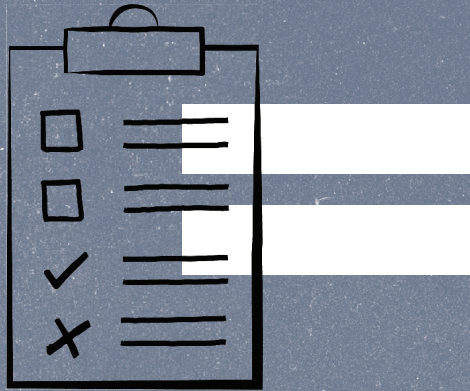


EQUITABLE ENFORCEMENT

BALANCING RISK, RESOURCES, AND POLICY GOALS



JULY 2020, UPDATED FEB 2021
CITIZENS HOUSING & PLANNING COUNCIL



CHPC is committed to advancing equity through housing and planning policy. New York City's building codes and their implementation seem agnostic, but may contribute to the inequities experienced by many New Yorkers.

POWER OF ENFORCEMENT

New York City strives to keep the built environment safe for everyone—from a renter in a rowhouse to a steelworker harnessed to a new high-rise. This is an enormous responsibility in a large city of diverse stakeholders, and the primary tool used to ensure safety is the enforcement of the New York City's Construction, Administrative, Housing Maintenance, and Health codes. Code enforcement officers are the city's frontline responders to concerns about the health and safety of the built environment.

Enforcement has the power to revitalize neighborhoods, improve children's health outcomes, protect occupants from substandard housing conditions, educate homeowners, and strengthen communities. But code compliance isn't a policy goal in itself. The city's myriad codes and regulations address issues large and small, not all of which have immediate and outsized impact on health and safety. In fact, code enforcement can work against other important housing goals by thwarting affordable housing creation and preservation, destabilizing neighborhoods, and by disproportionately penalizing and displacing vulnerable populations, particularly elderly, low-income, immigrant, and communities of color. The current code enforcement system advantages powerful voices within a community, which can result in the deployment of government resources to neighbors with the loudest voices, weaponization of the enforcement system, or neglect of neighborhoods with the greatest need.

ENFORCEMENT VERSUS HOUSING POLICY

Consider a recent case: an 90-year old widow in the Bronx has been issued a number of violations because the contractor that she and her husband had hired in the 1960s to convert the basement of their home into an apartment had conducted the work without filing documents with DOB. She has rented out what she thought was a legal unit for 50 years, first to her ailing mother-in-law, later to a Section 8 tenant, and currently to a retired member of the New York Police Department. Decades after the conversion, an anonymous caller lodged a complaint initiating enforcement actions that have left her with an imminent lien on her house and no viable options.

Now weigh the housing policy goals at play:

Safety

While the basement apartment is structurally safe and habitable, there are no permits on file assuring that the contractor who installed the stove and bathroom fixtures did so according to the code in effect at the time. This is a health and safety concern that forms the basis of the enforcement action.

Creation and preservation of affordable units

She will be forced to vacate and dismantle the basement unit, which has long provided a one-bedroom rental to households below 50% of the area median income.

Housing stability

The tenant will lose the home he has occupied for fifteen years and the homeowner will have a lien placed on her house because she cannot pay the mounting fines. Both occupants could ultimately end up homeless.

Aging securely in place

The cost to retain an architect, contractor, and lawyer to remedy the violations would put the elderly homeowner into debt. The loss of her tenant makes her more isolated and financially and physically vulnerable. The enforcement action also undermines the intent of the government subsidy she receives through the senior citizen homeowner’s exemption that relieves a portion of her property taxes.

Stabilize and strengthen neighborhoods

The homeowner and many of her neighbors are long-time residents of the block and members of the neighborhood Puerto Rican community. Over the last two years, several properties on the block have been redeveloped and are now selling for over a million dollars each. The long-time residents feel that this neighborhood change has instigated the displacement of some of these families.

Equitable enforcement would consider the homeowner, her capacity to resolve the violations, the safety risk, and the policy objectives at play. Ideally, enforcement would facilitate her compliance, retain the units, and strengthen its relationship with the community. A policy of “aggressive enforcement” favors immediate and punitive action largely because of an accountability structure that incentivizes the city to prioritize its own liability above the other policy goals.¹ Without alternative equitable enforcement tools and metrics, marginalized New Yorkers suffer and code compliance takes precedence over advancing broader housing policy goals.

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¹ Across multiple mayoral administrations, DOB has identified itself as the “primary regulator” of the built environment and prioritizes “aggressive enforcement” in the furtherance of its mission. <https://www1.nyc.gov/site/buildings/about/commissioners-message.page>

NYC CODE ENFORCEMENT AGENCIES

Department of Buildings (DOB)

The Department of Buildings has the broadest mandate with regard to code enforcement. DOB reviews plans for code compliance, inspects cranes, and enforces the NYC Construction Codes (Administrative, Building, Energy Conservation, Fire, Fuel Gas, Mechanical, and Plumbing), and the Zoning Resolution.

Department of Housing Preservation and Development (HPD)

With a commission to improve the affordability, availability, and quality of housing, HPD is the primary enforcer of the New York City Housing Maintenance Code and the New York State Multiple Dwelling Law. HPD will inspect for CO and smoke detectors, window gates and guards, infestations, heat and hot water, and lead paint, among other violations.

Department of Health and Mental Hygiene (DoHMH)

DoHMH has the authority to enforce codes that impact the health of New Yorkers including the Health Code, the Administrative Code, and state law. In particular, the agency is responsible for monitoring drinking water quality, cooling towers, pest control, and indoor air quality.

311 can be weaponized and deployed in communities undergoing demographic change.

Two recent examples of the weaponization of the enforcement system are shown below. A shelter in Queens that predominantly serves elderly in the community has been the subject of many recent 311 complaints. One such complaint accused the shelter of illegally hiring “undocumented” workers on the property.

“Caller states that there is construction at this location which is being done without permits and by undocumented workers.”



Photo credit: Fern Kwok via Gothamist

Following the New York outbreak of the novel coronavirus, residents of Bay Ridge and Dyker Heights began seeing racist flyers (photo at left) warning that Chinese-New Yorkers are “ruining” the neighborhood with illegal home conversions pushing out “middle-class” (implied, non-Chinese) homeowners. Reporting an illegal conversion is a frequently used tactic for penalizing a neighbor with extra government scrutiny. Repeated complaints pose an inconvenience at best, and harassment, financial losses, and displacement at worst.

TAKING STOCK OF THE CURRENT SYSTEM

Before incorporating new tools and metrics, New York City must undertake a full accounting of its current enforcement system. The system is defined by legislation, building and administrative codes, legal precedent, written procedures, data collection and management practices, agency norms, and individual incentives. Its implementation must also be examined through the lens of human interaction and experience.

Many municipalities are moving toward data-driven enforcement hoping to prioritize resources and remove personal discretion and bias from their enforcement practices. New York City has mature data collection practices, but they have not been scrutinized for their contribution to inequitable enforcement. Without an explicit equity lens, data-driven algorithms can worsen disparate impacts. Biases underlying the data or data collection methods are given a veneer of objectivity. Despite open data initiatives, the policy apparatus applied to the data is opaque and contains the value judgments of its maker. In systems where the discretion is centralized and obscured, there is no opportunity to course correct when the wheels of enforcement unduly bear down on vulnerable populations.

For example, many DOB code enforcement officers are deployed in response to complaints logged in the city’s 311 database. As noted in Hester Street’s study of enforcement in upstate municipalities, “[311] privileges those who are comfortable making complaints and navigating the system. It also concentrates government resources on properties or in areas that may not require it: for example—if complainants simply do not like or feel comfortable with their new neighbors. A reactive system disadvantages those who don’t know how or aren’t able to complain: for example—renters afraid of retribution from their landlords.”² There are clear biases in the collection of 311 data, and concerningly, the system is more heavily used in regions of New York City with unclear or “fuzzy” boundaries between ethno-racial enclaves.

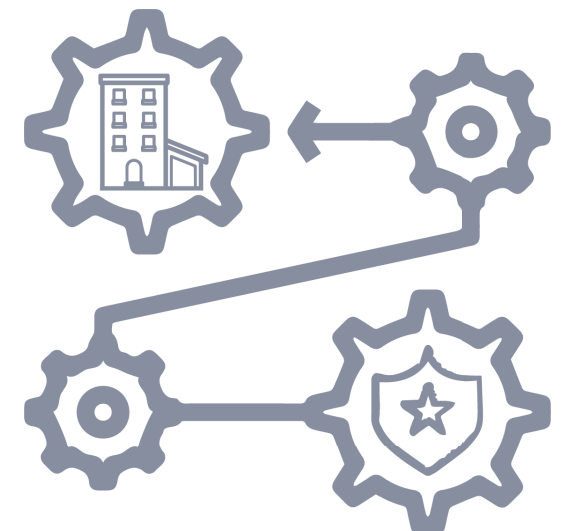
According to a study by social scientists Legewie and Schaeffer (2016), fuzzy boundaries between more homogeneous communities produced the most neighbor-related 311 complaints.³ Rather than fostering civic accountability, 311 and its consequent enforcement actions have been weaponized against certain groups and deployed in communities experiencing an influx of privileged newcomers who consciously or unconsciously seek to change community norms.⁴

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² The New York State Attorney General launched the Cities for Responsible Investment and Strategic Enforcement (Cities RISE) initiative in 2017 to build capacity and support for equitable enforcement in the state. Hester Street was appointed to the project which ultimately targeted ten upstate communities. Documenting the insight gained from this experience, Hester Street published a report titled, *The Power and Proximity of Code Enforcement: A Tool for Equitable Neighborhoods* in 2019.

³ Legewie, J. & Schaeffer, M. (2016). *Contested Boundaries: Explaining Where Ethnoracial Diversity Provokes Neighborhood Conflict*. *American Journal of Sociology*, 122:125-161.

⁴ Fayyad, A. (2017, December 20). *The Criminalization of Gentrifying Neighborhoods*. *The Atlantic*. Retrieved from <https://www.theatlantic.com/politics/archive/2017/12/the-criminalization-of-gentrifying-neighborhoods/548837/>



The current enforcement system also fails to account for the type and capacity of a property owner. An elderly rowhouse owner in the Bronx is subject to the same process as corporate landlords who own thousands of units. In 2019, the New York Times documented that failure-to-correct violations, issued every 60 days for immediately hazardous conditions, have disproportionately fallen on owners of small residential properties even though the intent of the law was to create a “major economic incentive for construction companies to correct violations” after two fatal crane collapses in 2009.⁵

Thinking again of the 89-year-old homeowner in the Bronx, if the city’s priorities were to ensure that there is no immediate public danger and to protect the housing security of the two occupants, it would not have followed its current course of action. The city could have promptly deployed an inspector to determine whether the stove and bathroom plumbing had been installed correctly or pose a danger. It could have connected her to a caseworker and the Senior Citizen Homeowner Assistance Program (SCHAP) to help her navigate the unfamiliar process and cope with the steep costs of compliance. Instead, the underlying violations remain open and an algorithm continues to mete out failure-to-correct violations every 60 days diminishing her ability to afford the fix. Under an equitable enforcement framework, this would not count as success.

DEFINING AN EQUITABLE FRAMEWORK

New York City must create a framework for institutionalizing equitable code enforcement that aligns with its ambitious and urgent housing goals. Organizations like the Citizens Housing and Planning Council (CHPC) and Hester Street (HST) hope to be a catalyst and a resource for city and its diverse communities to take on this important work. Objectives for an equitable enforcement program should include:

- Reframe the purpose of code enforcement from reactive and punitive to proactive and goal-oriented;
- Develop a framework to strategically and equitably deploy enforcement resources;
- Create alternative tools to resolve code violations suited to the respondent and commensurate to the risk;
- Support the development of code enforcement practices and strategies that align with New York City’s housing goals.

As the country’s most populous and diverse municipality, New York City must consider its enforcement practices through an equity lens. Enforcement can be a powerful tool to advance housing policies that serve all New Yorkers.

Without alternative equitable enforcement tools and metrics, marginalized New Yorkers suffer and the the city cannot measure and celebrate its success in advancing broader housing policy goals.

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⁵ Ashford, G. (2019, September 9). The Law Was Aimed at Deadly Machinery. It Hit Her Washer. The New York Times. Retrieved from <https://www.nytimes.com/2019/09/09/nyregion/building-violations-fines-debt.html>

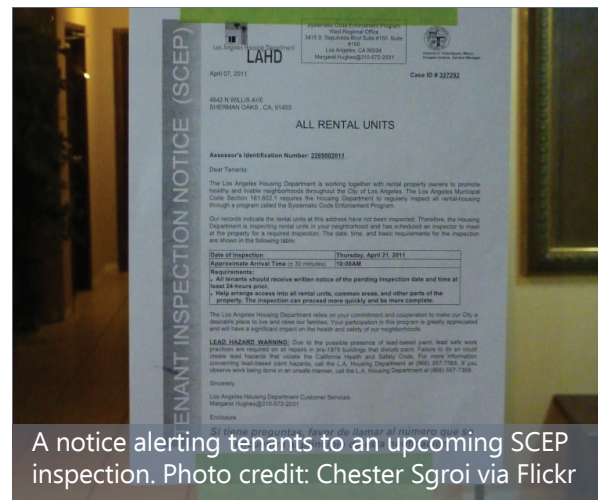
ADDRESSING BIAS IN PUBLICLY SOURCED DATA

Modern “smart” cities use data to inform policy and planning, many relying heavily on citizen-generated 311 data.¹⁰ Yet many studies have demonstrated that 311 can be problematic because it often under-represents certain demographic groups. For instance, one 2017 study found that some New York City communities—those with high unemployment, those that are largely non-white, and those with a high percentage of limited-English speakers—tend to under-report problems to 311.¹¹ Algorithmic decision-making models can magnify biases in the underlying dataset and policymakers may unknowingly base decisions on flawed or misleading data. **Without transparency or data that reflects the “ground truth,” government policy is prone to inequitable allocation of its resources, benefits, and penalties.**

How can government agencies reduce bias in their policies? After suspecting bias in their complaint driven code enforcement system, the city of Los Angeles minimized its reliance on neighbor complaints by implementing a proactive inspection program where rental properties would be inspected on regular cycle rather than solely in reaction to complaints. When the Systematic Code Enforcement Program (SCEP) was enacted in 1998, inspections were scheduled according to a three-year cycle. After amassing data from several inspection cycles over nearly two decades of the program, Los Angeles revised SCEP so that the 96% of the city’s properties that are generally compliant are inspected in four-year intervals and the remaining 4% of problem properties are inspected every two years.¹²

While the proactive inspection program ensures that government resources are deployed more equitably, it does not eliminate the public’s ability to file building complaints. The Housing and Community Investment Department of Los Angeles (HCIDLA), which responds to violations in the city’s rent stabilized and multi-family housing stock, still receives roughly 15,000 complaints annually.¹³ Of the code inspections HCIDLA conducted in 2019, twice as many properties were inspected through SCEP versus in response to complaints.¹⁴

Around 2015, frustrated by the number of complaint-driven inspections where the alleged violation was either unfounded or inaccessible, the City of Los Angeles began requiring contact information to submit a complaint.¹⁵ Now, when an on-line complaint is initiated, a privacy statement is included among the directions assuring users that the personal information collected is only used to provide service and will remain confidential.



A notice alerting tenants to an upcoming SCEP inspection. Photo credit: Chester Sgroi via Flickr

To minimize the impact of bias on public policy, the Urban Institute explores the idea of equipping government with an automated tool that would help to quantify data bias. In its paper, “Toward an Open Data Bias Assessment Tool,” the authors detail a prototype that reads in geospatially coded datasets from 311 and then produces bias indicators based on spatial and demographic distributions across a city.¹⁶ While the prototype is more appropriate for some types of data than others, it marks practical progress in the effort to improve policy equity.

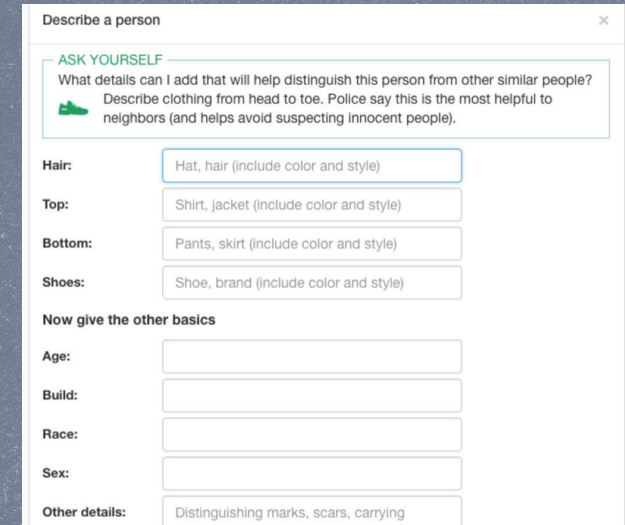
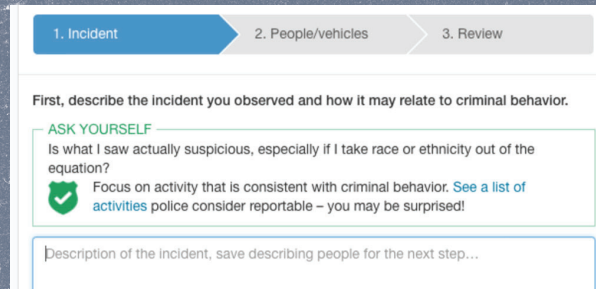
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- ¹⁰ Kontokosta, C., & Hong, B. (2021). Bias in smart city governance: How socio-spatial disparities in 311 complaint behavior impact the fairness of data-driven decisions. *Sustainable Cities and Society*, 64.
 - ¹¹ Kontokosta, C., Hong, B., & Korsberg, K. (2017). Equity in 311 Reporting: Understanding Socio-Spatial Differentials in the Propensity to Complain. *arXiv*, arXiv:1710.02452.
 - ¹² Los Angeles Office of the Controller. (2018). L.A. Controller's Audit on: The Los Angeles Housing + Community Investment Department's Systematic Code Enforcement Program.
 - ¹³ Ibid.
 - ¹⁴ McDevitt, J. (2021, January) HCIDLA conducted 20,500 SCEP inspections and 9,940 complaint-based inspections in 2019.
 - ¹⁵ Williams, D. (2020, December). Questions for the Acting Chief Inspector, Systematic Code Enforcement Program (SCEP). (K. Leitch, Interviewer)
 - ¹⁶ Narayanan, A., & MacDonald, G. (2019). Toward an Open Data Bias Assessment Tool: Measuring Bias in Open Spatial Data. *Urban Institute*.

Just as governments struggle with publicly sourced data, private companies that rely on crowd-sourced data, like Nextdoor and Citizen, are predisposed to bias in the demographic representation of their users and the content of user posts. Nextdoor, a social networking app intended to build community among neighbors, has struggled since its creation to address biased or overtly racist posts contributed by its users. Common among the troubling posts are purported sightings of “suspicious” individuals, the result of racial profiling Black members of a community. In one effort to address the problem, Nextdoor drew upon the work of Stanford University social psychologist Jennifer Eberhardt and introduced prompts (see inset on right) to help users consider whether the content of their posts reflects implicit bias. According to Nextdoor, the move resulted in a 75% drop in posts flagged as offensive content.¹⁷

While the prompts helped to reduce racial profiling on the app, bias and racism still proliferate on Nextdoor and many sites like it. In September 2019, Nextdoor rolled out a new feature called the “Kindness Reminder.” The Kindness Reminder is a script that scans a user’s post for potentially inflammatory words and phrases and encourages the user to rephrase or refrain from posting. According to Nextdoor, the Kindness Reminder has led to a 30% reduction in flagged content.¹⁸

Like user posts on Nextdoor, complaints made to 311 are susceptible to the biases of the person making the complaint. The intentions and biases behind 311 complaints manifest in different problems within the data. Citizens who distrust government or are disenfranchised in some way are less likely to report a problem, creating gaps in the data and depriving these New Yorkers of government resources.

Below: Nextdoor prompts users to consider whether racial or ethnic bias has unconsciously influenced the user’s perception of criminal behavior. Right: When describing a person involved in the suspicious activity, race is deemphasized relative to other distinguishing characteristics. Photo credit: Nextdoor.com “Nextdoor’s Approach [to Racial Profiling]”



Implicit social expectations influence whether citizens perceive and report an issue, whether it is a neighbor who has “failed to maintain” their yard or if pests in an apartment are to be expected or reported. These biases produce a subjective and inconsistent government response.¹⁹ Most concerning is when citizens knowingly weaponize 311 to achieve a personal end. Reporting alleged building code violations is a common tactic used to harass neighbors and make them feel unwelcome. These complaints can also be used to exert claim over public space, for example, punishing neighbors who use certain street parking or whose construction project is perceived as a nuisance.²⁰ This over-represents certain cohorts in 311 data and disproportionately directs government attention to these issues. These examples, which are not comprehensive, demonstrate ways in which government action is predicated on the biases of publicly sourced data.

While eliminating racism and bias is a long-term effort, there are concrete practical policy solutions that can help reduce reliance on biased data in our code enforcement and other public policies.

17 Hempel, J. (2016, February 16). For Nextdoor, Eliminating Racism Is No Quick Fix. *Wired*. Retrieved from <https://www.wired.com/2017/02/for-nextdoor-eliminating-racism-is-no-quick-fix/>

18 Mamut, T. (2019, September 18). Announcing Our New Feature to Promote Kindness in Neighborhoods. Retrieved from: blog.nextdoor.com/2019/09/18/announcing-our-new-feature-to-promote-kindness-in-neighborhoods/

19 Kontokosta, C., & Hong, B. (2018). Who Calls for Help? Statistical evidence of disparities in citizen-government interactions using geo-spatial survey and 311 data from Kansas City. *Bloomberg Data for Good Exchange Conference*.

20 Examples of neighbor harassment abound in the media and in local housing forums. See, for example, newyork.cbslocal.com/2017/08/10/311-complaint-harassment/ and brownstoner.com/forum-archive/2006/11/neighbors-311/

PROACTIVE ENFORCEMENT REGIMES

Given the troublesome nature of complaint-based enforcement, many municipalities are deemphasizing the role of complaints in their code enforcement regimes and implementing proactive inspection for large segments of their housing portfolios. Under proactive inspection, a property's code compliance is assessed on a regular, often multi-year, schedule. Regular systematic inspection encourages preventative maintenance and an equitable allocation of city resources. Los Angeles, for example, reported the correction of 1.5 million habitability violations between 1998 and 2005 after the implementation of its Systematic Code Enforcement Program (SCEP).⁶ Most cities that have adopted a proactive inspection regime focus their resources on their rental stock, often coupling inspections with a rental unit registration program. Proactive inspection programs vary in frequency; some may occur on a fixed two-to-six-year cycle and others according to an accelerated schedule if a property has a history of violations or has been flagged as high-risk.

Cities that have adopted proactive inspection include Boston, Los Angeles, Baltimore, Kansas City, Seattle, and Washington D.C. Boston, for example, enforces the state sanitary code which sets "minimum standards for human habitation" through a proactive inspection and rental registration regime that operates on a five-year cycle. The program is funded by rental registration fees, however, owner-occupied properties with fewer than six units are exempt.⁷ Like Boston, Los Angeles funds its proactive

enforcement program, SCEP, by charging landlords an annual per unit registration fee. SCEP operates using a tiered inspection cycle where high-risk buildings are assessed every two-years and the remainder every four-years. Continuous inspector education, which includes cultural sensitivity training, is a hallmark of the program. Since its inception, more than 90 percent of Los Angeles' multi-family housing has been inspected through SCEP resulting in an estimated \$1.3 billion re-investment in the housing stock.⁸

Importantly, a proactive inspection program must integrate social services and tools that help owners bring their properties into compliance. This may entail low-cost financing, connection to legal aid, and technical assistance. When owners cannot afford to bring a property into compliance or pass an untenable cost on to the tenant, the city may lose essential affordable housing supply and further relegate the poor and vulnerable into substandard unregulated spaces. In cases where a unit cannot be made safe and habitable, the city should offer relocation services to ensure that all occupants remain safely housed.⁹

⁶ Ackerman, A., Galbreth, L., & Pearson, A. (2014). A Guide to Proactive Rental Inspection Programs. ChangeLab Solutions, Oakland.

⁷ http://www.publichealthsystems.org/sites/default/files/PHS3/71275GPmeeting_03.pdf

⁸ Harvard Kennedy School Ash Center. (2020). Systematic Code Enforcement Program. Retrieved from: <https://www.innovations.harvard.edu/systematic-code-enforcement-program>

⁹ Ackerman, 2014.