

Moving Neighborhoods Out of Blight in an Equitable Way

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1 Introduction

As a component of the affiliation between Albany Law School and the University at Albany, our two institutions collaborate to assist the City of Albany through our social innovation programming, including our joint class on urban and social innovation. This year, as in years past, the students and faculty were asked by officials within the City of Albany government to make recommendations to those officials as to how they could better address blight within city limits. This year, however, the students were asked to assess the City's blight remediation programming through the lens of the City of Albany's Equity Agenda. To this end, the students focused on developing innovative programming that could address blight, but do so in a way that would also further equity. Since many of the root causes of blight, particularly as it is manifest in the City of Albany, can be found in a legacy of institutional racism and discrimination, solutions to blight must be founded in tactics and strategies that also advance equity. This Report represents our efforts to identify ways that the City of Albany can further its Equity Agenda through blight remediation strategies that have advancing equity at their center. As the remainder of this Report shows, we have focused around four, core strategies that could accomplish this: advancing an equity-focused approach to code enforcement, incorporating an effective and pro-active emergency repairs program, instituting the use of Article 19-A of the Real Property Actions and Proceedings Law in a strategic fashion, and making creative uses of vacant parcels within city limits. As we hope this Report shows, thoughtful, pro-active blight remediation strategies can be deployed that can advance and further, rather than undermine, the City's Equity Agenda.

2 Roadmap

With the goal of furthering the City of Albany’s Equity Agenda as it relates to housing conditions within the city, the City of Albany’s leaders seek a holistic approach to blight remediation with a focus on prevention of blight, remediation of vacant and abandoned homes, and long-term sustainability of neighborhoods. To further those goals our team was asked to (1) create a definition of equity as it relates to the housing context, (2) explore and identify equitable tools available to city leaders to address blight and abandonment, and (3) explore how they can use these tools to further blight remediation efforts.

City leaders identified three categories of data for our team to begin to collect and analyze in the context of blight remediation: information related to housing conditions, the state of economic opportunity and development within the city, as well as information pertaining to issues of justice and safety as they arise in the city. Using these categories of information, we explored the legacy, potential effectiveness, and viability of blight remediation efforts within the city through the lens of equity. Lastly, we explored what impact, if any, key equity indicators within the housing context have on blight remediation efforts.

In pursuing these goals, our team searched for examples how other cities define equity then identified common themes in language and used these themes to develop the City of Albany-specific definitions and applications. We explored how an equity lens is used in other cities to frame blight remediation initiatives. We then flagged case studies of successful initiatives in cities similarly situated to the City of Albany. As the main product of this analysis, and which serves as the first of several recommendations we will make to the City of Albany with regard to blight-remediation efforts, we suggest the use of an “Equity Map” to help inform critical policy and tactical decisions about where the City can direct its resources to pursue equity-informed, blight remediation strategies. After discussing the use of an equity lens through

which to view the legacy and current status of blight in the City of Albany, and how the City could utilize an Equity Map to inform its blight remediation approach, the remainder of this Report will discuss a range of interventions that the City can use to address blight in an effective, efficient, and equitable way.

3 Equity as Lens

3.1 Defining Equity in Context of Blight

Equity is both a means and an end, a process and an outcome. For the purposes of this report, we will define equity as it relates to the context of housing and neighborhood revitalization.¹ As an outcome, equity in this context is a system in which everyone, regardless of their demographic identity or socio-economic status, has access² to safe, adequate, and affordable housing in inclusive,³ engaged, and sustainable neighborhoods designed to promote the physical, psychological, social and economic health and well-being of all.⁴ As a process, equity in this context means developing and implementing a collaborative, data-informed, and continually improving strategy to ensure a fair distribution of housing opportunities and access to resources

¹ For an excellent discussion of defining equity for the purposes of municipal-level equity initiatives and policy statements, including a list of sample equity definitions from other cities, *see* Diane T. Besser & Russill Fellow, *What Does “Equity” Look Like? A Synthesis of Equity Policy, Administration and Planning in the Portland, Oregon, Metropolitan Area*, INST. PORTLAND METROPOLITAN STUD. 20-24 (Apr. 2014) (prepared for the Oregon Community Foundation).

² *Advancing Equity and Inclusion: A Guide for Municipalities*, CITY FOR ALL WOMEN INITIATIVE 17 (June 2015), https://www.cawi-ivtf.org/sites/default/files/publications/advancing-equity-inclusion-web_0.pdf (“Accessibility involves removing the barriers faced by individuals with a variety of disabilities (which can include, but is not limited to: physical, sensory, cognitive, learning, mental health) and the various barriers (including attitudinal and systemic) that impede an individual’s ability to participate in social, cultural, political, and economic life.”) [hereinafter *CAWI Report*].

³ *Id.* at 17 (“Inclusion [is] [a]cknowledging and valuing people’s differences so as to enrich social planning, decision-making, and quality of life for everyone. In an inclusive municipality, we each have a sense of belonging, acceptance, and are recognized as valued and contributing members of society. Real inclusion takes place when those already included in the “mainstream” learn from those who are excluded and initiate change.”).

⁴ *Id.* at 6 (“Equity and inclusion create more sustainable cities where people from all walks of life have the right to, and can participate fully in, social, economic, political, and cultural life.”); *see* Diane T. Besser & Russill Fellow, *supra* note 1, at 7 (“Despite its popular use, the term “equity” is an expansive and complicated concept. It incorporates broad and interwoven ideas about individual and community well-being, opportunity, and access to resources.”).

in a way that targets, engages, and lifts those portions of society most vulnerable to the harmful and unjust effects of systemic racism and poverty, and, as is particularly salient in our discussion of addressing blight and abandonment, still suffer from the lasting effects of a legacy of housing disinvestment, some of which we will address in this report.⁵

3.2 Albany’s Equity Agenda

In 2019, the City of Albany adopted an Equity Agenda.⁶ The Equity Agenda stresses the essential role of local government in fostering and maintaining equity⁷ and emphasizes the need to focus equity efforts on communities most affected by systemic and institutional racism. The goal of this Equity Agenda “is to focus on achieving equity across all communities and ending the injustices caused by institutional and systemic racism and discrimination.”⁸ To accomplish this goal, the City of Albany has committed to engaging in equitable budgeting,⁹ to engage in violence prevention, and enhance programing to ensure the residents of the city live in a community free of systemic and institutional racism and one that is able to move forward in as equitable and fair way as possible.

The Equity Agenda has a strong focus on the built environment as a locus and site of equity initiatives. It reflects a holistic vision of neighborhood revitalization and community development. Highlighting issues like park space, tree coverage, and sidewalk conditions ultimately equalizes opportunities for improved health outcomes and promotes investments in areas like housing and local business development. The Equity Agenda also recognizes the

⁵ Diane T. Besser & Russill Fellow, *supra* note 1, at 6 (“Equity from a process perspective entails understanding, and continually improving, “how” we are moving toward desired equity goals.”).

⁶ ALBANY, N.Y., ORDINANCE ch. § 183-1 (2019).

⁷ *Id.* §183-1 (“Equity is a cornerstone of a thriving democracy and must be embedded in the internal and external actions of local government that contribute to the health and well-being of everyone in our City.”).

⁸ *Id.*

⁹ *See id.* (“Equitable budgeting is a “funding shift” to focus on those neighborhoods with the greatest needs.”).

historic disparities in neighborhood treatment and investment by the City of Albany. This is a central theme of an equitable approach—seeking to repair past wrongs and imbalances of access and opportunities across lines drawn by systemic racism, generational poverty, and discriminatory institutional systems.¹⁰

Initiatives outlined in the Equity Agenda are informed through the identification of indicators that the City has collectively defined.¹¹ One of the priority efforts associated with the Equity Agenda is the development of an Equity Map. An Equity Map, also referred to as an Equity Atlas, is where relevant data, tied to the indicators, are brought together for analysis that can inform action or investment.¹² The creation of an Equity Map requires the identification of data and recognition of its inherent biases, the assessment of the data quality, and analysis of the data.¹³ Analysis derived from an Equity Map must be coupled with informed dialogue from a range of stakeholders so as to ensure that the results are not counterproductive to an Equity Agenda.¹⁴ An Equity Agenda and an Equity Map also provides a methodology for synthesizing

¹⁰ Diane T. Besser & Russill Fellow, *supra* note 1, at 23 (“Achieving equity is often explicitly connected to rectification of the[] [social and economic] disparities [experienced by underprivileged members of society], a position reflecting the strong linkage between social equity and social justice. To achieve equity, then, requires attaining a state in which all members of society have sufficient access to resources and opportunities for personal enrichment.”).

¹¹ *See* § 183-3(A) (“The Equity Agenda should include policy recommendations for city-wide initiatives and policies to ensure equitable growth among key indicators of success: education, economic development, health, housing, jobs, criminal justice, the built environment, service equity, and arts and culture.”).

¹² Diane T. Besser & Russill Fellow, *supra* note 1, at 32 (“With the increasing sophistication of online mapping applications, equity atlases are now able to compile numerous indicators and create interactive mapping interfaces that not only offer customizable visualization tools (maps), but also analytical capabilities. The use of regional indicators and equity atlases are becoming popular methods that support data-driven decision-making and help to gauge a region’s level of equity attainment.”).

¹³ *Id.* at 28 (“Equity experts admit heavy reliance on data and indicators to assess their initiatives and programs. The use of indicators, benchmarks and opportunity/equity mapping are becoming popular methods of gauging the level of equity attainment, both within organizations and at a regional and state level.”); *see CAWI Report, supra* note 2, at 55 (“Data on equity and inclusion is crucial for decision-making, resource allocation, program design, and service delivery.”).

¹⁴ *See* § 183-3(C); *see also* Diane T. Besser & Russill Fellow, *supra* note 1, at 32 (“[I]ndicators are ‘quantities that reveal qualities.’ The indicators represent abstract portrayals of on-the-ground realities that people experience on a daily basis. Experts recognize that decisions should not be made based on data, indicators or maps alone. To truly understand what the indicators reveal, they need to be supplemented with the rich stories and perceptions of real people.”).

data into frameworks such as ward rankings and park asset maps as a site of data collection and integration into municipal initiatives and investment priorities.¹⁵ For example, in describing a communications strategy focused on employment and workforce development, the Equity Agenda specifically notes that it will be implemented “with an emphasis on communities with the following characteristics[:] minority majority wards, low income[,], disproportionate crime rates[,], and vacant buildings.”¹⁶ Another example is the selection of wards for capital projects based on disparities between neighborhoods in receiving capital project funds over a given time period and current needs for built environment enhancements.¹⁷ Additionally, the City of Albany will prioritize “high needs communities” that have been historically disenfranchised in allocating Community Block Grant Funding.¹⁸ Such strategies, which are a part of the implementation of the Equity Agenda, will be continuously evaluated and monitored by the City to ensure successful equity outcomes and avoid misplaced municipal investments that might otherwise overlook those traditionally ignored communities that are most in need of improvement.¹⁹

What our group was asked to address was how the City of Albany might translate some of those key concepts that inform the Equity Agenda into a strategy and a set of corresponding tactics that might combat the spread of blight and remediate it wherever possible. Blight is an intrinsically complex and intersectional issue, a nexus of many causes and effects and cycles.²⁰

¹⁵ § 183-2(1).

¹⁶ *Id.* § 183-2(3).

¹⁷ *Id.* § 183-2(1)(D) (“The selection of wards for capital projects must take into account the need for built environment enhancements, and the time period of the last capital project proposed or completed in the ward. Wards that have received zero or a limited number of capital project funds must be prioritized.”).

¹⁸ *Id.* § 183-2(3) (“While the office of Housing and Urban Development requires that all Community Block Grant Funding be allocated to high needs communities, the Albany Community Development Agency will take special care to ensure that CDBG funds be prioritized for organizations that serve communities historically disadvantaged due to racism and discrimination including African Americans, Latinos and Native Americans.”).

¹⁹ *Id.* § 183-3.

²⁰ *CAWI Report, supra* note 2, at 18 (“The intersection, or crossover, of our many identities affects how each of us experiences the municipality. These intersections occur within a context of connected systems and structures of power (e.g., laws, policies, state governments, other political and economic unions, religious institutions, media).”).

Any equity-based approach targets solutions that exist at the intersection of multiple social justice issues that disproportionately affect poor and minority communities; such issues include high crime rates, poor health outcomes health, and lack of access to decent affordable housing.²¹ A blight-remediation strategy, one that was operated through a focus on equity and carried out in a manner consistent with the City of Albany’s Equity Agenda, would do the same.²²

The goal of this report is to assist the City of Albany to consider ways it could undertake an equity-based approach to blight remediation. Such a pro-active, equity-focused blight remediation strategy would look at some of the reasons that have brought about blight in the city and try to identify the ways a lack of equity has contributed to the problem of blight in the city. Using an equitable lens to view some of these causes might help the city government formulate plans and select tactics that will get at some of the root causes of blight. By addressing such root causes, which have at their source a lack of equity, through an equity-based approach, we believe the City of Albany stands a better chance of ensuring long-term, sustainable solutions to the problem of blight in the city.²³

What is more, a truly equitable approach to blight remediation will view blight remediation as a continuum and will seek to repair existing inequities which may help to prevent blight from occurring in the future. Such an approach can lead to cost-effective strategies, targeted where they are needed most and when they are needed most, and which can bring about

²¹ Diane T. Besser & Russill Fellow, *supra* note 1, at 14 (“Linking social equity with justice has, in turn, led to policies that seek to achieve social equity by focusing on issues of racial and ethnic diversity and, in particular, addressing problems of institutional or structural racism.”).

²² *CAWI Report*, *supra* note 2, at 15 (“An intersectional analysis rooted in social justice gives us the ability to look at equity and inclusion from the standpoint of the real experiences of people – and not simply as isolated or fixed identities and issues.”).

²³ Diane T. Besser & Russill Fellow, *supra* note 1, at 27 (“Research shows that a complex web of social, economic and environmental conditions contribute to the overall well-being necessary to achieve social equity. It is important to acknowledge these interdependencies and develop “indices” that effectively measure progress toward equity goals.”).

greater equity and more sustainable outcomes.²⁴ Thus, throughout this report, we will view blight remediation as just such a continuum, starting with interventions that can encourage property owners to make repairs, that can intervene to correct emergency situations, to initiate 19-A proceedings where necessary, and to utilize vacant lots effectively. Indeed, we believe by viewing blight remediation as a continuum, and building in equity-focused interventions at the earliest point possible, the City can help prevent violations from escalating to the point where they create unsafe or inadequate housing conditions. Such a preventive and interventionist strategy can also mean that otherwise unaddressed code violations will not get progressively worse and more expensive to fix over time.

The remainder of this report will discuss a range of strategies to address blight and will assess them through the perspectives that animate the Equity Agenda. First, however, we will discuss some of the sources of blight in the city, particularly as they relate to the ideas that form the core of the Equity Agenda.

3.3 Why Equity: The History and Legacy of Redlining

Equity can serve as a measure of the fairness of strategies, but it can also serve as a tool employed to inform decision making and solve systemic problems. To use equity as a tool, city leaders can engage in a balancing test: equity seeks to find a balance between *utility* and *justice*.²⁵ Utility seeks to maximize resources. In furtherance of Utility, leaders must consider availability of resources and how to use them sustainably to achieve maximum benefits from their use.²⁶ Justice seeks fair treatment, allocation of resources, and opportunity regardless of any

²⁴ *CAWI Report*, *supra* note 2, at 30 (“Build sustainability by securing resources over the medium and long-term. Embedding equity and inclusion in policies and strategic documents can help you to obtain resources.”).

²⁵ See *Ethical Principles in the Allocation of Human Organs*, U.S. DEP’T HEALTH & HUM. SERV. (June 2015), <https://optn.transplant.hrsa.gov/resources/ethics/ethical-principles-in-the-allocation-of-human-organs/>.

²⁶ See *id.*

one person's or group's characteristics.²⁷ The cold logic of utility runs the risk of dehumanizing citizens and needs to be tempered or balanced by justice to avoid abuse.

The goal of the City of Albany's Equity Agenda is to "focus on achieving equity across all communities and ending the injustices caused by institutional and systemic racism and discrimination."²⁸ To the extent that residents and neighborhoods within the City of Albany have suffered from, or endure the lasting legacies of, institutional and systemic racism, an agenda focused on combating such racism would seek to address its effects. The City of Albany is no stranger to a legacy of institutional and systemic racism, and our research into one key indicator of such racism, the practice of bank redlining, indicates that the city is still suffering the lasting impacts of these odious practices. An analysis of the impacts of redlining on the city's neighborhoods helps inform strategies for addressing institutional and systemic racism because it helps us identify those neighborhoods that were those targeted for such practices and suggests that efforts to address their lasting legacy will direct resources to those same neighborhoods.

Indeed, one way through which a legacy of racist policies has made its way into housing policy for decades has been through the practice of redlining, the effects of which are still felt today. This practice can be understood as the systematic and purposeful policies of federal, state, and local governments that defined where Black and White people could live during the majority of the twentieth century.²⁹ The most common way these public policies were carried out was through private financial entities such as banks:³⁰ "Banks discriminated through the practice of 'redlining' by refusing to give mortgages to Black people and by extracting unusually severe

²⁷ *See id.*

²⁸ § 183-1.

²⁹ RICHARD ROTHSTEIN, *THE COLOR OF LAW* vii (2017).

³⁰ *Id.*

terms from them with subprime loans.”³¹ These practices were so widespread, systematic, and forceful that the effects endure today.³²

As part of the reaction to the economic hardships exacerbated by the Great Depression, in 1933, the federal government created the Home Owners Loan Corporation (HOLC) to rescue homeowners who were about to default on their mortgages.³³ The HOLC created color-coded maps to assess lending risk based on a graded scale: the “best” neighborhoods colored green and given grade “A” and the “hazardous” neighborhoods in red and given grade “D”.³⁴ Tragically, in assessing financial risk, HOLC considered the racial makeup of neighborhoods as it made determinations as to their relative economic viability and the perceived economic risk of supporting lending to such neighborhoods. Neighborhoods were shaded red if Black citizens lived in them, even if such neighborhoods posed low risk to lenders, like a middle-class neighborhood of single-family homes.³⁵ Ultimately, HOLC appraisers colored a neighborhood green if it “had not a single foreigner or negro” and red if “the *colored element* controll[ed] the district.”³⁶ The maps had a serious impact on the availability of mortgage capital nationwide.³⁷ What is more, it institutionalized stigma, recording the federal government’s judgement of its Black citizens as poor risks merely based on race.

One year after creating HOLC, the administration also created the Federal Housing Administration (FHA) in 1934. The FHA insured bank mortgages if they met certain standards and qualifications, and one of these qualifications was white skin.³⁸ The Underwriting Manual

³¹ *Id.*

³² *Id.* at viii.

³³ *Id.* at 63.

³⁴ ROTHSTEIN, *supra* note 29, at 63.

³⁵ *Id.*

³⁶ *Id.* at 64 (emphasis added).

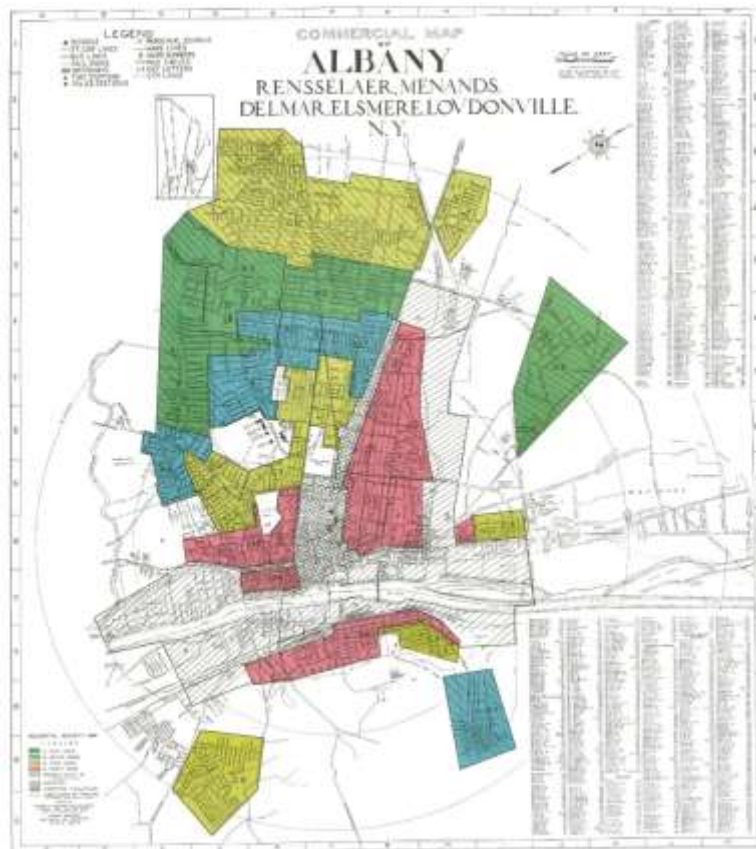
³⁷ *Id.*

³⁸ *Id.* at 64–65.

circulated by the FHA was concerned with blight³⁹ that might be brought into White neighborhoods by the “infiltration of . . . lower class occupancy, and inharmonious racial groups.”⁴⁰ These policies were explicitly relied on for decades. In 1958, the FHA went so far as to punish a White school teacher who rented his home to a Black colleague.⁴¹

The City of Albany was not immune to these widespread practices nor the problems they exacerbated and created. A redlined HOLC map from 1936 is set forth below.

FIGURE 1: THE CITY OF ALBANY HOLC “REDLINED” MAP



³⁹ See *id.* at 65 (explaining that there was concern for the stability of neighborhoods and the reduction of property values).

⁴⁰ ROTHSTEIN, *supra* note 29, at 65.

⁴¹ See *id.* at 68–70 (explaining that the FBI investigated but the U.S. Attorney refused to press charges. The FHA then denied Mr. Cohn the ability to obtain a government-backed mortgage indefinitely).

Many of the injustices people of color suffered throughout the United States were also felt here in the City of Albany and still affect the city today. A recent study done by the National Community Reinvestment Coalition (NCRC) included the City of Albany with 114 other cities. NCRC found nationwide that 74% of the neighborhoods that the HOLC redlined are low-to-moderate income and nearly 64% are minority neighborhoods today.⁴² An organization called Mapping Inequality uses a mapping program⁴³ to compare race and utility variables against redlining in the City of Albany. They found higher percentages of non-Whites and buildings lacking complete plumbing clustered in and around historically redlined areas.⁴⁴ As experience indicates, inadequate plumbing contributes to building deterioration generally and eventually blight.

As another example of the lasting legacy of institutional racism, which can in some ways be tied to redlining and some of which can be tied to discriminatory taxing practices, there is a well-documented wealth gap between Black and White Americans.⁴⁵ Like redlining, discriminatory property tax assessments denied Black families the opportunity to accumulate wealth resulting in smaller disposable incomes and fewer savings.⁴⁶ A county tax assessor can undermine tax fairness by using different percentages of market value in different areas.⁴⁷ In the

⁴² Bruce Mitchell & Juan Franco, *HOLC “Redlining” Maps: The Persistent Structure of Segregation and Economic Inequality*, NAT’L COMMUNITY REINVESTMENT COALITION (Mar. 20, 2018), <https://ncrc.org/holc/> (The northeast fared better than southern cities but showed that redlining persists); see also Daniel Aaronson et al., *The Effects of the 1930s HOLC “Redlining” Maps*, FED. RES. BANK CHICAGO (Feb. 2019), <https://www.chicagofed.org/publications/working-papers/2017/wp2017-12>.

⁴³ *Mapping Inequality: Redlining in New Deal America*, AM. PANORAMA, [https://dsl.richmond.edu/panorama/redlining/#loc=12/42.659/-73.854&city=the City of Albany-ny](https://dsl.richmond.edu/panorama/redlining/#loc=12/42.659/-73.854&city=the%20City%20of%20Albany-ny) (last visited Apr. 21, 2020).

⁴⁴ Rose Hildebrandt, *Redlining in Albany*, ESRI, <https://www.arcgis.com/apps/MapJournal/index.html?appid=692fd60d0dc94383a6b7a367e711147e> (last visited Mar. 23, 2020).

⁴⁵ ROTHSTEIN, *supra* note 29, at 169.

⁴⁶ *Id.*

⁴⁷ *Id.* at 170.

mid-twentieth century, local governments excessively taxed Black citizens.⁴⁸ A 1973 study done by HUD examined ten large cities and found systemic patterns of overassessment in low-income Black communities while finding a corresponding underassessment of White middle-class neighborhoods.⁴⁹ A 1979 study found that the chance these assessment differences could be attributed to the social bias of the assessors alone was less than one in a hundred.⁵⁰ One study that included the City of Albany compared the assessed and market value of homes moving property-by-property; they documented higher effective property tax burdens born by Black citizens.⁵¹

More recent experiences with lending practices in African-American communities have turned redlining on its head, but have also had dramatic impacts on such communities. Known as “reverse redlining,” this more modern discriminatory practice involved the excessive marketing of exploitative loans to communities of color.⁵² The marketing of subprime mortgages through this practice, which were bound to default, substantially contributed to the Great Recession of 2008.⁵³

While there certainly are many things that contribute to vacant properties, it is safe to assume that cycles of disinvestment and then predatory lending contributed to the current state of vacant and abandoned properties in the City of Albany. As Figure 2 shows, historically redlined portions of the city are also those with the most instances of blighted and abandoned properties.

⁴⁸ *Id.*

⁴⁹ *Id.* at 171.

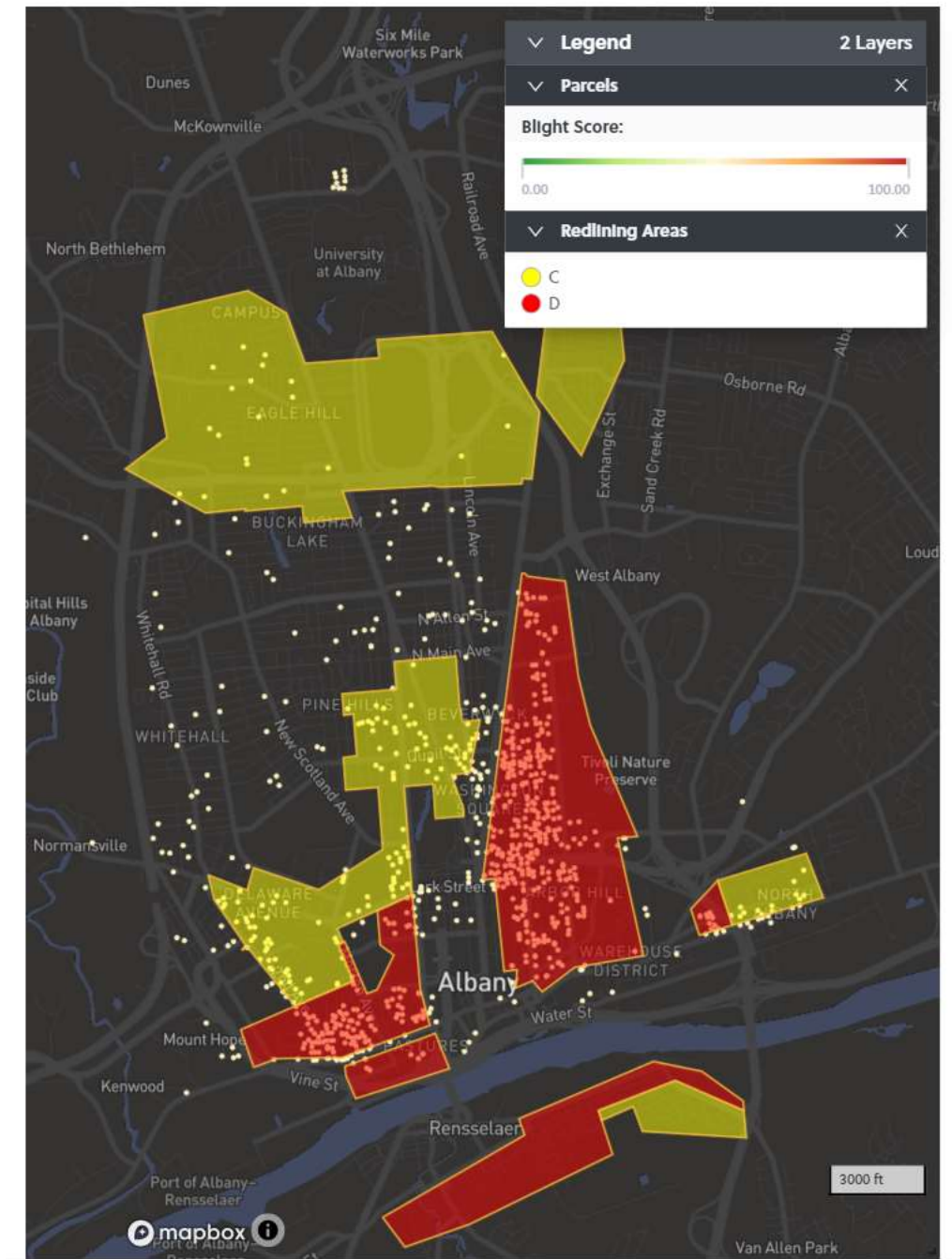
⁵⁰ *Id.* at 170.

⁵¹ Arthur Lyons, *The Urban Property Tax and Minorities*, ILL. ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS 73–78 (1982) <https://www2.law.umaryland.edu/marshall/usccr/documents/cr12h8117.pdf> (last visited Mar. 23, 2020).

⁵² ROTHSTEIN, *supra* note 29, at 109.

⁵³ *Id.*

FIGURE 2: REDLINE AND BLIGHT MAP IN THE CITY OF ALBANY



An equity-focused approach to housing and blight remediation would work to remedy this legacy of injustice by directing resources to remediating those neighborhoods hit the hardest by inequitable treatment.

3.4 Operationalize Equity: Map and Indicators

Blight is a traditionally difficult problem facing city leaders as it affects many aspects of the health and vitality of a city.⁵⁴ Introducing an equity lens to addressing blight can uncover hidden barriers, like the effects of redlining, that prevent a city from achieving its blight remediation goals. Central to this approach is the idea that in order to build equality one must consider the multiple aspects of a person's life that can contribute to exclusion.⁵⁵ An equity lens introduces questions and themes essential for city leaders to analyze policy and blight remediation strategies, including the following.⁵⁶ First, even if policies do not contain explicit racial biases, they can still inadvertently contribute to racial inequity in a city.⁵⁷ Second, city leaders can learn about policies that have historically shaped inequity across the nation and determine if they exist in a given community.⁵⁸ Third, city leaders can conduct in-depth analyses of racial disparities that are discovered in previous steps.⁵⁹ Fourth, leaders can begin with racial disparities in outcomes (e.g. generational wealth gaps) and track backwards to uncover the root causes of these differences.⁶⁰

⁵⁴ Joseph Schilling & Jimena Pinzon, *The Basics of Blight: Recent Research on Its Drivers, Impacts, and Interventions*, VACANT PROP. RES. NETWORK 3 (2016), https://vacantpropertyresearch.com/wp-content/uploads/2016/03/20160126_Blight_FINAL.pdf (last visited Mar. 23, 2020).

⁵⁵ *Advancing Equity and Inclusion: A Guide for Municipalities*, CITY FOR ALL WOMEN INITIATIVE 9 (June 2015), https://www.cawi-ivtf.org/sites/default/files/publications/advancing-equity-inclusion-web_0.pdf.

⁵⁶ *Advancing Racial Equity in Your City*, NAT'L LEAGUE OF CITIES (Oct. 25, 2017), <https://www.nlc.org/resource/advancing-racial-equity-in-your-city> (last visited Mar. 23, 2020).

⁵⁷ *Id.*

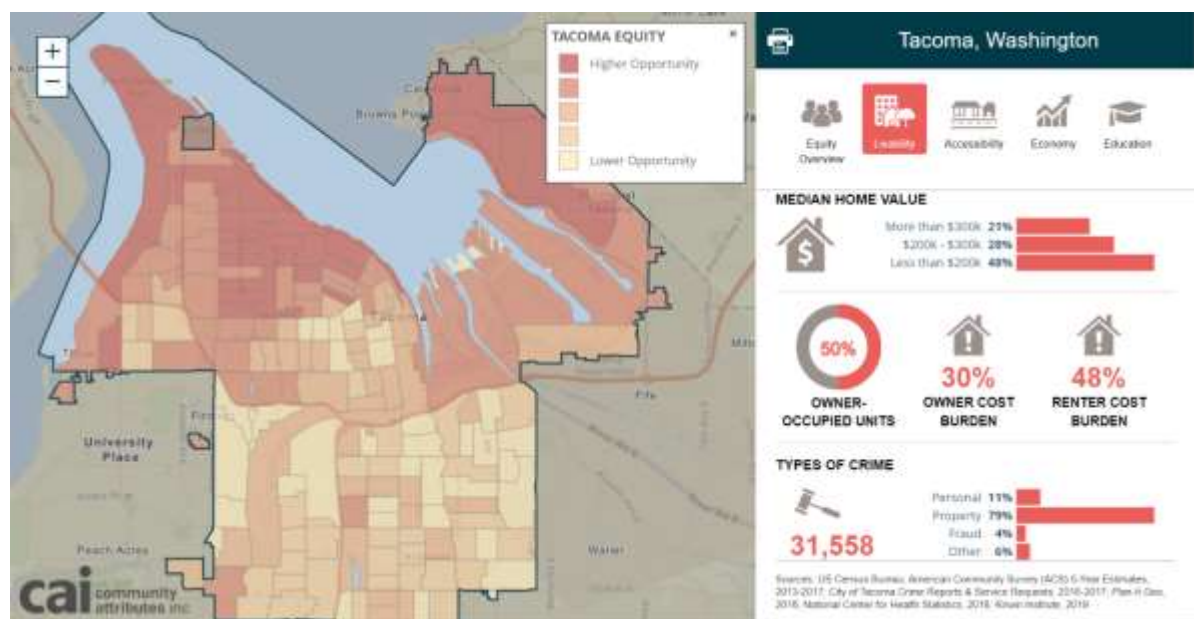
⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

What is more, equity indicators give city leaders many ways to not just organize and use data, but also to inform critical decision making. Equity indicators can be used as a framework for information to enable city leaders to more clearly define problems and answers.⁶¹ These indicators are used to identify and eliminate underlying drivers of inequity within a community that perpetuate inequality.⁶² An equity indicator is a measure that compares outcomes of groups likely to experience inequalities, such as racial minorities, to groups less likely to experience them, such as Whites.⁶³ Equity indicators are slightly different from social indicators in that they directly compare groups.⁶⁴ To apply these indicators to blight remediation efforts, cities have organized them into a map like the one used by Tacoma, Washington, which is set forth below as Figure 3.⁶⁵

FIGURE 3: TACOMA EQUITY MAP



⁶¹ See Victoria Lawson et al., *Equality Indicators Annual Report*, INST. ST. & LOC. GOVERNANCE 17 (2018), <https://nyc.equalityindicators.org/wp-content/uploads/sites/4/2018/12/Equality-Indicators-Annual-Report-2018.pdf>.

⁶² *Id.*

⁶³ *Id.* at 27.

⁶⁴ *Id.*

⁶⁵ *Tacoma Equity Map*, CITY OF TACOMA, <https://caimaps.info/tacomaequitymap?location=Tacoma&searchType=city&layer=EquityLayer&tab=liv> (last visited Apr. 21, 2020).

The City of Tacoma used indicators to measure opportunity based on geographic location.⁶⁶ Similar to the City of Albany’s Equity Agenda, Tacoma used indicators to measure economic development, health, housing, jobs, criminal justice, the built environment, availability of services, and arts and culture.⁶⁷ For example, health indicators might include rates of asthma, availability of fresh and healthy foods, and the number of parks and greenspace.⁶⁸ Maps like these can provide key insight to city leaders when deciding how to invest and what actions are needed in blight remediation. The most relevant ways for operationalizing an equity lens are highlighted in the recommendations section.

3.5 Equity Tools Inform Investment: Crime, Demolition and Blight

Another critical example of inequity affecting low-income communities, particularly in the City of Albany, is that historically marginalized communities have not just increased blighted properties, as shown above, they are also communities that suffer from higher crime rates. Using an equity lens to consider crime-reduction strategies can help focus attention on those communities that have faced historic and institutional racism. What is more, the tie between such institutional racism in housing practices, housing conditions and crime is not accidental. A growing body of work suggests that remediation of vacant properties has implications for crime happening in and around those properties; moreover, targeting blight-remediation strategies can have a great effect on violent crime specifically.⁶⁹ For example, demolition of a vacant or

⁶⁶ See generally *Office of Equity & Human Rights Annual Report*, CITY OF TACOMA (2015-2016). https://cms.cityoftacoma.org/OEHR/AnnualReport/COT_OEHR_AnnualReport2016.pdf (last visited Mar. 23, 2020).

⁶⁷ See *id.* at 8; see also LAWSON ET AL., *supra* note 61, at 7.

⁶⁸ *Id.* at 23.

⁶⁹ See Charles Branas et al., *Urban Blight Remediation as a Cost-Beneficial Solution to Firearm Violence*, 106 AM. J. PUB. HEALTH 2158–2164 (Dec. 2016).

abandoned building is a standard strategy cities use to address blight.⁷⁰ By introducing an equity lens to decisions as to where, when, and whether to demolish particular buildings, focusing on buildings in communities that have historically been subject to institutional racism, placing a priority on reducing crime in such neighborhoods, and targeting limited resources to demolishing properties in such communities, a city can make demolition a more precise tool for combating blight, improving equity, and reducing crime.⁷¹

Thus, cities can use equity indicators to assist city leaders in identifying which properties they need to target for demolition and estimating the likely influences that demolition may have on a community.⁷² Studies have shown that demolition affects crime rates.⁷³ Further, these effects are not experienced city-wide, but rather in smaller block-group⁷⁴ changes.⁷⁵ For example, a study carried out in Detroit, Michigan, relied on crime, demolitions, and neighborhood characteristics data to examine the impact of one of the nation's largest demolition programs on crime at the block-group level. This study sought to determine whether the over 9,000 demolitions completed from 2010 to 2014 were associated with discernible reductions in neighborhood crime.⁷⁶ Specifically the researchers explored whether demolitions were related to changes in total crime, violent crime, drug crime, and property-based crime.⁷⁷ This study found a statistically significant impact on total crime rates rises relative to a higher number of

⁷⁰ Matthew Larson et al., *Exploring the Impact of 9398 Demolitions on Neighborhood-level Crime in Detroit, Michigan*, 60 J. CRIM. JUST. 57–63 (2019).

⁷¹ *Id.*

⁷² *Id.*

⁷³ David S. Kirk & John H. Laub, *Neighborhood Change and Crime in the Modern Metropolis*, 39 CRIME & JUST. 441–502 (2010) (examining the association between demolitions and crime).

⁷⁴ A “block group” is a geographical unit used by the United States Census Bureau, which is between the Census Tract and the Census Block. It is the smallest geographical unit for which the bureau publishes sample data. Typically, Block Groups have a population of 600 to 3,000 people. *See Glossary*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/about/glossary.html> (select “Block Groups”) (last visited Apr. 21, 2020).

⁷⁵ Matthew Larson et al., *supra* note 70, at 57.

⁷⁶ *Id.*

⁷⁷ *Id.*

demolitions in one area. For example, areas of the city where over 35% of block-groups experienced more than ten demolitions were likely to have a reduction in total crime rates.⁷⁸ Similar to the total crime model, demolitions were associated with reductions in counts of both violent crime and property crime at the block-group level.⁷⁹

A similar study performed in Buffalo, New York, analyzed the impact of 2035 demolitions on crime from January 2010 to October 2015.⁸⁰ The researchers found that when measured from the microplace (i.e., the demolished structure), demolitions produced a significant reduction in both violent and nonviolent crimes.⁸¹ However, the impact did not extend to the entire block-group but rather was extended up to 1000 ft. from the demolition site.⁸² Because of this, when the researchers aggregated demolitions to the block-group level, demolitions did not have a statistically significant impact on crime. While early studies report mostly positive findings, it is difficult to know the true impact of demolitions on crime because there are too few studies available to assess the issue with certainty. For example, an analysis of the federal Neighborhood Stabilization Program found that demolitions reduced theft and burglary in Cleveland, Ohio (within 250 ft of the demolition, similar to the 2018 findings in Buffalo), but did not produce a discernible effect in Chicago, Illinois.⁸³ Thus, scale and geographical placement of demolitions are two factors that produce varying outcomes.

⁷⁸ *Id.* at 60.

⁷⁹ *Id.* at 61.

⁸⁰ Andrew P. Wheeler, *The Effect of Housing Demolitions on Crime in Buffalo, New York*, 55 J. RES. CRIME & DELINQ. 390–424 (2018).

⁸¹ *Id.*

⁸² *Id.*

⁸³ See generally Jonathan Spader et al., *Fewer Vacants, Fewer Crimes? Impacts of Neighborhood Revitalization Policies on Crime*, FIN. & ECON. DISCUSSION SERIES (2015), <https://www.federalreserve.gov/econresdata/feds/2015/files/2015088pap.pdf> (last visited Apr. 21, 2020).

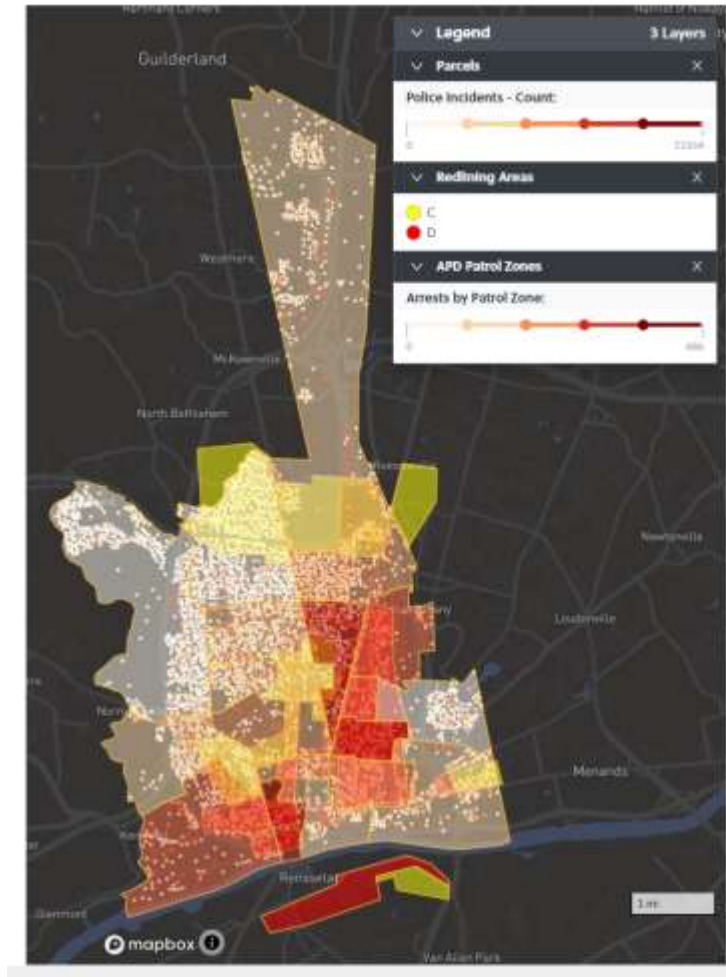
Preliminary data in the City of Albany suggests similar results: demolitions affect violent crimes, but not drug violations.⁸⁴ Further, multiple demolitions per block-group are needed to have a statistically relevant impact.⁸⁵ City leaders can use this information to plan targeted demolitions to achieve specific purposes.

Demolitions are large investments for any city to consider. By analyzing equity indicators in the context of an Equity Map, city leaders can make informed decisions so their investment has the most possible impact. Recall Figure 2 shows redlined areas of the City of Albany had the highest concentration of blighted properties; Figure 4 adds crime as a third equity indicator.

⁸⁴ Jonathan Jay et al., *Urban Building Demolitions, Firearm Violence and Drug Crime*, J. BEHAV. MED. (2019).

⁸⁵ *Id.*

FIGURE 4: REDLINE AND CRIME IN THE CITY OF ALBANY



If city leaders know at least that (1) multiple demolitions in the same block group have a measurable effect on crime; and (2) demolitions affect violent crime rates, then, based on at least those two data points, an equity lens can guide city leaders to target a block group with high rates of violent crimes that have multiple blighted properties that can be demolished and extend the effects of demolition as a blight-remediation tool.

Further, an equity lens can start to answer questions city leaders are left with after findings like the fact that demolition affects violent crimes but not drug crime.⁸⁶ Equity can

⁸⁶ *Id.*

uncover reasons for the lack of change in drug crimes by creating a framework to gather data and inform leaders on the drivers of crime generally and what types of drug crimes are common in a neighborhood. It can also assist city leaders explore how changes in policy or other areas of the city's blight remediation plan can have an effect on types and frequency of crime in a neighborhood.⁸⁷

The remainder of this report will present strategies for blight remediation that the City of Albany can consider as they transform neighborhoods in an effective, efficient, and equitable way. In introducing an equity lens, a city can begin to view blight remediation on this continuum starting with preventative interventions that encourage owners to make repairs to stop blight before it starts. For example, building equity-focused interventions into code enforcement practices at the earliest point possible can help prevent unaddressed violations from escalating and creating long term costs for city governments.

4 Blight Prevention: Code Enforcement

The purpose of code enforcement activities by a city through its' code enforcement personnel is to ensure that buildings are "safe and [do not] negatively affect property around them."⁸⁸ Such personnel do this by investigating complaints and "identifying violations in [the] normal course of business, notifying the owner of code violations [found], and following up to ensure that the property is brought into compliance."⁸⁹ Code enforcement tactics can be used to

⁸⁷ See Mike McLively & Brittany Nieto, *A Case Study in Hope: Lessons from Oakland's Remarkable Reduction in Gun Violence*, GIFFORDS L. CTR. (Apr. 2019), <https://policingequity.org/images/pdfs-doc/reports/A-Case-Study-in-Hope.pdf>

(explaining that Oakland Ceasefire is a holistic partnership between social service providers, community members, and law enforcement officials working to reduce community violence. It approaches violence as a structural problem and enlists new approaches to promote healthy communities).

⁸⁸ *Residential Property Guide*, CITY OF ALBANY DEP'T OF BUILDINGS & REG. COMPLIANCE 10 (Aug. 28, 2017).

⁸⁹ *Id.*

“[fight] neighborhood decline, [preserve] sound neighborhoods and [restore] distressed areas.”⁹⁰

In other words, code enforcement has a major impact on the development and sustainability of a community. Due to the significance of this role in the community, our team was asked to explore the ways in which equity can be implemented into the code enforcement process within the City of Albany to combat blight.

4.1 Why is an Equity-Focused Code Enforcement Process Essential to Blight Remediation?

The legislative intent of the City of Albany’s Equity Agenda highlights the need for equity to be “embedded in the internal and external action of local government that contribute to the health and well-being of everyone in the City,”⁹¹ and code enforcement officers (CEOs) are at the heart of this internal and external action. CEOs are first-hand witnesses to the effects of blighted buildings, distressed neighborhoods, and vacant properties.⁹² They have the power to “restore [these] distressed propert[ies], preserve neighborhoods, protect renters and low-income homeowners, and increase neighborhood resiliency and strengthen community.”⁹³ It is for these reasons that it is vital for code enforcement departments in every city to not only institutionalize equity, but also to advance it through “proactive protection”⁹⁴ and the use of data-driven equity indicators.

The use of equity indicators in code enforcement will lead to a higher prioritization of vulnerable neighborhoods that have been historically marginalized due to redlining. These

⁹⁰ *Strategic Code Enforcement*, CTR. FOR COMMUNITY PROGRESS, <https://www.communityprogress.net/read-more---strategic-code-enforcement-pages-265.php> (last visited Apr. 21, 2020).

⁹¹ § 183-1.

⁹² See Joe Schilling & Kermit Lind, *Strategic Code Enforcement*, VACANT PROP. RES. NETWORK 1 (2018), https://vacantpropertyresearch.com/wp-content/uploads/2018/09/20180910_CEBrief-FINAL.pdf (last visited Apr. 21, 2020).

⁹³ *The Power & Proximity of Code Enforcement: a Tool for Equitable Neighborhoods*, CITIES FOR RESPONSIBLE INVEST. & STRATEGIC ENFORCEMENT 5 (June 2019), https://hesterstreet.org/wp-content/uploads/2019/07/CR_-Phase-I-_Equitable-Code-Enforcement-report_FINAL-JUNE-2019.pdf (last visited Apr. 21, 2020).

⁹⁴ See *id.*

neighborhoods still face the largest number of blighted properties and therefore need the most attention.⁹⁵ By equipping code enforcement with the proper data-driven equity indicators, CEOs can not only make more informed decisions when prioritizing code violations, but can also (quite literally) spot problems in distressed neighborhoods before they even reach the blight stage. This can all be done while, at the same time, furthering the City of Albany’s Equity Agenda. In this section, we explore and identify ways that the City of Albany can realize its Equity Agenda through strategies aimed at improving code enforcement efforts that have a particular equity-focused approach.

4.2 Methodology and Preliminary Findings

Our team was tasked with exploring holistic interventions in the code enforcement process for the City of Albany through an equity lens in an effort to stop blight in its tracks. We were asked to analyze the ways in which code enforcement can be more proactive rather than reactive and carried out in a way that advances equity for each “step” of the code enforcement process.⁹⁶ Specifically, we were asked to focus on three pieces: (1) proactivity, (2) equity, and (3) compliance. We were then asked to further assess interventions that are low-cost, but high-impact.

In our interviews with the City of Albany’s Neighborhood Stabilization Coordinator, Samuel Wells, and Deputy Corporation Counsel, Robert Magee, we learned the current challenges faced by CEOs in the City of Albany. The main challenge is that resources are very limited.⁹⁷ Even with such limited resources, a large proportion of these resources are being

⁹⁵ See Brian Bieretz & Joseph Schilling, *Pay for Success and Blighted Properties*, URB. INST. 2 (July 2019), https://www.urban.org/sites/default/files/publication/100464/pfs_and_blighted_properties_0.pdf (last visited Apr. 21, 2020).

⁹⁶ The steps we have identified in the code enforcement process include: (1) Complaint, (2) Inspection, (3) Citation, (4) Re-evaluation, and (5) Court.

⁹⁷ Interview with Robert Magee, The City of Albany Deputy Corporation Counsel (Apr. 2, 2020).

directed towards a small number of landlords that end up in the judicial stage of the code enforcement process. Another sizable portion of resources are being directed towards “on-the-spot” mediation between tenants and landlords, which usually does not solve the problem.⁹⁸ These conflict resolution sessions are being conducted by the CEOs, who have no formal mediation training. The CEO will first receive a complaint, verify the violation with the tenant, and then reach out to the landlord. More times than not, the CEO finds themselves caught up in a landlord/tenant dispute, which then involves multiple back-and-forth phone calls or testifying at eviction hearings.⁹⁹

A second problem that our team analyzed is the need for landlords to maintain upkeep on their properties. In our interviews, we learned that the main problem between tenants and landlords “comes down to the business of renting property itself.”¹⁰⁰ Landlords want to maximize the return on their property, which results in higher rent, but less investment in upkeep. According to Robert Magee, this ultimately results in low-income tenants spending portions of their income to fix these uninhabitable dwellings.¹⁰¹

These challenges are taking away a considerable amount of time from more urgent code enforcement matters in vulnerable neighborhoods with higher blight scores. CEOs are overwhelmed and we understand that because there is a lack of resources, it is difficult to impose new tasks and more obligations upon them. That is why our team explored programs in other cities that would work to promote equity through code enforcement and give CEOs more time to prioritize highly distressed properties, with the ultimate, long-term goal of eliminating blight.

⁹⁸ According to Robert Magee, however, a CEO’s normal work sometimes does resolve problems by alerting the landlord to the violation and making sure that it gets corrected.

⁹⁹ Email Correspondence with Robert Magee, The City of Albany Deputy Corporation Counsel (Apr. 7, 2020).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

4.3 What Do Other Jurisdictions Do to Address Code Enforcement through an Equity Lens?

4.3.1 Cities RISE Study

Our team identified *The Power & Proximity of Code Enforcement: a Tool for Equitable Neighborhoods*, as a useful resource for identifying effective strategies utilized in other jurisdictions for addressing blight and promoting equity. This study specifically focused on equity in code enforcement and was conducted by Cities for Responsible Investment and Strategic Enforcement (“Cities RISE”), Ford Foundation, and Hester Street.¹⁰² The study, broken up into two “phases,” identified several cities in New York that integrate equity into different parts of their code enforcement procedure. “Phase I” of the study collected data from 16 New York municipalities, with the City of Albany being one of those cities.¹⁰³ This phase consisted of collecting data based on socio-economic factors and city government structure.¹⁰⁴ “Phase II” took a deep dive into four of the cities: Elmira, Rochester, Newburgh, and Mt. Vernon.¹⁰⁵ In each of these four cities, a team conducted an “on the ground” study consisting of ride-alongs with CEOs, interviews with city staff and community-based organizations, and process mapping out the entire code enforcement procedure.¹⁰⁶ In each city, the team noted any “pain points,”¹⁰⁷ “opportunities,”¹⁰⁸ and “best practices”¹⁰⁹ that could provide “a lens to inspire reflection, improvements, and actionable next steps.”¹¹⁰

¹⁰² *The Power & Proximity of Code Enforcement*, *supra* note 93, at 2.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 9.

¹⁰⁶ *Id.* at 12–13.

¹⁰⁷ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 13 (defining “pain points” as “[e]lements of the process that stakeholders found to be cumbersome, troubling, frustrating, and/or ineffective.”).

¹⁰⁸ The Hester Street team defines “opportunities” as “[s]uggestions made by stakeholders in each municipality to address pain points.”). *Id.*

¹⁰⁹ The Hester Street team defines “best practices” as “[n]oteworthy protocols that could be replicated or adopted.” *Id.*

¹¹⁰ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 13.

During the “instigation”¹¹¹ step, it was noted that complaints of noise or overcrowding were received, but may have been fueled by racist or anti-immigrant sentiment.¹¹² Researchers found that the opportunity here involved using data collection on neighborhoods and complaint patterns to gather “contextual information” to determine whether these were valid complaints.¹¹³ During the “inspection” step, researchers found CEOs do more than just assess building code violations; they also deal with many social service issues.¹¹⁴ Here, there was an opportunity to connect social services with CEOs.¹¹⁵ Researchers observed that during the “enforcement”¹¹⁶ step, CEOs were not in agreement about issuing citations because they found that it would be cheaper to pay the fine, rather than fix the actual problem.¹¹⁷ The team saw an opportunity to use data collection to identify those landlords who show patterns of paying fines without ever taking action on the violation and then develop an action plan to deal with those problem landlords.¹¹⁸ The team subsequently highlighted positive code enforcement practices in each of the other cities that promoted equity.

In one of the cities studied, the City of Rochester, code enforcement practice begins with its hiring process. The city looks for staff with “customer service orientation,” then places their new employees in a “comprehensive, two-year, cross-training and mentorship” program that ensures they receive the best on-the-job training and support.¹¹⁹ Senior CEOs can use this as an opportunity to pass down relationships to new employees. This practice promotes a sense of

¹¹¹ The “instigation” step is synonymous with our “complaint” step identified in note 83. *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 16.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Our team refers to this as the “citation” step.

¹¹⁷ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 17.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 18.

“continuity and consistency” in the community.¹²⁰ Furthermore, Rochester uses a volunteer-based home repair group called “Flower City Work Camp” to assist residents with repairs.¹²¹

In Mount Vernon, due to the influx of “zombie properties” following the foreclosure crisis, the city uses data collection to determine who the “bad actors” of its city were.¹²² The city used the program “Building Blocks” to connect data points on properties with fire incidents, inactive building permits, and open code enforcement cases.¹²³ Using this data, the city was able to focus its attention on one owner who was apparently using different LLC names on 16 foreclosed properties.¹²⁴ They also have the city’s CEOs perform “neighborhood walk-throughs” in vulnerable neighborhoods to provide information to residents on how to become compliant with codes.¹²⁵

In another city studied in the report, Newburgh, that city hired a CEO with experience in social work and community organizing to ensure its code enforcement department has an employee that can understand and connect with residents, sometimes even providing resources when necessary.¹²⁶ Newburgh also uses a “two-pronged protocol” to safeguard high impact cases, such as those involving low-income tenants.¹²⁷ Prioritization is first given to “high-risk safety” and health code violations.¹²⁸ In any case where a violation could potentially result in displacement, the CEO with a social work background is automatically assigned to that case.¹²⁹

¹²⁰ *Id.*

¹²¹ *Id.* at 19.

¹²² *Id.*

¹²³ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 19.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 20.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 19 (researchers noted that this approach built trust with tenants moving CEOs from seeming like a “punitive enforcer” to a “connector and ally”).

In the City of Elmira, ¹³⁰ its code enforcement department teamed up with the Department of Social Services (DSS) to assist the vulnerable population of the city.¹³¹ With the help of the DSS, the code enforcement department discovered and compiled a list of problem landlords who are notorious for neglecting their buildings.¹³² This list was used to prevent vulnerable residents from being placed in a future harmful situation.¹³³ Elmira’s code enforcement department also notifies DSS prior to condemning an illegal building to prevent homelessness and offers alternative living arrangements.¹³⁴

After conducting these in-depth analyses of the four cities, The Hester Street team recommended four general principles to promote equity in code enforcement:

- (1) Utilizing “standardized tools, training, and support” to promote “evidence-based inquiry” and limit implicit bias;
- (2) Fostering a “holistic, proactive, and cross-sectoral approach”;
- (3) Promoting code enforcement as a community-building tool rather than punitive enforcer; and
- (4) Strengthening a sense of “transparency, collaboration, and accountability.”¹³⁵

In subsequent sections, we will examine ways the City of Albany might incorporate some of these concepts into its code enforcement efforts.

4.3.2 NYC Alternative Enforcement Program (AEP)

One promising program our team reviewed, which can deliver high impact at relatively low cost, is the NYC Department of Housing Preservation and Development’s (HPD)

¹³⁰ Elmira was identified as being most similar in typology to the City of Albany.

¹³¹ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 21.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 23.

“Alternative Enforcement Program” (AEP), which identifies the worst apartment buildings in the city based on a range of metrics, including the number of housing maintenance code violations that appear per unit in buildings across the city,¹³⁶ as well as the number of certain hazardous code violations and the dollar value of any emergency repairs performed by HPD in such buildings.¹³⁷ HPD will usually select buildings on January 31st of each year to be designated as “AEP” participants.¹³⁸ Following building selection, owners are notified and given instructions on how they can be “discharged” or released from the program (a process we will describe shortly).¹³⁹ Owners that do not correct problems in their buildings are required to display a sign within 15 days of the notice on the main door of the building stating the following: (1) “[t]he building has been selected for AEP[;]” (2) “[t]enants can call 311 or AEP at 212-863-8262 for complaints about the conditions in their units or common areas[;]” and (3) “[t]he owner's name, phone number, and address, and the financial institution that holds the mortgage on the property, if any[.]”¹⁴⁰ Owners that do not comply can receive a \$250 fine.¹⁴¹ Inclusion in the program means HPD will focus its code enforcement efforts on these buildings, including filing court actions to secure compliance with the code.

There is an option for the owner to be discharged from the program so that they might avoid this scrutiny and the attention of code enforcement efforts. In order to be discharged from AEP, the owner must correct a number of violations, perform certain replacements, pay outstanding fees, and submit a valid property registration statement. This must be done within

¹³⁶ See *Alternative Enforcement Program (AEP): Selection and Notification*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/alternative-enforcement-program-aep.page> (last visited Apr. 11, 2020).

¹³⁷ See *id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

the first four months of receiving notice that their building is included in AEP.¹⁴² Buildings that have been vacant for a year are also eligible to be discharged from AEP unless that building contains six or more units, or if the building is transferred to a third party by the city for failing to pay property taxes.¹⁴³ HPD has programs offering low-interest loans to owners with vacant or occupied smaller buildings for moderate to major renovations so that lack of funds will not discharge a building from AEP.¹⁴⁴

Owners that do not correct issues within the first four months of inclusion in the program will receive an “AEP Order to Correct,” which is mailed to the owner, posted on the building, and filed with the County Clerk.¹⁴⁵ HPD has the ability to contract workers and bill the owner for the work if the owner does not comply with the order.¹⁴⁶ If the owner does not pay for the work performed, a tax lien may be placed against the property.¹⁴⁷ Additionally, fees may be issued for buildings not discharged within the first four months. For example, there is a \$500 fee per unit every six months with a maximum \$1,000 per unit during AEP, a \$200 fee for any complaint inspection performed that results in a violation, and a \$100 fee for any re-inspection that is a result of a “certification of correction of violation(s) submitted to HPD where HPD finds one or more violations have not been corrected.”¹⁴⁸

¹⁴² See *Alternative Enforcement Program (AEP): Discharge*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/alternative-enforcement-program-aep.page> (last visited Apr. 11, 2020).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Alternative Enforcement Program (AEP): Order to Correct*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/alternative-enforcement-program-aep.page> (last visited Apr. 11, 2020).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

Each year, HPD publishes the list of buildings included in AEP on its website.¹⁴⁹ There is a public database available called “NYC OpenData,” which includes all buildings participating in AEP and that building’s current status (i.e. “AEP Active” or “AEP Discharged”).¹⁵⁰ HPD is also required to submit an annual summary city council report and at regular intervals.¹⁵¹ By identifying the buildings with the most problems and directing its resources towards obtaining compliance of the owners of such buildings with the housing code, the City of New York is able to rationalize and focus its code enforcement efforts where they are needed most, ensuring code enforcement efforts are able to do the most good. In subsequent sections, we will explore ways the City of Albany might adopt a similar program.

4.3.3 NYC Worst Landlords Watchlist Program

In another innovative program, the City of New York established a public list of the worst landlords as an “information-sharing” tool to allow concerned residents such as tenants or public officials to single out residential property owners who have a high number of HPD violations.¹⁵² In order to make this list, a landlord must own one or more buildings that meet a minimum number of open HPD violations per unit.¹⁵³ Landlords are then ranked by the number

¹⁴⁹ See *Alternative Enforcement Program (AEP): List of Buildings Identified (By Fiscal Year)*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/alternative-enforcement-program-aep.page> (last visited Apr. 11, 2020).

¹⁵⁰ *NYC OpenData: Buildings Selected for the Alternative Enforcement Program (AEP)*, NYC HOUSING & PRESERVATION DEV., <https://data.cityofnewyork.us/Housing-Development/Buildings-Selected-for-the-Alternative-Enforcement/hcir-3275/data> (last visited Apr. 12, 2020).

¹⁵¹ See *Alternative Enforcement Program (AEP): Alternative Enforcement Program City Council Reports*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/alternative-enforcement-program-aep.page> (last visited Apr. 11, 2020).

¹⁵² *About the 2019 Worst Landlords Watchlist: The Landlord Watchlist*, NYC PUB. ADVOC., <https://landlordwatchlist.com/about> (last visited Apr. 12, 2020).

¹⁵³ *Id.*

of open violations they have.¹⁵⁴ The top 100 landlords with the most open violations for 12 months are included in the list.¹⁵⁵

The NYC Public Advocate's¹⁵⁶ website displays every landlord on this list, along with each building they own. Under the landlord's name includes the following data points: (1) total number of buildings on the Watchlist for that year; (2) total number of units; (3) an average number of open HPD violations; (4) total number of open Department of Buildings violations; (5) total number of evictions; and (6) whether there has been a tax lien in the past two years.¹⁵⁷ Each property associated with that landlord is then listed with the same data points specific to the building.¹⁵⁸ Further, there is an online map available with each landlord and their respective building locations along with the number of average HPD violations.¹⁵⁹ Similar to the AEP program, inclusion on this list brings unwanted attention to landlords, and landlords likely strive to keep their names off of the list so as not to attract greater scrutiny or code enforcement efforts. It is thus a low-cost means of bringing landlords voluntarily into code enforcement compliance. In subsequent sections, we will explore what a similar program might look like for the City of Albany, particularly one that might be combined with an AEP-style initiative.

4.3.4 City of Syracuse Adopt-a-Block

In an effort to clean up the streets and increase community collaboration within the city, Syracuse created the "Adopt-a-Block" program. This is a year-long program aimed at creating a

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ The position of Public Advocate in the City of New York is a creature of the City's Charter. *See* City of New York City Charter § 22 (2004). The City of Albany does not have a similar position, but we believe the City's Department of Buildings & Regulatory Compliance could compile a similar list, should the City of Albany consider such a program.

¹⁵⁷ *2019 NYC Landlord Watchlist*, NYC PUB. ADVOC., <https://landlordwatchlist.com/landlords> (last visited Apr. 12, 2020).

¹⁵⁸ *See id.*

¹⁵⁹ *See Map of the 2019 Worst Landlords Watchlist Buildings*, NYC PUB. ADVOC., <https://landlordwatchlist.com/map> (last visited Apr. 12, 2020).

citywide effort for city beautification.¹⁶⁰ This program gathers volunteers from organizations, business, schools, and any individual that wants to help.¹⁶¹ These volunteers agree to clean up at least two city blocks for a minimum of two years.¹⁶² Cleanups range from “on the spot” litter pickups to monthly designated area cleanups.¹⁶³

In order to “adopt a block,” participants must build a team of volunteers, register their group online at a designated website for the program, and organize monthly cleanups or “on the spot” litter pickups.¹⁶⁴ Following a site cleanup, volunteers can contact a designated “city line” phone number to arrange trash pickups or request other city services. Syracuse also has a number of social media websites (e.g., Facebook page, Instagram, Twitter) where volunteers can share photos using a hashtag “#KeepingCuseClean.” Although this program is only about two years old, it has generated a considerable amount of support and many community groups have volunteered to clean up the community.¹⁶⁵ By leveraging mostly in-kind, volunteer services, it is a highly cost-effective strategy for addressing blight.

4.3.5 Center for Community Progress Resources

Another potential source for cost-effective, equity-focused ideas for addressing blight includes recommendations from the Center for Community Progress (CCP). CCP started in 2010 and has become “the leading national, nonprofit resource for urban, suburban, and rural communities seeking to address the full cycle of property revitalization.”¹⁶⁶ CCP offers a number

¹⁶⁰ *Adopt-a-Block*, CITY OF SYRACUSE (2009), <http://syrgov.net/cleanupcuse.aspx> (last visited Apr. 12, 2020).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See *Adopt-a-Block*, CITY OF SYRACUSE, [http://www.syracuse.ny.us/uploadedFiles/Adopt-a-Block%20Intro%20Sheet%20\(no%20ampersand\).pdf](http://www.syracuse.ny.us/uploadedFiles/Adopt-a-Block%20Intro%20Sheet%20(no%20ampersand).pdf) (last visited Apr. 12, 2020).

¹⁶⁵ See Chris Baker, *Walsh launches ‘adopt-a-block’ program to clean up Syracuse litter*, CENT. N.Y. NEWS (Jan. 30, 2019), https://www.syracuse.com/news/2018/05/walsh_launches_adopt-a-block_program_to_clean_up_syracuse_litter.html.

¹⁶⁶ *Vacant Spaces into Vibrant Places*, CTR. FOR COMMUNITY PROGRESS, <https://www.communityprogress.net/> (last visited Apr. 12, 2020).

of free online resources, including webinars, events, publications, National Reclaiming Vacant Properties Conference PowerPoints, and a Community Progress Blog.¹⁶⁷ These free resources include a number of strategies and recommendations pertaining to equitable code enforcement.¹⁶⁸ These recommendations can serve as a tool kit of sorts for the latest look at what other cities around the United States have done to address distressed neighborhoods using equitable code enforcement procedures.¹⁶⁹

Every year, CCP holds a conference on reclaiming vacant properties where urban, suburban, and rural leaders from all over the country gather to discuss the latest actions being taken to combat “vacant, abandoned, and deteriorated properties.”¹⁷⁰ The CCP website offers free access to the conference resources, such as PowerPoints, sample documents, maps and surveys, and other materials that could be useful in exploring innovative ways to address blight using equity in code enforcement.¹⁷¹ Some strategies that CCP has gathered and recommends include the following:

- Create a new mission statement for code enforcement to better understand the goals as a department.¹⁷²

¹⁶⁷ *Id.*

¹⁶⁸ *See Strategic Code Enforcement*, CTR. FOR COMMUNITY PROGRESS, <https://www.communityprogress.net/read-more---strategic-code-enforcement-pages-265.php> (last visited Apr. 12, 2020).

¹⁶⁹ *See id.*

¹⁷⁰ *See Reclaiming Vacant Properties Conference 2019*, CTR. FOR COMMUNITY PROGRESS (Oct. 2-4, 2019), <https://reclaimingvacantproperties.org/> (last visited Apr. 12, 2020).

¹⁷¹ *See Reclaiming Vacant Properties Conference 2019: Sessions*, CTR. FOR COMMUNITY PROGRESS (Oct. 2-4, 2019), <https://reclaimingvacantproperties.org/sessions/> (last visited Apr. 12, 2020).

¹⁷² *See Sessions*, CTR. FOR COMMUNITY PROGRESS (Oct. 4, 2019), <https://reclaimingvacantproperties.org/sessions/#close> (last visited Apr. 12, 2020) (Under the “Filter by Day” option, select “Friday Oct 4.” Then under “Filter by Topic,” select “Code Enforcement and Rental Properties. Finally, under “Download Presentations,” selection “From Code Enforcement to Code Encouragement).

- Hand out “good job door hangers” to owners that are doing an effective job at maintaining their properties to acknowledge those that are consistently up to code.¹⁷³
- Host a “coffee with code,” where residents can meet and speak with CEOs in a casual setting.¹⁷⁴

4.4 Code Enforcement Strategies: Recommendations for the City of Albany

Based on our analysis of the City of Albany’s challenges coupled with ideas of the other cities mentioned above, our team developed four main recommendations that the City of Albany can integrate into its code enforcement program in order to help address blighted properties through an equitable lens.

4.4.1 Establish a Program Similar to AEP/Landlord Watchlist in the City of Albany

As mentioned above, the City of Albany is currently directing many of its code enforcement resources towards a small number of landlords because of the ongoing issues at their properties. Similar to the problem New York City found itself in before it launched the AEP program, without a focused strategy around these landlords’ property, it is likely resources are not being utilized in the most effective and efficient way when it comes to addressing these problem landlords. In an effort to combat this problem, we recommend that the City of Albany implement its own version of an “Alternative Enforcement Program” and “Landlord Watchlist” using Building Blocks to collect data based on equity indicators. Using the data to inform this list and then a focused code enforcement and public information strategy built around it might put added pressure on these owners and landlords to make drastic change.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

4.4.1.1 “Alternative Enforcement Program” in The City of Albany

Using Building Blocks, three equity indicators can be overlaid to identify which buildings will become part of the program: (1) redlining districts; (2) number of code violations; and (3) “blight score.”¹⁷⁵ Using these metrics, our team performed a rough analysis and found 12 properties that were located in a historically redlined neighborhood, had a higher blight score, and had the highest number of code violations in the past year. Figure 5 shows these properties.

¹⁷⁵ “Blight score” refers to a filter in Albany’s Building Blocks program, which allows a user to view properties that have a blight score between 0.00 (no blight) and 100.00 (severe blight). This data set was last updated on Feb. 15, 2019.

FIGURE 5: CITY OF ALBANY PROJECTED AEP PROPERTIES.

<u>Property Address</u>	<u>Owner of Property</u>
279 Sherman St.	279 Sherman, LLC
627 Second St.	Mall, Naeem
49 West St.	Ahmed, Zubair
60 Ontario St.	Landlord Productions, LLC
619 Third St.	Maneri, Joseph
329 Clinton Ave.	Hossain, Mossammat F
70 Dana Ave.	Jagathalaprathaban, Jagannath
165 Eagle St.	Bracellari, Vladimir
488 Third St.	JC Holland Properties LLC
163 Eagle St.	Bracellari, Vladimir
76 Morton Ave.	The Osifo Family IRR-Trust
161 Lark Ave.	Clayton, Evril

This list of properties could be treated similar to those in the NYC AEP and could be considered “prioritized properties” for CEOs. If, for example, a CEO receives a complaint associated with one of the properties on the list, it could be treated as an emergency and therefore addressed immediately.

Similarly to NYC’s program, we recommend that once the “top problem properties” are identified, the City of Albany would notify the owners and give instructions on how landlords can be discharged from the program. We recommend requiring owners to display signs to notify the public that the property is included on the list. Finally, we recommend that the City of Albany establish a website with the list of properties, similar to the “NYC Open Data” database¹⁷⁶ and complete annual reports.

4.4.1.2 The City of Albany Landlord List

The City of Albany could use the same data points identified in the AEP described above to publish a public “problem landlords” list on a designated website. For example, in Figure 6, the owners/landlords of the properties are identified using the metrics described above.

¹⁷⁶ In addition to data, we suggest including photos of the current state of the property on the website.

FIGURE 6: CITY OF ALBANY PROJECT PROBLEM LANDLORD LIST.

<u>Property Address</u>	<u>Owner of Property</u>
279 Sherman St.	279 Sherman, LLC
627 Second St.	Mall, Naeem
49 West St.	Ahmed, Zubair
60 Ontario St.	Landlord Productions, LLC
619 Third St.	Maneri, Joseph
329 Clinton Ave.	Hossain, Mossammat F
70 Dana Ave.	Jagathalaprathaban, Jagannath
165 Eagle St.	*Bracellari, Vladimir
488 Third St.	JC Holland Properties LLC
163 Eagle St.	*Bracellari, Vladimir
76 Morton Ave.	The Osifo Family IRR-Trust
161 Lark Ave.	Clayton, Evril

*Indicates owners that are listed more than one time.

Such a list could act as a resource for prospective tenants, and also to public officials by providing data informed insights that shines a spotlight on the bad actors in the City of Albany. Furthermore, since the City of Albany is much smaller than NYC, this would be a significant incentive for those landlords to fix their properties and be removed from the list. Alternatively, an “exceptional landlords” list could be created, which would identify landlords that have no code violations or blighted properties in historically redlined neighborhoods. This too would add incentive for landlords to keep up with their properties in an effort to make the list, which would likely generate more business for them.

4.4.2 Divert Disputes to Community Mediation

In order to free up more time for CEOs to have the ability to prioritize those distressed neighborhoods (ideally ones identified on an AEP list), we recommend that the City of Albany consider diverting some of the landlord/tenant disputes CEO come across to community mediation. Similar to the collaboration between Albany Law School and the Rockefeller College of Public Affairs and Policy at the University at Albany for “Law and Urban Innovation: Creative Problem Solving,” the City could team up with Albany Law School’s Mediation Apprenticeship Clinic¹⁷⁷ to assess the viability of this recommendation at little to no cost. This collaboration would allow students¹⁷⁸ to get hands-on experience and exposure to local government, while also allowing the City to assess whether diverting tedious tenant/landlord disputes has the ability to substantially reduce a CEO’s workload.

If CEOs find the diversion of disputes to community mediation to be helpful, the City may consider investing in a program such as “Mediation Matters” located in the City of

¹⁷⁷ See *Mediation Apprenticeship Clinic*, ALBANY L. SCH., <https://www.the City of Albanylaw.edu/centers/the-justice-center/our-clinics/apprenticeship/mediation-apprenticeship-clinic> (last visited Apr. 21, 2020).

¹⁷⁸ Students in the Mediation Apprenticeship Clinic are required to complete a 30-hour training in mediation theory and skills as a prerequisite to the clinic. See *id.*

Albany.¹⁷⁹ Mediation Matters provides mediation specific to landlord/tenant issues as well as conflicts between residents of the surrounding neighborhood. Alternatively, the City may consider covering the cost of training the future “Housing Services Advocate” position in mediation and diverting disputes to that person, since he or she will likely be responsible for becoming an integral part of strengthening the relationship between landlords and tenants.

4.4.3 Establish Adopt-a-Block in the City of Albany

We also recommend adopting a similar “Adopt-a-Block” program observed in Syracuse. This program could gather teams across local schools and colleges, businesses, and community volunteers across the Capital Region. The City could impose similar obligations on these teams such as requiring a minimum number of blocks to adopt for a set amount of time and organizing monthly cleanups. We also recommend establishing a similar “city line” phone number, which could be used to arrange trash pickups as well as alert CEOs to violations. The use of equity indicators, such as redlining and blight score, should be prioritized when assigning blocks to volunteers. Furthermore, we recommend the use of social media to both market and spotlight Adopt-a-Block in the City of Albany. Social media can be a powerful tool – pictures tell a thousand words.

4.4.4 “On the Ground” Study of the City of Albany

Similar to the “on the ground” study mentioned in the summary of the Cities RISE, Ford Foundation, and Hester Street report, we recommend that the City of Albany create its own “on the ground” study - with some added tweaks unique to the city. This research project could be administered by an intern, student, or even a future Social Innovation class.

¹⁷⁹ See generally MEDIATION MATTERS, <http://www.mediationmatters.org/> (last visited Apr. 21, 2020).

4.4.4.1 Deep Dive into Understanding Processes in the City of Albany’s Code Enforcement Department

We recommend that as part of the City of Albany’s “on the ground” study, a “deep dive” is performed similar to that of the Cities RISE report. In an effort to gain fresh eyes and a different perspective on the process, CEO ride-alongs, site visits, and interviews with City staff should be conducted. A CEO ride-along would provide the opportunity to observe day-to-day duties and to hear any challenges directly from the CEOs. Interviews with City staff and site visits could provide additional information.

After performing this portion of the study, a process map of the City of Albany’s code enforcement procedure should be created¹⁸⁰ identifying each operative step of the process as well as all “human-centered” perspectives.¹⁸¹ An analysis of this process map could focus on parts of the process that could use improvement and opportunities to address those areas with an emphasis on vulnerable and marginalized populations. Similar to that of the Cities RISE study, the City of Albany might focus on how equity is already considered in the code enforcement process and how it can be further implemented. A detailed overview of the City of Albany’s code enforcement process will provide insight that would otherwise not be possible and can be used to further identify small problems that may currently be overlooked.

4.4.4.2 Explore Mediation Training for CEOs

We recommend that as part of the “on the ground” study consideration is given as to whether the City should invest in a mediation course for CEOs. A formal training provided by an organization such as “Mediation Matters” may be helpful to give CEOs the tools to handle the landlord/tenant disputes more efficiently, thereby freeing up more time to prioritize distressed

¹⁸⁰ *The Power & Proximity of Code Enforcement*, *supra* note 93, at 14–15.

¹⁸¹ *See id.* at 13.

neighborhoods. According to its website, Mediation Matters can provide training that is unique to the “needs of the culture of the group being trained.”¹⁸² Rather than a four-day intensive training, one or more shorter training sessions covering basic mediation skills can be facilitated.

In addition to these components of blight-remediation strategies, our team was asked to explore ways that the City of Albany could enhance its ability to address emergency repairs directly, rather than merely using strategies to encourage and/or compel landlords to do so themselves. The next part of this report explores this issue.

5 Blight Intervention: Emergency Repairs

5.1 Introduction

A formal Emergency Repair Program within a city government is a funded mechanism that allows the City to take action on properties in dire need. Allowing the city to take emergency repair action is based on the idea that fixing is proactive, solution-oriented, and focused on the larger goal of addressing social issues, such as removing blight from neighborhoods, in lieu of punitive action.

In the context of removing blight from neighborhoods, emergency repair programs can sometimes serve as a first line of defense to ensure a rapid response to problems before they threaten life, health, or safety when a landlord refuses or is not in a position to address such problems. Emergency repair programs are an opportunity for the City of Albany's leaders to proactively address blight in the city's neighborhoods. As a part of our project this semester, the team was asked by the City of Albany leaders to design an effective emergency repair program

¹⁸² *General Training Services*, MEDIATION MATTERS, <http://www.mediationmatters.org/training-services/> (last visited Apr. 21, 2020).

as a possible solution to combatting blight in city neighborhoods. The goal of this specific section within the broader project report is to define emergency repairs; assess the City of Albany's current authorities in addressing emergency repairs; research and analyze other cities with effective emergency repair programs to identify best practices; and develop policy, funding, and practice guidance for the City with respect to any proposed emergency repair program. The goal of this section is to provide more information for Mayor Sheehan and her staff leadership to decide whether to create a financially sustainable emergency repair program that fights blight in an effective and equitable fashion.

As a part of this charge, we were asked to look at emergency repair programs in other cities and extract relevant information that could help inform the City of Albany. We were originally asked to look specifically to the programs in Syracuse, NY, and Rochester, NY. However, our initial research revealed that those cities focus their efforts on funding emergency repair programs in conjunction with non-profit groups, while we were looking at programs where the City itself would both fund and carryout the work without requiring an application/loan-type program.¹⁸³ In our research, we set out to identify cities with robust emergency repair programs to inform recommendations for the City of Albany to decide the best options for this community.

First, we will outline the City of Albany's current emergency repair authorities as stated in New York State laws, as well as the City of Albany's specific code provisions relevant to emergency repairs. We will then go through emergency repair programs in three cities: Buffalo, NY; Los Angeles, CA; and New York City and highlight the relevant sections of each of their emergency repair programs. Each city is presented with information to the following questions:

- How are emergency repairs defined?

¹⁸³ This is something the City of Albany currently does through the City of Albany Community Development Agency.

- How are emergency repairs are identified?
- What are the notice requirements?
- How are repairs are carried out?
- What entity oversees emergency repairs?
- How is it funded?
- What are the policy implications of the program?
- What other considerations are necessary for a program?

We conclude our research with recommendations for the City of Albany based on each of the aforementioned categories.

5.2 The City of Albany

5.2.1 Innovative Intervention Strategy

At the outset, it is important to note that we believe the creation of a robust and enhanced emergency repairs program in the City of Albany could serve as an innovative economic and social strategy in the remediation of blight that would serve as a paradigm shift in effective approaches, from reactive to proactive. What is more, the concept is human-centered and engages many stakeholders in addressing the issue of emergency conditions while using public sector resources to generate an effective solution to using this different, proactive approach. An effective emergency repairs program serves as a sustainable, cost-effective intervention that seeks to combat blight through prevention. We believe an enhanced emergency repairs program for the City of Albany could serve as an efficient and practical means through which the City can confront hazardous conditions before they lead to wider blight. In addition, timely and effective interventions into such conditions can help serve the broader equity agenda described throughout this report by targeting conditions in some of the city's most vulnerable communities before they

devolve into and worsen blight in communities already beset by blighted properties. It can also serve as an effective social and economic policy that intercepts conditions before it becomes impractical to do so or they become too expensive to repair and the situation requires a building to be demolished. We believe the benefits of an enhanced emergency repair program for the City are clear. Such a program would also address inequity by improving living conditions for some of the city's most vulnerable tenants, while enhancing the physical and political image of the city. An effective and expanded emergency repairs program could make the City of Albany's communities and neighborhoods better by improving the quality of life in the city, while directing the efforts of rehabilitation and improvement in the community as a method to keep the residents in their homes and not be forced to relocate.

5.2.2 Current Emergency Repair Authorities in the City of Albany

The City of Albany has a range of powers when it comes to addressing poor and hazardous housing conditions, though most do not address emergency repairs specifically. Under the City's Administrative Code, the Department of Buildings and Regulatory compliance is designated as the agency charged with "administer[ing] and secur[ing] compliance with the code."¹⁸⁴ Under the code, the Department can "make or cause to be made inspections" to assess buildings and safeguard the "health, safety and welfare" of the general public.¹⁸⁵ It can issue a notice when the building code has been violated¹⁸⁶ and can designate properties that are "unfit" and pose a "serious hazard to the health and safety of the occupants."¹⁸⁷ The code does give the power to the Department to "act in emergencies" when a condition "requires immediate action to abate a direct or immediate danger to the health, safety or welfare of the occupants of the

¹⁸⁴ ALBANY, N.Y., CODE § 231-114 (1983).

¹⁸⁵ *Id.* § 231-105.

¹⁸⁶ *Id.* § 231-108.

¹⁸⁷ *Id.* § 231-114.

building.”¹⁸⁸ At the same time, the Code does provide somewhat vague authority to engage in emergency repairs themselves. Section 231-122 of the City code, which provides the power to “make repairs or demolish,” states that the department, acting through its chief officer, when that officer determines that a notice and order “to remove a violation or secure...a building has not been complied with,” the officer “may proceed to cause the structure to be demolished, repaired, altered, secured or vacated or take such other legal action as is necessary to abate the nuisance.”¹⁸⁹ Furthermore, Section 231-123 authorizes the City to recover expenses “incurred pursuant to § 231-122,” and such expenses must be paid “by the owner...or by the person who caused or maintained such a nuisance or other violation,” and such expenses “shall be charged against the property as a lien.”¹⁹⁰ There are also two other important city code provisions that mimic the housing code to consider, which are found in the construction chapter: Sections 133-28 and 133-29. These allow the Department, through the Common Council, to take action on buildings in demolition proceedings. Section 133-28 provides the power “to employ such labor and furnish such materials...” and then remedy the condition “...to make the building safe.”¹⁹¹ Moreover, Section 133-29 authorizes the City to recover such expenses by placing “a lien against the property upon which the work is done...”¹⁹²

Thus, while the City does appear to have the authority to “cause” emergency repairs in appropriate situations, and may convert any expenses incurred in doing so as a lien against the property, little guidance is given to the City as to how to carry out such emergency repairs. Indeed, the Code says nothing about the notice to be provided landlords and any affected tenants

¹⁸⁸ *Id.* § 231-110.

¹⁸⁹ § 231-122.

¹⁹⁰ *Id.* § 231-122.

¹⁹¹ ALBANY, N.Y., CODE § 133-28 (1983).

¹⁹² *Id.* § 133-29.

that the City intends to engage in emergency repairs. It does not say anything about how the City might fund emergency repairs and does not provide a mechanism to the City through which tenants could satisfy their rental obligations by reimbursing the City for such repairs. As the following discussion will show, in several effective emergency repair regimes in other jurisdictions, such programs provide for these and other issues related to emergency repairs. Should the City undertake to establish a more robust emergency repair program, it could learn from other jurisdictions and the ways in which they have established their own effective emergency repair programs. It is to these other programs that we now turn.

5.3 Current Practice Overview

An assessment of the state and local regulations showed that the City of Albany currently has some established authority to make emergency repairs. In this section we will present the findings of our current practice research from three cities; Buffalo, New York, Los Angeles, California, and New York, New York.

5.4 The City of Buffalo

5.4.1 Overview

The City of Buffalo is the second largest city in the State of New York, with a population of approximately 256,304 residents covering 52.5 square miles in area.¹⁹³ The average annual household income is \$35,893 with 30.3% of the population living in poverty.¹⁹⁴ According to the U.S. Census, the City of Buffalo has the oldest housing stock of any large city in the United

¹⁹³ *QuickFacts*: Buffalo city, New York, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/fact/table/buffalocitynewyork/PST045218> (last visited Apr. 21, 2020).

¹⁹⁴ *Id.*

States.¹⁹⁵ Additionally, 64% of the city’s housing stock was built before 1940’s, the highest of any city in the country.¹⁹⁶ As of 2013, the City of Buffalo reported having approximately 30,000 vacant abandoned and blighted residential properties.¹⁹⁷ This number has since decreased due to demolition programs carried out by the Brown Administration.¹⁹⁸

5.4.2 Defining an Emergency Repair

The City of Buffalo Emergency Assistance Loan Program provides financial assistance to eligible homeowners to address emergency conditions within the home.¹⁹⁹ Conditions include interruptions in service (water, gas, electrical) as a result of unsafe conditions, or the repair of an individual component system that is in poor or unsafe condition furnace, boiler, hot water tank).²⁰⁰ Eligible repairs include the following:

- Break in Sanitary System
- Break in Water Service
- Leaking Roof System
- Electrical Hazards at Main Panel
- Hazardous Chimney
- Water Meter Installation
- Defective Heating System
- Cracked Heat Exchanger
- Cracked and/or Leaking Boiler Section
- Deteriorated Housing or Jacket
- Defective Hot Water Heater
- Gas Line Repair²⁰¹

¹⁹⁵ Jeff Preval, *Buffalo Housing Stock Named the Oldest in the Country*, WGRZ-TV (Mar. 27, 2019, 5:59 PM), <https://www.wgrz.com/article/news/local/buffalo-housing-stock-named-the-oldest-in-the-country/71-5c470297-533f-4180-ab84-f7980c2bfa90> (last visited Apr. 21, 2020).

¹⁹⁶ *Id.*

¹⁹⁷ *Consolidated Annual Performance Report: Addressing Special Needs of Non-homeless Persons*, CITY OF BUFFALO 156 (Aug. 14, 2013), <http://www.buffalony.gov/DocumentCenter/View/1778/2012-CAPER-PDF?bidId=>.

¹⁹⁸ *City of Buffalo Consolidated Annual Performance Report, CDBG* (Jan. 16, 2020), <https://www.buffalony.gov/DocumentCenter/View/6623/2018-CAPER-Final-PDF?bidId=> (last visited Apr. 21, 2020).

¹⁹⁹ *Housing Assistance Loan Programs*, CITY OF BUFFALO URB. RENEWAL AGENCY <https://www.buffalourbanrenewal.com/housing/housing-assistance-loan-programs/> (last visited Mar. 28, 2020).

²⁰⁰ *Id.*

²⁰¹ *Id.*

In some cases, properties too far deteriorated may not qualify for assistance under this program.²⁰²

5.4.3 How Are Emergency Repairs Identified?

Income-eligible city residents (that is, residents who meet the income threshold of low-to-moderate income as established by HUD guidelines) with self-identified emergency repairs must apply for emergency repair support at the designated community organization located in their council district.²⁰³ Unlike other programs, the City of Buffalo does not participate in the identification of properties that may benefit from this program. Community organizations have the responsibility of advertising and informing the public of its benefits.

The organization will make certain the resident does not have any outstanding City debts as this may determine their eligibility if not resolved.

5.4.4 How is Notice of an Emergency Repair Given?

Since this program is at the discretion of the homeowner, there is no notification requirement.

5.4.5 How are Emergency Repairs Carried Out?

Once the applicant is approved, a city inspector confirms the emergency need and the need for the repair and develops the scope of work. Once the scope is complete, the community organization will contact the contractors to submit bids based on the project scope. After this is done, the organization will award the project to the most qualified contractor having the lowest bid.²⁰⁴ Lastly, the contractor, homeowner and the community organization will work together to

²⁰² *City of Buffalo Consolidated Annual Performance Report*, *supra* note 198.

²⁰³ Telephone Interview with T. Norman, Deputy Director of Housing, City of Buffalo (Mar. 25, 2020).

²⁰⁴ *Id.*

complete the project as efficiently as possible.²⁰⁵ Once the repair is completed, the City will issue checks to the community organization to be distributed to the contractor for payment.

5.4.6 Administration of the Emergency Repair Program

The Emergency Assistance Loan Program is administered by the City of Buffalo Urban Renewal Agency (BURA), a public benefit corporation formed by the New York State Legislature in 1966.²⁰⁶ Its primary purpose includes the planning and operation of various urban renewal programs designed to prevent or eliminate blight in the City of Buffalo.²⁰⁷ BURA manages all of the HUD entitlement funds for the City of Buffalo.²⁰⁸

5.4.7 Funding Source

The Emergency Assistance Loan Program is funded by The Housing Urban Development Community Development Block Grant entitled fund.²⁰⁹ Annually, Congress determines the amount allocated to each city relative to population and need. The City of Buffalo, and the Buffalo Urban Renewal Agency, determine how the funds will be used.²¹⁰

5.4.8 Loan Program

Once the emergency repair is complete, the homeowner must pay back the cost of the repair in loan installments (installments are based on annual income of the homeowner).²¹¹ Loans are provided at zero interest and may be converted to partial grants for income eligible

²⁰⁵ *Id.*

²⁰⁶ *About BURA*, BUFFALO URB. RENEWAL AGENCY, <https://www.buffalourbanrenewal.com/about-1/> (last visited Mar. 20, 2020).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *City of Buffalo Consolidated Annual Performance Report*, *supra* note 198.

²¹⁰ *Id.*

²¹¹ *Housing Assistance Loan Programs*, *supra* note 199.

applicants. A lien is placed on the home to secure the loan until paid or forgiven.²¹² After the loan closing, the Buffalo Urban Renewal Agency manages the loan accounts.²¹³

5.4.9 Policy Implications

There are two main policies that govern the Emergency Repair Program in Buffalo. The first denies any applicant from receiving assistance if he or she owes any outstanding debts to the City.²¹⁴ In this case, applicants are given an opportunity to pay any debts without having their application denied.²¹⁵ The second policy allows the City to make emergency repairs without addressing any lead paint issues that may exist in the home prior to completing the project. The Federal Lead regulations state that an exemption exists when:

For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.²¹⁶

5.4.10 Other Considerations

As previously mentioned, the City of Buffalo's Emergency Repair Program is administered by an independent organization. Therefore, programmatic and funding oversight obligations lie outside the City's control. One of the primary concerns of Albany City leaders was to develop a program that was completely within the City's authority and control to carry

²¹² *Id.*

²¹³ Telephone Interview with T. Norman, Deputy Director of Housing, City of Buffalo (Mar. 25, 2020).

²¹⁴ BUFFALO, N.Y., MUN. CODE § 22-5 (2000).

²¹⁵ Telephone Interview with T. Norman, Deputy Director of Housing, City of Buffalo (Mar. 25, 2020).

²¹⁶ 24 C.F.R. § 35.115(a)(9) (2020).

out. Although the Mayor of Buffalo is the chairperson of the Buffalo Urban Renewal Agency, the organization is required by HUD to administer a program without any political exposure.

5.4.10.1 Program Challenges

The Emergency Assistance Loan Program experiences challenges with the following: the timely delivery of repairs; the overall cost to administer the program; homeowner compliance; and a lack of thorough understanding of the program by City officials.

In some cases, homeowners waited over a year for an emergency repair. A 2016 report from the City Comptroller documented that repairs took on average of 421 days from the date of the application to the work completion date.²¹⁷ In that same report, it was noted that more than half of the funding was spent on administrative expenses which was primarily payroll costs.²¹⁸ Consequently, only 46 cents of every dollar were spent on loans to homeowners.²¹⁹ Since 2016, the average time from application to repair completion has been reduced to less than 200 days.²²⁰ In response to some of these concerns, the City's Deputy Housing Director noted that at least some of the delays associated with the program are caused, in part, by the regulatory requirements of the program itself, which, he asserted, amounted to more than twenty-five separate steps from start to finish.²²¹

In addition to these delays, homeowners also create problems once payment is due to the contractor. Loan installment payments commence immediately after the repair is completed; therefore, homeowners attempt to cause delays by not signing off on the final payment.²²²

²¹⁷ *Informational Report: Emergency Rehabilitation of Housing Loan Program*, CITY OF BUFFALO DEP'T OF AUDIT & CONTROL, *Report on Emergency Rehab. Loan Program* (Jan. 27, 2016).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Telephone Interview with T. Norman, Deputy Director of Housing, City of Buffalo (Mar. 25, 2020).

²²¹ *Id.*

²²² *Id.*

Lastly, City officials who do not have a full grasp of the program tend to have a misconception of what constitutes a reasonable response to an emergency repair relative to the complexities of this program.²²³ As a result, communities and the councilmembers have an expectation of immediacy that is in most cases unreasonable.²²⁴

5.4.10.2 Program Impacts

In 2018, the Emergency Repair Program provided services to 137 units that received approximately \$1.9M in CDBG funds.²²⁵ The problems such repairs addressed included: leaky roof system; broken water lines; broken sewer lines; non-functioning hot water tanks or furnaces; and unsafe electrical panels.²²⁶ Based on an internal assessment conducted by the City of Buffalo, of all of its blight remediation efforts, this program is said to have the greatest impact on existing housing and neighborhood conditions in the City of Buffalo.²²⁷

5.5 The City of Los Angeles

5.5.1 Overview

The City of Los Angeles considers itself to be a “cultural mecca” as the entertainment capital of the world.²²⁸ At a size of only 472 square miles within the city itself, as of 2016, 4 million people resided within the city.²²⁹ The surrounding County of Los Angeles comes in at 4,084 square miles with 10.2 million people residing throughout it.²³⁰ The community within the City of Los Angeles is highly diverse with no majority population: 48.6 percent of the population

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *City of Buffalo Consolidated Annual Performance Report, supra* note 199.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Facts About LA, LOS ANGELES*, <https://www.discoverlosangeles.com/media/facts-about-la> (last visited Mar. 29, 2020).

²²⁹ *Id.*

²³⁰ *Id.*

considers themselves Hispanic or Latino; 26.1 percent consider themselves White, non-Hispanic; 15.4 percent consider themselves Asian/Pacific Islander; 9.0 percent consider themselves African-American; and 1.4 percent consider themselves American Indian/Other.²³¹ Following the 2007-2013 financial crisis, the City of Los Angeles was left to fight the blight that came with 50,000 vacant and abandoned homes.²³²

The City of Los Angeles has a similar program to that of an emergency repair program called the Urgent Repair Program (“URP”)²³³, which, very generally, affords the City the ability to carry out repairs on properties found to be in violation of the law and that require immediate attention.²³⁴ According to the City’s municipal code: “The purpose of this new program is to immediately address critical habitability problems in multi-family buildings where the landlords have refused to address these problems.”²³⁵ URP is not intended to bring buildings up to code entirely; rather, it only addresses the uninhabitable conditions addressed below.²³⁶ The City explicitly states that by using this program it can expect “increasing safer, and more decent and sanitary housing for primarily low income residents.”²³⁷

LA’s urgent repair program is intended to service non-homeowners within a rental property so as to prevent the Los Angeles Housing and Community Investment Department (“HCIDLA”) from having to vacate the units within these buildings or entire buildings.²³⁸

²³¹ *Id.*

²³² Helen Morales & Jack Meek, *Models of Collaborative Governance: The City of Los Angeles’ Foreclosure Registry Program*, 83 ADMIN. SCI. 1 (Oct. 24, 2019) (citing *In LA, Banks Get Away with Blight and Hand Taxpayers the Bill*, FIX LA (May 2014), <http://fixla.org/wp-content/uploads/2014/07/In-LA-Banks-Get-Away-with-Blight-report.pdf>).

²³³ L.A., CAL., MUN. CODE ch. 4, art. 15, § 50.00(A) (2013).

²³⁴ *Avoid Liens-Urgent Repair Program (URP)*, L.A. HOUSING & COMMUNITY. INV. DEP’T, <https://hcidla.lacity.org/Urgent-Repair-Program> (last visited Mar. 29, 2020).
<https://doi.org/10.3390/admsci9040083>

²³⁵ § 50.00(A).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234.

Through the City of Los Angeles' *Housing Goals, Objectives, Policies and Programs* adopted in 2013 and valid through 2021, the City adopted a number of goals to address the municipality's housing situation, including the need to promote sustainable neighborhoods and preserve communities.²³⁹ With this plan, the City seeks to maintain and conserve approximately 39,000 multifamily buildings by utilizing the URP.²⁴⁰ This plan lays out in detail the components of the URP, which begins with the requirement that property owners must make immediate repairs to hazardous conditions within 48 hours. The failure to do so will prompt the City to complete the repairs and then bill the owners to recover costs and penalties, including the possibility of securing a lien against the property.²⁴¹ The plan details the objective of the URP as "prevent[ing] the vacation of 4,500 market-rate apartment buildings due to life-safety Housing Code and the California Health and Safety Code violations."²⁴²

5.5.2 Defining an Urgent Repair

For the URP to be used, the violation at issue must be a habitability violation under the California Civil Code and/or City of Los Angeles Municipal Codes, as well as "constitute a present, imminent, extreme, and immediate hazard or danger to life or limb, health or safety."²⁴³

5.5.3 California Civil Code and City of Los Angeles Municipal Code

In order to define what qualifies as an urgent repair deserving attention under the URP, the City of Los Angeles determined that fulfilling the California Civil Code's definition of

²³⁹ *Housing Goals, Objectives, Policies and Programs*, L.A. DEP'T CITY PLAN. 6-3 (Dec. 3, 2013), <https://planning.lacity.org/odocument/a2e5cc53-8a2f-40f9-abc4-ad47a90b32a7/Ch6.pdf>.

²⁴⁰ *Id.* at 6-5.

²⁴¹ *Id.* at 6-31.

²⁴² *Id.*

²⁴³ *See Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; *see also* L.A., CAL., MUN. CODE ch. 4, art. 15, § 50.00(B) (2013).

untenantable will be sufficient to identify an urgent repair, which is when any of the following are substantially lacking:

- (1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (2) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.
- (3) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
- (4) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.
- (5) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.
- (6) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (7) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.
- (8) Floors, stairways, and railings maintained in good repair.
- (9) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code. This subdivision shall become operative on July 1, 2008.²⁴⁴

Further, the Los Angeles Municipal Code adds overcrowding of a building beyond the approved capacity as a qualifying urgent repair, permitting Fire Code Officials to intervene upon finding “any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes an immediate life safety hazard”²⁴⁵

5.5.4 How Are Urgent Repairs Identified?

²⁴⁴ CAL. CIV. CODE § 1941.1 (2013).

²⁴⁵ L.A., CAL., MUN. CODE ch. 5, art. 7, § 57.107.6 (2017).

Residents, any City agency, City council offices, County Health Department, or the Problem Property Resolution team are all able to initiate the URP through a complaint-based system directly through the HCIDLA.²⁴⁶

5.5.5 How is Notice of an Urgent Repair Given?

After a complaint has been filed with the City, the City attempts to verify the hazardous condition by an inspector, at which point a Two-Day Order to Repair is issued to the owner if the statutory requirements are met.²⁴⁷ Notice of this Two-Day Order to Repair is posted on the building at issue as well as forwarded to the owner of the building by overnight mail.²⁴⁸ The owner must begin to correct the hazardous condition within those two days for the Order to Repair to be closed.²⁴⁹ If, however, the work has still not commenced at the close of the two days, then such non-compliance is documented with the City and the City will begin to undertake completion of the Urgent Repair.²⁵⁰

Orders of violation must be provided to owners and tenants of a property on a standard form detailing the violation and relevant sections of the Code in plain language, as well the ramifications of failure to correct a violation, which may include fees, rent withholding, a referral to the Rent Escrow Account Program (REAP)(described below, §4.4.9), URP status, as well as

²⁴⁶ See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 4, art. 15, § 50.00(C) (2013).

²⁴⁷ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁴⁸ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁴⁹ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁵⁰ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

any other statutorily required notification under the circumstances.²⁵¹ Orders must be served on the owner by first class mail and copies of the order must be provided to all affected residents.²⁵²

5.5.6 How Are Urgent Repairs Carried Out?

City approved contractors are then contacted and invited to the location of the hazardous condition where a bid walk takes place and each contractor proposes to do the construction.²⁵³

The URP then reviews and approves the winning bid so the contractor can begin the work immediately.²⁵⁴ The building inspector will then verify that the emergency repair has been successfully completed by the contractor.²⁵⁵ HCIDLA has the authority to designate preselected contractors to make the necessary repairs as well.²⁵⁶

5.5.7 Administration of the Urgent Repair Program

The Los Angeles Municipal Code provides for the HCIDLA to facilitate URP.²⁵⁷ Additionally, the statute provides for HCIDLA to carry out the relevant functions of the urgent repair program.²⁵⁸

5.5.8 Funding Source

URP places a burden on the owners of the property subject to a repair to reimburse the City for having been forced to complete the emergency repair themselves.²⁵⁹ If the owners of the property subject to repair fail to comply with the original Two-Day Order to Repair, the City may

²⁵¹ § 161.702 (2000).

²⁵² *Id.*

²⁵³ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ § 50.00(C).

²⁵⁷ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; *see also* L.A., CAL. MUN. CODE ch. 4, art. 15, § 50.00 (2013).

²⁵⁸ § 50.00.

²⁵⁹ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234.

refer the property to REAP to recover all costs incurred to the City.²⁶⁰ Landlords may request a hearing to appeal a decision placing a property in REAP.²⁶¹ Generally, the City is able to recover the money it has spent on these urgent repairs before any court of competent jurisdiction.²⁶² The costs to the owners of the property may include up to no less than 40% of the actual cost to perform the actual work to compensate the City for the costs associated with administering any contract and supervising the work required.²⁶³ HCIDLA also has the power to file a lien with the Los Angeles County Recorder's Office to recover any costs, including fees, fines, late charges, or interest, that it is not able to receive directly through the owner.²⁶⁴

The City of Los Angeles Housing Goal plan specifically lists funding sources for the URP, without providing additional information regarding those sources.²⁶⁵ The listed funding sources for the program include CDBG funds, as well as Systematic Code Enforcement Fees.²⁶⁶ Systematic Code Enforcement Fees arise out of the Systematic Code Enforcement Program that provides regular periodic inspections of rental units, in addition to complaint-based inspections.²⁶⁷

5.5.9 Rent Escrow Account Program

The Rent Escrow Account Program was established “to provide a just, equitable and practical method, to be cumulative to and in addition to any other remedy available at law, to

²⁶⁰ See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁶¹ See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁶² See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.702 (2000).

²⁶³ See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; see also L.A., CAL., ADMIN. CODE div. 7, ch. 1, § 7.35.3 (2003).

²⁶⁴ See *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234; L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.904 (2000).

²⁶⁵ *Housing Goals, Objectives, Policies and Programs*, *supra* note 239.

²⁶⁶ *Id.* at 6-31.

²⁶⁷ *Are There Any Required Inspections and Fees to be Paid?*, L.A. HOUSING & COMMUNITY. INV. DEP'T, <https://hcidla.lacity.org/Inspections-and-Fees> (last visited Mar. 29, 2020).

enforce the purposes of the Housing Code” as well as to promote compliance.²⁶⁸ Once referred to the program, tenants divert rent payments into an escrow account with the City to help defray the costs for repairs conducted under the URP.²⁶⁹ Service of orders and notices under REAP must be carried out for property owners by personal service or by posting in a conspicuous location of property along with prepaid United States Mailing to the last address listed on the assessment roll.²⁷⁰ Service on a tenant must be completed by personal service, posting in a conspicuous location and on each unit, or by posting in a conspicuous location of property along with prepaid United States Mailing to each impacted unit.²⁷¹

City and county agencies, as well as the tenants themselves, may seek referral to REAP when the building or unit is subject to at least one order, the period of required compliance has expired, and the violation at issue impacts “the health or safety of the occupants.”²⁷² The Department then conducts a review of the building and owner and upon acceptance to REAP, a decision will be provided and served on the property owner by certified mail and by first class mail to tenants, detailing the following: the date of the Order at issue and citing agency; outstanding violations on the property; units impacted by the order; a rent reduction schedule; date rent reduction is effective which will be the same date as the General Manager Hearing Officer Decision; the date the account will actually be established, while payments may not be made until rent reduction is in effect; administrative fees; tenant protections; and General Manager Hearing date.²⁷³

²⁶⁸ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.00-.01 (2016).

²⁶⁹ See L.A., CAL. MUN. CODE ch. 16, art. 2, § 162.00-.13 (2001).

²⁷⁰ *Id.* § 162.01 (C); see L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.409(B) (2018).

²⁷¹ See § 162.00-.13; see also § 161.409(B); L.A., CAL., MUN. CODE ch. 16, art. 1, § 161.409(C) (2018).

²⁷² L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.03 (2001).

²⁷³ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.04 (2016).

Rent reduction through the program must “tak[e] into account the nature of the violation, the severity of the conditions, and the history of past untenable conditions.”²⁷⁴ Further, a maximum rent reduction may be set to avoid abandonment by the owner of the subject property, which could lead to further health and safety violations.²⁷⁵ Property owners are afforded a REAP hearing prior to the commencement of rent reduction.²⁷⁶ These hearings provide the tenants and enforcement agencies the opportunity to present evidence of the violations and provides property owners the opportunity to present evidence, which they have the burden to establish, that the “rent reduction is not appropriate because the violations were caused by the tenants.”²⁷⁷ The General Manager Hearing Officer may then decide to affirm, reverse, or modify the rent reduction within ten business days of the hearing.²⁷⁸ Property owners, tenants, or the enforcement agency may all file appeals following the decision of the General Manager, at which point enforcement of REAP will be on hold.²⁷⁹ However, if the appeal is denied rent reduction will be applied retroactively if applicable.²⁸⁰

An escrow account must be established within five business of the building at issue being accepted into REAP where tenants may deposit their rent payments.²⁸¹ Tenants must be notified of the account’s existence and how and when to deposit rent and must be provided a receipt upon deposit.²⁸² The records relating to the escrow account must also be reasonably available to the property owner or any interested party.²⁸³ REAP enrollment will terminate upon the City’s

²⁷⁴ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.05 (2016).

²⁷⁵ *Id.*

²⁷⁶ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.06(A) (2016).

²⁷⁷ *Id.*

²⁷⁸ *Id.* § 162.06(B).

²⁷⁹ *Id.* § 162.06(C).

²⁸⁰ *Id.*

²⁸¹ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.07(A) (2016).

²⁸² *Id.*

²⁸³ *Id.*

receipt of a notice that all orders have been signed off on by the agency and there are no outstanding orders on the building.²⁸⁴ REAP also provides a number of tenant protections.²⁸⁵

5.5.10 Policy Implications

The entire Urgent Repair Program is based on statutory enactments, as previously discussed. Upon a search for relevant case law, there is only one published decision regarding the URP that mentions the program specifically.²⁸⁶ However, this one case does not focus on the constitutionality or any other subject requirement of the Urgent Repair Program.²⁸⁷ Rather, this case focuses on the tangential issue of relocation following eviction proceedings for reasons other than relating to the urgent repairs themselves.²⁸⁸

The Rent Escrow Account Program itself has also been found to be survive constitutional scrutiny, as it was determined the City's actions are rationally related to the legitimate goals of REAP: "by allowing tenants to pay a reduced rent into an escrow account to be used to repair their landlord's uninhabitable property, REAP addresses the health and safety problems created by substandard housing and encourages landlords to prevent those problems."²⁸⁹ Therefore, for any program to include this form of rent collection, statutory requirements would need to be implemented and in compliance with the constitution.

5.5.11 Other Considerations

In researching the URP, we identified a portion of REAP that provides tenants protection from their landlords.²⁹⁰

²⁸⁴ L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.08.

²⁸⁵ See L.A., CAL., MUN. CODE ch. 16, art. 2, § 162.09 (2016).

²⁸⁶ See *Woods v. Alexandria Hous. Partners*, 2008 U.S. Dist. LEXIS 120289, at *1, *21 (C.D. Cal. May 22, 2008).

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 26.

²⁸⁹ *Sylvia Landfield Tr. v. City of L.A.*, 729 F.3d 1189, 1193-95 (9th Cir. 2013).

²⁹⁰ See § 162.09.

5.5.11.1 Tenant Protections

The following are some of the protections afforded tenants in properties/units affected by the URP, once a tenant is referred to REAP for rent reduction in repayment for the repairs completed by the City.²⁹¹

5.5.11.1.1 Evictions

If a property owner seeks recovery of the property at issue under the REAP, tenants are provided the affirmative defense of the fact that they have been paying rent into REAP as if those payments were made directly to the property owner.²⁹² Further, property owners have an affirmative duty to verify whether tenants have made payments to the escrow account prior to instituting an action for property recovery on the basis of nonpayment if the unit is subject to a REAP order.²⁹³ Until the unit is no longer within REAP and a period of time has elapsed after that resolution of REAP, an action for recovery of the unit may only be brought upon the grounds listed within the statute.²⁹⁴ If retaliation is the intent behind an action, the property owner may not recover possession or take any action to cause the tenant to leave voluntarily.²⁹⁵

5.5.11.1.2 Rent Increases

Until a unit is removed from REAP and one year has passed or another set period has expired, a landlord must not increase the tenant's rent for the current or any subsequent tenants unless some other law provides for such increase.²⁹⁶

5.5.11.1.3 Civil Actions

²⁹¹ *Id.*

²⁹² *Id.* § 162.09(A).

²⁹³ *Id.*

²⁹⁴ *See id.*; *see also* L.A., CAL., MUN. CODE ch. 15, art. 1, § 151.09(A) (1980).

²⁹⁵ *Id.*

²⁹⁶ *Id.* § 162.09(B).

If a property owner violates the afforded tenant protections or retaliates against a tenant or other enforcement agency, they will be liable to civil damages and a \$1,000 penalty for each violation as well as attorney's fees and expenses.²⁹⁷ Such damages can be collected directly from the escrow account at issue.²⁹⁸

5.6 The City of New York

5.6.1 Overview

The City of New York's population is approximately 8 million, and covers about 302.6 square miles.²⁹⁹ The diversity within the city is what makes it one of the most distinct in the United States, often referred to as a "melting pot" within the melting pot of the United States, currently without any ethnic or racial group surpassing 43 percent of the City's population. The City of New York has a history of blighted neighborhoods within the five boroughs that make up the city, and currently is one of few with a formal emergency repairs program.

New York City's Emergency Repair Program (ERP) operates through city government. Through this program, building owners are held accountable for the costs associated with a repair carried out through the program. ERP's founding predates the formal establishment of the department which currently administers the program. ERP is a resource for tenants with questions and complaints concerning housing codes, and a means for homeowners to be certain their buildings are following New York City's Housing Maintenance Code.

5.6.2 Defining Emergency Repair

²⁹⁷ *Id.* § 162.09(C).

²⁹⁸ *Id.*

²⁹⁹ *New York City, NY*, United States Census Bureau <https://www.census.gov/quickfacts/newyorkcitynewyork> (last visited April 20, 2020).

ERP defines an emergency repair as including but not limited to the following: “housing code violations identified as class "C" violations and Orders; NYC Department of Buildings (DOB) Orders and Declarations of Emergency and referrals of certain elevator violations; and NYC Department of Health and Mental Hygiene (DOHMH) Commissioner's Orders.”³⁰⁰ After an emergency repair is complete, the charges will appear on the building owner's property tax bill. Failure to pay the bill will result in a tax lien against the property, which increases with interest and can be sold or foreclosed for the city to collect the amount owed.³⁰¹ Building owners are allowed to contest charges for the emergency repair by putting their objections in writing and delivering them to the New York City’s Department of Housing Preservation and Development (HPD), the agency responsible for administering the City of New York’s emergency repair program.³⁰²

5.6.3 How are Emergency Repairs Identified?

ERP identifies emergency repairs through annual inspections, court proceedings, and homeowner outreach. Annual Inspections are conducted to protect the quality of living in New York City by enforcing New York City’s Housing Maintenance Code. Indications of a disruption of quality of living includes conditions of, but not limited to, heat, hot water, mold, pests, gas leaks, and fire safety.³⁰³ HPD brings cases to Housing Court for building conditions in violation of New York City’s Housing Maintenance Code and such conditions can be referred for an emergency repair if needed. Homeowner outreach is also another tool HPD uses to identify building violations and can be addressed by ERP, if determined necessary by HPD.

³⁰⁰ *Emergency Repair Program*, NYC HOUSING & PRESERVATION DEV., <https://www1.nyc.gov/site/hpd/services-and-information/emergency-repair-program-erp.page> (last visited Apr 20, 2020).

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

5.6.4 How is Notice of Emergency Repair Given?

As an outcome of a court case cases challenging the constitutionality of the ERP, the City is required to notify landlords of an emergency repair and allow them the opportunity to fix the repair themselves after notification.³⁰⁴ This case will be discussed in more detail in our review of ERP's policy implications.

5.6.5 How are Emergency Repairs Carried Out?

There is no publicly available source that details how contractors are selected to carry out the repair itself through the ERP.

5.6.6 Administration of ERP

As mentioned above, the ERP is administered through the New York City Department of Housing Preservation and Development (HPD).³⁰⁵

5.6.7 Funding Source

According to a financial plan summary for HPD in 2019, a part of a larger report by the Finance Division regarding the funding and planning for HPD in 2020, New York City's Emergency Repair Program is funded by the City, New York State, and the federal government. The financial plan named NYCHA Pass-through, City Funds, Capital-IFA, State, Federal – Community Development, and other unspecified federal funds as HPD's fiscal funding sources for 2020.³⁰⁶

³⁰⁴ 300 W. 154th St. Realty Co. v. Dep't of Bldgs. of N.Y.C., 26 N.Y.2d 538, 541 (1970).

³⁰⁵ *Emergency Repair Program*, *supra* note 300.

³⁰⁶ *Report of the Finance Division on the Fiscal 2020 Preliminary Plan, Fiscal 2020-2029 Ten-Year Capital Strategy, Fiscal 2020 Preliminary Capital Budget, Fiscal 2020 Preliminary Capital Commitment Plan, and the Fiscal 2019 Preliminary Mayor's Management Report for the Department of Housing Preservation and Development*, New York City Council <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/03/806-HPD-2020.pdf> (last visited April 20, 2020).

5.6.8 Policy Implications

In an attempt to declare the New York City's Emergency Repair Program unconstitutional, an Article 78 proceeding was initiated challenging it.³⁰⁷ However, by the time that the suit reached the New York State Court of Appeals, that court limited its discussion only to the sufficiency of notice and postponement of liability adjudication.³⁰⁸ The tenant reported a blocked toilet, deemed a nuisance for purposes of the program, to the landlord on December 23, 1966, and then again on December 27 of the same year, after nothing was done by the landlord to address the issue. At that point the tenant was told by the landlord no repair would be made under any circumstance and that if the tenant complained to the authorities, the landlord would evict that tenant.³⁰⁹ Ultimately, the City completed the repair and billed the landlord for the repair and administrative expenses, for a total of \$58.10.³¹⁰ The Court ultimately found that landlords are entitled to notice by the city of its intent to conduct emergency repairs and must be afforded an initial opportunity to make the repairs themselves, however they are not entitled to a judicial proceeding on whether they are liable prior to tenants making rent payments directly to the City to pay for such repairs.³¹¹ An administrative hearing may be held in a challenge to the order.³¹² Further, rent payments are limited only to the actual cost of the repairs, and holding rent in excess of that amount would be "invalid and unconscionable."³¹³ A landlord has the opportunity to sue for recovered rents after the completion of the repairs, upon the establishment

³⁰⁷ 300 W. 154th St. Realty Co. v. Dep't of Bldgs. of N.Y.C., 26 N.Y.2d 538, 541 (1970).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at 542.

³¹¹ *Id.* at 543.

³¹² *Id.* (citing N.Y.C. ADMIN. CODE § 564-19.0).

³¹³ *Id.* at 543-544.

of nonliability, and this postponement of a judicial determination for liability is not a denial of due process.³¹⁴

4.6.9 How Are Emergency Repairs Identified?

Based on our analysis of New York City, Buffalo, and Los Angeles emergency repair programs, we recommend incorporating proactive measures in identifying emergency repairs for an emergency repair program in the City of Albany. Homeowner outreach, a formal line of communication, and an assessment task force are three ways of identifying emergency repairs efficiently and proactively. We have been informed by the City of Albany's city leaders that, currently, the City of Albany relies on calls to 911 by tenants to identify repairs determined to be urgent. While it may be useful to continue to do so in the future, incorporating proactive strategies to identify emergency repairs offers a more effective means of identifying the need for early interventions. These strategies can develop a relationship between the community and the city government, spread awareness of the program, and swiftly connect communities to resources.

Homeowner outreach would be implemented by the administrators of the City of Albany's emergency repair program by contacting homeowners and informing them of the program's existence. This may encourage homeowners to address or report any broken systems or objects in their home that may be eligible for an emergency repair. This approach allows the city to develop a relationship with homeowners in the community, bring awareness to the impact the condition of their properties have on the community, and offer resources when needed. Most importantly, homeowner outreach can identify emergency repairs before the condition of the

³¹⁴ *Id.* at 544 (citing *Phillips v. Commissioner of Internal Revenue*, 238 U.S. 589, 596-601 (1931)).

properties deteriorates to the point that an emergency repair will not serve as an effective means of preventing deterioration and blight.

A part of proactively and efficiently identifying emergency repairs would include a formal line of communication with homeowners, building owners and tenants. Creating a direct line of communication between the emergency repair program and the complainants reduces the time and resources it takes to link the solution to the problem. The most practical form this communication can take in an emergency repair program is a phone number, email, and a website providing the goals and purpose of the program itself for the program specifically. This will be in addition to the 911 complaint system, not a replacement. The circumstances emergency repairs address are civil matters, not criminal, and, more importantly, emergency repairs are not within law enforcement's duties. Providing a cellphone, email, and website for the emergency repair program to complaining residents of a rental property leads the residents directly to a solution to fixing their broken system or object. This prevents sole reliance on the 911 complaint system, which is not designed for housing emergencies, but, rather, emergencies involving law enforcement.

Another step the City could consider would be the formation of an assessment task force led by Code Enforcement that would identify conditions that might be appropriate to address through an emergency repair program. If the need for emergency repairs is any indication of blight, an assessment of those neighborhoods in the City of Albany with a disproportionate number of items requiring emergency repairs may be appropriate. This program will require information such as zip codes and mailing addresses from the homeowners, building owners, and tenants, and these data can be used to identify a cluster of emergency repairs in each area. The skills and overall purpose of Code Enforcement officials make them uniquely qualified to form

and operate an assessment task force that can identify emergency repairs. The properties and buildings selected for inspections by Code Enforcement's assessment task force, within these "clusters," need to be randomized to a degree to avoid appearing to target specific areas unfairly. An assessment task force, homeowner, building owner and tenant outreach, and a formal line of communication are three strategies that are proactive and efficient in identifying emergency repairs as an alternative to solely relying on the City of Albany's current 911 complaint system.

4.6.10 Policy Implications

The City of Albany may need to focus its attention in particular to the Solution Phase of any emergency repair program. Should an owner begin the process of fixing the emergency repair, after an initial two-day notice, the City will not intervene. However, the emergency repairs program will need to ensure Code Enforcement follows up with the homeowner and/or tenant to confirm the emergency repair has been addressed. We suggest placing a limit on the amount of days the homeowner has in completing the emergency repair instead of solely relying on the homeowner's commencement of the repair process. It is in our opinion that, without such a limit, homeowners will have the opportunity to prevent city intervention without fixing the repair.

5.7 Overarching Issues and City Comparison Chart

There are a number of general issues that the City of Albany should consider in its further research before establishing an emergency repair program. First is the utilization of existing law sufficient for the foundation of an emergency repair program? Next, the program must conform with any legal requirements presently imposed on any such program, as well as any that may arise for the first time. Lastly, in funding an emergency repair program, options that do not require the City to expend funds without reimbursement are ideal for sustainability. The

following table outlines our highlighted findings based on our research of Buffalo, NY, Los Angeles, CA, and New York, NY.

FIGURE 8.

	BUFFALO	LOS ANGELES	NEW YORK CITY
Defining Emergency Repair	The City of Buffalo does not use a formal definition of emergency repairs but rather lists repairs that qualify.	Habitability violation under the California Civil Code and City of Los Angeles Municipal Codes, as well as “constitut[ing] a present, imminent, extreme, and immediate hazard or danger to life or limb, health or safety.”	Class C violations: hot water or illegal devices or lead-based paint violations. (vague enough to apply to different circumstances.) Housing Maintenance Code: Where the owner expects that an interruption of any heat, hot water, cold water, gas or electricity service will last for less than two hours
How are Emergency Repairs Identified	Eligible homeowners apply for funding	Residents, or any Department or Agency	Annual inspection, homeowner outreach, and court proceedings.
Notification Requirements	N/A	Personal Service or Certified overnight mail and conspicuous	Landlords are entitled to notice,

	BUFFALO	LOS ANGELES	NEW YORK CITY
		posting for the entire building and each affected tenant	and the opportunity to fix the problem themselves
How are Repairs Carried Out	Community Orgs bid to private Contractors	Preselected Contractors and/or bid walk	No mention of how contractors are selected, just that HPD conducts them
Administration of Emergency Repairs	City of Buffalo Urban Renewal Agency	Los Angeles Housing and Community Investment Department	NYC Housing Preservation and Development (HPD)
Funding Source	CDBG	REAP, SCEP, CDBG	Funded by NYC and Federal Government
Policy Implications	Federal implication regarding lead paint which requires an “emergency” designation to be exempt from the statute. (24 C.F.R. § 35.115)	Will require statutory changes to affect any portion of this program within the City of Albany No local case law relevant to the constitutionality of this program found	Landlords are entitled to notice, and the opportunity to fix the problem themselves. (Realty Co. v. Dep’t of Bldgs of City of N.Y., 26 N.Y.2d 538, 541 (1970))

5.8 Recommendations for the City of Albany

5.8.1 Overview

Based on our research of Buffalo, NY, Los Angeles, CA, and New York, NY, we have identified a number of recommendations that the City of Albany should consider in the pursuit of possibly establishing a robust and effective Emergency Repair Program, they include:

- Utilizing existing City laws and departments in establishing an emergency repair program;
- Notice of initiation of the emergency repair program in compliance with existing statutes and case law;
- Carrying out repairs through RFQ and then bid walks;
- Funding an emergency repair through a variety of options, including rent escrow, tax liens, and payment plans;
- Establishing an emergency repair program would need to be done statutorily in compliance with existing case law;
- Lastly, additional considerations the City of Albany may require, to protect the City relationship with community members.

5.8.2 Defining an Emergency Repair

The New York State Uniform Code sets the standard of defining statutes that establish unsafe structures and equipment, imminent danger, and what is “unfit for human occupancy” while the City of Albany Code builds upon and is responsible for “administering and enforcing” the Uniform Code. The City of Albany Housing Code begins the process of establishing the governing agencies, the powers and duties, compliance measures, inspections, notices and orders, the power to act in emergencies, and the “designation of unfit premises” that implement

the procedures that further develop the statutes, relative to the city, that designate the enforcement procedures, penalties, and the ability to vacate the structure, if necessary, and then make repairs and “abate the nuisance.” The City of Albany does not have a formal and operational emergency repairs program. There is only one passage in the City Code (§231-114) that defines when a dwelling is “unfit for human habitation.” Therefore, we recommend the City of Albany to utilize its current authority and add upon the existing structure and definitions, within the City Code, in creating and defining a formal emergency repair program.

Additionally, we recommend the City consider the possibility of adopting language from the City of Los Angeles’s program that requires the emergency warranting an emergency repair as one that “constitute[s] a present, imminent, extreme, and immediate hazard or danger to life or limb, health or safety.”³¹⁵ By adopting this language, the City would identify what qualifies as an emergency repair, even within those that qualify under the unsafe and unfit definition. Additionally, this creates a higher standard necessary to initiate an emergency repair in an effort to avoid concerns that this program could be used to address conditions that do not genuinely warrant emergency interventions.

Lastly, the City of Albany should consider capping repair costs at a specific dollar amount (e.g. \$5,000). This will address two main issues: control of the annual budget, and determining the type of repairs eligible for the program. Based on previous year’s data, the number of repairs can be predicted and planned for in the coming year’s City budget. Additionally, capping the amount will exclude certain types of repairs that may exceed the value of the property. Given the emergency nature of the program, eliminating the additional requirement of determining the property value versus the cost of the repair, may avoid delays and

³¹⁵ *Avoid Liens-Urgent Repair Program (URP)*, *supra* note 234.; L.A., CAL., MUN. CODE ch. 4, art. 15, § 50.00(B) (2013).

the likelihood that the City will waste tax dollars on repairs on soon-to-be abandoned or demolished properties. In some cases, this may be unavoidable given the condition of the property.

5.8.3 How Are Emergency Repairs Identified?

Based on our analysis of New York City, Buffalo, and Los Angeles emergency repair programs, we recommend incorporating proactive measures in identifying emergency repairs for an emergency repair program in the City of Albany. Homeowner outreach, a formal line of communication, and an assessment task force are three ways of identifying emergency repairs efficiently and proactively. We have been informed by the City of Albany's city leaders that currently the City of Albany relies on calls to 911 by tenants to identify repairs determined to be urgent, and while it may be useful to continue to do so in the future, incorporating proactive strategies to identify emergency repairs offers a more effective means of identifying the need for early interventions. These strategies can develop a relationship between the community and the city government, spread awareness of the program, and swiftly connect communities to resources.

Homeowner outreach would be implemented by the administrators of the City of Albany's emergency repair program by contacting homeowners and informing them of the program's existence. This may encourage homeowners to address or report any broken systems or objects in their home that may be eligible for an emergency repair. This approach allows the city to develop a relationship with homeowners in the community, bring awareness to the impact the condition of their properties have on the community, and offer resources when needed. Most importantly, homeowner outreach can identify emergency repairs before the condition of the properties deteriorates to the point that an emergency repair will not serve as an effective means of preventing deterioration and blight.

A part of proactively and efficiently identifying emergency repairs would include a formal line of communication with homeowners, building owners and tenants. Creating a direct line of communication between the emergency repair program and the complainants reduces the time and resources it takes to link the solution to the problem. The most practical form this communication can take in an emergency repair program is a phone number, email, and a website providing the goals and purpose of the program itself for the program specifically. This will be in addition to the 911 complaint system, not a replacement. The circumstances emergency repairs address are civil matters, not criminal, and, more importantly, emergency repairs are not within law enforcement's duties. Providing a cellphone, email, and website for the emergency repair program to complaining residents of a rental property leads the residents directly to a solution to fixing their broken system or object. This prevents sole reliance on the 911 complaint system, which is really not designed for housing emergencies, but, rather, emergencies involving law enforcement.

Another step the City could consider would be the formation of an assessment task force led by Code Enforcement which would identify conditions that might be appropriate to address through an emergency repair program. If the need for emergency repairs is any indication of blight, an assessment of those neighborhoods in the City of Albany with a disproportionate number of items requiring emergency repairs may be appropriate. This program will require information such as zip codes and mailing addresses from the homeowners, building owners, and tenants, and these data can be used to identify a cluster of emergency repairs in a given area. The skills and overall purpose of Code Enforcement officials make them uniquely qualified to form and operate an assessment task force that can identify emergency repairs. The properties and buildings selected for inspections by Code Enforcement's assessment task force, within these "clusters," need to be randomized to avoid appearing to target specific areas unfairly. An assessment task force,

homeowner, building owner and tenant outreach, and a formal line of communication are three strategies that are proactive and efficient in identifying emergency repairs as an alternative to solely relying on the City of Albany's current 911 complaint system.

5.8.4 How is Notice of an Emergency Repair Given?

There is little guidance within case law as to how a municipality might carry out an emergency repair program, let alone how to comply with the constitutional due process requirements afforded to all. We recommend, consistent with *300 W. 154th St. Realty Co.*, described above, that there must be a period of time afforded to homeowners or landlords for them to carry out the emergency repair themselves. One of the goals of the City is to be able to identify an emergency-repair-eligible situation and be able to begin the repair process immediately, like the procedure for an emergency demolition that currently exists within city authority. However, this level of immediacy will likely not be permissible based on the case law available and would serve the community negatively. Our goal with this recommendation, and the goal of the City, is to encourage homeowners or landlords to correct the issues themselves. In order to accomplish this, the City must afford homeowners or landlords the opportunity to correct the violation before leading to a City emergency repair.

We encourage the City of Albany to follow the City of Los Angeles's notice scheme in initiating an emergency repair. Upon verification of a code violation that qualifies as an emergency repair, we recommend the City file an order to repair that provides 48 hours to the homeowner or landlord to initiate the repair, at which point City officials or city-selected contractors will step in and begin an emergency repair themselves. We believe that this period of time is long enough to provide ample opportunity to begin a repair, while quick enough that the emergency does not cause too much of a detriment to the property or its residents. Of course,

should any condition warrant immediate attention such that a 48-hour waiting period could result in danger to the tenants or neighboring residents, the City could take emergency action as necessary.

The notice of the repair should be completed in accordance with any New York requirements, but at a minimum, notice should be provided by overnight certified mail to the homeowner listed in the City records or the rental dwelling registry, as well as by posting to the property. If there are tenants living on the property who might be affected by the emergency repair, they should also be provided notice. These notices should include the reason for the order to repair, including all relevant necessary information relating to the violation, as well as the repercussions of failing to begin the repair within the allotted period of time.

5.8.5 How Will the Emergency Repairs Be Carried Out?

The existing unsafe property procedure for demolitions will be used as the framework for carrying out emergency repairs. Initially, the City of Albany Code Enforcement Department will issue a Request for Qualifications (RFQ) to prospective qualified contractors to participate in the program and to build a preferred contractors list. This process should probably take place annually, making certain to adhere to any state or local procurement guidelines.

As mentioned previously, Code Enforcement will receive the information (via phone call or email) regarding the emergency by a concerned tenant, resident, or the Code Enforcement department. An inspector would strive to visit the property as soon as possible given the nature of the condition to assess the validity of the emergency, determine the scope, and the proper course of action.

If an emergency exists, City officials should then attempt to reach the property owner by phone, posting notice on the property, and/or by mail. The owner should have 48 hours to

respond to the City's notice of violation (unless an acute emergency exists) and have an opportunity to make the repair or make arrangements to complete the repair.

For landlords who are non-responsive, the City will wait for the 48-hour--notice period before beginning the repair. Once the notice period has expired, all contractors would be notified to attend a bid walk at the job site and given a timeframe to submit their bids to the City.

The City would award the job to the contractor with the best bid. Given the immediate nature of the program, the contractor should be expected to begin the repair immediately upon obtaining the award. Contractors would be required to secure any permits relative to the repair. Contractors should coordinate with the tenant to gain access to the property during the repair.

Once the repair is complete, the contractor should notify the City inspectors who will complete a final inspection. After the inspection, the contractor may bill the City for payment.

5.8.6 Administration of Emergency Repairs Program

It is recommended that the Department of Buildings and Regulatory Compliance should administer all facets of the Emergency Repair Program since the programmatic and legal framework already exists for it to do so. The City of Albany City Code, §§ 231-103 through 231-123 authorizes the Department of Buildings to enforce code compliance; make inspections of properties; to act in an emergency; to designate properties unfit; and make repairs.³¹⁶ As noted from other cities, specifically Buffalo, outsourcing the administration of such a program to another agency severely impedes the ability to deliver emergency repairs as quickly as possible. The City is uniquely positioned to control the entire process from start to finish, eliminating the obstacles another non-governmental agency would inevitably encounter.

³¹⁶ THE CITY OF ALBANY, N.Y., HOUSING CODE art. VIII, §§ 231-103-231-123 (2013).

It may be necessary at times to include other City agencies to resolve disputes, set up accounts for payment plans or collect payments.

5.8.7 Funding the Emergency Repair Program

It is recommended that the City of Albany use three different funding methods to seek reimbursement for the cost of the repairs: a homeowner payment plan with the City, rental payments redirected to the City, and/or applying the entire cost of the repair to property taxes. All three options assume the City will cover the cost of repairs upfront with the expectation to be reimbursed at some point in the future.

5.8.7.1 Repayment Plan

If property owners show a willingness to cooperate after the repair has been completed, the City may allow the property owner to enter into a payment plan for an extended period of time. To secure the interest on the costs associated with the repair that have now been effectively converted into a loan to the homeowner, the City would place a lien on the property as collateral until the debt is paid in full. If the property owner defaults, the City could pursue the option of accelerating reimbursement for the cost of the repair as a tax to be reimbursed by the County. The City could also decide not to take action, leaving the lien in place to recover when the property is sold in the future.

This option offers the most flexibility for property homeowners who may not have the resources readily available to either pay for the repair outright or have access to a bank loan. As this program could impose an undue hardship on property owners who may be economically disadvantaged, this option may afford them a less punitive, more flexible option. For example, the City may offer longer terms than what would be common for a traditional loan.

This option may require the Legal Department to perfect the interest, and/or the Accounting Department to manage payments and keep track of the account.

5.8.7.2 Rent Escrow Account

One of the requested recommendations by and for the City leaders was that we explore the potential for a program that sustains itself by having tenants pay rent directly to the City for an emergency repair rather than needing to go after the homeowner or landlord directly. We recommend the City adopt a statutorily based program that permits the City to collect rent from a tenant directly, in conjunction with tenant protections. The City of Los Angeles has a robust Rent Escrow program, as previously described above.³¹⁷ We recommend the City establish a similar program so that, first, a portion of rent payments from affected tenants are paid directly to the City in reimbursement, but also, second, the program would also give the homeowner or landlord the ability to avoid rent reduction through a hearing process. A rent escrow program is ideal for the City of Albany because it can accomplish the goal of completing an emergency repair while having a guaranteed means of collecting payment without unduly burdening the homeowner with a forced lump sum payment.

5.8.7.3 Property Tax

The final funding option the City could explore would be to add the cost of the repair to the property taxes. This option is the least favorable for the property owner, but most favorable for the City. At the end of the tax year, presumably the County of the City of Albany will reimburse the City for any property bills charged to property owners. In this case property

³¹⁷ L.A., CAL. MUN. CODE Ch. 16, art. 2, §§ 162.00-.13 (Effective April 16, 2001).

owners either pay the cost or suffer potential foreclosure. This method is currently used to recoup the cost of emergency demolitions done by the City.

5.8.7.4 Penalties

In order to disincentivize property owners from using this program as a means to circumvent the regular maintenance of their properties, the City should impose a penalty exceeding the market cost of repairs or the interest rate associated with borrowing the funds. For example, if the market cost to replace a furnace is \$3,500, the City could impose an additional penalty in excess of \$3,500, in addition to the lien placed on the property, to secure what would amount to the interest on the costs associated with the repair.

Keeping in mind the City of Albany's equity agenda, we recommend all circumstances be considered on a case-by-case basis, taking into account the financial well-being of the property owner. Although the program is designed to address blight, the intention should not be to overly burden struggling homeowners placing them in a worse position. The City should allow reasonable flexibility for those who are most vulnerable.

5.8.8 Policy Implications

Regardless of the specific details of the program itself, anything the City undertakes in connection with an emergency repair would obviously need to be in compliance with all relevant state and federal laws. The lack of New York State specific case law on the subject means that anything the City does could result in a case of first impression within this area of law. Notice relating to an emergency repair is the one area we have found relevant case law within the State of New York and should be followed, as described in the sections above. Additionally, while not binding on the Second Circuit, the Ninth Circuit's finding of the constitutionality of the Los Angeles REAP should be taken into account in the implementation of any rent collection

program established. Further, we understand that there have been recent changes relevant to the landlord-tenant relationship under New York State law and we would recommend waiting to see if there is any long-term impact of those policies on properties that may become subject to an emergency repair.

In addition, the City should consider whether property owners in tax arrears or owing debts to the City should be eligible for the payment plan or rent escrow option. It may be viewed unfavorably by the City Council or taxpayers to allow leniency for those already in debt to the City. Inevitably, the Emergency Repairs Program will impact low-income property owners who are unable to finance repairs and who also are in debt to the City. In these cases, as mentioned earlier, the City should seek to be as flexible as possible. For other cases involving absentee landlords, repeat offenders, or owners with multiple neglected properties, the City can elect to use a more punitive solution than for low-income or vulnerable property owners.

Taking into account the “renter-first policy,” understanding the possible negative consequences for holding landlords responsible, and the effects that tenants face when reporting violations, the City should consider providing legal information about the “New York Consolidated Laws, Real Property Law - RPP § 223-b. Retaliation by landlord against tenant” as a safeguard to prevent eviction and other issues that could include rent increases or other punitive actions that force displacement. The City should also take into account the need, where appropriate, to ensure tenants are relocated to safe housing when necessary to accomplish any repairs. The cost of providing such suitable, alternative and temporary housing could also be collected from property owners through the processes described above.

5.8.9 Other Considerations

After an in-class discussion regarding the viability of an emergency repair program within the City of Albany as well as based on our research, we urge City leaders to approach this program with caution. While we have not found any reason that a program such as this would be deemed unconstitutional, as other cities are successfully using such programs, given the size of the city and the required detail to accomplish an emergency repair, we are wary of the necessity of an emergency repair program at this current point in time.

For reasons of equity and justness, we would recommend City leaders avoid a program that moves too quickly in the actual performance of a repair at the risk of raising questions of first impression as well as the threat of damaging the relationship between community members and City leadership.

Furthermore, if the City undertakes any type of program that conducts emergency repairs, tenants must be protected. We recommend that the City implement the tenant protections that the City of Los Angeles developed in conjunction with their Rent Escrow Program.³¹⁸ Without these protections, the City could create a hostile environment for tenants that report violations and for those impacted by emergency repairs that the City would ideally like to avoid.

Additionally, to further the goal of shifting to a less punitive approach within the city, rather than instituting fees associated with this program for the pure goal of punishing those in violation, the City should reframe its fees to be understood as an administrative fee for being included in the emergency repair repayment system, something that was included in the City of Los Angeles REAP statute.³¹⁹

³¹⁸ L.A., CAL. MUN. CODE Ch. 16, art. 2, §§ 162.00-.13 (Effective April 16, 2001).

³¹⁹ L.A., CAL. MUN. CODE Ch. 16, art. 2, §§ 162.00-.13 (Effective April 16, 2001).

Recognizing the difficulties that repeat code violation owner/offenders place on the City budget and implementing procedures that secure the City financially in further emergency repairs going forward, the City could also explore employing alternative methods of collecting fines rather than using tax liens. It could also investigate the feasibility of instituting mandatory homeowner's insurance policies as a substitute funding opportunity, which can serve as an assurance that owners will be able to correct and pay for repairs or as a method of reimbursement to the City. The City could also put into place a mechanism that allows the City to recover expenses when the landlord refuses or cannot pay through a claim on tenants' rents.

Furthermore, the City of Albany may need to focus its attention in particular to the Solution Phase of any emergency repair program. Should an owner begin the process of fixing the emergency repair, after an initial two-day notice, the City will not intervene. However, the emergency repairs program will need to ensure Code Enforcement follows up with the homeowner and/or tenant to confirm the emergency repair has been addressed. We suggest placing a limit on the amount of days the homeowner has in completing the emergency repair instead of solely relying on the homeowner's commencement of the repair process. It is in our opinion that, without such a limit, homeowners will have the opportunity to prevent city intervention without actually fixing the repair.

Ultimately, anything that the City does with respect to an Emergency Repair Program must be done in light of the equity agenda to avoid any discriminatory use of the program and to serve the greater City of Albany community in blight mitigation.

5.8.10 Compiled Recommendations for an Emergency Repairs Program

	Recommendations for the City of Albany
Defining Emergency Repairs	<ul style="list-style-type: none"> • A code violation will qualify for an emergency repair if it meets the City of Albany definition for an unsafe and unfit order, designation of an Unfit Premises 231-114. • With a goal of “public protection from the hazards of threat to human life, safety, or health.” (NYS Uniform Code Supplement 101.2.7.4). • The City could potentially adopt the Los Angeles language requiring the emergency “constitute a present, imminent, extreme, and immediate hazard or danger to life or limb, health or safety.” • For a repair cost maximum at \$5,000.
How are Emergency Repairs Identified	<ul style="list-style-type: none"> • Homeowner outreach to encourage reporting of emergency repair-eligible. • Residents report code violations directly to the City. • Code enforcement emergency assessment task force potentially.
Notification Requirements	<ul style="list-style-type: none"> • Using the registry of rental dwellings to identify homeowners. • Notice of the emergency repair eligible condition provided to the landlord and tenants and after 48 hours the city may enter the premises and correct the hazardous condition.
How are Repairs Carried Out	<ul style="list-style-type: none"> • Using the City’s established contractors list (through RFQ) to carry out bid walks after the notice period concludes to begin repairs immediately.
Administration of Emergency Repairs	<ul style="list-style-type: none"> • Code Enforcement. §231-103. Administrative agency. [Amended 12-2-2013 by L.L. No.5-2013] part A, B, and C.
Funding Source	<ul style="list-style-type: none"> • Potential reallocation of Federal or State budget to fund the program • Rent Escrow Account Program should be established for the City to be directly reimbursed for the repairs. • Tax lien is an option for the City as well. • Payment plans for homeowners are also possible.
Policy Implications	<ul style="list-style-type: none"> • Statutory changes will be necessary to establish a program. Those changes will need to include the proper notice requirements, in accordance with New York State Court of Appeals precedent. • We understand that there have been recent changes relevant to the landlord-tenant relationship and we would recommend waiting to see if there is any long-term impact of those policies on properties that may become subject to an emergency repair.

	<ul style="list-style-type: none"> • If the City restricted those eligible for a potential payment plan based on their having an active debt with the City, it could be construed as doubly punitive on those subject to emergency repairs.
Other Considerations	<ul style="list-style-type: none"> • If the homeowner begins the emergency repair, the City should engage in follow up to ensure the emergency hazard is corrected. • For reasons of equity and justice, we would recommend City leaders avoid a program that moves too quickly in the actual performance of a repair at the risk of legal questions of first impression as well as the risk of damaging the relationship between community members and City leadership. • The City should also include Tenant Protections applicable to an emergency repair specifically, if rent is given directly to the City. • The City could also attach an Administrative Fee paid to the City.

6 Blight Remediation: Real Property Actions and Proceedings Law Article 19-A

6.1 Introduction

Along with strategies for blight prevention and intervention, the City of Albany can further its equity agenda through Real Property Actions and Proceedings Law Article 19-A (“19-A”). This state law provision vests local municipalities in New York with a legal mechanism for obtaining title to residential dwellings that have fallen into a state of neglect. As such, 19-A provides a tool through which local governments can remediate blight by obtaining title to abandoned and unkept dwellings, which can, in turn, be converted into habitable homes.

Admittedly, Article 19-A offers an aggressive means of code enforcement, one which may well seem draconian by some. However, our implementation efforts and consultations with corporation counsel show that aggressive code enforcement through such mechanisms as 19-A can be effective in prompting landowners to practice better stewardship of their properties when all other measures of blight prevention and intervention fail. To better understand the feasibility and logistics of using 19-A, our group looked at 291 Lark Street, a property which had recently been flagged for code violations by the City. In the process, we learned a valuable lesson: code

enforcement may influence property owners to assume greater responsibility in maintaining their property under threat of legal action. Therefore, tactical and aggressive code enforcement—such as the threat of a 19-A proceeding against targeted vacant properties—may remediate blight without requiring the proceeding’s completion. At the same time, the City maintains the option of completing 19-A proceedings in cases of non-compliance. Ideally, the threat of 19-A procedures will be effective without the need to prosecute, as such cases can be complicated, time consuming, and expensive.

Using this tool will fortify the City of Albany’s equity agenda by (1) allowing the City, working in conjunction with the Albany County Land Bank, to take title to vacant and abandoned buildings in gross states of disrepair in order to fix and sell them, and (2) pressuring building owners to maintain and reinvest in their properties. For these reasons, incorporating 19-A in a robust fashion into the code enforcement process will help the City of Albany remediate blight by lifting up areas already imperiled by blight and preventing neighborhoods from further deteriorating into blight.

Another thing our experience looking at potential interventions to address problems at 291 Lark Street revealed is something virtually anyone who has considered using the statute knows: 19-A’s statutory scheme is exceedingly, and, in our opinion, unnecessarily complex. In order to provide some guidance as to how to make 19-A work for municipalities, our group analyzed 19-A’s processes and attempted to demystify them, reducing them to a useful how-to-guide for municipalities, like the City of Albany, so that they might better understand that process in its current form and apply it to its full effect until such time as the legislature might amend and improve it. Within the how-to-guide, our group created flowcharts that visually depict each step in the process. In conjunction with creating a how-to-guide for law enforcement,

the group researched the requirements imposed by the statute and created document templates for the City to use in carrying out a proceeding.

Article 19-A is poorly drafted, and its deficiencies make the law seem overly daunting, likely prohibiting many in the state from using it to its full potential. In light of the complexity of 19-A and limited case law on the statute,³²⁰ this report presents our recommendations for ways the City of Albany could advocate with the state legislature to amend 19-A in such a way that would simplify it for law enforcement and city officials so that it can be an effective tool for remediating blight. Our work entailed drafting and proposing amendments from which cities like the City of Albany would benefit. Our research focused on drafting amendments to 19-A to streamline the process and eliminate unnecessary or redundant provisions that can be found elsewhere in state law and to clarify the applicability of the statute by adding a definitions section.

The 19-A section of this Report will first provide a brief description of 19-A, including its purpose and legislative history. Next, it outlines how a proceeding is carried out and briefly examines criteria that help determine whether a dwelling is appropriate for a 19-A action. The report then outlines the law enforcement how-to-guide along with templates to aid the City in preparing the required documents for the proceeding. We will then present the process through which our group researched and drafted amendments to clarify the statute. Copies of the how-to-guide (Appendix A), templates (Appendix B), and our amendments (Appendix C) are attached to this report.

³²⁰ See *Sonmax, Inc. v. N.Y.C.*, 392 N.Y.S.2d 810, 811–812 (N.Y. Sup. Ct. 1977); *Hous. & Dev. Admin. v. Ruel Realty Co.*, 404 N.Y.S.2d 941, 943 (N.Y. Civ. Ct. 1978); *Dep’t of Hous. Preserv. & Dev. of N.Y.C. v Deutsche Bank Natl. Tr. Co.*, 977 N.Y.S.2d 666 (N.Y. Civ. Ct. 2013).

6.2 19-A Proceedings

19-A is unique in the fact that it does not require a municipality to pay the owner of the building fair compensation for acquiring title to that building. Typically, whenever the government seeks to take title of any interest in real property, it must use its eminent domain power to avoid an unconstitutional taking.³²¹ The only exception to this rule that is widely used among the several states is to take property under civil forfeiture laws;³²² however, 19-A does not rely on those laws either. Instead, 19-A uses three different legal principles to vest local governments with title in the property: abandonment, public nuisance, and enforcement through the state's police power. Under abandonment, municipalities certify that an owner, through its conduct, has abandoned ownership of a building and relinquished all of its rights to it. 19-A is unique in the fact that typically the law only recognizes abandonment in personal property not residential dwellings. Under a public nuisance theory, the law recognizes that one person should not be allowed to harm the many and there exist civil remedies in which a court may impose sanctions on the parties whose nuisance is burdening the general public.³²³ Originally, public nuisance was first addressed under the common law. Over time, states have developed zoning regulations and building codes to address nuisance issues before they arise. Finally, utilizing their police powers, states have the ability to restrict certain kinds of conduct that a legislature has deemed harmful to society or the public at large.³²⁴ 19-A, by serving as a codification of all of these principles, grants local governments the power to acquire title to properties that negatively affect the health, safety, and welfare of the general public.

³²¹ See, e.g., *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 239–240 (1984).

³²² See, e.g., N.Y. C.P.L.R. Article 13-A (McKinney 2020).

³²³ See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1054–1055 (1992) (dissent).

³²⁴ See *Seawall Associates v. New York*, 74 N.Y.2d 92, 112–113 (1989).

Ordinarily, to bring building code violations into compliance, a local government will impose fines or place violators in prison for violating the law. However, so long as procedural due process is followed, the state also has the ability to correct violations of the law and seek payment from violators after the fact. The problem with correcting building violations is that, historically, the most a state or local government could do to encourage or even force landlords to correct these violations is impose fines, which are then converted to liens on properties, and such liens can exceed in value the overall worth of a property. The lien in turn disincentivizes landowners from selling their properties because they have lost all hope of turning a profit through such sales. This is where 19-A presents a useful solution. Instead of having the state or local government seek to correct a violation and bill violators later, this law tells violators to correct the problem themselves and if they do not, they risk losing their properties altogether. This shifts the burden from the state or municipality and back onto the person causing the societal burden in the first place. Legally, acquiring the property and imposing fines both fall under the same legal principle so long as it is done consistent with proper enforcement of a government's police powers. Given the nature of the grounds that give rise to a 19-A proceeding, the authority vested in local governments through 19-A is consistent with the exercise of local police power.

While we believe a 19-A action could not be considered a taking, subject to “just compensation” for the owner, there is still the question of whether such a proceeding is consistent with due process. The Fifth Amendment to the United States Constitution provides that a person shall not “be deprived of life, liberty, or property, without due process of law.”³²⁵ This clause makes the assumption that governments have the power to deprive citizens of life,

³²⁵ U.S. CONST. amend. V.

liberty, or property. The only restriction on this clause is that in doing so, governments must follow due process of the law. So long as 19-A does not violate due process the taking is constitutional.³²⁶

19-A was originally written into law to give the City of New York the ability to acquire title to real property it certified as abandoned.³²⁷ Three years later the state legislature signed into law RPAPL 19-B to give the same powers to the cities of Buffalo and Rochester.³²⁸ In 1982, the two laws were merged and, after several more minor amendments, 19-A became the law it is today.³²⁹ In the following discussion, we will set forth the provisions of the statute and then discuss some of the tensions and complexities inherent therein.

Under the current version of the law, 19-A gives cities, towns, and villages the power to certify buildings as abandoned and vest title in the municipality pursuing such actions.³³⁰ The law only applies to residential dwellings under a defined set of criteria.³³¹ To certify occupied dwellings as abandoned, a buildings department (“department”) may certify buildings where the owner has failed to collect rent for at least three consecutive months and have become “a danger to the life, health, or safety as a result of the owner’s failure to assume responsibility for its condition.”³³² Vacant buildings may be certified as abandoned if they are “not sealed or continuously guarded as required by law . . .” and there exists either “a vacate order currently

³²⁶ After some thought, this makes sense. If governments did not have the power to deprive life, liberty, or property, then how would governments enforce the laws it creates through imprisonment, fines, or civil forfeiture.

³²⁷ See N.Y. REAL PROP. ACTS. LAW Art. 19-A (enacted by L 1973, ch. 864).

³²⁸ See N.Y. REAL PROP. ACTS. LAW Art. 19-B (enacted by L 1976, ch. 834).

³²⁹ See N.Y. REAL PROP. ACTS. LAW Art. 19-A (amended by L 1982, ch. 573); *see also*, N.Y. Real Prop. Acts. Law Art. 19-B (repealed by L 1982, ch. 573).

³³⁰ N.Y. REAL PROP. ACTS. LAW § 1970 (McKinney 2020).

³³¹ N.Y. REAL PROP. ACTS. LAW § 1971 (McKinney 2020).

³³² REAL PROP. ACTS. LAW § 1971(1)(a).

prohibits occupancy of the dwelling . . .” or taxes have been due and unpaid for at least one year.³³³ Upon the findings of these facts a department may certify the building as abandoned.³³⁴

Once a building has been certified as abandoned, the department must follow a series of notice procedures. First, the department must file such certification within its own records.³³⁵ Next the department must create a notice of pendency and file both the certification of abandonment and notice of pendency with the county clerk’s office in which the dwelling is located.³³⁶ After that, the department must serve upon the owner, as well as every mortgagee, lienor, and lessee of the building, a copy of the notice of pendency and certification of abandonment.³³⁷ If none of the interested parties commence foreclosure proceedings or reach an agreement to rehabilitate the building within fifteen days, the department may commence a court proceeding to acquire title of the building.³³⁸

To commence a court proceeding, the department must create an affidavit certifying that all of the notice requirements of 19-A have been met and that no party served has taken appropriate action in response to such service.³³⁹ The department must then file a petition with the court along with the affidavit, certification of abandonment, and notice of pendency.³⁴⁰ The petition must then be personally served upon the same parties previously served, along with the certification of abandonment, notice of pendency, and affidavit.³⁴¹ Next, a copy of the petition must be posted in a conspicuous place on the dwelling along with a notice stating, “that any person having or claiming an interest in the property may appear at the hearing thereon to protect

³³³ REAL PROP. ACTS. LAW § 1971(1)(b).

³³⁴ REAL PROP. ACTS. LAW § 1971(2).

³³⁵ *Id.*

³³⁶ N.Y. REAL PROP. ACTS. LAW § 1972(1) (McKinney 2020).

³³⁷ REAL PROP. ACTS. LAW § 1972(3).

³³⁸ *Id.*

³³⁹ N.Y. REAL PROP. ACTS. LAW § 1973(1) (McKinney 2020).

³⁴⁰ REAL PROP. ACTS. LAW § 1973(2).

³⁴¹ REAL PROP. ACTS. LAW § 1973(3).

his interest.”³⁴² Finally, the petition may be noticed to be heard fifteen days after service is completed on all parties.³⁴³

At the hearing the municipality will have the burden of proving that the dwelling is abandoned, and the court shall make a finding of the facts before it.³⁴⁴ If the municipality prevails, it will then be vested title, fee simple absolute, in the dwelling after waiting an additional thirty days after the final judgment.³⁴⁵

6.3 Process and Guidance

One of the main reasons that municipalities do not use Article 19-A is because of its overly complex, convoluted and confusing text. To combat this confusion, our group has made an instructional guide for local governments. In this guide, local governments will learn how to (1) initiate the Article 19-A process, (2) gather the necessary information for carrying it out, and (3) execute the Article 19-A action. Moreover, this guide will discuss issues that local governments will need to address when deciding whether to commence an Article 19-A action. To help illustrate this kind of decision-making, our guide will spotlight the City of Albany and discuss how it addresses those same issues. Finally, this guide will include a flow chart that visually displays the Article 19-A process and its accompanying decision-making. For access to the full guide, see Appendix A.

6.3.1 Templates

A 19-A proceeding requires legal documents that are not normally created in the course of corporation counsel and code enforcement’s day-to-day duties. The statute imposes strict

³⁴² REAL PROP. ACTS. LAW § 1973(2).

³⁴³ REAL PROP. ACTS. LAW § 1973(4).

³⁴⁴ N.Y. REAL PROP. ACTS. LAW § 1974(1) (McKinney 2020).

³⁴⁵ REAL PROP. ACTS. LAW § 1974(3).

documentation and notice requirements on local governments bringing a 19-A action. To assist the City of Albany in pursuing 19-A actions, we created a series of document templates with the goal of simplifying the requirements of the statutes so that code enforcement authorities and corporation counsel can simply fill in these templates for each proceeding. The templates comply with the requirements of the statute and will ideally make it unnecessary to refer to the text of the statute for each 19-A proceeding. The templates drafted for code enforcement and corporation counsel include: the certification of abandonment, a notice of pendency, and an affidavit that the notice provisions have been complied with. See Appendix B for a complete compilation of these model documents.

6.4 Applying 19-A: Experience with 291 Lark Street

In order to understand how 19-A works in practice, the City requested that the group initiate the proceeding on a vacant building. The City designated 291 Lark Street as an appropriate candidate for 19-A because it was vacant, property taxes were up to date, there were unresolved code violations, and it could easily and without enormous expense be repaired and converted into habitable living quarters. While the group and corporation counsel were preparing to begin the process, code enforcement conducted a subsequent investigation of the building in accordance with standard procedure and discovered that some of the code violations had been resolved. Furthermore, a padlock was on the door, indicating that it was sealed and guarded as required by law. Corporation Counsel advised that the building was no longer an appropriate target for a 19-A proceeding.

Though our group was not able to experience initiating a 19-A proceeding, the outcome is in line with the goals of the City: that is, to urge landowners to maintain their buildings so that they are habitable and do not degrade overtime, plunging areas deeper into blight. This

experience reveals an important lesson: that even if the City does not ultimately obtain title through the successful completion of a formal 19-A proceeding, the potential of losing title to the City may in itself be an effective tool for compelling landowners to take care of their properties or risk losing title to the City.

6.5 Amending 19-A

Our final goal in this project was to explore how the City of Albany might seek support from the state legislature to amend 19-A to make it more efficient and easier for local governments to use and to propose suggested amendments that might achieve this goal. To accomplish this task, our team drafted amendments for 19-A that, we believe, clarify, expand upon, and simplify the current law. The remainder of this section will highlight and explain the changes embodied in our proposed amendments (*see* Appendix C for a “redline” version of the statute that contains our complete collection of recommended amendments).

The first problem that confronts anyone reading the statute is that it is exceedingly complex and difficult to understand. While some might say that about many laws drafted by legislatures across the nation or even the world, Article 19-A truly is unique. The statute appears far more complex than the average statute, and, we believe, it does not have to be to accomplish its ends.

For example, many of the terms used in the statute have multiple reasonable interpretations and easily create confusion. To combat this problem, our team created a definitions section, which most statutes generally contain, but, for some reason, was not included by the legislature when it adopted 19-A. Within the definitions section, we modified language to bring the current law in line with language consistent with modern building codes. The reasons

for the difference in language stems from the fact that 19-A was drafted in 1973.³⁴⁶ New York State’s Building Codes did not become effective until 1982.³⁴⁷ This new definition section removes ambiguity and will be more readily understandable by local government officials familiar with building regulations.

The next problem we addressed was the ambiguity among the terms “vacant” and “occupied.” Under the current law, there is no clear standard defining what is occupied or vacant. Under our amendments, the term occupied is flexibly defined to cover various types of occupancy regardless of a building’s zoning classification. Vacancy is regarded as a factual determination that can readily be made by building departments upon a site inspection. There is also some ambiguity under the current version of 19-A as to whether a building that is vacant requires a vacate order to be certified as abandoned. Since vacate orders would not normally be placed on buildings that did not need to be vacated, we made clear that it would not be a requirement for vacant buildings.

Our next goal was to expand the applicability of 19-A to cover all buildings within a city regardless of use and to allow 19-A to be utilized by counties as well as cities, towns, and villages.³⁴⁸ The proposed version of the law seeks to include any building within the state to 19-A’s purview regardless of use and allows counties to use it as well. However, given the fact that it is very common to find old or abandoned buildings on productive farmland outside of cities, we provided a clause to prohibit the use of 19-A on agricultural lands. We also expanded upon the types of violations that would allow a building to be certified as abandoned. The idea here is

³⁴⁶ N.Y. REAL PROP. ACTS. LAW Art. 19-A (enacted by L 1973, ch 864).

³⁴⁷ See N.Y. EXEC. LAW § 373(1).

³⁴⁸ The current version of 19-A applies only to residential buildings and may not be utilized by county governments. See N.Y. REAL PROP. ACTS. LAW § 1970 (McKinney 2020).

to give building departments the flexibility needed to apply 19-A to a wider variety of issues that still have an impact on the health, safety, and welfare of surrounding community members.

Our third goal was to simplify 19-A to make it easier for municipalities to use without violating the strictures of procedural due process. Under the current version of the law, many time restrictions overlap with one another. For example, § 1972 allows an owner to notify the buildings department within thirty days stating that he or she has corrected outstanding code violations, while during the same time period requiring all mortgagees, lienors, and lessees to be served within five days of noticing the owner, and within fifteen days of such service, mortgagees, lienors, and lessees have fifteen days to commence foreclosure proceedings or enter into an agreement with the building department to bring the building into compliance.³⁴⁹ Our team could not identify a legitimate reason for having this multitude of confusing time requirements. To correct this, we merged procedural wait periods together to make it easier to understand the different steps in the process and to make the procedural process clearer generally. Next, we combined processes associated with serving and filing the notice of abandonment and the certification of abandonment. A savvy municipality would typically generate these two documents together; in the interest of reducing redundant paperwork, we combined the two for greater simplicity. Our team also rearranged portions of the law to make it easier to read through the document from beginning to the end without having to skip around through the various provisions.

In addition, we divided § 1972 into a certification process and an institution of proceedings process. This will allow building departments the flexibility to certify buildings as abandoned when they see them as satisfying the standard set forth in the statute while still giving

³⁴⁹ N.Y. REAL PROP. ACTS. LAW § 1972 (McKinney 2020).

them the discretion and time to be able to decide whether or not they actually want to follow through with proceedings and file an action against the landowner. Separating these processes can also allow a code enforcement strategy that targets a pool of buildings that have been certified as abandoned, seeing how the landlords respond to the initial notices, and then instituting several proceedings at the same time against those landlords who have not taken corrective action. Overall, this process should better fall in line with how building inspections are done and be more easily implemented into any city's already existing code enforcement strategy.

Next, we made clear that the only place a municipality should have to look for documentation is in the county clerk's office where the building is located. The purpose behind recording a deed in the county clerk's office is to create a one-stop shop for real property ownership information. Local governments should not be burdened with having to go out of their way to find owners who do not wish to be found. Currently, the statute is unclear as to how far a municipality needs to search to find information to institute a 19-A proceeding. We wanted to make sure that, under our amendments, local governments would not be sent on a wild goose chase searching for information an owner is deliberately trying to hide.

Lastly, we eliminated the thirty-day wait period for a municipality to take title to the property. This step was unnecessary since the notice given was abundant and the likelihood of error on behalf of a city is extremely low. As a result, the extended wait period was unnecessary. We also eliminated the possibility of easements or covenants being transferred to a municipality; any title transferred through 19-A is given in fee simple absolute with no encumbrances.

All in all, we believe that 19-A can serve as an effective tool for the City of Albany to remediate blight and we have provided a series of templates and a how-to guide that will enable the City to use the statute to its fullest. At the same time, we have also made recommendations as to ways that the statute could be amended to make it more “user friendly” and accessible. Still, even if all of the recommended interventions should fail in remediating blight, and a building goes through demolition or a plot of land is otherwise completely vacant and unimproved, that does not mean the City is without options. The remaining sections will deal with tactics for addressing even vacant properties.

7 Green Space and Pop-Up Uses for Vacant Spaces

There are currently 274 vacant lots listed for sale on the Albany County Land Bank’s website.³⁵⁰ The neighborhoods of Arbor Hill and South End have the most vacant lots for sale, 40 and 78 respectively.³⁵¹ Moreover, if the City acquires new properties through the 19-A process, there is at least the potential that some of those buildings will be demolished, thus adding more vacant lots to the list. Empty vacant lots send the signal to surrounding neighborhood residents that there is a lack of control over their neighborhoods.³⁵²

The neighborhoods of Arbor Hill and South End are two neighborhoods within the City of Albany that have historically been redlined and which have been subject to underinvestment. As cities across the country are implementing blight remediation strategies, many are attempting to do so in a way that does not repeat the history and practices of redlining and other

³⁵⁰ See *List of Available Lots*, ALBANY COUNTY LAND BANK CORP. <https://static1.squarespace.com/static/5947fe9a2994cac227744c26/t/5e973c0a503e8b161565090e/1586969611017/20200415+Lot+List.pdf> (last visited Apr. 21, 2020).

³⁵¹ See *id.*

³⁵² See Eugenia Garvin, et al., *More Than Just An Eyesore: Local Insights And Solutions on Vacant Land and Urban Health*, 90(3) J. URB. HEALTH 412 (2013) (“The relevance of vacant land to health can be further understood through the lens of physical disorder. Physical disorder is described as visible cues in the environment that indicate lack of control over neighborhood conditions.”).

injustices.³⁵³ One of the ways cities are doing this is by focusing on the health and wellbeing of adversely impacted neighborhoods and by listening to the wants and needs of neighborhood residents.³⁵⁴

One of the less known, or less spoken about, lasting impacts of redlining on low-income communities is the environmental injustice that resulted from these practices.³⁵⁵ A recent study that sought to find the connection between redlining and environmental injustice found that among 37 metropolitan cities, in neighborhoods that were previously graded “D” (meaning they were redlined), which were considered to be least desirable neighborhoods for investment, which also had a majority racial and ethnic minority population, on average had 23 percent tree canopy cover.³⁵⁶ Moreover, the study found that in affluent white neighborhoods, previously graded “A” (meaning they were not redlined), which were considered to be the most desirable, had an average of 43 percent tree canopy cover.³⁵⁷

There is no shortage of available space in the City of Albany that could be used for the benefit of the community. This could help the City address the lingering impact that redlining has had on some of the City’s most vulnerable neighborhoods. In an effort of addressing blight through an equity-based approach, we recommend that the City of Albany consider using its available vacant lots as potential sites for what are frequently called pop-up projects, which can bring residents of the neighborhood together. Pop ups are temporary attractions (retail and

³⁵³ *Id.* (“However, public health also contributed to the deleterious effects of 1950s and 1960s urban renewal projects through the development of neighborhood blight guidelines, which resulted in the decimation of many thriving low-income communities.”).

³⁵⁴ *Id.* (“Notably, in this study, residents did not propose or advocate for policies of blight eradication through demolition of vacant homes and buildings. Rather, residents emphasized filling vacant properties with purpose, people, and active use. This distinction may be critical to the acceptance of neighborhood stabilization programs.”).

³⁵⁵ See *Redlining—and Greening—of Cities. What’s the Connection?*, AM. FORESTS (Jan. 16, 2020), <https://www.americanforests.org/blog/redlining-and-greening-of-cities-whats-the-connection/> (“[U]ntil now, there has been little research related to the connection between redlining and the environment.”).

³⁵⁶ Dexter H. Locke, et al., *Residential housing segregation and urban tree canopy in 37 US Cities*, SOCARXIC PAPERS (Jan. 4, 2020), <https://osf.io/preprints/socarxiv/97zcs>.

³⁵⁷ See *id.*

informational) that could be used on vacant properties. Some cities use pop ups as a way to have more direct contact with City officials through an information event. In addition, in an effort to prevent the spread of blight and to address any potential environmental injustices that stemmed from redlining, we recommend that the City consider taking some of the available vacant lots and put them in the hands of responsible neighborhood residents or community organizations so that they can turn them into green spaces or community gardens. This will bring the City of Albany closer to its 2030 goal of becoming a green city and have a more immediate benefit of more greenspace.

7.1 Pop-Ups

An equitable way to use vacant lots, which can even be incorporated into a green space, is to create a pop-up project. Pop-up projects are typically created by a group of community members that are hoping to draw attention to a space in a neighborhood where improvement is desired, and often needed.³⁵⁸ These projects can be created quickly and at a low cost.³⁵⁹ They can last as long as a few weeks, or as short as a few hours.³⁶⁰ According to the United States Department of Housing and Urban Development’s Office of Policy Development and Research, “[t]he experimentation and reversibility afforded by temporary use practices can encourage a multilayered approach to land use and increase the likelihood that a vacant space will eventually find permanent use.”³⁶¹

³⁵⁸ What Is a Pop-Up Demonstration?, AARP, <https://www.aarp.org/livable-communities/tool-kits-resources/info-2019/what-is-a-pop-up-demonstration.html> (last visited Mar. 27, 2020).

³⁵⁹ *See id.*

³⁶⁰ *See* Susan F. Harris, *From Pop-Ups to Park Benches*, LOC. INITIATIVES SUPPORT CORP., <https://www.lisc.org/our-resources/resource/pop-ups-park-benches> (last visited Mar. 27, 2020).

³⁶¹ *Temporary Urbanism: Alternative Approaches to Vacant Land*, OFF. POL’Y DEV. & RES. (Winter 2014), <https://www.huduser.gov/portal/periodicals/em/winter14/highlight4.html> (last visited Mar. 27, 2020).

Major cities around the United States are using pop-up projects to host events, set up farmer’s markets, and bring more activity to spaces that were previously overlooked.³⁶² For example, San Diego, CA, launched “Fair@44” in a vacant lot to give immigrant-owned entrepreneurs a place to sell goods.³⁶³ In Philadelphia, PA, life-size chess and mega Jenga are set up for the public to play in a vacant lot temporarily converted into a “community space.”³⁶⁴ Philadelphia also uses pop-ups for outdoor yoga, art exhibits, temporary dog parks, and gardens.³⁶⁵

The general steps to creating a pop-up project include: (1) identifying the lot and neighborhood where the pop-up project should be; (2) encouraging the community to get involved and begin planning; (3) analyzing the next steps and designing the project; (4) constructing the project; and (5) opening the pop-up project to the community.³⁶⁶ Pop-up projects are a feasible and cost-effective way for the City of Albany to make use of its vacant lots to promote community engagement and bring life back to parts of the city.

7.2 Green Space

Various studies have shown the many benefits that green space and community gardens can have on a neighborhood and its residents, specifically in urban neighborhoods affected by blight. Moreover, the use of green space can be a useful tool to combat the spread of urban blight. A 2014 study on the benefits of green space in blighted neighborhoods tested what is

³⁶² *Id.*

³⁶³ *See id.*

³⁶⁴ Eleanor Klibanoff, *Popping up in a vacant lot near you: Community engagement and neighborhood revitalization*, WHYY NEWS (Sept. 26, 2016), <https://whyy.org/articles/popping-up-in-a-vacant-lot-near-you-community-engagement-and-neighborhood-revitalization/> (last visited Mar. 27, 2020).

³⁶⁵ *See id.*

³⁶⁶ *See* Luis Gutierrez & Nat Gale, *Neighborday Idea #5: Transform a Vacant Lot into a Pop-Up Park*, GOOD (Apr. 24, 2015), <https://www.good.is/articles/neighborday-2015-la-great-streets-free-lots-angeles> (last visited Mar. 27, 2020).

known as the Greening Hypothesis, which states “[i]f well-maintained parcels tend to cluster together then we would expect that parcels proximal to a well-maintained produce garden would have better maintenance than parcels near an undeveloped vacant lot.”³⁶⁷ The study found that residential parcels within close proximity to produce gardens were better maintained by their owners than the parcels located closer to undeveloped parcels.³⁶⁸

Green space and community gardens also provide surrounding community members with a number of health benefits. Members of poor, low-income communities are more likely to suffer from poor health, and often lack the resources to adequately address their health issues.³⁶⁹ Green space has been shown to improve the mental health of surrounding residents and also provides residents with a sense of safety.³⁷⁰ Moreover, green space can be an efficient tool to combat what is known as the urban heat island effect, which occurs during the warmer months in neighborhoods that have a large amount of impervious surfaces, such as asphalt sidewalks, that increase temperatures.³⁷¹ In fact, in a recently published study, researchers found a connection between neighborhoods with high temperatures due to the urban heat island effect, and redlining.³⁷²

³⁶⁷ Allison M. Krusky et al., *The effects of produce gardens on neighborhoods: A test of the greening hypothesis in a post-industrial city*, LANDSCAPE AND URB. PLAN. (2014).

³⁶⁸ *See id.*

³⁶⁹ *See* Michelle C. Kondo et al., *Nature-Based strategies for Improving Urban Health and Safety*, J. URB. HEALTH (2015) (“[I]t is known that socioeconomic status, including income and education, is strongly associated with poor health outcomes, including higher rates of cardiovascular disease, mental health problems, and even death.”).

³⁷⁰ *See id.* (“Access to green views has been associated with improved mental health in general and more specifically has been shown to reduce mental fatigue and improve coping with stressful settings.”); *see also* Michelle Kondo et al., *Effects of greening community reuse of vacant lots on crime*, 53 URB. STUD. (2016) (“Greening has also been associated with an enhanced sense of safety and feelings of security.”).

³⁷¹ *See* Michelle C. Kondo et al., *supra* note 369.

³⁷² *See* Meg Anderson, *Racist Housing Practices From The 1930s Linked To Hotter Neighborhoods Today*, NPR (Jan. 14, 2020) <https://www.npr.org/2020/01/14/795961381/racist-housing-practices-from-the-1930s-linked-to-hotter-neighborhoods-today> (last visited Mar. 27, 2020) (Researchers found “that neighborhoods with higher temperatures were often the same ones subjected to discriminatory, race-based housing practices nearly a century ago.”).

In March 2020 our group held a meeting with the co-founders of the Underground Railroad History Project of the Capital Region who have experience in implementing and maintaining community gardens in the City of Albany. Since 2013 they have been maintaining the Abram Johnson garden here in the City of Albany. According to these community leaders, they have seen a change in the surrounding neighborhood as a result of the garden. They noted a decrease in drug dealing in the neighborhood surrounding the lot, and an increase in neighborhood involvement in community activities. Furthermore, based on their observations and conversations with surrounding residents, the owners of the surrounding properties felt motivated to maintain their own properties. Their observations are on par with the what the Greening Hypothesis holds and what other studies have found.³⁷³

Indeed, the effects of neighborhood green spaces on crime and safety have been the focus of several studies. The theoretical grounding of the studies is based on the so-called broken windows theory which posits that neighborhoods with signs of distress, such as graffiti, poorly maintained vacant lots, and abandoned buildings, send a message to criminals that their criminal activities can go on unchecked.³⁷⁴ Moreover, vacant lots and blighted buildings are often associated with crime and fear of violence. Vacant lots in particular are often hotspots of criminal activities, such as the sale of drugs, and are often used to store illegally obtained weapons.³⁷⁵

In the City of Youngstown, Ohio, the Youngstown Neighborhood Development Corporation (“YNDC”) started the “Lots of Green” program in 2010, the purpose of which was

³⁷³ See Allison M. Krusky et al., *supra* note 367 (“Produce gardens are a visible indicator of community investment that may lead to changes in neighboring residents yard maintenance through a variety of processes such as individual-level factors, neighborhood norms and preference for specific landscaping esthetics.”).

³⁷⁴ See Sandra Bogar & Kirsten M. Beyer, *Green Space, Violence, and Crime: A Systematic Review*, 17 TRAUMA VIOLENCE & ABUSE (Apr. 2016).

³⁷⁵ See Eugenia C. Garvin et al., *Greening vacant lots to reduce violent crime a randomized controlled trial*, 19 INJ. PREVENTION (2013).

to provide local communities with sufficient funding to allow them to turn vacant lots into green spaces.³⁷⁶ Like the City of Albany, the City of Youngstown has been experiencing a decline in population, and an increase in vacant properties.³⁷⁷ In response to the threat of an increase in urban blight, Youngstown developed a comprehensive plan that “envisions a ‘smaller, greener, cleaner’ city.”³⁷⁸ The Lots of Green program was included in the comprehensive plan. Initially under the program, the lots were chosen if they were located within a blighted area, or if it was located in a prominent or visible area.³⁷⁹ Once the lot was selected, it then underwent a process through which debris was removed from the lot, and the city added topsoil and grading, planted trees, installed fencing, and performed maintenance on the lot every two weeks thereafter during the spring and fall months.³⁸⁰

A year after the implementation of the Lots of Green program, Youngstown implemented a community reuse treatment program in which residents, or community organizations, can apply and receive funding to use a lot for the purposes of rehabilitating it.³⁸¹ Under the program, the resident or organization is responsible for maintaining the lot.³⁸² Admission to the program also included a 10-week training course, at no cost to the participant, in which Youngstown residents were taught how to plant their own green space.³⁸³ In addition, in 2014, YNDC launched the Lots of Green 2.0 Project Competition, to award a greening project that provided a “strong

³⁷⁶ Julian Spector, *Another Reason to Love Urban Green Space: It Fights Crime*, CITYLAB (Apr. 13, 2016) <https://www.citylab.com/solutions/2016/04/vacant-lots-green-space-crime-research-statistics/476040/> (last visited Mar. 27, 2020).

³⁷⁷ Michelle Kondo et al., *Effects of greening and community reuse of vacant lots on crime*, 53 URB. STUD. (2016) (“Youngstown’s population has decreased by an average of 17% in each of the last five decades, and 65,405 residents remained in 2010.”).

³⁷⁸ *See id.*

³⁷⁹ *See id.*

³⁸⁰ *See id.*

³⁸¹ *See id.*

³⁸² *See id.*

³⁸³ *YNDC taking applications for Lots of Green Program*, WFMJ NEWS (Jan. 11, 2011), <https://www.wfmj.com/story/13821426/yndc-taking-applications-for-lots-of-green-program> (last visited Mar. 27, 2020).

community benefit, have the support of surrounding neighbors, and will be located within the City of Youngstown,” a \$8,000 prize.³⁸⁴

Shortly after the Lots of Green program was launched, Michelle Kondo, et al., began a study to measure the connection between the implemented green spaces and their effects on crime throughout the City of Youngstown.³⁸⁵ For purposes of their study, they focused on two types of rehabilitated lots, one lot that went through a stabilization treatment, and one that underwent community reuse treatment.³⁸⁶ They then measured the occurrence of certain crimes that took place within a 7.6-mile radius, and, according to their results, there was a connection between the greened lots and statistically significant reductions in certain crimes.³⁸⁷

7.3 Recommendations

There is no shortage of vacant lots available in the City of Albany. There are also a range of community organizations throughout the City of Albany that could potentially partner with the City to undertake a green space project, or to open and operate a pop-up project. We recommend that City leaders consider using a pop-up project as a way to promote equity for the Cities RISE grant plan. As part of the “Good Neighbor School” program in conjunction with the “Housing Services Advocate” position and “Estate Planning Program,” a “resource fair,” pop-up projects could be created in a vacant lot to provide education and resources to landlords/tenants. This resource fair could also be used to take suggestions in from the community for future pop-up

³⁸⁴ *YNDC Announces 2014 Lots of Green 2.0 Competition*, YOUNGSTOWN NEIGHBORHOOD DEV. CORP., <http://www.yndc.org/news-media/yndc-announces-2014-lots-green-20-competition> (last visited Apr. 22, 2020).

³⁸⁵ *See* Michelle Kondo et al., *supra* note 377.

³⁸⁶ *See id.*

³⁸⁷ *See id.* (“(1) felony assault (including homicides and aggravated assaults); (2) burglary; (3) robbery; (4) theft; and (5) motor vehicle theft.”).

project ideas. Such measures would promote community engagement, education, and social trust.

Another example is that the City's libraries could open pop-up book exhibitions in vacant lots, with the hopes of increasing the availability of literature to children living within the neighborhood. Moreover, the City can make fresh produce more accessible to neighborhood residents by opening up vacant lots to local farmers who can set up and operate pop-up farmers markets, similar to NYC's Greenmarket Farmers markets which operate throughout the city.

Moreover, we recommend that the City of Albany implement, or facilitate, the greening of vacant lots in neighborhoods that have been adversely impacted by the history of redlining. As mentioned above, two neighborhoods within the City of Albany, Arbor Hill and South End, were both "D" designated neighborhoods and, to this day, years after redlining was declared to be illegal, continue to feel the negative impacts of the practice. In addition, when choosing an ideal lot to green, the City could also take into consideration the beneficial impacts of green space, as outlined above, and look for specific areas within these neighborhoods whose residents can benefit the most from green space. The city might look for block areas where there is a significantly high number of residents living with poor health, and, in addition, look for block areas that are particularly prone to high crime.

We learned from City officials of the City of Albany's "Mow to Own" program by which city residents can purchase a vacant lot for \$1 if they can manage to maintain it violation-free for a year. This program is a step in the right direction for sure. It can also be improved if the City of Albany can implement something similar to what Youngstown, OH, did under its "Lots of Green" program. Funding local residents and holding classes on how to green a lot can bring the community closer together and provide residents with the tools necessary to maintain a lot. It

may seem trivial to some, but the costs associated with greening a lot can prevent some from even trying. It must be taken into consideration things such as the price of purchasing a lawnmower, which some community residents may not own, or the price of placing a fence around the perimeter to prevent trespassers. Any additional funding that could be made available could go a long way in helping community residents take the actions necessary to green a lot. In addition, hosting green lot competitions like was done in Youngstown can bring residents from different neighborhoods throughout the City of Albany together that would otherwise not interact with each other. The City could award monetary prizes through this competition that could further support efforts to maintain these lots.

Lots such as the one located on 61 Clinton Street, located within the South End neighborhood, would be a great location for a greening project. The lot is currently listed for sale in the ACLB's lots for sale list for \$600, and according to City officials, neighborhood residents have an interest purchasing the lot. However, they cannot afford the purchase price. The lot as it currently stands includes a makeshift playground made of colorfully painted sticks and a slide. Before the lot was fenced off by the land bank neighborhood kids used it as a playground. Since neighborhood residents already have an interest in the lot we would recommend that the City transfer the lot to a community organization that can turn the lot into a green space.

8 Conclusion

As we hope this Report has shown, the City of Albany can extend its Equity Agenda into its blight-remediation efforts by taking into account some of the reasons, over time, some of the City's neighborhoods have faced institutional racism and unjust, discriminatory practices. Although blight has proven a stubborn foe in the City of Albany, we believe strategies that are pro-active, and strive to target those areas most adversely effected by these practices, will go a

long way towards addressing and remediating blight, while also making progress in alleviating some of the ways that inequities have been sewn into the fabric of city life. Through pro-active code enforcement, critical emergency repairs, strategic use of Article 19-A actions, and effective and creative use of vacant lots, we believe the City of Albany can further its Equity Agenda, while making life in the city better for all of its inhabitants.

APPENDIX A

19-A How-to Guide: Using 19-A as a Tool for Equity

I. Introduction

In this how-to guide, local governments will learn how to initiate an action under Article 19-A of the New York State Real Property Actions and Proceedings Law (“19-A”) and gather information that is necessary for successfully carrying it out.

First, this how-to guide will outline the sequential steps associated with carrying out a 19-A action, a highly complex and interconnected process, and will include a flow-chart that visually displays the 19-A process.

Second, this instructional guide will discuss the approach a municipality should take when deciding if it would like to commence a 19-A action. To help illustrate this kind of decision-making, our guide will spotlight the City of Albany and its anticipated approach and include hypothetical decision-making charts for the City of Albany.

II. Article 19-A Proceedings

19-A allows for the city or municipality in which an abandoned property is located to obtain clean title to a property without having to assume the costs associated with seizing properties through eminent domain. Here are the four overall steps that a city or municipality should follow if it wants to successfully complete a 19-A proceeding.

1. Identification & Certification

First, a municipality’s department or agency in charge of regulating the occupancy and maintenance of residential property (“Code Enforcement”) must make an official finding that the building is abandoned. The building can be vacant or occupied. This department will also be

responsible for initiating the abandonment proceedings. (*see* Chart 1 for a process flow chart presenting the steps of 19-A.).

Second, if the building is found to be abandoned, the department must file a Certificate of Abandonment that contains the finding of abandonment, with the facts on which the finding has been based, and a notice that the Corporation Counsel intends to commence the proceeding with the county clerk's office. After the Certificate of Abandonment is filed, Code Enforcement must then immediately attach a prominent notice to the structure stating that the building has been found to be abandoned. The notice must further state that it is a crime to take, remove, or otherwise damage any fixture or part of the building.

Next, Code Enforcement refers the property to Corporation Counsel for prosecution, which then allows the building to be identified as a possible contender for a 19-A proceeding.

2. Gather Information & Serve Process

After having a property referred to it for prosecution, the Corporation Counsel will need to gather the following information to determine if 19-A is the appropriate course of legal action. This information includes the following 1) owner information, 2) tax status, and 3) mortgage status. If 19-A is determined as the appropriate course of action to pursue, the Corporation Counsel will then have to file a copy of the Certificate of Abandonment and a Notice of Pendency that indicates that the department intends to commence the proceeding with the county clerk's office. Once filed, the department will have to properly serve the property owner and everyone else with an interest in the building with a copy of the certification and the notice declaring that the 19-A proceeding may be instituted if the owner does not notify and

demonstrate to the department within fifteen days of receiving service of the notice that the finding of abandonment either does not exist or has been corrected.

3. Judicial Proceedings

When the Corporation Counsel has satisfied all of the filing, notice, and service requirements set out in 19-A §1972, the Corporation Counsel may begin the proceeding in a court with jurisdiction within the county in which the building is located. That proceeding is commenced by Corporation Counsel preparing a Petition and an Affidavit of Compliance to file with the court. (*See Document Templates, Attached as Appendix B to this report*).

4. Final Judgment

If the court determines that the building has been abandoned according to the provisions of 19-A, the court will have to enter a final judgment in favor of the department. An officer of the city is required to then execute and record a deed conveying the title of the property to the city within 30 days of the court's final judgement. Once this happens, the title has vested in the city and the city is now the legal owner of the property.

III. Utilization of RPAPL 19-A

While the previous section outlines the steps necessary for a municipality to carry out an Article 19-A proceeding, it does not address the question as to whether a municipality should carry out such a proceeding with respect to any particular property. Article 19-A is a powerful tool that municipalities in New York can utilize—one quite unique in the array of tools municipalities across the country have to combat blight—but, since it is such a powerful and

unique tool, it should be used wisely, sparingly, and with intention. City leaders have a strong stake in addressing blight as best they can because it deeply impacts their cities, finances, and built environment.¹ As a result, municipal efforts to fight blight may take a variety of forms. However, in order to successfully fight blight, all cities must have a knowledgeable broad base of stakeholders, executive leadership, commitment to systems reform, and willingness to allocate resources to solutions.² Therefore, a municipality needs to have prior discussions regarding its plans for a property before commencing any 19-A action. These discussions should be centered around property targeting, budget funding, and resources. When considering whether a property is appropriate as a target for a 19-A action, municipalities should consider both the property itself as well as whether intervention with any particular property makes sense as a part of a broader and comprehensive plan for the municipality. We will discuss each of these issues, in turn, below.

A. Is 19-A the Right Tool for the Property?

As discussed above, the end result of a successful 19-A action is that a municipal government obtains title to property subject to 19-A. When trying to figure out how to utilize 19-A, a municipality should first ask itself: what exactly is it trying to accomplish by commencing a 19-A action with a particular property and acquiring title to that property? Municipalities should know that there are three general options they can pursue to address blight within their

¹ Bradley Pough & Qian Wan, *Data Analytics and the Fight Against Housing Blight: A Guide for Local Leaders. Responsive Communities*, HARVARD LIBRARY 3, https://dash.harvard.edu/bitstream/handle/1/31852257/2017-03_responsivecommunities%20%281%29%5B7140%5D.pdf?sequence=1&isAllowed=y (last visited Apr. 18, 2020) [hereinafter Pough].

² Tarik Abdelazim & Kim Graziani, *Piloting New Partnership Opportunities Between a Land Bank and a Community Land Trust in Albany, New York*, CTR FOR CMTY. PROGRESS 15, https://ahphome.org/uploads/3/4/7/1/34719249/171116_tasp_albany_final_report_transmitted.pdf (last visited Apr. 19, 2020).

boundaries after securing title through 19-A: rehabilitation, resale, and demolition. Before commencing an action pursuant to 19-A, it is our recommendation that any municipality should have a clear exit strategy for a property, one that follows one of these three paths. If none of these paths seem apparent should the municipality obtain title to a property, a municipality may think twice before commencing a 19-A proceeding. Thus, although it may seem odd to consider what a municipality might do with a property should it succeed in commencing a 19-A action, we suggest that, before undertaking any 19-A process, a municipality should have a plan for the property it wishes to target through a 19-A action so that it is not saddled with ownership responsibilities over a property that it has obtained through 19-A. Accordingly, any municipality that considers commencing a 19-A action, should first consider what steps it would take after obtaining title, assuming the municipality is successful in bringing the action. So, before commencing such an action, any municipality should consider whether one of the following three actions would be beneficial with respect to any particular property once that municipality obtains title.

1. Rehabilitation

Rehabilitation is by far the most appealing option for most cities, since during the early stages of blight, the property has not fallen so far into a state beyond repair.³ A property in the early stages of blight will usually have minor code violations or other evident structural troubles that can normally be repaired with limited financial expenditures.⁴ Of course, any rehabilitation would cost resources and effort, and municipalities must

³ Pough, *supra* note 1, at 4.

⁴ *Id.*

consider, to the extent they can before obtaining title, whether it would be cost-effective to rehabilitate any particular property.

2. Resale

Another option a city may take is reselling a property obtained through 19-A. A resale requires a government acquiring such property and selling it to a new owner (frequently after significant rehabilitation).⁵ Resales do not, however, guarantee that properties will not fall back into disrepair.⁶

3. Demolition

The last resort for addressing blight is usually demolition. Demolition happens when a property has fallen into such a state of disrepair beyond any hope for rehabilitation.⁷

Cities often try to avoid this avenue for multiple reasons such as high costs, loss of property tax revenues, and adverse impacts to a neighborhood's aesthetic.⁸ If a municipality believes the only proper avenue for disposing of a property after obtaining title through 19-A would be demolition, then that municipality may reconsider whether 19-A is the proper vehicle to accomplish this goal. If a property is truly worthy of demolition, a municipality may be in a position to carry out that demolition without resorting to 19-A.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.*

Thus, prior to commencing a 19-A proceeding, any municipality should likely consider what a successful outcome would be for any particular property and then decide whether 19-A offers a way to achieve that outcome.

B. Property Targeting as Part of a Comprehensive Plan

Considering how 19-A fits within a comprehensive, city-wide plan is wise when municipalities are considering whether to utilize this tool to combat blight. As previously mentioned, the Article 19-A process can be lengthy and time consuming. Because municipalities often have limited time and resources, they should not commence an Article 19-A proceeding on a property simply because it meets the statute's requirements. A comprehensive plan allows a municipality to strategically select properties that have the potential to revive blighted areas while allowing a municipality to avoid acquiring properties that may not do so. By having such a plan, a municipality can focus on defined areas where the rehabilitation of a property yields the most equitable gain to its residents. For example, a municipality may target properties based on specific neighborhood markets or code enforcement actions. To do so, it can use data analytics to identify areas that are in the greatest need of blight remediation, or those that might not fall into blight if particular properties within them are targeted for 19-A interventions.

Data Analytics can be quite useful for property targeting as part of a comprehensive, blight remediation plan. Currently, many municipalities rely on 911 calls and deployed inspectors as their main mechanism for discovery when a house has fallen or is about to fall into blight.⁹ Using data allows a city to fight blight in two primary ways. First, good data can expand a city's geographic reach as it attempts to catalogue the blight within its borders.¹⁰ Second, data

⁹ *Id.*

¹⁰ *Id.*

analytics can help a city begin remediation tactics earlier in a property's "blight cycle."¹¹ Data analytics make it easier for municipalities to detect a building's degradation.¹² To the extent municipalities can tap into their store of data on housing conditions and other factors that might impact a decision to utilize 19-A on any particular building in any particular neighborhood, it should harness such data to make informed decisions to utilize 19-A in a strategic way as part of a broad, comprehensive blight-remediation strategy.

C. The Costs Associated with Inaction

Municipalities should then take a look at their own resources to determine whether they have the means to repair a property acquired by 19-A into building code compliance by themselves or with an outside partner. Issues like having the funds to pay back taxes, construction, etc., would need to be considered ahead of a 19-A proceeding being carried out. The costs of rehabilitation can be considerable, if a municipality wants to renovate properties it obtains through 19-A. Such costs can be considerable. At the same time, when a municipality does not take action to address properties that are not being maintained, it must also expend resources, often a considerable amount, in addressing the failure of the owners of such properties to uphold their obligations with respect to property maintenance. Any analysis of whether a municipality should take action to utilize 19-A to obtain title to a property, and the costs that will necessarily entail, should also weigh such costs against those associated with not taking action with respect to a particular problem, which can include the following:

¹¹ *Id.*

¹² *Id.*

1. Property Maintenance Costs: Cities must often expend funds maintaining vacant and abandoned properties through such activities as cutting grass, removing trash or junk, and boarding homes.¹³

2. Code Enforcement Costs: Local government code enforcement programs incur numerous costs through the administrative and legal processes they use to address substandard, vacant, and abandoned properties.¹⁴ Code enforcement operational costs involve staff labor and computers systems to handle citizen complaints and property inspections.¹⁵ Code enforcement programs also spend additional resources investigating and tracking down owners of residential, commercial, and industrial properties.¹⁶

3. Police and Fire Costs: The presence of vacant and abandoned properties can lead to an increase in crime in a neighborhood.¹⁷ Additionally, many vacant and abandoned homes are also at risk for catching fire, which can have significant spillover costs to surrounding homes.¹⁸

¹³ Brian Bieretz & Joseph Schilling, *Pay for Success and Blighted Properties Insights and Opportunities for Funding Vacant Property Reclamation and Neighborhood Stabilization*, URB. INST. 6, https://www.urban.org/sites/default/files/publication/100464/pfs_and_blighted_properties_0.pdf (last visited Apr. 17, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.*

D. Resources Available to Municipalities

At the same time that there are costs associated with obtaining title to property, as well as costs associated with not doing so, municipalities might have resources at their disposal to help address the question of what to do with properties once a municipality obtains title to a property through 19-A.

1. Vacant Property Registries: A vacant property registry is implemented by a municipality to ensure that the (1) owners are known to the city and other interested parties and can be reached if necessary; (2) owners are aware of the responsibilities of ownership under relevant codes and regulations; and (3) owners meet minimum standards of maintenance of vacant properties.¹⁹ Cities also include a fee structure that may serve additional purposes, such as covering costs incurred by the municipality to deal with these properties.²⁰

2. Land Banks: Land banks are governmental entities or nonprofit corporations that are focused on the conversion of vacant, abandoned, and tax delinquent properties into productive use.²¹ Successful land banks transfer their rehabilitated properties back to responsible owners in a transparent manner that results in outcomes consistent with community development plans.²²

¹⁹ *Tool 1: Vacant Property Registration Ordinances (VPROs)*, CTR FOR CMTY. PROGRESS, <https://www.communityprogress.net/tool-1---vacant-property-registration-ordinances--pages-257.php> (last visited Apr. 15, 2020).

²⁰ *Id.*

²¹ *Frequently Asked Questions on Land Banking*, CTR FOR CMTY. PROGRESS, <https://www.communityprogress.net/land-banking-faq-pages-449.php> (last visited Apr. 15, 2020).

²² *Id.*

When considering what steps a municipality may take with respect to a particular property, it must always take into account the resources it must expend should it obtain property through 19-A. At the same time, any analysis of costs associated with obtaining title should also assess the extent to which that municipality is already expending resources to address the problems the vacant property creates (and the costs associated with those problems), as well as what additional resources or allies it might find to help defray some of the costs once the municipality obtains such title.

IV. Spotlight: City of Albany

Up to this point, this guide has addressed the general question of the sorts of issues municipalities may want to consider before commencing a 19-A proceeding. The remainder of this guide will address how those considerations may factor in decisions made by the City of Albany to use or not use 19-A as a blight-remediation tool.

A. Considerations

A significant reason why 19-A has been underutilized by Albany and other cities throughout New York has been limited resources. Fortunately, on January 28, 2020, New York's Attorney General, Letitia James, announced that Albany won a \$1 million grant under the Attorney General's Cities for Responsible Investment and Strategic Enforcement (Cities RISE) program.²³

²³ *Attorney General James Announces \$1 Million Grant For Albany To Implement New Strategic Housing Programs*, OFF. OF THE N.Y. ATT'Y GEN. (Jan. 28, 2020), <https://ag.ny.gov/press-release/2020/attorney-general-james-announces-1-million-grant-albany-implement-new-strategic> [hereinafter N.Y. ATT'Y GEN.].

First, this grant provides the City with much needed resources to make carrying out Article 19-A proceeding easier. With funding from the grant, the City plans to hire a dedicated Code Enforcement Attorney.²⁴ The Code Enforcement Attorney's sole responsibility will be to vigorously prosecute codes cases and collect code enforcement judgments by tracking down bad actors and taking properties when appropriate.²⁵

Additionally, the grant allows the City to tap into resources that would have otherwise been unaffordable. Through the grant, the City receives expert support from Cities RISE program partners Tolemi and Harvard University's Kennedy School of Government's Ash Center for Democratic Governance and Innovation, in developing new strategic programs and improving code enforcement strategies.²⁶

The Tolemi partnership is especially beneficial because it has given the City access to its BuildingBlocks platform. BuildingBlocks is a cloud-based service that connects and updates data held in different systems and formats across different government departments and agencies.²⁷ This software makes it easier for different parts of a city government to work together more smoothly.²⁸ For example, the platform allows a department to see how another department have interacted with a property instead of having to wait for these answers by phone calls or e-mails, which can cause a delay in the commencement a 19-A proceeding.

The City can also connect with the Albany County Land Bank as a resource before it acquires a property through 19-A because it has an existing relationship with the organization.

²⁴ Amanda Fries, *AG James to deliver \$1M grant check to Albany to tackle blight*, TIMES UNION (Jan. 28, 2020), <https://www.timesunion.com/news/article/AG-James-to-deliver-1M-grant-check-to-Albany-to-15008844.php>.

²⁵ *Id.*

²⁶ N.Y. ATT'Y GEN., *supra* note 23.

²⁷ *Albany now has a better sense of how many vacant buildings it has -- and a common starting point for taking on the problem*, ALL OVER ALBANY (Jan. 17, 2018), <http://alloveralbany.com/archive/2018/01/17/albany-vacant-building-list-effort-2018#comments>.

²⁸ *Id.*

The City has provided the Albany County Land Bank with programmatic funding for acquisitions and property rehabilitations and is currently partnered with it to redevelop more than 80 properties in distressed neighborhoods.²⁹

B. Property Targeting

Although the City of Albany does not routinely carry out 19-A proceedings, there has been an interest among city officials to start doing so. Our team met with Jared Pellerin, Assistant Corporation Counsel and Robert Magee, Deputy Corporation Counsel to learn about the Corporation Counsel's position on 19-A.

When asked about what type of buildings the City would have interest in targeting for a 19-A proceeding, both Mr. Pellerin and Mr. Magee stated that they would prefer to go after vacant buildings that do not have an outstanding property tax balance (*see* Chart 2 for a hypothetical decision-making scenario based on the Conversation our team had with officials from the City of Albany's Corporation Counsel.) Additionally, when asked what properties the City would target for a 19-A proceeding, Mr. Pellerin anticipated that the City would target properties that it believes has the potential to help revive blighted parts of a neighborhood that also meet the Albany County Land Bank's acquisition standards.³⁰ The Land Bank evaluates its potential property acquisitions using a set of guiding criteria to determine if the acquisition will meet its mission. Some factors the Land Bank takes into consideration is the following:

- whether the potential property is in proximity to other real property owned by the Land Bank;

²⁹ Adam Zaranko, *Commentary: Land banks transform communities. They're running out of funding.*, TIMES UNION (Mar. 17, 2020, 8:45 PM), <https://www.timesunion.com/news/article/AG-James-to-deliver-1M-grant-check-to-Albany-to-15008844.php>.

³⁰ Email Correspondence with Jared Pellerin, The City of Albany Corporation Counsel, (Mar. 31, 2020).

- whether such an acquisition may act as a catalyst for further development;
- whether the property is available for immediate resale without need for substantial rehabilitation

(see Chart 3 for a hypothetical decision-making scenario based on the Conversation our team had with officials from the City of Albany's Corporation Counsel factoring in the Albany County Land Bank's criteria into their 19-A approach.).

Mr. Pellerin also anticipated that the City may consider other factors for targeting, such as who the current property owners are, what actions they have or have not taken with respect to bringing the property up to code, and whether the City could work with them to get them into compliance. The Corporation Counsel's Office may also consider how starting a 19-A proceeding strategically may or may not bring an owner to the table who has been avoiding interaction with their property.³¹

Likely, the largest considerations for the City with respect to targeting properties for 19-A would center around what resources it has as a municipality to draw upon to get a property into compliance itself and if the resources would be sufficient enough to achieve success after the 19-A proceeding is carried out.³² These considerations require higher level decision making among the Mayor, City Treasurer, etc., as the City budget is set out yearly and most budget concerns are itemized ahead of time.³³

³¹ *Id.*

³² *Id.*

³³ *Id.*

CONCLUSION

As we hope this guide has shown, Article 19-A actions can serve as an effective tool, in appropriate situations, for municipalities to obtain title to a particular property that satisfies the requirements of the statute. While it likely does not make sense for municipalities to seek to obtain title over any property that might meet the statutory standard, this guide is an attempt to show that steps are necessary to carry out a successful 19-A proceeding, and the types of considerations that should go into selecting the property or properties that could be targeted for such actions.

Chart 1

19-A Process

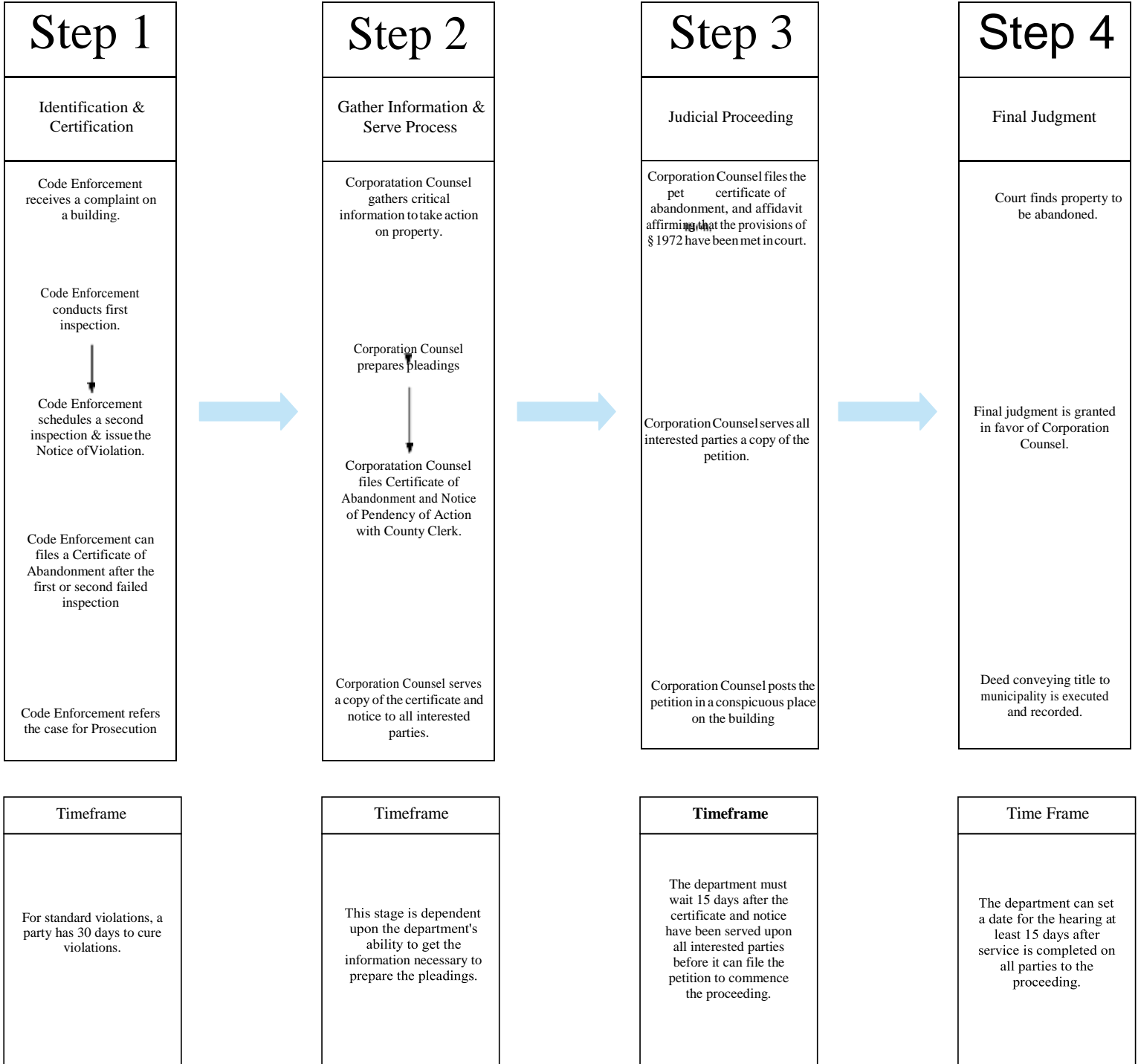


Chart 2

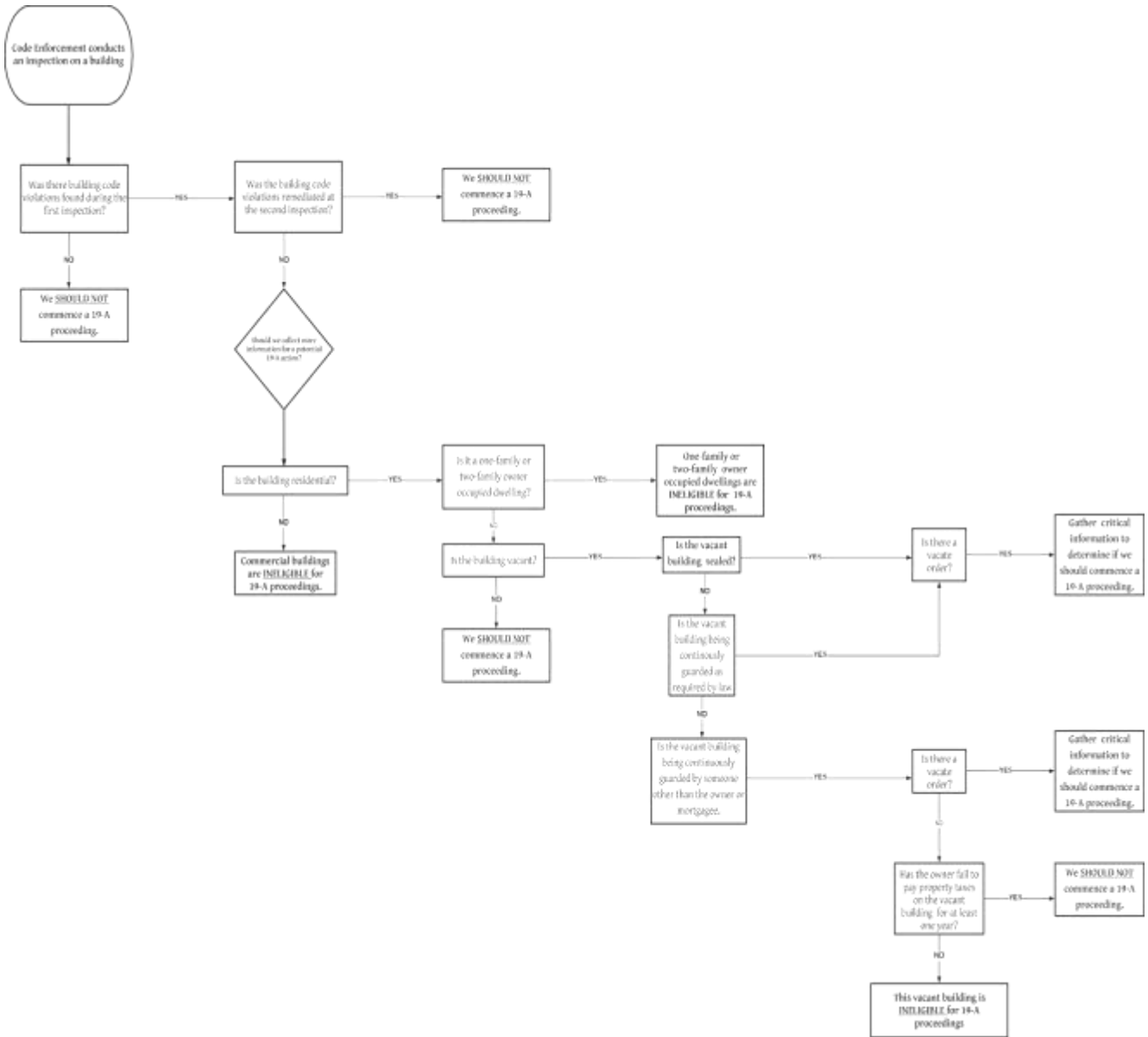
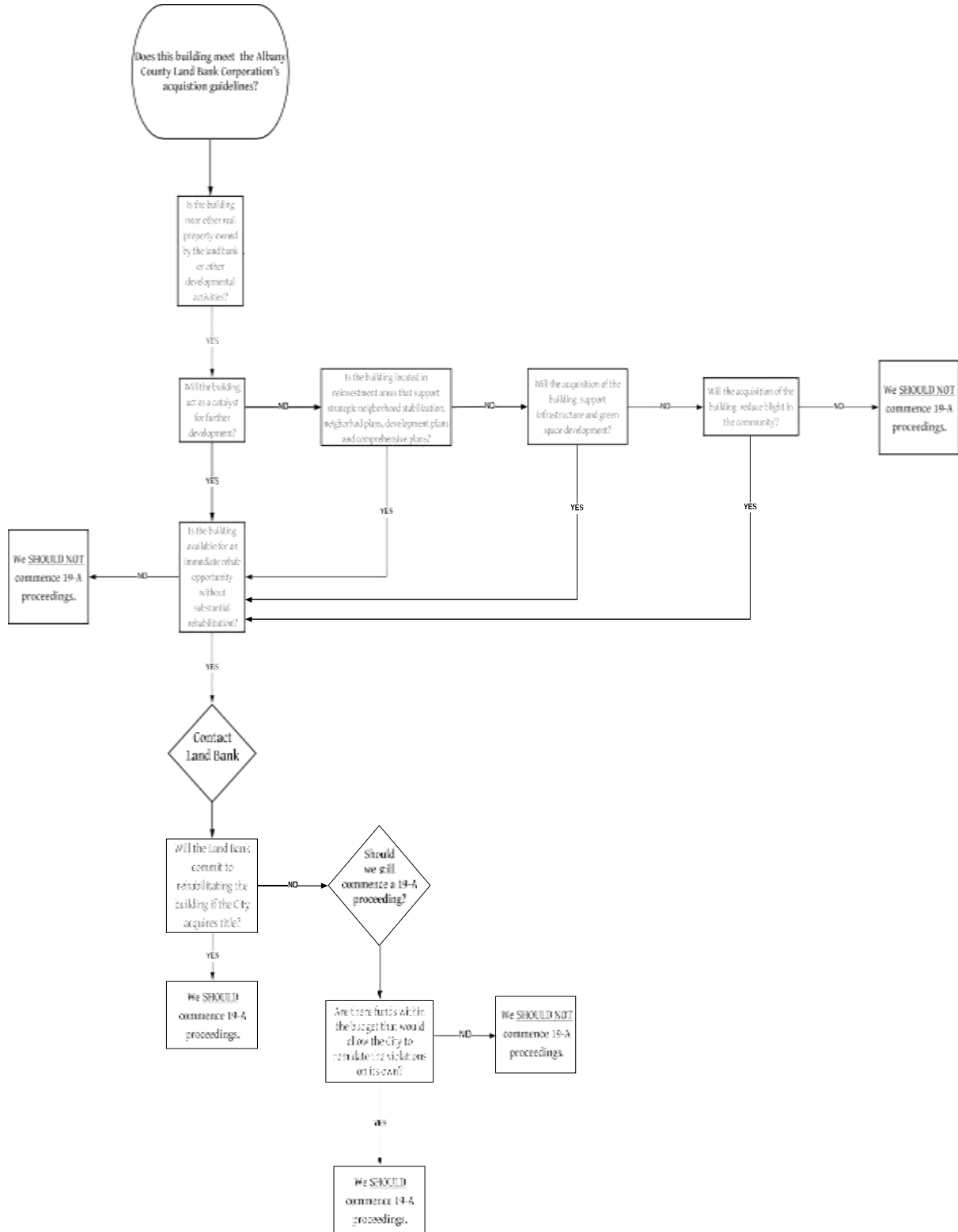


Chart 3



APPENDIX B



City of Albany
 200 Henry Johnson Blvd, Suite 1
 Albany, NY 12210
 Phone: (518) 434-5995
 Website: www.AlbanyNY.gov

Certification of Abandonment
BRC File Number:
Case Type:
Date Case Established:
Date of First Inspection:
Date of Second Inspection:

Owner: [Name of Owner Here]

Mailing Address

[Enter Owner's Address Here]

Certification of Abandonment for the following location:

Address	Parcel
[Enter property address here]	[Enter parcel # here]

Findings:

First Inspection

Violation: On [Date], [Title and Name of Inspector] inspected the above premises, found the following code violation[s], and directed the owner to take corrective action by the date of compliance:

<p>Violation: [Insert provision of code violated, and description of violation] Corrective Action: [Insert description of corrective action that needs to be taken] Date of Compliance: [Insert date of compliance]</p> <p>[Repeat above for each violation]</p>

The owner was notified a subsequent inspection was to occur [date of next inspection].

Second inspection

On [date], [Title and Name of Inspector] inspected the premises again and found the following violation[s]:

<p>Violation: [Insert provision of code violated, and description of violation]</p> <p>[Repeat above for each violation]</p>

Based on the findings of [Title and Name of Inspector], the dwelling has been deemed vacant, [choose one: (is not sealed or continuously guarded) or (was guarded by someone besides the

owner)] and a vacate order has been issued by the department, prohibiting occupancy of the dwelling.

The Building Department finds that the dwelling located at [property address] is hereby abandoned pursuant to NY Real Property Actions and Proceedings Law (RPAPL) §1971, and that it is a crime to take, remove or otherwise damage any fixture or part of the building.

Date:

[Inspector Signature]

[Inspector Name]

[Inspector Title]

Enclosures: Violation Notices, Vacate Order, Notice of Pendency

Cc. [names and addresses of anyone with interest] (w/ enclosures)

STATE OF NEW YORK
CITY COURT OF ALBANY

COUNTY OF ALBANY
CITY OF ALBANY

CITY OF ALBANY,

NOTICE OF PENDENCY

- against -

Docket No.:

[[DEFENDANT]],

Subject Property:

[[PROPERTY ADDRESS]]

Defendant(s)

BRC File No.: [[ENERGOV NO]]

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK

TO: [NAMES OF PARTIES REQUIRED TO BE SERVED: OWNER, MORTGAGEE(S), LIENOR(S), AND LESSEE(S)]

Notice of Pendency of 19-A proceeding against:

Address	[Enter property address here]
Parcel	[Enter parcel # here]
Description of Property	[Description of Property Affected]

Proceedings pursuant to Real Property Actions and Proceedings Law (“RPAPL”) Article 19-A may be instituted unless the owner notifies the department that the property has not been abandoned. Such notification shall be made by a showing that the conditions upon which the findings in such certification are based do not exist or have been corrected. Such showing shall be made no later than thirty days after the date of such notice.

[Only use the following language if there is a mortgagee or lienor: In the case of mortgagees or lienors, proceedings pursuant to this article may be instituted unless the mortgagee or lienor, within 15 days of this mailing, either commences proceedings to foreclose the mortgage or lien or enters into an agreement with the department to bring the building into compliance with the applicable provisions of law.]

Enclosures: Violation Notices, Vacate Order, Certification of Abandonment



Affidavit of Compliance

Pursuant to Real Property Actions and Proceedings Law (“RPAPL”) § 1973, I **[NAME and TITLE of affiant]** for the City of Albany hereby declare the following:

1. On **[DATE]**, a Certification of Abandonment was filed for the following property:
[ADDRESS OF PROPERTY]
Parcel #: **[PARCEL # OF PROPERTY]**
Owned by: **[NAME OF PROPERTY OWNER]**
2. On **[DATE]**, the Certification of Abandonment and Notice of Pendency were mailed to:
[NAME OF PROPERTY OWNER]
[MAILING ADDRESS OF PROPERTY OWNER]
[NAMES OF AND ADDRESSES OF OTHER PARTIES REQUIRED TO BE NOTIFIED]
3. The owner did not notify the department within 30 days of the notice of pendency that the property has not been abandoned by showing that the conditions upon which the findings in such certification of abandonment are based do not exist or have been corrected.
4. No mortgagees or lienors commenced a proceeding to foreclose the mortgage or lien or entered into an agreement with the department to bring the building into compliance within 15 days of the notice of pendency.
5. No party served with the notice of pendency pursuant to section 1972 has taken the actions prescribed therein in response thereto.
6. The provisions of RPAPL Article 19-A § 1972 have been complied with.

Date:

[AFFIANT SIGNATURE]

[AFFIANT NAME]
[TITLE OF AFFIANT]

Attached: Certificate of Abandonment and Notice of Pendency

Sworn to before me, on this _____ day of _____ 20____

Notary Public
Albany County

APPENDIX C

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

PURPOSE:

SUMMARY OF SPECIFIC PROVISIONS:

JUSTIFICATION:

PRIOR LEGISLATIVE HISTORY:

FISCAL IMPLICATIONS:

EFFECTIVE DATE:

§ 1970. PurposeApplicability

1. The department or agency of a city, town, ~~or~~ village, or county, responsible for the enforcement of state and local land use regulations such as the New York State Property Maintenance Code, the New York State Uniform Fire Prevention and Building Code, the multiple dwelling law, the multiple residence law, or his or her agent or any other law, code or ordinance governing the occupancy and maintenance of residential property (hereinafter in this article referred to as “the department”) may institute a proceeding in accordance with the provisions of this article for a judgment vesting in the city, town, ~~or~~ village, or county title to a buildingdwelling which has been abandoned by the owner.

2. This article shall ~~not~~ apply to all buildings, residential, commercial, or otherwise, with the exception of:

(a) a one-family or two-family dwellings occupied by the owner thereof; and-

(b) any building or structure located on agricultural land.

§ 1970-a. Definitions

When used in this article:

“Abandoned” or “Abandonment” means that the requirements of section nineteen hundred seventy-one of this article have been met, a certification of abandonment has been made by the department, and the facts supporting such certification remain substantially unresolved.

“Agricultural land” means land suitable for use in farming or the cultivation of land for the production of agricultural crops, grazing, or the production of livestock.

“Building” means any structure utilized or intended for supporting or sheltering any occupancy.

“Destruction of an abandoned building” occurs when a person, having no right to do so or permission by the department or the owner take, remove or otherwise damage the fixtures or the structure of the building, intentionally removes or damages any fixture or part of the structure of a building which has been certified as abandoned in accordance with the provisions of section nineteen hundred seventy-one of this chapter.

“Last known address” means the address listed on the last relevant document filed or held in the records in the office of the clerk in the county in which the building is located. The department may not be held responsible for insufficient notice if, in the relevant documentation, no address is listed or the address listed is incorrect.

“Occupied” means the building or portion thereof is lawfully being utilized for its intended purpose.

“Sealed and secured” means the building meets all of the following requirements:

(1) The building has all doors, windows, and structural openings made weathertight and secured against entry by the general public as well as animals.

(2) All roofs and roof flashings are sound and tight such that no rain will penetrate the structure and must allow for appropriate drainage so as to prevent deterioration of the interior structure.

(3) The exterior of the structure is free of loose or rotten materials. Any balconies, canopies, signs, metal awnings, stairways, fire escapes or other overhanging extensions are in good repair and appropriately anchored. Any exposed exterior metal, wood or other surface is protected from the elements against rust or decay by appropriate weather-coating materials (Paint or similar treatment). Any accessories or appurtenant structures, including but not limited to garages, sheds, other storage facilities and appurtenant walkways, shall meet the same standards and be maintained in compliance with all applicable rules, regulations and laws pertaining thereto.

(4) The building is maintained in good repair, structurally sound and free from rubbish, garbage, and other debris.

(5) Structural members of the building are capable of bearing both live and dead loads, and the foundation walls likewise are capable of supporting an appropriate load.

“Vacant” means the building or structure, or a portion thereof consisting of at least fifty-one percent of the occupiable square footage, is not lawfully being utilized for its intended purpose and at least one of the following facts exists:

(1) there is little or no furniture, personal property, or chattels within the structure pertaining to customary activities of lawful occupancy or the personal property necessary for lawful occupancy is not present;

(2) a vacate order by the department or other governmental agency currently prohibits lawful occupancy of the structure;

(3) at least half of the exterior windows and doors are broken, boarded, or lack locking mechanisms;

(4) the structure lacks lawfully required access to light, water, or heat;

(5) the structure or premises thereof lacks lawfully sufficient means of ingress or egress; or

(6) the structure is currently registered as vacant by state or local government.

§ 1971. Applicability~~Certification of abandonment~~

1. The department may make a finding that a building&dwelling is abandoned if:

(a) In the case of an occupied building&dwelling:

(i); the owner has failed for a period of at least three consecutive months either to collect rent or to institute summary proceedings for nonpayment of rent; and

(ii) the department finds that the building&dwelling has become a danger to life, health or safety as a result of the owner’s failure to assume ~~his~~ responsibility for its condition. Such failure may be shown by such facts as an owner’s failure to provide services including, but not limited to:

(A); the failure to make repairs; and

(B) supply janitorial service; and

~~(C) purchase fuel or other needed supplies;~~ ~~or~~

~~(D) maintain and secure all utility lines;~~

~~(E) pay utility bills; or~~

~~(F) the failure to satisfy a notice by the department or other government agency to remedy a violation of a local zoning ordinance, local zoning law, building code, sanitation code, housing code, property maintenance code, fire code, electric code, fuel gas code, plumbing code, or any other provision of law relating to life, health, or safety for more than one year. The appointment of an administrator pursuant to article seven-A of this chapter shall not prevent the department from making a finding that a dwelling is abandoned; or~~

(b) In the case of a vacant ~~building~~~~dwelling~~:

~~(i) the department finds that the building has become a danger to life, health or safety as a result of the owner's failure to assume responsibility for its condition. Such failure may be shown by such facts as an owner's failure to provide services including, but not limited to:~~

~~(A) the failure to make repairs;~~

~~(B) supply janitorial service;~~

~~(C) purchase fuel or other needed supplies;~~

~~(D) maintain and secure all utility lines;~~

~~(E) pay utility bills; or~~

~~(F) the failure to satisfy a notice by the department or other government agency to remedy a violation of a local zoning ordinance, local zoning law, building code, sanitation code, housing code, property maintenance code, fire code, electric code, fuel gas code, plumbing code, or any other provision of law relating to life, health, or safety for more than one year.~~

~~(ii); it is not sealed and secured; or continuously guarded as required by law or it was sealed or~~

~~(iii) it was sealed and secured is continuously guarded by a person other than the owner and at least one, a mortgagee, lienor or agent thereof, and either of the following facts exists:~~

~~(A)~~ A vacate order of the department or other governmental agency currently prohibits occupancy of the ~~building~~~~dwelling~~; ~~or~~

~~(B)~~ The tax on such premises has been due and unpaid for a period of at least one year; or

~~(C) the owner, as recorded in the office of the clerk of the county where such real property is situated, has been deceased for a period of at least one year; or~~

(c) In the case of a building for which an administrator has been appointed pursuant to article seven-A of this chapter.

(i) no motion for the termination of the judgment entered pursuant to article seven-A of this chapter has been granted by the appointing court;

(ii) no mortgagee or lienor has commenced foreclosure proceedings; and

(iii) at least six months have passed since the granting of a judgment appointing an administrator pursuant to article seven-A of this chapter.

2. ~~The appointment of an administrator pursuant to article seven-A of this chapter shall not prevent the department from making a finding that a dwelling is abandoned. When the department finds that a dwelling is abandoned within the meaning of this article, it shall make and file among its records a certification containing such finding and the facts on which it is based. Further, it shall immediately affix to the dwelling in a prominent and conspicuous location, a notice that the building has been found to be an abandoned building and that it is a crime to take, remove or otherwise damage any fixture or part of the building structure.~~

~~§ 1971 a. Destruction of abandoned dwellings~~

~~“Destruction of an abandoned dwelling” occurs when a person, having no right to do so or permission of the department or the owner to take, remove or otherwise damage the fixtures or the structure of the building, nor any reasonable ground to believe that he has such right or permission, intentionally removes or damages any fixture or part of the structure of a building which has been certified as abandoned in accordance with the provisions of section nineteen hundred seventy-one of this chapter.~~

§ 1972. Certification of Abandonment Notice

1. If a department finds that a building is abandoned within the meaning of this article, it shall make and file among its records a certification containing such finding and the facts on which it is based and immediately affix to the building in a prominent and conspicuous location such certification. Certifications of abandonment must state that the building has been found to be an abandoned building and that it is a crime to take, remove or otherwise damage any fixture or part of the building structure.

2. Additionally, if the department proposes to institute proceedings pursuant to this article:
(a) the certification of abandonment must state the intention to commence proceedings pursuant to this article, ay file a copy of the certification and a notice of intention to commence such proceedings in the office of the clerk of the county in which the dwelling is located. Such notice shall contain the names of all persons required to be served pursuant to this section and shall otherwise meet the requirements of subdivision (b) of section six thousand five hundred eleven of the civil practice law and rules. The ~~certification notice~~ shall be indexed by the clerk in the manner prescribed by subdivision (c) of section sixty-five hundred eleven of the civil practice law and rules for a notice of pendency of action and shall have the same effect as such notice. It shall expire one year after filing, if no proceeding pursuant to this article has been commenced. Except as otherwise provided herein, all of the provisions of article sixty-five of the civil practice law and rules shall be applicable to the notice filed pursuant to this article.

(b)2. The department shall serve upon the owner of the building dwelling and each mortgagee, lienor and lessee of record, a copy of the certification of abandonment. Service shall be made either personally or by posting in a conspicuous place upon the dwelling and mailing a copy by registered or certified mail to the last known address of every owner, mortgagee, lienor, and lessee at such owner’s last known address.

3. ~~In the case of a dwelling subject to the provisions of section three hundred twenty five of the multiple dwelling law, such mailing may be made to the last registered owner at his last registered address. The copy of the certification of abandonment shall be accompanied by a notice stating that proceedings pursuant to this title may be instituted unless the department is owner notified, within twenty-one days of such mailing, s the department that the property has not been abandoned. Such notification shall be made by:~~

(a) -a showing that the conditions upon which the findings in the such certification are based do not exist or have been corrected;

(b) - a mortgagee or lienor commences proceedings to foreclose the mortgage or lien; or Such showing shall be made not later than thirty days after the date of such notice.

(c) a mortgagee, lienor, or lessee enters into an agreement with the department to bring the building into compliance with the applicable provisions of law.

~~3. Within five days of the service of notice on the owner, a copy of the certification shall be served on each mortgagee, lienor and lessee of record, personally or by registered mail to the address set forth in the recorded instrument or, if no address appears therein, to the person at whose request the instrument was recorded. Such copy shall, in the case of a mortgagee or lienor, be accompanied by a notice that proceedings pursuant to this article may be instituted unless the mortgagee or lienor, within fifteen days of such mailing, either commences proceedings to foreclose the mortgage or lien or enters into an agreement with the department to bring the building into compliance with the applicable provisions of law.~~

~~4. If the name or address of~~

~~(a) the last owner of record; or~~

~~(b) any owner, mortgagee, lienor, or claimant as shown on records maintained by any city official required by any local law to maintain records of persons entitled to notice or process in connection with the maintenance of in rem foreclosure actions;~~

~~(c) the person listed as the owner of the property on the latest completed assessment roll, is different from that referred to in subdivisions two and three of this section, a copy of the notice to the owner, or to a mortgagee or lienor, whichever is applicable, shall also be sent to such person at such address by registered mail.~~

§ 1973. Commencement of proceeding

1. After all provisions of section nineteen hundred seventy-two of this article have been complied with, the department may commence a proceeding in a court of competent jurisdiction in the county in which the buildingdwelling is located, to vest title to the property in the city, town, ~~or~~ village, or county.

2. The petition in such proceeding shall be accompanied by a copy of the certification and proof by affidavit that the provisions of section nineteen hundred seventy-two have been complied with and that no party served with the notice pursuant to such section has taken the appropriate action prescribed therein in response thereto.

3. A copy of the petition shall be served on all persons to whom notice was given pursuant to section nineteen hundred seventy-two of this title by personal service pursuant to article three of the civil practice law and rules. A notice of pendency shall be filed in accordance with the provisions of section sixty-five hundred one of the civil practice law and rules. A copy of the petition shall also be posted in a conspicuous place on the premises in question, accompanied by a notice that any person having or claiming an interest in the property may appear at the hearing thereon to protect suchhis interest.

4. The petition shall be noticed to be heard not less than fifteen days after service is completed on all parties to the proceeding.

5. A special proceeding pursuant to this article may also be commenced by order to show cause, in which case the manner of service and the time at which the order is returnable shall be as prescribed therein by the court.

§ 1974. Decision and judgment of court

1. If any party to the proceeding contests the issue of abandonment, the burden of proving that the buildingdwelling is abandoned shall be upon the department, and the court shall make a finding based on the facts before it.

2.

(a) Upon application by any party to the proceeding, the court may order a stay of the proceeding for such time as the court deems proper to permit the mortgagee or lienor to foreclose his or her mortgage or lien and to permit the owner, mortgagor or lienor to enter the property to make repairs or if the property be vacant to seal ~~and secure or continuously guard~~ the building as required by law. The court may impose such terms upon the owner, mortgagee or lienor as it deems proper for the issuance of said order, including the posting of such security, if any, as it may require. At the expiration of the period prescribed by the court, the court may extend the time of the owner, mortgagee or lienor to comply with the order, dismiss the proceeding if the owner, mortgagee or lienor has substantially complied with the order, or issue a judgment as provided in subdivision three of this section, if the court finds that the owner, mortgagee or lienor has failed to comply with the order.

(b) Notwithstanding paragraph (a) of this subdivision, if the department has brought a proceeding pursuant to section nineteen hundred seventy-three of this chapter based on a finding of abandonment pursuant to paragraph (c) of subdivision one of section nineteen hundred seventy-one of this chapter, the court may not grant a stay for more than six months, nor extend it for more than an additional three months.

3. Upon a finding by the court that the buildingdwelling is abandoned, the court shall enter a final judgment in favor of the petitioner. The fact that an administrator has been appointed pursuant to article seven-A of this chapter shall not prevent the court from entering a final judgment in favor of the petitioner upon a finding by the court that the buildingdwelling is abandoned. The final judgment shall direct such officer of the city, town, ~~or~~ village, or county in which the buildingdwelling is located as may be designated in the judgment to execute and record a deed conveying title of the premises to the city, town, ~~or~~ village, or county as soon as practicable~~thirty days after entry of judgment~~. Upon the entry of such judgment the city, town, ~~or~~ village, or county shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien, license, covenant, servitude, or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien, license, covenant, servitude, or equity of redemption.

4. The provisions of section three hundred seventeen of the civil practice law and rules shall not apply to a proceeding instituted pursuant to this article. A motion or action to set aside a judgment in a proceeding instituted pursuant to this article on the grounds either that there was a failure to comply with the provisions of this article as to notice or that a defect in the proceeding prejudiced a substantial right of a party may be instituted within ninety days after the deed vesting title in a city has been recorded, but not thereafter.

~~5. The right, title and interest of a purchaser or incumbrancer of a property as to which a deed vesting title in a city, town or village has been recorded pursuant to a judgment obtained through this article shall not be affected or impaired by a motion or action instituted more than ninety days after such deed vesting title in a city, town or village has been recorded.~~