

## HEALTHY AND AFFORDABLE HOUSING Fact Sheet

# Proactive Rental Inspection as a Tool for Enforcing Tenants' Rights

## Summary


The quality of housing affects many aspects of health. Poor housing conditions can lead to infectious and chronic diseases, poor mental health, avoidable injuries, and long term physical and developmental problems for children.<sup>1</sup> A significant portion of substandard housing is rented.<sup>2</sup> Rental properties present many potential risks to residents, such as exposure to poor air quality, mold, asbestos, or lead. Studies show approximately 40% of diagnosed asthma among children can be attributed to exposure to substandard air quality in the home.<sup>3</sup> Notably, research shows that children who live in rental properties are more likely to have asthma,<sup>4</sup> with 21.5% of children in rented properties exposed to smoke in the home at least monthly.<sup>5</sup> Many of these children also regularly experience musty smells, leaks, and evidence of roaches or rodents.<sup>6</sup>

In most localities, these rental properties are only inspected if a tenant files a complaint.<sup>7</sup> For numerous reasons, such as fear of retribution from their landlord or unawareness of their rights, tenants frequently do not complain and continue to live in substandard conditions.<sup>8</sup> Some localities have adopted proactive rental inspections to mitigate the power imbalance between tenants and landlords and avoid blighted properties in their neighborhoods.

## Benefits of Proactive Inspection Programs

**Proactive rental inspection programs identify poor housing conditions that would otherwise remain unaddressed.**

Unlike code enforcement systems that rely on tenant complaints, proactive rental inspection (PRI) programs require routine inspections of properties to preemptively identify health and safety issues.<sup>9</sup> During these regular inspections, a municipal code enforcement officer ensures the property is up to code and safe for the occupants and neighboring residents. Although the program details vary depending on a locality's needs and resources, most require that (1) property owners register their rental properties or obtain a certificate or license to rent housing units; (2) all covered rental properties are inspected on a regular schedule; and (3) there are enforcement measures in place if a property fails inspection.<sup>10</sup>



The most significant benefit of PRI is the assurance that rental properties remain safe and healthy for tenants. As mentioned above, tenants may be hesitant to report a code violation for fear of eviction or retribution from their landlord; this fear may be compounded if a tenant's immigration status would affect their ability to move.<sup>11</sup> Tenants also may have a language barrier or disability that would inhibit their ability to report a code violation.<sup>12</sup> Moreover, they may not even know they are entitled to safe conditions as renters.<sup>13</sup> For these reasons, shifting the burden away from tenants to report code violations creates a more equitable system where all renters are entitled to live in code-compliant housing regardless of whether they report. PRI also may make a landlord aware of a poor condition before it worsens, allowing the landlord to perform preventative maintenance that is significantly less expensive than fixing a catastrophic issue.<sup>14</sup> Finally, PRI may help preserve neighborhood property values by identifying issues early so properties do not become blighted.<sup>15</sup>

### **Research shows that proactive rental inspections lead to improved housing quality.**


Although each jurisdiction applies PRI differently, results across the board demonstrate improved housing conditions. For example, in 2006, Rochester, New York, began proactive rental inspections of all public housing and rentals built before 1978, looking for compliance with state and municipal code including fire protection, stairs and handrails, and electric and plumbing.<sup>16</sup> In addition, the inspections look for any lead issues, such as deteriorating paint.<sup>17</sup> By 2012, the city had seen more than an 85% decline in children with elevated blood lead levels.<sup>18</sup> Data also shows that maintaining a more frequent proactive inspection schedule identified issues in Rochester rental properties that would otherwise have remained unaddressed—a study that compared duplexes with resident landlords, inspected every 6 years, and three-unit properties with resident landlords, inspected every 3 years, found that 11.5% of duplexes had one or more unresolved violation whereas 31.3% of the three-unit properties had unresolved violations.<sup>19</sup>

Similarly, during a six-week neighborhood pilot program in 2017 in Syracuse, New York, housing units that were in the pilot area had a compliance rate 18.2% higher than the rest of the city.<sup>20</sup> The inspectors in the pilot program proactively identified code violations at a rate 229% higher than other inspectors averaged during the period.<sup>21</sup> The program included inspectors interacting with the community by giving presentations to educate landlords and tenants on their respective rights and responsibilities.<sup>22</sup> Since the pilot program's success, Syracuse has expanded the program city-wide with continued progress. Overall, code violations are down nearly 20%, from 9,243 in 2015 to 7,792 in 2019.<sup>23</sup> Additionally, the city's compliance rate for health and safety violations has increased from 12% to 23% since 2017.<sup>24</sup>

Before the North Carolina legislature preempted its program in 2011, Greensboro's proactive inspection of randomly selected units lowered the number of unsafe homes in the city by 58% in the prior six years and decreased neighbor and tenant complaints by over 75% by 2009.<sup>25</sup>

### **While prospective rental inspection programs present some challenges, there are many workable solutions to mitigate potential issues.**

The most significant obstacle to a locality implementing a robust PRI program is the cost associated with the necessary workforce and resources. Many localities throughout the country fund their programs through various combinations of the following sources: charging registration, licensing, or certificate fees; charging inspection fees annually or at the time of inspections, or a re-inspection fee when a violation is found; and collecting fines for violations.<sup>26</sup> Another way to reduce costs is to phase the program in over time by beginning with a focus on certain types of properties. For instance, a locality could begin the program inspecting the oldest buildings first or start with areas that have the most complaints or the most rental units.<sup>27</sup> A locality could also choose to first focus its efforts on drive-by exterior inspections and return for interior inspections when necessary.<sup>28</sup> There is evidence that the greater number of exterior violations a property has, the more likely there are to be interior violations as well.<sup>29</sup> In San Francisco, only exteriors and common areas are inspected unless there is a complaint made or the inspector



believes it is reasonably necessary to inspect the interior to determine whether a housing code violation exists.<sup>30</sup> Alternatively, some jurisdictions use formulas to inspect a random sample of rental units instead of inspecting every unit in multi-unit buildings.<sup>31</sup>

Another concern is that government inspectors require a tenant's consent to enter their home to conduct a proactive inspection. Under the Supreme Court's interpretation of the Fourth Amendment of the U.S. Constitution, a government agent's entry into a private home without permission is presumed unreasonable unless there are emergency circumstances or the agent has a warrant.<sup>32</sup> A tenant might choose not to give consent to an inspection due to wariness of the government, privacy concerns, or an inability to be present at the time of an inspection because of other obligations.<sup>33</sup> There are several potential solutions to this problem. First, a locality can encourage community groups to provide education and outreach so tenants understand PRI and that the inspections are for their benefit.<sup>34</sup> For example, a Los Angeles program where community organizations visited tenants before the inspection saw a large increase in inspectors being allowed in to properties.<sup>35</sup> Another way to encourage tenant consent is providing them with direct notice of the inspection including adequate information such as the time and date, instead just informing the landlord, which allow the tenant to secure possessions and plan to be there.<sup>36</sup>

Next, if these methods are unsuccessful in obtaining tenant consent, there are other potential legal solutions. Some PRI ordinances empower a locality to seek an administrative inspection warrant, which requires a lower legal threshold than a criminal warrant.<sup>37</sup> Alternatively, according to a Washington Supreme Court ruling, if a state or municipality allows non-state agents to conduct the inspections and only requires the landlord to give the municipality a certification that the housing meets minimum standards, without details of the report, the inspection does not violate the Fourth Amendment.<sup>38</sup>

Finally, proactive inspections may lead to tenant displacement in several circumstances, such as if the inspector: (1) determines that a unit is so dangerous that it is considered uninhabitable, (2) finds an unregistered unit, or (3) uncovers a tenant code violation such as overcrowding or hoarding in the unit.<sup>39</sup> In these circumstances, localities should engage with community groups and fund complementary programs to try to keep tenants in their homes whenever possible and when it is not possible to assist with relocation.<sup>40</sup>

## **Conclusion**

Quality housing is a health necessity and many, particularly renters, suffer severe health consequences due to poor housing conditions. Proactive rental inspections allow localities to ensure housing standards through regularly scheduled inspections that do not rely on tenant complaints. There is significant evidence that proactive inspections lead to fewer code violations and healthier tenants. Although there are some challenges to implementing a proactive rental inspection program, there are strategies to alleviate potential problems.



## SUPPORTERS

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- <sup>1</sup> Louise Morales-Brown, *How Can Housing Influence Health?*, MED. NEWS TODAY (May 13, 2021), <https://www.medicalnewstoday.com/articles/housing-and-health>; James Krieger & Donna L. Higgins, *Housing and Health: Time Again for Public Health Action*, 92 AM. J. PUB. HEALTH 758, 758 (2002), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.92.5.758>.
- <sup>2</sup> Amy Ackerman et al., *A Guide to Proactive Rental Inspection Programs*, CHANGELAB SOLS. 4 (2014), [https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs\\_Guide\\_FINAL\\_20140204.pdf](https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs_Guide_FINAL_20140204.pdf).
- <sup>3</sup> Paula Braveman et al., *Exploring the Social Determinants of Health: Housing and Health*, ROBERT WOOD JOHNSON FOUND. (May 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>.
- <sup>4</sup> Bhargavi Ganesh et al., *The Relationship Between Housing and Asthma Among School-Age Children*, URB. INST. 7 (Oct. 2017), [https://www.urban.org/sites/default/files/publication/93881/the-relationships-between-housing-and-asthma\\_1.pdf](https://www.urban.org/sites/default/files/publication/93881/the-relationships-between-housing-and-asthma_1.pdf). Households with school-age children with asthma were more likely to rent their unit than households that did not report a school-age child with asthma, 47% to 39%. *Id.*
- <sup>5</sup> *Id.* at 10.
- <sup>6</sup> *Id.*
- <sup>7</sup> Ackerman et al., *supra* note 2.
- <sup>8</sup> *Id.* at 5.
- <sup>9</sup> *Id.* at 4.
- <sup>10</sup> *Id.* at 7.
- <sup>11</sup> *Id.* at 5–6.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.* at 5.
- <sup>15</sup> *Id.* at 6.
- <sup>16</sup> *Proactive Rental Inspection Roadmap Summary Rochester Case Study*, BETTER LEAD POL'Y (Mar. 26, 2020), <https://www.betterleadpolicy.org/casestudies/proactive-rental-inspection-roadmap-summary-rochester-case-study/>.
- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> Study Demonstrates Importance of Proactive Rental Inspections, Nat'l Low Income Hous. Coal. (Aug. 16, 2021), <https://nlihc.org/resource/study-demonstrates-importance-proactive-rental-inspections>; Geoff Rose & Richard Harris, *The Three Tenures: A Case of Property Maintenance*, URB. STUD. J. (2021), <https://journals.sagepub.com/doi/10.1177/00420980211029203>.
- <sup>20</sup> TOP Pilot Results, Innovation Team (Dec. 27, 2017), <http://www.innovatesyracuse.com/blog/top-pilot-results>.

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Syracuse Tenant-Owner-Proactive (TOP) Code Enforcement Program, Results for Am. (Sept. 22, 2021), <https://catalog.results4america.org/program/healthy-home-environment-assessments/syracuse-proactive-rental-inspection>.

<sup>24</sup> Id.

<sup>25</sup> Amanda Lehmert, Troubled Rentals Fall with Checkups, Greensboro News & Rec. (Aug. 28, 2010), [https://greensboro.com/news/political/troubled-rentals-fall-with-checkups/article\\_4a640e18-f609-5629-8fda-7a7f8d4b38bc.html](https://greensboro.com/news/political/troubled-rentals-fall-with-checkups/article_4a640e18-f609-5629-8fda-7a7f8d4b38bc.html).

<sup>26</sup> Ackerman et al., *supra* note 2, at 19–20.

<sup>27</sup> Id. at 6.

<sup>28</sup> Id.

<sup>29</sup> Relationship between Interior Problems and Exterior Problems Based on the American Housing Survey - 2009 National Data for Occupied Housing, Nat'l Ctr. Healthy Hous., [www.nchh.org/Portals/0/Contents/Interior\\_and\\_Exterior\\_2009\\_National.pdf](http://www.nchh.org/Portals/0/Contents/Interior_and_Exterior_2009_National.pdf).

<sup>30</sup> Ackerman et al., *supra* note 2, at 15. See S.F., Cal. Hous. Code § 303(a).

<sup>31</sup> Ackerman et al., *supra* note 2, at 16.

<sup>32</sup> *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 528–29 (1967).

<sup>33</sup> Ackerman et al., *supra* note 2, at 14–15.

<sup>34</sup> Id.

<sup>35</sup> Id. at 26.

<sup>36</sup> Id. at 13.

<sup>37</sup> Id. at 15. See *Camara*, 387 U.S. at 538–39. The Supreme Court found that a government agent can satisfy the requirements to obtain an administrative warrant by showing that they are enforcing a reasonable legislative program or standard. Id.

<sup>38</sup> Ackerman et al., *supra* note 2, at 15. See *City of Pasco v. Shaw*, 161 Wash.2d 450, 465 (2007).

<sup>39</sup> Ackerman et al., *supra* note 2, at 23–24.

<sup>40</sup> Id. at 25.