



ChangeLab Solutions
Law & policy innovation for the common good.

Model Proactive Rental Inspection Ordinance

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Introduction

ChangeLab Solutions developed this Model Proactive Rental Inspection Ordinance to assist cities and counties that are interested in establishing a local proactive rental inspection (PRI) program. Communities have adopted PRI programs to improve compliance with laws governing housing standards in order to promote health.

Poor housing can contribute to a wide array of health problems, including childhood lead poisoning; asthma and respiratory conditions resulting from exposure to mold, pests, and other household allergens; and increased rates of injury and mortality among the elderly. Poorly maintained, substandard housing can also have a negative effect on neighboring property values and can contribute to blight. By quickly identifying and targeting exterior and interior code violations, proactive rental inspection programs benefit tenants, property owners, and the entire community.

Proactive Rental Inspection Programs

Most localities maintain code enforcement programs to ensure the safety and welfare of their residents. Traditionally, these programs have been complaint-based: in response to a resident's complaint about a substandard housing condition, a municipal code enforcement officer conducts a housing inspection. If the complaint is substantiated, the officer begins enforcement proceedings, which are often lengthy and time-consuming.

PRI programs are different. Under a PRI program, covered rental units are inspected on a regular basis to ensure that they are safe and habitable and that property values are maintained. Typically, inspections take place at designated intervals, though they may also be triggered by an event, such as a change in tenancy. By quickly identifying and targeting exterior and interior code violations, PRI programs benefit tenants, property owners, and the entire community.

State Law, Preemption, and Proactive Rental Inspection Programs

Police power is the inherent power of government to act to protect the health, safety, and welfare of its citizens. Code enforcement is an exercise of that power. The extent of the police power that a locality may exercise is dependent on its state constitution or statutory law.

- In a few states, state law may provide for state-administered code enforcement. In most states, however, code enforcement occurs at the city or county level.
- Some state laws expressly authorize localities to establish a code enforcement program. In other states, the constitution or state law may give localities broad “home rule” power – the authority to enact laws, such as a proactive rental

inspection program – without a specific delegation of power from the legislature.

- State legislatures can also prohibit or “preempt” the authority of localities to enact proactive rental inspection programs by enacting state laws that override or limit a locality’s authority to establish a program.

It is important to review your state law to determine if the authority to establish a PRI program resides with your locality or with your state.

Using This Model

There is no standard PRI program. Programs vary according to the types of rental housing in a city or county, the needs of the particular locality, the availability of resources, and (to an extent) state law. For more information about the various components of successful PRI programs, see ChangeLab Solutions, “A Guide to Proactive Rental Housing Inspection Programs” available at: www.changelabsolutions.org/publications/PRI-programs.

This model ordinance provides the key components of PRI programs and offers options for tailoring the ordinance to meet the needs of your particular locality. In some instances, blanks (e.g., [____]) prompt you to customize the language of the *Model Proactive Rental Inspection Ordinance* to fit your community’s needs. In other cases, the ordinance provides options (e.g., [choice one / choice two]). Some of the ordinance options are followed by comments that describe the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community’s existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

Questions?

If you have questions about the Model Ordinance, please contact ChangeLab Solutions via our website at www.changelabsolutions.org/healthy-housing-ask-us.

Model Proactive Rental Inspection Ordinance

An Ordinance of the [City / County] of [____] Establishing a Proactive Rental Housing Inspection Program and adding Chapter ____ to the [City / County] Municipal Code.

The [City / County] does ordain as follows:

SECTION ONE. Findings. The [City / County] hereby finds and declares as follows:

COMMENT: In new legislation, cities and counties usually include “findings” of fact that support the purposes of the legislation. The findings section is part of the ordinance and legislative record, but it usually is not codified in the municipal codes. The findings contain factual information supporting the need for the law – in this case, documenting the need for and benefits of the ordinance. A city or county may select findings from this list to include in their legislation, and may draft and include additional findings addressing the specific conditions in the particular community.

- (a) The [City Council / County Board] of the [City / County] recognizes that the preservation of existing rental housing stock is of tremendous importance. There are more than [insert number] of rental housing units within the [City / County]. Rental housing provides needed, affordable housing for many and is a valuable asset that must be preserved and maintained. The [City / County] has a significant interest in ensuring that rental housing remains a safe and desirable housing option for its citizens.
- (b) There exists in the [City / County] substandard and unsanitary residential buildings and rental housing units whose conditions violate state and local building, housing, and safety Codes and ordinances. Property owners may be unaware of some hazardous conditions, or may choose not to make the necessary repairs due to costs.
- (c) Substandard and deficient rental housing units are unfit or unsafe for human occupancy and their conditions jeopardize the health, safety, and welfare of their occupants and of the public. Substandard housing conditions pose a particularly acute risk to young children (from lead poisoning or asthma attacks from mold and other air-borne irritants), seniors (from falls), and people with chronic illnesses.ⁱ
- (d) Relying on a complaint-based enforcement program is inadequate to ensure that rental housing properties are safely and adequately maintained. Inspection

authorities often do not receive complaints about rental units with the worst violations of health and safety codes.ⁱⁱ Tenants may fear being evicted or that their rent will be raised for reporting violationsⁱⁱⁱ or may face language or education barriers preventing them from using complaint-based programs.^{iv}

- (e) Deteriorating and substandard buildings and dwelling units also threaten the physical, social, and economic stability of neighboring structures and surrounding neighborhoods and the community as a whole. By ensuring that landlords are aware of poor conditions before they worsen, proactive inspections encourage preventative maintenance, which is more cost effective than deferred maintenance, and thereby helps landlords to maintain their properties.^v Proactive rental inspection programs can ensure that properties don't become blighted, thereby preserving neighboring property values and the local tax base.
- (f) Public interest demands that all rental housing properties comply with the minimum standards regarding the health and safety of the public. The most effective way to seek universal compliance with the minimum standards is through routine, periodic inspections of all rental housing properties. Accordingly, it is the intent of the [City Council / County Board] to enact the provisions of this Chapter to establish a rental housing inspection program to secure [city-wide / county-wide] compliance of rental housing properties with minimum standards. [city-wide / county-wide] compliance will reduce blight and help to ensure that all persons who live in rental housing units are provided decent, safe and sanitary housing.

SECTION TWO. [Chapter] of the [City / County] Municipal Code is hereby added to read as follows:

Article 1. General.

- ___ -1. Title.
- ___ -2. Purpose.
- ___ -3. Definitions.
- ___ -4. Exemptions.
- ___ -5. Applicability.

Article II. Registration and Fees.

- ___ -6. Fees Established.
- ___ -7. Registration and fee required.
- ___ -8. Local Contact Representative.

Article III. Inspections.

- ___ -9. Inspections Required.
- ___ -10. Self-Certification Program.
- ___ -11. Non-exclusivity.
- ___ -12. Notice of Inspection.
- ___ -13. Re-scheduling an Inspection.
- ___ -14. Entry.
- ___ -15. Results of Inspection.

Article V. Enforcement.

- ___ -16. Penalties
- ___ -17. Tenant Protections.

Article VI. Program Review.

- ___ -18. Program Review.

Article I. General

___-1. Title.

This Chapter shall be known as the “Proactive Rental Housing Inspections Code,” and will be referred to herein as “this Chapter.”

___-2. Purpose.

The purpose of this Chapter is to establish periodic, systematic inspection of rental housing within the [City / County] to protect the health and safety of the public, prevent blight, and preserve property values.

___-3. Definitions.

- (a) “Code Enforcement Officer” means a sworn or non-sworn inspector, officer, or investigator, who possesses specialized training in and whose primary duties are the prevention, detection, investigation, and enforcement of violations of laws regulating public nuisance, public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs.

COMMENT: Many proactive rental inspection programs, such as those in Los Angeles and Sacramento, use municipal inspectors or code enforcement officers.^{vi} Code Enforcement Officers are trained in environmental health and nuisance laws, as well as building and construction laws, so they have the skills to ensure inspections address health as well as building safety concerns. Some localities, including Boulder and Baltimore, require property owners to contract with a licensed home inspector.^{vii} In Boston and Seattle, property owners may use public inspectors or authorized private inspectors.^{viii} Practices differ depending on state law, historical practice, or a political or economic decision by a locality not to hire additional municipal employees. The following language provides the alternative to allow the use of private inspectors:

(d) “Inspector” means an employee designated by the Director to perform inspections of rental housing units under this Chapter or a private inspector registered with the city/county as a qualified rental housing inspector who currently maintains and possesses the following credentials: [list qualifications].

- (b) “Common areas” means the areas in a rental housing building that are accessible to all occupants of the property, including, but not limited to, lobbies, laundry rooms, recreation areas, common kitchens, hallways, stairs, courtyards, light wells, garbage areas, boiler rooms, storage rooms, basements, roof areas, or parking garages or areas.

- (c) “Director” means the Director of the [department or agency of the city/county charged with overseeing the Proactive Rental Inspections Program], or his or her designee.
- (d) “Engage in the business of rental housing” means renting or offering to rent a rental housing unit.
- (e) “Owner” means a person, persons, corporation, partnership, limited liability company, or any other entity holding fee title to the subject real property.
- (f) “Rental Housing Unit” means a single unit providing living facilities for one or more persons that has permanent provisions for living, sleeping, and sanitation and is rented or available for rent to tenants.

____-4. Exemptions. All Rental Housing Units shall be subject to the requirements of this Chapter, except for the following:

COMMENT: Cities and counties decide on the types of rental housing to include within their proactive inspection programs. Although the most comprehensive proactive code enforcement program is one that covers all rental housing, some jurisdictions may lack the resources to administer such a broad program, particularly at the outset. For this reason, some jurisdictions consider restricting the types of housing that are subject to the program, and/or phasing the program in.

Covered Housing

The types of housing included are determined by the most pressing needs in the community and by the availability of resources for inspection and enforcement. Below are the types of rental housing that some cities have excluded from their programs. Based on its needs and resources, a locality should determine which of the following types of housing to exempt from its program.

Phasing in New Programs

When a city or county adopts a new proactive inspection program, it is unlikely that it will have the resources to inspect all units citywide at the outset. Most communities implement the registration requirements on all covered rental housing units and phase in the systematic inspections over time. Sacramento, for example, instituted a pilot rental housing inspection program by targeting two neighborhoods, each of which contained a large number of rental properties with a high incidence of dangerous building cases, code enforcement cases, and police and fire calls for service.^{ix} Santa Cruz, California instituted the registration requirement on all covered rental housing, but limited the first phase of inspections to those buildings that have a record of violations or whose owners requested inspections.^x

- (a) Rental Housing Units for transient lodging, including hotels, motels, inns, tourist homes. This exception does not apply to residential hotels.

COMMENT: Non-residential hotels, motels, and other transient housing are also commonly exempted from rental housing inspection ordinances.^{xi} However, vulnerable tenants often live in residential hotels (also known as single-room occupancy hotels) on a long-term basis, so it is important to include them in proactive rental inspection programs.

- (b) Rental Housing Units in a state licensed hospital, hospice, community care facility or nursing home; convent, monastery, or other facility occupied exclusively by members of a religious order; on-campus fraternity or sorority houses; or on-campus housing accommodations owned, operated, or managed by an institution of higher education or secondary school for occupancy by its students.

- (c) Rental Housing Units that are owned, operated by, or receive funding or subsidies from federal, state, or local government entities and are inspected by the governmental entity at least once every five years.

COMMENT: Many cities exempt government-subsidized housing from their programs when it is subject to inspection by another agency.

- (d) Rental Housing Units located within a building of [_____] or fewer units.

COMMENT: Most programs cover multi-unit rental properties, but some programs restrict that coverage to properties with a certain number of units. Los Angeles's Systematic Code Enforcement Program applies to residential properties with two or more units, so long as at least one of those units is rented or offered for rent.^{xii} Washington D.C.'s proactive inspection program applies to all multi-family rental properties with more than three units.^{xiii} Grand Rapids, Michigan recently expanded its registration and inspection program to include single-family rental housing and abandoned and vacant residential properties, as more single-family homes have been converted to rental housing.^{xiv}

- (e) Rental Housing Units located within a building of no more than [_____] units, one of which is occupied by the owner.

COMMENT: Several localities exempt buildings where the property owner lives in one of the units.^{xv} Boston, for example, exempts buildings of six or fewer units if the owner occupies one of the units.^{xvi} The rationale for these exemptions is that buildings where the landowner resides are likely to be adequately maintained.

- (f) Rental Housing Units that have been newly constructed, for a period of [five] years from the issuance of [certificate of occupancy or other similar-type authorization].

COMMENT: Some localities exempt newly-built housing, as most cities require inspections before new housing may be occupied. In Santa Cruz, California, housing built within the preceding five years is exempt from the inspection program.^{xvii}

- ___-5. Applicability. Nothing in this Chapter shall limit or prohibit the authority of City officers or employees from enforcing any other provision of this Code or any state or federal law under their jurisdiction. None of the inspection provisions shall prohibit, condition, or otherwise limit any inspection conducted under any other provision of this Code or other applicable law.

Article II. Registration and Fees.

- ___-6. Fees Established.

COMMENT: The laws of many states prescribe the way a city or county may assess regulatory fees. In many states, there must be a nexus between the activity or the industry burdened with the fee and the purpose for which the fee proceeds will be expended. In addition, the fee must not exceed the cost of providing the service. In some localities, the city council or county board sets specific fee amounts; in others', the legislative body may authorize an official, such as the Director of the agency charged with implementing the Program, to set fees. This section should be altered to conform to state and local law and practice.

- (a) Registration and Inspection Fee. An Owner of any rental housing properties subject to this Chapter shall pay a registration fee of \$ [___] per unit to finance the costs of inspection and enforcement by the [City / County]. This fee shall be paid [annually] by [January 31].

COMMENT: Most cities and counties collect an annual fee to finance their programs. Some localities, such as Grand Rapids, Michigan, do not charge a fee, but assess a significant penalty if an owner fails to register a housing unit.^{xviii}

(b) Re-scheduling Fee. An Owner of a Rental Housing Unit shall pay a fee of \$_____ per unit for re-scheduling an inspection, as required by section ____ - 13.

(c) Re-inspection Fee. An Owner of a Rental Housing Unit shall pay a fee of \$_____ per unit for the re-inspection of any rental property or rental housing unit as required under section ____ -15(d).

(d) Self-Certification Fee. An Owner of a Rental Housing Unit shall pay a fee of \$_____ per unit in the Self-Certification Program as provided under section ____ -10.

____-7. Registration and fee required.

(a) It shall be unlawful for any Owner to Engage in the Business of Rental Housing, unless:

(1) Each Rental Housing Unit is registered with the [City / County] and

(2) The Proactive Rental Inspection Program fee is paid for each Rental Housing Unit.

COMMENT: Many localities require owners of rental housing units to register their properties. In lieu of a registration requirement, some localities require property owners to obtain a license before renting a housing unit. To ensure the habitability of rental units prior to tenant occupancy, localities may require an inspection as a prerequisite to a license. Examples of communities that use a licensing approach are Boulder, Colorado and Baltimore County, Maryland.^{xix}

(b) A Rental Housing Unit is registered with the [City / County] when the Owner of the rental property submits a completed registration form, made available by the [City / County], signed under penalty of perjury to [department or agency of the City / County charged with overseeing the Proactive Rental Inspections Programs]. The registration form must contain the following information:

(1) Description of the rental housing property, including, but not limited to, the street address and Assessor's Parcel Number;

(2) Number and address or other description of all Rental Housing Units on the rental housing property;

(3) Name and current contact information for the Owner of the rental housing property;

(4) Name and current contact information for the Local Contact Representative, as described in section ____-8, below;

COMMENT: Having a local contact is important so that in the event of an emergency, the city can immediately contact someone to help resolve the situation. In addition, it aids in the implementation and enforcement of the program to ensure that the city can easily serve notices affecting the property.

(5) Name, address, and telephone number of the person or entity that a tenant is to contact when requesting repairs be made to their Rental Housing Unit and the contact's business relationship to the Owner;

(6) The date, location, and type of violation(s) for all Rental Housing Units on the rental property for which the Owner has been cited in the past [three] years; and

(7) Any other information reasonably required by the Director to carry out this Chapter.

(c) Effective January 1, _____, the registration requirement established by this section shall go into effect. Initial registration of rental housing units is due within [30] days of January 1, _____. After the initial registration, the owner shall register each housing unit [annually] within [30] days of January 1, or a change of ownership.

COMMENT: Jurisdictions vary in how frequently they require registration renewal. For example, Kansas City, Missouri requires annual registration.^{xx} Some localities require registration to be updated when there is a change in ownership, in addition to or in place of renewal on a fixed term basis. Jurisdictions can simplify matters if they coordinate fee payment with the registration.

____-8. Local Contact Representative.

(a) Each Owner of rental housing property shall designate a Local Contact Representative with full authority to act on behalf of the Owner for all purposes under this Chapter, including the acceptance of service of all notices from the [City / County]. The Owner of the rental housing property may act as the Local

Contact Representative.

- (b) A Local Contact Representative shall establish and maintain a local telephone number and a residence or business address within the jurisdiction of the [City / County]. All official notices served on the Local Contact Representative shall be deemed to have been served on the Owner.

Article III. Inspections.

-9. Inspections Required.

- (a) All rental housing properties and Rental Housing Units are subject to routine, periodic inspections, as provided by this Chapter, to ensure that the rental housing complies with [all applicable building, housing, and sanitation Codes and ordinances or specify provisions of the applicable state or local code enforcement laws].
- (b) If there are multiple housing units on a single rental housing property, the Code Enforcement Officer shall inspect the exterior of the property, all Common Areas, and a random sampling, selected by the Code Enforcement Officer, of no fewer than [ten percent] of Rental Housing Units, but at least [two] units. If the Code Enforcement Officer determines that one or more violations exist on the property, the Code Enforcement Officer may conduct an inspection of additional units up to 100 percent of the units.

COMMENT: Sampling

Often, cities and counties cannot devote the resources necessary to inspect every unit in large multi-unit buildings. Instead, these localities use sampling formulas. In Sacramento, the inspection of a multi-unit building includes all common areas and a random sampling of no less than ten percent of rental housing units. If the inspector determines that a property is in violation of any standard, the inspector is authorized to inspect additional, or all, units of that property.^{xxi} Seattle uses a different formula: in buildings containing 20 or fewer units, a minimum of two units must be inspected. In buildings containing more than 20 units, 15 percent of the rental units must be inspected, up to 50 rental units in each building.^{xxii} As described more fully below, the inspector must provide advance notice to the tenants in each unit in which the interior is inspected. Therefore, if the enforcement officer selects the units to inspect at the location, notices should be sent to all tenants.

Exterior and Common Area Inspections Only

In some cities, such as Kansas City, Missouri, the proactive rental housing inspection program inspects only exterior buildings, yards, and, sometimes, common areas of

buildings.^{xxiii} Other cities allow interior inspections only of vacant units. Exterior inspections can help to identify nuisances and blighted property, and prevent crime and fires. Analysis of data from the American Housing Survey, conducted by the Census Bureau for the Department of Housing and Urban Development, found that exterior and interior conditions are related: the greater the number of certain exterior problems, the more likely that housing has associated interior problems. For example, a sagging roof indicates interior problems with pests and/or moisture.^{xxiv} An exterior inspection alone, however, can't identify unsafe and substandard conditions, such as electrical, plumbing, and structural problems, that reside within the rental unit. Where a community faces obstacles to systematic interior inspections, beginning a program with exterior inspections and vacant unit inspections may be one strategy for starting a program.

(c) Frequency of Inspections.

All rental housing properties shall be inspected initially, within [60] days of registration, once every [three] years thereafter, or more frequently if the Director determine the property poses a risk of harm to its tenants based on the following factors:

- (1) The current condition of the premises, including the number, nature, and severity of violations found;
- (2) Whether, within the [three] prior years:
 - (A) A Code Enforcement Officer has found violations on the property;
 - (B) The Owner or manager of the property has other properties found in violation of [City / County housing code];
 - (C) Delinquent fees have been assessed on the property;
 - (D) The Owner is delinquent in paying property taxes or utility bills; or
- (3) Other criteria determined by the Director that indicate the presence of health or safety violations.

COMMENT: Proactive rental inspection programs rely on systematic inspections to ensure that property owners adequately maintain rental housing. Jurisdictions vary in how frequently they require rental housing property to be inspected. Baltimore County, Maryland and Los Angeles, for example, require an inspection every three years.^{xxv} Boulder, Colorado requires an inspection at registration, upon renewal of a rental license – generally every four years – or upon transfer of ownership.^{xxvi}

The frequency with which localities elect to conduct these inspections is often heavily dependent on the extent of a locality's resources.

A number of localities set a baseline standard for the frequency of inspections and then allow for deviation from that standard based on a property's record of compliance. Some cities require less frequent inspections once a property owner establishes a record of compliance. Grand Rapids, for example, conducts inspections when owners apply for a certificate of compliance, which is a prerequisite for occupancy.^{xxvii} The certificate is valid for two, four, or six years, depending on the record of compliance, the presence or absence of violations, and the degree of compliance with the program's registration and fee requirements.^{xxviii} Boston sets a baseline inspection schedule of every five years, but requires more frequent inspections for problem properties.^{xxix} The language above can be tailored to set baseline standards and more or less frequent inspections based on the property's record of compliance.

__-10. Self-Certification Program.

COMMENT: A number of cities allow property owners to “graduate” into self-certification programs if they have established a record of passing inspections with no violations. Self-certification allows cities to allocate their limited resources to properties most in need of inspections. It can also provide an incentive for property owners to ensure that their property complies with all applicable codes. Cities may wish to impose lower fees on properties in the self-certification program as a further incentive for property owners to maintain their rental properties. In Sacramento, rental housing properties are initially subject to routine periodic inspection by the city.^{xxx} Rental housing property may be placed in the self-certification program if: (1) the inspector has found no violations, or all violations identified in the initial inspection were abated within 30 days; (2) the property owner and local contact representative are in compliance with all of the provisions in the housing code; and (3) the property owner is not delinquent on any payments to the city of fees, penalties or taxes.^{xxxi}

(a) Qualification. A rental housing property shall be placed in the Self-Certification Program if all of the following circumstances exist:

- (1) After the last inspection conducted pursuant to this Chapter, the Code Enforcement Officer determines that no violations exist on the property or violations identified were abated within the [30] day period;

[Alternative language: After the last inspection conducted pursuant to this Chapter, the Code Enforcement Officer determines that no violations exist on the property and no violations existed within the past [three] year period;]

- (2) The Owner and Local Contact Representative are in compliance with all applicable provisions of this Chapter; and
- (3) The Owner is not delinquent on any payment to the [City / County] of property or other taxes, fees, penalties, or any other monies related to the property.

[(4) The Owner and Local Contact Representative have completed the Landlord education training provided by [City / County].

COMMENT: Some jurisdictions may want to ensure that owners and the Local Contact Representatives have training on their safe housing obligations before allowing them to move into the self-certification program. Jurisdictions provide landlord and tenant education in a variety of ways. In Sacramento, the Rental Housing Association provides a free class for landlords on their PRI ordinance.^{xxxii} Boston's Inspectional Services Department holds monthly seminars for landlords to discuss the rental registration program and inspection process. Jurisdictions could also develop an on-line training module or require owners to review materials on safe and healthy housing.

- (b) Removal from the Program. A rental housing property may be removed from the Self-Certification Program if any of the following circumstances occurs:
 - (1) The rental housing property is in violation of this Chapter or any other provision of law, even if the violation is abated within [30] days; or
 - (2) Any of the circumstances set forth in subsection (a) of this section cease to exist.
- (c) Self-Certification. Owners of rental housing properties that are in the Self-Certification Program shall certify, under penalty of perjury, that each rental housing unit on the property is in compliance with all [building, housing, and sanitary] codes annually [by no later than _____, and upon each change in tenancy]. Self-certification shall consist of the following:
 - (1) The Owner, or his or her designee, shall inspect all Common Areas and each unit for compliance with the requirements of Self-Certification as provided by the [City / County];
 - (2) The Owner shall repair immediately any conditions necessary to achieve

compliance with the Self-Certification requirements;

(3) The Owner shall complete the Self-Certification documentation and submit the form to the [City / County] and to the occupants of the corresponding rental housing unit.

(4) In the event that any rental housing unit cannot be self-certified due to conditions of the property or an inability to repair conditions, the Owner must immediately notify the [City / County agency].

(d) Random Inspections. The City may inspect rental housing properties and Rental Housing Units in the Self-Certification Program on a random basis, but not more frequently than once per year.

____-11. Non-exclusivity. None of the inspection provisions in this Chapter shall prohibit, condition, or otherwise limit any inspection conducted pursuant to this code or other applicable law.

____-12. Notice of Inspection.

(a) The Director shall serve written notice of the date and time of any inspection to be conducted under this Chapter, by mailing such notice by first class mail at least [14] calendar days prior to the date of inspection. The Director shall mail the notice to the occupants of each Rental Housing Unit, the Owner, and the Local Contact Representative to the addresses provided on the registration application, as described in section ____-7. [The Director shall also post official notice of the inspection in a common area of the rental property.] In the case of multiple Owners of the same property, notice to any one of the Owners shall comply with the notice requirement under this section.

COMMENT: Notice to tenants is essential to inform them about the purpose and process of inspections, allay fears, and encourage tenants to permit entry. Giving a tenant notice of the scheduled date and time of an inspection can also increase the likelihood that a tenant will be home and available to permit the Code Enforcement Officer to enter. Notice can also alleviate some privacy concerns that residents may have by giving them the opportunity to, in advance of inspections, store personal items that are unrelated to code enforcement. Notices should be clearly worded and provided in a manner that takes into account language and other communication barriers. In developing notices and other materials to support a periodic rental inspection program, it is important to look at local government policies for guidance on language access. Depending on the applicable federal, state, and local laws,

translation of the notice into commonly spoken languages may not only be a best practice, it may be a requirement.

___ - 13. Re-scheduling an Inspection. An Owner or Local Contact Representative may reschedule an inspection once by [contacting the Director's office] at least [five] calendar days prior to the scheduled inspection date. A rescheduled inspection must occur within [14] calendar days of the original inspection date. Violation of this section shall result in the imposition of a re-scheduling fee.

___ -14. Entry.

- (a) The Owner or Local Contact Representative shall provide the Code Enforcement Officer with access to all common areas and vacant units on the rental housing property.
- (b) The Owner or Local Contact Representative is responsible for obtaining the consent of the tenant of the Rental Housing Unit for the Code Enforcement Officer's entry to inspect the unit. If the tenant does not consent to the entry for inspection, the Director is authorized to seek an inspection warrant from a court of competent jurisdiction. If a tenant or occupant of a rental housing unit refuses to allow the inspection, the Owner is not in violation of this section.
- (c) If the Code Enforcement Officer has reasonable cause to believe that the rental housing unit is so hazardous, unsafe, or dangerous as to require immediate inspection to safeguard the public health or safety, the Code Enforcement Officer shall have the right to immediately enter and inspect the premises and may use any reasonable means required to effect the entry and make an inspection.

COMMENTS: Under the 4th Amendment to the U.S. Constitution, tenants have the right to be secure in their homes against unreasonable searches. At the same time, state and local police power may authorize laws that are reasonably related to the public health, safety, and welfare of residents. The U.S. Supreme Court has recognized that local inspection powers are of "indispensable importance to the maintenance of community health."^{xxxiii} A government agent's entry into a private home without the tenant's consent is presumed to be unreasonable, unless there are emergency circumstances or a warrant to justify the intrusion.^{xxxiv} Therefore, a Code Enforcement Officer must have affirmative consent from the resident prior to or at the time of the inspection. Programs may allow a Code Enforcement Officer to obtain tenant consent for entry at the time of the inspection^{xxxv} or through a pre-inspection consent form.^{xxxvi}

Where necessary, the model ordinance allows the locality to seek an administrative inspection warrant from a court. State laws vary on the procedures an agency must follow, so review state law before including this provision.^{xxxvii} An alternative is to permit a Code Enforcement Officer to obtain access to a unit when a tenant refuses entry, only if a Code Enforcement Officer has reasonable cause to believe that the rental housing unit is so hazardous, unsafe, or dangerous as to require immediate inspection to safeguard the public health or safety.

Proactive rental housing inspection programs bring code enforcement officers into contact with a broader cross-section of residents than do complaint-based programs – including many residents who have not affirmatively sought out housing inspections. In order to help educate tenants and landlords about rental housing inspections, allay resident concerns, and ensure effective implementation of inspections, successful programs use community education and have involved community members and nonprofit organizations in the implementation of their programs. See *A Guide to Proactive Rental Housing Inspection Programs* (www.changelabsolutions.org/publications/PRH-programs) for more information.

____-15. Results of Inspection.

- (a) If the Code Enforcement Officer finds no code violations, the Code Enforcement Officer shall issue a notice of compliance that shall state in plain language that the property is in compliance with all applicable laws. The Code Enforcement Officer shall mail the notice to the occupants of each rental housing unit, the Owner, and the Local Contact Representative to the addresses provided on the registration application, as described in section ____-7.
- (b) If upon inspection, the Code Enforcement Officer discovers one or more violations of this Code and any other applicable law, the Director shall cause to be issued a notice and order to the Owner and Local Contact Representative to correct the violations. The order shall state in plain language the violations of law found and the sections of law with which the property is not in compliance. The order shall also state that failure to correct the violations may result in additional inspection fees under section ____-15 and other enforcement actions. The Director shall mail the notice and order to the occupants of each Rental Housing Unit, the Owner, and the Local Contact Representative to the addresses provided on the registration application, as described in section ____-7.
- (c) If the Director determines that the conditions pose a present, imminent, extreme and immediate hazard to health or safety, he or she shall order abatement of the conditions within 48 hours. Within 24 hours after the time to abate, the Director

shall conduct a re-inspection of the property or rental housing unit to determine compliance with the order. If the condition has not been abated, the Director is authorized to make the necessary repairs to ensure immediate repair of dangerous, life-threatening conditions.

- (d) Except as provided in subsection (c), the Director shall specify a reasonable time period for correction of the violations, depending on the severity of the condition, between [48] hours and [30] days from receipt of the order to correct the violations and schedule a re-inspection of the property. The [City / County] shall impose a fee for the additional inspection required under this subsection. The [City / County] may also commence any enforcement action as provided in this Chapter, including, but not limited to those in Article V.
- (e) Except for conditions specified in subsection (c), if the violation has not been corrected by the compliance date, but the Owner has made significant progress in correcting the violation since the prior inspection, the Director may grant a single extension of time not to exceed [30] days. In determining whether to grant the extension of time, the Director shall consider the factors listed in ____ - 9(c).

COMMENT: Cities and counties vary in the length of time given to Owners to correct violations. Sacramento gives Owners 30 days to correct violations.^{xxxviii} Los Angeles allows 30 days to correct, unless the condition “poses a serious risk to the health or safety of the occupants or the public,” in which case the Owner has 14 days to correct the violation.^{xxxix}

Article V. Enforcement.

COMMENT: State and local laws dictate the type and means of enforcement permitted by local governments. The major forms of enforcement are civil enforcement through law suits obtaining injunctive relief or civil monetary penalties; administrative enforcement by the city or county resulting in fines or revocations of licenses or permits, and criminal enforcement. In many cities or counties, the penalties or procedures for enforcement may not be separately stated in the new law. Instead, the penalty provision is contained in state law or in another chapter or section of the local government’s municipal code. For general information on enforcement of housing ordinances, please see ChangeLab Solutions’ fact sheet: *Healthy Housing through Proactive Rental Inspection* (www.changelabsolutions.org/publications/healthy-housing-laws-work).

Having a variety of enforcement remedies is the most effective way to ensure compliance with the law. Most cities and counties already have a complaint-based code enforcement program with enforcement mechanisms and will integrate those enforcement methods into the periodic inspection program. Below are some standard sample enforcement clauses. A local attorney

should draft the enforcement clauses to ensure that they conform to state and local law and procedures.

____-16. Penalties.

- (a) If, after re-inspection of the property, pursuant to section ____-14(c), the Owner fails to correct the conditions in violation of the law, the [City / County] may seek compliance by any remedy allowed under this Code or state law.
- (b) Any person who violates a provision of this chapter shall be guilty of a misdemeanor.
- (c) Any person or entity that violates a provision of this chapter shall be liable for a civil penalty of up to [\$1,000.00] for each day the violation is committed or permitted to continue. The penalty shall be assessed and recovered in a civil action brought by the [City / County] attorney in a court of competent jurisdiction. The [City / County] shall be entitled to the costs of enforcing this chapter, pursuant to a court order.
- (d) Any person who violates any of the provisions of this section shall be subject to an administrative penalty not to exceed [\$100] per day for each violation. Administrative penalties authorized by this section shall be assessed, enforced and collected in accordance with section [] of this Municipal Code.
- (e) The [City / County] may collect any judgment, fee, cost or charge, including any fees, late charges, or interest, incurred under this Chapter that has not been paid within [45] days of notice thereof, as provided under [cite to the applicable provisions in the City/County municipal code]. Any Owner who fails to pay any judgment fee, cost or charge, will be subject to the placement of a lien against the rental housing property that is the subject of the fees, costs, or charges.
- (f) The remedies provided in this Chapter shall be cumulative and not exclusive of any other remedies available under federal, state, or local laws.

COMMENT: As noted above, cities will integrate their existing enforcement mechanisms into their proactive inspection program ordinance. Included within enforcement, of course, is the right to an administrative and judicial appeal of any decisions made by the agency.

____-17. Tenant Protections.

- (a) Retaliatory Eviction. It shall be unlawful for an Owner to recover possession of a rental housing unit in retaliation of a tenant for exercising his or her right to file a complaint with the [City / County] advising that a building, housing, sanitation Code or ordinance violation or permit violation may exist on the property.
- (b) Rent Increase or other Retaliatory Actions. If an order is made under Section [cite to the applicable provisions in the City / County municipal code], the Owner shall not:
 - (1) Increase the rent for the existing tenants of any rental housing unit that is the subject of the order from the date of the order to a period of [one year] after the Director determines that the Owner has complied with the order or
 - (2) Engage in other types of retaliatory conduct, including, but not limited to, depriving the tenants of use of the premises, decreasing services, or otherwise interfering with the tenants' rights under the lease.
- (c) Relocation costs. If the Director finds it is necessary to vacate any rental housing unit because of an unsafe or unsanitary condition, or to correct any violations, the costs and expenses of any tenant shall be the responsibility of the Owner.

COMMENT: State law may protect tenants from retaliatory action, but it is important to ensure that those protections are in place. Funded tenant relocation assistance programs help ensure that displacement resulting from code enforcement efforts doesn't result in housing instability and homelessness, which have significant negative health impacts.^{xl} Los Angeles, for example, has a Tenant Relocation Assistance Program, which entitles a tenant to financial assistance from the property owner to find new housing.^{xli} State or other local laws (such as rent control laws) may also address rent increases, particularly how the cost of property improvements may be passed to tenants. Some states prohibit local governments from imposing rent control laws, which may impact the localities ability to limit rent increases. It is important to ensure that the PRI program provisions are consistent with these other laws.

Article VI. Program Review.

- ____-18. Program Review. Beginning on [_____] and annually, thereafter, the Director shall report to the [City Council / County Board of Supervisors] on the activities of the Proactive Rental Inspection Program, including, but not limited to: (1) the

number of rental units registered (including details about any previously unidentified housing units that have been discovered); (2) the number of rental units inspected; (3) Owners' compliance in allowing inspections to be completed within the timeframe; (4) the number of inspections finding violations; (5) the types of violations found; (6) the number of units that were not brought into compliance within the timeframe; (7) the number of inspections that have resulted from complaints; (8) an evaluation of whether the program fees reflect the program costs and recommendations for any changes to the fee structure; (9) a description of the number of cases requiring enforcement and the enforcement measures used; (10) a comparison of this year's activities to prior years; (11) the number and types of referrals to other agencies (i.e., Child Protective or Adult Protective Services) and (12) any recommendations for modifications to the Program.

- i Krieger J, and Higgins D., “Housing and Health: Time Again for Public Health Action.” *Public Health Matters*. 2002;92(5):758-768; U.S. Department of Housing and Urban Development, Federal Healthy Homes Work Group, “Advancing Healthy Housing: A Strategy for Action.” Page 14. 2013. Available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/advhh
- ii District of Columbia, Dept. Consumer and Regulatory Affairs. Public Roundtable on the Department of Consumer and Regulatory Affairs, Proactive Housing Inspections Program. Testimony of Linda K. Argo, Director (Dec. 16, 2009). (“It is well known, however, that a complaint response program does not result in all rental units meeting health and safety standards because not all substandard units are reported to the City. There are a variety of reasons why substandard rental housing isn’t always reported, including language and cultural barriers and the fact that some renters are afraid of the potential consequences of reporting problems such as a rent increase, or a worsened relationship with the landlord.”); Available at http://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/DCRA%2520Proactive%2520Housing%2520Inspections%2520Program%2520%252012_16_09.pdf
- iii See CDC, Building Blocks for Primary Prevention: Protecting Children from Lead-Based Paint Hazards (Oct. 2005). www.afhh.org/buildingblocks/docs/BuildingBlocksforPrimaryPrevention.pdf at 187 (“[Tenants] may be reluctant to complain out of fear of retaliation by the landlord.”)
- iv *Id.*
- v Poor and deferred maintenance can lead to both increased maintenance costs and increased health expenditures. For example, deferring maintenance can lead to a failure to discover water leakage, which may lead to further structural damage, the accumulation of mold, and the degradation of hazardous materials that contain toxins like asbestos or lead. See, e.g., Susan Kay Cummins & Richard Joseph Jackson, “The Built Environment and Children’s Health 6.” 2001. Available at http://198.246.124.22/healthyplaces/articles/the_built_environment_and_children_health.pdf
- vi Los Angeles, Cal. Housing Code § 161.351; Sacramento, Cal. Ordinance No. 2013-0013, § 8.120.080 (May 28, 2013).
- vii Boulder, Colo. Rev. Code of Ordinances § 10-3-7(b)(1); Baltimore County, Md. Code of Ordinances § 35-6-107(b).
- viii Boston, Mass. Municipal Code § 9-1.3; Seattle, Wash. Municipal Code § 22.214.020(9).
- ix Report to Council, City Council of Sacramento, Proposed Residential Rental Housing Inspection Pilot Program, (Mar. 28, 2006). Available at http://sacramento.granicus.com/MetaViewer.php?meta_id=67355&view=&showpdf=1
- x Santa Cruz, Cal. Municipal Code § 21.06.050.
- xi Los Angeles, Cal. Housing Code § 161.301.
- xii *Id.*
- xiii City of Washington, D.C. Department of Consumer and Regulatory Affairs, “What is the Proactive Inspections Program?” Available at <http://dcra.dc.gov/book/about-proactive-inspections/what-proactive-inspections-program>.
- xiv Grand Rapids, Mich. Municipal Code § 901.2 (within Title VIII, Chapter 140: Property Maintenance Code).
- xv See also Los Angeles, Cal. Municipal Code § 161.301 (exempting dwelling units within a condominium).
- xvi Boston, Mass. Municipal Code § 9-1.3.
- xvii Santa Cruz, Cal. Municipal Code § 21.06.030(B).
- xviii City of Grand Rapids, Code Compliance Division. “Rental and Vacancy Property FAQ’s.” Available at: <http://grcity.us/community-development/Code-Compliance-Division/Pages/Rental%20and%20Vacant%20Property%20FAQ's.aspx>
- xix Boulder, Colo. Rev. Code of Ordinances § 10-3-2; Baltimore County, Maryland Code of Ordinances § 35-6-105.
- xx Kansas City, Mo. Code of Ordinances § 56-352(b).
- xxi Sacramento, Cal. Municipal Code § 8.120.080(B).
- xxii Seattle, Wash. Municipal Code § 22.214.050(G)(1).

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- xxiii Kansas City, Mo. Code of Ordinances § 56-363.
- xxiv National Center for Healthy Housing, “Relationship between Interior Problems and Exterior Problems Based on the American Housing Survey - 2009 National Data for Occupied Housing.” National Center for Healthy Housing. Available at www.nchh.org/Portals/0/Contents/Interior_and_Exterior_2009_National.pdf
- xxv Baltimore County, Md. Code of Ordinances §§ 35-6-107, 35-6-108; Los Angeles, Cal. Housing Code § 161.353.
- xxvi Boulder, Colo. Rev. Code of Ordinances § 10-3-3.
- xxvii Grand Rapids, Mich. Municipal Code § 1000.1.
- xxviii *Id.* at § 1000.3.
- xxix Boston, Mass. Municipal Code § 9-1-3(a) and (f).
- xxx Sacramento, Cal. Municipal Code § 8.120.080.
- xxxi *Id.* at § 8.120.150(A).
- xxxii See Rental Housing Association of Sacramento Valley at: www.rha.org/displaycommon.cfm?an=1&subarticlenbr=213
- xxxiii *Camara v. Municipal Court of City & County of San Francisco*, 387 U.S. 523, 537 (1967) (quoting *Frank v. Maryland*, 359 U.S. 360, 372 (1959)). See also, *id.* at 535 (“The primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety.”).
- xxxiv *Id.* at 528-529.
- xxxv See, e.g., Los Angeles, Cal. Municipal Code § 161.601 (“This authority shall be subject to the following limitations: (1) If the premises is occupied, the General Manager shall first present proper credentials to the occupant and request entry explaining his reasons... If entry is refused or cannot be obtained, the General Manager shall have recourse to every remedy provided by law to secure lawful entry and inspect the premises, including but not limited to securing an inspection warrant pursuant to California Code of Civil Procedure.”).
- xxxvi See, e.g., City of Sacramento, Rental Housing Inspection Program, “Tenant Consent to Inspect Rental Housing Units.” Feb. 7, 2012. Available at <http://portal.cityofsacramento.org/~media/Files/CDD/Code%20Compliance/Programs/Rental%20Housing/RHIPTenantConsent2-7-2012.ashx>
- xxxvii The U.S. Supreme Court, in a challenge to a San Francisco housing inspection program, clarified that administrative searches, such as routine housing inspections, do not require the same showing of particular probable cause to validate an inspection warrant as required with a criminal search warrant. Instead, any reasonable legislative program or standards that clarify why a unit is subject to inspection will satisfy the “cause” requirement of an administrative warrant. *Camara v. Municipal Court of City & County of San Francisco*, 387 U.S. 523, 538-39 (1967) (“[I]t is obvious that ‘probable cause’ to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.”). Some states may have particular statutes addressing the requirements. See, e.g., Cal. Code of Civ. Proc. § 1822.52 (California has enacted into law the standard required for administrative warrants); N.C. Gen. Stat. Ann. § 160A-424(a) (narrowly defining “reasonable cause” for the purpose of preemption).
- xxxviii Sacramento, Cal. Municipal Code § 8.120.120(A).
- xxxix Los Angeles, Cal. Municipal Code § § 161.704.1; 161.704.4.
- xl Ma, C, Gee, L. Kushel, M., “Associations Between Housing Instability and Food Insecurity with Health Care Access in Low-Income Children.” *Ambulatory Pediatrics*. 8(1):50-57, 2008; Kushel, M., et al. “Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans.” *Journal of General Internal Medicine*. 21(1):71-77, 2006; Reid, K, Vittinghoff, E. and Kushel, M., “Association between the Level of Housing Instability, Economic Standing and Health Care Access: A Meta-Regression.” *Journal of Health Care for the Poor and Underserved*. 19(4): 1212-1228, 2008.
- xli Los Angeles, Cal. Municipal Code § 163.02 *et. seq.*