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Empowering People Who Are Homeless or Upholding a Double Standard: Homeless Shelter Regulations

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Empowering People Who Are Homeless or Upholding a Double Standard: Homeless Shelter Regulations

*Marcie Murtha**

Code Sections Affected

Health and Safety Code § 17974.1 (amended)
AB 362 (Quirk-Silva); 2021 STAT. CH. 395

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I. INTRODUCTION

Craig Aslin’s sidewalk encampment in Los Angeles was susceptible to suffering bedbug bites at the homeless shelter.¹ Infestations of bedbugs, lice, rats, and cockroaches are some of the dangerous conditions plaguing occupants of California homeless shelters.² Homeless shelter residents reported 400 people, only seven overflowing and broken portable toilets, feces-smearred walls, and a lack of functional showers for days or weeks on end.³ Thousands like Craig Aslin choose the streets over the unsafe and unsanitary conditions of some homeless shelters.⁴ In Los Angeles, with the largest homeless population in California, dangerous and unhealthy shelter conditions are not isolated incidents; they are commonplace and persist for years.⁵

Horrendous shelter conditions persist from a combination of opaque or inadequate complaint, inspection, and enforcement procedures.⁶ Across California complaint-based inspections, also known as reactive inspections, are the predominant code enforcement mode, and proactive, routine or periodic, inspections are less common.⁷ According to many people experiencing homelessness, dismissive shelter staff and government workers ignore their complaints of substandard conditions.⁸ There is a systemic lack of oversight because each municipality imposes its own procedures for shelter inspection and

1. Rina Palta, *Why Do Thousands of L.A.’s Homeless Shelter Beds Sit Empty Each Night? Rats, Roaches, Bedbugs, Mold*, KQED (May 16, 2018), <https://www.kqed.org/news/11668623/why-do-thousands-of-l-a-s-homeless-shelter-beds-sit-empty-each-night-rats-roaches-bedbugs-mold> (on file with the *University of the Pacific Law Review*); CAL. HEALTH & SAFETY CODE § 50801(e) (defining emergency shelter as “housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person”). “Shelters” in this Note refer to emergency shelters.

2. Palta, *supra* note 1.

3. EVE GARROW & JULIA DEVANTHÉRY, ACLU S. CAL., “THIS PLACE IS SLOWLY KILLING ME.” ABUSE AND NEGLECT IN ORANGE COUNTY EMERGENCY SHELTERS 18–20 (2019), https://www.aclusocal.org/sites/default/files/aclu_social_oc_shelters_report.pdf (on file with the *University of the Pacific Law Review*).

4. Palta, *supra* note 1.

5. See GARROW & DEVANTHÉRY, *supra* note 3, at 18–20 (explaining ongoing substandard shelter conditions, including nonfunctioning showers for weeks at a time in December 2016, again in April 2018, May 2018, June 2018, and January 2019); see also Matt Levin et al., *California’s Homelessness Crisis—and Possible Solutions—Explained*, CALMATTERS, <https://calmatters.org/explainers/californias-homelessness-crisis-explained/> (last updated May 2, 2022) (on file with the *University of the Pacific Law Review*) (explaining 161,548 people were homeless in the last official count, with the highest population in Los Angeles).

6. See GARROW & DEVANTHÉRY, *supra* note 3, at 58 (explaining shelter staff and local government agencies did not do any meaningful code enforcement or respond to requests for inspections).

7. *Code Enforcement*, LOCAL HOUS. SOLS., <https://localhousingsolutions.org/housing-policy-library/code-enforcement> (last visited July 14, 2022) (on file with the *University of the Pacific Law Review*); see also CAL. HEALTH & SAFETY CODE § 17970.5(a)–(a)(1) (mandating reactive inspections under state housing law for all alleged substandard dwellings); Michael Weinberg, *Strategic Housing Code Enforcement: A Multidisciplinary Approach to Improving Habitability*, 29 GEO. J. POVERTY L. & POL’Y 73, 77 (2021) (“Traditionally, the majority of inspections were initiated in response to a complaint, while a much smaller portion were proactive investigations.”).

8. GARROW & DEVANTHÉRY, *supra* note 3, at 52.

code enforcement, and there is no uniform statewide process.⁹ Homeless shelter occupants struggle to navigate this labyrinth of agencies and municipalities to discover who is responsible for ensuring adequate shelter conditions.¹⁰ Shelter residents try to complain about shelter conditions to the correct authority, but those authorities refer their complaints to other agencies, and ultimately no one resolves the issue.¹¹

Some municipalities require that shelter occupants first exhaust shelter complaint protocols, but shelters often do not initiate repairs after complaints.¹² The process can be confusing and ineffective, even with meticulous adherence to shelter and city protocols.¹³ Local government's lack of enforcement and transparency allows frequent violators to maintain substandard shelters, so, in response, California legislators passed Chapter 395.¹⁴ Chapter 395 creates statewide inspection requirements for homeless shelters and provides penalties for failure to remedy violations within the required timeframe.¹⁵ However, Chapter 395's inspection procedure is a reactive system that only requires inspection when an occupant lodges a legitimate complaint.¹⁶ Therefore, substandard conditions can persist in certain circumstances where residents will not complain about housing conditions.¹⁷ Proactive inspections, those that occur periodically at routine intervals, can complement reactive, complaint-based inspections to resolve many issues sole reliance on reactive inspections creates.¹⁸ Chapter 395 is beneficial, but

9. CAL. HEALTH & SAFETY CODE § 17961(a)–(b); *see also* Matt Tinoco, *LA County Approves Universal Health Standards for Homeless Shelters*, LAIST (Nov. 27, 2018), <https://laist.com/news/la-county-homeless-shelter-health-standards> (on file with the *University of the Pacific Law Review*) (reporting code enforcement inefficiency due to no uniform procedure).

10. Palta, *supra* note 1.

11. GARROW & DEVANTHÉRY, *supra* note 3, at 52.

12. Palta, *supra* note 1.

13. *Id.*

14. *See* Sharon Quirk-Silva, *Assemblymembers Advance Long-Term Solutions to Address Homelessness: Voices for Accountability and a Long-Term Plan to Address Homelessness*, STEINBERG INST. (last visited Sept. 3, 2022), <https://steinberginstitute.org/assemblymembers-advance-long-term-solutions-to-address-homelessness/> (on file with the *University of the Pacific Law Review*) (explaining the need for enforceable homeless shelter standards).

15. CAL. HEALTH & SAFETY CODE §§ 17974.1(a)–(a)(1), 17974.4(b)(1)–(b)(3) (amended by Chapter 395).

16. HEALTH & SAFETY § 17974.1(a)–(a)(1).

17. *See* Natalie Delgadillo, ‘*The Streets Are Dangerous: What It’s Like to Be Undocumented and Homeless in D.C.*’, DCIST (July 25, 2018), <https://dcist.com/story/18/07/25/undocumented-homeless-residents-fac/> (on file with the *University of the Pacific Law Review*) (explaining the reluctance of undocumented immigrants to seek services directly from government officials); JASON ALBERTSON ET AL., COALITION ON HOMELESSNESS, SHELTER SHOCK 5, 28 (May 2007) (explaining complaints to staff result in retaliation and eviction).

18. *See* AMY ACKERMAN, CHANGE LAB SOLS., A GUIDE TO PROACTIVE RENTAL INSPECTION PROGRAMS 4, 5 (2014) (explaining proactive inspections usually also have a reactive component).

reactive inspections are inefficient for people experiencing homelessness; the statute would better serve shelter residents by adding proactive inspections and self-advocacy components.¹⁹

II. LEGAL BACKGROUND

The American Civil Liberties Union (ACLU) conducted research of homeless shelter conditions and produced a report with results that prompted a lawsuit and legislative action.²⁰ Assembly Member Sharon Quirk-Silva drafted AB 362, now Chapter 395, as a solution to the abhorrent homeless shelter conditions.²¹ Section A explains the existing health and safety standards.²² Section B reviews California's homelessness crisis and AB 362's evolution after a series of legislative compromises.²³

A. Foundation for Chapter 395: California Health & Safety Code

California Health and Safety Codes apply the same minimum standards statewide to all structures intended for human habitation.²⁴ Health and Safety Code section 17920.3 defines substandard buildings as dwellings containing, among other things: lack of water, inadequate heating, improper ventilation, vermin infestation, and improper maintenance.²⁵ A building is substandard if the conditions are present to a degree they endanger "the life, limb, health, property, safety, or welfare of the public or . . . occupants . . ."²⁶

Penalties for violating the California Health and Safety Code vary by the degree of the violation.²⁷ The shelter owner's minimum liability is a misdemeanor with a fine up to \$1,000, imprisonment up to six months, or both.²⁸ For another conviction within five years, the fine increases to \$5,000, up to six months

19. *See* *Camara v. San Francisco*, 387 U.S. 523, 535–36 (1967) (commenting in dicta, "the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections").

20. *See* *Hearing on AB 362 Before the Assemb. Comm. on Hous. & Cmty. Dev.*, 2021 Leg., 2021–2022 Sess. 7 (Cal. 2021) [hereinafter *362 Hous. Hearing*] (quoting report from the ACLU in support of AB 362. "The [ACLU] recently sued Orange County on behalf of 11 shelter residents, alleging sexual abuse, rampant rodent and bedbug infestations, broken toilets and showers and extreme temperatures at the shelters.").

21. *See id.* at 5 (explaining author's motivation and urgent need to increase access to housing that protects occupants' health and safety) (Chapter 395 was previously Assembly Bill 362).

22. *Infra* Section II.A.

23. *Infra* Section II.B.

24. *See* CAL. HEALTH & SAFETY CODE § 17920.3 ("Regulations of Buildings Used for Human Habitation.").

25. *Id.*

26. *Id.*

27. *See generally* CAL. HEALTH & SAFETY CODE DIV. 13, PT. 1.5, CH. 6 (containing Chapter 6 Violations §§ 17995–17995.5).

28. CAL. HEALTH & SAFETY CODE § 17995.

imprisonment, or both.²⁹ If the later conviction is for a serious violation, the penalties increase to a fine and a prison sentence of six months to a year.³⁰ In addition to state-imposed statutory penalties, local governments can assess their own fines and penalties.³¹

California Health and Safety Code section 17920 defines code enforcement, “‘enforcement’ *may*, but need not, include inspections of existing buildings on which no complaint . . . has been filed. . . .”³² Therefore, the state does not impose a requirement on a city or county to ever conduct a proactive inspection of a homeless shelter.³³ Chapter 351 amends the California Health and Safety Code by adding section 17970.5 to broadly govern code enforcement of all substandard dwellings including homeless shelters.³⁴ Chapter 351 requires reactive, complaint-based inspection of substandard buildings and reinspection to verify the owner’s corrections.³⁵ Notably, Chapter 351 leaves inspections and code enforcement timelines up to local municipal or county government.³⁶

Reactive inspections are the predominant code enforcement procedure in county and municipal governments throughout California.³⁷ Local governments favor reactive inspections because they are relatively inexpensive and efficiently target existing code violations.³⁸ Reactive inspections occur after an alleged substandard condition exists in response to a resident’s complaint.³⁹ Proactive or

29. CAL. HEALTH & SAFETY CODE § 17995.1.

30. CAL. HEALTH & SAFETY CODE § 17995.3 (explaining serious violations are conditions posing immediate danger due to owners’ habitual neglect that show a “flagrant lack of concern for . . . health and safety”).

31. *Hearing on AB 362 Before the S. Comm. on Approps.*, 2021 Leg., 2021–2022 Sess. 2 [hereinafter 362 *S. Approps. Hearing*] (Cal. 2021).

32. CAL. HEALTH & SAFETY CODE § 17920(e) (emphasis added).

33. *See id.* (omitting any requirements for proactive inspections).

34. *See generally* HEALTH & SAFETY § 17970.5.

35. HEALTH & SAFETY § 17970.5(a)–(a)(1), (a)(3).

36. HEALTH & SAFETY § 17970.5(b); CAL. BLDG. CODE § 100.3.11 (2019) (leaving timeline up to municipalities with vague statutory language, “[t]he final inspection shall be made after all work required by the building permit is completed”).

37. *See* Cecilia Reyes & Madison Hopkins, *Scheduled Inspections. Licensing Landlords. A ‘Fix-It’ Court. Here Are 9 Things Chicago Could Do To Help Keep Renters Safe from Fires*, CHI. TRIB. (Aug. 2, 2021), <https://www.chicagotribune.com/investigations/ct-fatal-fires-chicago-buildings-solutions-20210802-2ln4fjaodzbjhton5qwji3gte-story.html> (on file with the *University of the Pacific Law Review*) (explaining Los Angeles, Sacramento, and San Jose have proactive inspections); *see also* Cassandra Garibay, *Fresno Housing Policy Gaps Cause Lack of Timely Inspections on Substandard Rental Units*, FRESNO BEE (May 24, 2021), <https://www.fresnobee.com/fresnoland/article251513933.html> (on file with the *University of the Pacific Law Review*) (explaining Fresno uses proactive inspection program); *Rental Housing Unit Inspection*, SAN DIEGO HOUS. COMM’N, <https://www.sdhc.org/housing-opportunities/help-with-your-rent/current-rent-assistant-participants/rental-housing-unit-inspection/> (last visited Aug. 10, 2022) (on file with the *University of the Pacific Law Review*) (reporting San Diego uses proactive inspections).

38. *See* Weinberg, *supra* note 7, at 73, 82 (explaining that, because inspectors only inspect properties that have complaints alleging substandard conditions, municipalities do not unnecessarily spend resources inspecting compliant properties).

39. *Code Enforcement*, *supra* note 7.

periodic inspections differ from reactive inspections because they are a passive system that ensures every building is habitable whether or not occupants complain.⁴⁰

B. Homelessness Prompts Legislative Action, Political Compromise Hinders Reform

California has the country's largest population of people who are homeless.⁴¹ A major factor contributing to homelessness in California is the high cost of housing.⁴² California's rates of homelessness were already increasing in 2019, and the COVID-19 pandemic intensified the problem.⁴³ With the scarcity of affordable housing, more people are relying on homeless shelters, but no one intended shelters to be a long-term solution.⁴⁴ California law limits the maximum stay in an emergency shelter to six months.⁴⁵ But the recent increase in homelessness creates demand for shelter beds that far exceeds supply.⁴⁶ The increasing population of people experiencing homelessness, stress on existing shelters, and lack of shelter oversight allowed egregious housing code violations to fester.⁴⁷

California State Assembly Member Quirk-Silva introduced AB 362 in 2021 as an ambitious answer to abhorrent shelter conditions.⁴⁸ As introduced, AB 362 created specific minimum habitability standards exclusive to homeless shelters.⁴⁹ Prospective homeless shelter standards prohibited overcrowding, set specified temperature thresholds, and provided security for occupants and their belongings.⁵⁰ AB 362 originally included robust code enforcement with proactive inspection of

40. ACKERMAN, *supra* note 18, at 4, 5.

41. See Levin et al., *supra* note 5 (explaining California has over 160,000 homeless people and “while about 1 in 8 Americans lives in California, more than 1 in 4 homeless Americans live here”).

42. *People Experiencing Homelessness*, CAL. DEP'T OF HOUS. & CMTY. DEVEL., <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/people-experiencing-homelessness> (last visited Aug. 10, 2022) (on file with the *University of the Pacific Law Review*).

43. MEGHAN HENRY ET AL., U.S. DEP'T OF HOUS. & URB. DEVEL., THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 66 (Jan. 2021); HUD: *Growth of Homelessness During 2020 Was 'Devastating,' Even Before the Pandemic*, NPR (Mar. 18, 2021), <https://www.npr.org/2021/03/18/978244891/hud-growth-of-homelessness-during-2020-was-devastating-even-before-the-pandemic> (on file with the *University of the Pacific Law Review*).

44. CAL. HEALTH & SAFETY CODE § 50801(e); see also JIALU STREETER, STANFORD INST. FOR ECON. POL'Y RSCH., HOMELESSNESS IN CALIFORNIA: CAUSES AND POLICY CONSIDERATIONS 1 (2022) (reporting on a forty-two percent increase in homelessness from 2014–2020 due in part to high housing costs).

45. HEALTH & SAFETY § 50801(e).

46. STREETER, *supra* note 45, at 1, 4.

47. See *id.* at 4 (explaining population of people experiencing homelessness went up, but not shelter capacity); see also Levin et al., *supra* note 5 (pointing to California's “lack of coordination and accountability across the complicated web of state agencies and local counties, cities and service providers”).

48. 362 Hous. Hearing, *supra* note 20, at 1, 5, 6 (summarizing the report on shelter conditions to explain the need for the bill).

49. *Id.* at 1.

50. *Id.* at 3–4.

each shelter at least once every three months.⁵¹ Another section required state and federal pass-through funding to end until the owner corrected violations.⁵² AB 362, as introduced, required shelter owners to post a placard in a common area with contact information for a complaint phone line.⁵³ The Legislature eliminated all aforementioned prospective provisions by the time the governor signed the bill into law.⁵⁴ What survived the legislative process is now Chapter 395: homeless shelter safety regulations.⁵⁵

III. CHAPTER 395

Chapter 395 adds Article 2.3 “Inspection of Homeless Shelters” to the California Health and Safety Code.⁵⁶ Article 2.3 creates a new framework for inspection of homeless shelters, and backs up its provisions with the right to bring a civil action to enforce the statute’s requirements.⁵⁷ Chapter 395 also authorizes penalties for owner or operator violations.⁵⁸ Article 2.3 creates a public record of owners with outstanding or frequent violations.⁵⁹ Following a complaint by an occupant or their agent, Chapter 395 requires local code enforcement agencies to inspect the substandard portion of the homeless shelter.⁶⁰ However, if the inspector deems the complaint frivolous or unfounded, Chapter 395 does not require inspection for future complaints from the same person and property for 180 days.⁶¹ The local government agency will notify the owner of any violation and the required action to correct it, followed by a reinspection to verify repairs.⁶²

51. *Id.* at 2.

52. *Id.* at 1–2 (defining pass-through funding: federal funds given to homeless shelters through grant programs).

53. *Id.* at 4.

54. See *Hearing on AB 362 Before the Assemb. Comm. on Approps.*, 2021 Leg., 2021–2022 Sess. 2 (Cal. 2021) [hereinafter 362 *Assemb. Approps. Hearing*] (detailing May 2021 hearing with fiscal impact of AB 362 at “\$3.16 million in the first year, \$10.58 million in the second year, \$10.5 million in the third year and \$9.3 million . . . ongoing”); see also 362 *S. Approps. Hearing*, *supra* note 32, at 1 (detailing August 2021 hearing with amendments that reduced fiscal impact down to “minor and absorbable costs” by deleting requirements for proactive inspections and limiting reporting requirement); AB 362, 2021 Leg., 2021–2022 Sess. 1–6 (Cal. 2021) (on file with the *University of the Pacific Law Review*) (encompassing final trimmed-down bill).

55. AB 362, 2021 Leg., 2021–2022 Sess. 1–6 (Cal. 2021) (on file with the *University of the Pacific Law Review*).

56. *Id.*

57. CAL. HEALTH & SAFETY CODE §§ 17974.1(a)–(a)(1), 17974.3(b) (amended by Chapter 395).

58. CAL. HEALTH & SAFETY CODE §§ 17974.4, 17974.5(2)(d) (amended by Chapter 395) (making violators ineligible for state funding).

59. HEALTH & SAFETY § 17974.1(c).

60. HEALTH & SAFETY § 17974.1(a)–(a)(1).

61. HEALTH & SAFETY § 17974.1(e)(2).

62. HEALTH & SAFETY § 17974.1(a)(3).

There are three different procedures for providing notice to correct violations depending on the degree of the violation.⁶³ First, owners will receive immediate notice when the violation “constitutes an imminent threat to health and safety of the occupants.”⁶⁴ Next, for any lesser degree violation, the owner shall receive notice to fix the violation within ten business days from inspection.⁶⁵ Lastly, violations that endanger life and health, or make the “shelter unfit for human habitation,” permit an order that the owner take immediate action to correct the violation.⁶⁶

Homeless shelter owners must correct violations within thirty days of receiving notice, but a city or county may issue a thirty-day extension at its discretion.⁶⁷ Chapter 395 also creates penalties for owners or operators who fail to correct violations, allow similar violations to reoccur, or fail to meet required timelines.⁶⁸ The city or county may assess penalties per violation or per day of continued violation.⁶⁹ Chapter 395 prevents cities or counties from using state funding to operate a shelter if the owners fail to correct violations.⁷⁰ Chapter 395 includes requirements that each city or county maintain and make publicly available records of each inspection.⁷¹ Municipalities shall submit annual reports to a specific California government agency and department which details owners with outstanding violations and repeat violations in a six-month period.⁷² Chapter 395 attempts to address issues of ignored complaints by establishing that a municipality “shall not unreasonably refuse to communicate with an occupant [regarding their complaint].”⁷³

63. HEALTH & SAFETY § 17974.1(b)(1)–(3).

64. HEALTH & SAFETY § 17974.1(b)(2).

65. HEALTH & SAFETY § 17974.1(b)(1).

66. HEALTH & SAFETY § 17974.1(b)(3).

67. CAL. HEALTH & SAFETY CODE § 17974.2(b) (amended by Chapter 395).

68. CAL. HEALTH & SAFETY CODE § 17974.4(b)(1)–(b)(3).

69. HEALTH & SAFETY § 17974.4(a).

70. HEALTH & SAFETY § 17974.4(b)–(b)(3).

71. HEALTH & SAFETY § 17974.1(c).

72. CAL. HEALTH & SAFETY CODE §§ 17974.5(a)(1), 17974.5(a)(1)(A), 17974.5(a)(1)(D), 17974.5(a)(2)(c), 17974(a), 17974(d) (amended by Chapter 395) (defining state agency as the Business, Consumer Services, and Housing Agency and department as the Department of Housing and Community Development).

73. HEALTH & SAFETY § 17974.1(g).

IV. ANALYSIS

Chapter 395 gives people who are homeless important substantive and procedural rights.⁷⁴ Yet, Chapter 395 has too many gaps and loopholes in code-enforcement procedures that undermine its beneficial aspects.⁷⁵ Section A gives credit to Chapter 395's benefits and importance.⁷⁶ Section B assesses the effectiveness of Chapter 395's complaint procedures.⁷⁷ Section C offers improvements to existing law by adding proactive inspections and implementing self-advocacy components.⁷⁸

A. What Chapter 395 Gets Right

While Chapter 351 broadly governs all substandard dwellings, Chapter 395 narrowly governs only one type of substandard dwelling: homeless shelters.⁷⁹ Both Chapter 395 and 351 entitle residents to inspections following a valid complaint and allow residents to bring an action in civil court to compel performance.⁸⁰ Prior to this bill, local agencies could ignore or deny shelter resident's inspection requests with impunity.⁸¹ Now, not only must inspections occur, but local agencies are expressly barred from refusing to communicate with the shelter occupant regarding the complaint, inspection, or violation correction.⁸² Beneficial provisions of Chapter 395 are apparent in comparison to Chapter 351.⁸³

Chapter 395's notice timelines demonstrate heightened protections for people who are homeless.⁸⁴ Homeless shelter residents can expect shelter owners to receive notice of violations within ten business days after inspection.⁸⁵ In contrast, Chapter 351, code enforcement for all substandard buildings, omits any specific

74. See Quirk-Silva, *supra* note 14 (promoting legislation as solution to protect and improve lives of shelter residents with procedures to enforce rights to safe and healthy shelters).

75. See Marilyn Uzdavines, *Barking Dogs: Code Enforcement Is All Bark and No Bite (Unless the Inspectors Have Assault Rifles)*, 54 WASHBURN L.J. 161, 164 (2014) (explaining that a reactive inspection system is flawed because impoverished people who do not make complaints do not access code enforcement protections).

76. *Infra* Section IV.A.

77. *Infra* Section IV.B.

78. *Infra* Section IV.C.

79. CAL. HEALTH & SAFETY CODE § 17970.5; CAL. HEALTH & SAFETY CODE 17974–17974.6 (amended by Chapter 395).

80. HEALTH & SAFETY § 17970.5(a)–(a)(1), (j)(1); HEALTH & SAFETY §§ 17974.1(a)–(a)(1), 17974.3(b); CAL. CIV. PROC. CODE § 1085(a).

81. GARROW & DEVANTHÉRY, *supra* note 3, at 52, 58.

82. HEALTH & SAFETY § 17974.1(g).

83. See generally HEALTH & SAFETY § 17970.5 (detailing for substandard buildings in general there is no repair timeline, no penalty provision and ambiguous notice timelines). Cf. HEALTH & SAFETY §§ 17974.1–17974.2, 17974.4–17974.5 (detailing homeless shelter regulations require thirty-day repair timeline, contain a penalty provision and ten-day notice timeline from inspection date).

84. HEALTH & SAFETY § 17974.1(b)(1). Cf. HEALTH & SAFETY § 17970.5(a)(3) (containing no express timeline to notify owner to correct violation).

85. HEALTH & SAFETY § 17974.1(b)(1).

timeline to notify the owner of violations.⁸⁶ Another beneficial component of Chapter 395 is the abatement timeline for shelter owners.⁸⁷ The abatement timeline provides people who are homeless with expedited relief from substandard conditions by requiring owners to correct violations within thirty days of notice.⁸⁸ Chapter 351 does not include any timeline whatsoever to correct a violation.⁸⁹

Finally, Chapter 395's penalty provision is a powerful tool to motivate shelter owners and operators to maintain safe and healthy shelters.⁹⁰ California provides billions in funding to local governments for homelessness programs and shelters; thus, shelter owners will likely adhere to required standards to avoid loss of funding for non-compliance.⁹¹ Chapter 351 contains no analogous penalty provisions.⁹² Chapter 395's right to shelter inspections, procedural safeguards, and penalty provisions empower shelter residents and promote code compliance.⁹³

B. Reactive Complaint Procedures Inadequate for Shelter Residents

In a perfect world, Chapter 395 is a powerful solution to improve the quality of life for shelter residents.⁹⁴ However, the strength of the enforcement and penalty provisions hinges on the effectiveness of reactive inspections.⁹⁵ If the code enforcement system fails at the complaint level, further protections and penalties are moot.⁹⁶ Complaint-based procedures are inadequate because many factors

86. HEALTH & SAFETY § 17970.5(a)(3).

87. CAL. HEALTH & SAFETY CODE § 17974.2(b).

88. *Id.*

89. HEALTH & SAFETY § 17970.5.

90. See LEGIS. ANALYST'S OFF., THE 2022–23 BUDGET: THE GOVERNOR'S HOMELESSNESS PLAN 3 (Feb. 9, 2022) (explaining as homelessness crisis worsens the local funding model shifts to more reliance on state funding).

91. 362 *Assemb. Approps. Hearing*, *supra* note 55, at 2 (reporting from 2018–2020 California spent \$1.45 billion funding local efforts to reduce homelessness with shelters, rental assistance, and housing); see also CAL. HEALTH & SAFETY CODE § 17974.4(b)(1)–(b)(3) (detailing penalty of loss of state funding for maintaining substandard shelters).

92. HEALTH & SAFETY § 17970.5.

93. HEALTH & SAFETY §§ 17974.1–17974.2, 17974.4–17974.5; Rubi Gomez & Shannon M. Kitchell, *AB362—Addressing the Unseen Reality of the Unhoused*, VOICEOFOC (Sept. 8, 2021), <https://voiceofoc.org/2021/09/gomez-and-kitchell-ab362-addressing-the-unseen-reality-of-the-unhoused/> (on file with the *University of the Pacific Law Review*) (describing potential of AB 362 for unprecedented accountability and improving shelter conditions).

94. See Uzdavines, *supra* note 76, at 161, 164 (inferring that if people who are poor complained with the frequency and effectiveness of middle-class neighbors the reactive system could be effective, but they do not).

95. See HEALTH & SAFETY § 17974.1(a)–(a)(1) (requiring inspection only after receiving a complaint, notice and order to correct violation only occur inspection).

96. See *Code Enforcement*, *supra* note 7 (explaining housing occupied by vulnerable residents can remain outside the scope of health and safety inspections because such residents will be reluctant to participate in a complaint-based system).

create a chilling effect on shelter residents' willingness to file complaints.⁹⁷ Two factors that implicate Chapter 395's procedural shortfalls are fear of retaliation and confusion on complaint procedure.⁹⁸

Shelter residents are vulnerable to retaliation because shelter staff have power to provide shelter or take it away.⁹⁹ Shelter residents do not need to inform or report to shelter staff of any substandard or dangerous conditions to trigger Chapter 395's inspection requirement.¹⁰⁰ A shelter resident may instead report any code violations directly to local code enforcement agencies.¹⁰¹ However, it is not intuitive to bypass shelter staff since many residents will struggle with whether to endure substandard conditions or initiate confrontation with a complaint to staff.¹⁰² Many shelter residents fear retaliation from shelter staff and their impunity to deny shelter or services.¹⁰³ Some shelters have rules and protocols that require administrative review of a resident's complaint before eviction, but administrators almost always side with shelter staff.¹⁰⁴ Chapter 395 lacks any mechanism to inform shelter residents of their rights and procedures to exercise them.¹⁰⁵ Accordingly, it is natural that residents will assume their recourse is with shelter

97. See *Chilling Effect*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining chilling effect as "[b]roadly, the result when any practice is discouraged"); see also *Code Enforcement*, *supra* note 7 (explaining unwillingness to complain about substandard conditions may be due to immigration status, language barriers, or of fear of retaliation).

98. ALBERTSON ET AL., *supra* note 17, at 5, 28 (explaining that complaints about shelter conditions are met with retaliation such as eviction by shelter staff); see also ACKERMAN, *supra* note 18, at 5 (chilling effect to complain due to immigration status, criminal record, trauma, language barriers, lack of phone, internet, or transportation).

99. GARROW & DEVANTHÉRY, *supra* note 3, at 48 ("[O]ne of the most common tools of oppression is the threat of eviction. Staff members often evict or threaten to evict residents for minor transgressions, such as breaking house rules or talking back to staff members.").

100. HEALTH & SAFETY § 17974.1(a) (requiring residents to notify only the city or county).

101. HEALTH & SAFETY § 17974.1(a).

102. See Palta, *supra* note 1 (relating stories of shelter residents confused by the complaint process and how prior to Chapter 395 residents following mandatory shelter policy went to shelter staff first with complaints).

103. See ALBERTSON ET AL., *supra* note 17, at 30 (detailing shelter residents complained most frequently about treatment from staff); see also Dean Moses, 'It's definitely retaliation': Wards Island homeless Shelter Residents Say They're Being Punished For Media Interviews, AMNY THE VILLAGER (Sept. 4, 2021), <https://www.amny.com/news/wards-island-homeless-shelter-residents-punished-for-interviews/> (on file with the *University of the Pacific Law Review*) (reporting allegations of shelter owners retaliating by forcing residents into COVID isolation, after testing negative, transferring them, confiscating phone chargers and dismantling fans after residents spoke to press).

104. GARROW & DEVANTHÉRY, *supra* note 3, at 49, 52, 65, 67.

105. See 362 Hous. Hearing, *supra* note 20, at 4 (revealing legislators removed measures to inform residents of AB 362's rights and procedures like signage and central complaint line present in earlier drafts).

owners or staff.¹⁰⁶ Those shelter residents who either are aware of the new protections or advocate for themselves face another hurdle: confusing complaint procedures.¹⁰⁷

Chapter 395 does not streamline or clarify the circuitous complaint procedures shelter residents and advocates navigate.¹⁰⁸ Most people do not know which code enforcement agency or department to report to.¹⁰⁹ If a resident calls the wrong code enforcement agency, Chapter 395 provides no recourse because the proper agency only initiates inspections if it receives the complaint.¹¹⁰ There is no statutory provision that requires the incorrect agency to answer, reply, or assist with residents' complaints from a different jurisdiction.¹¹¹

Adding to the confusion within a municipality, there are multiple departments to handle inspections such as: the building department, the health department, and the fire department.¹¹² San Francisco even has its own department specific to homeless shelter oversight, but its grievance form relates to service or discrimination complaints, not health and safety complaints.¹¹³ Chapter 395 ensures a code enforcement response, but only once a resident successfully lodges a complaint with the appropriate agency.¹¹⁴ Confusing procedures create an

106. See GARROW & DEVANTHÉRY, *supra* note 3, at 52 (revealing shelter staff handled grievance process internally and without any informative information indicating otherwise this presumption that complaints go to shelter staff will remain); S.F. DEP'T OF HOMELESSNESS & SUPPORTIVE HOUS., PARTICIPANT GRIEVANCE POLICY 2 (2019), <https://hsh.sfgov.org/wp-content/uploads/2020/05/HSH-CE-SC-Grievance-Interim-Policy-8-22-19-.pdf> (on file with the *University of the Pacific Law Review*) (requiring residents to “exhaust[] the agency’s internal grievance procedure”).

107. See HEALTH & SAFETY § 17974.1(a)–(a)(1) (requiring each city or county to hear occupant complaints and conduct its own homeless shelter inspection).

108. See *id.* (including merely one sentence to enlist the existing complaint procedure within each city or county); GARROW & DEVANTHÉRY, *supra* note 3, at 52 (detailing Mr. Rodas’, a homeless advocate, attempt to lodge complaint and the complicated system he navigated in the unsuccessful attempt).

109. See GARROW & DEVANTHÉRY, *supra* note 3, at 52 (“Some residents say they do not understand the process for reporting violations . . . Others shy away from reporting because they do not trust the system. The process for resolving grievances typically remains within the shelter programs that are abusing or neglecting them.”).

110. See HEALTH & SAFETY § 17974.1(a)–(a)(1) (containing no option to make a complaint to a different jurisdiction).

111. See HEALTH & SAFETY § 17974.1, 17974.1(g) (prohibiting local governments only from “unreasonably refus[ing] to communicate with an occupant” which does not amount to requiring shelter inspection for a building outside its jurisdiction).

112. See *Code Enforcement, LACP*, <https://planning.lacity.org/zoning/code-enforcement> (last visited July 17, 2022) (on file with the *University of the Pacific Law Review*) (explaining Los Angeles Department of Building and Safety (LADBS) enforces zoning, and codes for single-dwelling units, and vacant buildings while Housing + Community Investment Department (HCIDLA) investigates rental units, and certain single-family unit properties); see also *Citizen Complaint Inspections, SAN DIEGO FIRE-RESCUE DEP’T*, <https://www.sandiego.gov/fire/services/complaintinspections> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (explaining complaints for inside building conditions should go to building department unless they are related to fire protection or building access then they go to Fire Hazard Advisor).

113. S.F. DEP'T OF HOMELESSNESS & SUPPORTIVE HOUS., *supra* note 107.

114. See HEALTH & SAFETY § 17974.1(a)–(a)(1).

unnecessary burden on people who are homeless.¹¹⁵ Additionally, fear of retaliation will remain because some code enforcement agencies do not permit shelter residents' anonymous complaints.¹¹⁶ Chapter 395's complaint procedure is no less opaque than existing law and its reactive model has the potential to be a double-edged sword with the "frivolous complaint" provision.¹¹⁷

While Chapter 395 empowers shelter residents with the right to an inspection after a complaint, it could also invoke a six month ban from an inspection.¹¹⁸ A resident is banned for six months from their right to an inspection on the same property if the inspector "reasonably determine[s the complaint is] . . . frivolous or unfounded."¹¹⁹ Worryingly, there is no definition or guidance on what is unfounded or frivolous.¹²⁰ Each municipality can apply its own interpretation; unfounded or frivolous could mean the substandard condition does not exist or does not rise to the level of a code violation.¹²¹ Unfounded or frivolous could also mean it is a complaint outside the scope of health and safety codes, so there is no recourse with Chapter 395.¹²²

The ambiguous language could leave people experiencing homelessness without the right to inspections for six months based on a misunderstanding or ignorance of health and safety standards.¹²³ For example, in the city of Sacramento, it is not a code violation for a unit to have visible mold growth, a non-working air conditioner, or non-working refrigerator.¹²⁴ City officials even published a pamphlet articulating that these common issues are not code violations—even

115. See GARROW & DEVANTHÉRY, *supra* note 3, at 52 (detailing how a confusing and unresponsive process causes shelter residents disengagement and frustration with complaint procedures).

116. *Development Services: Code Enforcement*, CITY OF SAN DIEGO, <https://www.sandiego.gov/development-services/code-enforcement> (last visited July 17, 2022) (on file with the *University of the Pacific Law Review*).

117. HEALTH & SAFETY § 17974.1(e)(2) (detailing that an inspector can deem a complaint "frivolous or unfounded" if an inspection does not result in a code violation).

118. HEALTH & SAFETY § 17974.1(a)-(a)(1), 17974.1(e)(2).

119. HEALTH & SAFETY § 17974.1(e)(2) ("chief building inspector or their designee reasonably determined").

120. HEALTH & SAFETY § 17974.1, 17974.1(e)(2).

121. See *Unfounded*, DICTIONARY.COM, <https://www.dictionary.com/browse/unfounded> (last visited July 17, 2022) (on file with the *University of the Pacific Law Review*) (defining unfounded as "without foundation" or "not established"); see also *Frivolous*, BLACK'S LAW DICTIONARY (11th ed. 2019) (last visited July 17, 2022) (on file with the *University of the Pacific Law Review*) (defining frivolous as "[l]acking a legal basis or legal merit; manifestly insufficient as a matter").

122. See *Unfounded*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/unfounded> (last visited July 17, 2022) (on file with the *University of the Pacific Law Review*) (defining unfounded as "lacking a sound basis").

123. See Weinberg, *supra* note 7, at 73, 77 (explaining that vague code language gives inspectors increased discretion in-the-field).

124. COMMUNITY DEVELOPMENT CODE COMPLIANCE DIVISION, CITY OF SACRAMENTO, HOUSING AND DANGEROUS BUILDINGS (2015), <http://www.cityofsacramento.org/-/media/Corporate/Files/CDD/Brochures/HousingDangerousBuildings.pdf> (on file with the *University of the Pacific Law Review*) (detailing conditions that are not code violations including mold "unless there is a structural condition causing the mold"); see also CAL. HEALTH & SAFETY CODE § 17920.3(a)(7) (requiring only proper ventilation not air conditioning).

though they likely appear as such to an average person.¹²⁵ Chapter 395's harsh six-month ban is based on ambiguous language that inspectors could apply capriciously.¹²⁶

Barring a resident from an inspection after reporting a perceived substandard condition would penalize and disincentivize shelter residents from utilizing the complaint procedures the statute purports to promote.¹²⁷ This frivolous complaint bar on inspections is a harsh penalty considering many places have no proactive inspections at all.¹²⁸ If a shelter resident is barred from a complaint-based inspection and their city does not offer proactive inspections, then there is effectively no recourse for substandard conditions.¹²⁹ Chapter 395 exclusively relies on reactive inspections.¹³⁰

Local governments prefer reactive inspections because code enforcement agencies are overburdened and underfunded.¹³¹ Reactive inspections are more responsive and inexpensive in the short-term, but are less effective for properties with vulnerable occupants.¹³² Low-income residents face barriers to engaging with code enforcement services that homelessness only intensifies.¹³³ Shelter occupants are less likely to complain for fear of retaliation, and, therefore, substandard conditions are more likely to develop and persist.¹³⁴ The substandard conditions

125. COMMUNITY DEVELOPMENT CODE COMPLIANCE DIVISION, *supra* note 124.

126. *See* Weinberg, *supra* note, at 73, 78 (explaining that ambiguous statutory language allows inspectors wide discretion that they apply differently in wealthy versus impoverished areas).

127. *See* Quirk-Silva, *supra* note 14 (explaining the legislative goal: enforcing standards to protect homeless residents).

128. *See* Chelcey Adami, *Salinas Code Enforcement Faces Big Job*, CALIFORNIAN (Aug. 18, 2015), <https://www.thecalifornian.com/story/news/crime/2015/08/17/salinas-code-enforcement-faces-big-job/31882803/> (on file with the *University of the Pacific Law Review*) (detailing a city with no proactive inspections: Salinas).

129. *See* Uzdavines, *supra* note 76, at 161, 164 (arguing complaint-based inspections implicitly acknowledge that inspectors will not reach all properties); CAL. HEALTH & SAFETY CODE § 17974.1(e)(2).

130. *See* HEALTH & SAFETY § 17974.1(a) (requiring an inspection only after a complaint).

131. *See* Adami, *supra* note 129 (“Part of the reason for the complaint-based policy is the shortage of code enforcement officers” Salinas has had “only three full-time code enforcement officers covering the whole city of more than 150,000.”).

132. *See* CITY OF SAN JOSE, OFF. OF THE CITY AUDITOR, CODE ENFORCEMENT: IMPROVEMENTS ARE POSSIBLE, BUT RESOURCES ARE SIGNIFICANTLY CONSTRAINED 11, 17 (2013) (explaining for proactive inspections are pushed out six years and general code enforcement is cutting complaint response to manage staff and budget cuts); *see also* ACKERMAN, *supra* note 18, at 5 (“[H]ousing inhabited by the most vulnerable populations . . . is often the most likely to fall through the cracks of a complaint-based code enforcement system.”).

133. *See* U.S. DEPT. OF HOUS. AND URBAN DEVEL., STRATEGIES FOR IMPROVING HOMELESS PEOPLE'S ACCESS TO MAINSTREAM BENEFITS AND SERVICES 168 (2010) (“Most low income people face one or more barriers that hinder their ability to enroll in benefits and services from mainstream public programs. When one is homeless, these barriers increase.”).

134. *See id.* at 85 (explaining that people who are homeless can be reluctant to interact with local government agencies because of mental illness, immigration status, and “deep-seated fears of authority”); *see also* GARROW & DEVANTHÉRY, *supra* note 3, at 49 (“[T]he [shelter] staff uses the threat of eviction to bully and silence residents.”).

that result from the reactive inspection model increase strain on shelter residents' health.¹³⁵ Unhealthy or unsanitary shelters can cause asthma, lead poisoning, COVID-19, and death.¹³⁶

People who are homeless are far more likely to have chronic health issues or disabilities that make health consequences of substandard shelters more serious.¹³⁷ Many shelter residents have existing health problems that the experience of homelessness exacerbates with sleep deprivation, stress, personal safety concerns, lack of nutritious food, and preventative medical care.¹³⁸ People who are homeless are also less likely to have health insurance, and even simple medical conditions can escalate without access to a safe and healthy shelter.¹³⁹ A proactive inspection component would better serve shelter residents because they feel the negative impact of substandard housing more intensely and have less resources to cope.¹⁴⁰ Reactive inspections appear less expensive short-term, but are more expensive long-term when accounting for the extra costs, time, resources of inspection, re-

135. ACKERMAN, *supra* note 18, at 5; *see also* *Hotels, Housing Facilities and Institutions*, CNTY. OF L.A. PUB. HEALTH, <http://www.publichealth.lacounty.gov/eh/business/hotels-housing-facilities-institutions.htm> (last visited July 18, 2022) (on file with the *University of the Pacific Law Review*) (“Research has consistently demonstrated a link between housing and health. [Safe housing can] . . . reduce the incidence of negative health outcomes such as asthma, cardiovascular disease, and injuries.”).

136. *See* J.J. Cutuli et al., *Asthma And Adaptive Functioning Among Homeless Kindergarten-Aged Children in Emergency Housing*, 25 J. HEALTH CARE FOR POOR & UNDERSERVED 717, 718 (2014) (“[A]sthma rates for children living in a shelter were consistently two to three times the national prevalence.”); *see also* *SF Women and Children’s Shelter Closes After Child Tests Positive for Lead Poisoning*, ABC7NEWS (Oct. 3, 2019), <https://abc7news.com/catholic-charities-charity-mold-lead/5590453/> (on file with the *University of the Pacific Law Review*) (relating that a child in a homeless shelter tested positive for elevated levels of lead and the shelter closed after failing three separate lead tests); Amy Maxmen, *Coronavirus Spread Under the Radar in US Homeless Shelters*, 581 NATURE 129, 129 (2020) (documenting the spread of COVID-19 in homeless shelters as due to close living quarters and lack of testing); *7 On Your Side Investigates Exclusive: Parents Blame New York City Shelter for Baby’s Death*, EYEWITNESS NEWS ABC 7, <https://abc7ny.com/kathleen-solimene-james-williams-7-on-your-side-investigates-new-york-city/4687695/> (last visited July 13, 2022) (on file with the *University of the Pacific Law Review*) (reporting an infant died due to lack of air conditioning in a homeless shelter).

137. Infection Control Guidance, from the Cal. Dep’t of Pub. Health to Local Pub. Health Dept Staff, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/infection-control-guidance-clients-congregate-shelter-including-homelessness.aspx> (last updated May 6, 2022) (on file with the *University of the Pacific Law Review*) (“People experiencing homelessness and other clients in congregate shelters are . . . also at higher risk of having serious disease and complications, especially those who are older and have chronic medical conditions. Homeless shelters . . . are especially vulnerable to outbreaks of COVID-19.”).

138. *See* NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, HOMELESSNESS & HEALTH: WHAT’S THE CONNECTION 1, 2 (2019) (explaining that homelessness causes and worsens health conditions such that those who are homeless “die on average 12 years sooner than the general U.S. population”).

139. *See id.* (explaining homelessness makes access to preventive care difficult and injuries can escalate to life-threatening conditions); *see also* *Health Care and Homelessness*, NATL. COAL HOMELESSNESS (July 2009), <https://www.nationalhomeless.org/factsheets/health.html> (on file with the *University of the Pacific Law Review*) (“The National Health Care for the Homeless Council (2008) estimates that 70% of Health Care for the Homeless (HCH) clients do not have health insurance.”).

140. *See* ACKERMAN, *supra* note 18, at 6 (explaining reactive systems allow conditions in impoverished areas to deteriorate because residents will not complain, thus, in practice the programs do not enforce the health codes).

inspection, and efforts to correct violations.¹⁴¹ Whereas, a proactive inspection can identify issues before they escalate and motivate shelter owners to maintain standards in the first place.¹⁴² With reactive inspections, code enforcement acts after shelter conditions are at substandard levels, and, by design, will reveal more violations that require re-inspections.¹⁴³ Proactive inspections in California promote code compliance and can prevent conditions from reaching critical substandard levels.¹⁴⁴

However, proactive inspections, where available, can have extended intervals between inspection periods because of a lack of funding and staffing.¹⁴⁵ Without budget increases or reassessing inspection priorities, municipalities cannot keep up with proactive code enforcement duties, let alone add proactive homeless shelter inspections.¹⁴⁶ For example, at one time in Los Angeles county, there were only forty Building and Safety inspectors for 600,000 residential units.¹⁴⁷ Only 175 inspectors were responsible for all apartment buildings, “restaurants, markets, warehouses and schools” in Los Angeles county.¹⁴⁸

Public health suffers when proactive inspections fail to meet timelines legislators codified into law.¹⁴⁹ Substandard housing conditions such as cockroach and mice infestations are important triggers of childhood asthma.¹⁵⁰ Even before

141. See Liam Dillon, ‘Horrible’ Has A Home at South L.A. Apartments: Mold And Sewage Complaints Ignored, Tenants Say, L.A. TIMES (Apr. 22, 2022), <https://www.latimes.com/homeless-housing/story/2022-04-21/mold-broken-pipes-health-problems-apartment-complex> (on file with the *University of the Pacific Law Review*) (detailing the repeated complaints and cycles of inspection and re-inspection).

142. See ACKERMAN, *supra* note 18, at 5, 6 (explaining that proactive rental inspection procedures in certain circumstances are better at ensuring compliance with housing codes and protecting vulnerable occupants).

143. See Uzdavines, *supra* note 76, at 161, 163–64 (explaining that a reactive model will minimize the volume of code violations compared to a proactive model, leading to infer that while volume will be lower, the ratio of violations per inspection will be much higher in a reactive model).

144. See ACKERMAN, *supra* note 18, at 5 (explaining proactive systems improve compliance with health standards).

145. See CITY OF SAN JOSE, OFF. OF THE CITY AUDITOR, *supra* note 133, at 31 (explaining San Jose extended proactive inspection intervals to six years due to lack of funding).

146. See generally Hector Tobar, *Housing Laws No Cure for Slums’ Ills*, L.A. TIMES (July 20, 1997), <https://www.latimes.com/archives/la-xpm-1997-jul-20-mn-14612-story.html> (on file with the *University of the Pacific Law Review*) (relating Los Angeles requires annual proactive inspections for apartment buildings, but with too few inspectors and too many units, even with full department staffing inspectors cannot achieve this).

147. *Id.*

148. *Id.*

149. See *id.* (explaining that the annual inspection timeline for apartments was not sustainable at current inspector staffing levels); see also Melody Peterson, *California Fails to Inspect Several Dozen Hospitals with High Infection Rates*, L.A. TIMES (Jan. 24, 2017), <https://www.latimes.com/business/la-fi-hospital-infection-inspections-20170123-story.html> (on file with the *University of the Pacific Law Review*) (“California law requires hospitals to be inspected every three years, but the state has fallen so far behind that the period has stretched to at least five years for 131 hospitals, the group said. Eighty of those hospitals have reported infection rates that are significantly higher than other facilities, it said.”).

150. See D. Werthmann, F.A. Rabito & Charlie Reed, *Knowledge, Attitudes, And Practices Concerning Cockroach Exposure Among Caregivers of Children with Asthma*, 21 BMC PUB. HEALTH 1485, 1485 (2021) (indicating children in low income households are more likely to suffer severe asthma from cockroach allergens); see also Weinberg, *supra* note 7, at 73, 75 (“[A] study suggests a link between the existence of a high level of

COVID-19 impacted inspection schedules, 131 California hospitals were overdue for proactive inspections by two or more years.¹⁵¹ This led to deaths and higher rates of infection with antibiotic-resistant bacteria.¹⁵² These shortfalls are starker with COVID-19 suspending inspections.¹⁵³

C. Hybrid Proactive-Reactive Inspections and Self-Advocacy Component

Reactive inspections are effective for those shelter occupants who advocate for their rights with complaints to code enforcement, but other residents will be hesitant to advocate for themselves.¹⁵⁴ Reactive inspections are more expensive in the long run, yet provide expedited code enforcement to people who utilize them.¹⁵⁵ However, reactive systems are ineffective if residents are hesitant to use them, and local governments implicitly understand residents can endure substandard conditions with the lack of proactive inspections.¹⁵⁶ A model that best neutralizes the drawbacks of the reactive model, but keeps the beneficial components, is a hybrid proactive-reactive model.¹⁵⁷

The hybrid model is in use in many of the biggest cities in California.¹⁵⁸ Proactive inspections are best when a reactive component complements them.¹⁵⁹ Local governments can address staffing and budget concerns by moderating the

housing code violations in a neighborhood and the hospitalization of children for asthma.”); Danica Dorlette, *Home Is Where The Heart—And Lungs Are, WE ACT FOR ENV’T JUST.* (July 2018), <https://www.weact.org/2018/07/home-is-where-the-heart-and-lungs-are/> (on file with the *University of the Pacific Law Review*) (explaining children with exposure to cockroaches and mice allergies have more severe health consequences and hospitalizations).

151. See Peterson, *supra* note 150 (explaining that 131 hospitals were years overdue for inspections with no inspection in the prior five years).

152. See *id.* (“The state had not been to UCLA Medical Center for the required inspection for at least four years before the outbreak, which killed three patients . . .”).

153. See Farida Jhabvala Romero, ‘Minimal to Non-Existent’: *Safety Inspector Shortage Worsened in Pandemic, Leaving California Workers Vulnerable*, KQED (June 2, 2021), <https://www.kqed.org/news/11875988/minimal-to-non-existent-safety-inspector-shortage-worsened-in-pandemic-leaving-california-workers-vulnerable> (on file with the *University of the Pacific Law Review*) (describing Cal/OSHA as understaffed for years with a lack of field inspectors, that only worsened with COVID-19, “crippling the agency’s ability to protect millions of workers . . . Enforcement of health and safety regulations has been minimal to non-existent due to the lack of occupational health inspectors”).

154. See Uzdavines, *supra* note 76, at 161, 164 (explaining that for a reactive system to be effective, the complainant must be organized and follow through with monitoring progress to get results).

155. See Dillon, *supra* note 142 (detailing the resources expended on a reactive system and the cycles of inspection and re-inspection).

156. See Uzdavines, *supra* note 76, at 161, 164 (arguing a reactive model is a tacit acknowledgment by local government it will not inspect all properties).

157. See Reyes & Hopkins, *supra* note 38 (explaining importance of hybrid inspections for safety code compliance).

158. See *id.* (explaining Los Angeles, Sacramento, and San Jose use hybrid proactive-reactive model).

159. See *Code Enforcement*, *supra* note 7 (explaining proactive inspections do not replace reactive inspections).

frequency of proactive inspections.¹⁶⁰ Legislators should consider implementing proactive homeless shelter inspections at least at the same frequency as federally-subsidized public housing units: every one to three years.¹⁶¹ Amending the statute would solve the current disparity in inspection models because some cities solely use Chapter 395's reactive model.¹⁶² The lack of uniform procedures means enforcement of health and safety standards continues to depend on the varying budget and priorities of local governments.¹⁶³ Uniform procedures are necessary for uniform code compliance, and major California cities already successfully use hybrid inspection models.¹⁶⁴

Legislators should also amend Chapter 395 to add components to educate prospective and current shelter residents on Chapter 395's procedures and protections.¹⁶⁵ While Chapter 395 indisputably empowers shelter occupants, promoting self-advocacy would ensure people who are homeless actually exercise their right to shelter inspections and Health and Safety Code enforcement.¹⁶⁶ Educational campaigns should include informing occupants of their statutory rights, the proper agency to report substandard conditions, what constitutes a code violation, and follow-up steps.¹⁶⁷ Conveying this information should use a trauma-informed method.¹⁶⁸ Homelessness can be traumatic, and most people experiencing homelessness have past bad experiences trying to access resources; it is vital information is conveyed accurately, simply, and consistently.¹⁶⁹

160. See Weinberg, *supra* note 7, at 73, 83 (explaining not all places can afford proactive inspections without extending intervals between inspections).

161. See *Inspection Information for Residents*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/topics/REAC_Inspections/residents (on file with the *University of the Pacific Law Review*) (explaining inspections are "every 1 to 3 years").

162. See Adami, *supra* note 129 ("Code enforcement operates under a complaint-based policy, meaning officers taking reports and respond to complaints as they are received from residents."); see also *Code Enforcement*, *supra* note 7 ("Reactive inspection models . . . are complaint-based. Inspections occur only when tenants or neighbors report possible violations.").

163. See Tobar, *supra* note 147 (explaining Los Angeles prioritizes its code enforcement resources on construction companies and inspecting new developments over the low-income tenements).

164. See Reyes & Hopkins, *supra* note 38 (reporting Los Angeles, San Jose, and Sacramento use proactive inspections); see also *Code Enforcement*, *supra* note 7 (explaining proactive inspections combine with reactive).

165. See 362 *Hous. Hearing*, *supra* note 20, at 4 (listing provisions that did not make the final version but had beneficial components, like information in communal area of shelter and a centralized complaint hotline).

166. CAL. HEALTH & SAFETY CODE §§ 17974.1(a)–(a)(1), 17974.2(b), 17974.3(b), 17974.4 (listing new procedural rights and enforcement mechanisms the individual or state may impose for violations); *Advocacy Tips*, DISABILITY RTS. CAL. (Apr. 1, 2014), <https://www.disabilityrightsca.org/publications/advocacy-tips> (on file with the *University of the Pacific Law Review*).

167. See *Advocacy Tips*, *supra* note 167 (explaining to effectively advocate for oneself it is important to know your rights).

168. L.A. HOMELESS SERVS. AUTH., BEST PRACTICES FOR ADDRESSING STREET ENCAMPMENTS 6, 7 (2021).

169. See *id.* (explaining the experiences of people who are homeless can make them wary to engage with resources if information is incorrect, misleading, or confusing).

A tool already available to simplify and demystify complaint procedures is 311.¹⁷⁰ 311 is a non-emergency phone line operating in most cities as a central hub to connect to city services and agencies.¹⁷¹ Access to 311 for code enforcement services mitigates the confusing procedure element, if 311 operators receive training to connect residents to the correct local agency.¹⁷² If local governments share Chapter 395's benefits and procedures with shelter residents, conditions are more likely to improve.¹⁷³

V. CONCLUSION

If Chapter 395's reactive inspection model functions as legislators intend, it is a truly impressive grant of procedural rights to people who are homeless.¹⁷⁴ The concern is that reactive inspections do not adapt to the needs of people experiencing homelessness and leave gaps in the enforcement of health standards.¹⁷⁵ A solution is to keep the reactive model and combine it with a proactive component as a backup if residents do not lodge complaints with code enforcement.¹⁷⁶ Arguments for the cost of proactive inspections are not persuasive when balanced against the societal cost of exposing people who are homeless to persistent substandard conditions.¹⁷⁷ Combining Chapter 395's reactive inspections with information and streamlined procedure will empower shelter residents to advocate for themselves.¹⁷⁸ Proactive inspections ensure uniform application of health code standards on a systemic level, which eliminates the double standard varying local code enforcement creates.¹⁷⁹

170. See Cecilia M. Vega, *San Francisco / Dial 311—For Everything but Emergencies*, SFGATE (Mar. 30, 2007), <https://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Dial-311-for-everything-but-2567298.php> (on file with the *University of the Pacific Law Review*) (explaining 311 is a telephone hotline for residents to get information about non-emergency city services).

171. See *id.* (stating that, in San Francisco, 311 is a hub for over 2,300 phone numbers to different departments and city services).

172. See Dakota Smith, *Trying to Get Through on L.A.'s 311 Hotline? You're Probably Waiting Longer on Hold*, L.A. TIMES (Dec. 30, 2017), <https://www.latimes.com/local/lanow/la-me-ln-311-phone-call-20171228-story.html> (on file with the *University of the Pacific Law Review*) (detailing that L.A. did not adequately staff 311 leading to overwhelmed operators with longer wait times and acknowledging that each operator interprets requests with their own knowledge and judgment).

173. See *Advocacy Tips*, *supra* note 167 (explaining to effectively self-advocate knowledge of procedure is vital).

174. See Uzdavines, *supra* note 76, at 161, 164 (suggesting that reactive models are most effective for people who are willing to navigate the complaint bureaucracy).

175. See *Code Enforcement*, *supra* note 7 (explaining fear of retaliation, immigration status, and language barrier dissuades some people from making complaints).

176. ACKERMAN, *supra* note 18, at 6.

177. See ACKERMAN, *supra* note 18, at 5–6 (explaining proactive inspections protect vulnerable and poor people).

178. See Uzdavines, *supra* note 76, at 161, 164 (suggesting that if people who are poor complained frequently and effectively like richer neighbors the reactive system could be effective).

179. See ACKERMAN, *supra* note 18, at 5 (explaining people in impoverished areas in the worst housing suffer most from reactive complaint systems).

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