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Preservation of Affordable Housing

Review and Comparison of Authority and Approaches CHICAGO/MINNEAPOLIS



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I. INTRODUCTION

Healthy, safe, and affordable housing is essential to human and community wellbeing. Many communities throughout the United States are experiencing a shortage of affordable housing and, more specifically, healthy and safe affordable housing. Chicago and Minneapolis are two (2) of these cities. Although the legal authority governing the landlord-tenant relationship and enforcement of the housing code in Chicago and Minneapolis is similar in many ways, there are some notable differences that impact how each municipality approaches (and is able to approach) its efforts to preserve affordable housing and to ensure the available affordable housing is healthy and safe.

This Report contains a review of the relevant legal authority (derived from both city ordinance and state statute) in Chicago (Chicago Municipal Code and Illinois Statutes) and Minneapolis (Minneapolis Code of Ordinances and Minnesota Statutes), along with a comparison of that legal authority. In addition, this Report contains brief summaries of the primary approaches in Chicago (Troubled Buildings Initiative) and Minneapolis (Problem Property Unit), along with a comparison of these two (2) approaches.

II. BACKGROUND

On June 7, 2018, representatives of Family Housing Fund (FHF) convened a meeting with Jack Markowski of Community Investment Corporation in Chicago, City government officials, and other systems stakeholders to learn about the Chicago Troubled Buildings Initiative and to inform strategies for addressing troubled buildings in Minneapolis. At this meeting, Mr. Markowski offered the below list of city and state tools available in Chicago to preserve rental housing:

- Chicago Drug and Gang House Ordinance
- Chicago Residential Landlord Tenant Ordinance
- Right of Property Owners and Tenants Within 1,200 Feet to Intervene in Housing Court
- Troubled Buildings Initiative
- Vacant Buildings
 - Vacant Building Ordinance
 - Forfeiture and Abandonment Statutes
 - Distressed Condo Act

The contents of this Report are based upon research and review, along with comparison and analysis, of the relevant Chicago legal authority related to the items on the above list and research and review of comparable Minneapolis legal authority. The purpose of this Report is to identify gaps and opportunities, and to determine what practices and approaches could be implemented and what tools could be utilized in Minneapolis to preserve affordable housing. This Report will be used to inform FHF's strategies for addressing troubled buildings in Minneapolis and to help guide the city in its efforts to improve physical conditions and management of troubled buildings in Minneapolis.

III. AUTHORITY

A. REVIEW

I. Chicago

i. City Authority – Chicago Municipal Code

a. Residential Landlord and Tenant Ordinance

The Chicago Code contains a chapter specifically related to landlords and tenants and governance of the landlord-tenant relationship – the “Residential Landlord and Tenant Ordinance.” The stated purpose of the ordinance is “to protect and promote the public health, safety and welfare of its citizens, to establish the rights and obligations of the landlord and the tenant in the rental dwelling units, and to encourage the landlord and the tenant to maintain and improve the quality of housing.”¹ This is the general ordinance governing rental housing in Chicago, and contains the requirement that the landlord maintain the premises in compliance with all applicable provisions of the ordinance and promptly make any and all repairs necessary to fulfill this obligation.²

Specifically related to habitability and repairs, the ordinance contains a nonexclusive list of the circumstances that constitute a landlord’s material noncompliance with the requirement that a landlord maintain the premises in a habitable condition,³ along with remedies available to tenants related to a landlord’s noncompliance.⁴ One of the remedies set forth in the ordinance is that if a noncompliance is not remedied by the landlord within the specified period, the tenant may terminate the lease.⁵ Other remedies include rent abatement,⁶ recovery of damages and reimbursement of cost of repairs (minor defects),⁷ withholding of rent,⁸ and injunctive relief and/or recovery of damages.⁹ There are also a number of remedies specifically related to a landlord’s failure to provide essential services in violation of the lease.¹⁰

b. Drug and Gang House Ordinance

The Chicago Code contains a section, commonly referred to as the “Drug and Gang House Ordinance,” that sets forth certain uses of premises (including rental housing) that constitute a public nuisance.¹¹ The stated uses are “prostitution, illegal gambling, illegal possession or delivery of or trafficking in controlled substances, or any other activity that constitutes a felony, misdemeanor, business offense or petty offense under federal, state or municipal law,” and the ordinance specifically sets forth when any of these uses is considered to be a public nuisance.¹²

¹ Chicago, Illinois, Municipal Code, §5-12-010 (2018).

² Id. at §5-12-070.

³ Id. at §5-12-110.

⁴ Id. at §5-12-110(a).

⁵ Id. at §5-12-110(a).

⁶ Id. at §5-12-110(b).

⁷ Id. at §5-12-110(c).

⁸ Id. at §5-12-110(d).

⁹ Id. at §5-12-110(e).

¹⁰ Id. at §5-12-110(f).

¹¹ Id. at §8-4-090(a).

¹² Id. at §8-4-090(a).

Pursuant to the ordinance, “any person who owns, manages, or controls any premises” who encourages or permits an illegal use set forth in this ordinance or fails to implement reasonable and warranted abatement measures articulated in any notice within the prescribed time period or otherwise agreed to, or other abatement that would successfully abate the nuisance, is subject to a fine.¹³ Each day the violating use is allowed to continue is considered a separate and distinct offense, and the person allowing the use to continue will be fined.¹⁴ A person may be found in violation of this ordinance regardless of whether an order of abatement or notice has been issued.¹⁵

In addition, if a public nuisance exists under this ordinance, the commissioner of buildings or other authorized representative of the city may bring an action in court to abate the public nuisance, and the presiding authority will issue an order of abatement upon a finding of a public nuisance.¹⁶ The order of abatement will require the defendant (owner, manager, or other person in control of the premises) to take measures reasonably calculated to prevent the recurrence of the illegal activity, which may include, but are not limited to, making improvement to the premises.¹⁷ Further, when the commissioner of buildings, the superintendent of police, or other authorized representative of the city reasonably believes a premises constitutes a public nuisance under this ordinance, he or she will give written notice articulating reasonable abatement measures to the person who owns or controls the premises.¹⁸ Failure to implement the abatement measures set forth in the notice or agreed to within the specified time period constitutes a violation of the ordinance.¹⁹

c. Vacant Building Ordinance

The Chicago Code contains a number of sections relating to vacant buildings, or otherwise dangerous, unsafe, abandoned, or improperly maintained buildings, commonly referred to collectively as the “Vacant Building Ordinance.”

I.) Vacant Building Registration

The ordinance contains two (2) sections relating specifically to vacant buildings. Pursuant to these sections, the owner of any vacant building must register such building as vacant with the department of buildings, and must maintain the registration as long as the building remains vacant, and must pay all fees associated with the registration throughout the term of the vacancy.²⁰ The owner, after registering the building, is required to provide access to the city to conduct an inspection of the building to determine compliance with the municipal code.²¹ Any owner who violates the ordinance is subject to fine for each offense, and every day that a violation continues constitutes a separate and distinct offense.²² Fines assessed under this ordinance are recoverable from the owner and will be lien on the property.²³

Similarly, the mortgagee of any vacant building which is not registered must register such building as vacant with the department of buildings, and must maintain the registration as long as the building remains vacant, and must pay all fees associated with the registration throughout the term of the

¹³ Id. at §8-4-090(b).

¹⁴ Id. at §8-4-090(b).

¹⁵ Id. at §8-4-090(b).

¹⁶ Id. at §8-4-090(d).

¹⁷ Id. at §8-4-090(d).

¹⁸ Id. at §8-4-090(e).

¹⁹ Id. at §8-4-090(e).

²⁰ Id. at §13-12-125(a)(1).

²¹ Id. at §13-12-125(a)(1).

²² Id. at §13-12-125(d).

²³ Id. at §13-12-125(d).

vacancy.²⁴ Any mortgagee who violates the ordinance is subject to fine for each offense, and every day that a violation continues constitutes a separate and distinct offense.²⁵

2.) Dangerous or Unsafe Buildings

Pursuant to the ordinance, if any building that is found in a dangerous or unsafe condition or uncompleted and abandoned, the building commissioner or fire commissioner must notify the owner of the building and direct the owner to put the building in safe condition, or to enclose or to demolish the building.²⁶ If, after the prescribed time period has passed, the owner has not put the building in a safe condition, or has not enclosed or demolished the building, the building commissioner or fire commissioner may recommend initiation of proceedings and upon receipt of such recommendation, counsel for the city may initiate a court action to obtain a court order to repair, enclose, or demolish the building.²⁷ Further, the ordinance states, the cost of such demolition, repair, or enclosure is recoverable from the owner or owners of the building and will be a lien on the property.²⁸

3.) Improperly Maintained Buildings

Pursuant to this ordinance, certain buildings and structures are deemed public nuisances subject to abatement proceedings.²⁹ These public nuisances generally include buildings and structures that: (1) are found to be vacant and open; (2) contain a code violation that is imminently dangerous and hazardous; (3) require repairs the cost of which exceed the market value of the building; (4) are owned by an owner who has failed to correct code violations addressed by an order or judgment; and (5) is subject to enforcement proceedings by the city.³⁰ When the inspection of such a building reveals the building is a public nuisance, the commissioner of buildings with concurrence of counsel for the city, may initiate abatement proceedings.³¹ If the presiding authority finds by a preponderance of the evidence that the building or structure is a public nuisance, that authority's abatement order may include, but is not limited to: correcting all code violations; making repairs or improvements; rendering the building fit for human habitation; or hiring a property manager or a receiver appointed by the presiding authority.³²

In addition, if requested and determined to be reasonable in light of relevant factors, the presiding authority may order assignment to the city or a third party designated by the city or forfeiture to the city of all of the defendant's rights, title, and interest in the real estate.³³ Any person who fails to comply with the presiding authority's abatement order is subject to further penalties and the commissioner of buildings, with the concurrence of counsel for the city, may seek an order from the presiding authority authorizing the commission to repair, alter, improve, or otherwise address the building or structure that is the public nuisance.³⁴ Counsel for the city is also authorized to bring an action in court to abate the public nuisance and may seek an order requiring the owner of the property to abate the nuisance.³⁵

²⁴ Id. at §13-12-126(a)(1).

²⁵ Id. at §13-12-126(c).

²⁶ Id. at §13-12-130.

²⁷ Id. at §13-12-130.

²⁸ Id. at §13-12-130.

²⁹ Id. at §13-12-145(a).

³⁰ Id. at §13-12-145(a).

³¹ Id. at §13-12-145(b)(1).

³² Id. at §13-12-145(b)(2).

³³ Id. at §13-12-145(b)(2).

³⁴ Id. at §13-12-145(b)(3).

³⁵ Id. at §13-12-145(c).

Any owner or other person managing or controlling the building or structure that is a public nuisance will be fined in accordance with the ordinance for each day the nuisance has existed until the nuisance is abated.³⁶ The amount of the fine, along with the cost of repairs, alterations, or improvements, and the costs of bringing the abatement proceeding, including inspector's and attorney's fees, are recoverable from the owner and will be a lien on the property upon which the building or structure is or was located.³⁷ The lien for the cost of repairs, alterations, demolition, receivership, vacating, or enclosing the building will be a first lien upon the real estate and the rents and issues thereof, and will be superior to all prior assignments of rents and all prior existing liens and encumbrances, except taxes.³⁸

ii. State Authority – Illinois Statutes

a. Right of Property Owners and Tenants to Initiate Proceedings

Pursuant to Illinois Statutes, certain property owners and tenants have the independent right to initiate proceedings related to dangerous or unsafe buildings. Any owner or tenant of real property within 1,200 feet in any direction of any dangerous or unsafe building located within the territory of a municipality with a population of 500,00 or more may file a request that the municipality apply to the court for an order permitting the demolition or repair of the building.³⁹ If the municipality fails to institute an action within the prescribed time period, the owner or tenant of real property within 1,200 feet in any direction of the building may institute a court action seeking an order compelling the owner to demolish or repair the building or to cause the building to be demolished or repaired.⁴⁰ The cost of repair or demolition will be the responsibility of the owner of the building.⁴¹ If the owner fails to follow the directive of the court order, the owner or tenant who instituted the action may request that the court join the municipality as a party to the action.⁴² If the municipality is joined, the court may order the municipality to demolish or repair the building or to cause the building to be demolished or repaired.⁴³ If the municipality or someone other than the owner pays the cost of demolition or repair, the cost, including court costs, attorney's fees, and other costs related to enforcement, is recoverable from the owner of the real estate and is a lien on the property which is superior to all prior existing liens and encumbrances, except taxes.⁴⁴

b. Right of Municipality to Seek Injunction and Appointment of Receiver

Illinois Statutes allows a municipality to seek an injunction and appointment of a receiver upon a determination that any building or structure in the municipality fails to conform to the minimum standards of health and safety as set forth in the municipal code.⁴⁵ The municipality can exercise this right when the owner of such a building fails, after due notice, to bring the property into conformance, and the municipality may apply to the court for an injunction requiring compliance with the violated ordinances

³⁶ Id. at §13-12-145(e).

³⁷ Id. at §13-12-145(e).

³⁸ Id. at §13-12-145(e).

³⁹ Ill. Stat. 65 ILCS 5, §11-31-1(b).

⁴⁰ Id. at §11-31-1(b).

⁴¹ Id. at §11-31-1(b).

⁴² Id. at §11-31-1(b).

⁴³ Id. at §11-31-1(b).

⁴⁴ Id. at §11-31-1(b).

⁴⁵ Id. at §11-31-2(a).

or for other order the court deems necessary or appropriate to secure compliance by the owner.⁴⁶ Upon such an application, the court may order appointment of a receiver to cause the building or structure to conform.⁴⁷

c. Distressed Condominium Act

Illinois Statutes contain a section specifically related to distressed condominium property, commonly referred to as the “Distressed Condominium Act.” For purposes of this section, “[d]istressed condominium property” is generally defined as “a parcel containing condominium units which are operated in a manner or have conditions which may constitute a danger, blight, or nuisance to the surrounding community or to the general public.”⁴⁸ The municipality may commence a proceeding under and request relief under this section.⁴⁹ Pursuant to this statute, if a court finds that the property meets the definition of a “distressed condominium property,” the court may order appointment of a receiver.⁵⁰ A receiver appointed under this section has possession of the property and has full power and authority to operate, manage, and conserve the property, including the authority to delegate managerial functions.⁵¹

d. Abandoned Housing Rehabilitation Act

Illinois Statutes contain a section specifically related to abandoned housing, commonly referred to as the “Abandoned Housing Rehabilitation Act.” Pursuant to this section, an organization may petition for temporary possession of property under certain circumstances.⁵² In support of its petition, the organization must submit a plan for rehabilitation of the property to the court and present evidence that the organization has adequate resources to rehabilitate and thereafter manage the property.⁵³ If the court approves the petition, the court will enter an order approving the rehabilitation plan and granting temporary possession of the property to the organization.⁵⁴ During the organization’s temporary possession, the owner may petition the court to regain possession, but the owner will be responsible for reimbursing the organization’s expenditures,⁵⁵ and after two (2) years from the date of the order granting temporary possession, the organization may petition the court to obtain permanent possession.⁵⁶

2. Minneapolis

i. City Authority – Minneapolis Code of Ordinances

a. Housing Maintenance Code

The Minneapolis Code contains a chapter specifically related to landlords and tenants and governance of the landlord-tenant relationship – the “Housing Maintenance Code.” The stated purpose of the Housing Maintenance Code is “to protect the public health, safety and welfare” and the code,

⁴⁶ Id. at §11-31-2(a).

⁴⁷ Id. at §11-31-2(a).

⁴⁸ Ill. Stat. 765 ILCS 605, §14.5(a) (2017).

⁴⁹ Id. at §14.5(b).

⁵⁰ Id. at §14.5(c).

⁵¹ Id. at §14.5(e).

⁵² Ill. Stat. 310 ILCS 50, §3 (2017).

⁵³ Id. at §4 (2017).

⁵⁴ Id. at §5 (2017).

⁵⁵ Id. at §7 (2017).

⁵⁶ Id. at §9 (2017).

among other things, establishes minimum standards for housing, determines the responsibilities of owners, operators, and occupants of housing, and provides for administration and enforcement of the code.⁵⁷ This is the general ordinance governing rental housing, specifically enforcement of the Housing Maintenance Code, in Minneapolis.

b. Revolving Repair Fund

The Minneapolis Code establishes a revolving fund for rental property repair that is maintained by the department of regulatory services and known as the “Housing Maintenance Code Revolving Repair Fund.”⁵⁸ The fund may be drawn upon by administrators appointed by the court to make necessary repairs, and monies to perform such repairs, including approved administrative expenses and fees, will come from the Fund.⁵⁹ The ordinance allows for all costs and fees incurred by the court-appointed administrator to be recoverable from the property owner, and if the director of regulatory services deems it appropriate, disbursement from the fund may be recovered through the special property tax assessment process.⁶⁰ The fund was initially created with a one-time payment from the Family Housing Fund.

The fund may also be accessed to address emergency violations of this ordinance. Pursuant to this ordinance, the city must maintain an emergency violation hearing board that can be engaged if a housing repair emergency arises.⁶¹ If an emergency is determined to exist, the office declaring the emergency will immediately notify the board of the emergency, and the board will set a hearing.⁶² If the board finds that the repairs have not been made within the prescribed time period, that the emergency continues to exist, and that the emergency is not caused by the occupant of the premises, the board will issue an order which may include ordering the city to remedy the violation.⁶³ If the city is ordered to make the repairs, the monies for making the repairs will come from the fund and all costs incurred by the city are recoverable from the owner, using such means, including special assessments, as feasible.⁶⁴

c. Conduct on Licensed Premises

The Minneapolis Code specifically addresses conduct on licensed premises and imposes a responsibility on the licensees of rental housing to take appropriate action, with the assistance of crime prevention specialists or other assigned police department employees, following conduct by tenants or their guests which is determined to be disorderly to prevent further violations.⁶⁵ Activities constituting violations of this ordinance, and triggering the licensee’s responsibility include: gambling; prostitution and acts relating thereto; unlawful sale or possession of controlled substances; unlawful sale of alcohol; noisy assemblies; unlawful possession, transportation, sale, or use of a weapon; and disorderly conduct that disturbs the peace and quiet.⁶⁶ Upon determination that the premises was used in a disorderly manner, the licensee will be notified and directed to take appropriate action with the assistance of the police department to prevent further violations.⁶⁷ If the disorderly manner is allowed to continue, oversight and

⁵⁷ Minneapolis, Minnesota, Code of Ordinances, §244.20 (2018).

⁵⁸ Id. at §244.185

⁵⁹ Id. at §244.185.

⁶⁰ Id. at §244.185.

⁶¹ Id. at §244.180(a).

⁶² Id. at §244.180(b).

⁶³ Id. at §244.180(d).

⁶⁴ Id. at §244.180(d)(3).

⁶⁵ Id. at §244.2020(a).

⁶⁶ Id. at §244.2020(a).

⁶⁷ Id. at §244.2020(c).

penalties may escalate and may include: submission of a written management plan by licensee;⁶⁸ completion of a property owner's workshop;⁶⁹ or denial, revocation, suspension, or nonrenewal of rental license.⁷⁰

d. Vacant Building Ordinance

The Minneapolis Code contains a number of sections relating to vacant buildings, or buildings that may otherwise present a nuisance, commonly referred to collectively as the "Vacant Building Ordinance."

1.) Nuisance Condition

The ordinance sets forth the circumstances under which a building will be deemed a nuisance condition, specifically identifying a nuisance condition as any building that is unfit for occupancy as it fails to meet the minimum standards set out by city ordinances or is unfit for human habitation because it fails to meet the minimum standards set out in the Housing Maintenance Code.⁷¹ A building that is determined to be a nuisance condition may be rehabilitated or razed by order of the director of regulatory services,⁷² but before a decision is made regarding the fate of the building, the director of regulatory services will examine the building and ascertain whether the nuisance condition should be abated through rehabilitation or demolition.⁷³ In making this decision, certain criteria are to be considered, among them are the need for neighborhood housing, the impact on the neighborhood and the ability of the neighborhood to attract future residents, the capacity of the neighborhood to use the property, the estimated cost of rehabilitation, and the availability of funds for rehabilitation to the owner.⁷⁴

2.) Alternatives to Demolition

The ordinance sets forth the following alternatives to demolition: (1) ordering the owner of any nuisance condition to rehabilitate the building;⁷⁵ (2) if the owner is, for any reason, unwilling or unable to immediately rehabilitate the building, the city may elect to rehabilitate and assess the cost thereof;⁷⁶ and (3) creation of a revolving fund for housing purposes to be used in the neighborhood for which the funds have been earmarked.⁷⁷ If one of these alternatives to demolition is used, the director of regulatory services will notify the owner of the cost incurred in razing or rehabilitating the building and the owner will be responsible for payment of those costs, together with an administrative fee.⁷⁸ In the event of default of payment by the owner, the cost of such razing or rehabilitating and the administrative fee will be levied and collected as a special assessment against the property.⁷⁹ The city maintains a revolving fund known as the "Nuisance Building Abatement Fund" which may be drawn upon to perform abatement of

⁶⁸ Id. at §244.2020(d).

⁶⁹ Id. at §244.2020(d).

⁷⁰ Id. at §244.2020(e).

⁷¹ Id. at §249.30(a)(2).

⁷² Id. at §249.40.

⁷³ Id. at §249.40(1).

⁷⁴ Id. at §249.40(1).

⁷⁵ Id. at §249.50(a)(1).

⁷⁶ Id. at §249.50(a)(2).

⁷⁷ Id. at §249.50(a)(3).

⁷⁸ Id. at §249.60.

⁷⁹ Id. at §249.60

any building that has been deemed to be a nuisance condition.⁸⁰ All costs and fees incurred abating buildings that are a nuisance condition are recoverable from the property owner.⁸¹

3.) Vacant Building Registration

Pursuant to this ordinance, the owner of a vacant building must register such building with the director of regulatory services.⁸² The registration must include a statement of the period of time the building is expected to remain vacant, along with a plan and timetable for returning the building to appropriate occupancy or for demolition of the building.⁸³ Along with the registration, the owner must pay all fees associated with the registration throughout the term of the vacancy,⁸⁴ and any unpaid fees are levied and collected as a special assessment against the property.⁸⁵ The owner must also provide access to the interior portions of an unoccupied building to permit a complete inspection for the purpose of enforcing and assuring compliance with the code.⁸⁶

ii. State Authority – Minnesota Statutes

a. Landlord and Tenant Statutes

Minnesota Statutes contain a chapter specifically related to landlords and tenants and governance of the landlord-tenant relationship – “Chapter 504B Landlord and Tenant.” Pursuant to this chapter, in every residential lease the landlord has an implied covenant of habitability, which requires the landlord to ensure the premises is fit for its intended use, keep the premises in reasonable repair, and maintain the premises in compliance with applicable state and municipal health and safety laws.⁸⁷

If a tenant has trouble getting a landlord to remedy a violation of the covenant of habitability, the tenant has several options to get the landlord to make necessary repairs: (1) file a complaint with the Minneapolis housing, health, energy, or fire inspector, and ask that the unit be inspected; (2) pursue a rent escrow action by placing the full rent in escrow with the court and asking the court to order the landlord to make repairs;⁸⁸ (3) sue the landlord in district court under the Tenant Remedies Act;⁸⁹ (4) sue the landlord in conciliation court or district court for rent abatement; and (5) use the landlord’s failure to make repairs as a defense to an eviction action or a lawsuit for unpaid rent. If the court finds that a landlord has willfully failed to comply with a court order to remedy a violation, the landlord may be fined and if the landlord willfully fails to comply with an order more than two (2) times in a three (3) year period, the landlord is guilty of a gross misdemeanor.⁹⁰

b. Tenant Remedies Actions

Minnesota Statutes create a cause of action specifically directed at addressing habitability issues. The parties who can bring a tenant remedies action in district court are as follows: (1) residential tenants;

⁸⁰ Id. at §249.65.

⁸¹ Id. at §249.65.

⁸² Id. at §249.80(a).

⁸³ Id. at §249.80(c)(4) and (d).

⁸⁴ Id. at §249.80(j).

⁸⁵ Id. at §249.80(j).

⁸⁶ Id. at §249.80(k).

⁸⁷ Minn. Stat. §504B.161, subd. 1(a)(1-3).

⁸⁸ Id. at §504B.385.

⁸⁹ Id. at §504B.381 and §504B.395.

⁹⁰ Id. at §504B.391.

(2) neighborhood organizations; and (3) state, county, or local department or authority.^{91, 92} The statute authorizes appointment of an administrator to manage and operate the premises,⁹³ specifically making repairs to the property, and the court may enter judgment against the landlord for the services and expenses incurred by the administrator when the administration terminates.⁹⁴ The statutes provide that the Minnesota Housing Finance Agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators for properties for occupancy by low- and moderate-income persons or families, and landlords must repay payments made from this fund.⁹⁵

c. Receivership Property – Priority of Claims

Minnesota Statutes contain a specific provision related to distribution of claims and order of priority, specifically addressing claims secured by liens on receivership property.⁹⁶ Pursuant to this provision, “claims secured by liens on receivership property, which liens are valid and perfected before the time of the appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law” receive priority distribution.⁹⁷ The receiver is reimbursed for the reasonable and necessary expenses of preserving, protecting, or disposing of the collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professionals.⁹⁸

d. Disorderly House Statute

Minnesota Statutes contain a section, commonly referred to as the “Disorderly House Statute,” that sets forth certain uses of premises (including rental housing) that meet the definition of “disorderly house.” Pursuant to the statute, a “disorderly house” is a building, dwelling, place, establishment, or premises in which actions or conduct habitually occur in violation of laws relating to sale of alcohol, gambling, prostitution or acts relating to prostitution, or the sale or possession of controlled substances.⁹⁹ The statute further provides that “[n]o person may own, lease, operate, manage, maintain, or conduct a disorderly house, or invite or attempt to invite others to visit or remain in the disorderly house.”¹⁰⁰ A violation of this provision is a gross misdemeanor¹⁰¹ and the person violating this provision is subject to fine.¹⁰²

e. Nuisance Statute

Minnesota Statutes contain a section that addresses nuisance properties. A nuisance property is any property (including rental housing) in which illegal activity (such as drug dealing or illegal possession of drugs, prostitution, weapons violations, unlawful alcohol sales, and conduct that unreasonably annoys, injures, or endangers the safety, health, or comfort of members of the public) that takes place that is

⁹¹ Id. at §504B.381, subd. 1.

⁹² Id. at §504B.395, subd. 1.

⁹³ Id. at §504B.445, subd. 1 and §504B.425(d).

⁹⁴ Id. at §504B.445, subd. 3.

⁹⁵ Id. at §504B.451.

⁹⁶ Id. at §576.51, subd. 1(1).

⁹⁷ Id. at §576.51, subd. 1(1).

⁹⁸ Id. at §576.51, subd. 1(1).

⁹⁹ Id. at §609.33, subd. 1.

¹⁰⁰ Id. at §609.33, subd. 2.

¹⁰¹ Id. at §609.33, subd. 2.

¹⁰² Id. at §609.33, subd. 3.

unsafe or reduces the quality of life for the residents of the property or the surrounding neighborhood.¹⁰³ A public nuisance also exists when a person maintains or permits a public nuisance to exist.¹⁰⁴ Pursuant to the statute, a prosecuting authority may start a nuisance action if there is reason to believe a nuisance condition is maintained or permitted.¹⁰⁵

B. COMPARISON

See Appendix A attached hereto.

IV. APPROACHES

A. REVIEW

1. Chicago – Troubled Buildings Initiative

One way Chicago uses the legal authority discussed above to preserve rental housing is through the Troubled Buildings Initiative (TBI). Community Investment Corporation (CIC) is Chicago’s leading source of financing for the acquisition, rehabilitation, and preservation of affordable rental housing in Chicago neighborhoods and suburban communities.¹⁰⁶ CIC engages three (3) primary strategies in its approach to revitalizing neighborhoods and keeping rental housing affordable: (i) innovative financing, (ii) community development, and (iii) policy leadership. Community Initiatives, Inc. (CII), CIC’s non-profit affiliate, in partnership with the City of Chicago, administers the TBI, which is one of several initiatives within the community development strategy of CIC’s approach.¹⁰⁷

The goal of the TBI is to use code enforcement and receiverships to improve physical conditions and management of distressed multifamily properties, thereby preventing continued deterioration, which would ultimately result in abandonment and demolition,¹⁰⁸ leading to loss of multifamily housing. The TBI is a tool to help reclaim troubled and abandoned buildings that create dangerous and hazardous conditions for residents, neighbors, and first responders. The TBI works with existing owners and lien holders, primarily through the housing court process with the use of receivers and by the acquisition of distressed notes and liens, to prevent these buildings from deteriorating into a state of disrepair which may lead to displacement, the loss of affordable housing, and unnecessary demolition.¹⁰⁹ The TBI uses a coordinated response from multiple City agencies, departments, community partners, and delegate agencies.¹¹⁰

2. Minneapolis – Problem Properties Unit

One way Minneapolis uses the authority discussed above to preserve rental housing is through the Problem Properties Unit (PPU). The PPU is administered by the Housing Inspections Services Division of Regulatory Services and is charged with identifying the worst properties in Minneapolis and developing action plans to resolve the issues related to these properties.¹¹¹ The PPU includes staff from various City

¹⁰³ Id. at §617.81, subd. 2.

¹⁰⁴ Id. at §617.81, subd. 2.

¹⁰⁵ Id. at §617.81, subd. 4.

¹⁰⁶ <http://www.cicchicago.com/about-2/what-is-cic-2/> (last visited 6/19/2018).

¹⁰⁷ http://www.cicchicago.com/wp-content/uploads/2018/02/CIC_Overview__011618_2018.pdf.

¹⁰⁸ <http://www.cicchicago.com/about-2/troubled-buildings/> (last visited 6/19/2018).

¹⁰⁹ https://www.cityofchicago.org/city/en/depts/dcd/supp_info/troubled_buildinginnitiativetbi.html (last visited 6/19/2018).

¹¹⁰ Id.

¹¹¹ <http://www.ci.minneapolis.mn.us/inspections/ppu/index.htm> (last visited 6/25/2018).

departments that work together to reduce the number and severity of problem properties.¹¹² The PPU also tracks and manages boarded, vacant, and condemned housing in Minneapolis, and reviews condemned properties to determine which properties can be declared a nuisance and can be demolished pursuant to the municipal code.¹¹³ A problem property can be a business, privately-owned home, or rental property, and result from a number of circumstances, and designation as a problem property results from the property needing ongoing attention from housing and fire inspectors, police officers, or other government agencies responding to complaints that range from criminal activity to chronic disrepair.¹¹⁴ The PPU is the City's response to a recognition that problem properties can lead to fractured neighborhoods, reduced quality of life, and draining of resources.¹¹⁵

B. COMPARISON

See Appendix B attached hereto.

V. CONCLUSION

The basic legal authority available in Chicago and Minneapolis to be used to preserve affordable housing is quite similar. However, there is some additional language in the authority and there are some additional provisions in Chicago that are particularly noteworthy, and they are as follows:

- a. An additional stated purpose of the legal authority related to governance of the landlord tenant relationship and code enforcement is to encourage landlords and tenants to maintain and improve the quality of housing.
- b. A tenant whose landlord does not remedy a violation or noncompliance of the code related to habitability and repairs within the prescribed period of time has the right to terminate the lease.
- c. Any owner or tenant of real property within 1,200 feet in any direction of a dangerous or unsafe building may initiate a proceeding to remedy the condition of the building.
- d. If the municipality or someone other than the owner pays the cost of demolition or repair, the cost, including court costs, attorney's fees, and other costs related to enforcement is recoverable from the owner of the property and is a lien on the property superior to all prior existing liens and encumbrances, except taxes.
- e. Any owner managing or controlling a building that is determined to be a public nuisance will be fined, and the amount of the fine, along with the cost of repairs, alterations, or improvements, and the costs of bringing an abatement proceeding, including inspector's and attorney's fees, are recoverable from the owner and are a lien on the property. Further, the lien for the cost of repairs, alterations, demolition, receivership, vacating, or enclosing the building will be a first lien on the real estate and the rents and issues thereof, and will be superior to all prior existing liens and encumbrances, except taxes.
- f. If requested and determined to be reasonable in light of relevant factors, the presiding authority may order assignment to the city or a third party designated by the city or forfeiture to the city of all of the defendant's rights, title and interest in the real estate.
- g. The mortgagee of any unregistered vacant building has the same obligations as an owner to register the vacant building.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id.

Some of this language and these provisions could be used in Minneapolis, and could benefit efforts to preserve affordable housing. However, before seeking to add this language and these provisions to the Minneapolis Code or Minnesota Statutes, there must be an assessment as to whether such additions are appropriate in Minneapolis, and whether they are likely to have the intended positive consequences (and to not have unintended negative consequences). In short, the following questions must first be answered: Should we seek to attain these tools? If so, how should we attain them. Next steps in the process of considering adding such tools to the toolbox in Minneapolis would necessarily include researching and better understanding the impact such language and provisions have on the public, and more specifically those members of the public who are accessing or need to access affordable housing.

Both Chicago and Minneapolis, through the TBI and the PPU, respectively, seek to resolve issues with troubled/problem buildings through the use of legal authority and processes. However, from this similarity, the approaches appear to diverge. The existence of the TBI and the PPU highlight the need for cities to implement intentional approaches to address troubled/problem buildings in an effort to preserve affordable housing. Next steps in continuing to develop this intentional approach in Minneapolis would include researching and better understanding both the TBI and the PPU to inform the evolution of the PPU and/or creation of supplemental initiatives in Minneapolis.

APPENDIX A

COMPARISON OF AUTHORITY

CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<p>RESIDENTIAL LANDLORD TENANT ORDINANCE (CITY) Chicago Municipal Code [Relevant Provisions: §5-12-010; §5-12-070; §5-12-110; §5-12-190]</p>	<p>HOUSING MAINTENANCE CODE (CITY) Minneapolis Code of Ordinances [Relevant Provision: §244.20]</p> <p>LANDLORD TENANT STATUTES (STATE) Minnesota Statutes [Relevant Provisions: 504B.161; §504B.385; 504B.381; §504B.395; §504B.391]</p>	<p>SIMILARITIES:</p> <ul style="list-style-type: none"> • In both Chicago and Minneapolis, there is authority specifically governing the landlord-tenant relationship and housing code enforcement. • The general purpose of the relative authority of Chicago and Minneapolis is the same – to protect public health, safety, and welfare. • In both Chicago and Minneapolis, landlords are required to maintain the premises in a habitable condition, in reasonable repair, and in compliance with applicable housing code provisions. • The remedies available to address habitability and repair issues in Chicago and Minneapolis are largely the same. <p>NOTABLE DIFFERENCES:</p> <ul style="list-style-type: none"> • <i>In Chicago, an additional purpose of the legal authority is to encourage landlords and tenants to maintain and improve the quality of housing.</i> • <i>In Chicago, a tenant whose landlord does not remedy a violation or noncompliance within the prescribed period of time has the right to terminate the lease.</i> • In Minneapolis, if the court finds that a landlord willfully failed to comply with a court order to remedy a violation, the landlord may be fined or subject to criminal liability (gross misdemeanor). • In Minneapolis the authority creates a distinct cause of action to address habitability and repair issues – a Tenant Remedy Action.

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COMPARISON OF AUTHORITY

CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<i>No directly comparable authority.</i>	REVOLVING REPAIR FUND (CITY) Minneapolis Code of Ordinances [Relevant Provisions: §244.185; §244.180]	In Minneapolis, there is a Housing Maintenance Code Revolving Repair Fund that is available to administrators appointed by the court to make necessary repairs. All costs and fees incurred by the court-appointed administrator are recoverable from the property owner and, if necessary, disbursements from the fund may be recovered through the special property tax assessment process. The fund is also available to address emergency violations of the code and there is a specific process to be followed to access the fund in an emergency situation. It does not appear Chicago has directly comparable authority, but it is possible there is a fund available to assist with repairs to rental housing.

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COMPARISON OF AUTHORITY

CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<p>RIGHT OF PROPERTY OWNERS AND TENANTS TO INITIATE PROCEEDINGS (STATE) Illinois Compiled Statutes [Relevant Provision: 65 ILCS 5, §11-31-1]</p> <p>RIGHT OF MUNICIPALITY TO SEEK INJUNCTION AND APPOINTMENT OF RECEIVER (STATE) Illinois Compiled Statutes [Relevant Provision: 65 ILCS 5, §11-31-2]</p>	<p>TENANT REMEDIES ACTIONS (STATE) MINNESOTA STATUTES [Relevant Provisions: §504B.381; §504B.395; 504B.445; §504B.451]</p>	<p>SIMILARITIES:</p> <ul style="list-style-type: none"> Both Chicago and Minneapolis have additional remedies specifically available to address dangerous and unsafe buildings or buildings that are not habitable or are in disrepair. In both Chicago and Minneapolis, the authority allows for appointment of a receiver or administrator to “stand in the shoes of” the landlord, specifically to make repairs and address habitability issues. <p>NOTABLE DIFFERENCES:</p> <ul style="list-style-type: none"> In Minneapolis, the additional remedy – a Tenant Remedies Action – is available to residential tenants, neighborhood organizations, and state, county, or local department or authority. <i>In Chicago, any owner or tenant of real property within 1,200 feet in any direction of a dangerous or unsafe building may initiate a proceeding to remedy the condition of the building.</i> In Chicago, the municipality has a right to seek an injunction if a property fails to conform to the minimum standards of health and safety as set forth in the municipal code. <i>In Chicago, if the municipality or someone other than the owner pays the cost of demolition or repair, the cost, including court costs, attorney’s fees, and other costs related to enforcement is recoverable from the owner of the property and is a lien on the property superior to all prior existing liens and encumbrances, except taxes.</i>

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		<ul style="list-style-type: none">Although the Minneapolis authority allows for judgment against the landlord for the services and expenses incurred by the administrator, the authority is silent in this provision as to whether or not a lien for the amount of such costs is placed on the property.
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CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<i>No directly comparable authority.</i>	RECEIVERSHIP PROPERTY – PRIORITY OF CLAIMS (STATE) Minnesota Statutes [Relevant Provision: §576.51]	In a more general provision related to receivership property, entirely separate from the provision related to tenant remedies actions, Minneapolis authority states that claims secured by liens on receivership property may receive priority distribution, and the receiver is reimbursed for reasonable and necessary expenses of preserving, protecting, or disposing of collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professionals. Although it does not appear Chicago has directly comparable authority, Chicago authority does specifically address imposition of a lien and priority of that lien when repairs are made and paid for by someone other than the landlord. (See immediately above.)

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COMPARISON OF AUTHORITY

CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<p>DRUG AND GANG ORDINANCE (CITY) Chicago Municipal Code [Relevant Provision: §8-4-090]</p>	<p>DISORDERLY HOUSE STATUTE (STATE) Minnesota Statutes [Relevant Provision: §609.33]</p> <p>CONDUCT ON LICENSED PREMISES (CITY) Minneapolis Code of Ordinances [Relevant Provisions: §244.2020]</p> <p>NUISANCE STATUTE (STATE) Minnesota Statutes [Relevant Provision: §617.81]</p>	<p>SIMILARITIES:</p> <ul style="list-style-type: none"> Both Chicago and Minneapolis have authority to address premises on which unlawful conduct or behavior (such as those related to prostitution and acts related to prostitution, gambling, sale of alcohol, sale or possession of controlled substances, sale or use of a weapon, or other criminal acts) occur. In both Chicago and Minneapolis, this type of conduct or behavior is considered a public nuisance. In both Chicago and Minneapolis, liability under this authority is imposed on anyone who owns, manages, leases, operates, maintains, or otherwise controls premises who encourages or permits an unlawful use or public nuisance to exist. In both Chicago and Minneapolis, an authorized representative of the city may bring an action to abate the nuisance. <p>NOTABLE DIFFERENCES:</p> <ul style="list-style-type: none"> Minneapolis authority provides that violation of the Disorderly House Statute is a gross misdemeanor and the person violating the statute is subject to fine. In Minneapolis, violating conduct also includes conduct that unreasonably annoys, injures, or endangers the safety, health, and comfort of member of the public, or conduct that disturbs the peace and quiet. Chicago authority provides that anyone who violates this provision is subject to fine. Minneapolis authority provides that if a

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		disorderly manner is allowed to continue, oversight of and penalties to the licensee may escalate and may include submission of a written management plan, completion of a property owner’s workshop, or denial, revocation, suspension, or nonrenewal of rental license.
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COMPARISON OF AUTHORITY

CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<p>DANGEROUS OR UNSAFE BUILDINGS (CITY) Chicago Municipal Code [Relevant Provision: §13-12-130]</p> <p>IMPROPERLY MAINTAINED BUILDINGS (CITY) Chicago Municipal Code [Relevant Provision: §13-12-145]</p>	<p>ALTERNATIVES TO DEMOLITION (CITY) Minneapolis Code of Ordinances [Relevant Provisions: §249.50; §249.60; §249.65]</p> <p>NUISANCE CONDITION (CITY) Minneapolis Code of Ordinances [Relevant Provisions: §249.30; §249.40]</p>	<p>SIMILARITIES:</p> <ul style="list-style-type: none"> Both Chicago and Minneapolis have authority relating to vacant buildings. In both Chicago and Minneapolis, a building that is found to be in a dangerous or unsafe condition, or uncompleted or abandoned (Chicago) or a public nuisance or unfit for occupancy or human habitation (Minneapolis), may be rehabilitated or demolished. Both Chicago and Minneapolis authority allow for costs associated with the rehabilitation or demolition to be recoverable and collected from the owner of the property. <p>NOTABLE DIFFERENCES:</p> <ul style="list-style-type: none"> In Chicago, although the building commissioner or fire commissioner may recommend initiation of proceedings and counsel for the city can initiate proceedings to order repair or demolish a building, the decision as to the fate of the building lies with the court. In Minneapolis, a building that is determined to be a nuisance condition may be rehabilitated or demolished by order of the director of regulatory services after examination of the building to determine whether the nuisance should be abated by rehabilitation or demolition. In Chicago, the cost of demolition or repair is recoverable from the owner of the building and is a lien on the property. In Minneapolis, the cost of rehabilitation or demolition is levied and collected as special

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		<p>assessment against the property.</p> <ul style="list-style-type: none"> • <i>Pursuant to Chicago authority, any owner managing or controlling a building that is determined to be a public nuisance will be fined, and the amount of the fine, along with the cost of repairs, alterations, or improvements, and the costs of bringing an abatement proceeding, including inspector's and attorney's fees, are recoverable from the owner and are a lien on the property. Further, the lien for the cost of repairs, alterations, demolition, receivership, vacating, or enclosing the building will be a first lien on the real estate and the rents and issues thereof, and will be superior to all prior existing liens and encumbrances, except taxes.</i> • In Chicago, counsel for the city is authorized to initiate a court action to obtain a court order to repair, enclose, or demolish the building. • <i>In Chicago, if requested and determined to be reasonable in light of relevant factors, the presiding authority may order assignment to the city or a third party designated by the city or forfeiture to the city of all of the defendant's rights, title and interest in the real estate.</i> • Chicago authority specifically allows for the presiding authority to appoint a receiver. • In Minneapolis, the city maintains a revolving fund known as the "Nuisance Building Abatement Fund" which is available to abate a building that is deemed to be a nuisance condition and all costs and fees incurred are recoverable from the property owner.
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CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
VACANT BUILDING REGISTRATION (CITY) Chicago Municipal Code [Relevant Provisions: §13-12-125; §13-12-126]	VACANT BUILDING REGISTRATION (CITY) Minneapolis Code of Ordinances [Relevant Provisions: §249.80]	SIMILARITIES: <ul style="list-style-type: none"> Both Chicago and Minneapolis have authority requiring registration of vacant buildings. The relative authority in Chicago and Minneapolis are similar – the owner of any vacant building must register the building, maintain the registration as long as the building remains vacant, and pay all fees associated with the registration. NOTABLE DIFFERENCES: <ul style="list-style-type: none"> <i>In Chicago, the mortgagee of any unregistered vacant building has the same obligations as an owner to register the vacant building.</i> In Chicago, any owner or mortgagee who violates this ordinance is subject to fine, and fines assessed are recoverable from the owner and are liens on the property. In Minneapolis, any unpaid fees related to registration of a vacant building are levied and collected as a special assessment against the property.

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CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
DISTRESSED CONDOMINIUM ACT (STATE) Illinois Compiled Statutes [Relevant Provision: 765 ILCS 605, §14.5]	<i>No directly comparable authority.</i>	<p>In Chicago, the authority contains a provision known as the “Distressed Condominium Act” which specifically permits the municipality to commence a proceeding related to any distressed condominium property. A “distressed condominium property” is a parcel containing condominium units that is in a condition that may constitute danger, blight, or nuisance to the surrounding community or to the general public. If the court finds that the property meets the definition of a distressed condominium property, the court may order appointment of a receiver. Although Minneapolis does not appear to have a directly comparable authority, this type of property may be governed by other provisions related to habitability and repairs of rental housing.</p>

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CHICAGO AUTHORITY	MINNEAPOLIS AUTHORITY	COMPARISON OF AUTHORITY
<p>ABANDONED HOUSING REHABILITATION ACT (STATE)</p> <p>Illinois Compiled Statutes [Relevant Provisions: 310 ILCS 50, §§3, 4, 5, 7, 9]</p>	<p><i>No directly comparable authority.</i></p>	<p>In Chicago, the authority contains a specific provision known as the “Abandoned Housing Rehabilitation Act” which allows an organization to petition for temporary possession of property under certain circumstances. The organization must submit a rehabilitation plan and demonstrate it has sufficient resources to execute the plan and to thereafter manage the property. If the court approves the petition and rehabilitation plan, the organization takes temporary possession of the property and may later petition for permanent possession. During the temporary possession by the organization, the owner may seek repossession of the property, and if repossession is granted, the owner is responsible for reimbursing the organizations expenditures. There does not appear to be directly comparable authority in Minneapolis, although this type of property may be governed by other provisions related to habitability and repairs of rental housing.</p>

APPENDIX B

COMPARISON OF APPROACHES

CHICAGO Troubled Buildings Initiative	MINNEAPOLIS Problem Property Unit
SIMILARITY	
Seek to resolve issues with troubled/problem buildings using legal authority and processes.	
NOTABLE DIFFERENCES	
<ul style="list-style-type: none"> Administered by a nonprofit organization in partnership with the City of Chicago. 	<ul style="list-style-type: none"> Administered by the City of Minneapolis.
<ul style="list-style-type: none"> Part of a larger endeavor to revitalize neighborhoods and keep rental housing affordable and is part of a community development strategy. 	<ul style="list-style-type: none"> Unit within the Housing Inspections Services Division of Minneapolis Regulatory Services and charged with identifying the worst properties and developing action plans to resolve issues related to those properties.
<ul style="list-style-type: none"> Goal is to use code enforcement and receiverships to improve conditions and management of distressed properties. 	<ul style="list-style-type: none"> Its goal is to reduce the number and severity of problem properties.
<ul style="list-style-type: none"> Works with existing owners and lien holders, primarily through the housing court process with the use of receivers and by the acquisition of distressed notes and liens, to prevent troubled and abandoned buildings from deteriorating into a state of repair which may lead to displacement, the loss of affordable housing, and unnecessary demolition. 	<ul style="list-style-type: none"> Tracks and manages boarded, vacant, and condemned housing and reviews condemned properties to determine which properties can be declared a nuisance and can be demolished pursuant to the code.
<ul style="list-style-type: none"> Coordinates with multiple city agencies, department, community partners, and delegate agencies. 	<ul style="list-style-type: none"> Coordinates with staff from various city departments.