



**BUILDING AND STANDARDS COMMISSION
MINUTES
PANEL 1**

**REGULAR MEETING
Date: August 24, 2016**

The Building and Standards Commission ("BSC") convened for a regular meeting on Wednesday, August 24, 2016 at City Hall, Boards and Commission Room, Room 1101, 301 West 2nd Street, Austin, Texas.

Commission Members in Attendance:

Charles Cloutman, Chair; Melissa Orren; Brian Talley; John McIntyre; Andrea Freiburger; Wordy Thompson; Natalya Sheddan; Ashley Holmes and John Green

Staff in Attendance:

Edgar Hinojosa, Assistant Division Manager (ADM) /Acting BSC Coordinator; Marcus Elliott, Division Manager (DM); Patricia Links, Assistant City Attorney; Merlinda Coleman, Program Specialist; Doug Jansky, Administrative Hearing Coordinator; Don Birkner, Assistant Director; Matthew Noriega, Assistant Division Manager; Moses Rodriguez; Investigator; Christina Mendez; Executive Assistant; Hector Aguilera, Program Specialist; Melanie Alley, Program Specialist; Todd Wilcox, Division Manager, Robert Alvarado, Assistant Division Manager; Hilda Martinez, Investigator and Edmund Su, Investigator.

CALL TO ORDER

Chair Charles Cloutman called the Building and Standards Commission (BSC) Meeting to order at 6:31 p.m.

1. CITIZEN COMMUNICATION: GENERAL

a) Citizen Kevin McDonald spoke before the BSC regarding his property, Unit P-5 of the Bellaire Condominiums, located at 4801 S. Congress Avenue, which has been under a yellow-tag violation notice since January 28, 2014 for suspected structural defects associated with the construction of the complex. McDonald noted that while the litigation against the general contractors may be nearing conclusion, the cost of owner assessments, legal fees and other litigation costs may put the repair of the complex in question; and, may leave the unit owners at risk of losing their homes and sustaining heavy monetary losses.

Mr. McDonald requested the following: 1) that the new BSC members review the statement and 11 questions he presented to the BSC on March 3, 2015 relating to city involvement with the construction, permitting and inspection of the complex; and 2) that the City review their permitting and inspection policies to ensure that such situations do not happen again. He also referred to an item on the agenda, i.e., resources to assist property owners with repairs of substandard and dangerous conditions, and stated that he hoped to get a better understanding how the City is attempting to help those in a situation such as his.

Chairman Charles Cloutman added that this can be taken up at the end of the meeting as a future agenda item.

b) Citizen Stewart Hersh spoke before the Commission concerning the Austin Code Department staffing issues.

Mr. Hersh stated that his comments to be made later in the evening regarding local amendments to the Codes, the size of the BSC, and the Repeat Offender Program (ROP), all tie back to the issue of what is expected of good customer service when the resources the City devotes to Austin Code has jumped from staff of 11 to 117.

Citizen Kevin McDonald stated he does not know the status of the litigation and a timeline will be required by the BSC as to the repairs. Chair Cloutman suggested that they not put Bellaire Condos on the agenda next month and Mr. McDonald assess where the Bellaire Condos HOA ends up and then it can be brought back up for discussion and possible action in November or December.

Citizen McDonald stated that the current contact for Bellaire has been Attorney Matt Pearson and has taken over all contact with the City and everybody else. Once the litigation is complete, he will no longer have anything to do with it so a new point person would need to be appointed. Citizen McDonald stated he would talk to the HOA and then get back with Mr. Hinojosa.

2. PUBLIC HEARINGS

ADM and Acting BSC Coordinator Edgar Hinojosa presented the following cases:

A. Appeals

a. CL # 20162013-004696 12503 River Bend Cutbirth Lake Austin Properties

Assistant Division Manager (ADM) /Acting BSC Coordinator Edgar Hinojosa stated that this appeal was settled prior to the meeting.

B. Update Cases

2015-098835	1124 Rutland Drive, Bldg. 1	NAHC Cross Creek Apartments, LLC
2015-098845	1124 Rutland Drive, Bldg. 2	NAHC Cross Creek Apartments, LLC
2015-098847	1124 Rutland Drive, Bldg. 3	NAHC Cross Creek Apartments, LLC
2015-098850	1124 Rutland Drive, Bldg. 4	NAHC Cross Creek Apartments, LLC
2015-098853	1124 Rutland Drive, Bldg. 5	NAHC Cross Creek Apartments, LLC
2015-098854	1124 Rutland Drive, Bldg. 6	NAHC Cross Creek Apartments, LLC
2015-098857	1124 Rutland Drive, Bldg. 7	NAHC Cross Creek Apartments, LLC
2015-098861	1124 Rutland Drive, Bldg. 8	NAHC Cross Creek Apartments, LLC
2015-098864	1124 Rutland Drive, Bldg. 9	NAHC Cross Creek Apartments, LLC
2015-098869	1124 Rutland Drive, Bldg. 10	NAHC Cross Creek Apartments, LLC
2015-098870	1124 Rutland Drive, Bldg. 11	NAHC Cross Creek Apartments, LLC
2015-098871	1124 Rutland Drive, Bldg. 12	NAHC Cross Creek Apartments, LLC
2015-098874	1124 Rutland Drive, Bldg. 13	NAHC Cross Creek Apartments, LLC
2015-098877	1124 Rutland Drive, Bldg. 14	NAHC Cross Creek Apartments, LLC
2015-098880	1124 Rutland Drive, Bldg. 15	NAHC Cross Creek Apartments, LLC
2015-098881	1124 Rutland Drive, Bldg. 16	NAHC Cross Creek Apartments, LLC
2015-098885	1124 Rutland Drive, Bldg. 17	NAHC Cross Creek Apartments, LLC
2015-098886	1124 Rutland Drive, Bldg. 18	NAHC Cross Creek Apartments, LLC
2015-098837	1124 Rutland Drive, Main Office	NAHC Cross Creek Apartments, LLC

ADM and Acting BSC Coordinator Edgar Hinojosa reported that Attorney Mitchell Zoll, who represents the property in this matter, had a conflict on his calendar would not be attending tonight's meeting.

The update was provided by Assistant Division Manager (ADM) Matthew Noriega. ADM Noriega stated that: Code is consistent with the Court's Order; they would be taking measurements tomorrow; and, per Order, have until the end of day Monday to check hot water temperatures and verify compliance. A follow-up hearing before the district judge is set for September 15, 2016. Additionally, all three water loops have been replaced and the permits are in the inspection process. ADM Noriega did not know why the permits had not been finalized. He also noted that there are some remaining structural issues that need to be addressed.

City Attorney Link stated she did not know the status of their permanent financing, but that they have an item before the State Housing and Community Development Commission the next day regarding a portion of the financing related to that property.

3. DISCUSSION AND BRIEFINGS

A. Draft Ordinance that Reduces the Size of the Building and Standards Commission (BSC)

Assistant City Attorney Patricia Link provided details on this topic. She stated that Council passed an August 4, 2016 resolution requesting an ordinance to be brought back September 1 that would take the BSC back down to one panel. Further, if the ordinance were to pass September 1, it would go into effect 10 days later, and by the September meeting, the existing panel of 11 members would make up the full BSC.

Citizen Stuart Hersh also spoke on the topic, stating that in October 2013, he had supported an unrealized council resolution to change the BSC from 7 to 11 members that would consist of two panels (one of 6 and one of 5) with the vision that the Commission could meet year-round in neighborhoods in all council districts. Not until late 2014, when the City was transitioning to a 10:1 council, was the BSC finally expanded to two panels (11 members each). Mr. Hersh added that he supports the resolution and hopes it is a step towards getting the kind of compliance within the property maintenance code that is in the purview of why the Commission meets every month.

The Commission discussed meeting requirements when going remote that included: 1) all meetings are required to be recorded; meetings must be posted within 72 hours prior to the meeting; 2) a suitable place with appropriate recording equipment; and 3) all cases must be noticed 10 days in advance. Chairman Cloutman stated that it would behoove Code to investigate this further.

Chairman Cloutman also stated that he did not understand why there are not many more cases, especially multi-family, coming before the BSC. Assistant Director Don Birkner stated that he would follow-up with the director regarding this matter. Marcus Elliott, DM responded and spoke about reasons the case load seen in previous year at BSC has diminished, i.e., Code has other venues Code has to handle cases - Municipal Court and the new Administrative Hearing Process (AHP); and as part of their customer service, Code was working more with property owners and responsible parties to help them come into compliance, and to help them develop compliance plans.

Assistant City Attorney Patricia Link provided a brief overview of the AHP as opposed to the process followed by the BSC. Commission Member McIntyre requested a monthly report be provided to the BSC on an ongoing basis beginning in September tracking the resolution of cases going before the AHP. DM Marcus Elliott spoke about the process by which the Code Officer determines the route to be taken in each case. Attorney Patricia Link suggested that, assuming Council approves the ordinance, a retreat be set up to include a discussion about the department's processes and how they make those decisions.

Citizen Stuart Hersh stated that the City Code is ambiguous and unclear, and it would be helpful to understand through the language in property maintenance code, local amendments to be adopted or through some administrative procedures, how all this integrates. Chair Cloutman added that, to clean up some of the ambiguity, this point should be brought up when discussing the property maintenance code ideas and when making recommendations to council.

Chairman Cloutman urged the BSC to think about ways to be more efficient, and asked if they would be willing to meet twice monthly as a full commission and/or be willing to resize themselves into parts so as to spread out across the City and handle some of these cases. Discussion followed among Commissioners regarding the size of those panels and how it might limit representation from each district. Assistant City Attorney Link advised that the Commission should be able to act on concerns such as how the BSC operates at a retreat.

B. Proposed Changes to the City's Property Maintenance Code

Code Investigator Moses Rodriguez went over the presentation and provided staff responses to Stakeholder Stuart Hersh's suggestions made in July's BSC meeting as follows: **1) Minimum number of local amendments. 2) Integrate overcrowding and other standards adopted by the City Council for Short-Term Rental (section 404.5); 3) Cross reference applicable state law governing the BSC; 4) Cross reference Austin City Code provisions concerning landfill waste and recycling facilities; testing of cross-connection valves; fire alarms; and fire sprinklers; 5) Align license, inspection, license suspension, and certificate of occupancy revocation provisions for hotels; motels; rooming houses; boarding houses; bed-and breakfast; and short-term rentals standards and cross-reference to zoning and parking requirements adopted by the City Council. Staff does not recommend any changes at this time. 6) Modify insect screen amendment to govern where air conditioning is not the source of ventilation and/or solar screens were required when the house was built; 7) Modify minimum habitable room amendment to retain an existing 120 sq. ft. standard**

and allow 2 adults to sleep overnight per the short-term rental standard for short-term and long-term rental (Sec. 304.14); 8) Modify sleeping room to require to re-instate former “adult” definition to treat children between 2 years old and 12 years old as ½ adult for overcrowding purposes (Sections 404.4.1 and 404.5); 9) Modify temporary heater amendment to require combustible clearance per manufacturer’s expectation (Section 602.2); 10) Adopt IPMC’s standard for Carbon Monoxide Alarms (Section 705); and 11) Cross reference Austin City Code language for notice of intent to suspend and/or revoke certificate of occupancy (Sections 908.2, 909.3, 909 and 910).

In response to Item 1, as referenced above, Commissioner John McIntyre addressed redundancy in different codes that are not all identical. He stated that as a code review, the Commission should be sure that they are compliant with the other codes that say the same thing and make sure that the criteria is consistent to ensure uniform enforcement. He used section 303.2 regarding swimming pool enclosures as an example. Commissioner John McIntyre stated he would provide some examples of conflicting codes to Assistant City Attorney Patricia Link. Vice Chair Jessica stated that if there is an existing swimming pool, the IPMC code gives Code the ability to enforce it to this standard as opposed to Residential Code which may require a higher standard to meet the requirements of new construction, and in this instance, some of the inconsistencies make sense.

Regarding Item 1, staff does not recommend reducing the number of local amendments, and are proposing only 3 new amendment changes, i.e., 304.3 – addressing; section 304. 14 – insect screens; and section 705 – carbon monoxide alarms.

Regarding Item 2, the Code Department is to email a copy of the Short Term Rental Ordinance to the Commissioners prior to the next meeting.

Under Item 4, discussion followed regarding the pros and cons of Code cross referencing certain codes currently under other departments’ authority. Citizen Stuart Hersh stated that his suggestion to cross reference other technical codes was the spirit of letting everyone know all of the rules they are supposed to relate to concerning property maintenance.

Commissioner John McIntyre stated that if all the other codes are already cross referenced, then there would be no reason for repetition here as it is already enforced by Code. Assistant City Attorney Patricia Link stated that would look at the issue and follow-up with the Commission. She also stated that she would talk to the departments about who should appropriately respond to complaints regarding cross-connections.

Discussion ensued regarding the potential for abuse of the code and asking Code Officials to exceed their education, ability or knowledge. Assistant City Attorney Patricia Link stated that that section is about authorizing the Code Official taking immediate steps to address an immediate hazard. Chair Cloutman asked that next time we take this up for action that Code be ready to defend against a structural engineer (109.1)

Citizen Stuart Hersh stated that regarding Item 6, staff is proposing changes to the current property maintenance code requiring that all houses with window units will now require screens, which pertains mostly to poor people. Discussions regarding possible modifications to the proposed amendments followed.

Regarding Item 7, Staff recommends the local amendments mirror the requirements in 2015 IRC so the two codes would be consistent. The habitable space would go down to 2 adults per 70 sq. foot habitable space or room in the house.

Regarding Items 7 and 8, Mr. Hersh states that the current code and amendment concept is that per 70 sq. ft., you can have 2 adults and anyone over 2 years old is counted as an adult. Previous standards stated that any child between age 2 and 12 would be considered ½ an adult and you could have 2 adults and 2 children under 12 in a 120 sq. ft. room. This is consistent with what Council said regarding short-term rental. Mr. Hersh suggested that Code return to the old standards so that long-term rentals should have the same occupancy as those in short-term rentals. Chair Cloutman asked that the Code Department review the amendments and provide a defense why they are not implementing the proposed suggestions.

Staff recommendations for Item 11 is that there is no reason to include a cross-reference to existing City Code language relating notice of intent to suspend or revoke a certificate of occupancy. Citizen Stuart Hersh stated that his logic for Item 11 was that all code provisions would be aligned with each other and be easy to interpret i.e., by referencing in the local amendments to the property maintenance code that these other provisions exist in 25.1 and that the Building Official still has the authority to take action independent of the BSC.

C. Possible Changes to the City's Repeat Offender Program for Problem Rental Properties

DM Todd Wilcox gave a presentation regarding the Repeat Offender Program (ROP) to the BSC in May 2016. He and ADM Matthew Noriega returned to answer questions regarding the current program. ADM Noriega stated that the program currently has 79 properties in the ROP program, 46 of which are multi-family apartment units and 33 are residential; Code has 680 building that they inspect with over 8572 units that are currently under the program; Code has conducted 32 periodic inspections of the 79 properties; and 2 properties have met criteria and come off of the program.

Commissioner Wordy Thompson expressed concern about notice being properly posted at ROP properties and discussion followed regarding Commission recommendations for stricter requirements for posting ROP public notice and required acknowledgements by current and any future tenants.

Code has looked at possible changes to the ordinance. They are limited to 3 inspectors for the entire city. Commission Melissa Orem stated she would send the Commissions' recommendations from the May presentation. DM Todd Wilcox stated that the suggestions to Council might include more detailed requirements where signage should be posted.

Citizen Stuart Hersh suggested that the notice and placarding for ROP should be integrated with the Property Maintenance Code; and that the responsibility should be shifted away from the owner(s) and to the Code Officers, whereby the signage would be posted by the Code Officer near entrances and mailboxes, be photographed, and have the similar language to other signage. ADM Matthew Noriega stated that, if in the ordinance, Code Officers could post and enforce the signage.

Discussion followed regarding the ability for the Commission to request and obtain reports from the Amanda system regarding the ROP. Also discussed was the number of currently registered properties (44) and how the program is working. Assistant City Attorney Patricia Link stated that the ROP properties are tracked by address, however the responsibility lies on the owner. Discussion ensued regarding the possibility of tracking the management companies with multiple ROP properties as well.

D. Resources to Assist Property Owners with Repairs of Substandard and Dangerous Conditions

Public Information and Marketing Manager (PI/MM) Candace Cooper appeared before the Commission to respond to any questions on behalf of the Austin Code Department in regard to this topic.

This item on the agenda was proposed by Commissioner Brian Talley. He stated that after seeing people under duress coming before the Commission and the BSC not having answers pointing them to specific resource; and in light of the discussion of the BSC's inability to speak on behalf of the City in seeking resources for people under these circumstances, he is requesting clarity on what he individually can and can't do in this regard. Commissioner Talley further stated that he would like to: 1) understand the resources and then have the ability to provide those easily; and 2) to have or create resources that do not exist.

Assistant City Attorney Patricia Link suggested that the issue is a conflict of interest or ethics discussion take place either at the next meeting or at the next retreat. She further stated that she will follow-up with the City Clerk's office to get a better understanding of what their concerns were and then can advise accordingly.

Chair Charles Cloutman stated that while there are plenty of resources out there, 80% of the people will fall through those cracks. Funding available for home repair programs here in the City will only fix 150 to 200 houses. The current count of low income home owners in need of major home repair is between 15,000 and 25,000.

PI/MM Candace Cooper stated that the Code Department has the Community Outreach Program in place, which she can provide to the Commission through Code's legal staff. She explained how the process works that includes: identification of individuals requiring assistance; providing resources; referrals to liaison; attending monthly meetings with HHR to identify additional resources; completing assessments; referring cases out; and monitoring cases. Code also relocates certain individuals through the Emergency Tenant Response and Relocation Plan, and partners with Health & Human Services, Neighborhood Housing and Austin Energy. She further stated that the need far exceeds the resources.

Commissioner Talley reiterated his items of priority: 1) authorization by the BSC to speak on behalf of the City in seeking volunteers to assist people in need impacted by code violations; and 2) that the BSC have a list of existing resources that the Commission can cite and knowing exactly where that is. Jessica Mangrum added that she would like clarity on what they can say when the Commission is meeting.

Chair Charles Cloutman added that whenever he wants to make a suggestion to a property representative, he advises that they go through Code, or makes a suggestion for a fix to Code.

4. FUTURE AGENDA ITEMS

- a) Proposed changes to the City's Property Maintenance Code
- b) Possible changes to the City's Repeat Offender program for problem rental properties
- c) Resources and opportunities to assist property owners with repairing substandard and dangerous conditions
- d) proposed venues, topics and dates for BSC retreat
- e) report on the Administrative Hearing Program

ADJOURNMENT

Chairperson Charles Cloutman adjourned the Commission Meeting at 9:59 p.m. on Commission Member John McIntyre and Ashley Holmes' motion. Commission Member Melissa Orren seconded without any objection on a 9-0-0 vote.