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DETROIT HOUSING CODE ENFORCEMENT AND COMMUNITY RENEWAL: A STUDY IN FUTILITY

Brett R. Dick and John S. Pfarr Jr.*

I. Introduction

Slum housing is emerging as urban America's most critical problem.¹ Following the Second World War, the City of Detroit adopted a three-pronged strategy to attack urban decay,² which remains Detroit's present program for community renewal.³ Briefly, the three phases of this program attempt to (1) demolish buildings not salvageable and construct new ones in their place (renewal),⁴ (2) rehabilitate salvageable buildings (conservation), (3) maintain new and rehabilitated buildings and raise standards in buildings not located in renewal or conservation areas through

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¹ Today, after more than three decades of fragmented and grossly under-funded Federal housing programs, decent housing remains a chronic problem for the disadvantaged urban household. Fifty-six percent of the country's non-white families live in central cities today, and of these, nearly two-thirds live in neighborhoods marked by substandard housing and general urban blight. For these citizens, condemned by segregation and poverty to live in the decaying slums of our central cities, the goal of a decent home and suitable environment is as far distant as ever. REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 467 (1968). See REPORT OF PRESIDENT'S COMMITTEE ON URBAN HOUSING. A DECENT HOME, at 1-36, 43, (1968).

² For a discussion of how other cities are meeting this problem, see *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1964-65).

³ SUMMARY REPORT DETROIT COMMUNITY RENEWAL PROGRAM, DETROIT: THE NEW CITY, at 11 (1966). [Hereinafter cited as DETROIT: THE NEW CITY]

⁴ Funds are available principally under the Housing Act of 1949 and the Housing Act of 1937 as amended. See 42 U.S.C. §§ 1453 (a)(b), 1401 (Supp. 1964). See also *Enforcement of Municipal Housing Codes*, *supra*, note 2. For an analysis of past urban renewal and conservation projects in Detroit, see DETROIT: THE NEW CITY, *supra* note 3, at 29; NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, *supra* note 1, at 473-474 (1968); and REPORT OF PRESIDENT'S COMMITTEE ON URBAN HOUSING, Sec. II, (1968), *supra* note 1.

use of Building (housing) Code enforcement machinery (Code enforcement).⁵

The purpose of Code enforcement is to retard the spread of physical and environmental blight and to eliminate structural and environmental conditions which do not meet standards of health and safety.⁶ Attainment of these goals is a crucial factor in Detroit's overall campaign against urban decay.

As Detroit officials have conceptualized the war on urban decay, Code enforcement is relegated to the relatively minor role of supporting the main efforts—renewal and conservation.⁷ In practice, however, Code enforcement must play a much more significant role since available conservation and renewal funds are not sufficient to attack slum housing on the scale necessary to solve the problem in the foreseeable future.⁸ Code enforcement is thus expected to coerce the owners of slum housing to repair and/or rehabilitate their buildings in an area approximately ten times the size of the combined renewal and conservation areas⁹ with a budget that is between one-fifth and one-tenth the total amount spent each year on renewal and conservation projects.¹⁰

Current estimates show that with the City and Federal funds presently available for urban renewal, it will take Detroit at least forty years to clear itself of blight, utilizing both redevelopment and conservation techniques.¹¹ This estimate admittedly does not take into account the aging and blighting of structures subsequently built during the forty year period,¹² control of which is one of the principal functions of the Code enforcement system.

Despite what is called a "model" landlord-tenant law¹³ and a

⁵ As originally envisioned, housing codes were passed to insure that new housing would meet specific building requirements. Only in later years have they been used on any significant scale to force correction of health and safety violations. Interview with William Parness, Assistant Corporation Counsel in charge of housing code prosecutions, in Detroit, Mar. 11, 1969.

⁶ DETROIT: THE NEW CITY, *supra* note 3, at 29.

⁷ *Id.* Chapter III.

⁸ Projected resources for Detroit urban renewal, including City and Federal funds, is between fifteen and thirty million dollars per year. *Id.* at 50.

⁹ *Id.*

¹⁰ These figures are calculated from data found in DETROIT: THE NEW CITY, Chapter III, *supra* note 3.

¹¹ *Id.* at 50.

¹² *Id.*

¹³ MICH. COMP. LAWS § 125.525-533, (1967). For an intensive analysis of the new laws see Glotta, *Michigan Landlord-Tenant Law: The Course of Statutory Reform, Tenant's Attorney: Evaluation of Impact*, 2 PROSPECTUS: A J. OF LAW REFORM 247 (1968).

housing code enforcement program considered by some to be one of the best in the nation,¹⁴ an examination of Detroit's current city housing leaves no doubt that the housing problem is still acute and has in fact reached critical proportions.¹⁵ Of the 500,000 plus housing units in Detroit, "... there are nearly 94,000 units of housing in the city that are either dilapidated, deteriorating, or lacking some or all plumbing facilities."¹⁶ In Detroit's "inner" and "middle"¹⁷ city, of the 167,000 residential structures, only 45,000 are considered sound¹⁸ by the Detroit Community Renewal Program.¹⁹ This problem is much graver in

¹⁴ Richard L. Sanderson, Executive Director of the Building Officials Conference of America, compared the City of Detroit with other large metropolitan cities. Nationally, the City of Detroit Building Department is considered as the fountainhead of code enforcement. In 1963, the International City Managers Assn. cited Detroit as the only city with a well coordinated building code enforcement department. Minutes of meeting of the MAYOR'S SPECIAL TASK FORCE FOR STUDY OF CODE ENFORCEMENT PROBLEMS IN DETROIT, at 2, Aug. 24, 1968

... [I]t is our opinion that, in the main, Detroit's ordinances related to housing and housing environment are good and adequate." (Letter from Herman Cook and Norman Miller, Chairmen of Codes Sub-Committee of the Detroit Committee for Neighborhood Conservation to the Detroit Common Council, June 24, 1965.

¹⁵ People still live in buildings with falling plaster, septic cellars, no hot water, sporadic heat, vermin, gaping roofs and rotted beams, tilting stairs and lurching porches, wiring that crackles crazily overhead and plumbing that spews incessantly within the weakened walls, indifferent or non-existent caretakers; buildings where age and neglect and self-destructive occupants create foul traps for fellow tenants. Stanton, *Why Tenements Don't Get Fixed: A Tale of Slumlords and Tenants*, Detroit Free Press, Jan. 12, 1969, Sec. B at 1B cols. 3 and 4.

¹⁶ DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT No. 2, at 2 (1967). In 1960 the percentage of non-white occupied housing units classified as deteriorating or delapidated in Detroit was 27.9%. The percentage of non-white occupied housing units classified as deteriorating, delapidated or sound but without full plumbing was 30.1%. REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, *supra* note 1, at 468 (1968).

See, *Hearings Before the National Commission of Urban Problems, Need for Practical Alarmists*, Mayor Jerome Cavanaugh, 1967, at 3. [Hereinafter cited as 1967 *Hearings*.]

¹⁷ The terms "inner" and "middle" city are taken from DETROIT: THE NEW CITY, *supra* note 3, at 8-9, as representing the center of Detroit bounded by the Grand Blvd. and the Detroit River (inner city) and a three mile belt surrounding the Grand Blvd. (middle city).

¹⁸ *Id.* at 49-50.

¹⁹ The Detroit Community Renewal Program was a select Committee which did a study of the housing problems of Detroit.

the “inner” city where only 1,000 of the 27,000 residential structures are considered sound.²⁰

The city of Detroit has financed several studies to determine whether or not the present method of Code enforcement is adequate.²¹ Though the evaluations differ, the Detroit Commission on Community Relations, in a report issued in August 1967 (a report virtually ignored by the Mayor’s Office),²² reached a conclusion representative of most of those studies:

The inescapable conclusion that flows from our present system is that we have been unwilling in this community to pay the cost of adequate code enforcement and have established a tradition that tells us that except for the threat to life itself—either fire, rat bite, or the community contagion—that even “emergency” cases are handled on the premise that “the human being can endure this condition even more.”²³

On the other hand, officials charged with the city’s Code enforcement program feel that such criticism is unfounded²⁴ and believe they are doing an efficient job.²⁵

²⁰ DETROIT: THE NEW CITY, *supra* note 3, at 49. According to Mr. Harold Knox, former Director-Secretary of the Detroit Housing Commission: “80,000 people live in deficient housing in Detroit.” This estimate must be conservative at best in light of the amount of unsound residential structures presently existing in Detroit. Interview of Mr. Harold Knox by ABC News, Feb. 1969.

²¹ See DETROIT: THE NEW CITY, *supra* note 3; Memorandum from Harold J. Bellamy, Director Mayor’s Committee for Community Renewal to Harold Black, Community Development Coordinator, Dec. 29, 1966; DETROIT COMMISSION ON COMMUNITY RELATIONS. HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, Letter from Herbert Cook and Norman Miller, Chairman Code Sub-Committee of the Detroit Committee for Neighborhood Conservation, to the Common Council, June 24, 1965, and Letter from Mayor’s Special Task Force for Code Enforcement to Mayor Jerome Cavanagh, January 6, 1969.

²² Stanton, *supra* note 15, at sec. B, 1B, col. 7.

²³ DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, at 26. *But cf.* text at p. 74. See also note 21, *supra*.

²⁴ Mr. Harry Boyle, Director, Bureau of Sanitary Engineering, Detroit Department of Health, said that the Commission on Community Relations’ report was unfair and slanted. Though unwilling to reveal the Bureau’s formal reply to the report, he made it abundantly clear that he felt the report’s conclusions were not only inaccurate but biased. Interview with Harry Boyle in Detroit, Mar. 12, 1969. Moreover, Mr. William Parness, Assistant Detroit Corporation Counsel felt that insofar as his department acts on complaints received, the program is effective. Interview with William Parness in Detroit, Mar. 11, 1969.

²⁵ Interview with Harry Boyle in Detroit, Mar. 12, 1969. He did add, however, that the Department could be more effective if he had more inspectors, but felt that he would have a hard time getting them even if the money were appropriated unless there was an increase in salaries.

The above contradiction appears irreconcilable. However, this article will demonstrate that the inconsistency is, to a large extent, more apparent than real and results from the application of two different conceptions of the purpose of the program to the same facts. Furthermore, it will be demonstrated that Detroit's Building (housing) Code²⁶ has failed in its attempt to force rehabilitation of residential structures through Code enforcement. Although it can be made to work more *efficiently*, the Code will never serve as an *effective* solution to the housing problem.

II. Building Code Enforcement Machinery

A. Authority for Enforcement

The authority to enforce Detroit's Building Code flows from state and municipal sources. The State of Michigan in summer 1968 passed a series of amendments²⁷ to the existing housing law²⁸ which added to, and more clearly defined, the responsibility and authority of housing code "enforcing agencies"²⁹ in the major metropolitan areas.³⁰ The act provides that the enforcing agency shall have authority to (1) maintain a registry of owners and premises,³¹ (2) periodically inspect multiple dwellings and rooming houses at least every two years,³² (3) withhold issuance of a certificate of compliance from nonconforming dwellings,³³ (4) order corrections of housing code violations,³⁴ and (5) enforce the act by bringing an "action to abate or enjoin the violation."³⁵ The act also grants the State courts extensive powers in framing

²⁶ In the various jurisdictions, the equivalent of a building code is referred to by a variety of names such as building and safety code, health and safety code. All of these terms refer essentially to the same type of statute. In the interest of simplicity, this article calls this type of statute a "building code."

²⁷ MICH. COMP. LAWS § 125.521-125.537 (1968).

²⁸ PUBLIC ACT NO. 167 of the PUBLIC ACTS OF 1917.

²⁹ MICH. COMP. LAWS § 125.523.

³⁰ Detroit adopted the provisions of the State Housing Law through Ordinance 132-D. For a discussion of the Law, see Schier, Beattie and Glotta, *Michigan Landlord-Tenant Law: The Course of Statutory Reform*, 2 PROSPECTUS: A J. OF LAW REFORM 225 (1968).

³¹ MICH. COMP. LAWS § 125.525.

³² *Id.* § 125.526.

³³ *Id.* § 125.530.

³⁴ *Id.* § 125.532.

³⁵ *Id.* § 125.534.

remedies to force the repair of Code violations,³⁶ but eliminates the earlier provision for criminal prosecution.³⁷

According to Mr. William Parness, Assistant Corporate Counsel for Detroit in charge of housing code prosecution, the new state statute does not add authority to Detroit's Code enforcement agencies, but rather clarifies the powers and remedies which the city had already provided in its own Building Code.³⁸ The basic difference between the new state law and the Detroit Building Code is that the Building Code requires inspection of multiple dwellings every year³⁹ and provides that a violation of the ordinance is a misdemeanor punishable by a fine of not more than \$500 and/or 90 days imprisonment for each housing code violation.⁴⁰ Therefore Detroit courts possess not only the wide remedial powers granted by the new state law but also a significant fining and imprisoning⁴¹ authority as well.

B. Code Enforcement Agencies

Though Detroit has several agencies responsible in varying degrees for Code enforcement,⁴² the City relies primarily upon the Department of Buildings and Safety Engineering and the Bureau of Sanitary Engineering of the Department of Health.⁴³

The Department of Buildings and Safety Engineering has three

³⁶ *Id.* § 125.534(5) and (7).

³⁷ *Id.* § 125.501.

³⁸ Interview with William Parness, Mar. 11, 1969.

³⁹ Detroit, MICHIGAN BUILDING CODE, § 2197.0.

⁴⁰ *Id.* § 101.3

⁴¹ According to the Director of the Detroit House Commission, the only person who has ever been jailed for a code violation was a woman on public assistance who did not purchase a trash receptacle when ordered to do so. URBAN HOUSING COUNCIL, A SURVEY OF HOUSING CODE ENFORCEMENT IN DETROIT at 7 (1966). Jail sentences are provided for in most jurisdictions. However they are so infrequently used that they play but a small role in code enforcement. See, FRANK P. GRAD, LEGAL REMEDIES FOR HOUSING CODE VIOLATIONS, NATIONAL COMMISSION ON URBAN PROBLEMS, RESEARCH REPORT NO. 14, Washington, D.C., at 26 (1968).

⁴² Along with the Bureau of Sanitary Engineering and the Department of Buildings and Safety Engineering, the Fire Department, the Department of Public Works and the Detroit Housing Commission have some code enforcement responsibility.

divisions which have major responsibilities in the housing area. The Bureau of Electrical Inspection and the Bureau of Plumbing Inspection⁴⁴ approve plans for new buildings and inspect the technical apparatus and systems within their respective fields of expertise. The Bureau of Buildings' responsibility lies in inspecting and approving plans for new buildings to determine whether or not they are structurally sound and in compliance with the Building Code.⁴⁵

The Bureau of Sanitary Engineering, Department of Health (herein referred to as the Health Department) is the principle agency charged with residential inspection.⁴⁶

C. Operation of the Code Enforcement Program

1. Agency Enforcement

Before an analysis of the inspection program is undertaken, it should be made clear that Code enforcement in Detroit is based on the theory that the enforcing agency's role is to seek voluntary compliance with the Code and to avoid use of the courts if at all possible:

Through years of experience we are convinced that compliance is preferable to prosecution. Through exercising good judgment, we are convinced that there are many good reasons for permitting continuances which are practical and logical. It would be easy for this Department to enter all cases into Court

⁴³ DETROIT: THE NEW CITY *supra* note 3. at 30.

⁴⁴ The Bureaus of Electrical and Plumbing Inspection have, respectively, thirty-two and twenty-nine inspection and supervisory personnel budgeted. DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT No. 2, *supra* note 16, at 4.

⁴⁵ Of forty-six inspectors; sixteen work on a complaint basis and five deal exclusively with "dangerous or abandoned buildings." *Id.*

⁴⁶ The Bureau has four divisions: Waste Receptical, General Sanitation, Rodent Control and Substandard Housing. Of the four, Rodent Control and Substandard Housing are the most important. Rodent Control is charged not only with rat extermination, but also with general housing inspection duties within the geographic area in which it is working. The Substandard Housing division is responsible for inspection of residential structures for general health and sanitary code violations.

after thirty (30) days, but this would not realistically accomplish our primary objective of compliance.⁴⁷

Therefore, delay is tolerated whenever the Departments feel compliance may be achieved.⁴⁸

The Departments of Health and of Buildings and Safety Engineering fulfill their statutory and ordinance responsibilities by conducting systematic area surveys and by responding to complaints.⁴⁹ Planned inspections are conducted in which every building or dwelling in a specific geographic area is examined for Code violations. If major violations are discovered, steps are begun to correct them before the inspecting force leaves the area.⁵⁰

However, there are a number of inadequacies in this system. While planned geographic inspections are an extremely important part of the Code enforcement program, the lack of manpower restricts the area which can be covered in a year's time.⁵¹ Since 1964, only 87,000 of more than 500,000 housing units have been inspected in the Health Department's planned inspection program.⁵² After the survey is completed, those areas improved to a certain standard may quickly deteriorate because manpower shortage prohibits even sporadic follow-up inspections.⁵³ An addi-

⁴⁷ DEPARTMENT OF BUILDINGS AND SAFETY ENGINEERING, COMMISSION ON COMMUNITY RELATIONS REPORT, at 2-3 (1968).

Ordinarily, enforcement officials are highly pleased if their work results in future improvement of the property; if they are successful in that effort they are perfectly happy to let bygones be bygones. Sax & Histan, *Slumlordism as a Tort*, 65 MICH. L. REV. 871 (1967). See also, F. GRAD, *supra* note 41 at 14.

⁴⁸ Interview with Marcus Irwin, Feb. 20, 1969. Interview with Harry Boyle, Mar. 12, 1969.

To implement compliance some of the procedures practised include field consultations, office hearings and telephone conversations with the owners of buildings for the purpose of developing with the owners work programs that will result in correction of the conditions cited in violation notices.

Answer to interrogatories by Department of Health and Building and Safety Engineering at 5, *Hardeman v. Director of Dept. of Health Civil No. 113, 217* (1969).

⁴⁹ Interview with Harry Boyle, Mar. 12, 1969.

⁵⁰ *Id.*

⁵¹ The Health Department has seventy-five inspectors and supervisory personnel, thirty-five of whom are assigned to planned geographic inspections while the others respond to complaints. Interview with Harry Boyle, Mar. 12, 1969.

⁵² Interview with Harry Boyle, Mar. 12, 1969.

⁵³ *Id.*

tional shortcoming of the present planned inspection program is that inspections are made in those areas where there is the greatest chance of success rather than where enforcement may be most needed.⁵⁴

The complaint basis of inspection begins when a tenant notifies either the Health Department or the Department of Buildings and Safety Engineering.⁵⁵ After the complaint is received, an inspector is supposed to be dispatched within one to four days to make an inspection.⁵⁶ If a violation is discovered, the inspector sends a notice of violation to the owner of the building and forwards a copy to his supervisor.⁵⁷ After thirty to forty days another inspection is made to determine whether the required repairs have been completed.⁵⁸ If the condition has not been corrected, but the inspector believes that the owner is acting in good faith to make the repairs, the inspector, in his discretion, may grant a continuance.⁵⁹ If the repairs have not been made and the inspector believes that the owner is not acting in good faith, the inspector will report this to his supervisor, and a complaint, issued at the supervisor's discretion,⁶⁰ will be forwarded to the Corporation Counsel's office for prosecution.

Once the case has been sworn in at court, it comes to trial within three to four weeks.⁶¹ If the owner does not respond to the

⁵⁴ DETROIT: THE NEW CITY, *supra* note 3, at 32. Marcus Irwin said in an interview on Feb. 20, 1969, that "very poor housing areas are not given planned geographic inspections on the assumption that they will eventually become areas for urban renewal."

⁵⁵ Interview with Marcus Irwin, Feb. 20, 1969.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* A reinspection by the Health Department will not necessarily be made by the same inspector who made the prior inspection. Inspectors are normally assigned on a random basis to housing units though groups of inspectors are permanently assigned to specific geographic areas. Interview with Harry Boyle, Mar. 12, 1969.

This practice is contrasted with that followed by the Department of Building and Safety Engineering. These inspectors remain on a specific case from the original inspection until the case is closed. This practice provides incentive for the inspector to achieve compliance in each case as quickly as possible since the case remains on his record until closed. This method also provides for a more accurate appraisal of his performance than merely judging him by the number of inspections made as is the case in the Health Department. Interview with William Parness, Mar. 11, 1969.

⁵⁹ Interview with Marcus Irwin, Feb. 20, 1969.

⁶⁰ *Id.*

⁶¹ Interview with William Parness, Mar. 11, 1969. Interview with Frederick Byrd, Reference, Traffic and Ordinance Division, Records Court, in Detroit, Mar. 20, 1969. The Health Department, unlike the Department of Buildings and Safety, is on a three group schedule; that is, every three weeks a different group of inspectors will swear in complaints. This may mean an additional three to four week delay before the inspector bringing the complaint returns to court. Interview with William Parness, Mar. 11, 1969.

summons, a warrant is issued.⁶² However, because of the large volume of summonses and warrants coupled with the lack of court personnel to serve them, a failure to locate and serve⁶³ means added delay since the summons or warrant will be put into the pile of those previously unserved.⁶⁴

The evidence is overwhelming that the system is not functioning efficiently. Violations continue uncorrected and unprosecuted for exceptionally long periods of time:

It is clear that cases of actual violations go unabated and unprosecuted for periods many times greater than that specified on the violation notice which threatens court action if the violation isn't repaired in three days for an "emergency" item such as a blocked sewer, rats in the building, etc.; or 30 to 40 days for all other violations.⁶⁵

Moreover, an even longer period of time is required to achieve actual compliance. According to a report made in 1966 by the Urban Housing Council, in those cases brought by the Department of Buildings and Safety Engineering *in which compliance was achieved*, an average of four and one-half months elapsed between initial notification to the owner of a violation and eventual compliance.⁶⁶ In the Department of Health, in those cases

⁶² *Id.*

⁶³ Under the DETROIT BUILDING CODE § 104.1, the owner of the building is liable for any code violations. Since this is a criminal prosecution, the owner must receive personal service.

⁶⁴ Interview with William Parness, Mar. 11, 1969. "If a landlord doesn't show up in court a warrant is issued, but if police don't find him on the first try, the warrant is buried forever in the backlog." Stanton, *supra* note 15. Sec. B., at 1B, col. 8.

Steps are being taken to remedy this situation by replacing the summons with an informal letter advising the addressee that failure to respond to the letter will result in an issuance of a warrant for his arrest. This system will permit the process servers to concentrate on serving only warrants, hopefully cutting their work-load in half. Interview with William Parness, Mar. 11, 1969.

⁶⁵ DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, at 9. For a national analysis, see REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, *supra* note 1, at 472.

⁶⁶ The Council examined seventy-five cases. Of those cases, the Council also discovered that:

Thirty-eight percent of violations were corrected within two months while twenty-three percent were corrected three to six months after notice.

where compliance was achieved, an average of eight months elapsed between notice and compliance.⁶⁷

More serious is the fact that compliance is never achieved in many cases:

Looking at the total records of the Department of Building and Safety Engineering it was found that of the 6,336 cases opened in 1965, compliance had not been achieved in 3,720 by the end of that year. A total of 1,577 cases opened in 1964 have not been brought to compliance by the end of 1965 and 448 cases remained unresolved from 1963. Nine cases of uncorrected code violations dated back ten years to 1956.⁶⁸

The Urban Housing Council Report concluded:

Perhaps the most serious and frustrating problem of housing code enforcement lies in the erratic and generally sluggish operation of the departments of Health and Buildings and Safety Engineering.⁶⁹

A sampling of tenants during February 1969, indicates that there has been little or no improvement since the Report was

Twenty-six percent (19 instances) remained pending and apparently uncorrected after eighteen months had elapsed. Data indicate that where violations were not corrected within two months (36 instances excluding pending cases) an average of seven months was required to secure compliance.

URBAN HOUSING COUNCIL, A SURVEY OF HOUSING CODE ENFORCEMENT IN DETROIT, *supra* note 41, at 2.

⁶⁷*Id.* at 2, 3. In a random sample of 62 instances (10% of the cases) which met compliance in Mar. 1965:

Fifteen cases (24%) had been corrected within two months of original notice to the owner. Twenty-eight percent required three to six months for correction of the violations.

In forty-five percent of cases it required seven to fifty-five months before violations were corrected.

⁶⁸*Id.* at 2.

⁶⁹*Id.* at 5. In a memorandum from Harold J. Bellamy, Director, Mayor's Commission for Community Renewal to Harold Black, Community Development Coordinator, Dec. 29, 1966, Mr. Bellamy said that a delay of three months between issuance and scheduled court appearance is not uncommon. This problem is also recognized by the Mayor's Special Task Force for Study of Code Enforcement in a letter to Mayor Jerome Cavanagh from the Committee, Jan. 6, 1969. This is not unusual. Grace periods in Washington, D. C. have lasted for over one and one-half years, *The Poor Man and the Law*, POVERTY (1965) at 15. *c.f.* note 3, *supra*.

issued in 1966.⁷⁰ Actual case histories discussed by the Detroit Committee on Community Relations confirm this finding.⁷¹ In several instances, apartments with extremely hazardous housing code violations have been allowed to go uncorrected from twelve

⁷⁰ Tenants interviewed at 97XX Dundee said that it took three weeks for an inspector of the Health Department to be sent to inspect for roaches and vermin, and over a month for a non-functioning furnace to be inspected by the Department of Buildings and Safety Engineering.

At 24XX Tuxedo tenants report that heat has been sporadic at best and that plaster is falling from the walls and ceilings. One tenant first complained about the heating situation to the Health Department in March 1968, after her child (three months old) developed pneumonia. Though the lack of heat should have been an "emergency" type violation, the landlord was allowed to wait until summer 1968 to replace or fix the furnace. Another tenant in the same building said that he has been complaining to the Health Department for the last six months about the incinerator and the same furnace. Although an inspector was dispatched immediately after the first complaint regarding the furnace, it has not been repaired as of February 1969. At 49XX Maplewood and 45XX N. Boston, complaints about rat infestation and falling plaster were registered in November 1968. Although the Health Department has inspected those buildings, no repairs or corrections have been made and no proceeding by the Health Department has been brought. Interviews with tenants in Detroit, February 1969.

⁷¹ CITY OF DETROIT COMMISSION ON COMMUNITY RELATIONS. HOUSING-URBAN-RENEWAL REPORT NO. 2, *supra* note 16, Appendix: At 20XX West Euclid the original inspection showed 71 violations. Yet the case had not been brought to court after 15 months. There were 10 reinspections of this same building. At 18XX West Grand Blvd. there were multiple violations including no heat, no hot water, rat infestation and severe structural defects. Though the owner is continually reporting that repairs are underway, only the heat and water situations have been corrected. The case is still open after 12 months.

16XX Clairmont—Original inspection on 8/15/63 which noted numerous structural defects and rodent and vermin infestation. Ownership of the building changed twice and new notices were issued, the latest dated 8/3/66. There have been eight reinspections since that date, and a court complaint was written on 2/13/67, three and one-half years after violations first noted.

2XX Alfred—Original notice dated 11/4/65, items noted were defective flooring, wall plaster and paint throughout the whole building. Supplemental notices issued 3/18/66, 1/12/67, containing violations of flooring in specific apartments and in hallways, defective front exterior door, broken windows, a defective water closet, junk autos, tenants throwing trash from apartment windows. There were a total of five reinspections, the last being on 1/12/67. Comments of the inspectors on the record include: 'Mr. ___ called, will have work done, leaving for Florida—will be gone until 4/18/66!' and 'ceilings are falling—in bad condition.' The case is not yet in court after being open 15 months.

20XX Virginia Park—Original notice issued on 3/25/65 noting such items as litter and debris inside and outside the building, leaking plumbing, broken windows and plaster and paint. On each of the next five reinspections, (6/17, 8/23, 10/23, 11/22, 2/7) supplemental notices were

months up to 3½ years before court action had been commenced, if commenced at all.⁷² Delays are caused by multiple reinspections, numbering as many as fifteen per case, with supplemental notices issued, each with a new compliance date. Such a practice has led to continuances beyond the original time set for the completion of repairs.

It has sometimes been alleged that the long delay between citation of housing code violation and court action is due to the backlog of cases in the courts.⁷³ However, interviews with the Prosecutor's Office and with the Traffic and Ordinance Court show that this is not the case. According to the Corporate Counsel's Office, "We can handle all [the cases] they can give us."⁷⁴

One factor which may contribute to this delay, and to the general breakdown of the enforcement system, is the possibility of corruption among Code enforcement officials. Experiences of slum dwelling tenants whose buildings never seem to get inspected have led to the widespread belief among tenants and their attorneys that Health and Building inspectors are being bribed.⁷⁵ Although there is no available data supporting this belief, the

issued—having a total of 25 violations, including rodent infestation. On 12/7/65, the notice was cancelled and a new notice written with a new compliance date covering the same items. There were then eight more reinspections and two more supplemental notices. The history of the case is as follows:

10/5/66 Court complaint written by Bureau of Sanitary Engineering.

10/26/66 Complaint 'received' at Office of Corporation Counsel.

11/7/66 Case sworn in at Court and placed on the docket.

12/22/66 Court appearance—adjourned to . . .

2/14/67 Adjourned to . . .

3/16/67

These violations have gone unabated for *two* years (emphasis in original).

⁷² *Id.*

⁷³ Interview with Marcus Irwin, Feb. 20, 1969.

⁷⁴ Interview with William Parness, Mar. 11, 1969. Interview with Frederick Byrd, Mar. 20, 1969.

⁷⁵ At 24XX Tuxedo a tenant's daughter was bitten by a rat and had to be treated at the hospital. After repeated calls to the Health Department, an inspector finally arrived. Upon inspecting the premises, he concluded that the unit was not rat infested. He did, however, make notes of many other violations. The tenant neither heard from nor saw the inspector again until several months later in court. During eviction proceedings, resulting from a rent strike by the tenants of this building who were protesting the landlord's refusal to correct these conditions, this same inspector testified that

present Code enforcement structure cannot help but provide opportunities for graft. Because the cost of repairs is high, the benefit accruing from illicit gratuities far exceeds their cost.

Housing code officials, however, categorically deny that any graft exists.⁷⁶ These officials, moreover, are of the opinion that the Code enforcement system is, in fact, functioning efficiently. They point to the fact that last fiscal year there were 54,000⁷⁷ inspections of 20,000 housing units leading to 12,000 cited violations.⁷⁸ Of all notices of violations issued, the Department of Health achieves ninety-three percent eventual compliance,⁷⁹ with the other seven percent either court cases or so-called "hardship" cases which are not prosecuted.⁸⁰ However, though compliance

there were no violations in the building. (Interview with tenants, February 1969.) An independent inspection of this building made by legal aid attorneys and a VISTA volunteer at the time of the rent strike disclosed thirty serious code violations including rat infestation. The fact that the inspector later denied under oath that there were any code violations in the building was confirmed by the VISTA volunteer. (Interview with Richard Sobel, then a VISTA volunteer working with United Tenants for Collective Action, on February 23, 1969.) In the opinion of the tenant and his attorneys, this inspector had perjured himself and had done so as a result of a bribe.

The belief that Code enforcement inspectors regularly accept bribes led a tenant's attorney in another case to specifically ask Department of Health officials, in an interrogatory, if inspectors received gratuities from the owner of a particular building. The Health Department refused to answer the interrogatory. Answer to interrogatories by Department of Health at 5, *Hardeman v. Director of Department of Health*, Civil No. 113,217, *supra*, note 48, at 5, question and answer no. 6.

⁷⁶ Interview with Harry Boyle, Mar. 12, 1969.

⁷⁷ Interview with Harry Boyle, Mar. 12, 1969. A REPORT ON NEIGHBORHOOD BLIGHT AND NEIGHBORHOOD CONSERVATION IN THE CITY OF DETROIT by the Detroit Committee for Neighborhood Conservation and Improved Housing gave these figures on the activity of the General Sanitation and Sub-Standard Housing Divisions, Department of Health.

| | Field Orders Issued | No. of Inspections | No. of Court Cases |
|------|------------------------|-----------------------|-----------------------|
| 1956 | 9,000 | 71,049 | 324 |
| 1957 | 9,130 | 69,438 | 305 |
| 1958 | 9,132 | 74,560 | 240 |
| 1959 | 8,938 | 71,561 | 434 |
| 1960 | 9,676 | 73,064 | 394 |
| 1961 | 9,646 | 76,928 | 534 |

⁷⁸ Interview with Harry Boyle, Mar. 12, 1969.

⁷⁹ *Id.* However, the amount of time it takes to get this compliance was not stated. See URBAN HOUSING COUNCIL, A SURVEY OF HOUSING CODE ENFORCEMENT IN DETROIT, *supra* note 41, at 2-3.

⁸⁰ However, it is also admitted by Health Department officials that violation statistics do not include "minor" violations which are often overlooked in favor of concentrating

may eventually be obtained, as stated above, the time necessary to achieve this compliance may range from several months to several years.⁸¹

2. Judicial Enforcement

Another possible explanation for the inefficiency of the present system may be the fact that, while Code violation cases have increased,⁸² the average fine in housing code cases is extremely small.⁸³ In 1965, the average fine in health code cases in Traffic Court was seven dollars and the average in Building Code cases was twenty-eight dollars. In 1966, the average for all cases increased to over twenty-nine dollars. In the first two months of 1967, the last time the figures were compiled, the median fine was twenty-five dollars and seventy-nine percent of the fines were less than fifty dollars.⁸⁴ Referee Frederick L. Byrd of the Traffic and Ordinance Court stated that these averages were misleading since they included fines given for minor violations and fines in hardship cases. The average fine excluding the above is about \$150.⁸⁵ Referee Byrd further stated that there are many considerations which enter into determining the amount of the fine, such as the nature of the violations, whether the defendant lives in the building, whether he has previously been before the court and what he plans to do to correct the violations.⁸⁶ If the referee feels that the landlord is not being conscientious, he will levy a heavy fine.⁸⁷ After the fine is levied, although a reinspection is ordered by the Court,⁸⁸ there is, of course, no guarantee that the inspection will be made or that the repairs will be completed.⁸⁹ In other words,

on those violations which present real hazards to health and safety. Interview with Marcus Irwin, Feb. 20, 1969. DETROIT: THE NEW CITY, *supra* note 3, at 32.

⁸¹ See text, pp. 70-73, *supra*.

⁸² From July 1, 1968, to February 28, 1969, 1,657 code violation cases have gone to court. This figure is approximately double the number of cases for the same period in the previous year. In the entire fiscal year 1968, a total of only 1,902 code violation cases went to court. Interview with William Parness, Mar. 11, 1969.

⁸³ Small fines are the general rule in most jurisdictions. F. GRAD, *supra* note 41, at 26.

⁸⁴ Stanton, *supra* note 15, Sec. B at 4B, col. 1.

⁸⁵ Interview with Frederick Byrd, Mar. 20, 1969.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* Referee Byrd states that at the time of trial he directs each inspector to reinspect the defendant's premises after a reasonable time. But he admits that he has no way of knowing whether or not this is actually done.

the fine does not assure the alleviation of the sub-standard housing conditions.

Even if fines were severe enough to act as a deterrent, effective prosecution of Code violators would still be hampered by the common practice among some building owners known as "trafficking" in slum dwellings. Typically, as soon as these owners feel that they are about to be cited for a Code violation, they secretly sell the building to a friend. Therefore, unless the Code enforcement agencies and the Corporation Counsel's office have kept a close eye on the Registry of Deeds, this transfer of interest will go unnoticed and prosecutions will be brought against the non-owner of the building. Since only the owner can be cited for a Code violation, the entire prosecution process must be reinstated against the new owner. Before a new citation is issued, however, the new owner typically makes another secret sale of the building to yet another friend or sometimes back to the original owner of the building, again frustrating prosecution of the Code violation.⁹⁰

D. Evaluation

The importance of identifying and rectifying the major breakdown of the Code enforcement system certainly cannot be over-emphasized. The system as presently constructed *can* be made more effective. Since Detroit relies upon Code enforcement as one part of its three-pronged attack on urban decay, efficient and effective enforcement is a prerequisite to solution of Detroit's housing problem.⁹¹ However, research for this article has dis-

⁸⁹ The courts lack the manpower and the time to follow up previous cases independently. They must wait until the enforcing agencies reinspect the building which may take several months if done at all.

Neither the Department of Health nor the Department of Building and Safety Engineering has a definite policy dealing with reinspection cases. DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16 at 21. "Reprosecutions of cases is frequently initiated by the enforcement Bureaus of our Department. Serious violations are promptly reentered. *While this is not an automatic procedure, good judgment is exercised.*" [Emphasis added] DEPARTMENT OF BUILDINGS AND SAFETY ENGINEERING, COMMISSION ON COMMUNITY RELATIONS REPORT, *supra* note 47 at 6.

⁹⁰ Interview with William Parness, Mar. 11, 1969. DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, at 13.

⁹¹ Numerous proposals for change in code enforcement procedure have been made. (See note 21, *supra*). Among the better ones have been: reorganization of the enforcement agencies so that all the inspection functions are in one department; higher salaries for

closed a generally pervasive belief on the part of both critics and advocates of the Code enforcement system that a reorganized, efficiently and honestly administered Code enforcement system, injected with a realistic amount of new funds, will cure Detroit's Code enforcement ills. This conclusion seems overly optimistic and fails to come to grips with the real problems facing Code enforcement. More realistically, no matter how doctored and subsidized the present enforcement system becomes, no matter how dedicated its enforcement personnel are, the present Code enforcement structure can never fill its vital role in the overall attack on urban decay.

III. Prospects For Code Enforcement

There are at least four basic reasons why it is unrealistic to expect a Building Code system to meet the important goals presently assigned to it.

A. Manpower Shortage

Because of the varying technical expertise of the three city departments having responsibility for Code enforcement, the ma-

inspectors; higher fines and the selective use of jail sentences; a separate housing court; and a shorter time between notice of violation and trial. A plan to reorganize the inspecting departments will probably be implemented soon, but this is not in and of itself a solution to the problem.

There are two areas where change can be instituted with a minimum of cost or organizational trauma and immediate beneficial effect. This first is the elimination of the open-ended time allowed for repairs. Though it is proper for the Departments to allow some time for compliance, the data reveal that the Departments have been too lenient with landlords and have misplaced their reliance in them. Thirty to forty days should be sufficient time in most cases to make repairs or at least to have them well on their way. Even if a definite time limit is not adopted, more should be required for a continuance than the word of the owner that repairs will be made.

The second area susceptible to immediate correction is the size of the fine levied. Even though the Court has shown a willingness to raise the fine to an average of \$150, it is still so low that in many instances the cost of repair is more than the fine. In this situation the threat of a fine is hardly an incentive to landlords to make repairs and maintain their buildings. The threat of a large fine can be an effective deterrent to those landlords whose business is renting slum housing and who look at fines as merely another expense of the business. As one city official put it: "They [fines] may be viewed as a license for the owner to continue to violate the Code." (URBAN HOUSING COUNCIL, A SURVEY OF HOUSING CODE ENFORCEMENT IN DETROIT, *supra* note 43, at 6) Since the Courts are hesitant to levy large fines for fear of crowding the court dockets with lengthy appeals and trials *de novo*, an *enforced policy* of immediate reinspection and immediate issuance of new notices for uncorrected violations would lead to individual fines so small they would not be worth appealing but so many of them that compliance would become more economical.

majority of Detroit's residential structures must be inspected by two or all three of these departments. This results in additional delay and greater stress on manpower which is already in short supply.⁹² If the yearly inspections required by ordinance were confined only to those areas of the city with the highest density of slum dwellings, the number of inspections per year would still be astronomical. To illustrate this point, some statistics bear repeating. In the "inner" city, which is an area comprising approximately eleven percent of the total land area of Detroit, there are 27,000 residential structures.⁹³ Although exact figures are not available, approximately 21,000 of these structures were built prior to 1919.⁹⁴ Only 1,000 of the 27,000 residential structures are considered in sound condition.⁹⁵ In the "middle" city, which is an area comprising 35 percent of the total land area of Detroit, more than one-third of its 151,000 structures were built before 1919.⁹⁶ Of the 151,000 structures, all but 11,000 are dwelling structures.⁹⁷ Only twenty-three percent of the entire "middle" city area is considered in sound condition.⁹⁸

The number of inspectors presently available to inspect this large number of buildings is frightfully small. At current manning levels, the Department of Health and the Department of Buildings and Safety Engineering have a combined inspector strength of 182.⁹⁹ Through reorganization of these agencies, Detroit hopes to eliminate to some degree overlapping inspections of the same dwelling. However, manpower improvements through reorganization are not expected in the near future.¹⁰⁰ In addition, as more emphasis is placed on prosecution of code violators, valuable inspector-time is increasingly spent in the courts.

⁹² Interview with Harry Boyle, Mar. 12, 1969. Interview with Marcus Irwin, Feb. 20, 1969.

⁹³ DETROIT: THE NEW CITY, *supra* note 3, at 10.

⁹⁴ *Id.* at 10.

⁹⁵ *Id.* at 49. See text at 63-64, *supra*.

⁹⁶ *Id.* at 10. Almost all code enforcement activity is presently aimed at the "inner" and "middle" cities, DETROIT: THE NEW CITY, *supra* note 3, at 28).

⁹⁷ *Id.* at 50.

⁹⁸ *Id.*

⁹⁹ DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, at 4. Interview with Harry Boyle, Mar. 12, 1969.

¹⁰⁰ The prospect of a major reorganization of Detroit's Code enforcement agencies is a tempting one, yet one that must be approached with extreme caution; because not only is

As presently staffed, the Department of Buildings and Safety Engineering estimates that it requires three to five years to complete a cycle of inspection of those areas for which it is responsible.¹⁰¹ Because of greater responsibility and a higher incidence of violations, the Health Department estimates that its present systematic inspection program will take 10 years to complete.¹⁰²

In light of the job to be done by these departments, even if they were to become very efficient, they would have to more than quadruple in size in order to reduce systematic inspections to a tolerable and effective frequency. Such a proposal would be inordinately expensive to implement and would require revenue which the City is incapable of raising.¹⁰³ Since the City is already beset with the worst financial squeeze in its history, and because the demand for public services is at its highest level,¹⁰⁴ new programs which require large sums of money are not feasible. Also, since publically coerced compliance with the Building code is, at best, inefficient, if such revenue were made available, it could be better spent improving the quality of the inspectors presently authorized¹⁰⁵ or on other urban renewal projects.

this a difficult task to carry out, but also and primarily because reorganization is *not*, in-and-of itself the solution to the problems which beset the system. [Emphasis in original.]

DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT NO. 2, *supra* note 16, at 16.

¹⁰¹ DETROIT: THE NEW CITY, *supra* note 3, at 31.

¹⁰² Interview with Harry Boyle, Mar. 12, 1969.

¹⁰³ Based on fiscal year 1965, an increase of these departments to four times their present size would cost over \$13 million, a figure considerably higher than the City's total contribution to the urban renewal program for the same period (\$5-10 million—DETROIT: THE NEW CITY, *supra* note 3, at 50). Mayor Jerome Cavanagh testified before the National Commission on Urban Problems that the City of Detroit could not afford the code enforcement program necessary to keep up conservation areas alone. Since the City can not afford this type of code enforcement, it certainly is unable to afford adequate code enforcement in the entire City. 1967 *Hearings*, *supra* note 16 at 14.

¹⁰⁴ Detroit Free Press, Apr. 9, 1969, at 1, col. 8. REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, *supra* note 1, at 283, 393-394. 1967 *Hearings*, *supra* note 16, at 4.

¹⁰⁵ The quality of the presently authorized staff inspectors could be greatly increased by increasing salaries to attractive levels. Currently, Building and Safety inspectors are paid at the "going" union scale for journeymen. Health inspectors, who are required to have at least two years of college, are paid approximately \$2,000 per year less. (\$7,358-\$8,630) Interview with Harry Boyle, Mar. 12, 1969. DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING URBAN RENEWAL REPORT NO. 2 *supra*, note 16, at 6.

B. Attitudes of Officials Enforcing the Code

The second reason why the present Code enforcement system is incapable of achieving the goals assigned to it is the attitude of the persons responsible for housing code enforcement.¹⁰⁶ These people are interested in doing an *efficient* job as distinguished from an *effective* job. So long as they keep criticism to a minimum and inspect as many buildings as is reasonably possible, they are pleased with their performance. They feel then that the Code enforcement system is all that it should be and strongly resent criticism of their efforts.¹⁰⁷ They do not appear, however, to be similarly concerned with the ultimate effectiveness of the program.

Before the housing code enforcement machinery can become a truly efficacious weapon against slum housing, the system requires resourceful and energetic individuals with a desire to implement a genuine program of reform. To expect to find individuals of this caliber in any meaningful number at the city bureaucratic level seems unrealistic. Likewise, to raise salaries sufficiently to attract such individuals is not feasible.

C. Lack of Social Stigma

The third reason why the present Code enforcement system will never adequately achieve compliance with the Building Code is that violation of the Building Code does not bring with it the social opprobrium that is normally associated with other criminal conduct. The reason for this phenomenon is not that society condones slum housing, but rather that since 81 percent of the "inner" city dwelling units are not owner-occupied,¹⁰⁸ associates of the absentee landlord will ordinarily have no intimate knowledge of the human suffering caused by the way in which their neighbor makes his living.¹⁰⁹ This lack of social stigma means,

¹⁰⁶ In an interview with Mr. Hewitt, a HUD official working with the Virginia Park Conservation Area, in Detroit on February 20, 1969, Mr. Hewitt said: "Supervisors are not in the know. They do not understand the problem or have a feeling for it." *cf.* 1967 Hearings *supra*, note 16, at 3.

¹⁰⁷ Interview with Harry Boyle, Mar. 12, 1969. See notes 24 and 25 *supra* and accompanying text.

¹⁰⁸ DETROIT: THE NEW CITY, *supra* note 3, at 10.

¹⁰⁹ Interview with United Tenants for Collective Action, in Detroit, Feb. 20, 1969. Interview with John Huston, Feb. 11, 1969.

therefore, that there is no significant peer pressure on an absentee owner of a slum dwelling to repair his building.

D. Ineffectiveness of the Courts

The fourth reason why the present Code enforcement system cannot achieve city-wide compliance with the Code is that the courts are unable to bring sufficient pressure to bear on a sufficiently large number of landlords to make non-compliance on a wide scale more expensive than compliance.¹¹⁰ Judicial influence in this area is non-existent until the bureaucratic Code enforcement machinery brings violators into court and, of course, the great number of dwelling structures means that the risks of being cited for Code violations is relatively small. This total dependence upon an inefficient Code enforcement system is perhaps the chief weakness of a judicial solution to the Building Code problem.

The courts, however, have problems of their own. The courts are currently able to dispose of all prosecutions brought for Code violations because the great majority of these cases are handled in summary proceedings.¹¹¹ Defendants normally do not appeal the findings and decisions of the Referee.¹¹² However, if fines were increased to a point where defendant landlords were financially harmed, the summary processing of these cases would cease.¹¹³ Defendants would demand (and be granted as of right) a trial *de novo*. Since time in these cases normally favors the defendant,¹¹⁴

¹¹⁰ Landlords presently feel little economic pressure to keep their low income housing repaired and habitable, or to rehabilitate badly deteriorating buildings. *cf.* Dahl, *A White Slumlord Confesses*, *ESQUIRE*, July 1966, at 92.

Since the cost of making the repairs may be—and usually is—substantially higher than the fine imposed, the occasional payment of fines, may be viewed as part of the cost of the business of renting dwelling space, or, in the case of an owner-occupant, as one of the incidents of homeownership. F. GRAD, *supra* note 41, at 29.

¹¹¹ Interview with Referee Frederick Byrd, Mar. 20, 1969.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ The lengthy delay that commonly intervenes between the inspection of the buildings and the imposition of penalties for any violation disclosed during the inspection, moreover, diminishes the effectiveness of the criminal prosecution in another way. It has often been suggested that, with criminal penalties, the seriousness of the penalty is less important than the certainty and swiftness of its imposition.

it would be to his advantage to drag the trial out as long as possible. If the sentence is severe enough, he can be expected to appeal an unfavorable verdict. As a consequence, if the City of Detroit attempted to prosecute a large number of Code violators and if the courts imposed sentences appropriate to the offense, the resulting legal maneuvering would quickly and effectively clog the entire judicial process. For this reason, it is unrealistic to regard the courts as an effective device to *coerce* the city's landlords to comply with the law.¹¹⁵

IV. Proposals for Reform

The present Code enforcement system has proved unsatisfactory in the past. There is little prospect of it working more effectively in the future. As a substitute for Code enforcement, it is necessary to turn away from a system of coerced compliance toward a system which induces voluntary compliance. A new concept must be adopted which makes voluntary compliance with existing building and health codes in the landlords' own self-interest by eliminating, through the use of economic penalties, the profitability of non-compliance. Although this could be achieved on an individual basis by increasing judicially imposed penalties, widespread achievement of this goal requires the passage of innovative legislation, *totally outside the concept of Code enforcement*, which shifts the burden of achieving compliance with the Code from tenants and Code enforcement officials to the landlord himself.¹¹⁶

And in the case of housing prosecutions, the penalty is rarely certain and never swift. F. GRAD, *supra* note 41, at 29.

¹¹⁵ Many heralded the passage of a 1968 "tenants rights" package (MICH. COMP. LAWS § 125.525-533 (1968)) by the Michigan Legislature as an important step in strengthening the enforcement system as a weapon in fighting urban decay. However, reliance upon the exercise of tenants' rights as a method of code enforcement has significant drawbacks. The "tenants rights" package is an important piece of legislation, improving the rights of the tenant class in general. It has not, however, strengthened the tenant unions which, as a collective entity, would be the only body able to enforce the provisions of this Act as presently conceived. This is due to the requirement that all rents be paid into a court-established escrow account in order for the tenants to take advantage of the new statutory defenses to nonpayment of rent. (MICH. COMP. LAWS § 125.530) In practice, tenants are very reticent to pay rents into a fund over which they would have no control. For this reason, it cannot be considered an important aspect of overall code enforcement. *See note 13 supra*.

¹¹⁶ Illustratively, under the present system, a rat infested building will be corrected only if and when the tenants and the enforcement officials are able to bring sufficient pressure to bear on the landlord. Under the proposed concept, this necessary force would constantly be in existence. Health and building officials would thereby be freed

Implementation of this concept would not be easy, especially from a political standpoint, since it would amount to the financial ruination of the present class of non-conforming landlords as the lesser of a variety of evils necessary to cure our urban ills. If all landlords could accurately be characterized as "evil" persons, making such a decision could much more easily be rationalized. However, all landlords cannot be so characterized. Contemporary scholars in the field of urban problems have discredited the once popular notion that all owners of slum dwellings are greedy capitalists, living comfortably in the suburbs while profiting from the suffering of other human beings:

We do not characterize the slum landlord as a conscious or willing evildoer, we agree that he is probably doing precisely what a rational profit-seeking businessman in his circumstances would feel required to do.¹¹⁷

Although many Detroit landlords today might appropriately be described as "slumlords," there is nevertheless another large segment of the landlord class barely living above the poverty level themselves. Some of these persons, for example, have committed their meager savings to the purchase of a building which represents for them their entire retirement security. As stated above, proper implementation of the concept proposed here would necessarily result in significant financial harm, often financial ruin, to these "good" people as well as to the "evil" ones.

The following proposals are intended to be examples of legislative ideas in the spirit of this concept. They hopefully will generate others and are by no means presumed to be exhaustive.

A. Proposal for a More Effective Rent Withholding Power

Either the state or the cities¹¹⁸ should enact appropriate legislation requiring that all multiple dwellings and rooming houses obtain a certificate of compliance evidencing conformity with the

from the role of policeman and be permitted to return to the task of administering the health and building codes.

¹¹⁷ Sax & Histan, *supra* note 47.

¹¹⁸ The present State Housing Law, PUBLIC ACT No. 286 also provides for a certificate of compliance. MICH. COMP. LAWS § 125.529-152.531. This act has serious deficiencies, however. The two principal ones are that (a) failure to have a certificate of compliance is not a defense to non-payment of rent, and (b) a temporary certificate may be granted without inspection. Where the present law is not inconsistent with the following proposals, it should be retained.

Building Code¹¹⁹ within a period of six to twelve months after the passage of the law. Such a certificate will serve as a rebuttable presumption that the building is free from Code violations. Prior to the granting of the certificate, the tenants shall be given notice of its prospective issuance and of the right to enjoin issuance upon a showing that Code violations do in fact exist in the building. In such an action, the tenants must allege those specific violations of the Code which would make issuance of the certificate illegal. It would then be the burden of the landlord to show cause why he is entitled to a certificate by establishing to the satisfaction of the court that his building is free from Code violations endangering the health or safety of the tenants as alleged. Once issued, this certificate would expire after two years.

The lack of a certificate of compliance *plus* the existence of any Code violations constituting a danger to the safety or health of the tenants would be an absolute defense to non-payment of rent and/or termination of the tenancy;¹²⁰ that is, tenants living in substandard housing would have the power to withhold rent without fear of precipitating costly retaliatory legal action against them. Where the landlord, on the other hand, is unable to obtain a certificate, because of a shortage of inspectors, for example he will nonetheless be entitled to receive rents by showing that the dwelling is free of any Code violations which would endanger the health or safety of the tenants. Under no circumstances should the state or the city grant additional time for inspections beyond the six or twelve month grace period provided for in the statute.

The principal advantage of this proposal is that the Code enforcement agencies could drop the unworkable role of being the protagonist for Code compliance. Instead, the agencies would adopt a more neutral position—that of assisting the courts to determine the relative rights of the actual parties in the controversy between landlord and tenant. The agencies' principal function would then become inspectional. The responsibility of achieving Code compliance would thereafter fall primarily upon

¹¹⁹ This proposal and those which follow may have such far reaching implications that enactment may be preferred on the local rather than state level.

¹²⁰ Rent withholding as a means to enforce the building code was given strong support in F. GRAD, *supra* note 41, at 152-153.

the landlord by permitting tenants to withhold rents if the building does not meet Code requirements.¹²¹

Although there is a possibility that this proposal would initially increase the existing workload of the enforcing agencies, this possibility is a remote one. Until a building is brought into substantial compliance with the Code, requested inspections could be made on a cursory basis. Since the majority of residential structures in Detroit today fall below minimum Code standards, it would be many months before the majority of structures could be made ready for inspection. Also, the limited number of contractors available to make needed repairs will insure that buildings with Code violations will be prepared for inspection on a piecemeal basis. These factors will spread requests for inspections over a long period of time rather than having them bunched in the initial period immediately following enactment of the proposal.

To prevent time consuming reinspections of buildings which repeatedly fail to receive a certificate of compliance, the proposal would limit the number of inspection requests to three within any six month period. If, after three inspections within a six-month period, the owner did not receive a certificate, he would be prohibited from requesting another inspection for six months from the date of the last inspection.

Under the present practice, inspectors make procedural court appearances to swear in complaints every three to four weeks.¹²² In addition, inspectors make regular court room appearances to testify in Code violation prosecutions and in civil actions between landlord and tenant.¹²³ Although inspectors would still make court appearances under this proposal, these appearances would, in most cases, only be necessary in the event of civil litigation between landlord and tenant. This would further alleviate the burden on the inspectors' time.

¹²¹ This proposal intentionally makes it easy and financially rewarding for individual tenants or organized groups of tenants to withhold rent whenever a serious code violation exists. In the majority of cases, therefore, it is presumed that the tenants will effectively police their own dwellings. However, should any condition exist which constitutes a nuisance or hazard to non-tenants, nothing in this proposal would weaken the authority of the code enforcement officials to initiate an action of their own to have these violations corrected.

¹²² Interview with William Parness, Mar. 11, 1969.

¹²³ Interview with Harry Boyle, Mar. 12, 1969.

If the demand for inspectors were to produce inspection delays, those landlords whose units complied with the Building Code would not be harmed since the tenants of such a landlord would not be able to come under the rent withholding provisions of the law. To assist landlords and tenants alike in this matter, the enforcing agency should prepare regulations to enable the parties to anticipate the results of an inspection.

The proposal contained herein is set forth in Appendix A as an amendment to the present housing law, Public Act 286.

B. Proposal for Summary Receivership

A summary procedure enabling the tenant to get a court order appointing a receiver to make repairs should also be implemented. In cases in which the landlord does not have a certificate of compliance, tenants' allegations that Code violations exist which threaten their health or safety will be given a presumption of truth. The burden of persuasion will therefore rest on the landlord. If the court determines that Code violations do exist, a private receiver will be appointed.¹²⁴ He will collect all rents and will have authority to make needed repairs. After all necessary repairs have been made, the receiver shall file an accounting with the court, returning surplus rent to the owner. The only defense to this action will be an affirmative one showing that the alleged Building Code violations do not exist.

As an alternative to surrendering his building to a court appointed receiver, the owner may hire a private contractor to correct all Code violations. This contract must be presented to the court within seven days of its decision appointing the receiver. The contract must contain a liquidated damage clause providing for payment to the receiver if the work is not completed by a date specified by the court. The contractor must furnish a performance and payment bond to the Court running in favor of the private receiver. The tenants will be third party beneficiaries under the contract. If each of the foregoing conditions are met the court may, in its discretion, suspend it's order appointing a receiver.

¹²⁴ Receivership programs were extremely successful in New York and are presently viewed as the most effective method of insuring compliance with the building code in Chicago. F. GRAD, *supra* note 41, Chap. V.

This receivership proposal would be a private action not involving present Code enforcement agencies. Tenants will themselves be acting directly to affect their physical environment. This will foster a realization that they can in fact do something to help themselves.¹²⁵ This will hopefully alleviate one of the basic deficiencies inherent in the present Code enforcement system. Since the present system is “. . . basically a two party proceeding between the enforcement official and the landlord . . .”¹²⁶ with the most critically interested party, the tenant, no more than the observer, it “. . . embrace[s] all the most unattractive elements of paternalism.”¹²⁷ The enforcement officials are presently forced to make decisions for the tenant without his knowledge or advice “. . . which even the saintliest official would find it difficult to make with proper discretion and sensitivity.”¹²⁸ It is therefore understandable that Code enforcement leaves those whom it ultimately is to benefit “. . . puzzled, resentful and hostile. . .”¹²⁹

Other advantages of this proposal are that: (a) under this summary proceeding, tenants will be able to get a court order and repairs made with a minimum amount of effort, expense, or delay; (b) the tenant's legal status as third party beneficiaries will give them the right to sue the landlord and/or the contractor if repairs are not completed on time or if the repairs are not made satisfactorily; (c) since the landlord is in jeopardy of losing rental income entirely if a receiver is appointed, he will be under constant pressure to maintain his building, or, in the event of court action, to get a private contractor; (d) since two interested groups will be

¹²⁵ This rationale was expressed in F. GRAD, *supra* note 41, in its support of tenant remedies at 145:

Tenant Remedies appear to have at least three purposes . . . Third, tenant remedies serve a purpose which is at least in part extrinsic to the basic aim of improving housing conditions: because bad housing is a major cause of discontent in slum areas and because housing issues are both tangible and persuasive in their impact, tenant remedies have formed a useful focus for community organization, designed not only to improve housing but also to make felt other discontents and demands of slum dwellers, of economically deprived groups, and of groups that have been deprived for racial or ethnic reasons.

¹²⁶ Sax & Hinstead, *supra* note 47, at 871.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

supervising the landlord, that is, the tenants and the bonding company, supervision by the courts and the enforcement agencies will be minimal; (e) with bonds running in favor of the receiver, necessary funds will be generated with which to make repairs if they are not completed on time or are completed unsatisfactorily.

The proposal contained herein is set forth in Appendix B as an amendment to the present housing law, Public Act 286.

C. Proposal To Halt Marketing of Slum Dwellings

This third proposal provides that contracts for the sale of multiple dwelling-unit buildings containing one or more serious Code violations would be voidable. Such contracts could be voided by either party and be held unenforceable by any court. The fact that the violations were known or unknown at the time of sale would not be a defense to nullification of the contract. An exception would be made for a sale in which the buyer contracts to correct the Code violations within a stipulated time and secures the promise with an adequate surety.

Because of the risks involved, such a law would virtually end the common practice of marketing in slum dwellings, thereby furthering the policy of making compliance with the Building Code economically attractive. It would be similar in its effect to the filing of a notice of *lis pendens*¹³⁰ which the City already has authority to file,¹³¹ though seldom does.¹³² This proposal, however, would be more effective than *lis pendens* since it goes into effect automatically without action on the part of enforcement officials. Though this law would interfere with traditional notions of freedom of contract, it is a relatively minor interference when compared to the benefits to be reaped. Since *lis pendens* also inhibits transfers of property by making purchases risky, this interference with freedom of contract is not much greater than that posed by *lis pendens*.

¹³⁰ Notice of *lis pendens* is filed in the Recorder's Office for the purpose of giving notice to all interested persons that the title to certain property is in litigation and that, if they purchase this property, they may be bound by any adverse judgment affecting the property.

¹³¹ DETROIT COMMISSION ON COMMUNITY RELATIONS, HOUSING-URBAN RENEWAL REPORT No. 2 *supra* note 16, at 13

¹³² Interview with Marcus Irwin, Feb. 20, 1969.

V. Conclusion

Under these proposals the owner of a building with serious Code violations may (1) repair them, or, if he does not have the resources, he may try to avail himself of Federal low interest loans or grants,¹³³ (2) sell the building, making sure that the purchaser contracts to repair all code violations, or (3) sue for a voluntary receivership.

These proposals would cause significant financial loss to those who own the slum dwellings at the time the law is enacted. However, it is believed that the social benefits to be gained by the proposals made herein outweigh the financial hardship that they will entail. Whatever hardship does occur will not fall indiscriminately upon all landlords, but rather only upon those who have failed to maintain their buildings at minimal health and safety levels though required to do so by law for over fifty years. Undue consideration for non-complying landlords should not be permitted to cloud the real issue; should such landlords be permitted to continue renting substandard housing? This is a policy question which the city and the state must answer. Either these governmental units will vigorously attack slum housing, or they will tolerate slum housing indefinitely under the inadequate Code enforcement program now in existence. The argument that government should not force the owners of slum dwellings to make repairs because the landlords feel that such repairs are too expensive or too difficult was succinctly answered by the Court of Appeals for the District of Columbia:

This Court is aware of and sympathetic to the vicissitudes which must be endured today by a property owner in obtaining reliable and competent help to maintain his premises, *but one who chooses to use his property as a dwelling place for others to produce profit for himself cannot avoid compliance with the safety standards properly established for*

¹³³ Those landlords interested but presently unable to finance the repairs made necessary by these proposals may be able to avail themselves of long term low interest loans or grants from the Federal Government. Such funds are available through the Federal Housing Administration: for example, 3% loans under 42 U.S.C. § 1452b (1964). For an extensive examination of Federal subsidy programs see, REPORT OF PRESIDENT'S COMMITTEE ON URBAN HOUSING *supra*, note 1, Sec. ii.

*such use merely because it is expensive or difficult.*¹³⁴ [Emphasis added]

It is reemphasized that landlords of slum dwellings are not necessarily evil, but rather that the renting of slum housing exacts such a large social cost that this business can no longer be tolerated. Any individual electing to be a landlord can appropriately be saddled with the legal responsibility of maintaining housing conditions at the highest standards as a condition to the privilege of staying in the business. One commentator stated this idea as follows:

[I]f it is true that slum ownership is a business which requires maintenance of such indecent conditions *then this is a business which needs to be eliminated.* . . . Nothing forced him to stay except his willingness to subordinate the life of his tenants to the prospect of some economic loss.¹³⁵ [Emphasis added]

City officials, either expressly or implicitly, anticipate that the Building Code enforcement system will achieve results far beyond that which can reasonably be expected. The present Code enforcement structure has broken down and consequently is unable to perform the task that was originally intended for it: that is, to coerce landlords into conforming their dwellings to minimum standards of health and safety. To combat slum housing more effectively, the City of Detroit must find a substitute for Code enforcement which will shift the burden of ensuring that buildings comply with the Building Code from municipal agencies to the landlords. The power to ensure that dwellings meet minimal standards of health and safety can best be given to the occupants of the buildings. This would not only rescue the City from the present inefficient and unworkable method of attacking slum housing, but would also give the urban ghetto dweller the means to better his own future.

¹³⁴ *Levengard v. District of Columbia*, 254 A.2d 728, 729 (D.C. App. 1969).

¹³⁵ *Sax & Hinstead, supra*, note 47, at 892.

APPENDIX A*

MICH. COMP. LAWS § 125.529

Sec. 129 (1) IT SHALL BE UNLAWFUL TO RENT OR LEASE units in multiple dwellings or rooming houses ~~shall not be occupied~~ unless a certificate of compliance has been issued by the enforcing agency. The certificates shall be issued only upon an inspection of the premises by the enforcing agency AND ~~except~~ A FINDING THAT THE DWELLING IS FREE FROM HOUSING CODE VIOLATIONS WHICH ARE A THREAT TO THE HEALTH OR SAFETY OF THE OCCUPANTS ~~as provided in section 134.~~ The certificate shall be issued within 15 days after written application therefor if the dwelling at the date of the application is entitled thereto.

(2) ~~A violation of this act shall not prevent the issuance of a certificate, but the enforcing agency shall not issue a certificate when the existing conditions constitute a hazard to the health or safety of those who may occupy the premises.~~ PRIOR TO 7 DAYS BEFORE ISSUANCE OF THE CERTIFICATE OF COMPLIANCE THE OCCUPANTS OF THE DWELLING SHALL BE FORMALLY NOTIFIED OF ITS PENDING ISSUANCE.

(3) PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF COMPLIANCE THE OCCUPANTS MAY BRING SUIT TO ENJOIN ITS ISSUANCE. IF THE COURT DETERMINES THAT THERE ARE HOUSING CODE VIOLATIONS WHICH ARE A THREAT TO THE HEALTH OR SAFETY OF THE OCCUPANTS IT SHALL ENJOIN ITS ISSUANCE UNTIL SUCH TIME AS THEY ARE CORRECTED.

(4) IN ANY ACTION BROUGHT BY THE OCCUPANTS OF THE DWELLING TO ENJOIN THE ISSUANCE OF A CERTIFICATE OF COMPLIANCE THE LANDLORD MUST AFFIRMATIVELY SHOW THAT THE DWELLING IS FREE FROM ANY HOUSING CODE VIOLATION WHICH IS A THREAT TO THE HEALTH OR SAFETY OF THE OCCUPANT.

(5) No change.¹³⁶

MICH. COMP. LAWS § 125.530

Sec. 130. (1) No change.¹³⁷

* *The regular printed portions contain the present language of the law. The words which are lined out are the proposed deletions and the words printed in all-capitals are the proposed additions to the law.*

¹³⁶ MICH. COMP. LAWS § 125.529 Sec. (3): Inspections shall be made prior to first occupancy of multiple dwellings and rooming houses, if the construction or alteration is completed and first occupancy will occur after the effective date of this article. Where first occupancy will occur before the effective date of this article, inspection shall be made within 1 year after the effective date of this article. Upon a finding that there is no condition that would constitute a hazard to the health and safety of the occupants, and that the premises are otherwise fit for occupancy, the certificate shall be issued. If the finding is of a condition that would constitute a hazard to health or safety, no certificate shall be issued, and an order to comply with the act shall be issued immediately and served upon the owner . . . On reinspection and proof of compliance, the order shall be rescinded and a certificate issued.

¹³⁷ MICH. COMP. LAWS § 125.530 Sec. (1): When a certificate is withheld pending compliance, no premises which have not been occupied for dwelling or rooming purposes shall be occupied, and those premises which have been or are occupied for dwelling or rooming purposes may be ordered

(2) A certificate of compliance shall be issued on condition that the premises remain safe, healthful and fit condition for occupancy. If upon reinspection the enforcing agency determines that conditions exist which constitute a hazard to health or safety, the certificate shall be immediately suspended as to affected areas and the areas may be vacated as provided in subsection (1). ~~IN ANY EVENT SUCH CERTIFICATE SHALL EXPIRE TWO YEARS AFTER THE DATE OF ISSUANCE.~~

(3) The duty to pay rent in accordance with the terms of any lease or agreement or under the provisions of any statute shall be suspended ~~and the suspended rentals shall be paid into an escrow account as provided in subsection (4),~~ during that period when the premises have not been issued a certificate of compliance, or when such certificate, once issued, has been suspended. This subsection does not apply until ~~the owner has had a reasonable time after the effective date of this article or after notice of violations to make application for a temporary certificate, as provided in section 131-6~~ (12) MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE. ~~Nor does~~ This subsection SHALL NOT apply where the owner establishes that the conditions which constitute a hazard to health or safety were DIRECTLY caused by the occupants. The rent, once suspended, shall again become due in accordance with the terms of the lease or agreement or statute from and after the time of reinstatement of the certificate, ~~or where a temporary certificate has been issued, as provided in section 131-~~

~~Rents due for the period during which rent is suspended shall be paid into an escrow account established by the enforcing officer or agency, to be paid thereafter to the landlord or any other party authorized to make repairs, to defray the cost of correcting the violations. The enforcing agency shall return any unexpended part of sums paid under this section, attributable to the unexpired portion of the rental period, where the occupant terminates his tenancy or right to occupy prior to the undertaking to repair.~~

~~When the certificate of compliance has been suspended, or has not been issued, and the rents thereafter withheld are not paid into the escrow account, actions for rent and possession of the premises for nonpayment of rent may be maintained, subject to such defenses as the tenant or occupant may have upon the lease or contract.~~
MICH. COMP. LAWS § 125.531

Sec. 131. (1) An owner shall apply for a certificate of compliance. Inspection and issuance of certificates shall be in accordance with the requirements of this act and with procedures established by the enforcing agency. ~~The enforcing agency may authorize the issuance of temporary certificates without inspection for these premises in which there are no violations of record as of the effective date of this article, and shall issue such temporary certificates upon application in cases where inspections are not conducted within a reasonable time. Temporary certificates shall also be issued for premises with violations of record, whether existing before or after the effective date of this article, when the owner can show proof of having undertaken to correct such conditions, or when the municipality has been authorized to make repairs, or when a receiver has been appointed, or when an owner rehabilitation plan has been accepted by the court.~~ ANY OWNER WHOSE BUILDING SHALL FAIL TO OBTAIN A CERTIFICATE OF COMPLIANCE AFTER THREE INSPECTIONS BY THE ENFORCING AGENCY WITHIN ANY 6 MONTH PERIOD SHALL NOT BE PERMITTED TO APPLY FOR ANOTHER INSPECTION FOR A PERIOD OF 6 MONTHS FOLLOWING THE DATE OF THE LAST INSPECTION.

(2) No change.¹³⁸

(3) No change.¹³⁹

vacated until reinspection and proof of compliance in the discretion of the enforcing agency.

¹³⁸ MICH. COMP. LAWS § 125.531 Sec. 131(2) provides for a registry of all owners.

¹³⁹ MICH. COMP. LAWS § 125.530 Sec. (1): When a certificate is withheld pending compliance, no premises which have not been occupied for dwelling or rooming purposes shall be so occupied, and those premises which have been or are occupied for dwelling or rooming purposes may be ordered vacated until reinspection and proof of compliance in the discretion of the enforcing agency.

APPENDIX B

MICH. COMP. LAWS § 125.535

Sec. 135. (1) ~~When a suit has been brought to enforce this act against the owner the court may appoint a receiver of the premises.~~ ANY OCCUPANT OR LANDLORD MAY BRING A SUIT TO APPOINT A RECEIVER OF THE PREMISES.

(2) When the court finds ~~that there are adequate grounds for the appointment of a receiver.~~ HOUSING CODE VIOLATIONS WHICH ARE A THREAT TO THE HEALTH OR SAFETY OF THE OCCUPANT OR OCCUPANTS OF THE DWELLING, it shall appoint ~~the municipality or a proper local agency or officer, or~~ any competent person as receiver. WHEN THE LANDLORD DOES NOT HAVE A CERTIFICATE OF COMPLIANCE THE ALLEGATION OF A HOUSING CODE VIOLATION WHICH IS A THREAT TO THE HEALTH OR SAFETY OF THE OCCUPANT OR OCCUPANTS SHALL BE GIVEN THE PRESUMPTION OF TRUTH. The receivership shall terminate ~~at the discretion of the court~~ WHEN THE COURT DETERMINES THAT THE REPAIRS HAVE BEEN COMPLETED.

(3) No change.¹⁴⁰

(4) No change.¹⁴¹

(5) No change.¹⁴²

(6) IF THE LANDLORD WITHIN 7 DAYS OF THE COURT ORDER APPOINTING A RECEIVER PRODUCES A WRITTEN CONTRACT WITH A LICENSED BUILDING CONTRACTOR PROVIDING FOR CORRECTION OF ALL HOUSING CODE VIOLATIONS THE ORDER APPOINTING THE RECEIVER SHALL BE SUSPENDED. SUCH A CONTRACT SHALL CONTAIN A LIQUIDATED DAMAGE CLAUSE PROVIDING FOR PAYMENT TO THE RECEIVER IF THE REPAIRS ARE NOT COMPLETED BY A DAY CERTAIN AS DETERMINED BY THE COURT.

(7) THE BUILDING CONTRACTOR SPECIFIED IN SEC. 6 SHALL FURNISH A PERFORMANCE AND PAYMENT BOND RUNNING IN FAVOR OF THE RECEIVER.

(8) THE OCCUPANTS OF THE BUILDING SHALL BE THIRD PARTY BENEFICIARIES UNDER THE CONTRACT.

¹⁴⁰ MICH. COMP. LAWS § 125.535 Sec. 135 (3): The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

¹⁴¹ MICH. COMP. LAWS § 125.535 Sec. 135 (4): Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

¹⁴² MICH. COMP. LAWS § 125.535 Sec. 135 (5): When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be alien on the real property for the payment thereof.