

Healthy Housing Laws that Work

Creating Effective Implementation & Enforcement Clauses



ChangeLab Solutions

Law & policy innovation for the common good.

LOCAL GOVERNMENTS PLAY A ROLE IN HEALTHY HOUSING

Most localities have housing or property maintenance codes to promote public health and protect property values. These laws typically set forth basic health and safety standards for rental housing within the jurisdiction. To ensure that property owners comply with these laws and safely maintain housing, it is important that ordinances contain **implementation** and **enforcement** provisions. Localities proceed with enforcement if property owners fail to bring the housing up to code after inspection. This fact sheet explains the different ways that local governments can enforce housing and property maintenance codes. Local governments may use one or a combination of the options described here.¹ While tenants or neighboring property owners may also have the right to sue landlords for substandard housing, this fact sheet focuses on the ways that local governments may enforce safe housing laws.

Code enforcement is an exercise of government's "police power," the inherent power of government to act to protect the health, safety, and welfare of its citizens. The extent of the police power that a city or county may exercise is dependent on its state constitutional or statutory law. Generally, state law also dictates the types of punishments that local governments may impose for violations of laws.² This fact sheet provides general information on the types of enforcement used by cities. **Because state law varies, consult with a local attorney for more information on enforcement measures in your community.**

In some cities or counties, each new law contains its own enforcement language. In others, enforcement is contained in state law or another section or chapter of the city or county's municipal code.

IMPLEMENTATION

Implementation refers to how the city or county will carry out the local ordinance. Implementation clauses assign the responsibility to specific departments or officials. These clauses are important for advocates because they identify the persons or agencies that are responsible when a law is not adequately enforced.

The implementation clause(s) should:

- Designate the department(s) or official(s) responsible for implementing and administering the law's requirements;
- Authorize or direct the official to issue additional regulations (if necessary) for how to implement the law;
- Authorize any other powers the official will need to administer the law, such as delegating authority to other employees, entering into contracts, or issuing citations; and
- Designate those authorized to issue citations for violations.

Example of an implementation clause:

- (a) The Director of the Department of Housing shall implement, administer, and enforce this chapter. The Director is hereby authorized to issue all rules and regulations consistent with this chapter and shall have all necessary powers to carry out the purpose of this chapter.
- (b) In addition to any peace officer, the following classes of employees are authorized to issue citations for violation of this chapter: Environmental Health Inspector, Senior Environmental Health Inspector, Principal Environmental Health Inspector, Director of the Bureau of Environmental Health, and Assistant Director of the Bureau of Environmental Health.



ENFORCEMENT

Enforcement refers to the way government ensures that its citizens abide by the law and specifies the consequences for failing to do so. To ensure that housing is safely maintained, a city or county needs a range of enforcement tools. Of course, proper enforcement of laws is dependent upon more than just the language in an ordinance. Local governments need adequate financial resources to hire and train enforcement officers, the political will to enforce housing and property maintenance codes, and community support for the program.

Because the goal of housing and property maintenance codes is to ensure that housing is safely and adequately maintained, most programs begin with enforcement measures that help property owners to comply with the code. If an investigation shows violations, most programs give the property owner some time to remedy the problems. Government will then re-inspect the property to ensure the property is improved. Many property owners are not aware of the violations and quickly repair them when notified. But if the property owner doesn't fix the problem, then the city needs to move forward with enforcement.

There are four major types of enforcement:

1. Administrative enforcement
2. Civil enforcement
3. Criminal enforcement
4. Emergency enforcement

Administrative Enforcement

In many states, cities or counties may enforce violations of ordinances through administrative proceedings. Administrative enforcement occurs within the local government instead of through the court system.³ Administrative enforcement is less costly and quicker to administer than civil or criminal enforcement. In addition, administrative enforcement offers localities flexibility by providing different types of remedies.

State law may set forth specific requirements for cities and counties to administratively enforce their laws and may set limitations on the types of penalties for violations. For example, California law requires a local jurisdiction to provide in its ordinance the administrative procedures through which the government will impose, enforce, collect, and review administrative fines.⁴

Although procedures vary by state and locality, most jurisdictions follow the same basic structure to ensure that all of the parties receive fair treatment. Generally, the agency overseeing the program issues a written citation or notice of the law violation.⁵ For example, after inspecting property and finding a violation, a housing inspector provides a written notice to the landlord of what section of the law was violated and how. Usually, the inspector gives the landlord time to remedy the violation and then re-inspects the property.⁶ In the event the property is not repaired



and the city moves forward with enforcement, the landlord is entitled to a hearing on the violation.⁷ An administrative officer hears evidence and allows the property owner to respond to the charges.⁸ The hearing officer determines whether a violation occurred, and, if so, the penalty for the violation.⁹ The property owner typically can appeal the outcome to an appellate board or superior or trial court.¹⁰ Some cities may have a pool of administrative hearing officers; others may have a dedicated official or board to hear housing claims.

Financial Penalties

Many cities assess administrative penalties for violations of housing or property maintenance codes, including failing to register property, allow inspections, or maintain property, or submitting false certificates of inspections or other documents. In Boulder, Colorado, for example, the city can impose administrative penalties from \$150 to \$1000 for each violation of the property maintenance code.¹¹ In some cities, penalties may be used, in part, to support code enforcement programs.

Some cities, such as Grand Rapids, Michigan, ensure that financial penalties are paid by placing a lien on the property.¹² A lien is a legal document that is recorded against the property and serves to notify the public that a creditor (such as a city or county) has a financial interest in the property. The lien lasts until the debt it secures is paid and may affect the refinancing or sale of the property.

Example of administrative penalty clauses:

- (a) 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.
- (b) Where an officer or employee designated in this chapter determines that there has been a violation of any of the provisions of this section, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. For purposes of this section, an entity is responsible if an officer, employee, or agent of the entity commits the violation. The citation shall inform the person or entity responsible of the date, time, place, and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the Treasurer within 30 business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, pursuant to section _____ to request administrative review of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review.



Suspension of Licenses, Permits, or Registration

Many cities, particularly those with proactive or periodic rental inspection programs,¹³ require landlords to register their properties or obtain a license to rent housing units.¹⁴ Those requirements offer an additional administrative enforcement tool as the cities can deny, suspend, or revoke the rental licenses or registrations of landlords who violate housing or property maintenance codes.¹⁵ Localities should specify the consequences that will result from suspension of the license. For example, during the suspension period, the locality could prohibit the owner from renting units that are currently vacant or that become vacant once a tenant moves out. Another option would be to prohibit the landlord from collecting rent during the license suspension period and instead have tenants pay rent into an escrow account that will be used to pay for repairs at the property.

Civil Enforcement

A city or county can also file a civil lawsuit to enforce a law, remedy a wrong, or protect a right. If someone is violating an ordinance, the city or county may sue for an injunction, civil penalties, or both. Because filing a lawsuit and litigating a matter in court is expensive and time-consuming and cities have limited resources, generally cities pursue civil remedies only in extreme cases where landlords have evaded other forms of enforcement or housing is in a dangerous condition.¹⁶

An **injunction** is a court order requiring a party to take or refrain from certain action. A city or county may sue for an injunction to stop a person or business from violating an ordinance. For example, the city of Sacramento authorizes enforcement of its rental housing inspections code by injunction.¹⁷ If a landlord fails to bring a property up to code standards, the city may sue to get the court to order the landlord to do so.

Example of clause authorizing injunctive relief:

The city attorney is hereby authorized to bring an action for injunctive relief to enjoin a violation of this ordinance.

Civil penalties are similar to the damages (money) a private party may receive in a civil lawsuit. They are similar to administrative penalties, but the city must file a lawsuit to collect them. Where state law permits, a city or county may file a lawsuit to collect civil penalties for the violation of an ordinance.¹⁸ Baltimore County, Maryland, for example, provides that a landlord who rents a dwelling unit without a license is subject to a civil penalty of \$1,000 per day.¹⁹

When establishing civil penalties in an ordinance, a local government must comply with state law requirements, including any caps on the amounts it may impose. The government also must ensure the process for imposing the penalties is fair, and the penalty must be reasonably related to a legislative goal.²⁰ The amount of the civil penalties must not be oppressive or unreasonable.²¹

State or local law may determine how the collected financial penalties can be used. State law may also permit a local government to collect court costs and attorneys' fees for successfully prosecuting a civil lawsuit.²²

Example of clauses authorizing civil penalties:

- (a) Any person who violates this chapter may be liable for a civil penalty, not to exceed [\$100] per occurrence for each day such violation is committed or permitted to continue.
- (b) The city attorney may bring a civil action to recover civil penalties for the violations of this chapter.
- (c) Attorneys' Fees. The city attorney may seek recovery of the attorneys' fees and costs incurred in bringing a civil action pursuant to this section.

Criminal Enforcement

In some states, cities and counties are authorized to make violations of an ordinance a crime.²³ The county's district attorney or a city attorney may file charges in criminal court to prove the ordinance was violated. A criminal violation of a local ordinance is usually either a **misdemeanor** (less serious than a felony and usually punishable by a fine or brief confinement in a city or county jail) or an **infraction** (punishable by a fine but not incarceration).²⁴ Fort Worth, Texas, for example, provides that each violation of its multi-unit housing inspection law is a misdemeanor punishable by a fine of no more than \$2,000 per day.²⁵ Criminal enforcement is most often used as a remedy of last resort when other types of enforcement have failed.

Example of violation constituting a misdemeanor:

Any person who violates this chapter is guilty of a misdemeanor, punishable by a fine of not more than [\$1,000] or by imprisonment in the city/county jail for a period of not more than six months, or by both such fines or imprisonment.

Example of violation constituting an infraction:

Any person who violates this chapter is guilty of an infraction, punishable by a fine of not more than [\$100].



Emergency Enforcement

When properties are in a dangerous condition, cities must act quickly and definitively to protect tenants. Emergency enforcement clauses are critical to addressing violations that pose an immediate danger to the health or safety of tenants. In Los Angeles, for example, the city can order that the violation be fixed within 48 hours and re-inspected within the next 24 hours. If the condition has not been abated (repaired), the city is authorized to make the repair and require the property owner to reimburse the city.²⁶

Example of emergency enforcement clause:

Where the Department determines that the condition poses a present, imminent, extreme and immediate hazard or danger to life, health or safety, it shall order abatement of the conditions within [48] hours. No extensions of time shall be granted as provided by regulation. Within [24] hours after the time to abate, the Department shall conduct a reinspection of the building or dwelling unit to determine compliance with the order. If the condition has not been abated, the Department shall have the authority to make the necessary repairs.²⁷

Cumulative Remedies

To ensure that housing is safely maintained, cities and counties need to have and use an array of enforcement options. As discussed above, some remedies are more costly to pursue and offer more severe penalties. Cities typically use the least costly remedies first, but pursue more punitive remedies in egregious cases. To preserve the right to use multiple remedies for a single property owner, a city should include in its ordinance a “cumulative remedies” clause.

Example of cumulative remedies clause:

The remedies provided for in this chapter shall be cumulative and not exclusive of any other remedies available under any other federal, state, or local law.

HOW WE CAN HELP

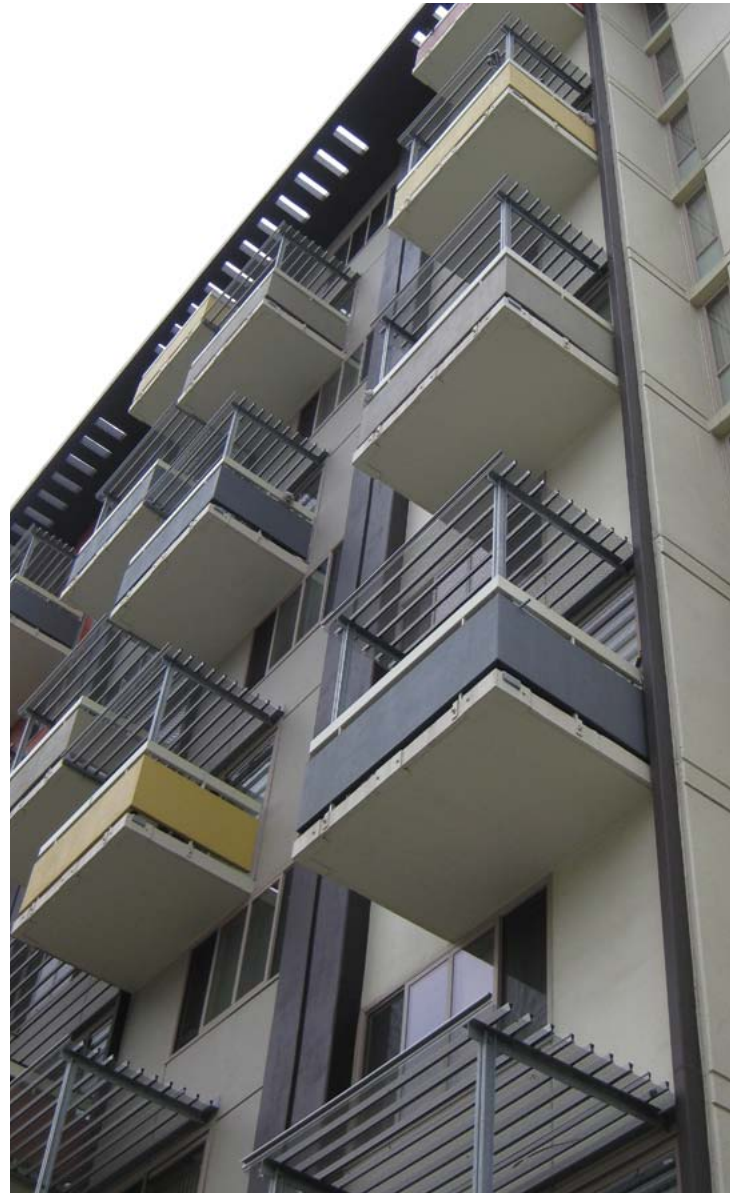
For additional materials designed to help advocates ensure that housing standards are maintained and public health laws are effectively enforced, visit www.changelabsolutions.org/healthy-homes.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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¹ Different enforcement options have varying strategic and political ramifications. A discussion of political strategies associated with advocating for different enforcement mechanisms is beyond the scope of this fact sheet.

² 62 C.J.S. Municipal Corporations § 230 (2013).

³ See, e.g., Cal. Govt. Code § 53069.4; Ga. Code Ann. § 8-2-26 (Enforcement of Codes).

⁴ *Id.*

⁵ See, e.g., Los Angeles Housing Code § 161.702.

⁶ See, e.g., §§ 161.354, 161.355.

⁷ See, e.g., §§ 161.801.1-161.805.

⁸ See, e.g., § 161.804.

⁹ See, e.g., § 161.805.

¹⁰ See, e.g., § 161.805.1.

¹¹ Boulder, Colo. Municipal Code § 10-3-16.

¹² Grand Rapids, Mich. Municipal Code § 103.5.1.

¹³ For more information about these programs, see ChangeLab Solutions, A Guide to Proactive Rental Inspection Programs (2014), www.changelabsolutions.org/publications/PRI-programs.

¹⁴ See, e.g., Kansas City, Mo. Code of Ordinances § 56-352(b) (requiring registration of properties); Boulder, Colo. Rev. Code of Ordinances § 10-3-2 (requiring license to rent housing).

¹⁵ See, e.g., Baltimore County, Md. Code of Ordinances § 35-6-110 (allowing the denial, suspension, and revocation of rental license).

¹⁶ Nevius, C.W. 2010. “Landlord sued by city, tenants: ‘Nothing Wrong’.” *S.F. Chron.*, Apr. 8, www.sfgate.com/bayarea/nevius/article/Landlord-sued-by-city-tenants-Nothing-wrong-3192981.php.

¹⁷ Sacramento, Calif. Municipal Code § 8.120.200.

¹⁸ See, e.g., 55 Ill. Comp. Stat. 5/5-1113; *City of Syracuse v. Barbuto*, 500 N.Y.S.2d 625 (1986).

¹⁹ Baltimore County, Md. Code of Ordinances § 35-6-112.

²⁰ *Hale v. Morgan*, 22 Cal. 3d 388, 398 (1978).

²¹ *Id.* at 399.

²² *City of Santa Paula v. Narula*, 114 Cal. App. 4th 485, 492-93 (2003).

²³ 56 Am. Jur. 2d Municipal Corporations § 378 (2d ed. 2008).

²⁴ See, e.g., 65 Ill. Comp. Stat. 5/1-2-1.1.

²⁵ Fort Worth, Tex. Code § 7-416.

²⁶ Los Angeles Housing Code § 161.704.5.

²⁷ *Id.*