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A BILL

25-48

IN COUNCIL OF THE DISTRICT OF COLUMBIA



To require the Department of Buildings to establish a tiered proactive inspection program for multifamily rental housing properties; and to amend D.C. Code § 10–562.02 to require the Department’s Annual Enforcement Report to contain specific data on proactive inspection program activities and enforcement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Proactive Inspection Program Act of 2023”.

TITLE 1. ESTABLISHMENT OF THE PROACTIVE INSPECTION PROGRAM

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Area” means a defined geographical area such as a ward, police district, neighborhood, census tract, census block group, or advisory neighborhood council single member district.

(2) “Code official” means a person designated by the Director of the Department of Buildings to administer or enforce the Housing Code of Title 14 of the District of Columbia Municipal Regulations or the Construction Codes adopted pursuant to § 6-1409.

(3) “Department” means the Department of Buildings.

26 (4) “Director” means the Director of the Department of Buildings.

27 (5) “Extremely low household income” means a household income equal to 30%
28 or less of the area median family income.

29 (6) “Housing provider” means a landlord, an owner, lessor, sublessor, assignee, or
30 their agent, or any other person receiving or entitled to receive rents or benefits for the use or
31 occupancy of any rental unit within a housing accommodation within the District.

32 (7) “Mayor” means the Office of the Mayor of the District of Columbia.

33 (8) “Multi-building housing complex” means a group of 2 or more contiguous or
34 proximate structures, under management of a single owner or licensee, through single or multiple
35 licenses, of 3 or more dwelling units.

36 (9) “Multifamily rental housing property” means residential real property
37 consisting of 3 or more dwelling units that are rented or offered for rent for residential
38 occupancy, including an apartment, efficiency apartment, room, suite of rooms, a single-family
39 home, or duplex.

40 (10) “Tenant” includes a tenant, subtenant, lessee, sublessee, or other person
41 entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

42 Sec. 3. Program; purpose.

43 (a) The Director shall establish a program to proactively inspect all multifamily rental
44 housing properties. It is the purpose of the proactive inspection program to:

45 (1) Proactively identify and address housing code violations in multifamily rental
46 housing properties across the District;

47 (2) Ensure significant compliance with the housing code in multifamily rental
48 housing properties; and

49 (3) Preserve and enhance the quality of life for District residents.

50 (b)(1) For purposes of the program, the Director shall classify multifamily rental housing
51 properties into two tiers: Tier 1, and Tier 2.

52 (2) Properties classified into the tiers shall be proactively inspected as follows:

53 (A) Properties in Tier 2 shall be proactively inspected at least once every 6
54 years; and

55 (B) Properties in Tier 1 shall be proactively inspected at least once every 2
56 years.

57 (c)(1) The Director shall assign multifamily residential housing property to one of the
58 tiers established by subsection (b) of this section. Tier assignments shall be made pursuant to an
59 algorithm developed by the Director that may take into account the following factors:

60 (A) The type of building on the property;

61 (B) The age of the building;

62 (C) The status of the rental housing business license for the property;

63 (D) The legal structure of the corporation to which the business license
64 was issued;

65 (E) The number and class of housing code violations found at the
66 property;

67 (F) The average length of time (in days) housing code violations remained
68 unabated at the property;

69 (G) The number of stop-work orders issued for the property;

70 (H) The number of violations for failure to properly store solid waste at or
71 on the property;

72 (I) Whether the owner has been delinquent in paying property taxes;

73 (J) Whether the property is located within an area where the percentage of
74 vulnerable populations, including people with disabilities, people who are foreign-born, people
75 who have limited or no-English proficiency, and households with extremely low household
76 income, is greater than the overall percentages for the District;

77 (K) Whether the property is located in an area where the percentage of
78 children under the age of 6 that have lead blood levels equal to or greater than 3.5 micrograms
79 per deciliter ($\geq 3.5 \mu\text{g/dL}$) is greater than the overall percentage for children in the District; and

80 (L) Whether the property is located in an area where the rate or incidence
81 of pediatric asthma is higher than the rate or incidence of pediatric asthma for the District.

82 (2) The Director shall specify the weight to be assigned to each of the factors
83 listed in paragraph (1) of this subsection.

84 (d)(1) The Director shall re-evaluate the tier classification for each multifamily rental
85 housing property as follows:

86 (A) Properties in Tier 2 shall be re-evaluated for classification every 6
87 years; and

88 (B) Properties in Tier 1 shall be re-evaluated for classification every 2
89 years.

90 (2)(A) The Director shall notify each housing provider of their initial
91 classification and of any subsequent change in that classification.

92 (B) The notification shall include basic information about the proactive
93 inspection program, the specific criteria that were used to classify the multifamily residential
94 housing property, and contact information for the Department for further questions.

95 (3) Notwithstanding any other provision of this subsection, the Director may
96 reclassify a property at any time; provided, that the Department shall provide notice to the
97 affected housing provider describing the reasons for the reclassification.

98 (4) Classification and reclassification decisions made by the Director are not
99 subject to appeal.

100 Sec. 4. Proactive inspections; units inspected; consent of tenants.

101 (a) For purposes of a proactive inspection, a code official shall inspect the exterior, all
102 common interior areas, and individual units in a property.

103 (b)(1) The number of units inspected in a multifamily rental housing property shall be
104 calculated as follow:

105 (A) At least 50% of units in a property with 25 units or less;

106 (B) At least 40% of units in a property with 26 to 49 units;

107 (C) At least 30% of units in a property with 50 to 199 units; and

108 (D) At least 20% of units in a property with 200 or more units.

109 (2) If the property contains more than one level, at least one unit on each level
110 shall be inspected.

111 (3) All vacant units shall be inspected for purposes of a proactive inspection, but
112 shall not count toward the percentages in paragraph (1) of this subsection.

113 (4) A multifamily rental housing property that comprises a multi-building housing
114 complex shall be treated as a single property for purposes of determining the percentage of units
115 that shall be inspected pursuant to paragraph (1) of this subsection.

116 (c)(1) The Director shall notify the property owner or property manager of a proactive
117 inspection and use best efforts to post notice of a proactive inspection at the property at least 60
118 days before the scheduled inspection date. Notice is presumed effective if provided to any e-mail
119 address on file with the Department in relation to the business license for the property.

120 (2) If a property owner does not consent to a proactive inspection after receiving
121 notice from the Director pursuant to paragraph (1) of this subsection, the Director may apply to a
122 judge of the District of Columbia for an administrative search warrant to conduct the inspection.

123 (3)(A)(i) The Department shall provide tenant inspection consent forms on its
124 website, and property owners shall be responsible for accessing these forms as needed.

125 (ii) The Department shall provide consent forms in all languages
126 covered by Section 4 of the Language Access Act of 2004 (D.C. Law 15-167; D.C. Code § 2-
127 1933).

128 (B)(i) Consent forms shall advise tenants of the purpose and importance of
129 the Department's proactive inspection program and that:

130 (I) A code official with the Department will enter the unit
131 for purposes of performing a proactive inspection if the tenant provides consent by signing the
132 form;

133 (II) The inspection will occur on a specifically identified
134 date and an approximate time; and

135 (III) The tenant has the right to see the code official's
136 identification before the code official enters the unit.

137 (C)(i) A property owner or manager shall make a good faith effort to
138 obtain written consent from tenants of the units that have been selected by the Department for
139 inspection at least 25 days before the scheduled inspection date.

140 (ii) If a property owner or manager knows or reasonably should
141 know that the tenant speaks a primary language other than English that is covered under § 2-

142 1933, the property owner or manager shall provide the consent form to the tenant in that
143 language.

144 (iii) Completed consent forms shall be transmitted to the
145 Department at least 25 days before the date of the scheduled inspection.

146 (iv) Absent emergency circumstances or an administrative search
147 warrant, no proactive inspection shall occur of any unit for which the tenant has withheld
148 consent.

149 (D) When a tenant does not return a signed consent form provided by the
150 property owner or manager, the Director may provide the property owner or manager with
151 another unit to inspect; provided, that the failure to obtain the requisite number of tenant consent
152 forms shall not result in a delay or rescheduling of the proactive inspection of units for which
153 tenants have provided consent.

154 (d) A tenant may request that his or her unit be subject to a proactive inspection if he or
155 she does not receive a consent form pursuant to subsection (c) of this section. The request may
156 be made in writing or orally to the property owner, manager, or the Department.

157 (e) The Director shall publicly post a list of properties and units to be proactively
158 inspected at least 60 days prior to the scheduled inspection.

159 (f) A property owner or manager must be on the premises during inspections, and an
160 authorized agent or employee of the property owner or manager with means to access each unit
161 scheduled for inspection must accompany the code official during the inspection.

162 (g) If two or more units selected for inspection, or 20% or more of the inspected units,
163 whichever is greater, are each found to have four or more class 1 civil infractions pursuant to 16
164 DCMR 3200.1, the Director may require that up to 100% of the units at the property be
165 inspected.

166 (h)(1) When it is necessary to make an inspection to enforce the provisions of the
167 Construction Codes or the Housing Code, including for purposes of a proactive inspection, the
168 code official is authorized to enter the premises, or any part thereof, at reasonable times to
169 inspect or to perform the duties imposed by the Construction Codes or the Housing Code, subject
170 to applicable law, including subsection (c) of this section. This authority includes situations
171 when the code official has reasonable cause to believe that a condition exists in or upon a
172 premise that is contrary to or in violation of the Construction Codes or the Housing Code. When
173 attempting to gain entrance for inspection, the code official and authorized representatives
174 thereof shall present official credentials.

175 (2) With respect to the inspection of an occupied residential portion of any
176 premise under the exclusive control of a tenant, the code official shall not enter that portion of
177 the premise without first having obtained permission from the tenant or other person of suitable
178 age and discretion who resides there, unless the code official has:

179 (A) A valid administrative search warrant which permits the inspection;

180 (B) A reasonable basis to believe that an imminent danger to the public
181 health, safety or welfare exists requiring immediate entry into that portion of the premises.

182 (3) Any person who interferes with the code official in the performance of
183 authorized duties, or prevents or refuses to allow the code official to enter a premise or any
184 portion thereof for inspection in the performance of authorized duties, is in violation of the
185 Construction Codes and the Housing Code.

186 (4) If entry is refused, the code official shall have recourse to the remedies
187 provided by law to secure entry.

188 Sec. 5. Proactive inspection fees and fines.

189 (a) Fees assessed for proactive inspections shall be deposited into the Nuisance
190 Abatement Fund described in § 42-3111.01.

191 (b) Fines assessed pursuant to this act or District of Columbia Municipal Regulations
192 (DCMR) as a result of proactive inspections shall be deposited into the General Fund of the
193 District of Columbia.

194 Sec. 6. Proactive inspection algorithm evaluation report.

195 (a) The Director shall prepare and submit to the Council an evaluation report assessing
196 the efficacy of the algorithm used to classify properties.

197 (b) The report shall include:

198 (1) The final list of factors that will be used in the algorithm and an explanation
199 for why any factor listed in Section 3(c) of this act was not utilized in the algorithm;

200 (2) A list and explanation of statistics that were used to assess the efficacy of the
201 algorithm, including statistics for accuracy, precision, recall, the F1-Score, the receiver operating
202 characteristic area under curve score, and the Brier score; and

203 (3) A plan detailing how the Department will assess the efficacy of the algorithm
204 in the future.

205 (c) The report shall be submitted to the Council 90 days after the effective date of this act.

206 Sec. 7. Section 202 of the Department of Buildings Establishment Act of 2020 (D.C. Law
207 23-269; D.C. Official Code § 10-562.02) is amended to read as follows:

208 “(a) On or before January 1, 2025, and January 1 of every year thereafter, the Director
209 shall submit to the Council and the Office of Attorney General an annual report detailing the
210 enforcement activities of the Department in the prior fiscal year.

211 “(b) The report required under subsection (a) of this section shall assess the Department's
212 progress against the Strategic Enforcement Plan required under Section 201 of the Department of
213 Buildings Establishment Act of 2020 (D.C. Law 23-269; D.C. Official Code § 10-562.01) and
214 identify any changes to operations necessary to implement the Strategic Enforcement Plan.

215 “(c)(1) The report required under subsection (a) of this section shall also include the
216 following data for the prior fiscal year:

217 “(A) Complaint data, detailing the number, type, method, determination of
218 validity, and resolution of complaints received by the Department;

219 “(B) Inspection data, detailing the number of inspections conducted by
220 complaint and program type;

221 “(C) Violation data, detailing the violations identified and cited in the
222 prior fiscal year and their status as abated or unresolved as of the date of the report;

223 “(D) Fine collection data, detailing the dollar value of the fines assessed,
224 dollar value of the fines assessed versus the fines collected, violations for which the fines were
225 issued, and identifying any reduction in fine amount due to an action by an administrative judge
226 to reduce the assessed fine, adverse judgment at an administrative hearing, administrative
227 settlement or dismissal by the Department, or other means resulting in a collection of less than
228 the levied amount, and any fines not yet collected as of the date of the report;

229 “(E) Abatement efficacy, detailing the number and nature of abatement
230 orders, the number of days taken to abate each order, the number of extensions granted by type
231 of abatement order, the justification for each extension, and the location of each abatement order,
232 and its status as abated or unresolved as of the date of the report;

233 “(F) Enforcement escalation data, detailing the number of violations
234 referred to the Attorney General for the District of Columbia, the aggregate dollar amount
235 assessed, and a description of the matters referred; and

236 “(G) Collections escalation data, detailing the number of violations
237 referred to the Central Collections Unit.

238 “(2) For all data required pursuant to subparagraphs (B) through (G) of paragraph
239 (1) of this subsection, proactive inspection program data shall be reported separately. All
240 proactive inspection data shall be reported by tier and Ward.”.

241 Sec. 8. Rules.

242 (a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
243 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue
244 rules necessary to implement the provisions of this act.

245 (b) Proposed rules promulgated pursuant to subsection (a) of this section shall be
246 submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal
247 holidays, and days of Council recess. If the Council does not approve or disapprove the proposed
248 rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be
249 deemed approved.

250 (c) Upon the effective date of rules promulgated pursuant to this act, 14 DCMR §
251 207.1(d) is repealed.

252 Sec. 9. Applicability.

253 (a) This act shall apply upon the date of inclusion of its fiscal effect in an approved
254 budget and financial plan.

255 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in
256 an approved budget and financial plan and provide notice to the Budget Director of the Council
257 of the certification.

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258 (c)(1) The Budget Director shall cause the notice of the certification to be published in
259 the District of Columbia Register.

260 (2) The date of publication of the notice of the certification shall not affect the
261 applicability of this act.

262 Sec. 10. Fiscal impact statement.

263 The Council adopts the fiscal impact statements in the committee report as the fiscal
264 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
265 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

266 Sec. 11. Effective date.

267 This act shall take effect following approval by the Mayor (or in the event of veto by the
268 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
269 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
270 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
271 Columbia Register.