rarely ends up issuing citations against rental properties for code violations. In all of 2014, the Code Department issued approximately 24 citations against just 7 multifamily properties and 6 single family/duplex rental properties for building-related conditions (versus citations for loose animals or other issues unrelated to the safety conditions of the building). For ROP properties, Code has issued citations against only 6 properties for building-related conditions since the program’s inception, for a total of 11 citations. The other 23 properties on the list did not receive any citations related to unsafe or unsanitary building conditions.

Code staff reported to us that they are reluctant to send cases to the Austin Municipal Court. According to staff, the municipal court prosecutors are somewhat hostile to enforcing the citations, and the judges are quick to issue deferred adjudication against the property owners, often leading to owner not having to pay a fine. Citations also take a lot of resources to prepare and process. As a result, according to code staff, citations end up not being worth the effort.

We reviewed 20 criminal citations that the Code Department issued against rental properties in 2014. Of these, six citations (30%) were dismissed without having to pay a fine. A few others were dismissed where the owner still paid a nominal fine, in the \$75-150 range. Six properties (30%) paid fines in the \$515 to \$1820 range and another three properties (15%) paid \$250 in fines.

Best Practice: Swift Code Enforcement in New Orleans

New Orleans, Louisiana has made concerted efforts in recent years to hold problem property owners accountable through swifter and more aggressive enforcement actions. As a result of these efforts, the average number of monthly code hearings in the City rose from 270 to 416 a month from 2012 to 2014, while the median time from initial inspection to hearing dropped from 160 days to 80 days during the same time period.⁵⁴

Slow Implementation of an Administrative Hearing Process: To provide an alternative to the criminal citation process, the Texas Legislature has authorized cities to set up administrative hearing processes for code violations. Code staff reported to us that they recognize the benefits of the administrative hearing process but are still in the process of

⁵⁴ http://www.communityprogress.net/filebin/Lee_-_Funding_and_Beyond.pdf.

adopting the process. A few cases have been tried administratively, but Code has not yet started utilizing the administrative process for code violations at rental properties.

Once the administrative process is finally set up, we are hopeful that this process can be used to hold rental property owners responsible for minor code violations. As we noted in our prior report, administrative fines can provide for a swifter and more cost effective resolution than criminal citations.

Buildings and Standards Commission: The Buildings and Standards Commission (BSC) remains the City of Austin’s forum of choice for addressing rental properties with serious, unaddressed code violations. The BSC typically meets monthly to hear cases on various property violations, although over the past two years the BSC has had to cancel several meetings due to lack of quorum or other issues, resulting in long delays for cases being heard. For this report, we reviewed all the rental property cases heard by the BSC in 2014.

Despite the Commission’s authority to issue steep fines for properties that fail to remedy violations within a certain timeframe, the Code Department uses this enforcement mechanism infrequently against problem rental properties. In the 2014 calendar year:

- Out of all occupied residential rental properties in Austin, the BSC issued orders against 10 multifamily properties, along with 7 single-family/duplex properties.
- Out of the 29 properties on the City’s ROP list, the BSC issued orders against 7 of the properties.⁵⁵

We found that when the Code Department does refer a case to the BSC, 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. This was confirmed to us by a BSC commissioner, who expressed frustration with the long delays and subsequent impacts on the tenants.

On top of that, we 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, as illustrated in the cases below. The Code Department does not provide any special monitoring of properties with BSC orders and has no mechanism in place for tracking all properties with outstanding BSC orders, although staff report that the Department is working to implement new procedures for providing better monitoring of these properties.

While the City has the ability to file a Chapter 54 lawsuit in district court to obtain injunctive relief, along with civil penalties, the City is still failing to use this tool when the facts appear to indicate that the City’s other enforcement measures are failing to bring a property into compliance. We could not find any cases involving rental properties where the City had used a Chapter 54 lawsuit in the past two years. Our last report went into further detail about the

⁵⁵ The information in this paragraph is based on reviews of code logs and BSC orders we received from the City of Austin in response to requests for information we submitted under the Public Information Act.

importance of Chapter 54 lawsuits as an enforcement tool for dealing with dangerous building conditions.⁵⁶

Case Illustration: 2317 Pleasant Valley Road

A resident filed a complaint on **November 13th, 2012**, about the lack of hot water and stairs “barely hanging on by a screw.” A code inspection the next day confirmed the substandard stairway and also found that the risers and landing were substandard. Code issued a Notice of Violation on November 15, 2012. Code did not conduct a follow-up inspection until February 20, 2014, and found multiple dangerous issues with the stairs and landings. A second Notice of Violation was sent on February 25, 2014. The Code Department conducted two follow-up inspections on February 27 and March 24, 2014, and found that the violations had still not been corrected. Code never issued any fines or citations against the owner for the violations. The case was sent to the BSC in April 2014. An inspection in **May 2014** confirmed that the property owner was finally working to repair the dangerous conditions—**18 months after the Code Department initially identified the conditions.**

Case Illustration: 1512 Wheless Lane

A fire struck the multifamily complex at 1512 Wheless Lane sometime before March 27, 2014, leaving dozens of tenants homeless. When the Code Department inspected the property on April 1, tenants were still living in some of the fire-damaged units amongst dangerous conditions. A code inspector issued the owner a citation on April 9, 2014. After the citation, there was no follow-up inspection of the property until July 1, 2014, almost three months later, when the inspector noted that units appeared to still be occupied and that dangerous areas of the complex were unsecured. The property was referred to the BSC, which heard the case in January 2015. At the January hearing, the BSC issued fines of (1) \$1,000 per week if the property failed to create a compliance plan within 30 days; (2) \$1,000 per week if the property had no engineer’s plan within 30 days; and (3) \$1,000 per week until the units are unoccupied. As of April 2015—**more than a year after the code violations came to light**—the code issues had not been addressed.

⁵⁶ Addressing Problem Properties, *supra* note 2, at 20, 25-26.

Case Illustration: 1127 E. 52nd Street

In **September 2013**, a code inspector identified multiple code violations at the apartment complex at 1127 E. 52nd Street, including a stairway support system showing signs of deterioration and cracking; overhead support joist buckling; an electrical supply cable installed too close to the gas supply; a compromised foundation; and damage to the structure's frame from a fire. Multiple notices of violation were issued in 2014 that were unaddressed. The code officer referred the case to his supervisors for BSC review on **July 21st 2014**. The case was set for BSC hearing on **October 2014**, but this meeting was cancelled, and the BSC did not meet again until December 2014. The BSC finally heard the case in **December 2014** and held the property in abeyance for 30 days to collect additional information on whether the tenants needed to be vacated from the property and the property demolished given the hazardous conditions. The BSC next took up the case on **March 25, 2015**, when it finally issued an order giving the property owner 30 days to correct the violations or else pay a fine of \$7,000 a week. **The BSC order was issued 18 months after the initial hazards were identified at the property.** The most recent code logs we received for the property state that the dangerous conditions have not been addressed.

Failure to Recover Enforcement Costs Imposed by Repeat Offender Properties

One of the most disconcerting aspects of Austin's code enforcement program is the strain that enforcement imposes on city resources and, ultimately, the taxpayers. Other cities have addressed this strain on resources by moving towards a full cost recovery model for code enforcement. If the violation is corrected by the first re-inspection, the fee can be waived, but otherwise, the owner is responsible to paying for the full costs of the inspection and all re-inspections until the code issue is addressed. Through its full cost recovery program, the **City of New Orleans** collected \$2.1 million in code enforcement fines and fees for 2014.⁵⁷

To help recover code enforcement costs, several cities have also adopted a re-inspection fee for any follow-up inspections that have to be conducted until a code violation is fixed. For example, **Minneapolis** charges a \$100 re-inspection fee. If the fee is not paid within 30 days, the owner is charged an additional fee of 50%.⁵⁸ **San Diego** charges a \$288 re-inspection fee.

⁵⁷ Ellen Lee, City of New Orleans, *Funding and Beyond: Building a Code Enforcement Budget*, presentation at 2015 Reclaiming Vacant Properties Conference (May 21, 2015), available at http://www.communityprogress.net/filebin/Lee_-_Funding_and_Beyond.pdf.

⁵⁸ Flyer for Minnesota Reinspection Fee Program, available at http://www.ci.minneapolis.mn.us/www/groups/public/@regservices/documents/webcontent/convert_256133.pdf

Best Practice: Full Cost Recovery

For **Chula Vista's** cost recovery program, the City tracked time spent on each code case, as well as costs associated with enforcement, including vehicle costs, administrative support, and other back office costs. The City found that a fair estimate of the cost to inspect and enforce code violations was \$125 for every hour of the code officer's time spent on the case. After a violation is found, the City sends the owner a bill. If a property comes into compliance within the time period on the notice of violation, the charge is waived.⁵⁹

Raleigh, North Carolina has a Probationary Rental Occupancy Permit for repeat offenders, which assesses a \$500 annual fee to help cover the program's administrative costs. Landlords in the program must also attend a city-approved residential property management course. The program incentivizes landlords to swiftly address code violations.

Very few of the costs imposed by problem properties in Austin are paid for by the owners. In our review of code records, we observed case after case where code staff made repeated visits to a rental property over the course of a year or longer in attempts to make the property safe, and the property paid nothing towards those costs.

As mentioned above, only 6 ROP properties have received citations for building-related conditions since October 2013. And from these citations, ROP properties have paid a total of \$3,001 in fines.

The ROP ordinance imposes a flat \$100 registration fee, regardless of the size of the property. This fee in no way reflects the costs of operating the program. The median ROP property has 16 buildings, and the periodic inspection and processing of violations found at these properties involves dozens of hours of staff time. In March of 2015, around eight Code inspectors spent half a day inspecting one ROP property, at a cost of more than \$800.⁶⁰ This figure does not include the many hours each inspector would later spend logging violations into the City's database system and conducting follow-up inspections—nor does it cover the many hours spent investigating the violations that led to the registration of the property on the repeat offender list. The ROP ideally would cover the costs of the comprehensive inspection and any follow-up inspections.⁶¹

These fees and fines come nowhere close to recovering the costs that Code has invested to make repeat offender properties safe for tenants.

⁵⁹ Doug Leeper, Code Enforcement Solutions, *Funding and Beyond: Building a Code Enforcement Budget*, presentation at 2015 Reclaiming Vacant Properties Conference (May 21, 2015).

⁶⁰ According to public records, a code compliance Investigator in Austin is paid \$25.76 per hour. <http://www.bizjournals.com/austin/news/2015/02/02/database-searchcity-of-austin-salaries.html>. Eight investigators working four hours amounts to \$824.31.

⁶¹ Mallach, *supra* note 4, at 61.

SECTION 5. RECOMMENDATIONS

We have identified a number of policies to improve the City's identification, monitoring, and enforcement of code violations at problem properties and, in particular, ROP properties.

Recommendations to Improve Identification of Problem Properties

1. Conduct immediate comprehensive inspections of ROP properties. The 2-5-2 Repeat Offender Ordinance allows Code to conduct a comprehensive inspection of an ROP property once a year. We recommend that the Code Department conduct these inspections immediately upon the registration of each ROP property.
2. Adopt a comprehensive rental registration program. Continuing a recommendation from a prior report, we recommend that the City of Austin 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.
3. Identify owners with high volumes of problem properties. We recommend that the City of Austin emulate the City of Dallas's new High Impact Landlord Program. The program, which is undergoing implementation, utilizes objective criteria to identify high-volume owners of smaller-sized problem properties in the city. Dallas plans to then inspect each of these properties and engage in targeted and aggressive enforcement actions against those owners that do not address their properties' major code violations.
4. Proactively issue Notices of Violation (NOVs) for publicly-visible dangerous code violations. We recommend the Code Department adopt a policy requiring code officers to issue NOVs for dangerous code violations that code officers observe while traveling through a neighborhood. We also recommend that other city officials who come into contact with rental properties receive basic training on recognizing potential major code violations and reporting these violations to the Code Department.
5. Conduct regular code meetings with neighborhood associations. Neighbors often know best which properties in a neighborhood are creating problems for the community and are creating dangerous conditions. We recommend that code staff meet regularly with neighborhood associations to assist in the identification of problem properties.

Recommendations to Improve Monitoring of Repeat Offender Properties

1. Increase public access to code violations. As required by the 2-5-2 Ordinance, the Code Department should develop an online tool through which the public can access detailed information about all repeat offender properties, including the outcome of the violations, regardless of whether the properties have registered. We also

recommend the City adopt a publicly-accessible database for code violations at all properties, allowing for residents to track the status of complaints and for prospective tenants to assess the safety and habitability of properties.

2. Revamp City's databases for problem properties. The City's databases needs to be revamped in order 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 the repeat offender list when they qualify under the ordinance.
3. Produce detailed quarterly code reports. We recommend the creation of 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. Detailed reports will also allow Code to work towards more targeted enforcement goals and create action plans to meet those goals. We recommend the reports include the following for ROP properties and all rental properties in the City (separated from other types of code cases), recognizing that the code database likely needs to be revamped first to allow for these report to be efficiently run:
 - The average and median time between: (1) code complaints and initial inspections for these properties, (2) notices of violation and follow-up inspections; (3) initial code complaints and voluntary compliance; (4) initial code complaints and final compliance (whether voluntary or through legal or administrative action); and (4) initial code complaints and any hearings before the Municipal Court or the Buildings and Standards Commission.
 - The number of citations issued, the outcome of the municipal court action on the citation, and the amount of the fine paid, if any.
 - The status of all BSC cases, including the number and amount of any fines ordered by the BSC and the amount of the fine ultimately assessed against the property owner and paid by the property owner. For each BSC order, the report should also include information on how long it took for the property to come into compliance with the order. A regular report that includes this information would be extremely useful for assessing the effectiveness of the BSC.

Recommendations to Improve Code Enforcement Against Repeat Offender Properties

1. Enforce NOV and BSC deadlines. The Code Department should change its practices to 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. The Department should then 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. Any extension of time in an NOV should be conditions on approval by the Department Director.

2. Hold ROP properties accountable for not registering. The Code Department should implement swift and aggressive enforcement measures against ROP properties that fail to timely register, including administrative fines and graduated late fines, then criminal citations or even BSC action for properties that still fail to register.
3. Bring Chapter 54 actions against egregious code violators. 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.
4. Assess potential issues with Austin Municipal Court. We recommend a deeper investigation into the issues raised by code staff with delays in enforcement of citations at the Municipal Court and with hesitancy by prosecutors to pursue fines.
5. Create a community prosecutor program. Continuing our recommendation from our prior report,⁶² the City of Austin should 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 enforcement actions against problem properties. In Dallas, the community prosecutors have their own teams of code inspectors to bring enforcement actions against problem properties.
6. Develop specific performance goals for ROP properties and improve speed for responding to ROP cases. The City has performance goals for code enforcement, but these are not broken out by different types of properties, issues, or enforcement actions. We recommend the City create a specific set of performance goals for ROP properties and then regularly assess progress towards these goals. Performance goals should include the average number of days to compliance and the percentage of ROP cases brought into compliance within different ranges of days. These performance goals should include specific goals to increase Code's responsiveness to complaints at repeat offender properties, which appear to be slower than Code's average response rates.
7. Hire an independent auditor. We recommend the City 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, and to also assess how dangerous and repeat offender cases can receive higher prioritization of code resources. We recently heard a presentation by one code enforcement consultant who reported that a code audit can improve efficiency by as much as 25%.⁶³ The last audit of the Code Department appears to have been done in 2010.⁶⁴ Several of the recommendations in this audit have still not been implemented.
8. Adopt full-cost recovery policies for problem properties. We recommend that the City adopt policies to recover the enforcement costs imposed by ROP properties and other problem properties. Some specific policies to consider:

⁶² Addressing Problem Properties, *supra* note 2, at 33, 64.

⁶³ Mark Frater, LEANFirm, Inc., *Funding and Beyond: Building a Code Enforcement Budget*, presentation at 2015 Reclaiming Vacant Properties Conference (May 20, 2015).

⁶⁴ Office of the City Auditor, Performance Audit of the Code Compliance Function (Mar. 23, 2010), available at <https://www.austintexas.gov/sites/default/files/files/Auditor/au09115.pdf>.

- Adopt a graduated inspection fee for ROP properties, based on the number of units at the property, and the cost to conduct the inspections.
- For code violations involving unsafe building conditions, assess a fee whenever a re-inspection of the code violation is conducted.