



Executive Office of Health and Human Services  
The Commonwealth of Massachusetts  
Department of Public Health  
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lieutenant Governor

MARYLOU SUDDERS  
Secretary

MONICA BHAREL, MD, MPH  
Commissioner

Tel: 617-624-6000  
[www.mass.gov/dph](http://www.mass.gov/dph)

TO: Commissioner Monica Bharel and Members of the Public Health Cou  
FROM: Jan Sullivan, Acting Director, Bureau of Environmental Health  
DATE: June 14, 2017  
RE: Informational Briefing on Proposed Amendments to 105 CMR 410.000:  
*Minimum Standards of Fitness for Human Habitation, State Sanitary Code,  
Chapter II*

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## **INTRODUCTION**

This memorandum provides an informational briefing on proposed amendments to 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation, State Sanitary Code, Chapter II*, hereafter referred to as the Housing Code. The purposes of the Housing Code regulations are: establishing minimum standards for housing to protect the health, safety, and well-being of occupants and the general public; providing enforcement procedures for local boards of health to ensure compliance with these minimum standards; and facilitating the use of legal remedies available to occupants of substandard housing. The proposed amendments consist of a comprehensive revision to the entire set of regulations pertaining to the Housing Code in order to clarify regulatory requirements, especially for local health authorities who enforce these minimum standards. The amendments also update standards and implement new sections based on feedback from local health officials, the regulated community, and the public, including concerns about heating requirements affected by climate variability, and the desire for green housing alternatives to improve home energy efficiency and conservation.

## **BACKGROUND**

Housing regulations that established minimum standards for health and safety in residential housing in Massachusetts were first adopted in 1960 in accordance with Chapter 522 of the Acts of 1959. Subsequently, Chapter 898 of the Acts of 1965 was signed into law (codified at M.G.L. c. 111, §127A), which authorized the Department of Public Health (DPH) to promulgate regulations known as the state sanitary code in matters “affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and responsibility, including, but not limited to, standards of fitness for human habitation.” Under

this authority, the housing regulations were amended in 1969 and became Chapter II of the State Sanitary Code (“the Housing Code”). Although the Housing Code has had limited amendments in the last two decades to incorporate new statutory requirements, substantial revisions have not been made since 1994.

In its current form, the Housing Code is outdated, contains obsolete references, and is ambiguous or confusing with regard to some requirements. For example, specific citations to other codes, such as the Building Code, are no longer accurate due to numbering changes in other codes. The proposed amendments will eliminate specific references to other codes to avoid outdated references in the future. In addition, the current Housing Code is not organized in a manner that facilitates easy access to specific requirements. The proposed changes group similar requirements together in broad categories (e.g., building and plumbing, health and safety) to help readers find all relevant requirements for a related area.

In order to revise these regulations, the DPH Bureau of Environmental Health (BEH) initiated a comprehensive review of the Housing Code several years ago, in partnership with key stakeholders. With input from officials at local and state agencies responsible for health and safety matters in residential buildings, as well as participation from various landlord and tenant organizations, BEH has completed that review, culminating in significant proposed revisions to the Housing Code.

## **PROPOSED AMENDMENTS**

The Housing Code has been revised to improve readability/organization and clarify existing requirements. The most significant proposed changes are summarized below. A complete set of proposed amendments is attached in Appendix A.

Summary of Major Proposed Amendments:

- **410.002: Scope.** This section was completely rewritten to provide clearer guidance on the scope of the regulations. An explicit statement was added that the local board of health has a duty to order correction of violations and the owner has the obligation to comply with such order.
- **410.003: General Provisions.** A new section was added that addresses general matters that were previously sporadic or not specifically addressed, such as a requirement that occupants provide owners reasonable access to make repairs.
- **410.010: Definitions.** Several definitions were revised for clarity and some new definitions were added, for example, Alternative Housing (to address owner-occupied energy efficiency alternatives), Cabin, Integrated Pest Management, and Temporary Overnight Shelter.
- **410.130: Potable Water/Sanitary Drainage.** Water and sanitation requirements have been grouped in a new section, which also includes requirements for water and sewer submetering.
- **410.150: Hot Water.** Requirements for hot water for bath/shower and other fixtures are clarified.

- **410.160: Heating Facilities.** Requirements for a central heating system are specifically provided, and prohibited heating sources are listed.
- **410.180: Temperature Requirements.** The heating season is currently from September 15 through June 15. Due to climate variability experienced notably in the last few years (e.g., hot weather in early June), the heating season is now proposed as September 15 through May 31. The amendments also clarify that the requirement not to exceed 78 degrees F means that the heating system may not cause heat in any room to exceed 78 degrees F (noting that this does not mean that air conditioning is required when ambient temperatures cause indoor temperatures to exceed 78 degrees). This section also implements a new simplified process for boards of health to vary the heating season based on weather forecasts by posting notice on a city or town website. This eliminates the need for an individual property variance process that requires public hearings to vary the heating season when weather conditions do not warrant a requirement for heat. It also allows facilities that provide air conditioning to turn on such units without concern about violating the heating requirements in the Housing Code.
- **410.200(D): Provision and Metering of Electricity and Gas.** To be consistent with the electrical code, this section was added to require owners to provide occupants with unrestricted access to their dwelling unit's electrical distribution panel when the occupants pay for the electrical service, or when the owner or manager does not reside in the residence or is not available within an hour's notice.
- **410.220: Natural and Mechanical Ventilation.** This section now requires mechanical ventilation in bathrooms to minimize the buildup of moisture that can lead to mold growth. A one year implementation period is provided.
- **410.230(A): Owner's Installation and Maintenance Responsibilities.** An owner is now required to provide a cook top and oven in dwelling units.
- **410.260: Means of Egress.** This section was revised for consistency with the State Building Code.
- **410.270: Locks.** Requirements for locks are clarified for consistency with building and architectural access board requirements. Owners are required to provide keys to occupants and occupants are required to provide a key to the owner when an occupant changes the locks on an entry door.
- **410.420: Habitability Requirements.** Minimum space requirements have been revised to include single occupancy rooming units. In addition, the amendments simplify the minimum square footage requirements for sleeping areas by making the requirements for rooming units and dwelling units the same.
- **410.440: Temporary Housing and Cabins.** A new provision allows for cabins that do not meet all the requirements in the Housing Code if approved by the board of health. This addresses mainly seasonal cabins in rural areas that are generally not intended for permanent occupancy.
- **410.450: Alternative Housing.** This is a new section that allows alternative types of housing that are intended to be low-environmental impact provided they are owner-occupied and permitted by the board of health. An exemption from certain code requirements for electrical service, plumbed water systems, central heating facilities, and sanitary/sewer services may be granted by the board of health if all the permitting conditions specified in 410.710 are satisfied.

- **410.500: Owner’s Responsibility to Maintain Building and Structural Elements.** This section was modified to require that building maintenance conform to accepted building standards and other advisories issued by DPH. It also specifically requires that buildings be maintained free of mold and mildew in amounts that may harm occupants. This enables local boards of health to cite visible mold as well as chronic dampness.
- **410.560: Elimination of Pests.** This section clarifies the responsibilities of owners and occupants with regard to elimination of pests. For properties with four or more units, it specifically requires owners to implement an Integrated Pest Management approach to pest elimination and mandates inspections every four months. These inspections may be conducted by owners or their representatives but must be documented. In multi-unit properties, pests in one unit may affect conditions in other units.
- **410.570: Refuse.** Amendments now address responsibilities between owner and occupant in municipalities that have adopted a “Pay as You Throw Program” in which a fee per bag of waste is generally charged.
- **410.620: Conduct of Inspections.** This revised section now includes comprehensive requirements related to pest inspections and mold inspections. The current version of the regulations addresses mold through the appearance of chronic dampness and does not specifically refer to mold as a violation. This section now states that the presence of mold requires an inspector, to the best of their ability, to investigate the potential sources of moisture, which may require corrective action(s).
- **410.700: Variances.** The variance section now explicitly lists those provisions in the Housing Code that boards of health are not authorized to vary. Approved variances will be required to be submitted to DPH but not subject to DPH approval.
- **410.710: Permitting Alternative Housing.** This new section specifies the requirements for an owner to apply to a board of health for a permit for alternative housing. This section has been added based on requests from certain rural communities and their residents to allow people to live in more primitive houses that have a lower impact on the environment than traditional houses. The section contains safeguards to ensure that such homes are restricted to owner-occupied premises, and that adequate measures are in place to ensure the health and safety of the occupants. Any permit issued by a board of health for alternative housing must be submitted to the DPH.

## CONCLUSION

The proposed amendments present a comprehensive revision to the Housing Code regulations to improve organization, clarify regulatory requirements, update outdated requirements, and add provisions for alternative means to achieve the objectives and underlying purpose of the regulations: establishing minimum standards for human habitation.

DPH/BEH plans to solicit feedback from the public and other interested organizations and will provide for an extended comment period. It is anticipated that there will be significant comments on the proposed revisions. DPH/BEH will evaluate the comments and make any further revisions to the proposed regulations as it deems appropriate. The testimony and any additional proposed changes will be summarized and presented to the Public Health Council at a future meeting. Following that presentation, DPH/BEH will request approval for final promulgation.