Barking Dogs: Code Enforcement Is All Bark and No Bite (Unless The Inspectors Have Assault Rifles)

Marilyn Uzdavines
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I. INTRODUCTION

In Detroit, Michigan, in 2014,¹ broken windows, a roof caving in, and a yard that had not been maintained for years is the view for its residents in a blighted and unstable neighborhood. Code enforcement inspectors are nowhere to be found. The local code enforcement department lacks the resources, manpower, and strategic plan to deal with blight on a massive scale.

In the Antelope Valley, just outside of Los Angeles, on October 17, 2007, government agents wearing bulletproof vests and armed with assault rifles surround a cabin.² Three men approach the door to the cabin and steel themselves to execute the job for which they had come. These men are not there to arrest a drug dealer or apprehend a terrorist. They are there because the cabin did not meet the county building code.³

The two paragraphs above paint two very different pictures of real events in the realm of code enforcement, and neither approach is working to ensure stable neighborhoods. Local government code enforcement departments are officials charged with maintaining the health, safety, and welfare of the community. However, analysis of the code enforcement models used in a number of communities today shows that they are insufficient to accomplish the goal of maintaining the health, safety, and welfare of the community. The spectrum of ineffective code enforcement ranges from the very weak departments that fail to rehabilitate blighted neighborhoods to the abusive and

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1. Report, DETROIT BLIGHT REMOVAL TASK FORCE, https://s3.amazonaws.com/detroit-blight-taskforce/CHAPTER+01.pdf (last visited Nov. 16, 2014) ("No city in the country has taken on the scale of blight that Detroit faces.").


3. Id.
oppressive code enforcement departments that use the code as a tool to further personal or political agendas.

The first section of this article will begin by briefly explaining the history of the code enforcement systems that have developed over the last two centuries. The second section of this article will discuss some of the major roadblocks that keep the code enforcement departments from being more effective. In particular, this section will explore how code enforcement problems have been exacerbated in recent years as a result of the foreclosure crisis and population migration. Finally, in the third section of this article, I will highlight proactive solutions that have been extremely effective in communities that are reforming their code enforcement model to address community needs—solutions that, I contend, should be extensively replicated.

II. BACKGROUND OF CODE ENFORCEMENT IN THE UNITED STATES

A. History of Code Enforcement

Historically, one essential duty of government was to protect the property rights of all its citizens. One method of discharging this duty was by enjoining nuisances. Along with bringing actions to enjoin nuisances, it was within the purview of the legislative arm of the government to prescribe what constituted a nuisance. The legislature also had the power to determine the method for abating nuisances. The inspectorate had a duty to enjoin public nuisances that interfered with public health, safety, peace, or convenience.

Dating back to the nineteenth century, municipalities in the United States formed police departments by housing code inspectors, neighborhood watch programs, and criminal police officers under one roof. Eventually, however, municipalities separated work of inspectors into separate departments. The focus of the inspectorate was preventative. Its goal was to promote public

4. This article will focus on code enforcement as it relates to residential structures that have already been built. The issues related to code enforcement of new buildings and of existing commercial properties are outside the scope of this article.
6. Id.
7. Examples of activities that states have declared a public nuisance include gambling, maintaining a house of prostitution, and public endurance contests continuing longer than twenty-four hours. See Valdez, 142 Fla. at 129 (gambling); People ex rel. Bradford v. Laine, 182 P. 986, 988 (Cal. Ct. App. 1919) (prostitution); Sportatorium, Inc. v. State, 115 S.W.2d 483 (Tex. App. 1938) (public endurance contests).
8. "It is also well established that, when a state exerting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective." Purity Extract & Tonic Co. v. Lynch, 226 U.S. 192, 201 (1912).
9. Id.; see also Restatement (Second) of Torts § 821B (1979) (defining "public nuisance").
11. Id.
safety. Rather than apprehend criminals to jail them, the emphasis was preventing violations through community relationships.

B. Modern Code Enforcement: Three Main Steps in Code Enforcement

Today, there are several remedies for redressing nuisances, including suits in courts of equity for injunctions, civil actions in courts of law for damages, and criminal prosecution. States also authorize code enforcement boards to levy fines against those who violate the codes of their jurisdiction.

To be productive, every code enforcement agency must effectively accomplish three things. First, it must properly and systematically identify code violations. Next, it must monitor the properties identified as violating the code, and take the proper action when the problem is not remediated. Finally, there must be a remediation process, which results in either restoration or demolition of the problem property.

1. Step One: Identifying Code Violations

Looking at the first step of identifying code violations, there are several methods that are being used throughout the country. Some inspectors use a periodic inspection approach that is based on a set time cycle. For example, a “block by block” method would go block by block and inspect every residence in the community. While a benefit to this approach is that each property is included, and the residents feel as though they are being treated equally, a downside is that it is time consuming and inefficient, and it ignores the fact that some areas need more attention than others.

Another method is a geographically-targeted inspection. The geographically-targeted inspection method identifies a particular part of a community that has the most problems, and the inspectors focus their attention on that part of the community. This may address the neediest areas. However, remaining parts of the community suffer while all the jurisdiction’s resources are being focused on a single area.

Almost all cities use a complaint-based system. The complaint-based

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12. Id. at 84.
13. Id.
16. Id. at 20.
17. Id.
18. Id.
20. Id. at 48.
21. Id. at 28. There are additional methods for identification that can be used that are not included in this article. For example, some jurisdictions require an inspection scheduled at the time property changes hands to a new owner. This point of sale inspection is one way of identifying violations, but it is not a comprehensive strategy to protect the community. Id. at 33.
22. Id. at 47.
model becomes a de facto system when no one in authority has developed a strategy for prioritizing violations.\textsuperscript{23} This has the added effect of minimizing the volume of violations that would be produced under a proactive inspection system.\textsuperscript{24} The complaint-based system may be supplemented by one of the other methods described above in a more proactive code enforcement department.\textsuperscript{25}

A complaint-based system relies on residents who are proactive in reporting violations.\textsuperscript{26} "Middle-class residents are more likely to complain than residents in poorer and more deteriorated neighborhoods and most likely to get results because they are well enough organized to document violations, demanding enough to monitor the progress of complaints, and astute enough to enlist the support of political stakeholders."\textsuperscript{27} Failure to report violations creates inspectors who have tacitly accepted the impossibility of total compliance with the discretion to ignore violations that are not reported despite being visible to the inspector.\textsuperscript{28} The complaint-based model without combining any additional inspection method is what is primarily used in our country.

2. Step Two: Monitoring the Identified Violations and Taking Action

\textit{a. Informal Notice Policies}

The first step taken once the identification method has uncovered a violation is an informal notice.\textsuperscript{29} This step has also been referred to as the advisory notice or the "Ask Nicely" phase.\textsuperscript{30} This can include the following: the inspector placing a telephone call to the owner; a non-threatening letter sent to the owner letting them know that a violation exists and asking them to remedy the violation; a door-hanger where the inspector indicates violations that were observed (such as lawn maintenance, litter, etc.); or an area-wide advisory letter alerting the residents of a neighborhood that the inspectors are coming to the neighborhood in a few weeks and giving them suggestions of common violations that should be fixed so that they can avoid receiving a
formal notice of violation. Martin G. Collins, an expert in code enforcement, states that sixty percent of owners will correct the violation at this first phase of informal notice. Therefore, finding an informal method to give notice that can be quickly executed and cost-effective is very important.

One informal notice method that has been used in the City of Milwaukee is the “E-Notify by Location” computer program created by Collins. It makes use of a free database that keeps records of any change of status to a “subscribed” property such as a complaint or violation. The subscriber will receive a direct email that states the status change for a subscribed property. This allows a subscriber to have immediate notice of a violation. This program also allows a subscriber to monitor progress of other property violations in their neighborhood.

b. Formal Notice of Violation

If the informal notice described above does not yield the desired compliance, the next phase is generally a formal notice of violation. The formal notice of violation is a legal notice that must be given once enforcement of the code violation has begun. The violator needs to be given adequate notice of the violation, and included in the notice, must be the specific references to the code that has been violated and penalties that may result if compliance is not achieved. The formal notice of violation will also contain a time frame in which the violator has to comply before the next phase of enforcement is initiated. Each local jurisdiction has specific procedures, dictated by law, that local officials must adhere to when they implement the requirement—procedures that must be followed closely to avoid due process violations.

c. The Reinspection

When the time period listed in the formal notice of violation has expired, the inspector will set a time to reinspect the property to determine if the owner has remedied the violation. The inspector may make phone calls to check in

31. Id.
32. Id. at 25. Martin G. Collins is regarded as one of the leading influencers in code enforcement. He has been employed in the Counsel’s Office of New York City’s Department of City Planning. He has held the positions of Code Enforcement Administrator, followed by Construction Inspection Administrator, Deputy Commissioner, and Commissioner for Milwaukee’s Building Inspection Department, n/k/a Department of Neighborhood Services. From 1984 through 2011, Mr. Collins annually taught Existing Housing Inspection Administration and Management at UW-Madison’s Annual Professional Development Program’s Housing and Building Inspection.
33. Id.
34. Id. at 26.
35. Id. at 47.
36. Id.
37. Id.
38. Id. at 56.
39. Id. at 56.
with the owner before the time to correct the violation has expired. Working
with the owner to help with questions the owner may have about what is needed
to bring the property into compliance demonstrates that the inspector's goal is
rehabilitation of the property and not punishment of the owner. Beyond the
first sixty percent of violators who comply at the informal notice stage, another
thirty percent typically comply during the formal notice stage by the time of
their first or second reinspection.

d. Pre-Court Hearing Alternative

If the formal notice of violation and reinspection period do not result in
compliance, many jurisdictions will move to the stage where a court or hearing
officer hears the case and, potentially, issues a sanction. However, some
jurisdictions that take a softer approach include the additional step of the "pre-
court hearing alternative." This approach gives the violator one last chance
to enter into an agreement with the inspector to comply with the code and avoid
court and the ensuing sanctions. The pre-court hearing allows the owner to
meet with the inspector or a pre-court officer at a specified time and date and
tell his or her side of the story before being brought before the court. The
inspector will then determine whether a final extension period is warranted.
If the owner is given an additional extension period and complies with the code,
the case ends. However, if the owner still does not comply after the expiration
of this additional time period, the case proceeds forward to court. Some
jurisdictions also use mediation during this phase immediately before court.
However, as is also true of the pre-court hearing, mandatory mediation
increases the time it takes to bring a case to completion.

e. Taking the Case to Court

If the informal notice, formal notice of violation, reinspection period, and
pre-court hearing or mediation has failed to motivate the owner to remedy the

40. See id. Even if this goal is not codified, local governments desire the removal of blight over
delivering punishment to individuals. For example, in a brochure published by the Los Alamos County, New
Mexico, Community & Economic Development Department, the Code Enforcement Division states, "The
goal of Code Enforcement is compliance not punishment." Nuisance and Property Maintenance Code

41. See Collins, supra note 19 at 25. Extension policies can be given at the reinspection period to allow
the owner additional time to bring the property into compliance. Id. at 57. However, code enforcement
departments would be wise to adopt rules as to what qualifies a property for an extension so that the various
inspectors in one department are treating violators consistently in their enforcement efforts. Id.

42. Id. at 60.
43. Id.
44. Id.
45. Id.
46. Id.
47. Id.
48. Id.
violation, the owner will have to appear at a judicial or quasi-judicial hearing regarding the violation.\textsuperscript{49} For the cases that result in a court hearing, the inspectors will have to testify as to the condition of the property and the steps taken to remedy the violation.\textsuperscript{50} The owner may then introduce rebuttal evidence. Ultimately, the judge will determine what, if any, remedy is appropriate for the defendant.\textsuperscript{51} Some of the remedies discussed in the paragraph below can occur at the completion of the court hearing. Others can be used earlier in the process to encourage compliance before court.\textsuperscript{52}

Various types of deterrence tools or “hammers” can be used to encourage prompt action and, in each jurisdiction, local and state laws will dictate which legal tools are available.\textsuperscript{53} Some of the “hammers” that have been effective in producing desired actions by non-compliant owners include fines, physically removing the violation or nuisance,\textsuperscript{54} allowing easy public access to code violation records,\textsuperscript{55} code enforcement through cost recovery reinspection fees,\textsuperscript{56} civil court injunction, and potential contempt of court resulting in power to arrest for noncompliance,\textsuperscript{57} criminal sanctions,\textsuperscript{58} and monthly case fees.\textsuperscript{59} An additional “hammer” can be a lien placed on the property to recoup fees spent to abate a nuisance.\textsuperscript{60} In some jurisdictions, these liens can be very effective and result in forfeiture of the property.\textsuperscript{61}

\textsuperscript{49} Id. at 67. Some local governments have established administrative proceedings to review code enforcement claims. This alleviates some of the case load for the civil and criminal courts. One example is Riverside, California, which has established a notice, hearing, and appeal procedure in lieu of formal court proceedings. See RIVERSIDE MUNICIPAL CODE, §§ 1.17.005-1.17.390, available at http://www.riversideca.gov/municode/pdf/01/1-17.pdf.

\textsuperscript{50} Collins, supra note 19 at 68.

\textsuperscript{51} Id.

\textsuperscript{52} Id.

\textsuperscript{53} Id. at 61.

\textsuperscript{54} Id. at 62-63. Abatement of the nuisance may be limited to only apply to exterior violations such as weed-cutting, junk cars, etc. Other jurisdictions may allow the abatement of violations actually within the home such as emergency heating repairs.

\textsuperscript{55} Id. at 63. This type of hammer motivates the individuals that are not deterred by fines, but are concerned about their public reputation. In addition to making the public records of violations easily accessible, local jurisdictions could even have the legal right to post large visible signs on the offending property or even hold press conferences in front of the property. This hammer should be used with caution as one of the last resorts.

\textsuperscript{56} Id. Reinspection fees could be a flat fee for each reinspection, or graduated fees that increase with each inspection.

\textsuperscript{57} Id. at 66. This is another powerful hammer that should be saved for the most egregious of cases after the department has all the facts of why the owner is not complying. Sometimes the owner is not complying due to financial hardship or medical problems, and the inspector would be wise to direct the owner to places for assistance as opposed to seeking jail time for failing to comply with the court injunction. Id. at 24, 60.

\textsuperscript{58} Id. at 67. Some jurisdictions allow this, while many do not. New York City used to have criminal sanctions for code violations. Id. ("Picture the judge who had a docket of cases for murder, aggravated assault, rape and then one for peeling paint. This pretty much sums up why New York switched from a criminal to a civil sanction method for enforcing the code.").

\textsuperscript{59} Id. Portland, Oregon has used this method as a hammer. The inspector opens a case with each violation and there is a monthly case fee that begins at the formal notice of violation stage that the violator is legally responsible to pay each month the case is open until the inspector has verified that the property is in compliance. This can encourage prompt action by the owner so that the monthly fees stop accruing. Id.

\textsuperscript{60} Id. at 61.

\textsuperscript{61} Id. at 69. Code enforcement liens will be discussed in more detail in Part III and Part IV of this article.
3. Step Three: Restoration or Demolition

Local law, the inspector’s assessment of the danger an offending property poses to the inhabitants or surrounding neighbors, the value of the property, and the owner’s willingness to comply with the court order all play a part in determining whether a non-compliant house should be restored or demolished.\(^6\) A threat of condemnation and demolition may be the ultimate motivator for some homeowners.\(^6\) Demolition, however, takes significant financial resources.\(^6\) The average cost of a demolition is approximately $10,000.\(^6\) Many times the value of the home is far below the cost to demolish the home.\(^6\)

III. PROBLEMS IN CODE ENFORCEMENT

Because code enforcement is implemented at the local level, each community may face its own unique challenges to maintaining properties. There are some problems, however, that are common to many communities throughout the United States that are dealing with a rise of vacant and abandoned homes due to financial or natural disasters. There are also some communities that have faced code enforcement problems due to an overly aggressive code enforcement system. It is important to address this problem of abuse as well because, although it is not as widespread, the effects are equally devastating on a community.

This Part of the article will highlight several of these common problems. First, this Part will discuss the lack of resources that hinder a code enforcement agency from effectively doing its job. Next, this Part will discuss how a standard code enforcement lien does not assist in encouraging a homeowner’s compliance or recouping the local government’s remediation fees. Then, this Part will discuss problems with the drafting of the codes that make the codes inherently unenforceable due to vague language, an unattainable middle class standard, and a lack of prioritization of goals. Next, this Part will discuss how the current practice of targeting the property owner is ineffective and belies the main purpose of code enforcement, which is to protect the health, safety, and welfare of the citizens. Finally, this Part will discuss the problem of abusive

\(^6\) See id. at 67.
\(^6\) Id.
\(^6\) See Report, DETROIT BLIGHT REMOVAL TASK FORCE, https://s3.amazonaws.com/detroit-blight-taskforce/CHAPTER+01.pdf (last visited Nov. 16, 2014). The task force, assembled by the Obama administration, reported that about 40,000 homes must be demolished and thousands more rehabilitated. “Detroit will need as much as $8.50 million just to address neighborhood blight in the next few years.” Id.
\(^6\) Graham Wood, Home Demolition Costs in Detroit Exceed Property’s Value in Many Cases (Feb. 4, 2013), http://realestate.aol.com/blog/2013/02/04/detroit-demolition-home-values/.
code enforcement departments, and it will highlight communities that have been subjected to this type of aggressive code enforcement.

A. Lack of Resources

Whether it was caused by an economic downturn or a natural disaster, a shockingly large number of America’s communities are dealing with blight on a massive scale. However, in an environment where the budgets are shrinking and the workload is increasing, code enforcement is struggling to keep up with the needs of the changing communities. Very often code enforcement departments fail to meet intended goals, a problem that is exacerbated by the perception that too few resources exist to adequately enforce the code.

The local ad valorem property tax is the main source of revenue for most code enforcement departments. As a result of the increased numbers of vacant and abandoned properties in our country, the stream of revenue from property taxes is often delayed because of tax or lender foreclosures. It may take years before the local jurisdiction receives payment of the tax arrearages on foreclosed properties. Although there may eventually be a payment of all the tax arrearages, foreclosure-caused delays often disturb the revenue needed to pay local code enforcement department salaries and costs. Moreover, the workload for code inspectors has increased because of the increased numbers of homes that are either vacant, abandoned, or not being maintained while they are in foreclosure.

There are numerous communities in which local governments have only one or two individuals available to handle the entire code enforcement within the jurisdiction. This tiny staff is responsible for identifying code violations,

67. See Allison Blyer and Elaine Ortiz, Benchmarks for Blight How Much Blight Does New Orleans Have?, GREATER NEW ORLEANS CMTY. CTR., 4 (Aug. 21, 2012), https://gnocdc.s3.amazonaws.com/reports/GNOCDC_BenchmarksForBlight_March2012.pdf. A study of blight in New Orleans published by the Greater New Orleans Community Data Center looked at the rate of blight in other cities as of March 2012. Id. It found that Detroit had 83,833 blighted houses (24% of the city’s houses), Flint, Michigan had 14,497 (27%), Youngstown, Ohio had 7,057 (21%), Cleveland had 40,824 (19%), and Baltimore had 40,265 (14%). Id. According to the study’s estimates, New Orleans had 43,680 (19%), down from 71,657 (34%) in March 2008. Id. Based on the study, the cities listed all have seen rises in blight, except New Orleans. Id. Much of New Orleans’s success is due to changes in their code enforcement system and a superlenny statute in Louisiana, which is discussed below. Id.

68. Betts, supra note 15, at 27.

69. See COLLINS, supra note, at 70.

70. Frank S. Alexander, Tax Liens, Tax Sales, and Due Process, 75 IND. L.J. 747, 748 (2000) (citing Henry J. Aaron, Who Pays the Property Tax?: A New View 56 (1975)). In addition to the time involved in foreclosing tax liens, the process is complicated, and sometimes costly. Id. “Collection of delinquent property taxes is not for the faint hearted.” Id.

71. Id. The property tax, as a percentage of overall revenue, “continues to be predominant among the sources of revenue that are within the control of our cities, counties, and school districts.” Id.

72. See COLLINS, supra note 19 at 69. “Do more with less!” has been the guiding motto and has resulted in many creative approaches to achieving the goals of code enforcement.” Id.

investigating reported violations, citing the violations, monitoring compliance, and overseeing the rehabilitation of the property. The situation in Killeen, Texas provides a useful illustration of just how understaffed code enforcement offices frequently are. As of March, 2011, Killeen, which has an estimated population of 130,000 people, employed two code enforcement officers who were responsible for handling over 200 cases per month.\(^74\) The responsibilities of these two officials were increased to require them to remove worn-down signage and solid waste. Nonetheless, the City did not hire more staff members.\(^75\) As a result, one resident reported trash in Killeen, such as old mattresses, now remains left out in the neighborhood for as long as three weeks.\(^76\)

Other examples abound. In Lexington, Kentucky the population exceeds 300,000, and yet there are only two staff members to address code enforcement issues.\(^77\) In Cincinnati, Ohio, one inspector had a caseload of 600 properties.\(^78\) Billings, Montana employed five code enforcement staff members, and documented 1,662 violations between January and June, 2013.\(^79\) Cleveland, Ohio, and Detroit, Michigan, have both cut their code enforcement personnel in half since the mid-2000s during a period when the number of abandoned homes has dramatically increased.\(^80\)

One key to keeping a code enforcement staff functional during this tough housing market is to add additional revenue sources that can supplement the revenue that is received from the property tax.\(^81\) Additional revenue can come in the form of fees, fines, grants, and recovery costs.\(^82\) One such fee is the reinspection fee.\(^83\) Each time an inspector has to go to a property to reinspect and determine whether the property is in compliance, the owner can be charged a fee.\(^84\) Another fee that can be used to create revenue is the point of sale inspection fees.\(^85\) This is a program where the inspector inspects a property that is about to be sold. The inspector then charges a fee for this service, which

\(^{74}\) Id.
\(^{75}\) Id.
\(^{76}\) Id.
\(^{81}\) COLLINS, supra note 19, at 70.
\(^{82}\) Id. at 70–71; see also Alexander, supra note 70, at 748.
\(^{83}\) COLLINS, supra note 19, at 70.
\(^{84}\) COLLINS, supra note 19, at 57; see Rusk v. City of Milwaukee, 727 N.W.2d 358, 364 (Wis. 2006).
also alerts the potential buyer to code violations before closing on the property.

Additional revenue sources may also be generated from the recovery costs expended to abate a violation. For example, demolition costs may be recoverable from fire insurance proceeds. If the state has created a fire insurance escrow fund, this fund will allow the code enforcement department to receive insurance proceeds to pay for the demolition of a building partially destroyed by fire. The property owner is prevented from pocketing the insurance proceeds while the taxpayers pay the bill for the demolition. Fines are another way to generate additional resources for code enforcement departments.

Some jurisdictions use fines heavily to encourage compliance and deter violations. However, as discussed in more detail below, code enforcement departments should tread cautiously with creating fines and other penalties that create a risk that the owner will face criminal sanctions if he or she does not pay. The focus should be on the property and not the person, and recovering the property to rehabilitate it should take precedence over fining the owner to raise revenue. There should be a careful balance between the need to create additional revenue streams and the need to protect citizens from criminal sanctions and incarceration because of fines that are not paid on code violations.

**B. Liens Do Not Protect the Local Government**

Another sort of code enforcement problem arises when a properly enforced code still results in blighted communities. Typically, at its penultimate point, code enforcement involves placing a lien on the delinquent property for fines levied and costs that were incurred by the authority placing the lien. The final enforcement step, in theory, is foreclosing that lien, forcing a sale to the highest bidder, or—failing any meaningful bids—taking possession of the property in satisfaction of the lien. The authority then has the power to remediate any deficiencies that remain on the property, and then sell it to recoup its expenses.

The goal, of course, is that the process never reaches the foreclosure stage. A municipality’s power to lien and foreclose code enforcement liens is designed to encourage the property owner or any mortgage holders to remediate the code violations on the property and pay any fines or expenses. When property owners held equity in their land, this was generally effective. Today,

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86. **COLLINS, supra** note 19, at 71.
87. **Id.** at 72.
88. **Id.**
89. **Id.**
90. **Id.**
91. **See id.** For example, in Daly City, California, constructing a secondary unit on a home without a permit results in a $1,050 fine if not corrected within 90 days. **Code Enforcement Procedures and Fees, DALYCITY.ORG, http://www.dalycity.org/Page195.aspx** (last visited Aug. 20, 2014).
92. An owner holds equity in their property when its value exceeds the total value of the liens that exist
since many distressed properties are valued below what the owner owes to mortgage holders, the threat of a code enforcement lien loses its sting. This is a problem because the owner has no fear of losing equity in the property as a result of the junior lien, and the local government has no incentive to foreclose the lien to recoup costs because there is not enough equity in the property relative to their lien priority.

C. Current Codes as Drafted Are Inherently Unenforceable

Most codes are currently drafted in a manner that makes them inherently unenforceable. Some codes are drafted in vague terms that do not give objective guidelines for an inspector to implement. Other codes are drafted to require homes to maintain a middle class standard that is idealistic and impossible to maintain in lower income neighborhoods. Additionally, most codes fail to set priorities for code enforcement departments, leaving inspectors to set their own priorities of which violations to enforce. These shortcomings in the code should be addressed to achieve higher success in code compliance.

1. The Code is Drafted for a Middle Class Standard and is Vague

Almost all housing codes define a standard that is of middle-class quality. However, not all properties can feasibly meet the required standard, especially much needed, affordable rental properties. For example, a code that requires all dwellings to use premium quality paint or modern standards of lighting may prevent some units from being affordable in the lower income market. If an owner must put in thousands of dollars to bring an older dwelling into compliance with requirements that are not necessarily essential, then the owner will have to raise the rent to make it economically feasible to rent the unit. This will drive the prices of rental units up and prevent lower income families from finding affordable housing. Moreover, codes are also often voluminous and vague. “They may require, for example, ‘good repair,’

upon it. When property values plummeted in the late 2000’s, many owners who held equity in their properties found themselves with mortgage debt that exceeded those new values. Subsequent lienholders, like code enforcement agencies, found that their liens were essentially worthless.

93. When a junior lienholder holds a lien on a property whose owner still has equity in it, the lienholder has the possibility of 1) the owner paying the lien, because they do not want to lose the equity they have in the property, or 2) foreclosing the lien, because even though the junior lienholder cannot extinguish the senior liens, the value of the property will allow the junior lienholder to either sell the property to satisfy the senior liens, or justify satisfying or negotiating the senior liens directly.

95. Id. at 22.
96. Id. (citing H. Lawrence Ross, Underenforcing the Housing Code, http://www.reds.msh-paris.fr/communication/textes/hcode.htm (last visited Aug. 13, 2014)). Although we know that most city codes share this standard (for example properties free of cracks in the walls), we also know that it is unrealistic to meet each and every demand for multifamily rental properties at the bottom of the rental market. Id.
97. See Betts, supra note 15, at 22.
98. See id.
99. See id.
‘safe condition,’ or ‘fitness for human habitation,’” terms that are not self-defining and provide owners with inadequate notice of what is required of them.100

2. Current Codes Fail to Address the Prioritization of Goals

It is also unrealistic to think that even if every single code violation in a particular city could be identified, the code enforcement authorities would have the resources and manpower to deal with them all.101 This impossibility may lead to a lack of commitment by those working in code enforcement.102 Moreover, the law itself does not usually establish priorities for code enforcement departments, and departmental management, too, often refuses to set priorities.103 Thus, inspectors must often set their own priorities of which violations to enforce.104 This is a flawed system. Individual judgment rarely utilizes the benefit of the collective wisdom that a comprehensive strategy developed by a code enforcement agency would afford.105 Without a clear strategy to prioritize violations, it is easier for individual inspectors to be biased in their enforcement. It is easier for them to avoid more dangerous violations, which take more work and are harder to resolve, so that they can show a better success rate by selecting easier violations to enforce.106

Another pitfall that occurs when there is no clear prioritization is that code enforcement departments focus on “impression management.”107 When a department begins to focus on particularly high profile violations, “impression management displaces enforcement as the primary function of the system.”108 The result is a department that places misguided stock in particular compliance victories rather than the overall effectiveness of the department in actually eradicating and preventing blight.109 The ultimate effect of an impression management oriented strategy is a code enforcement department with underdeveloped systems for the essential prerequisites for an efficient department.110

100. Id.
101. See id.
102. Id.
103. Id.
104. Id. As we see any time an individual is required to exercise personal judgment interpreting law, the results are varied. An inspector may decide to enforce the code against a violator because compliance can be obtained more easily, but could also be based on personal reasons such as whether a particular violator has been disrespectful.
105. Id. Relying on the personal judgment of an individual inspector also can result in inconsistent enforcement and claims of selective enforcement which frustrate the community by confusing expectations.
106. COLLINS, supra note 19, at 81.
107. Betts, supra note 15, at 23. “Impression management means that more highly visible or more politically significant complaints become priorities, including both serious health and safety complaints and complaints involving influential stakeholders.” Id.
108. Id.
109. Id. at 23–24.
110. Id. at 24.
D. Code Enforcement’s Focus on the Person and Not on the Property

To enforce its code, two types of actions are available to a local government: *in personam* and *in rem*. *In personam* actions include fines and penalties,\(^{111}\) and can even involve civil contempt of court.\(^{112}\) *In rem* actions are those that look to the property for satisfaction.\(^{113}\) A code enforcement lien against property securing the costs of remediating code violations is considered *in rem*.\(^{114}\) Both types of actions benefit local government in their code enforcement work. However, there are limitations to each. *In personam* actions may encourage some property owners into compliance, but not all. Some property owners have no resources to pay fines or cover the costs of remediation; in these cases, *in personam* actions carry little weight.\(^{115}\) *In rem* actions, such as placing liens and foreclosing on the property, avoid the pitfalls of insolvent property owners.\(^{116}\) But they come with their own obstacles. As noted above, a problem local governments face with their code enforcement liens is that often the property value is less than the existing liens. As a result, it frequently makes little financial sense for the local government to foreclose its lien,\(^{117}\) and in a lender foreclosure, there will likely be no surplus to pay the local government’s junior lien.

In many instances, there is post-adjudication non-compliance.\(^{118}\) This occurs when a judge or hearing officer has determined an individual is in violation, yet the violator still does not abate the nuisance.\(^{119}\) Of course, the *in rem* penalties described above such as liens on the property could result in forfeiture of the property.\(^{120}\) However, in some jurisdictions the code violation can result in incarceration.\(^{121}\) This seems very wrong. An *in personam* action

\(^{111}\) “In an effort to achieve compliance with local laws, ordinances and building and zoning codes, local municipalities can obtain leverage against accused parties by seeking the imposition of cumulative fines for continuing violations.” Desmond C.B. Lyons, Esq., *Building the Pyramid: The Use of Cumulative Penalties in Municipal Code Prosecutions*, 36 WESTCHESTER B.J. 38, 38 (2009).

\(^{112}\) Black’s Law Dictionary defines *in personam* as “I. Involving or determining the personal rights and obligations of the parties. 2. (Of a legal action) brought against a person rather than property.” BLACK’S LAW DICTIONARY 862 (9th ed. 2009).

\(^{113}\) Black’s Law Dictionary defines *in rem* as “Involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.” BLACK’S LAW DICTIONARY 864 (9th ed. 2009).

\(^{114}\) See 51 AM. JUR. 2D LIENS Jurisdiction and venue; foreclosures as proceedings in rem § 84 (2011).

\(^{115}\) Fines and penalties that are uncollectable due to a property owner’s insolvency are ultimately a waste of resources for the local government, in that the process to levy the fines uses money and manpower that could be used in more productive ways. In addition, jail property owners who cannot or will not comply does not accomplish code enforcement’s ultimate goal – restoration.

\(^{116}\) For a detailed discussed on the benefits of pursuing *in rem* remedies with vacant houses, see Kelly, James J. Jr., *A Continuum In Remedies: Reconnecting Vacant Houses to the Market*, SCHOLARLY WORKS (2013), http://scholarship.law.nd.edu/law_faculty_scholarship/1081.

\(^{117}\) This is because the local government’s foreclosure, as a junior lienholder, would not extinguish the senior liens, so the local government would take title subject to all superior liens.

\(^{118}\) COLLINS, supra note 19, at 68.

\(^{119}\) Id.

\(^{120}\) See id. at 69.

\(^{121}\) Paul Nelson, *Week In Jail for Code Violations*, TIMES UNION (Sept. 24, 2013), http://www.timesunion.com/local/article/Week-in-jail-for-code-violations-4840772.php. For example, in Schenectady, New York, a man was sentenced to a week in jail for failure to pay code enforcement fines. Id.
against the violator could result in a court order to repair the property and then
the use of contempt of court penalties could ultimately lead to the violator’s
incarceration.\textsuperscript{122} In the case where the violator simply does not have the
financial means to make the repair, this essentially results in a debtor’s
prison.\textsuperscript{123} Although the United States Constitution does not allow a person to
be incarcerated simply because he or she is unable to pay fines or court costs,\textsuperscript{124}
some courts circumvent that mandate by using civil contempt as a means to
incarcerate the violator.\textsuperscript{125} The Great Recession has left many people in the
position where they cannot afford to maintain their homes, they are fined for
code violations, they are not able to make the repairs, and they are hit with
additional fines, and then jailed for contempt of court when they do not comply
with the court order to remedy the violations.\textsuperscript{126} To make matters worse, a
violator in foreclosure can face a more difficult situation when he or she is still
the legal owner of the property and the bank is stalling the foreclosure. If cost
of the foreclosure and fines on the property would outweigh what the bank
would receive from the collateral, the bank has no incentive to move forward
with the foreclosure litigation.\textsuperscript{127} This results in a home that the owner cannot
afford to keep or maintain, and a lender who is contending that because they
are not the owner, they do not have a responsibility to comply with the code
enforcement order to make the repairs. In this case, the house sits in disrepair
with no one willing to pay to rehabilitate the property, and the community at
large is victimized.\textsuperscript{128} Much of the blight that we see in communities today is
a result of this dodging of responsibility between the homeowner and the
foreclosing lender.

The following is anecdotal evidence of the dangers of \textit{In Personam}
Enforcement. The system is broken when you hear of a single mother pleading
to a judge to grant a motion for summary judgment of foreclosure against her
so that she will not have to go to jail for failing to repair a damaged roof. A
former client’s situation illustrates how hard it can be for a homeowner without
the means to repair a code violation. Sandy,\textsuperscript{129} a single mother, had a house in
foreclosure for over five years. Sandy’s house was valued well below the

\textsuperscript{122} COLLINS, supra note 19, at 68; see also Paul Nelson, \textit{Week In Jail for Code Violations}, TIMES UNION
\textsuperscript{124} See \textit{id.} at 241; Tate v. Short, 401 U.S. 395, 398 (1971).
\textsuperscript{125} See Letter From Christine Link, Exec. Dir. of ACLU of Ohio, to Hon. Chief Justice Maureen
O’Connor, Supreme Ct. Justice. (Apr. 2013). The letter discussed the emergence of a debtor’s prison in Ohio,
which blatantly disregarded the U.S. Supreme Court, Constitution, and the Ohio constitution. \textit{id.} A person is
not permitted to be incarcerated for failing to pay a fine if they are unable to do so. \textit{id.} A hearing to determine
the violator’s financial status and ability to pay must be heard before a person is incarcerated. \textit{id.}
\textsuperscript{126} See COLLINS, supra note 19, at 69.
\textsuperscript{127} See Kermit J. Lind, \textit{Collateral Matters: Housing Code Compliance in the Mortgage Crisis}, 32 N.
\textsuperscript{128} \textit{id.} at 449–450.
\textsuperscript{129} The homeowner’s name has been changed to protect the privacy of the individual.
amount that was owed on the property. Two years into the foreclosure, while Sandy was still residing in the house, the roof was damaged due to a strong storm. Sandy’s homeowner’s insurance would not give Sandy the money to repair the roof because the home was in foreclosure. Her lender would not repair the roof, and she could not afford to repair the roof. The local code enforcement department gave Sandy several notices to repair the roof. Each time she spoke with the inspector, she told him that she did not have money to repair the roof and the insurance company and lender were not working with her to fix it. After months of notices, Sandy’s case was heard in court and the court issued an order requiring her to repair the roof. Sandy received the order, along with the inspector’s warning that if she did not repair it, she could be incarcerated. Sandy explained to the inspector that she had no money to fix it and that her house was in foreclosure. Sandy could not risk being incarcerated as she was the sole provider in the household, and she had no one else who could care for her young son.

Sandy was a paralegal and knew enough about litigation to set a hearing date for the motion for summary judgment for the foreclosure of her own home. Sandy set the hearing. The lender’s counsel did not appear and Sandy argued in support of the lender that the court should grant the motion for summary judgment and set a sale date. She was desperate to get the property out of her name so that she would not be responsible for the repair of the roof. Sandy represented herself pro se at the motion for summary judgment hearing. The motion for summary judgment was granted and in a few months the lender took title at the foreclosure sale. If a homeowner in Sandy’s circumstances did not know enough about the law to move the foreclosure to a sale, as Sandy did, that owner could have eventually been incarcerated.

The code enforcement’s attempt at compliance through the threat of incarceration was not successful in this case. Solutions that would have benefitted the community, without threatening incarceration of a woman financially incapable of compliance, are discussed in Part Four of this article.

E. Unchecked and Abusive Code Enforcement Departments

In some areas of our country, code enforcement has been used as a cannonball where a simple flyswatter would suffice. Cases from the Antelope Valley in California, and Arlington, Texas, highlight the potential abuse that nuisance abatement teams can administer. The people of Antelope Valley who are “off the grid” are least able to defend themselves in these cases yet they are most in need.

130. Although it is outside the scope of this article, it is interesting to explore the rights of an individual facing a debtor’s prison and whether or not they are afforded the right to counsel if they cannot afford one. See Travis Steams, Legal Financial Obligations: Fulfilling the Promise of Gideon by Reducing the Burden, 11 Seattle J. for Soc. Just. 963, 984 (2013).
The Antelope Valley is a 2,200 square mile patch of land located at the western edge of the Mojave Desert in Los Angeles County.\textsuperscript{131} It is made up of small towns with residents ranging from truck drivers to retirees.\textsuperscript{132} The common thread between most of the residents is the desire to live somewhere quiet and to be left alone.\textsuperscript{133} But the scene described in the introduction of this article, with armed, flak jacket-wearing agents descending on homes in the Valley has become a story told by more and more residents since 2006.

On October 17, 2007, the agents surrounded a cabin belonging to Jacques and Marcelle Dupuis. The cabin they lived in stood for twenty-six years without incident. But the agents told Marcelle that because the structure did not have the proper permits, it would have to be torn down. Jacques had built the cabin to code in 1984, but he did not obtain the proper permits at the time. As an experienced commercial builder, he assumed he could get the permits after the fact, a common practice in Southern California. “They wouldn’t let me grandfather in the water tank,” Jacques Dupuis said.\textsuperscript{134} “It is so heart-wrenching because there was a way to salvage this, but they wouldn’t work with me. It was, ‘Tear it down. Period.’ ”\textsuperscript{135}

In another manifestation of the aggressive tactics of the Antelope Valley Nuisance Abatement Team ("NAT"), Oscar Castaneda, a pastor of a historic Seventh-day Adventist Church, was ordered to "freeze" while walking on his own remote rural property.\textsuperscript{136} Having received verbal approval from the county decades ago for his improvements, Castaneda told the NAT team that in twenty-two years no one had ever bothered him.\textsuperscript{137} The NAT team member replied, "Well, we’re twenty-two years late."\textsuperscript{138} Castaneda and his wife gave up the fight and moved off of the land they had lived on for twenty-two years.

Scott Sterner, another Antelope Valley resident, was also a victim of the NAT’s ruthless policies.\textsuperscript{139} The armed NAT team came after Sterner who had two seagoing containers on his property.\textsuperscript{140} To comply with the code, Sterner was forced to cut the containers into three pieces with a blowtorch.\textsuperscript{141} His property now meets code but he has a worthless and potentially dangerous mess in his yard.\textsuperscript{142}

\textsuperscript{131} Melnicoff, supra note 2.
\textsuperscript{132} Tim Cavanaugh, Celebrate the Freedom to Have Your Life Destroyed by County Busybodies, HIT & RUN: REASON.COM (July 4, 2011, 7:49 PM) http://reason.com/blog/2011/07/04/celebrate-the-freedom-to-have.
\textsuperscript{133} Id.
\textsuperscript{134} See Melnicoff, supra note 2.
\textsuperscript{135} Id.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} See id. Sterner's neighbors also had containers of the same kind. Id.
\textsuperscript{141} Id. The local code prohibited non-permitted structures larger than 120 square feet on private property. Id.
\textsuperscript{142} Id. Residents discovered information that the third party complaints to the NAT team were all coming from the same party, and this was a wealthy investor looking to build condos in this area. Id. Various conspiracy theories as to why there is a focus on this rural area of Los Angeles County exist. Id.
A six-week investigation by *L.A. Weekly* in 2011 found that the NAT team was "pursuing victimless misdemeanors and code violations, with sometimes tragic results."\(^{143}\) Los Angeles County officials state that the NAT team is used only for "[v]ery, very serious violations," however; some residents who appear to be doing no harm and have lived on the land for decades are being left homeless.\(^{144}\) Key members of the NAT team admitted there is now a major focus on the unincorporated areas of the Antelope Valley.\(^{145}\) Robert McNamara, an attorney at the Institute of Justice, states that inevitably, selective enforcement of the code occurs.\(^{146}\) Technically, everyone is in violation of some code, so a code enforcement team can pick on the people they do not like, and there is little judicial oversight to prevent this abuse.\(^{147}\)

Another incident that received media attention occurred in Arlington, Texas. This incident occurred at a property dubbed "The Garden of Eden," a combined business and residence that promoted a self-sufficient lifestyle. On August 2, 2013, the Arlington code enforcement team, along with a SWAT team, raided the premises. The SWAT team was there to execute a search for marijuana plants, none of which were found. The code enforcement team hauled away compost and furniture, along with goods that were essential to the residents' daily lives.\(^{148}\)

This Texas case, along with those from the Antelope Valley, highlight the difficulty code enforcement agencies face in balancing protection of the community with individual rights. In the "Garden of Eden" incident, the police allegedly received multiple complaints that the owners were growing marijuana plants on the property.\(^{149}\) Prior to the August 2, 2013 raid, the owners of the property had already been cited with a Nuisance Abatement Order for violations. This case raises several issues in defining effective code enforcement procedures.

First, when operating under a complaint-based system, agencies are stuck between taking a complaint at face value and making judgment calls assessing their reliability. Investigating every complaint will invariably spend resources on some false leads. Yet ignoring some complaints might overlook genuine violations. Second, the reality is that virtually every property has some violation that could be remediated. The agencies must ask which violations

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\(^{143}\) Id.

\(^{144}\) Id.

\(^{145}\) Id.

\(^{146}\) Id.

\(^{147}\) See id.

\(^{148}\) Owner, Shellie Smith, explained, "There were 15 to 20 blackberry bushes. There were sunflowers for our bees and gifting. Lots of okra, and we had a sweet potato patch that they whacked down with a Weed-Eater...The weeds that we used to shade our crops are also gone." Liz Klimas, *Texas 'Garden of Eden' Owner Claims SWAT Raided Her Property Under 'Guise' of a Drug Bust and Took 20,420 Pounds of Material*, THE BLAZE, (Aug. 16, 2013, 9:36 AM) http://www.theblaze.com/stories/2013/08/16/texas-garden-of-eden-owner-claims-swat-raided-her-property-under-guise-of-a-drug-bust-and-took-20420-pounds-of-material/.

\(^{149}\) Id.
should be enforced to further the overall purpose of code enforcement. They must exercise sound judgment. One might be hard pressed to argue that removing blackberry bushes furthers the goal of community preservation and safety. Unfortunately, the typical explanation is one that sounds in a zero-tolerance attitude, that is, if it is a violation, then enforcement is justified. This mentality drives a wedge between the community and code enforcement agencies, and does inspectors the disservice of implying that they lack the common sense to distinguish between a garden with edible plants and a house overgrown with weeds.¹⁵⁰

An additional factor that complicates a code enforcement agency’s decision is the demographic of the violator. There are a variety of factors that are at work in every anecdote of an agency enforcing its code, including age, income level, and ethnicity. The problem for code enforcement is that a hazard on a young, wealthy couple’s property poses the same danger to the community as one on a poor, elderly widow’s property. Yet social sympathy will favor the widow and call code enforcement oppressive, while the wealthy couple may be viewed as degenerates for not keeping their property in compliance. This issue is evident in a case from La Quinta, California.

Ageda Camargo, an eighty-three-year-old woman, bought a home in La Quinta in 1977.¹⁵¹ The house came with three bedrooms, and she lived there peacefully for thirty years.¹⁵² On June 7, 2007, code enforcement inspectors found that one of her three bedrooms was actually a garage converted into a room, in violation of the code.¹⁵³ The court agreed, fining Camargo $3,000, which she stated she could not pay.¹⁵⁴ The other option was thirty days in jail.¹⁵⁵

This case exemplifies the difficult position code enforcement and prosecuting attorneys can find themselves in when enforcing their local code.¹⁵⁶ On one hand, the converted garage was not only constructed without permits, it also did not meet the minimum requirements of the code, and therefore posed a danger.¹⁵⁷ On the other hand, however, the violator in the

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¹⁵⁰ In Tulsa Oklahoma, Denise Morrison grew a garden with over one hundred plant varieties, all of them edible for both food and medicinal purposes. Lori Fullbright, Woman Sues City of Tulsa for Cutting Down Her Edible Garden, TULSA, OK - NEWS, WEATHER, VIDEO, SPORTS (June 15, 2012, 7:39 PM) http://www.newson6.com/story/18802728/woman-sues-city-of-tulsa-for-cutting-down-her-edible-garden. A neighbor’s complaint landed her and the city in court, and despite a court order continuing the matter, the city cut down not only her garden, but several fruit- and nut-bearing trees as well. Id.


¹⁵² Id.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id. In addition to making a decision that best accomplishes the goals of code enforcement, the public sentiment was that Carmago was the victim, and one attorney alleged that the city’s actions amounted to elder abuse. Id.

¹⁵⁷ Id.
case had no resources to tear down the room. Fines or jail time would solve nothing in this instance. Fortunately, in this instance, common sense prevailed and an accord was reached, allowing Carmago to keep the garage intact if she brought it up to code.

If the purpose of municipalities having the power to enforce code violations is to protect the health, safety, and welfare of its communities, then one must ask whether jailing those members of the community is commensurate with that goal. One must also ask whether it is more or less safe to tolerate a structure that has stood for decades but is technically not compliant with the code, or bulldoze it and make its owners homeless. Whether it is from lack of resources, or a failure to use those resources wisely, in many jurisdictions, this system is failing. Therefore, a new comprehensive and strategic method must emerge to enable code enforcement agencies to effectively and efficiently deal with the blight in our communities.

IV. Solutions

Before exploring different ideas to improve the current code enforcement systems, it is important to note that as different as each community is across the United States, the possible solutions to resolving problems also vary immensely. The solutions proposed herein may be very useful for one

158. Id.
Carmago has three years to remediate the issues with the garage that violate the local code. Id. A local contractor has agreed to help Carmago with the repairs, free of charge. Id. While this is a story with a happy ending, it required the assistance of an attorney on behalf of Carmago and years of litigation, including a case before the city council. Id. The national discussion on how code enforcement can better serve the community and accomplish its goals must include a conversation on compromise, and enunciate the idea that the code should be viewed as a shield and not a sword. The Carmago case is a prime example of a desirable result that could have been achieved with less animosity and use of resources had the initial attitude from all sides been one of cooperation.

Another important element of the Carmago case, which is addressed in more detail below, is the cost of remediation. Id. In that case, Carmago had no ability to remediate the violations. Id. Fortunately, in that case, a local contractor agreed to do the work for free. Id. It would be naïve to base a code enforcement system on the community to do all of the work for free, thus another important part of the discussion is how to allow agencies themselves to complete the work and still have their costs recoverable, both legally and practically.

160. Another type of abuse of power exists where code enforcement agents use their position for personal gain. See Jay Weaver, Miami Beach Code Enforcer at Center of FBI Nightclub Sting Pleads Guilty, MIAMI HERALD (Aug. 6, 2012) http://www.miamiherald.com/2012/08/06/2935489/miami-beach-code-enforcement-boss.html; Steven Chaitman, Feds Nab Seven City Inspectors in Bribery Case, CHI TOWN DAILY NEWS (May 22, 2008, 8:53 PM) http://www.chitowndailynews.org/2008/05/22/Feds-nab-seven-city-inspectors-in-bribery-case-14709.html; Jim Smith & Dave Davies, Sex, Bribes and L&I Ex-Inspector Indicted Frank Antico Accused of Shakedowns, Bribery and Extortion, PHILLY.COM (May 15, 1998) http://articles.philly.com/1998-05-15/news/25740273_1_red-tape-city-inspector-grand-jury. In any type of law enforcement, the opportunity exists for the agent to overlook violations in exchange for money or favors. See id. Code enforcement is no different. Further, not only do code enforcement agents have the ability to overlook violations, but there are also instances of targeted extortion. See id. In Miami Beach, Florida, an investigation involving an FBI agent posing as a club manager revealed that the lead code enforcement agent for Miami Beach had accepted over sixteen thousand dollars in bribe money, after demanding money for "protection" from the city's inspections. Weaver supra. The investigation revealed multiple inspectors involved in the extortion, and also exposed a history of bribes and drug transportation within the department. Id.

jurisdiction but ineffective or even counter-productive in another, because of local politics, culture, and the existing legal framework. Despite these differences, studying systems that have been successful may help a local government craft a solution tailored to its particular needs. Below are examples of a few legal tools that have been successful in various states and local jurisdictions across the country. The first solution presented is granting superlien status to code enforcement liens. The next solution presented is enacting ordinances or statutes that allow for a health and safety receivership. The final solution presented is a co-production model of code enforcement. States and municipalities—along with their code enforcement agencies—should examine these solutions and implement them locally, adjusting the methods to suit the nature of their communities.

A. Creation of Superlien Status for Code Enforcement Liens

Creating super-priority for code enforcement liens is a legal tool that is not being used in most states. This tool, however, has the potential to help solve the problem of lack of resources in code enforcement departments. It also motivates owners to action because they do not want the superlien to be foreclosed.

The common law rule of “first in time, first in right” has been codified in the majority of states through recording statutes. This idea, that earlier recorded liens will have priority over later recorded liens, is uniform throughout the country. There are exceptions to this, however, for a variety of liens, including—among others—ad valorem tax liens as well as condominium and homeowner association liens. These liens are commonly referred to as “superliens.”

Under a superlien regime, even if an ad valorem tax lien was created and recorded subsequent to an earlier recorded purchase money mortgage lien, the ad valorem tax lien would have priority. In times when residential mortgage collateral exceeds the value of the mortgage on the property, lien priority is not so important an issue because there is plenty of money to go around—all the lienors get paid and the mortgagor may even get money back, too. When the value of the home falls below the amount owed on the mortgage, however, lien priority becomes much more important.

In the example of an ad valorem tax lien foreclosure sale, the ad valorem tax lien will be paid in full before anything is paid to the remaining lienors (including a purchase money mortgage). As one can imagine, the ability for a lien to jump the order of priority and head to the front of the line is not appreciated by lenders. Nonetheless, some state legislatures have made exceptions to the first in time principle in cases where the benefits to the

162. They are also referred to as having “super-priority.”
community outweigh the potential risks to the lending markets. Without the super-priority lien for ad valorem taxes, a local government would have a much harder time recouping unpaid property taxes which are essential for providing services such as schools and utilities.

If the overall mission of code enforcement is to keep communities safe and clean, then superliens help achieve that goal in several ways. First, it is more likely that the state will pursue remediation over sanctions if its costs are recoverable.\textsuperscript{163} Because the goal of code enforcement is to keep properties safe and neighborhoods free of blight, remediation is always preferred over punishment. More importantly, where there is no superlien statute in effect, lenders will have little incentive to remediate a distressed property. The absence of a superlien statute compels the state to bear the cost of repairing a dangerous violation, and effectively makes the state's cost a windfall to the lender because in an "underwater" property, the state will not recoup those costs.\textsuperscript{164} Where code enforcement agencies cannot or will not remediate violations, and lenders have no incentive to act, properties remain neglected and hazardous.\textsuperscript{165} Because mortgage securitization has disconnected the personal relationship between mortgagor and mortgagee, states must incentivize a lender's participation in keeping properties compliant and neighborhoods free of blight.\textsuperscript{166}

Louisiana has established superlien priority throughout the state and its municipalities for code enforcement liens. Municipalities may impose civil fines for property that is blighted, abandoned, or otherwise poses a danger to the public because of code violations.\textsuperscript{167} A separate statute grants municipalities the authority to remove unsanitary weeds and growth from a property and the sidewalks around it.\textsuperscript{168} Most importantly, municipalities have a lien for any maintenance, removal, or demolition it conducts on a derelict property.\textsuperscript{169} The Louisiana legislature reiterated the superiority of all of these


\textsuperscript{164} \textit{Id.} This is because, as a junior lien, the code enforcement lien will be eliminated through foreclosure as to its \textit{in rem} remedy; the \textit{in personam} remedy would not be against the lender, but rather the homeowner, who is likely insolvent.

\textsuperscript{165} The problem is exacerbated by lenders' lack of diligence in prosecuting active foreclosures. While a property is in foreclosure, its lender has little incentive to remediate violations, absent a superlien statute. Once the lender takes possession, code enforcement can then levy fines directly against the lender as owner.

\textsuperscript{166} Lind, \textit{supra} note 127, at 447. It is the securitization of mortgages that has destroyed the traditional connection between mortgagor and mortgagee. \textit{Id.} Rather than the borrower and the lender engaged in a personal and mutual economic relationship, lenders today rarely keep loans they originate and the tasks of collecting payments are assigned to servicers. \textit{Id.} at 447-448. This absence of personal interest from lenders in properties fuels an apathy towards their conditions and a lack of concern for the community in general. \textit{Id.}

\textsuperscript{167} LA. REV. STAT. ANN. § 13:2575 (2013). The statute distinguishes between municipalities with more or less than seventy thousand people. \textit{Id.} For those under seventy thousand, code violations do not qualify as instances where fines would apply. \textit{Id.}

\textsuperscript{168} \textit{Id.} § 33:5062.

\textsuperscript{169} \textit{Id.} § 33:4766.

A. The parish or municipality has a privilege and lien upon an immovable and its improvements, and the owner is personally liable for:

(1) The cost to the parish or municipality of maintenance of the immovable or improvements; and
liens in the statute regarding lien priority.\textsuperscript{170} The result is that municipalities in Louisiana can undertake remediation of blighted properties with the confidence that they can recover their costs. As a result, since 2010, the city of New Orleans has reduced blight by thirty percent, and it has recovered $3.4 million through the lien foreclosure process.\textsuperscript{171}

As noted above, Louisiana has explicitly established superlien status for code enforcement liens, or explicitly authorized municipalities to do so.\textsuperscript{172} Other states have chosen to prioritize code enforcement liens as any other lien on real property.\textsuperscript{173} Still other states, however, have not explicitly legislated whether municipalities may establish code enforcement liens as having super-priority to other liens. A recent opinion from the Florida Supreme Court highlighted this ambiguous situation.

In \textit{City of Palm Bay v. Wells Fargo Bank, N.A.},\textsuperscript{174} the Florida Supreme Court was called upon to address whether Palm Bay, a municipality in the state of Florida, was permitted to enact local legislation that established its municipal code enforcement liens as having super-priority status.

In Florida, municipalities are granted the right to enforce their code by Florida Statute Chapter 162.\textsuperscript{175} That provision establishes code enforcement boards and a procedure by which they may lien properties.\textsuperscript{176} Additionally, the Florida Constitution grants municipalities governmental, corporate, and proprietary powers to allow them to operate as a municipality.\textsuperscript{177} Finally, Florida Statute 166.021(1), in reference to the Florida Constitution, reiterates municipalities’ home rule powers, stating that they “may exercise any power for municipal purposes, except when expressly prohibited by law.”\textsuperscript{178}

The Florida Supreme Court looked to three Florida statutes that address lien priority in holding Palm Bay’s ordinance invalid.\textsuperscript{179} Two of the statutes

\textsuperscript{(2)} The cost to the parish or municipality of demolishing or removing, or both, a building or other structure situated upon the immovable or improvements, and all attorney fees incurred by the parish or municipality in connection with such demolition or removal.

\textit{Id.}

\textsuperscript{170.} \textit{See} \textit{id.} \S 9:4821. "The privileges granted by R.S. 9:4801 and 4802 rank among themselves and as to other mortgages and privileges ..." \textit{Id.}


\textsuperscript{172.} LA. REV. STAT. ANN. \S 30:2281 (2013).

\textsuperscript{173.} ME. REV. STAT. tit. 38, \S 1370 (2014).

\textsuperscript{174.} 114 So. 3d 924 (Fla. 2013).

\textsuperscript{175.} FLA. STAT. \S 162.02 (2014).

\textsuperscript{176.} \textit{Id.} \S\S 162.05--06.

\textsuperscript{177.} FLA. CONST. art. VIII, \S 2(b) (2012) ("Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.").

\textsuperscript{178.} FLA. STAT. \S 166.021(1) (effective July 1, 2011) \textit{unconstitutional as applied by City of Miami Beach v. Bd. of Tys. of the City Pension Fund for Firefighters & Police Officers in the City of Miami Beach, 91 So. 3d 237 (Fla. Dist. Ct. App. 2012).}

\textsuperscript{179.} \textit{City of Palm Bay}, 114 So. 3d at 928; FLA. STAT. \S\S 28.222(2), 695.11, 695.01(1) (2012).
are recording statutes, which mandate the procedure that clerks of the court must follow to record official records; the third requires that all official records be recorded according to statute to be valid against subsequent creditors or purchasers without notice.  

The court found that the municipal ordinance conflicted with the recording statutes. The majority acknowledged that municipalities have the power to legislate on any subject matter, so long as the municipal legislation did not conflict with state law. However, as noted in the dissent, such a conflict is not the same as a situation where a municipal enactment has been expressly preempted by state statute. That should have been the test applied by the majority.

Florida, like many other states, was hit very hard by the housing market crash and the ensuing foreclosure crisis, and there have been a record number of abandoned and lender-owned properties in the state. Unfortunately, the Palm Bay case produced a result in which local governments are now blocked from enacting superlien legislation, not because the state legislature has expressly preempted it, but due to an opinion focused on statutes which are “scattered and separately enacted.”

One battle over superlien status took place in 1983 when Massachusetts enacted a law that gave super-priority status to environmental liens. Both the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association responded to the statute by threatening to stop purchasing single-family residence mortgages in Massachusetts. The state responded by exempting residential property from the superlien statute.

Mortgage lenders oppose superlien statutes due to the negative impact a superior lien would have on its return in the event of a default and foreclosure. Additionally, the securitization of mortgages created a need within that industry for uniformity across states; superlien statutes would

180. FLA. STAT. § 695.01(1) (2012) (“No conveyance, transfer, or mortgage of real property, or of any interest therein . . . shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law.”).
181. City of Palm Bay, 114 So.3d at 931 (Perry, J., dissenting).
182. Id. The majority’s logic is additionally flawed in that the state legislature has itself established several exceptions to the lien priority schedule. The dissent points this out, stating, “Because the Legislature has provided several exemptions to the ‘first in time’ rule, the City may likewise legislate such a rule under its home rule authority.” Id.
183. Id.
184. Mortgage Foreclosure, (last visited Nov. 3, 2014) http://www.flcourts.org/administration-funding/court-funding-budget/mortgage-foreclosure.stml (“As of April 30, 2014, there were about 186,000 mortgage foreclosure cases pending in Florida courts.”).
185. City of Palm Bay, 114 So. 3d at 931 (Perry, J., dissenting).
186. Nash, supra note 163, at 129. Environmental liens differ from code enforcement liens in that the former focus on contamination of real property from toxic materials, while the latter stem from violations of local building codes. Id.
187. Id. at 129–130.
188. Id. at 130.
189. Id. at 131. Lenders fear the “slippery slope” of superliens and the threat that they pose to the “predictability that undergirds the residential mortgage lending industry.” Id. at 134. A few years later that predictability was shattered by the lending practices of the industry itself. Id.
destroy the certainty of the priority of their liens.\textsuperscript{190}

While tax liens enjoy superlien status in most states, those liens are predictable and lenders are able to cover the risk of those superior liens within the loans themselves.\textsuperscript{191} The issue with environmental or code enforcement superliens that apply retroactively is that they fail to give lenders the opportunity to factor in the risk that a superlien will trump their mortgage, consequently precluding the lender from adding a premium to the loan to offset the risk.\textsuperscript{192} One solution to this issue is for a state to only apply the superlien statute to mortgages that are recorded after the statute is in effect.\textsuperscript{193}

The arguments against superliens—that their risk to lenders and unpredictability would wreak havoc on the secondary market—are less pertinent with regard to code enforcement liens. The stark difference between liens for environmental cleanup and code enforcement liens is their respective amounts. The cost for remediating soil contaminated with toxic materials is vastly different than the cost of fixing a broken window or keeping a lawn mowed. There are, of course, more serious violations that code enforcement agencies face, including some so serious that total demolition is required. The point, however, is that by and large the value of code enforcement liens do not rise to the level of those for environmental cleanup, so the economic impact on lenders is minimal in comparison. In the event a property is so dilapidated that a code enforcement lien would strip some or all of the lender’s equity, that lender’s bottom line will be impacted regardless of whether an agency or the lender itself completes the repairs.\textsuperscript{194} Allowing a code enforcement agency to remediate repairs by protecting the state with a superlien for its costs accomplishes the goal of removing blight from communities while minimizing its impact on lenders and their security interests.

Granting superlien status to code enforcement liens is an effective solution to fighting blight in communities. It creates an incentive to first mortgage holders to take an active part in ensuring their collateral remains compliant with the code. Additionally, in the instances where the interested parties refuse to remediate violations, it protects the local government by ensuring its costs in repair or demolition are reimbursed before all other lienholders. This protection creates an incentive for local governments to act, resulting in less blight.

\textbf{B. Health and Safety Receiverships}

Another tool that states have used to accomplish the goals of code enforcement is termed a health and safety receivership. California has a statute

\footnotesize
\begin{itemize}
\item \textsuperscript{190} Id. at 131-132.
\item \textsuperscript{191} Id. at 167.
\item \textsuperscript{192} Id. at 168.
\item \textsuperscript{193} Id. at 168–169.
\item \textsuperscript{194} For a detailed analysis of the impact of properties that are so devalued that they are worthless and how land banking has rejuvenated certain cities, see generally Alexander, supra note 70.
\end{itemize}
which allows any "enforcement agency, tenant, or tenant association or organization" to seek a court order appointing a receiver for a property that remains in violation of the code and poses a substantial danger to residents or the public.\footnote{195. \textit{CAL. HEALTH \\& SAFETY CODE} §§ 17980.7, 17980.6 (2013). To qualify for a receiver, the statute requires that a building contain violations that "are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered." \textit{Id.}}

The procedure begins with a notice to repair or abate the code violations.\footnote{196. \textit{Id.}} The owner is given a reasonable time to comply.\footnote{197. \textit{Id.} § 17980.7.} If the owner fails to comply, then the enforcement agency has several remedies, including seeking an order for the appointment of a receiver for the offending property.\footnote{198. \textit{Id.} § 17980.7(c).}

California requires any receiver to first demonstrate "his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building."\footnote{199. \textit{Id.} § 17980.7(c)(2). The statute specifically allows nonprofit organizations or community development corporations to serve as receivers. \textit{Id.}} Upon appointment, the receiver is given full control of the property and the power to act on behalf of the property.\footnote{200. \textit{Id.} 17980.7(4). The receiver is granted the power to manage the building and pay expenses (4)(B), to secure a cost estimate and construction plan from licensed contractors to remediate the violations (4)(C), to employ licensed contractors (4)(D), to collect rents from the building and use the funds to remediate the violations (4)(E)(F), and with court approval, borrow and secure the debt with a lien on the subject property (4)(G).} The receiver is then tasked with remediating the violations or demolishing the building.\footnote{201. \textit{City of Santa Monica v. Gonzalez}, 182 P.3d 1027, 1045 (Cal. 2008). In \textit{Gonzalez}, a receiver was appointed for a residential building that had been in an unsafe condition for over fifteen years. \textit{Id.} at 1030. The receiver determined that the most profitable decision was, rather than repairing the building, to demolish it and sell the property. \textit{Id.} at 1034. The California Supreme Court affirmed the trial court's determination that the facts supported the receiver's determination that demolition, rather than repair, was the proper course of action. \textit{Id.} at 1046.} During the receivership, the owner of the property is enjoined from collecting rents.\footnote{202. \textit{CAL. HEALTH \\& SAFETY CODE}, § 17980.7(3) (2013). \textit{See generally}, Schreiber v. Ditch Rd. Investors, 164 Cal. Rptr. 633 (Cal. Ct. App. 1980).}

A problem arises for a receiver when the property in question has little or negative equity due to existing liens. In those instances, there is a danger that the receiver will have no source of income with which to pay the costs of remediation, including the receiver's fee. Because the receiver's lien would be prioritized behind the existing liens, it would hold no value. This is the same problem code enforcement agencies face in collecting reimbursement of their expenses, discussed above. While California does not have a universal superlien statute for receivership liens, its courts have held that a receiver may still obtain superlien status for liens associated with remediation of the subject property. To do so, a receiver may petition the court to establish its lien as having super-priority over existing liens, including purchase money mortgages. Not only may a court establish the costs of restoration or demolition as a superior lien, but also the receiver's fees and costs.\footnote{203. \textit{Id.} 17980.7(3).} In deciding whether to
grant super-priority status to a receiver’s lien, the main questions for the court are whether existing lienholders have been afforded notice and the opportunity to object,\textsuperscript{204} and whether the receiver has been appointed to protect the interests of the property.\textsuperscript{205}

California’s Health and Safety Receivership model has two facets that states can and should implement to aid code enforcement agencies in discharging their duty. First, the receivership itself removes the burden of remediation from code enforcement agencies and allows those agencies to dedicate their resources to inspection and monitoring. Independent of the receivership, California’s method of establishing super-priority for its receivership liens could be repurposed for code enforcement liens. The three-pronged approach California courts use to determine whether to grant super-priority status for liens is one that balances the protection of lenders’ mortgage liens with the need to give code enforcement agencies the incentive to remediate substandard properties and the ability to collect their costs from doing so.

One way for states to borrow from California’s approach is for them to establish a procedure whereby code enforcement agencies could notice existing lienholders of their intent to conduct remediation of code violations. The existing lienholders could then either make the repairs themselves, or allow the code enforcement agency to make them. Existing lienholders—particularly those with a purchase money mortgage—would then have foreknowledge that the code enforcement lien would receive super-priority status, while they are still afforded an opportunity to remediate the violation themselves. Additionally, the impact on first lienholders would be minimal, especially those in foreclosure, since regardless of whether the lender spends money remediating problems at a property (thereby reducing its bottom line) or code enforcement’s lien is given the first equity in the property, the net effect in dollars is the same.

\textbf{C. Co-Production Model}

As discussed above, most states are still focusing on the person and not the property when it comes to code enforcement. These states have code enforcement models that use a deterrent enforcement strategy that attempts to get residents to comply with the code out of fear of fines or other negative government action.\textsuperscript{206} One method that takes a different approach, however,

\begin{itemize}
  \item \textsuperscript{204} \textit{Id.} The court stated that the lender consented to the appointment of the receiver, and only after the receiver filed its final account did the lender object to the subordination of its lien. \textit{Id.} The court held that such an objection came too late, and upheld the super-priority of the receiver’s lien. \textit{Id.}
  
  \item \textsuperscript{205} “But there can be no question of the right of the court to give priority to certificates issued to enable the receiver to carry out the primary object of his appointment, viz., the care and preservation of the property.” Title Ins. & Trust Co. v. Cal. Dev. Co., 152 P. 564, 566 (Cal. 1915).
  
  \item \textsuperscript{206} \textbf{Anne Blumenberg et al., A Co-Production Model of Code Enforcement and Nuisance}
\end{itemize}
has seen very positive results.

The “co-production model” has been successfully implemented by several communities in Baltimore. This model realizes that the people who are best able to see the community problems and have the knowledge and ability to implement sustainable solutions to these problems are the residents. The residents, however, cannot do it alone. They still need help from the local government agencies to achieve results that are comprehensive. They work together through a community association to target the problem areas in the community. The community association cleans and boards up abandoned properties and keeps detailed evidence logs of drug dealing and drug use in the neighborhood to prove that certain properties are in violation of the housing code. However, the association must turn to the local police or the local government administrative agency if the property owner fails to respond to the community association. The court may impose fines on the property that force the owner to action. The court may appoint the community association as a receiver of the property so that the property can be maintained and secured until it is sold to a developer for rebuilding. If an abandoned property is not being maintained because the owner is an elderly woman in a nursing home, threats of fines from the local government agency will not abate the nuisance. The inclusion of the community associations is therefore crucial to the solution because the residents know each other and are better suited to advise the local government agency of problem properties and coordinate a strategy for dealing with each property individually.

“Code enforcement is, by its very nature, an interactive process dependent on governmental systems such as inspections, government records, the court system and system of follow-up to ensure compliance with a court order.” This coordination is essential to successful abatement and remediation, but it rarely occurs where the government agency is the only actor involved. One great strength that the residents of a community can bring to the table is their ability to monitor whether the court order is actually accomplished.

One obstacle to bringing the community associations into the mix of code enforcement is their potential lack of standing to bring nuisance abatement cases to court. Some states require that, in order to have standing, a community association must own property. Community associations rarely own property, however. There needs to be incremental legislative reform on this point to

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207. Id. at 268; see also Report, DETROIT BLIGHT REMOVAL TASK FORCE supra note 1 (stating that one part of the plan to remove blight in Detroit calls for “[t]he Establishment of the Department of Neighborhoods, providing the foundation for coordinating cross-agency actions and supporting much more consistent and transparent communication between the city and its residents than ever before”).

208. Id. at 274.

209. Id. at 273.

210. See id.

211. Id.
allow community associations standing to bring these types of suits. If they have standing, these groups can target the problem properties and try non-legal efforts to rehabilitate them. But if that fails, they can enlist the court system to help tackle the distressed property.

In Baltimore, the community law center created a separate entity called "Save a Neighborhood, Inc." ("SAN")\(^{212}\) that procured the necessary funding to have a lawyer and be the entity that was appointed as a receiver for the abandoned properties. The SAN-type entity can watch the property and track it through the entire process and ultimately have the property transferred to a new owner who will responsibly maintain the property if the original owner loses the property rights.

There are several case studies in Baltimore that show the successful use of co-production models. They involve comprehensive strategies that were implemented that produced tremendously positive results. For example, in the small neighborhood of Boyd Booth the co-production model was used to convert an open-air drug market neighborhood into one listed by the local press as one of the safest neighborhoods in Baltimore.\(^{213}\) The residents pooled their resources to create this dramatic shift in their community.

They worked with a part-time organizer, a community attorney, a community paralegal, the Southwestern Police Drug Enforcement Unit, a task force of city agencies and surrounding community associations established by the mayor, the Victory Outreach drug abuse treatment program, the largest employer in the community (a hospital), and several local funders.\(^{214}\)

The community association, in addition to boarding up drug houses, cleaning up the properties, and creating a "defensible space program," brought the appropriate nuisance abatement cases to court.\(^{215}\) The community also held vigils, regularly used the public spaces for positive community events, and established a youth program. This comprehensive plan by the residents, working through the community association, resulted in a ninety percent drop in narcotic-related calls for police service and arrests, and violent crime dropped fifty-five percent. These statistics are impressive, but the real victory is that the residents of this community now feel empowered and hopeful about their neighborhood. A strong sense of community has replaced fear. The residents see the government coming alongside them to help them reclaim their neighborhood, and the once cynical view of the government has been replaced with the view of a true partnership.\(^{216}\)

The co-production model is a potential solution that can address many of the problems discussed in this Article. It has the ability to bring additional revenue sources to the code enforcement efforts through the funding of the

\(^{212}\) Id. at 274.
\(^{213}\) Id. at 282–283.
\(^{214}\) Id. at 282.
\(^{215}\) Id. at 283.
\(^{216}\) Id. at 286.
community associations by the local businesses. The co-production model also
decreases the workload for code enforcement staff because the community
association is sharing in the burden of some of the inspector duties, thereby
allowing the resources to last longer.

Moreover, the co-production model deals with the problem of lack of
prioritization in enforcing violations. The community association works with
the code enforcement department to strategically plan how to identify
violations, and how to monitor compliance so that the cases do not fall through
the cracks. In the case of Baltimore, the community association mapped out
the entire neighborhood and detailed specific dates as to when certain
enforcement actions or community clean up events would take place. 217

Finally, the co-production model can address the potential for abuse of
power in code enforcement. The code enforcement department works with the
community association to develop the best strategy to remove the blight in the
neighborhood while at the same time building up the community morale.
Because the community is involved, it greatly reduces the risk of a government
department acting with unchecked power. The community association’s
intimate involvement in the enforcement of violations would prevent the
inspectors from turning to abusive scare tactics. The code enforcement
department gets the extra help and financial resources they need from the
community association, and the community gets a code enforcement
department that is listening to the community needs, and working with the
residents and not against them.

V. CONCLUSION

Code enforcement systems in the United States have not evolved quickly
enough to meet the changing needs of America’s communities. Within the last
decade, financial disasters, like the housing market crash of 2008, and natural
disasters, like Hurricane Katrina, have impacted communities in ways not seen
in generations, if ever. As a result, even formerly effective code enforcement
systems have shown flaws in their ability to accomplish the goals those systems
were designed to meet.

Local governments are facing unprecedented numbers of abandoned
properties, and they lack the financial resources and legal tools to remove the
blight in their neighborhoods. At the same time, a handful of local governments
are abusing their power and have resorted to using code enforcement as a means
to overpower and intimidate citizens. If these problems go unchecked, there
will be even more cities like Detroit, where forty thousand homes are in need
of demolition and thousands more are in need of rehabilitation. Or there may
be an increase of areas like the Antelope Valley, where residents are harassed

217. See id. at 282.
and threatened at gunpoint with little recourse other than to vacate their homes.

Because blight spreads throughout a community like a virus, state and local legislators need to take action to implement comprehensive code enforcement strategies that attack the problems from multiple angles. The creation of superlien status for code enforcement liens is one way to address the problem of lack of resources because it gives priority of payment in the event of a lien foreclosure, which is crucial when many homes are still valued for less than their mortgage. The creation of health and safety receiverships is one way to ensure code enforcement efforts focus on the property and not individuals, which furthers the goal of remediation over punishment. These receiverships accomplish this by streamlining the process for a receiver to take possession of distressed properties. Finally, a co-production model would help address lack of resources because the community partners help fund the community clean-ups, the residents provide the man-power, and the code enforcement agency relies on the community to assist in monitoring the progress. The co-production model also helps prioritize code violation claims. As opposed to relying on complaints to identify code violations, the community and code enforcement team work together to create a strategic plan to target areas in a comprehensive manner. The co-production model at its very core is a model where the code enforcement agency works side by side with the community to develop the community’s code enforcement goals. Because this model involves the community in each step of the process, it helps prevent a code enforcement department abusing its power. These solutions have had great success in a handful of states and communities, and they should be studied and replicated extensively across the United States to help adapt code enforcement systems to the new needs of our communities.