



Request for City Council Committee Action From The City Attorney's Office

Date: January 23, 2002

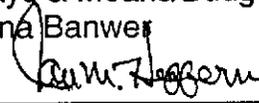
To: Public Safety & Regulatory Services Committee

Referral to: Ways & Means/Budget

Prepared by: Dana Banwer

Phone: 673-2014

Approved by:


Jay M. Heffern
City Attorney

Subject: Status Report on Tenant Remedies Act (TRA) Initiative

Presenter in Committee: Jay Heffern

Recommendation:

1. That the Public Safety & Regulatory Services Committee receives and files the attached Status Report (and attachments thereto) on the TRA Pilot Project Initiative.
2. That the City Council directs the City Attorney's Office and the Inspections Division to report back to this Committee on the results of the Pilot Project in May, 2002.
3. That the City Council directs the following:
 - (a) City Attorney's Office and the Inspections Division refine the proposal of establishing of a revolving fund to finance repairs to properties by court appointed administrators;
 - (b) City Attorney's Office and Inspections Division review the revolving fund proposal with the City's Finance Officer, develop internal procedures including roles and responsibilities, for access to the fund, and repayment of funds committed, and identify potential sources of funds;
 - (c) City Attorney's Office to draft an ordinance for first reading on February 1, 2002, and hearing in this Committee on February 20, 2002.
4. That the City Council directs the City Attorney's Office to draft any necessary amendments to M.C.O. 249, raising the cap on rehabilitation costs for "nuisance" properties.

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): To be determined.
- Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information: See attached report.

**STATUS REPORT TO PUBLIC SAFETY & REGULATORY SERVICES
COMMITTEE ON TENANT REMEDIES ACTION (TRA) PILOT PROJECT
JANUARY 23, 2002**

**BACKGROUND
and
OVERVIEW**

Following direction from the Community Development Committee on February 20, 2001, staff of the City Attorney's Office, and the Inspections Division of the Regulatory Services Department proposed a tenant remedies action (TRA) pilot project to run from July 1, 2001, through August 31, 2001. This proposal was the result of review of current law and procedures as well as input from Legal Aid, the Tenants Union, Minnesota ACORN and Minnesota Multi-Family Housing Association. Following a status report to the City Council in September, 2001, the TRA pilot project was extended through August 31, 2002.

These actions are more fully set forth in the joint City Attorney and Regulatory Services Department Request for City Council Committee Action, dated June 8, 2001. This report contained a 12 point workplan to be implemented during the pilot project period. Following is a status report of the TRA Workplan items.

In addition to the Workplan items, the City Attorney met with Hennepin County District Court Chief Judge Kevin Burke to advise the court of the City's new TRA initiative. Judge Burke expressed interest in and support for this initiative. In addition, the City Attorney's Office met with Hennepin County Housing Court Referee Haeg. Referee Haeg indicated that the Housing Court may have the capacity to set aside a specified time for a City TRA calendar. Referee Haeg also expressed interest in this initiative and pledged the Housing Court's support for this initiative.

Further, the City Attorney's Office and the Inspections Division have met with representatives from Legal Aid, Minnesota Tenants Union, Minnesota ACORN, and Minnesota Multi-Family Housing Association, to review the TRA pilot project and progress on the workplan. These representatives expressed approval of the City's efforts during the TRA pilot project. Also, at the invitation of the Family Housing Trust, the City Attorney's Office, and the Inspections Division met with representatives of the Family Housing Trust to review the City's TRA initiative with that organization. We are scheduled to meet again with representatives of the Family Housing Trust in February, to further discuss the City's TRA initiative, and to explore the feasibility of the City receiving funds from the Family Housing Trust to fund repairs to properties by court-appointed administrators.

Finally, it is difficult to make comparisons between the data for criminal actions versus TRA actions for a variety of reasons, including the length of the reporting period and the nature of the respective actions. We processed a much larger sample of criminal matters than TRA matters during the relevant period, since 431 matters involving rental property were referred for review for criminal complaints. Out of the 431 criminal referrals, 352 complaints were either drafted, or are currently in the typing process, and 79 were not issued (failed to meet guidelines). Of the 289 complaints actually drafted and served on the defendant, 51 were dismissed in court. Of the remaining 238 cases that were heard, 59 resulted in abatement of the underlying orders, or less than 26% of the matters heard.

In contrast, 35 TRA requests were received, including one (1) request for an emergency TRA (lack of heat). Of the 35 requests received, 7 were declined (failed to meet guidelines), and 4 are currently being reviewed. Of the 25 cases heard, 6 were dismissed (4 of which were subsequently re-filed), 12 have been fully abated, and 5 have been partially abated with further compliance hearings scheduled. Abatement has been ordered in the remaining 2 cases; however, full or partial compliance has not yet been attained. Of the cases where abatement has been ordered, full or partial compliance has been received in 81% of these cases to date. In addition, the City has been awarded \$6,750.00 in civil sanctions and attorney's fees, averaging approximately \$1,000.00 per sanction award. In contrast, during the same period, the total amount of fines paid (not stayed) in the criminal matters was \$17,125.00.

It is also important to note that only 9 of the 289 criminal complaints drafted and disposed of since the beginning of the TRA pilot project involved violations related to fire or electrical code violations as the primary reason for seeking prosecution, and the remainder related to interior and exterior problems, or other violations, including violations related to rental licensing procedures. Of the 17 TRA matters where abatement was ordered, 13 or 76% of the cases involved fire or electrical code violations as the primary reason for seeking a TRA, and one involved the lack of heat.

Attached to this document for your information are 1) a comparison of TRA results and criminal prosecution results (Attachment "A"), and 2) a summary of all TRA actions initiated to date (Attachment "B"). While the TRA pilot project period itself has been of a relatively short duration, the trend supporting the policy reasons for the pilot project continues to be very encouraging.

WORKPLAN

OBJECTIVE #1:

City Attorney's Office and Inspections Division staff will review the TRA criteria developed by the City Attorney's Office to determine whether criteria are appropriate, and amend, if necessary.

STATUS: Completed

The criteria developed have been used in each case referred to the City Attorney's Office for a TRA action. In addition, the City Attorney's Office developed a checklist for use by the Inspections Division in transmitting proposed TRA cases to the City Attorney's Office.

OBJECTIVE #2:

Inspections Division staff will be trained on TRAs by Legal Aid.

STATUS: Completed

The Inspections Division received TRA training from Legal Aid in June, 2001.

OBJECTIVE #3:

Inspections Division, in collaboration with the City Attorney's Office, will continue to review the Inspections Division "Intent to Condemn Buildings" list to determine whether any properties on this list are appropriate for TRA actions.

STATUS: Ongoing

The TRA referrals to the City Attorney's Office from the Inspections Division have been taken primarily from the Inspections Division's "Intent to Condemn Buildings" list. The Inspections Division previously reported regarding changes in policies on condemning buildings during the pilot project period.

OBJECTIVE #4:

The City Attorney's Office, in collaboration with the Inspections Division, will continue to evaluate all properties on which the property owner's rental license is in jeopardy because the property is in substandard condition, to determine whether a TRA action is appropriate.

STATUS: Ongoing

The Inspections Division has not referred properties to the City Attorney's Office for potential TRA action where the property owner's rental license is in jeopardy due to the substandard condition of the property. The Inspections Division will report further on this item.

OBJECTIVE #5:

During the TRA Pilot Project, the Inspections Division will establish a test program of inspection of rental units in the City, using the procedure for obtaining consent to

inspection, recommended by the City Attorney's Office, and with the cooperation of the owners of several rental buildings.

STATUS: Ongoing

The Inspections Division will report separately on this item.

OBJECTIVE #6:

The City Attorney's Office will initiate TRA actions on properties that have been identified as candidates for TRA action, on a pilot project basis, from the period of July 1, 2001, through August 31, 2001. During the period, the City Attorney's Office will continue to prosecute housing code violations as criminal offenses, on those violations referred to the office by the Inspections Division. Following this period, the City Attorney's Office will report back to the Community Development, Public Safety & Regulatory Services and Ways & Means/Budget committees in September, 2001, on the relative effectiveness of each procedure.

STATUS: Completed Initial Pilot Project. Pilot Project Extended through August 31, 2002.

During both the initial pilot project period, and the period from September, 2001, through the present, the City Attorney's Office used both the criminal prosecution process and the civil TRA process against owners of properties with housing code violations on rental properties. Attachment "A" to this report is a chart that analyzes the relative effectiveness of each procedure. The data collected to date, both in terms of the number of TRA cases initiated, and the results of the cases initiated remains somewhat limited, due in part to the length of the TRA pilot project. In order to accrue more meaningful data, we recommended, and the City Council approved a longer evaluation period, including a period that takes into account seasonal variations in obtaining compliance with housing code orders. This recommendation was supported by Legal Aid, Minnesota Tenants Union, Minnesota Multi-Family Housing Association, Minnesota ACORN, and Referee Haeg, Hennepin County Housing Court.

OBJECTIVE #7:

Inspections Division will review the feasibility of using the City's revolving fund procedures set out in Minneapolis Code of Ordinances, Chapter 249 to rehabilitate nuisance properties and assess the cost of rehabilitation against the property.

STATUS: Ongoing

The Inspections Division will report separately on this item.

OBJECTIVE #8:

Inspections Division and City Attorney's Office will present a proposed administrative adjudication ordinance and procedures to the City Council for consideration.

STATUS: Ongoing

The Administrative Enforcement and Hearing Process ordinance, fine schedules and procedures were adopted by the City Council in 2001. The Department of Regulatory Services is in the process of designing citations and modifying its data management system to track citations issued under the Administrative Enforcement and Hearing Process ordinance. The City Attorney's Office is in the process of sending out a Request for Proposals for a hearing officer panel.

OBJECTIVE #9:

Inspections Division will review policies and procedures related to compliance periods on code violations, and, if appropriate, will alter its procedures to shorten initial compliance deadlines, and to avoid extensions of deadlines thereafter, where appropriate.

STATUS: Ongoing

The Inspections Division will report separately on this item.

OBJECTIVE #10:

City Attorney's Office and Inspections Division will review M.C.O. § 249.50, authorizing the City to rehabilitate properties and assess the costs of rehabilitation against the property, to determine whether the ordinance should be amended, and will report to the Community Development, Public Safety & Regulatory Services, and Ways & Means/Budget committees in the appropriate cycle in September, 2001.

STATUS: Ongoing

The City Attorney's Office reviewed M.C.O. § 249, in particular, the provision in M.C.O. § 249.50 that caps the rehabilitation costs at the cost of demolition. The City Attorney's Office also reviewed the comparable San Francisco ordinance. The City Attorney's Office discussed with the Inspections Division an ordinance amendment that would raise the cap on rehabilitation costs, and anticipates bringing it forward to this Committee for hearing on February 20, 2002.

OBJECTIVE #11:

Inspections Division will enforce the City's reinspection fee requirement imposed by M.C.O. § 244.190, and will propose, through the City's Intergovernmental Relations process, that the City's 2002 legislative program support legislative changes allowing the assessment of these fees in the event of nonpayment by the property owner.

Inspections Division will report its analysis and recommendations to the Community Development, Public Safety & Regulatory Services, and Ways & Means/Budget committees in September, 2001.

STATUS: Ongoing

The Inspections Division has submitted a proposal to the Intergovernmental Relations staff for consideration in the City's Intergovernmental Relations process.

OBJECTIVE #12:

Inspections Division will meet with representatives of the MCDA, NRP and the appropriate County tax collection agency to analyze the feasibility of the MCDA acquiring and rehabilitating properties otherwise subject to condemnation and demolition.

STATUS: Ongoing

The Inspections Division will report separately on this item.

TRA PILOT PROJECT
07/01/01 - 01/22/02

<u>TRAS</u>		<u>CRIMINAL PROSECUTION</u>
35	REF FOR COMPLAINT	431 REF FOR COMPLAINT
12	DECLINED 1 - INSP REQ 3 - NO ORDERS 1 - VACANT 1 - NO SUCH ADD	79 DECLINED 59 - INSP REQ 9 - SOLD 7 - INSP ERROR 4 - LACK EVIDENCE
26	COMPLAINTS DRAFTING	352 COMPLAINTS DRAFTING
25	COMPLAINTS SERVED	289 COMPLAINTS SERVED
01	PENDING 1 ST HEARING	63 PENDING 1 ST HEARING
09	PENDING ABATEMENT HEARING	10 PENDING CONT CRT HEARING
15	DISPOSED 2 - DISM - SOLD 6 - DISM - ABT 7 - PAID FINE T \$6,250	216 DISPOSED 5 - DISM SOLD 4 - DISM ABT 28 - DISM-INSP REQ 03 - DISM-DECEASED 02 - DISM-FORECLOSED 62 - PAID FINE T-\$8,125 08 - STAY FINE T-\$8,400 63 - STAY/PAID T - \$14,300/\$9,100

TRA CASE SUMMARIES

Closed/Dismissed Cases

Anne Barthel-1700 3rd Ave. N.-Insp. Parker

- Three court appearances: 1st appearance 6/29/01, 1st compliance hearing 7/11/01, 2nd compliance hearing 7/25/01 (Defendant fined \$250.00)
- All orders (issued 12/00 and 5/01 w/ deadlines 6/01) abated as of 8/7/01
- Approximate elapsed time from filing (6/22/01) to abatement = 45 days

Alex Oman-3026-3028 11th Ave. S.-Insp. Larsen

- Two court appearances: 1st appearance 8/24/01 (settled through court-provided mediator), 1st compliance hearing 9/5/01 (all orders abated except for one)
- All 22 orders (issued 7/98, 10/00, and 6/01) abated as of 9/17/01
- Approximate elapsed time from filing (8/14/01) to abatement = 33 days

Howard Gangestad-2211 Bryant Ave. N.-Insp. Utto

- 1st appearance 9/11, 1st compliance 9/19/01 (City awarded \$1,000.00 pursuant to settlement agreement because all orders not abated)
- All 3 orders (issued 5/01 w/ deadline of 7/01) abated 10/16/01
- Elapsed time from filing to abatement = 45 days

Howard Gangestad-2717 Colfax Ave. N.-Insp. Utto

- Two court appearances: 1st appearance 10/11/01 (set for court trial), 10/15/01 settlement reached wherein Defendant given three weeks to abate orders w/ compliance hearing scheduled 12/6/01
- Inspector informed me that all orders abated as of 11/9/01
- Elapsed time from filing = 40 days

Howard Gangestad-3123 Newton Ave. N.-Insp. Utto

- 1st appearance 10/11/01 (set for court trial), 10/15/01 settlement reached wherein Defendant given 30 days to abate w/ compliance hearing set for 12/6/01
- Inspector informed me on 11/21/01 that all the orders are abated.
- Approximate elapsed time from filing (10/1/01) = 50 days

Fomba Konjan-2732 Oakland Ave.-Insp. Bockes

- Two court appearances: 1st appearance 9/20/01 (settlement reached wherein Defendant given 30 days to abate), compliance hearing 11/2/01
- All orders abated as of 11/2/01
- Elapsed time = 50 days

Derrick Mitchell-2709-11 3rd St. N.-Insp. Pogatchnik

- 1st appearance 9/20/01 settlement reached wherein Defendant given approx. 30 days to abate

-1st compliance hearing 11/2/01-all orders not abated; City awarded \$1,000.00 pursuant to settlement agreement and additional compliance hearing set for 12/4/01.

-Inspector informed me on 12/3/01 that all orders abated.

-Approximate elapsed time from filing = 80 days

Howard Gangestad-2503 Irving Ave. N.-Insp. Utto

-Settlement reached at 1st appearance on 9/11/01 wherein Defendant given 15 days to abate

-Compliance hearing on 10/12/01 wherein City awarded \$1,000.00 pursuant to settlement agreement b/c open orders remaining

-2nd compliance hearing 12/6/01 (19 open orders)

-All orders abated as of 12/7/01

Howard Gangestad-2930 Newton Ave. N.-Insp. Utto

-1st appearance 11/29/01; settlement reached wherein Defendant agreed to abate sole order by 12/14/01

-12/13/01 – order abated per inspector

Howard Gangestad-3651 Fremont Ave. N.-Insp. Utto

-1st appearance 11/29/01

-Abatement date for two orders-12/13/01

-12/13/01 – orders abated per inspector

James Waters-927 Sheridan Ave. N.-Insp. Thomas

-Settlement reached at 1st appearance on 10/25/01 wherein Defendant given 60 days to abate 23 open orders

-Orders abated

Covelle Houston-2726 Bryant Ave. N.-Insp. Pogatchnik

-Default judgment entered on 11/8/01. Defendant given three weeks to abate.

-Compliance hearing on 1/17/02; Defendant did not appear, \$1,000 penalty imposed pursuant to default Order

-Ref. Iijima also ordered Defendant not to rent units until building in compliance with Code

TNT Properties (Floyd Olson)-1709-1711 E. Lake St.-Insp. Larsen

-“Settled” at 1st appearance on 8/24/01 based on fact that Defendant sold the property on 7/3/01 (case filed 8/16/01)

Phung Dung-821 Lowry Ave. N.-Insp. Pogatchnik

-Same as above, Defendant not record owner of property

Cases In Progress

Neill & Soraya Scott-800 5th St. SE-Insp. Patrow

- Only case removed to District Court
- 1st appearance 6/13/01, Court gave Defendants 90 days to abate (deadline 9/12/01)
- Case has been continued for a variety of reasons since the expiration of the 90 days.
- Orders reportedly abated; awaiting final confirmation from inspector

Matthew Krinsky-2345-2347 Upton Ave. N.-Insp. Thomas

- “Tiered” settlement reached with counsel wherein Defendant is given three deadlines for different sets of orders (45, 75, and May 2002) and a separate compliance hearing is scheduled after each deadline
- All 45 and 75 day orders abated (25 of 29 orders abated)
- Contractor continuing work on property...

Jevon McDuffie-1810 10th Ave. S.-Insp. Bockes

- Continued from 10/25/01 b/c Defendant out-of-state
- 11/1/01 settlement reached wherein Defendant given 30 days to abate
- Compliance hearing on 12/6/01; Defendant did not appear; City awarded \$1,000 in sanctions/penalty pursuant to settlement agreement
- Next compliance hearing set for 1/28/02

Charles Lawrence-3242 Lyndale Ave. N.-Insp. Middleton

- Default judgment entered on 10/25/01. Defendant given 30 days to abate w/ compliance hearing set for 11/27/01
- Defendant did not appear at 1st compliance hearing (11/27/01); City awarded \$1,000.00 in sanctions plus \$500.00 in attorney's fees.
- Property vacant as of 11/21/01 per inspector
- Defendant appeared at 2nd compliance hearing on 1/8/02; award of further sanctions and compliance period forthcoming...

Howard Gangestad-3106 Newton Ave. N.-Insp. Utto

- 1st appearance 11/29/01
- 2 abatement dates because certain orders weather sensitive-12/13/01 and 6/1/02
- All orders with 12/13/01 deadline abated

Howard Gangestad-3459 Knox Ave. N.-Insp. Utto

- 1st appearance 11/29/01
- 2 abatement dates because of weather sensitive orders-12/14/01 and 6/1/02
- All orders with 12/14/01 deadline abated

Howard Gangestad-3019 Logan Ave. N.-Insp. Utto

- 1st appearance 11/29/01
- 2 abatement dates because of weather sensitive orders-12/13/01 and 6/1/02
- All orders with 12/13/01 deadline abated

Emergency Tenant Remedies Action(s)

3512 Portland Ave.-Gladys Green-lack of heat

Future Filings

2021 Penn Ave. N.

3712 28th Ave. S.

3317 1st Ave. S.

2653 Lyndale Ave. N.

Key Issues Encountered Thus Far

-Service of Summons/Complaint pursuant to Minn. Stat. § 504B.401; service timeframe can be difficult

-Collection issues related to sanction awards

-Additional tactics to achieve compliance when multiple compliance hearings not working

-Problems (delay, lack of familiarity) with cases removed to District Court