

Lead Legal Strategies Partnership

Legal Strategies and Mechanisms to Reduce Lead Poisoning - August 19, 2019, Webinar

Informal Q/A Response Post-Webinar

Question 1: How do registration and inspection policies fare in response to preemption challenges, in your experience?

- Several states, including [Georgia](#), [Kansas](#), [Arizona](#), and [Tennessee](#), have “ceiling” preemption laws that restrict local jurisdictions from adopting periodic or proactive rental inspection policies. There are no reported cases where courts have interpreted these statutes, but their explicit preemption appears to significantly restrict local powers for interior inspections in each of these states.
- Examples of PRI preemption:
 - The unified government of Wyandotte County/Kansas City, Kansas, had a periodic rental inspection system in place for two decades before it was preempted by state law in 2016. For information on that program and its preemption, see [the local government’s public statement opposing the legislation](#).
 - Greensboro, North Carolina, had a proactive rental inspection program until the state legislature preempted proactive inspections in 2011. Rather than operate a potentially illegal program, Greensboro retooled their program to comply with the state law. For more information, look at the Greensboro case study in [ChangeLab’s Up to Code: Code Enforcement Strategies for Healthy Housing](#). North Carolina [passed a law in July 2019](#) that amends much of its housing and building laws but maintains the language preempting periodic inspection.
- North Carolina explicitly preempts rental registration in the same statute that preempts periodic inspections. [Raleigh had a rental registration policy that was preempted by this law](#).
- Washington State has [a law regulating local rental inspection programs](#). It explicitly *authorizes* cities to require certificates as a business license condition but also states “a local municipality may not enact an ordinance requiring a certificate of inspection unless the ordinance complies with this section.” This has the effect of preempting local policies that contradict provisions of the state law.
- Some other states (such as [Ohio](#), [New Jersey](#), [Vermont](#), and [Maryland](#)) operate statewide registration programs for lead safety. Local governments in states with state-level registration systems should be careful to ensure that any local registry effort does not conflict with state law.

Question 2: Do you have any examples of cities that have addressed affordability in the PRI program/process?

- Unfortunately, we don’t have examples of cities that have directly addressed affordability in the PRI program/process.
- More often, what we see is a city will enact a PRI program/policy and pair it with complementary programs that help address affordability and concerns about displacement (e.g., a PRI program *plus* a code compliance loan program; or a PRI program *plus* a tenant relocation assistance ordinance).

- The question of how to build into a PRI ordinance mechanisms and levers to simultaneously promote healthier housing, affordability, and sustainability is a challenge the ChangeLab team is interested in exploring further as some grantees decide to take a deeper dive into this policy option.
- That said, here are some examples of cities combining their PRI efforts with other programs and policies to support tenants and preserve affordability:
 - *Boston, MA*
 - The city of Boston, MA, runs a PRI program that [requires rental properties to be inspected](#) at least once every five years.
 - The city also runs a [Lead Paint Abatement Program](#) that offers financial help to remove lead-based paint in the home.
 - To qualify for the program and its lead removal loans, applicants must meet one of these requirements:
 - “If you live in your one- to four-family home with a child who is six or younger, your income can’t be more than 80% of Community Development Block Grant Moderate Income.”
 - If you don’t live in your home, you have to give priority to tenants with children who are six or younger. At least 50 percent of your tenants must be low or moderate income. The rest of your tenants must be at or below 80 percent of Community Development Block Grant Moderate income.”
 - By providing property owners with financial help to remove lead-based paint, this should help reduce the likelihood that property owners will pass the cost of repairs along to tenants in the form of significant rent increases.
 - *Long Beach, CA*
 - The city of Long Beach, CA, for many years enforced a [Proactive Rental Housing Inspection Program](#) (PRHIP) “to safeguard the stock of decent, safe, and sanitary rental housing.” In 2015, they passed a [PRHIP ordinance](#) to codify the program into the Long Beach Municipal Code.
 - The city also administers a [HOME Multi-Family Residential Rehabilitation Loan Program](#) (funded by HUD), which offers rehabilitation construction loans at extremely low rates to improve housing quality for low-income and very-low-income families. In addition to HUD-imposed restrictions on household incomes and rent levels for units assisted by the program, the city is also required to work with the loan recipient to ensure that assisted units remain affordable to the target population for a “period of affordability” of 5-10 years after project completion.
 - This condition that the loan recipient ensure that the units remain affordable also helps alleviate concerns that the property owner will pass along to the tenant the cost of repairs via significant rent increases.
 - And finally, the [Long Beach City Council also adopted a Tenant Relocation Assistance Ordinance](#) “requiring landlords to pay relocation payments to residential tenants who are displaced by no fault of their own” (including when a tenant receives notice to vacate due to rehabilitation of the unit).
 - *Rochester, NY*
 - In the webinar, we covered Rochester’s proactive rental inspection program (which includes a rental registration component).

- One thing not mentioned on the webinar is that the city also operated a [Lead Hazard Control Program](#). The program, with funding support from HUD, provided financial assistance to privately held one- to four-unit residential structures to control lead-based paint hazards.
 - Under the program, priority is given to homes where children under the age of six live, as well as homes with children who have elevated blood-lead levels.
 - As a condition of participation, property owners must also agree to maintain rents at affordable levels for a five-year period.
- It's unclear from the City of Rochester's website whether or not funding for the Lead Hazard Control Program was made available beyond 2016. This raises a potential limitation of affordability programs that are dependent on federal funding – if the funding stops, how will a local municipality continue to address affordability issues related to PRI and code compliance? What are alternative solutions that are not dependent on federal funding? These questions deserve further exploration.