

HOUSTON, WE HAVE A PROBLEM AND IT'S YOUR 'ANTI HOARDING' ORDINANCE: THE LEGAL RAMIFICATIONS AND SHORTCOMINGS OF HOUSTON'S CONTROVERSIAL STATUTE

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I. INTRODUCTION

The number of Americans who suffer from a mental illness, approximately 20%,¹ is staggering and unignorable. A subset of this statistic, hoarding disorder, has received particular attention and scholarly interest over the past two decades, especially from the popularity of the A&E television

* I am grateful for Professors Richard Boldt and Barbara Bezdek, whose knowledge and insight made this paper possible. Also, a very special thank you to Jade Vega, whose love and support pushed me to undertake and finish this project.

¹ NATIONAL ALLIANCE ON MENTAL ILLNESS, <https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> (2018). It should also be noted that less than half of those with a mental illness, approximately 41%, received mental health services in a given year. See <https://www.nami.org/learn-more/mental-health-by-the-numbers> (2018).

show, *Hoarders*.² The disorder, which was introduced into the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V) in 2013, affects between two and five percent of the population and is characterized by an individual's struggle to discard items in their home such that their accumulation results in deleterious effects to one's health, life in general, or both.³ Hoarding is often a serious mental illness, requiring tactful intervention techniques to effectively manage one's behavior.⁴

Unfortunately, and unsurprisingly, those who hoard often find themselves in legal trouble because their behavior is almost always violative of some form of public health, safety, or housing laws.⁵ Laws that prohibit public nuisances, for example, are among the many local statutes which may implicate

² See generally Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 80 (2013) (describing, in a footnote, the impact of the television program on America's interest in hoarding disorder).

³ See *infra* PSYCHOLOGY OF COMPULSIVE HOARDING.

⁴ See *id.*

⁵ See *infra* THE INTERPLAY BETWEEN THE HOUSTON ORDINANCE, TEXAS LANDLORD-TENANT LAW, AND THE FAIR HOUSING ACT Part A. *An Overview of the Legal Ramifications of Hoarding.*

hoarding behavior.⁶ Tenants who hoard also almost always violate provisions of their lease because of the negative effects of this behavior to property and the well-being of others, prompting many landlords to begin the eviction process.⁷ While hoarding may violate such laws, those who hoard may find certain protections at the federal, state, and local levels.⁸ At the federal level, for example, the Fair Housing Act is partly designed to shield persons with disabilities from discrimination in housing, and it allows such persons to be provided with reasonable accommodations for the enjoyment of their property under certain conditions.⁹ Similarly, most states have their own state version of the act, which virtually overlaps with the federal counterpart.¹⁰ The Fair Housing Act and its state adaptations offer individuals who hoard not only protection from discriminatory housing practices, but they also

⁶ *Id.*

⁷ *Id.*

⁸ See *infra Id.* Part D: *The Fair Housing Act and the Houston Ordinance: Reasonable Accommodations*

⁹ *Id.* 42 U.S.C. § 3604 (2018).

¹⁰ *Id.*

critically afford the individuals an opportunity to work cooperatively with their landlord throughout the process.¹¹ Finally, state laws regarding the limits and process of evictions offer another layer of protection to those who hoard, and often interact with federal statutes.

Houston, Texas has opted for a different route to manage hoarding: the threat of criminal penalty. Residents of the city may become ensnared in the criminal justice system not from the violation of a nuisance ordinance, but by an ordinance specifically targeting hoarding. In 2014, the city passed Chapter Ten, Article XX of the Houston Municipal Code, becoming the first jurisdiction in America to enact such a statute.¹² The ordinance is a recent example of therapeutic jurisprudence, a theory with an interdisciplinary legal focus, by factoring an individual's emotions and psychological needs into the legal process.¹³ However, the ordinance

¹¹ *Id.*

¹² HOUSTON, TEX., CODE ch. 10, art. XX (2014).

¹³ David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125 (2000).

delegates this task to the Houston police, a component that deserves scrutiny because, under a usual therapeutic jurisprudence framework, the role of the police is filled by a judge.¹⁴ Although the statute authorizes police officers to use discretion to refer those who hoard to mental health services if a relatively low threshold is met, this provision places the law's alleged effectiveness largely within the jurisdiction of the Houston Police Department.¹⁵ As a result, the training of the police, along with the standards and protocols applied by officers, becomes directly implicated and assumes heightened importance in an evaluation of the ordinance.

The ordinance's breadth is quite broad, affecting those who live in private homes, apartments, and condominiums.¹⁶ Significantly, the police can issue criminal citations to individuals whose homes exhibit certain levels of clutter deemed to be

¹⁴ See generally *id.*

¹⁵ *Id.* See also Jayme Fraser, *Enforcement of Hoarding Law Will Hinge on Police*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.houstonchronicle.com/news/politics/houston/article/Enforcement-of-hoarding-law-will-hinge-on-police-5408693.php>.

¹⁶ *Id.* § 10-752(a).

unlawful after a warning is first given.¹⁷ If a warning is issued, however, the individual is given a “reasonable opportunity” to reduce the clutter to an acceptable level.¹⁸ What reasonable opportunity means is largely unknown, although clues by various courts provide strong hints at an answer.¹⁹ Further, Houston’s neighborhood nuisance ordinance appears to cover hoarding behavior, and violators of that statute do not face criminal penalties or as heavy fines.²⁰ While general criminal nuisance statutes are not uncommon, they have been criticized by various scholars for their disproportionate impact on those in poverty.²¹

According to the statements from members of the Houston City Council, the ordinance was created to

¹⁷ *Id.* §§ 10-752(b) and 10-754(a)-(b).

¹⁸ *Id.*

¹⁹ See *infra* THE INTERPLAY BETWEEN THE HOUSTON ORDINANCE, TEXAS LANDLORD-TENANT LAW, AND THE FAIR HOUSING ACT Part B. *Texas Landlord-Tenant Law and the Houston Ordinance: A Possible Affirmative Defense to Eviction.*

²⁰ See *infra* THE INTERPLAY BETWEEN THE HOUSTON ORDINANCE, TEXAS LANDLORD-TENANT LAW, AND THE FAIR HOUSING ACT Part E. *Other Considerations.*

²¹ See Peter Edelman, *More Than a Nuisance – How housing ordinances are making poverty a crime*, THE NEW REPUBLIC (Apr. 10, 2018), <https://newrepublic.com/article/147359/nuisance-laws-making-poverty-crime>.

assist individuals who hoard in obtaining treatment.²² This proposition, however, is subject to serious doubt. The law also may have subtler, yet more serious, psychological effects on those who hoard, such as potentially exacerbating issues related to self-esteem and self-worth due to the stigmatizing effects of the law from the general public.²³ Troublingly, numerous newspaper articles described the legislation as an “anti-hoarding” ordinance.²⁴

²² Houston Television. *April 16, 2014 City Council* (Apr. 16, 2014, 9:00 A.M.), <http://houstontx.swagit.com/play/04162014-5681>. See also Pat Hernandez, *Houston City Council Passes Anti-Hoarding Ordinance*, HOUSTON PUBLIC MEDIA (Apr. 16, 2014), <https://www.houstonpublicmedia.org/articles/news/2014/04/16/50450/houston-city-council-passes-anti-hoarding-ordinance/>. See also Jayme Fraser, *Council OKs Hoarding Ordinance*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.chron.com/news/politics/houston/article/Council-OKs-hoarding-ordinance-5406853.php>.

²³ See generally V. Pinfeld, et. al. *Reducing Psychiatric Stigma and Discrimination*, 38 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 337 (2003).

²⁴ Pat Hernandez, *Houston City Council Passes Anti-Hoarding Ordinance*, HOUSTON PUBLIC MEDIA (Apr. 16, 2014), <https://www.houstonpublicmedia.org/articles/news/2014/04/16/50450/houston-city-council-passes-anti-hoarding-ordinance/> (labeling the statute as an “anti-hoarding” ordinance); see also Jayme Fraser, *Man Hopes Hoarding Ordinance Will Speed Up Help*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.houstonchronicle.com/news/politics/houston/article/Man-hopes-hoarding-ordinance-will-speed-up-help-5402453.php>. (describing the ordinance as an “anti-hoarding proposal”).

It is unclear how the ordinance interacts with leases, evictions, and the Texas Fair Housing Act.²⁵ Much of this uncertainty relates to the timeframe provided in the ordinance, how the ordinance affects evictions, and other similar issues.²⁶ Those who live in Houston and hoard must understand the implications, limitations, and interplay of these various laws. Because the law may result in criminal liability and targets those with a mental illness, a more thorough analysis of the law's underpinnings is necessary. While it is imperative that the law appropriately remedy certain aspects of hoarding behavior, it is equally necessary that the rights of those who hoard are protected and secured.

Many communities across the country have responded in creative ways to the consequences that hoarding may have within their municipality, although the effectiveness of their strategies is somewhat elusive to capture.²⁷ The creation of

²⁵ TEX. PROP. CODE ANN. § 301 (West 2018).

²⁶ See *infra* THE INTERPLAY BETWEEN THE HOUSTON ORDINANCE, TEXAS LANDLORD-TENANT LAW, AND THE FAIR HOUSING ACT

²⁷ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, THE HOARDING HANDBOOK 30-35 (2011). The authors of the Hoarding

hoarding task forces is a common solution to these competing and intersecting demands of the community and the individual.²⁸ While task forces are not necessarily determinative of an alleviation of the hoarding, the sharing of information can enable a community to take more nuanced and effective measures.²⁹ Task forces also provide stakeholders with invaluable information and education that could allow a community to determine the optimal strategies for assisting residents who hoard.³⁰

This Article argues that the Houston ordinance is not enough to resolve hoarding as a community

Handbook mentioned California's receivership provision as an example of a unique legal mechanism that intersects with hoarding behavior. The statute, CAL. HEALTH & SAFETY CODE § 17980.1 (West 2018), allows for the appointment of a "receiver" when a tenant's use and enjoyment of their home becomes "significantly" impaired as a result of sanitary or safety concerns. The receiver is empowered with the ability to relocate tenants to adequate housing and relocation costs are paid to tenants individually.

²⁸ See generally Christiana Bratiotis, Cristina S. Schmalish & Gail Stekete, THE HOARDING HANDBOOK 30-31 (2011). For insight into different task forces and how they function, see also Christiana Bratiotis, *Community Hoarding Task Forces: A Comparative Case Study of Five Task Forces in the United States*, 21 HEALTH & SOC. CARE IN THE COMMUNITY 245 (2013).

²⁹ Christiana Bratiotis, Cristina S. Schmalish & Gail Stekete, THE HOARDING HANDBOOK 30 (2011).

³⁰ *Id.* at 30-31. See *infra* COMPARISON: THE ARLINGTON, MASSACHUSETTS HOARDING RESPONSE TEAM.

health issue effectively, and Houston should create a hoarding task force to understand and address the problem more effectively. First, this Article describes the psychological characteristics of hoarding and discusses the various problematic aspects of the disorder as it relates to intervention. After addressing how hoarding interacts with housing laws in general, the focus shifts to the intersection of hoarding and Texas housing laws, with an emphasis on the eviction process. Following a discussion of hoarding and state-level issues, the Article discusses the relationship among the ordinance and the federal Fair Housing Act, and Texas' state version, the Texas Fair Housing Act.³¹ Finally, this Article provides Houston lawmakers with a brief example of a hoarding task force that operates primarily under the direction of the police department and has not advocated for criminal penalties for hoarding behavior, to demonstrate why the city ordinance's mechanisms and underlying strategy should be reevaluated.

³¹ TEX. PROP. CODE ANN. § 301 (West 2018).

II. THE PSYCHOLOGY OF COMPULSIVE HOARDING

Hoarding is a complex psychological condition that should not be underestimated in terms of its depth and complexity by those who assist one struggling with it, nor should it be disregarded as merely a behavioral or psychosomatic issue.³² Compulsive hoarding is generally defined as the accumulation of possessions in one's living environment such that the clutter negatively interferes with the functioning of one's life.³³ "Compulsive," as a modifier, was introduced in the early 1990s to differentiate between those who collect items merely for recreation, and those whose possessions amount to an excessive and dysfunctional impairment on their livelihoods.³⁴ While hoarding interferes with one's physical navigation around their home, the psychological distress associated with the emotional attachment to

³² *Infra* fn 35.

³³ Randy O. Frost & Tamara L. Hartl, *A Cognitive-Behavioral Model of Compulsive Hoarding*, 34 BEHAVIOUR RES. & THERAPY 341, 342 (1996).

³⁴ *Id.*

the possessions, and the anxieties surrounding their potential removal, are characteristics of the disorder that are critical to understanding its underlying causes.³⁵ Moreover, individuals who hoard frequently suffer from indecisiveness, memory issues, and problems relating to the categorization of items.³⁶ Many of these problems stem from the perceived value of an object and a preoccupation with fears over losing the object.³⁷ Many individuals who hoard also exhibit a lack of insight pertaining to the extent and severity of one's hoarding.³⁸ Indeed, those who exhibit such behavior may regard their lifestyle as normal and integral to their sense of

³⁵ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, *THE HOARDING HANDBOOK* 19, 30 (2011) (advising that, because of the psychological and social factors of hoarding, various agencies and professionals should be involved in the process of cleaning one's home).

³⁶ *Id.* at 342-343.

³⁷ Randy O. Frost & Tamara L. Hartl, *A Cognitive-Behavioral Model of Compulsive Hoarding*, 34 *BEHAVIOUR RES. & THERAPY* 341, 344 (1996) ("When deciding whether or not to discard a possession, [those who hoard] spend most of their time thinking about being without the possession").

³⁸ Gail Steketee & Randy Frost, *Compulsive Hoarding: Current Status of the Research*, 23 *CLINICAL PSYCHOLOGY REV.* 905, 912 (2003).

purpose.³⁹ If intervention does occur, an individual's hoarding behavior may actually worsen due to the trauma and distress often associated with the confrontation and removal of clutter.⁴⁰ Those attempting to intervene in a hoarding situation must develop trust with the individual, and not immediately focus on a removal of the items because, by acting otherwise, they may cause the individual great anxiety and distress.⁴¹ Likewise, treatment for compulsive hoarding or hoarding disorder varies, and, while cognitive behavioral therapy has been argued as an ideal solution, not all individuals are receptive to the same forms of treatment.⁴²

Prior to its watershed inclusion in the DSM-V, hoarding disorder was often associated with

³⁹ David Mataix-Cols & Randy O. Frost et al., *Hoarding Disorder: A New Diagnosis for DSM-V*, 27 DEPRESSION & ANXIETY 556, 560 (2010).

⁴⁰ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, THE HOARDING HANDBOOK 130 (2011).

⁴¹ *Id.* at 19.

⁴² See generally David F. Tolin et al., *Cognitive Behavioral Therapy for Hoarding Disorder: A Meta-Analysis* 32 DEPRESSION & ANXIETY 158, (2015).

symptoms of obsessive-compulsive disorder.⁴³ As research on the subject proliferated, however, hoarding disorder as a standalone diagnosis gained traction, particularly after the publication of Randy Frost and Tamara Hartl's 1995 proposed definition of "compulsive hoarding."⁴⁴ Yet, despite the inclusion of the disorder in other authorities on diagnoses,⁴⁵ hoarding disorder was not included in the DSM until 2013.⁴⁶ While not dispositive, the DSM is an influential authority for judges, lawyers, and others who interact with those who are mentally disabled and the importance of its recognition of hoarding disorder cannot be understated.⁴⁷ The

⁴³ David Mataix-Cols, et al., *Hoarding Disorder: A New Diagnosis for DSM-V*, 27 DEPRESSION & ANXIETY 556, 557 (2010).

⁴⁴ *Id.* at 558.

⁴⁵ See David Mataix-Cols, et al., *Hoarding Disorder: A New Diagnosis for DSM-V*, 27 DEPRESSION & ANXIETY 556, 557 (2010) (the Y-BOCS symptom checklist, used for OCD, previously contained hoarding components).

⁴⁶ INTERNATIONAL OCD FOUNDATION, <https://hoarding.iocdf.org/professionals/diagnosing-hoarding-disorder/>.

⁴⁷ See Keith P. Ronan *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 263 (2011) ("without the validation of publication in the DSM-5, hoarding defendants lack credibility as to the severity of their disease and, more importantly, the proof that their symptoms are treatable").

inclusion of hoarding disorder in the DSM can assist the legal community by serving as a guide to courts, which can theoretically use the DSM to address hoarding in a more nuanced and consistent manner.⁴⁸

The definition of “Hoarding Disorder” is as follows:

1. Persistent difficulty discarding or parting with possessions, regardless of their actual value.
2. This difficulty is due to a perceived need to save the items and to distress associated with discarding them.
3. The difficulty discarding possessions results in the accumulation of possessions that congest and clutter active living areas and substantially compromises their intended use. If living areas are uncluttered, it is only because of the interventions of third parties (e.g., family members, cleaners, authorities).
4. The hoarding causes clinically significant distress or impairment in social, occupational, or other important areas of functioning (including maintaining a safe environment for self and others).
5. The hoarding is not attributable to another medical condition (e.g., brain

⁴⁸ *Id.* at 263.

injury, cerebrovascular disease, Prader-Willi syndrome).

6. The hoarding is not better explained by the symptoms of another mental disorder (e.g., obsessions in obsessive-compulsive disorder, decreased energy in major depressive disorder, delusions in schizophrenia or another psychotic disorder, cognitive deficits in major neurocognitive disorder, restricted interests in autism spectrum disorder).⁴⁹

Hoarding is also usually comorbid with other psychological and behavioral problems, further complicating treatment and intervention.⁵⁰ Many individuals who compulsively hoard suffer from major depressive disorder⁵¹ and generalized anxiety disorder (GAD).⁵² For example, for those who suffer from GAD and hoarding disorder, the mere touching or thought of touching an object may cause

⁴⁹ INTERNATIONAL OCD FOUNDATION, <https://hoarding.iocdf.org/professionals/diagnosing-hoarding-disorder/> (2018).

⁵⁰ Randy O. Frost, Gail Steketee & David F. Tolin, *Comorbidity in Hoarding Disorder*, 28 DEPRESSION & ANXIETY 876, 889 (2011).

⁵¹ *Id.*

⁵² *Id.*

significant anxiety due to the intrinsic attachment to an object that has been created.⁵³ Moreover, co-occurring health problems, such as chronic or severe physical conditions, are common among those who meet the diagnostic criteria for hoarding disorder.⁵⁴ Treatment of hoarding will not be useful, therefore, without an adequate understanding of the individual's underlying psychological problems.⁵⁵

Ineffective treatment plans for hoarding often result in relatively high recidivism rates among those who hoard.⁵⁶ Additionally troubling is that property managers or local governments often yield greater power over homeowners or tenants who hoard, leading to difficulties in procuring adequate resolutions among tenants.⁵⁷ Another reason for these relapses may be the result of a lack of insight, depression, or both, especially since those who hoard

⁵³ David Mataix-Cols, et al., *Hoarding Disorder: A New Diagnosis for DSM-V*, 27 DEPRESSION & ANXIETY 556, 559 (2010).

⁵⁴ See generally David F. Tolin, et al., *The Economic and Social Burden of Compulsive Hoarding*, 160 PSYCHIATRY RES. 200 (2008).

⁵⁵ Christiana Bratotiis, Cristina S. Schmalish & Gail Steketee, THE HOARDING HANDBOOK 129 (2011).

⁵⁶ *Id.*

⁵⁷ *Id.*

frequently exhibit a low motivation to continue treatment.⁵⁸ Importantly, evidence suggests that one's hoarding may worsen as a result of the cleanout of one's home, a popular, but expensive, strategy for many municipalities.⁵⁹ The conglomerate of these factors creates a complex, fraught, and precarious scenario where the utmost care should be undertaken by those intervening in a hoarding situation.

III. THE INTERPLAY BETWEEN THE HOUSTON ORDINANCE, TEXAS LANDLORD-TENANT LAW, AND THE TEXAS FAIR HOUSING ACT

A. An Overview of the Legal Ramifications of Hoarding

The consequences of hoarding behavior usually affect others' lives, thus implicating federal, state, and local laws designed to protect the health and

⁵⁸ Gail Steketee & Randy Frost, *Compulsive Hoarding: Current Status of the Research*, 23 CLINICAL PSYCHOLOGY REV. 905, 923 (2003).

⁵⁹ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, THE HOARDING HANDBOOK 130 (2011).

safety of both the public and the individual.⁶⁰ Perhaps the most obvious laws violated are those relating to fire hazards within the home due to lack of adequately navigable routes for escape or rescue.⁶¹ Hoarding also violates landlord-tenant and nuisance laws.⁶² A tenant who hoards has an especially fraught situation because it is incongruent with their duties as tenant to keep the home in a safe and sanitary condition.⁶³ Hoarding is “essentially incompatible” with the landlord-tenant law, especially regarding tenants’ obligations.⁶⁴ Eviction

⁶⁰ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 84 (2013).

⁶¹ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL’Y 427, 430 (2007).

⁶² Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 261 (2011).

⁶³ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.101(1)-(7) (amended 1974); While Texas has not adopted the URLAT, courts there recognize the implied duty of a tenant to protect the property from damage or injury other than normal wear and tear; *See* R.C. Bowen Estate v. Continental Trailways, 256 S.W.2d 71, 263 (Tex. 1953) (“There is implicit in the tenant-landlord relationship the duty of the tenant to use reasonable care to protect the premises from injury other than ordinarily resulting from normal wear and tear.”).

⁶⁴ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL’Y 427, 430 (2007).

is a common ultimatum for those who hoard, an expensive and often ineffective method of improving one's behavior.⁶⁵ An example of a nuisance case involving the eviction of the tenant with hoarding behavior is *5th and 106th St. Assocs. v. Rodriguez*.⁶⁶ The tenant, Rodriguez, accumulated clutter in her apartment to the point where the landlord alleged in the eviction notice that the unsanitary conditions constituted a nuisance and grounds for eviction.⁶⁷ Rodriguez counterclaimed her landlord, alleging that the conditions of the property constituted a breach of the warranty of habitability.⁶⁸ Initially, Rodriguez and her landlord settled and agreed that Rodriguez would cease to continue accumulating clutter and allow the landlord to inspect her apartment for a stated period of time.⁶⁹ Rodriguez also agreed to allow her landlord to make necessary repairs to her apartment.⁷⁰ A few months later, the landlord moved

⁶⁵ *Id.* at 245-246.

⁶⁶ 875 N.Y.S.2d 820, 2008 N.Y. Slip Op. 52331.

⁶⁷ *Id.* at 1.

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

to restore the initial holdover proceeding because Rodriguez allegedly breached the settlement.⁷¹ The court found for the landlord, and noted that Rodriguez's hoarding was mainly responsible for the conditions within the apartment since the clutter rendered it difficult for the landlord to make repairs.⁷² *Rodriguez* is one of the few published cases regarding hoarding as a nuisance, and, despite the tenant's failure to abide by the settlement, it is a useful example for both landlords and tenants for how cooperatively to resolve an eviction proceeding.

While evictions can present dire consequences for any tenant, those with a mental illness may be especially vulnerable.⁷³ Individuals with hoarding disorder or behavior may view such an ultimatum with increased anxiety because the eviction process involves the removal of possessions from their

⁷¹ *Id.*

⁷² *Id.*

⁷³ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL'Y 427, 430 (2007) (remarking that eviction can be "truly catastrophic" for those with hoarding behavior).

home.⁷⁴ In addition, eviction can quickly lead to homelessness, which has serious implications for subsidized-housing residents, a population in which hoarding may be particularly prevalent.⁷⁵ The prevalence of anxiety and depression among those who hoard compounds an already delicate situation since these illnesses suggest that an evicted tenant who hoards will likely not have adequate coping skills to face such harsh outcomes.⁷⁶

B. Texas Landlord-Tenant Law and the Houston Ordinance: A Possible Affirmative Defense to Eviction

Under Texas landlord-tenant law, the landlord must first provide the tenant with a written notice to

⁷⁴ David Mataix-Cols & Randy O. Frost et al., *Hoarding Disorder: A New Diagnosis for DSM-V*, 27 DEPRESSION & ANXIETY 556, 560 (2010).

⁷⁵ See generally Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 85 (2013). See also Carolyn I. Rodriguez et al., *Prevalence of Hoarding Disorder in Individuals at Potential Risk of Eviction in New York City: A Pilot Study* 200 J. NERVOUS & MENTAL DISEASE 91 (2012).

⁷⁶ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL'Y 427, 430 (2007).

vacate.⁷⁷ If a tenant breaches a written or oral lease under Texas law, the landlord need provide only at least three days' written notice to vacate the property for a breach of a lease.⁷⁸ The law also does not mandate that the landlord provide proof to accompany the notice, nor does the landlord need to explain a possible right to cure the breach if such a right exists.⁷⁹ During the three-day period, the individual who hoards should begin a dialogue with their landlord to reach an agreement or understanding regarding correcting the reason for the eviction. The individual should also request a reasonable accommodation under the Texas Fair Housing Act during this timeframe. Furthermore, a landlord may evict a tenant who either defaults on their rent, holds-over, or both.⁸⁰ A tenant holds-over when they refuse to leave the premises after either a termination of the tenancy, or an eviction has been initiated against them.⁸¹ Landlords in Texas have

⁷⁷ TEX. PROP. CODE ANN. §24.005(a) (West 2018).

⁷⁸ *Id.*

⁷⁹ *Effel v. Rosberg*, 360 S.W.3d 626, 630 (Tex. App. 2012).

⁸⁰ TEX. PROP. CODE ANN. §24.005(a) (West 2018).

⁸¹ *Id.*

several other legal tools at their disposal, such as unlawful detainer actions or expedited eviction proceedings for nuisance cases, if they wish to attempt to evict a tenant who hoards.⁸²

The ordinance's most relevant impact on Texas landlord-tenant law is preserving a tenancy despite an eviction. Specifically, the ordinance may be used as an affirmative defense to an eviction, although certain conditions must be met initially. First, using the municipal ordinance as a defense to state eviction statutes does not present preemption problems, which otherwise may impede a municipality from grafting an exception onto a state law.⁸³ Texas' constitution has codified Dillon's Rule, which states that "home rule" cities, such as Houston, may enact ordinances so long as they are not prohibited by state law.⁸⁴ First, there does not exist any Texas state law

⁸² *Id.*

⁸³ Tex. CONST. art.11, § 5 (describing home rule cities as those with a population of greater than 5,000 and also declaring that "no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State"); TEX. LOC. GOV'T CODE ANN. §251.072 (West 2018).

⁸⁴ *Id.*

that is in conflict with the ordinance according to Dillon’s Rule, which means that the Houston ordinance appears to be aligned with the state constitution. Moreover, if a Houston tenant has been served with a notice of eviction, despite being granted a reasonable opportunity under the local ordinance to remedy the situation, such an act may be retaliatory under Texas law.⁸⁵ According to Section 92.331 under the Texas law, a landlord retaliates when a tenant either exercises, or attempts to exercise, a right or remedy granted to the tenant by a municipal ordinance and the landlord files an eviction proceeding.⁸⁶ Although not labeled as such, the ordinance essentially grants a tenant a right to a “reasonable opportunity” to clean their living area.⁸⁷ Under Texas and Fifth Circuit case law, “reasonable opportunity” appears to be a contextual and flexible

⁸⁵ TEX. PROP. CODE ANN. §92.331(a) (West 2018).

⁸⁶ *Id.*; see *Chavez v. Aber* 122 F.Supp.3d 581 (W.D. Tx. 2015) (although related to a tenant’s reasonable accommodation request for a service animal, this case illustrates how a landlord’s interference with a tenant’s attempted use of the Fair Housing Act for a reasonable accommodation may constitute retaliation).

⁸⁷ HOUSTON, TEX., CODE ch. 10, art. XX, § 10-754(b) (2014).

standard.⁸⁸ While it is not clear how a Houston court will use this flexible standard, the severity of the clutter, existence of other mental health issues, and number of occupants in the home, among other factors, may be included in the analysis.

Ultimately, the police must initiate the opportunity to cure via a written warning.⁸⁹ The prior analysis thus reveals that the ordinance is thus seemingly only applicable, in the case of an eviction, in the narrow circumstance when a landlord has issued a notice to vacate and the tenant has been granted a written warning by the police. This aspect appears to undermine the ordinance's stated purpose of facilitating mental health resources and further supports the argument that the city council should

⁸⁸ See generally *Jim Walter Homes, Inc. v. Foster*, 593 S.W.2d 749 (Tex. Civ. App. 1979) (reasonable opportunity to cure defects found when defendant builder was notified twice in two months of defect in construction in context of the Deceptive Trade Practices Consumer Protection Act). See also *Tucker v. Aqua Yacht Harbor Corp.* 749 F. Supp. 142 (N.D. Miss. 1990) (in the context of cure provisions under Mississippi state law related to manufacturer defects, reasonable opportunity is "necessarily a flexible" standard and its meaning is dependent on the facts and circumstances).

⁸⁹ HOUSTON, TEX., CODE ch. 10, art. XX, §§ 10-754(b), 10-752(b)(2014) (declaring that the enforcement of the law is primarily overseen by the chief of police and that an officer may issue a criminal citation for noncompliance).

reevaluate the statute to determine a more effective solution to their citywide problem.⁹⁰

C. The Fair Housing Act and the Houston Ordinance: Reasonable Accommodations

The idealized solution under the Houston ordinance is a facilitation of mental health services to an individual after the police conclude that the home is in violation of the law.⁹¹ This vision, a more reactive scenario for the tenant, does not require or recommend the formulation of an action plan for treating the illness or removing the clutter. Instead, as previously discussed, it provides merely for an amorphous timeframe for one to remove the debris. Juxtaposed to this framework is the Fair Housing Act's robust reasonable accommodation procedure for those with mental disabilities. Originally passed by Congress in 1968 to safeguard tenants from

⁹⁰ See Pat Hernandez, *Houston City Council Passes Anti-Hoarding Ordinance*, HOUSTON PUBLIC MEDIA (Apr. 16, 2014), <https://www.houstonpublicmedia.org/articles/news/2014/04/16/50450/houston-city-council-passes-anti-hoarding-ordinance/> (characterizing the Houston mayor's view of the law as a "tool for mental health intervention").

⁹¹ See generally HOUSTON, TEX., CODE ch. 10, art. XX (2014).

discrimination in housing on the basis of race, sex, gender, religion, or national origin, the Act was amended in 1988 to include one's disability, both physical and mental.⁹² Texas, alongside most other states,⁹³ has adopted its own version of the federal Fair Housing Act.⁹⁴ As with its federal counterpart, the Texas Fair Housing Act provides for reasonable accommodations.⁹⁵

A "disability" is defined by the Act as a physical or mental impairment which severely limits a "major life activity."⁹⁶ Courts have granted reasonable accommodations to those suffering from anxiety disorders and even those exhibiting disruptive behavior as a result of their mental illness, so long as the accommodation can minimize the extent of the behavior to an allowable level.⁹⁷ Because Hoarding

⁹² 42 U.S.C. § 3604 (2018).

⁹³ ROBERT G. SCHWEMM HOUSING DISCRIMINATION LAW AND LITIGATION § 30:1.

⁹⁴ TEX. PROP. CODE ANN. § 301 (West 2018).

⁹⁵ TEX. PROP. CODE ANN. § 301.025 (West 2018).

⁹⁶ 42 U.S.C. § 3602(h) (2018).

⁹⁷ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 89-90, 92-93 (2013).

Disorder is now covered under the DSM-V, courts may be more receptive to finding that an individual who hoards has a disability for reasonable accommodation requests.⁹⁸ Although a diagnosis is ideal to demonstrate a mental disability,⁹⁹ individuals who hoard, who are not able to receive appropriate treatment, may argue that their behavior is reflective of a disability and impairs their ability to care for themselves, a characterization that is considered a major life activity.¹⁰⁰

The Act substantively requires that a property manager or other provider grant a tenant a reasonable accommodation if the tenant suffers from a “handicap,”¹⁰¹ the request is reasonable, the provider

⁹⁸ Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 257(2011); *See also* Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 95 (2013).

⁹⁹ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL’Y 427, 433 (2007). For a list of cases in which a court determined that a diagnosis is not required for a reasonable accommodation, *see* Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 264 (2011).

¹⁰⁰ 24 C.F.R. § 100.201(b) (2018).

¹⁰¹ 42 U.S.C. §3602(h) (2018).

knew or should have known of the disability, and the accommodation is necessary in order for the individual to have an equal opportunity to enjoy their property.¹⁰² This affirmative duty on the landlord does not extend to granting the specific accommodation requested by the tenant,¹⁰³ but requires the landlord to engage in dialogue with the tenant and create an accommodation that satisfies both the landlord and tenant's obligations and needs.¹⁰⁴ As to whether a landlord is skeptical of a tenant's claimed disability, the Seventh Circuit in *Jankowski Lee & Associates v. HUD* ruled that a landlord must initiate a discussion with the tenant to determine whether a disability genuinely exists.¹⁰⁵ A landlord's duty to interact with the tenant in this process does not end if the accommodation stalls; instead, the landlord is obligated to pursue other

¹⁰² *Douglas v. Kriegsfeld Corp.* 884 A.2d 1109, 1129 (D.C. 2005).

¹⁰³ ROBERT G. SCHWEMM HOUSING DISCRIMINATION LAW AND LITIGATION §11 D:8.

¹⁰⁴ *See id.*; *See also Jankowski Lee & Associates v. Cisneros* 91 F.3d 891, 895 (7th Cir. 1996).

¹⁰⁵ *See Jankowski Lee & Associates*, 91 F.3d at 895.

reasonable alternatives.¹⁰⁶ Finally, reasonable accommodation inquiries are fact-intensive and -specific, and are consequently ruled on a case-by-case basis.¹⁰⁷

The reasonable accommodation provision is not without limitations. First, the accommodations must be reasonable.¹⁰⁸ Reasonableness not only means “feasible” or “practical,” but also requires that an accommodation not result in a fundamental alteration of the role of the landlord or housing provider.¹⁰⁹ Similarly, the accommodation must not result in an undue financial or administrative burden for the landlord.¹¹⁰ This limitation is based on the Supreme Court’s interpretation of the 1973

¹⁰⁶ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL’Y 427,434 (2007) (citing *Humphrey v. Memorial Hospitals Association*, 239 F.3d 1128,1137-1139 (9th Cir. 2001)).

¹⁰⁷ ROBERT G. SCHWEMM HOUSING DISCRIMINATION LAW AND LITIGATION §11 D:8.

¹⁰⁸ 53 Fed. Reg. 45003 to 04 (Nov. 7, 1988).

¹⁰⁹ ROBERT G. SCHWEMM HOUSING DISCRIMINATION LAW AND LITIGATION §11 D:8 (2018).

¹¹⁰ *Id.* See also Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 88 (2013) (remarking that a housing provider need not do “everything humanly possible to accommodate”).

Rehabilitation Act, which contained a similar accommodation provision.¹¹¹ In its ruling in *Elderhaven, Inc. v. City of Lubbock*, the Fifth Circuit, which includes Texas, has placed the burden of proof, per the question of reasonableness, upon the plaintiff.¹¹² While the Fifth Circuit has not expressed a precise formulation relating to the interpretation of the fundamental alteration or undue burden aspects, cases in Sixth and Seventh circuits have indicated that a cost-benefit analysis may be used.¹¹³ Under a cost-benefit analysis, a court will undertake a fact-specific inquiry into the administrative costs associated with the accommodation and the individual's need for it, the benefits.¹¹⁴ Nonetheless, a court in the Fifth Circuit may allow the individual to force the landlord to bear some of the costs

¹¹¹ *Southeastern Community College v. Davis*, 442 U.S. 397, 409-410 (stating that a modification in the form of changes to curriculum would be a "fundamental alteration" of the program).

¹¹² 98 F.3d 175, 178 (5th Cir. 1996).

¹¹³ *See Dadian v. Village of Wilmette*, 269 F.3d 831, 838-839 (7th Cir. 2001); *See also Groner v. Golden Gate Gardens Apartments 250 F.3d 1039, 1044* (6th Cir 2001).

¹¹⁴ *See Daidan*, 269 F.3d at 838-839.

entailed in the reasonable accommodations process.¹¹⁵

A landlord may assert that a reasonable accommodation of a time extension to cure the hoarding, for example, is not reasonable because other residents may vacate or prospective tenants may move elsewhere, thus imposing a burden on the landlord.¹¹⁶ This is problematic because time extensions are generally an ideal accommodation as they necessarily entail a decluttering of one's living environment or other similar resolutions.¹¹⁷ Hypothetically, a court in Houston may determine that the landlord's costs for allowing a tenant who hoards to remain on the property result in an undue burden to the landlord because other tenants have vacated or the landlord is unable to acquire new tenants.¹¹⁸ Lastly, the tenant must also establish

¹¹⁵ ROBERT G. SCHWEMM HOUSING DISCRIMINATION LAW AND LITIGATION §11 D:8 (2018).

¹¹⁶ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL'Y 427, 434-435 (2007).

¹¹⁷ *Id.* at 432.

¹¹⁸ *Id.*

causation; the tenant must demonstrate that the disability caused the behavior.¹¹⁹

Importantly, reasonable accommodations are not required in situations in which the individual poses a direct threat and substantial risk of harm to the health or safety of others.¹²⁰ Based on case law in similar areas, a direct threat is generally assessed based on the duration, nature and severity of the threat, and potential for actual harm.¹²¹ The exception, however, will not be actionable until the court has first assessed a housing provider's response to a reasonable accommodation request.¹²² Under this exception, the Fifth Circuit is likely to place the burden of proof upon the housing provider, the landlord.¹²³ The direct threat exception is especially

¹¹⁹ *Id.*

¹²⁰ 24 U.S.C. § 3604(f)(9) (2018).

¹²¹ Jennifer L. Dolak, *The FHAA'S Reasonable Accommodation and Direct Threat Provisions as Applied to Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their Housing Environment*, 36 IND. L. REV. 759, 774 (2003).

¹²² Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 265 (2011).

¹²³ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 88 (2013).

relevant to individuals who hoard since their behavior almost always infringes upon the safety or health of others.¹²⁴ As previously mentioned, hoarding behavior may negatively impact those who may also be living in the same household, as well as neighbors and adjoining residents, in the form of fire hazards, unsanitary conditions, and similar situations.¹²⁵ In order for such an exception to be effective, a landlord or other property manager must demonstrate that no reasonable accommodation would eliminate or minimize the risk to an acceptable level.¹²⁶ To strengthen a landlord's claims, the refusal to accommodate must be based on an individual's history of conduct or their present behavior; generalizations or speculation will not suffice.¹²⁷ Resulting from this exception is the need

¹²⁴ See *supra* HOARDING AND HOUSING LAW Part. A. Overview of Legal Issues Related to Housing

¹²⁵ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL'Y 427, 430 (2007).

¹²⁶ U.S.C. 42 § 3604(f)(9); see also Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 259-260 (2011).

¹²⁷ *Douglas v. Kriegsfeld Corp.* 884 A.2d 1109, 1126 (D.C. Cir. 2005).

for both sides to advance their points in front of the court, especially since property managers are often biased due to their status as an owner and also are more likely to have more extensive financial resources compared to the tenant.¹²⁸ While a housing provider may offer a direct threat argument, they should nevertheless still engage in a cooperative dialogue with the tenant before claiming such a defense.¹²⁹ In addition, hoarding and hoarding disorder are often not consistently addressed in court, and the lack of an “established” method of alleviating hoarding has created obstacles for many tenants and property owners who seek reasonable accommodations.¹³⁰ The legal system is not adequately situated to resolve hoarding situations in a consistent way due to the system’s inexperience

¹²⁸ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, *THE HOARDING HANDBOOK* 129 (2011).

¹²⁹ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 *SUFFOLK U. L. REV.* 79, 98 (2013) (“housing providers should, at the very least, be required to engage in the interactive process to determine if any proposed accommodation could be reasonable.”).

¹³⁰ Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 *RUTGERS L. REV.* 235, 258 (2011).

with the mental disorder and the lack of a uniform process for handling a hoarding situation.¹³¹

Although case law involving reasonable accommodations for hoarding is relatively limited, *Douglas v. Kriegsfeld Corp* is the case most relevant to the issue of hoarding, housing, and the Federal Housing Act (FHA).¹³² The federal case involved a tenant with a hoarding condition who faced eviction from her landlord for failing to maintain a safe and sanitary living environment.¹³³ The tenant claimed discrimination under the FHA as both a counterclaim and a defense to the eviction.¹³⁴ After the lawsuit was filed, the tenant requested a reasonable accommodation from her landlord in the form of a stay of the eviction proceeding in order to provide adequate time to clean the apartment.¹³⁵ The trial court denied the tenant's reasonable accommodation,

¹³¹ *Id.*

¹³² 884 A.2d 1109 (D.C. Cir. 2005); *See also* Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 92 (2013).

¹³³ *See Douglas* 884 A.2d at 1115.

¹³⁴ *See id.*

¹³⁵ *See id.* at 1116.

finding that the tenant's request was not sufficiently specific, her behavior fell under the direct threat exception for reasonable accommodations, and her experts failed to demonstrate that she had a mental disability.¹³⁶ The District of Columbia Court of Appeals reversed, finding that the tenant demonstrated adequate specificity regarding her mental health treatment, how the cleaning would be undertaken, and the relatively short extension.¹³⁷

In another federal case involving the FHA and hoarding, *Goldsmith v. CBS TV Broadcasting, Pittsburgh, Inc.*, the tenant claimed that his housing provider owed him a reasonable accommodation because his hoarding behavior resulted from a disability.¹³⁸ Unlike other hoarding situations in which the reasonable accommodation is a time extension, the tenant sought additional space in his apartment to house the clutter.¹³⁹ When his landlord refused to grant the request, the tenant claimed his

¹³⁶ *Id.* at 1119.

¹³⁷ *See id.* at 1137-1138.

¹³⁸ No. 2:13-CV-00478 2015 WL 1411944 at *1 (W.D. Pa. Mar. 26, 2015).

¹³⁹ *Id.* at *4.

eviction was retaliatory and constituted unlawful discrimination against his disability.¹⁴⁰ The court ruled that the tenant's complaint could survive since he made many requests to his landlord to accommodate his disability.¹⁴¹ Importantly, in a footnote, the court seemed unconvinced reasonable accommodations could be "stretched so far as to cover" hoarding as a disability, while also announcing that it was not concluding on the merits of whether hoarding can qualify as a disability.¹⁴²

Regardless of the nuances associated with reasonable accommodation caselaw, the reasonable accommodation process demonstrates a tenant's awareness of the issue, and, more importantly, their commitment to reaching an appropriate solution. The tangible solution is an effective quality of the reasonable accommodation process, compared with the ordinance which does not require a concrete solution as part of the procedure; the ordinance merely affords a timeframe. This evidence of self-

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at *5.

¹⁴² *Id.* at fn, 11.

motivation and willingness to compromise through a reasonable accommodation request is thus more desirable than the ordinance's reactive and punitive approach.

Nonetheless, the allowable time granted through a reasonable accommodation, or under the reasonable opportunity in the ordinance, will not likely be conducive to alleviate the hoarding behavior.¹⁴³ This conclusion underscores a critical flaw in many court's reasoning: courts cannot expect realistically that one's problematic behavior will stop after their home's cleanup.¹⁴⁴ Moreover, a court is unlikely to find a time extension as a "reasonable" accommodation for persistent or chronic hoarding.¹⁴⁵ While the landlord's affirmative duty to

¹⁴³ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL'Y 427, 436 (2007) ("Given the health and safety risks presented by an excessively cluttered dwelling unit, the amount of time that a landlord may reasonably be expected to allow for decluttering is probably far shorter than the typical treatment and shorter still where the clutter problem poses a threat" to others).

¹⁴⁴ Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 260-261 (2011).

¹⁴⁵ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79,

seek viable alternatives is clearly a benefit to tenants, a tenant must be cognizant of the undue burden and fundamental alteration limitations. As seen in *Goldsmith*, additional space in a tenant's apartment may be a reasonable accommodation, although its reasonableness depends on case's facts.¹⁴⁶ The problems related to an individual's ability to clean their homes highlights the importance of the Houston police referring individuals to mental health professionals for treatment. Emphasis, therefore, must be placed initially on cleaning the home to a sufficient point where it is no longer noncompliant.¹⁴⁷

Despite the limitations of the Texas FHA, those who hoard in Houston should still request a reasonable accommodation under this law if they face a lease violation or eviction. Although federal

101 (2013) (“[a reasonable accommodation request] is likely to be found unreasonable when requested again and again in the future.”).

¹⁴⁶ See generally No. 2:13-CV-00478 2015 WL 1411944 at *1 (W.D. Pa. Mar. 26, 2015).

¹⁴⁷ Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 J. POVERTY L. & POL’Y 427, 436 (2007) (“A reasonable decluttering plan must entail promptly restoring the unit to a *reasonably* clean and safe condition.”) (emphasis added).

case law regarding hoarding is scarce, the existing law is relatively clear, and a host of resources are available to understand its applicability. A reasonable accommodation allows for both the landlord and the tenant to compromise and facilitates a cooperative relationship that is not overshadowed by the threat of criminal charges. The city ordinance, conversely, provides a limited “reasonable opportunity” for those who hoard to alleviate the effects of their behavior, a daunting task for the individual when faced with potential criminal sanctions.¹⁴⁸ The current ordinance is not adequate to address substantially the housing-related problems, and the city council must reevaluate its efficacy. A court’s decision under the ordinance is relatively unknown. Therefore, Houston tenants who hoard should use the reasonable accommodation provision in the Texas FHA to secure their housing and afford themselves the opportunity to receive mental health treatment. The Houston ordinance simply is not equipped or designed to facilitate such a task.

¹⁴⁸ HOUSTON, TEX., CODE ch. 10, art. XX, § 10-754 (2014).

D. Other Considerations

Although much attention has been placed on Houston's hoarding ordinance, other existing ordinances may impact those who hoard. Like in other cities, Houston's code of ordinances contains a provision prohibiting neighborhood nuisances.¹⁴⁹ The law protects those within the general area of one's home from acts or conditions which may pose as hazardous to those tenants nearby.¹⁵⁰ Importantly, the law notes that the accumulation of "offensive matter," in order to constitute a nuisance, may occur within one's home and need not be in public.¹⁵¹ The accumulation of material in one's own home may constitute a nuisance if such clutter creates a health hazard to those within the home or in the general area.¹⁵² Likewise, rooms or areas of the home that are

¹⁴⁹ HOUSTON, TEX., CODE ch. 10, art. XI, § 10-451 (2018).

¹⁵⁰ *Id.* at (a); The ordinance declares under this provision that anything "dangerous to human health or welfare, or whatever renders the ground, the water, the air, or food a hazard to human health is hereby declared to be a nuisance."

¹⁵¹ *Id.* at (b)(1); Unlike the general definition in (a), section (b) delineates specific examples of nuisances, of which the accumulation of "offensive matter" in a private area is but one of them.

¹⁵² *Id.*

in such a state of uncleanness so as to create health hazards may also be deemed a neighborhood nuisance.¹⁵³ The penalty for a first violation of the nuisance statute is only \$50,¹⁵⁴ while the initial fine for those who violate the ordinance relating to hoarding is at least \$200, but no more than \$500, assuming that the violator has been warned previously.¹⁵⁵ Moreover, those who violate the nuisance ordinance are not guilty of a misdemeanor, they are merely fined,¹⁵⁶ unlike the filing of criminal charges for violating the hoarding-related ordinance.¹⁵⁷ While the ordinance related to hoarding states that a violation of a different ordinance may supersede, a separate criminal ordinance for hoarding seems unnecessary and the ordinance seems unjustly harsher than its civil counterpart

¹⁵³ *Id.* at (b)(4).

¹⁵⁴ *Id.* at (d).

¹⁵⁵ HOUSTON, TEX., CODE ch. 10, art. XX, § 10-754(a) (2014).

¹⁵⁶ *See generally* HOUSTON, TEX., CODE ch. 10, art. XI, § 10-451(d) (2018).

¹⁵⁷ HOUSTON, TEX., CODE ch. 10, art. XX, § 10-754(b) (2014).

The statements by several members of the Houston City Council illuminate this distinction. On the day of the ordinance's passage, several city council members were hopeful that the ordinance would support mental health treatment for such individuals.¹⁵⁸ A newspaper article published shortly after the ordinance's passage similarly remarked that the ordinance's purpose, according to the city council members, was to assist those who hoard by guiding them towards mental health treatment.¹⁵⁹ The council and police also cited for its passage the lack of "authority or direction" on how to resolve a situation involving housing, particularly when the hoarding begins to affect other people.¹⁶⁰ Despite the

¹⁵⁸ Jayme Fraser, *Council OKs Hoarding Ordinance*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.chron.com/news/politics/houston/article/Council-OKs-hoarding-ordinance-5406853.php> see also Houston Television. *April 16, 2014 City Council* (Apr. 16, 2014, 9:00 A.M.), <http://houstontx.swagit.com/play/04162014-568>.

¹⁵⁹ Jayme Fraser, *Council OKs Hoarding Ordinance*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.chron.com/news/politics/houston/article/Council-OKs-hoarding-ordinance-5406853.php>.

¹⁶⁰ Jayme Fraser, *Man Hopes Hoarding Ordinance Will Speed Up Help*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.houstonchronicle.com/news/politics/houston/article/Man-hopes-hoarding-ordinance-will-speed-up-help-5402453.php>.

good intentions of the city council, the ordinance was not universally accepted, and several prominent experts on hoarding behavior voiced their concerns about the law's potential negative consequences.¹⁶¹

Another looming problem is that, generally, housing providers are permitted to inquire into a prospective tenant's qualifications, such as one's criminal record, as long as the questions asked are applied to all tenants.¹⁶² Courts are not persuaded typically by the argument that a housing provider should disregard a prospective tenant's prior criminal record if the charge is disability-related.¹⁶³ *Evans v. UDR Inc.* involved a woman with mental disabilities related to substance abuse. The housing

¹⁶¹ Jeff Szymanski, Randy Frost, and Gail Steketee, *Szymanski, Frost, Steketee: New Houston Ordinance Criminalizes Hoarders*, HOUSTON CHRONICLE (Apr. 25, 2014), <https://www.chron.com/opinion/outlook/article/Szymanski-Frost-Steketee-New-Houston-ordinance-5430381.php>.

¹⁶² Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 96 (2013) (citing 24 C.F.R. § 100.202(c) (2012)).

¹⁶³ *Id.* at 97 (citing *Evans v. UDR Inc.*, 644 F. Supp. 2d 675, 681-684 (E.D.N.C. 2009) as an example of a case where a court determined that a provider may use an applicant's criminal record as a reason for their denial despite a connection between one's disability and that record).

provided denied housing to the tenant because of the tenant's criminal charges stemming from her disabilities, and the tenant claimed that the rejection was an unlawful denial of housing based on her disability.¹⁶⁴ The court rejected her argument and concluded that the forms of disability discrimination that Congress sought to protect did not extend to crimes where the underlying cause is one's mental disability.¹⁶⁵ Likewise, the court noted that there was "no indication" from Congress that landlords may not consider one's prior convictions, even when those convictions were caused by a disability.¹⁶⁶ While *Evans* can seemingly be extrapolated to describe hoarding, interestingly, the court opined that Congress intended to curtail stereotypes about disabilities and that a prospective tenant's criminal conduct, even if resulting from a mental disability, falls outside of this protection.¹⁶⁷ Nonetheless, a

¹⁶⁴ *Evans* 644 F. Supp at 676.

¹⁶⁵ *Id.* at 685 ("criminal conduct caused by a mental disability is not an effect of a disability with which Congress was concerned in the FHA.").

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 684-685

landlord may reject a tenant who hoards and is charged with a misdemeanor under the Houston ordinance. However, the Fifth Circuit's ruling under these facts remains uncertain. Because hoarding is a unique disorder, and because the criminal record would be so intertwined with and inseparable from the disability, a case of disability discrimination may be viable under the right circumstances.¹⁶⁸ This unresolved legal question has significant implications for those affected by the Houston ordinance.

IV. THE ORDINANCE AND THE RELATIONSHIP BETWEEN THE POLICE AND THE MENTALLY ILL

A legal analysis of the ordinance must account for the implications from placing the police as the law's primary enforcers. As a result of

¹⁶⁸ Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant Hoarding under the Fair Housing Act*, 46 SUFFOLK U. L. REV. 79, 97-98 (2013) (warning that a housing provider's use of the direct threat exception to reasonable accommodations as way of preventing an applicant from obtaining housing may constitute disability discrimination based on one's prior symptoms).

deinstitutionalization and other constraints on access to mental health services, a high number of mentally ill individuals are arrested due to a lack of alternatives.¹⁶⁹ Many police officers have donned the role of “street corner psychiatrist” in their experiences with mentally ill individuals and unsavory practices, such as the “mercy booking” of the mentally ill when other options are unavailable, have plagued departments for decades.¹⁷⁰ For those who hoard, the police are often especially viewed with “dread,” compared with social workers and other mental health professionals, due to their power to issue criminal sanctions.¹⁷¹

Moreover, in order to actuate the law, the council has assigned law enforcement primarily to the chief of police, although the council emphasizes the inclusion of other city officials, such as the city attorney and the public health director, as other important figures who may be vital to the law’s

¹⁶⁹ H. R. Lamb, Linda E. Weinberger & Walter J. Decuir Jr., *The Police and Mental Health*, 53 PSYCHIATRIC SERVICES, 1266 (2002).

¹⁷⁰ *Id.* at 1267.

¹⁷¹ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, *THE HOARDING HANDBOOK* 31 (2011).

effectiveness.¹⁷² Nevertheless, city police must not only visit residents, but also exercise their discretion when issuing warnings and, possibly, fines or criminal citations.¹⁷³ Although the police issued only one criminal citation under this ordinance as of October 2018,¹⁷⁴ the mere possibility of criminal sanctions continues to exist. While several members of the Houston city council were careful to emphasize that the law's focus was not to issue criminal sanctions, some members voiced concerns that the police will enforce the law arbitrarily without

¹⁷² HOUSTON, TEX., CODE ch. 10, art. XX, § 10-752(b) (2014) (“The chief of police is primarily responsible for the enforcement of this article, in coordination with the fire chief, the city attorney, the director of public health, the director of the department of neighborhoods and the Director of Houston Public Works, as appropriate to the circumstances of the violation.”).

¹⁷³ *Id.* See also Jayme Fraser, *Enforcement of Hoarding Law Will Hinge on Police*, HOUSTON CHRONICLE (Apr. 16, 2014), <https://www.houstonchronicle.com/news/politics/houston/article/Enforcement-of-hoarding-law-will-hinge-on-police-5408693.php> (Article describing the issues surrounding the enforcement of the ordinance, as well as the relationship between the police department and the local mental health department).

¹⁷⁴ Data Produced by City of Houston Mun. Cts. to author (Sep. 26, 2018 12:59 P.M. EST) (file with author) (the data provided by the city of Houston revealed that only one individual had been fined and convicted under the statute since its inception in 2014. The fine was for \$271.00. While this may indicate that the police are reluctant to issue charges, a single statistic without more is relatively unilluminating. Nonetheless, the author is of the opinion that a single conviction is one too many).

adequate guideposts for determining whether a situation necessitates a warning.¹⁷⁵ These concerns underscore the need for a collaborative, multi-agency approach in which the police one of many players.¹⁷⁶ Thus, since hoarding affects multiple areas of an individual's life, in order for the ordinance to function effectively, officers must not only have a keen awareness of how their words and actions affect those who hoard, but they must also connect these individuals to proper mental health support services.¹⁷⁷ This "carrot and stick" approach will only be effective, however, if officers properly distribute and share their information with other

¹⁷⁵ Houston Television. *April 16, 2014 City Council* (Apr. 16, 2014, 9:00 A.M.), <http://houstontx.swagit.com/play/04162014-568>.

¹⁷⁶ *See supra*. *See also* Christiana Bratiotis, Cristina S. Schmalish & Gail Stekete, *THE HOARDING HANDBOOK* 92 (2011) (remarking that it is advisable for those inexperienced with hoarding behavior and mental illness to be accompanied with a professional who has such experience). *See also* H. R. Lamb, Linda E. Weinberger & Walter J. Decuir Jr., *The Police and Mental Health*, 53 *PSYCHIATRIC SERVICES*, 1269 (2002) (stating that officers should become familiar with disorders and develop good rapport with local mental health professionals).

¹⁷⁷ *See generally* Christiana Bratiotis, Cristina S. Schmalish & Gail Stekete, *THE HOARDING HANDBOOK* 17-19 (2011) (cautioning against displaying signs of judgment and using stigmatizing words or phrases such as "hoarding" or "hoarding disorder" when interacting with an individual who hoards).

agencies and authorities.¹⁷⁸ While officers may appropriately issue criminal sanctions, this approach must be balanced with contact between an appropriate mental health professional and the individual.¹⁷⁹ As first responders, the police are in an ideal position to initiate and maintain this communication with an individual.¹⁸⁰ If an officer fails to establish a relationship between the individual and mental health resources, and simply orders the individual to address the behavior, then, eventual eviction and, in this case, criminal sanctions will likely result.¹⁸¹

Although many police departments have created specialized training for those with mental illness, their effectiveness depends on the department's management.¹⁸² Less is known about officers'

¹⁷⁸ *Id.* at 31 (“coordination of care is a critical component of intervention for hoarding”).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 90.

¹⁸¹ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, *THE HOARDING HANDBOOK* 131 (2011).

¹⁸² *See generally* William Wells & Joseph A. Schafer, *Officer Perceptions of Police Responses to Persons with a Mental Illness*, 29 *POLICING: AN INT’L J. POLICE STRATEGIES & MANAGEMENT* 578, 593 (2006) (Finding that many officers in a survey were generally

training for hoarding situations. While code enforcement officers and social service professionals are more likely trained on how to navigate a hoarding situation, even these professionals often experience a lack of standardized protocol or effective training.¹⁸³ This factor is particularly problematic since situations involving hoarding are often complex, and necessitate a professional with sufficient training in navigating the precarity of the situation.¹⁸⁴ Experts suggest that a collaborative, interdisciplinary training approach is ideal, especially for law enforcement officers who may lack sufficient knowledge and expertise in hoarding situations.¹⁸⁵

dissatisfied with training for situations involving individuals with mental health problems).

¹⁸³ Joseph F. McGuire et al., *Hoarding in the Community: A Code Enforcement and Social Service Perspective*, 39 J. SOC. SERV. RES. 335, 338 (2013) (study of over 200 code enforcement officers and social service professionals which revealed that most participants lacked standardized training and protocol for situations involving hoarding).

¹⁸⁴ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, *THE HOARDING HANDBOOK* 92 (2011) (advising that inexperienced officers should be accompanied by a knowledgeable mental health professional).

¹⁸⁵ *Id.* at 30.

V. ALTERNATIVES TO THE ORDINANCE: TASK FORCES

Hoarding task forces are not uncommon across the country, given the increased awareness and interest in hoarding behavior.¹⁸⁶ One of the driving forces behind a community's attempt to quell hoarding in the community is the cost associated with removal.¹⁸⁷ The removal of possessions from one's home, usually associated with the abatement of a nuisance or other similar infractions, can be expensive, with removal costs approaching \$10 million in some jurisdictions.¹⁸⁸ Moreover, health

¹⁸⁶ See generally Christiana Bratiotis *Community Hoarding Task Forces: A Comparative Case Study of Five Task Forces in the United States*, 23 HEALTH AND SOC. CARE IN THE COMMUNITY 245, 246 (2013). (highlighting that in 2012, approximately 85 hoarding task forces functioned across the world).

¹⁸⁷ See David F. Tolin, Randy O. Frost & Gail Steketee et al., *The Economic and Social Burden of Compulsive Hoarding*, 160 Psychiatry Research 200, 209 (2008). (study which found that the economic impact of hoarding is greater than many other psychiatric disorders and can present a fiscal drain on both an individual and societal level).

See also Joseph F. McGuire et al., *Hoarding in the Community: A Code Enforcement and Social Service Perspective*, 39 J. SOC. SERV. RES. 335, 338 (2013). (study that revealed an average cost of removal of \$3,733 and that more than half of respondents experienced a repeat hoarding individual).

¹⁸⁸ Joseph F. McGuire et al., *Hoarding in the Community: A Code Enforcement and Social Service Perspective*, 39 J. SOC. SERV. RES. 335, 338 (2013).

officers, social workers, and others who attempt to intervene in a hoarding situation often find themselves with a recidivist individual, a sign that the community objective regarding hoarding may not be effective.¹⁸⁹ Other factors that further strain a regional government's limited resources include: many individuals who hoards' frequent need for time-off from work due to complications related to their disorder; and chronic health problems, such as obesity and diabetes.¹⁹⁰ Additionally, while forced cleanouts are a costly, yet popular, method employed by municipalities, they are not a favorable outcome for many hoarders who instead desire mental health treatment.¹⁹¹

Houston has not created such a hoarding task force yet. This is a troubling and problematic outcome from an evaluative standpoint because the ordinance's effectiveness cannot be readily

¹⁸⁹ Christiana Bratiotis, Cristina S. Schmalish & Gail Steketee, THE HOARDING HANDBOOK 129 (2011).

¹⁹⁰ David F. Tolin et al., *The Economic and Social Burden of Compulsive Hoarding*, 160 PSYCHIATRY RESEARCH 200, (2008).

¹⁹¹ *Id.* at 207; See also Carolyn I. Rodriguez et al., *Acceptability of Treatments and Services for Individuals with Hoarding Behaviors*, 11 J. OBSESSIVE COMPULSIVE RELATED DISORDERS 1, 9 (2016).

ascertained, nor can relevant data and information regarding the ordinance be disseminated and discussed with stakeholders. Therefore, Houston must create a hoarding task force, or a committee on the city council, to ensure that the law is effective and not operating contrary to its objectives. To facilitate the structuring and formation of a task force, Houston may analyze the variety of task forces across the country.

One task force in Massachusetts offers insight on how the Houston ordinance, particularly as it relates to the police, can be enforced with positive results for the mental health community.¹⁹² The town of Arlington, Massachusetts created a hoarding task force in 2011 to address a marked rise in hoarding incidents within the town.¹⁹³ The task force consists of various local health, safety, and law enforcement personnel who use a “hazard reduction model” by coordinating information between first responders

¹⁹² TOWN OF ARLINGTON, MASSACHUSETTS HEALTH DEPARTMENT
<https://www.arlingtonma.gov/departments/health-human-services/health-department/housing/hoarding-response-team-hrt>.

¹⁹³ *Id.*

and mental health professionals, with an emphasis placed on rapid response and the establishment of amicable relationships between the individual and those involved in their assistance.¹⁹⁴ Care and conscientiousness is critical to the task force's efficacy, and, if enforcement is needed, a clinician ensures that the individual understands the process and receives adequate assistance.¹⁹⁵ A social worker trained the town police and other emergency personnel on the specific needs in hoarding situations, such as the unique precarity and heightened sensitivity in the intervention process.¹⁹⁶ Social workers continue to provide training to first responders.¹⁹⁷ The task force also implemented a clear chain of command in which emergency personnel are directed to contact both the police department's designated mental health professional and the health department during a hoarding situation.¹⁹⁸ Herein lies a fundamental difference

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

between the Houston ordinance and the Arlington task force: prior to the implementation of the task force, the town feared that many residents who hoard were reluctant to seek assistance from the town's health department for fear of enforcement taken against them.¹⁹⁹ The task force sought to ameliorate this fear by creating a response team composed of various professionals within the community, not just the police alone.²⁰⁰ The Arlington task force is a single example of numerous other task forces and solutions created by communities across the country.²⁰¹ While Houston's solution need not be identical to the one opted for in Arlington, relevant aspects from this, and other, solutions should be molded by the city council in crafting a thoroughly tailored plan that effectively addresses hoarding.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Christiana Bratiotis *Community Hoarding Task Forces: A Comparative Case Study of Five Task Forces in the United States*, 23 HEALTH AND SOC. CARE IN THE COMMUNITY 245, 246 (2013).

VI. CONCLUSION

A city ordinance that targets a specific mental disability and potentially criminalizes its effects deserves a searching inquiry into its effectiveness. The Houston City Council has a plethora of available hoarding-related information that can be used to create a thoughtful, empirically-based solution that ensures that the ordinance is operating effectively—providing one with a meaningful connection to mental health resources. Presently, the ordinance is only useful for individuals who hoard if another person first complains about the individual and then the police are contacted. The ordinance focuses more on the cessation, rather than the treatment, of one's behavior, an aspect neither realistic nor conducive to remedying the underlying causes of hoarding. If these individuals face eviction or the threat of it, requesting a reasonable accommodation under the Texas Fair Housing Act appears as a more valuable and suitable option because it focuses on proactive engagement between the individual and landlord with a focus on compromise. When individuals who

hoard are thrust into the legal terrain, they must be properly equipped and protected in order to safely navigate this murky territory.