Code enforcement

Overview

State and local governments enact housing and building codes to require that residential properties meet minimum health and safety standards.

To ensure compliance with housing and building codes, cities, towns, and counties will need to engage in code enforcement activities. Housing and building code enforcement not only helps to ensure the habitability of specific properties that are in violation of the code, but also helps to keep surrounding homes safe. A home that shows clear signs of abandonment and neglect, for example, may be a target for criminal activity that compromises the safety of neighboring residents. Cities, towns, and counties take different approaches to code enforcement depending on local circumstances. Some jurisdictions adopt adversarial models focused on penalizing violators, whereas others adopt cooperative models focused on helping owners bring their properties into compliance. Housing code enforcement may take place at administrative, civil, and/or criminal levels. Some jurisdictions rely primarily on residents to report possible violations, while others take a more proactive approach and conduct windshield surveys or other inspections on a regular basis. Building code enforcement is undertaken by a local department of buildings, and is typically carried out by reviewing design plans and issuing permits when new construction or renovation is going to be undertaken.

Housing code inspection models

Code inspection models can either be proactive or reactive. Under proactive models, the enforcement agency conducts routine inspections of all covered rental housing. Inspections occur periodically, regardless of whether the renter has made a complaint. Periodic inspections do not replace complaint-based inspections, however – inspections are also conducted in response to tenants’ reporting of possible violations.

It is generally considered that proactive inspections can lead to earlier identification of violations and the reduction of complaints over time. Proactive models are also understood to benefit vulnerable renters who may not be knowledgeable about the complaint system, may fear retaliation from their landlords if they complain, and/or who may lack the language skills necessary to navigate the complaint system. Undocumented renters may be particularly reluctant to use complaint-based systems
because of these barriers. Proactive inspection programs can also benefit property owners by helping them become aware of defective conditions before they worsen and by incentivizing preventive maintenance.

Reactive inspection models, by contrast, are complaint-based. Inspections occur only when tenants report possible violations. Because reactive inspection programs rely on residents reporting, the code enforcement agency is less likely to be aware of all violations that exist in the locality. Vulnerable tenants, who fear retaliation and/or are not knowledgeable about the reporting system, may be reluctant to make complaints. Thus, housing inhabited by these residents is likely to fall outside the radar of the code enforcement agency.

**Housing code enforcement models**

There are two primary models of housing code enforcement, known as the “traditional” model and the “cooperative compliance” or “facilitative” model. Under the traditional model, code enforcement officers are focused almost entirely on conducting inspections and issuing violations. Once a code officer issues a violation, the property owner is notified and is given a certain amount of time to comply. If the property owner does not comply within that time period, he or she will face sanctions, such as financial penalties. This model is often criticized for leading to outcomes in which property owners make the bare minimum repairs in order to avoid being fined.

Under the cooperative compliance/facilitative model, code enforcement officers work with property owners to help them bring their properties into compliance. This model is far less adversarial than the traditional model. Code enforcement officers will educate property owners about healthy housing and will introduce them to financial resources that will help them make necessary repairs. Proponents of the cooperative compliance model believe that it can lead to owners making more substantial repairs than what is legally required.

**Levels of housing code enforcement**

There are three main levels of enforcement of the housing code: administrative, civil, and criminal. Administrative enforcement is carried out within the local government. In general, the code enforcement officer first provides notice of the violation to the property owner. If the violation is not remedied within the requisite allotted time, the city can order a number of different sanctions. These include assessing administrative penalties, issuing an order that the violation be removed, or suspending a license or permit. Some localities have the authority to impose a lien on the property if the property owner fails to pay the penalties. The property owner generally is able to appeal the city’s determination and sanctions through an administrative hearing, and
then to an appellate board or trial court.

Civil enforcement, by contrast, begins in the court system. The city will file a lawsuit seeking an order that the violation be repaired and sometimes that penalties be imposed if the owner fails to do so. Localities generally only pursue civil enforcement in egregious cases where administrative enforcement has been unsuccessful in remedying the violation, or where the property poses health or safety threats. Criminal enforcement is the least common type of housing code enforcement. In jurisdictions that have criminalized housing code violations, a violation is usually considered a misdemeanor or an infraction.

Criminal enforcement may be initiated by a district attorney or a city attorney. Housing code enforcement through the criminal system is generally considered a strategy of last resort that should only be used where the other enforcement options have failed to yield results.

**Building code enforcement**

Local building departments enforce building codes. When new construction or renovation is being undertaken, owners submit plans to the building department, the department decides whether to issue a permit, and then inspectors employed by the building department verify compliance. Building departments also decide whether to issue occupancy permits. Except in certain circumstances, such as when a building is significantly renovated or altered or there is a change in the building’s use, buildings are only required to comply with the code requirements that were in effect when the building was designed and constructed. In other words, the law does not generally require already-constructed buildings to be improved whenever the code changes.

Owners who violate building codes are subject to the assessment of fines, typically after being given notice and time to correct. Much like in the housing code context, there are two competing philosophies to obtaining voluntary code compliance: deterrence and facilitation. Enforcement models based on the deterrence perspective typically involve frequent inspection of construction activity, uniform and strict application of code and permit requirements, and the use of severe sanctions (such as stop work orders, fines, and the partial demolition of unauthorized structures) to deter violations. Enforcement models grounded in the facilitative perspective focus on achieving voluntary compliance through good working relationships with designers and contractors. Under these models, the enforcement agency uses general, flexible guidelines in assessing compliance (focusing on achieving enforcement goals rather than the strict letter of the law), offers incentives such as relaxed inspection schedules and leniency when violations are detected in order to reward those who make a good
faith effort to comply, and provides technical assistance to improve the capacity of builders and contractors.

For more information about building code enforcement, see Housing and Building Codes.

**Funding code enforcement programs**

Code enforcement programs must be sufficiently funded in order to be effective. In many jurisdictions, state law limits how local governments may fund their code enforcement programs. Where state law permits, localities have a number of funding options. Code enforcement can be funded through a localities’ general fund (i.e., through property tax revenue and other forms of local taxes and shared state revenues). Some localities fund code enforcement through the Community Development Block Grant (CDBG) program, which is administered by the U.S. Department of Housing and Urban Development. CDBG can be used for specific code enforcement activities, such as salaries and other personnel expenses, as well as for the costs associated with legal proceedings. Localities also often fund code enforcement operations through the revenue received from the licenses, permits, and fees related to housing regulation. Finally, some jurisdictions direct the revenue collected from property owners’ payment of penalties and fees for violating the house code to the code enforcement program.

**Other aspects of code enforcement programs**

1. **Educational resources** – Some housing code enforcement programs provide educational programming and materials for property owners. Boston, for example, offers courses for property owners on the code enforcement process and the Housing Code requirements. New York City’s housing department similarly offers property management training for new and small landlords.

2. **Financing mechanisms for repairs** – Some localities offer financing to property owners to repair defective conditions that are in violation of the housing code. The City of Los Angeles, for example, created the Rent Escrow Account Program (REAP). Under REAP, where an owner does not remedy housing code violations within a prescribed amount of time, the property may be placed into the REAP program. While the property is in the REAP program and violations are still outstanding, tenants are allowed to pay a reduced rental amount, as set by the City, and they can pay that amount either to the owner or to an escrow account. The money in the escrow account can then be used for repairs. Some localities also authorize the City to undertake repairs by placing a lien on the property to cover the cost. In New York City, for example, the Emergency Repair Program (ERP) allows the housing code enforcement agency to take action to correct certain housing and building code
violations that the owner has failed to remedy. All work undertaken by the City is billed to the building owner, and the bill may include the cost of the repairs plus related fees and/or the cost of hiring a contractor. If the owner fails to pay the bill, the City is authorized to place a tax lien on the property. The tax lien will bear interest, and if the bill is still unpaid, the City may collect by selling or foreclosing on the lien.

3. **Community-based programming** – Some localities adopt programs to train residents to detect defective conditions that are known health-hazards. In Seattle, for example, the Health Home Initiative educates residents about the types of housing conditions that can lead to asthma and uses community nurses to provide outreach about these hazards.

**Examples**

- **The City of Greensboro, North Carolina** adopted an innovative local housing code enforcement program in 2013. The City created a formal partnership with the nonprofit advocacy organization **Greensboro Housing Coalition (GHC)**. The City and GHC worked together on a public education campaign, which involved distributing multilingual educational materials about code requirements, meeting with community members to explain the code enforcement process, and facilitating code enforcement referrals. Greensboro code enforcement personnel collaborate with GHC counselors to prevent the displacement of residents and to solve other housing issues.

- **The City of Newark, New Jersey** has attempted to improve housing code enforcement by facilitating interagency coordination. The City has a referral system, through which agencies that learn of substandard housing conditions can refer to the code enforcement agency. In 2014, the City established a taskforce, Newark’s Life Improvement Task Force, which has sought to strengthen and refine the referral system to make code enforcement more effective.

- **Alameda County Healthy Homes** has a collaborative housing code enforcement model. Code enforcement officers collaborate with property owners to help them bring their properties into compliance. The County provides resources for owners online, including information about financial assistance for repairs and pamphlets on lead safety.

**Related resources**

- **Up to Code: Code Enforcement Strategies for Healthy Housing**, Change Lab Solutions, is a guide designed to give an overview of the practices and strategies necessary for code enforcement programs to protect residents and preserve housing effectively.
• Healthy Housing Laws that Work: A Fact Sheet about Effective Implementation and Enforcement Clauses, Change Lab Solutions, explains different ways that local governments can enforce housing and property maintenance codes, and provides general information on types of enforcement used by cities, towns, and counties.

• Housing Code Enforcement Policy Brief, Local Progress: The National Municipal Policy Network, provides an overview of housing code enforcement policies.

• Code Enforcement Recommendations for Small Towns, Rural Planning Group, outlines code enforcement policies and strategies in the context of rural municipalities.

• Some housing codes only apply to certain types of rental housing, such as multifamily dwellings. Housing codes tend to apply to apartment buildings, duplexes, rented single family units, and residential hotels/rooming houses, but tend not to apply to owner occupied units, vacant properties, and housing accommodations in hotels, motels, inns, or tourist homes.