

Policy Concern & Action Taken: Senior Living Facility Inspection Program

FY 2019

General Program

- Policy Concern 1: Most Senior Living Facilities are responsive to their residents and comply with property maintenance concerns in an effective and efficient manner. Why should we be in a program that requires registration and subjects us to intrusive and time-consuming inspections?
- Action Taken: DSD Code Enforcement's resources are best spent inspecting those properties that are not in compliance. Registration in the Senior Living Facility Inspection Program is performance based, so those properties maintaining compliance do not have to register or allow for proactive inspection. Only those properties that do not maintain compliance will have registration and inspection requirements. In order to not adversely impact those properties quickly responding to issues that arise, the program incorporates warning periods and size-contingent thresholds to keep the focus of the program on properties warranting the most oversight for the benefit of their senior residents.

The alternative is to have all Senior Living Facilities register annually and have inspections, similar to the programs established for mobile living parks and boarding homes.

- Policy Concern 2: The San Antonio Property Maintenance Code (SAPMC) allows the City to inspect the bad properties. You already know which ones those are. Why is a program necessary for Code Enforcement to do what it already has the authority to do?
- Action Taken: DSD Code Enforcement staff is authorized to conduct investigations of multi-tenant properties on reactive complaints, such as ones received through 311. The complaint gives probable cause for inspection. However, the inspection is limited to only what can be easily observed, which is most likely the unit receiving the complaint. Unless probable cause exists in the form of a complaint, it is unknown if a similar or different issue is present in the other units. The Senior Living Facility Inspection Program allows for proactive, non-complaint based, inspections of a limited portion of the property to ensure no major life safety violations are present.
- Policy Concern 3: Good actors are already doing the right thing. The bad actors are a small percentage of the total who gives all actors a bad name. However, there shouldn't be a program created solely for a small percentage of actors (5% to 15%).
- Action Taken: Unfortunately, it is quite common to establish or modify rules and regulations based on the untoward actions of a small percentage of actors. Arguably many of our law enforcement and administrative laws are established to provide consequences to the actions of a few.
- Policy Concern 4: Even if this program is tailored to "bad actors", why are only Senior Living Facilities being targeted for an apartment inspection program?
- Action Taken: The City Council submitted a Council Consideration Request (CCR) that explicitly requested exploring "new regulations and ordinances needed to adequately insure the health and safety of all residents of senior and/or disabled residential housing facilities." A proactive inspection program for these facilities could help prevent and minimize the public health dangers and risks for vulnerable populations like seniors and disabled people. In addition to the dangers and risks posed to residents of the Aurora Apartments at the time of the CCR's issuance, similar issues have been known before and after this incident.
While the policy drafted narrowly tailors participation to only those properties that meet the definition of senior living facilities while also meeting the required registration thresholds based on

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the accumulation of code violations, program participation could be expanded to apply to all senior living facilities, or to all multi-tenant facilities regardless of resident demographics. However, the recommendation for program expansion is beyond the charge of this task force.

- Policy Concern 5: A policy is been created, and let's assume the program goes into effect after City Council approval. What if the program shows detrimental or negligible impacts to the residents of senior living facilities?
- Action Taken: The task force can formally recommend that the ordinance approved by City Council include language that states that this is a pilot program for an established period of time. With that language, if City Council elects not to formally extend the pilot program or adopt the program in perpetuity, the ordinance would be void and the program would sunset.

Qualifying Violations & Registration Requirements

- Policy Concern 6: Good actors work to resolve issues quickly, but things inevitably break. Properties do not want to be punished when issues arise, and the issue is in the process of being addressed.
- Action Taken: Program establishes a warning period of 24 hours or 3 days for Tier 1 violations before a notice of violation is issued that would count towards a qualifying violation for the program. The warning period is a policy modification that differs from how issues are currently handled through the San Antonio Property Maintenance Code. If a Tier 1 issue is brought into compliance within the warning period, the issue would not receive a notice of violations & would not count towards a qualifying violation.
- Policy Concern 7: Even with a warning period of 24 hours or 3 days, oftentimes it takes longer than that to resolve a maintenance issue. Failure to comply within that tight timeline would result in a qualifying violation despite the property's best efforts to resolve the issue.
- Action Taken: For purposes of the warning period, *compliance* means the following:
 - the hazard has been abated by removal or repair,
 - the resident has been removed from the hazard, and
 - an achievable action plan has been developed & begun to be implemented in order to address the issue. The action plan would be reviewed and monitored by staff to ensure actions are being taken consistent with plan.
- Policy Concern 8: With the violation thresholds established, my property would qualify for the program if I had a sewer break that impacted each of the 4 units in my building or a single infestation outbreak that spread to 4 units.
- Action Taken: If the infestation is of a similar type and occurs in multiple units in the same structure during a single incident, it would count as 1 violation. However, because infestations are a Tier 1 violation that allows for a warning period, if compliance or an action plan to achieve compliance is provided within the warning period – and subsequently followed – then the issue would not count as a qualifying violation toward required program registration.

The minimum threshold of violations to require registration are size contingent. In a 12 month period, properties with less than 100 units must have two (2) violations impacting life safety and units with 100 or more units must have three (3) violations impacting life safety in order to require registration with the Senior Living Facilities Inspection Program.

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- **Policy Concern 9:** The presence of lesser threat violations – tall grass, trash, junked vehicles – will cause property to meet the threshold and require program registration.
- **Action Taken:** Code violations impacting life, safety, and structural issues are prioritized over property maintenance issues. For example, property maintenance issues, Tier 2, have a much higher minimum threshold than Tier 1 violations. In addition, historical data suggests that very few properties would qualify for the program due to Tier 2 violations.

Inspections

- **Policy Concern 10:** The more units inspected and the greater the frequency of inspections, the more violations that will be observed, which in turn will result in a higher likelihood of recurring annual registration requirements.
- **Action Taken:** To avoid time-consuming and disruptive inspections, proactive inspection targets are set at up to 10% of all units. Life safety concerns can escalate the number of units observed if warranted. Proactive inspection frequency increases with higher registration levels (RL). However, the presence of observed qualifying violations poses a life safety issue for the vulnerable residents living in that property. The inspections are designed to protect the safety of residents. Properties within the one (1) year registration period are afforded the warning periods, expanded definition of compliance, minimum thresholds, and other policy features affixed to this program. In addition, registered properties will also receive training for staff and residents to help identify issues and share techniques on how to prevent issues from occurring.

Registration Requirement Appeals

- **Policy Concern 11:** With Senior Living Facility Inspection Program registration requirements triggered automatically by the number of qualifying violations, is there any way for a property to appeal whether they are in the program?
- **Action Taken:** Should a property be required to register with the inspection program due to meeting the qualifying violation threshold, a property may have up to two rounds of appeals. First, the property may request a hearing to appeal the decision with the Code Official (DSD Director), or designee. If the Code Official upholds the registration requirement, the property may escalate the appeal to the building-related and fire codes board of appeals (internally known as the Super Board). The Super Board's decision shall be final.

Additional Resources & Support

- **Policy Concern 12:** Infestations – particularly bedbugs – can spread rapidly, can be exacerbated by resident action or inaction, and have high treatment costs, roughly \$500 per unit per treatment. Are resources available to ensure treatment is effective and residents will do their part?
- **Action Taken:** In Fiscal Year 2019 City Council appropriated funding for expenses related to the relocation of residents. In the recent past, these funds, administered by the Neighborhood Housing Services Department (NHSD), have been used to relocate residents of boarding homes, mobile living parks, and multi-tenant properties to safer or more stable living situations. Should the program proceed to adoption and implementation, a portion of this money has been earmarked to assist

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residents in deferring expenses related to preparing their units for treatment. In addition, these expenses could pay for material items such as mattresses or furniture if the severity of an infestation dictates disposing of the furniture.

Future funding is contingent upon the annual budget approved by City Council.

- *Policy Concern 13:* Are there resources available to train staff and residents on how to avoid life safety issues in their apartment units and overall communities? A particular need present is education on issues like infestations, which can impact more than one (1) unit.
- *Action Taken:* A key partner in the Senior Living Facility Inspection Program is Metro Health, the City department responsible for responding to infestation issues. They will share their knowledge and information to educate property owners, management, staff and residents on infestation prevention and effective treatment techniques. These resources will be available to all multi-tenant properties, regardless if the property is required to register with this program or not. As a condition of the registration requirements, registered properties will be required to attend training on the program and prevention and treatment techniques.

Fees

- *Policy Concern 14:* The costs of program are too high and would be passed on to residents.
- *Action Taken:* Fees are set at \$6.00 per unit and \$50.00 per inspection/reinspection. Depending on the frequency of inspections and reinspections, the cost equates to less than \$1.00 per unit per month. Properties under 100 units would likely pay less than \$600 annually. For comparison, the San Antonio Apartment Association membership fees are \$200.00 base plus \$3.00 per unit. Total program fees for 0-99 unit properties average 14% more than SAAA annual rates and 38% higher than SAAA annual rates for 100+ unit properties.
In terms of the maintenance costs associated with maintaining compliance with the standards established in the SAPMC, many properties are diligent in responding effectively and efficiently when property maintenance issues appear. Their behavior describes a property that works to take the appropriate, responsive action to address the issue. The only properties where the maintenance costs will rise considerably are those that are doing the minimum to address present issues.