

105 CMR: DEPARTMENT OF PUBLIC HEALTH

~~105 CMR 410.000: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION (STATE-SANITARY CODE, CHAPTER II)~~

105 CMR 410.000: STATE SANITARY CODE CHAPTER II: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION

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410.001: Purpose

The purposes of 105 CMR 410.000 are to:

(A) Establish minimum standards for housing to protect the health, safety, and well-being of occupants and the general public;

(B) Provide enforcement procedures for local boards of health to ensure compliance with these minimum standards; and

(C) Facilitate the use of legal remedies available to occupants of substandard housing. protect the health, safety and well-being of the occupants of housing and of the general public, to facilitate the use of legal remedies available to occupants of substandard housing, to assist boards of health in their enforcement of this code and to provide a method of notifying interested parties of violations of conditions which require immediate attention.

410.002: Authority

105 CMR 410.000 is adopted under authority of M.G.L. c. 111, §§ 3 and 127A.

410.003: Citation

105 CMR 410.000 shall be known, and may be cited, as 105 CMR 410.000: *State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation.*

410.010 002: Scope

(A) No person shall occupy as owner-occupant or let to another for occupancy any dwelling, dwelling-unit, mobile dwelling unit, or rooming unit for the purpose of living, sleeping, cooking or eating therein, which does not comply with the requirements of 105 CMR 410.000.

(A) The provisions of 105 CMR 410.000 apply to all residences as defined in 105 CMR 410.010, unless otherwise specified in 105 CMR 410.000. Should a conflict exist between 105 CMR 410.000 and another agency's regulation, the standard that is more protective of public health or safety shall apply.

(B) The provisions of 105 CMR 410.000 shall not apply to any dwelling, **residence** which:

(1) is **is** otherwise required to conform to **minimum housing standards specified in other chapters of the State Sanitary Code;** or of fitness for human habitation elsewhere existing in the State Sanitary Code; is located on a campground that is being operated in compliance with 105 CMR 420.000, 105 CMR 430.000, or 310 CMR 14.00; or

(2) is **is** used exclusively as a civil defense shelter **or a temporary overnight shelter in the case of an emergency;** or is otherwise required to conform with standards of fitness for human habitation elsewhere existing in the State Sanitary Code; or

(3) Is in any hospital, sanitorium, convalescent or nursing home, infirmary or boarding home for the aged, assisted living facilities, or substance abuse treatment facility **residential facility that is licensed by an agency of the Commonwealth,** whenever such facilities are licensed by the Department of Public Health, unless regulations pertaining to such facilities require compliance with 105 CMR 410.000; or

(4) Is federally owned housing.

(C) It is the duty of the local health official to order correction of such violations pursuant to 105 CMR 410.640 through 410.680 and the legal obligation of the person to whom the order is issued to comply with such order.

(E) **(D)** Nothing contained herein shall be construed to limit or otherwise restrict any person from seeking judicial relief in a court of competent jurisdiction notwithstanding any hearing, proceeding, or other administrative remedy set forth in 105 CMR 410.000.

(E) The provisions of 105 CMR 400.000: State Sanitary Code, Chapter I shall govern the administration and enforcement of these minimum standards except as supplemented by 105

CMR 410.600 through 410.950.

410.003: General Provisions

(A) No person shall occupy, as owner-occupant, or let to another for occupancy, **or allow a person to occupy** any dwelling, dwelling unit, **residence** mobile dwelling unit, or rooming unit for the purpose of living, sleeping, cooking or eating therein, which does not comply with the requirements of 105 CMR 410.000.

(B) Unless otherwise specified in 105 CMR 410.000, the owner is responsible for providing all maintenance, repairs, and equipment necessary to achieve compliance with 105 CMR 410.000.

(C) No owner or occupant shall cause any service, facility, equipment, or utility which is required to be made available by 105 CMR 410.000, or any optional service, facility, equipment, or utility provided by the owner, to be removed from or shut off from any occupied residence except for such temporary period as may be necessary during actual repairs or alterations and where reasonable notice of curtailment of service is given to the occupant, or during temporary emergencies when curtailment of service is approved by the board of health. If any such service, facility, equipment, or utility becomes curtailed, the responsible party shall take immediate steps to cause its restoration. (See M.G.L. c. 186, § 14.)

An owner shall not be prohibited from removing optional equipment when a unit is vacant or upon the expiration of an existing tenancy.

(D) Access for Repairs and Alterations

Every occupant of a dwelling, dwelling unit, or rooming unit shall, give the owner thereof, or his agent or employees, upon reasonable notice reasonable access, if possible by appointment, to the dwelling, dwelling unit, or rooming unit for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of 105 CMR 410.000.

(D) Every occupant of a residence, upon reasonable notice and if possible by appointment, shall give the owner thereof, or his representative access to the residence for the purpose of effecting compliance with the provisions of 105 CMR 410.000. Access shall include, but not be limited to any cooperation required for repairs, alterations, pest elimination, and service of utilities.

410.020 010: Definitions

Affected Parties means the occupants if the petitioner is the owner, and the owner if the petitioner is the occupant of any residence on which an order to correct has been served.

Alternative Housing means a single family, owner-occupied dwelling used for permanent occupancy and designed to minimize the environmental impact when compared to traditional housing. Alternative housing also includes permanent structures known as Tiny Houses.

Asbestos means:

- (1) ~~chrysotile~~ **Chrysotile**, amosite, crocidolite; or
- (2) ~~in~~ **In** fibrous form, tremolit-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

Asbestos Material means asbestos or any material containing asbestos.-

Bed and Breakfast Establishment means a private owner-occupied house where four or more rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

Bed and Breakfast Home means a private owner-occupied house where three or fewer rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

Board of Health means the appropriate and legally designated health authority of the city, town, county, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town, or his or its authorized agent or representative: **a municipal board of health, a municipal health department, a regional health district, or any other legally constituted city, town, or county governmental unit within the Commonwealth serving as a**

public health agency, as established under M.G.L. c. 41, § 1, or M.G.L. c. 111, §§ 26, 26A, 27A, or 27B, or its authorized agent or representative under M.G.L. c. 111, § 30. Board of health shall also mean an inspectional services department in a city or town where the inspectional services department is responsible for the enforcement of 105 CMR 410.000.

Building and Structural Elements means any component of a residence including, but not limited to, the foundation, floors, walls, doors, windows, ceilings, roofs, gutters, soffits, siding, staircases, porches, decks, and chimneys.

Bulk Items means waste items which because of size or weight cannot be collected as part of routine household refuse collection and have been designated by the local community through rules and regulations to require specific disposal procedures. Bulk items shall include, but not be limited to, large appliances, furniture, large auto parts, stumps, and trees, as well as large branches or brush that exceeds local size restrictions for yard waste collection.

Cabin means a structure that provides basic shelter and contains at least one habitable room for living, sleeping, eating, cooking or sanitation that is intended to be occupied by a single family or household. A cabin is intended for vacation, recreation, or leisure use in wilderness areas for intermittent periods of time.

Central Heating System means a system in which air or water is heated at a central furnace and distributed throughout the residence through vents, ducts, pipes, or radiators. It shall also mean a series of hard-wired electrical heaters installed within the residence.

Chemical Toilet means a self-contained toilet where material is held in a sealed tank, containing chemicals and deodorizers, and which is emptied on a periodic basis.

Chronic Dampness means the regular and/or periodic appearance of moisture; ~~or water, or mold or~~ evidence of such moisture or water as indicated by the presence of mold or other fungi.

Compliance means meeting all the requirements of 105 CMR 410.000. It shall also mean ~~correcting any violations of 105 CMR 410.000 in a work-personlike fashion and restoring all parts of the dwelling, or unit thereof, to the condition they were in before occurrence of any such violations. Compliance shall also mean in those cases where licenses or permits are required to perform work necessary to correct the violations, such as, but not limited to building, plumbing and wiring that the appropriate official certifies that the work has been completed in accordance with applicable laws and regulations.~~ **and correcting any violation of 105 CMR 410.000 in accordance with accepted building, plumbing, heating, gas fitting, electrical wiring standards, or advisories issued by the Department, so that the residence or cited item or component is returned to its intended function or use. Materials and equipment shall be appropriate for the use intended and affected areas shall be left in a properly cleaned condition. When licenses or permits are required to perform the work necessary to correct the violation, including, but not limited to building, plumbing, wiring/electrical, heating, gas fitting, asbestos removal, lead-based paint abatement, and integrated pest management, compliance shall also mean that such licenses and permits have been obtained and that any conditions or requirements imposed by such licenses and permits have been met.**

Compostable Material means an organic material excluding waste water treatment residuals which has the potential to be composted and which is pre-sorted and is not contaminated by significant amounts of toxic substances, as those terms are or may be defined by 310 CMR 19.00: *Solid Waste Management*.

Composting means a process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can safely be used, as those terms are or may be defined by 310 CMR 19.00: *Solid Waste Management*.

A Condition Making a Unit Unfit for Human Habitation is a condition meeting the standard set forth in the Massachusetts General Laws ~~M.G.L. c 111, §§127A and 127B~~ under which a **board of health** may justify closing down, **securing**, condemning, or demolishing a residence. It shall mean a violation which poses such immediate harm or threat of harm to an occupant or to the public that other legal remedies cannot be reasonably expected to bring about removal of the condition with sufficient speed to prevent the serious harm or injury to the occupants or to the public.

A Condition Which May Endanger or Materially Impair the Health or Safety and/or Wellbeing of an Occupant means the existence of a condition, listed in 105 CMR 410.750 **630** or any other condition so certified by the board of health to be a violation, which may expose or subject **a person or persons** to harm, **or may materially impair** the health, or safety, **and/or** the well-being of an occupant or the public.

Condominium means the land or the lessee's interest in any lease of such land which is submitted pursuant to M.G.L. c. 183A, the building or buildings, all other improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which have been submitted pursuant to M.G.L. c. 183A.

Condominium Unit means a part of the condominium including one or more rooms, with appurtenant areas such as balconies, terraces, and storage lockers if any stipulated in the master deed as being owned by the unit owner, occupying one or more floors or a part or parts thereof, including the enclosed space therein, intended for any type of use, and with a direct exit to a street or way to a common area leading to a street or way.

Department means the Massachusetts Department of Public Health.

Dwelling means every building or **structure** shelter including but not limited to rooming houses and temporary housing used **for** or intended for human habitation and every other structure or ~~condition~~ **feature** located within **the physical boundaries** ~~same of the~~ lot line whose existence **may** ~~causes or is likely to effect~~ noncompliance with the provisions of 105 CMR 410.000.

Dwelling Unit means the room or group of rooms within a dwelling used or intended for use by **an individual**, one family, or household for living, sleeping, cooking, and eating. ~~Dwelling unit shall also mean a condominium unit.~~

Entry Door of a Dwelling means any door of a dwelling which provides access to the common areas of the dwelling from the exterior of the dwelling except that when there are two doors which enclose an entryway between the common areas of the dwelling and the exterior of the dwelling it shall mean either of the doors.

~~Entry Door of a Dwelling Unit~~ means any door of a dwelling unit which provides access to the common areas of the dwelling or access to the outside of the dwelling.

Exterior Openable Window means any window designed and installed to open which opens to the common interior areas of the dwelling or to the outside of the dwelling **residence**.

Exterminate means to eliminate insects and rodents **pests**.

Fuel means the electricity or any combustible fuel such as oil, gas, coal, or wood used in the provision of heat and/or hot water.

Garbage means the animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food, and containers and cans which have contained food unless such containers and cans have been cleaned or prepared for recycling.

Guard means a building component or a system of building components, including but not limited to, newel posts, upper and lower rails, balusters, or a solid construction located at or near the open sides of elevated walking surfaces that minimize the possibility of a fall from the walking surface to a lower level.

Habitable Room means every room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding rooms containing toilets, bathtubs or showers and excluding laundries, pantries, foyers, communicating corridors, closets and storage spaces.

Handrail means a horizontal or sloping rail intended for grasping by the hand for guidance or support.

Historic building means any building covered by 105 CMR 410.000 which meets the definition of historic building as defined in 780 CMR 780 CMR 3409.0.

Infestation means the recurrent presence of insects and/or rodents **pests that may present a hazard to humans, property, or the environment, or create a nuisance.**

Integrated Pest Management means a systematic strategy for managing pests which considers prevention, avoidance, monitoring, and suppression. Where chemical pesticides are necessary, a preference is given to materials and methods which maximize public safety and reduce environmental health risk.

Legal Remedy means any common law and other rights **provided** guaranteed by judicial decision, or the laws or regulations of the Commonwealth of Massachusetts which are intended to protect the rights and interests of the occupants affected by violations of 105 CMR 410.000 whether such provision authorizes an affirmative civil action, criminal penalties, a defense to an action, or claim by another.

Manufactured Home means a structure that is ready for occupancy upon leaving the factory. It is built on and remains on a permanent chassis and is designed to be placed on a permanent foundation. It is designed for single family occupancy.

Manufactured Home Park means any lot or track of land upon which three or more manufactured homes occupied for dwelling purposes are located, including buildings, structures, fixtures and equipment used in connection with the manufactured home and licensed under M.G.L. c. 140 § 32B.

Means of Egress means a continuous and unobstructed path of travel from the any point in a dwelling **residence** to an abutting public way (780 CMR Massachusetts Building Code).

Mechanical Ventilation means a system designed to remove air from a room or space by using a fan or other mechanical means and which terminates to the outdoors.

Mobile Dwelling Unit means a dwelling unit built on a chassis and containing electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters:

- (1) An auto home, as defined in M.G.L. c. 90 § 1;
- (2) A house trailer, as defined in M.G.L. c. 90 § 1;
- (3) A Small, usually single-room dwelling (often called a “Tiny House”) when built on a chassis with wheels; or
- (4) A house boat.

Natural Ventilation means air exchange provided by a non-mechanical means. Sources of natural ventilation include, but are not limited to, windows or doors in exterior walls that are intended to supply or remove air from any space.

Occupant means every **any** person living or sleeping in a dwelling **residence**.

Representative or Occupant's Representative means any adult person designated and duly authorized to act on the occupant's behalf, including, but not limited to, any person or group designee from a tenant's organization or other community group.

Owner means every person who alone or severally with others:

- (1) has **Has** legal title to any **residence**, dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a **manufactured home park**; or
- (2) has **Has** care, charge or control of any **residence**, dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a **manufactured home park**, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (3) is **Is** a mortgagee in possession of any such property; or
- (4) is **Is** an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (5) is **Is** an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. Owner also means every person who operates a rooming house.

Owner's Representative means any adult person designated and duly authorized to act on the owner's behalf to effect compliance with the provisions of 105 CMR 410.000.

Person means every individual, partnership, corporation, firm, association, or group, including a city, town, county or other governmental unit, owning property or carrying on an activity regulated by 105 CMR 410.000.

Pest means insects, arachnids, rodents or other animal life which have characteristics regarded as injurious, unwanted, or a nuisance, and which may also have the ability to cause damage, disease or act as a disease vector.

Privy means a small room or outhouse building containing a toilet, usually with an earth closet, rather than a water closet.

Provide means to supply and pay for.

Recyclable Material means any type of refuse designated by the local community through rules and regulations to be separated for recycling.

Refuse means discarded solid material resulting from household activities and shall include, but not be limited to, garbage, rubbish, recyclable materials, bulk items, or yard waste. Refuse shall not include items designated as household hazardous waste which require separate disposal.

Residence means every dwelling, dwelling unit, condominium, condominium unit, manufactured home, rooming house, rooming unit, and mobile dwelling unit required to comply with the provisions of 105 CMR 410.000.

Rooming House means every dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four or more persons not within the second degree of kindred to the person compensated. **Rooming houses include, but are not limited to, boarding houses, hotels, motels, inns, lodging houses, bed and breakfast establishments, bed and breakfast homes, dormitories, fraternity and sorority houses, hostels, and other similar dwelling places are included, except to the extent that they are where governed by stricter standards in accordance with other state regulations elsewhere.** created; provided that the provisions of 105 CMR 410.000 shall not apply to any hospital, sanatorium, convalescent or nursing home, infirmary or boarding home for the aged licensed by the Department of Public Health in accordance with the provisions of M.G.L. c. 111, § 51 or 71.

Rooming Unit means the room or group of rooms **in a rooming house that are** let to an individual or household for use as living and sleeping quarters but not for cooking, **except as provided in M.G.L. c. 140, §22A.** ~~whether or not common~~ **A rooming unit is based on a contractual agreement between owner and occupant(s) for rent of a specified room or rooms which are not shared with other occupants of the rooming house. A rooming unit may by contractual agreement also include use of shared cooking facilities that are separate from any rooming unit and providing that the individual/household can access the cooking facilities without** for cooking are made available; provided, that cooking facilities shall not be deemed common if they can be reached only by passing through any part of the **any other** dwelling unit or rooming unit of another.

Rubbish means ~~combustible and noncombustible waste materials, except garbage, and includes~~ **including** but not limited to, such material as paper, rags, cartons, boxes, wood, ~~excelsior, rubber, leather, tree branches, yard trimmings, grass clippings, tin cans, metals,~~ **machine or machine parts,** mineral matter, glass, **plastic bags and containers,** crockery, dust, and the residue from the burning of wood, coal, coke and other combustible materials. **Rubbish does not include garbage, yard waste, recyclable material, or bulk items.**

Shared Facilities means facilities shared by more than one residence and placed so as not to require the passing through any part of another dwelling unit or rooming unit for access.

Stairway means any group of stairs consisting of three or more risers.

Temporary Housing means any ~~tent, mobile dwelling unit, or other structure used for human habitation shelter which is designed to be transportable and which is not attached to the ground, to another~~

structure, or to any utility system on the same premises for more than 30 days. **Temporary housing does not include a structure used for human habitation for a period of no more than twelve months while a dwelling destroyed by a fire or natural disaster is rebuilt. (M.G.L c. 40A § 3)**

Temporary Overnight Shelter means any building, facility, or space therein designed and used primarily as a church or house of worship for religious services or instruction or related activities which is owned or operated by a religious organization and qualified for exemption under 26 U.S.C. section 501(c)(3) of the Internal Revenue Code that may, on occasion, provide temporary overnight accommodation to a limited number of individuals for a limited period of time.

~~Use Group R-3 means all buildings arranged for occupancy as one or two family dwelling units, including not more than five lodgers per family and multiple single family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly.~~

~~Exceptions:-~~

~~(1) In multiple single-family dwellings that are equipped throughout with an approved sprinkler system installed in accordance with 780 CMR 906.2.1 or 906.2.2, the fire resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation wall shall be constructed as fire partitions.~~

~~(2) In multiple single-family dwellings that are equipped throughout with an approved automatic sprinkler system installed in accordance with 780 CMR 906.2.3, a two hour fire separation assembly shall be provided between each pair of dwelling units. The fire resistance rating between each dwelling unit shall not be less than one hour and shall be constructed as a fire partition (780 CMR 310.5).~~

~~Use Group R-4 means all detached one and two family dwellings not more than three stories in height and all accessory structures (780 CMR 310.6).~~

Violation means any condition in a **residence**, dwelling, dwelling unit, mobile dwelling unit, or rooming house, or upon a parcel of land which fails to meet any requirement of 105 CMR 410.000.

Water Conservation Device means for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding **two and ½** gallons of water per minute, for all faucets a maximum flow rate not exceeding two and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding one and 6/10 gallons of water per flush, contained within a dwelling unit **residence**.

Water Submetering means the use of a meter by an owner who receives water from a water company, as defined in M.G.L. c. 186, § 22, which meter measures water supplied to a dwelling unit **residence** to enable the owner to charge the tenant of the dwelling unit **residence** separately for water usage, or which meter measures water supplied to a common area.

Yard Waste means grass clippings, leaves, weeds, hedge clippings, garden waste, and twigs, as well as brush or branches that meet size restrictions specified by the local community through rules and regulations relating to yard waste collection.

410.100: Kitchen Facilities

(A) Every dwelling unit, and every rooming house where common cooking facilities are provided, shall contain suitable space to store, prepare and serve foods in a sanitary manner. The owner shall provide within this space:

- (1) A kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils; and
- (2) A stove and oven in good repair (*see* 105 CMR 410.351) except and to the extent the occupant is required to do so under a written letting agreement; and
- (3) Space and proper facilities for the installation of a refrigerator.

(A) The owner shall provide and maintain, in compliance with the manufacturer's intended use, the following facilities suitable to store, prepare, and serve food in a sanitary manner:

- (1) Cabinets, pantry or shelving,**
- (2) A countertop;**
- (3) A kitchen sink;**
- (4) A cook top and oven; and**
- (5) Space and connection for a refrigerator.**

(B) The facilities required ~~in~~ **by** 105 CMR 410.100(A) shall have smooth and impervious surfaces and be free from defects that **which** make them difficult to keep clean; or creates an accident hazard.

(C) The wall above the countertop containing a sink in a kitchen or pantry shall have a smooth, nonabsorbent, and easily cleanable surface. The surface shall extend at least 24 inches above the countertop where practical.

(D) The owner of a rooming house where shared kitchen facilities are provided is responsible for ensuring that the facilities and all food contact surfaces required by 105 CMR 410.100(A) are maintained in a clean and sanitary condition and sanitized at least once every 24 hours.

(E) The floor surfaces of every kitchen and pantry shall be smooth, noncorrosive, and nonabsorbent. Wood is allowed provided the flooring has a water-resistant finish and is maintained so as to prevent the accumulation of dirt and food or the harborage of pests.

410.150 **110**: Washbasins, Toilets, Tubs, and Showers

The owner shall provide no less than the following: **a room, with a door capable of being closed to afford privacy, which is not used for living, sleeping, cooking or eating purposes, and is accessible from within the building without passing through any part of another dwelling unit or rooming unit that contains the following:**

(A) For each dwelling unit **residence other than rooming units:**

(1) A toilet with a toilet seat. ~~in a room which is not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.~~

(2) A wash basin in the same room as the toilet;

(a) If the wash basin cannot be placed in the same room as the toilet, it shall be placed in close proximity **adjacent** to the door leading directly into the room in which the toilet is located.

(b) The kitchen sink may not be substituted for the wash basin required ~~in~~ **by** 105 CMR 410.150(A)~~110(A)~~**(2)**.

(3) A bathtub or shower. ~~in the same room as the toilet or in another room which is not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.~~

(4) Each room which contains a toilet, bathtub or shower shall be fitted with a door which is capable of being closed.

~~(B) For no more than each eight occupants of rooming units and rooming houses who are not otherwise provided with these facilities, in a room not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room:~~

(B) For each eight occupants of rooming units and rooming houses where private facilities are not already provided:

~~(1) One toilet with a toilet seat and wash basin in the same room; provided, that where more than one toilet is required in any toilet room used exclusively by males, urinals may be substituted for up to ½ of the total number of toilets required, on the basis of one urinal substituted for one toilet; and~~

~~(2) One shower or bathtub in the same room as the toilet and wash basin or in another room not used for living, sleeping, cooking or eating purposes and which affords privacy to a person within said room.~~

~~(3) In a room with more than one toilet, each toilet shall be separated by walls or partitions which afford privacy.~~

(1) One toilet with a toilet seat and wash basin in the same room;

(a) If the wash basin cannot be placed in the same room as the toilet, it shall be adjacent to the door leading directly into the room in which the toilet is located. A kitchen sink may not be substituted for the wash basin.

(b) Where more than one toilet is required:

i. Each toilet shall be separated by walls or partitions and a door to afford privacy.

ii. Urinals may be substituted for up to ½ of the total number of toilets

required in any toilet room used exclusively by males.
iii. Substitutions are based on one toilet to one urinal.
iv. Each urinal shall be separated by walls or partitions to afford privacy.

(2) A bathtub or a shower.

~~(C) Toilet, bathtub and shower facilities as required in 105 CMR 410.150(A) and 410.150(B) shall be accessible from within the building and shall be so placed as not to require passing through any part of another dwelling unit or rooming unit.—~~

(C) Facilities required by 105 CMR 410.110(A) and (B) shall have smooth and impervious surfaces and be free from defects which make them difficult to keep clean or create an accidental injury or hazard.

(D) Floor and Wall Surfaces shall consist of:

~~(1) On A smooth, noncorrosive, nonabsorbent, and water proof covering on the floor surfaces of in every room containing a toilet, shower or bathtub. and every kitchen and pantry; This shall not prohibit the use of carpeting in kitchens and bathrooms, nor the use of wood in the kitchen.~~

~~(1) Carpeting must contain a solid, nonabsorbent, water repellent backing which will prevent the passage of moisture through it to the floor below; and—~~

~~(2) Wood flooring must have a water resistant finish and have no cracks to allow the accumulation of dirt and food, or the harborage of insects.~~

~~(2) On A smooth, noncorrosive, and nonabsorbent and waterproof covering up to a height of 48 inches on the walls of in every room containing a toilet, shower, or bathtub. up to a height of 48 inches;~~

~~(3) On A smooth, noncorrosive, and waterproof covering up to a height of not less than six feet above the floor on the wall areas above built-in bathtubs having installed that have shower heads and in shower compartments. up to height not less than six feet above the floor level, with. Such wall shall form a watertight joint with each other and with the tub, receptor, or shower floor.~~

~~(D) The fixtures as required in 105 CMR 410.150(A) and 410.150(B) shall have smooth and impervious surfaces and be free from defects which make them difficult to keep clean, or create an accident hazard.—~~

(E) The owner shall be responsible for ensuring that the facilities required by 105 CMR 410.110(B) are maintained in a clean and sanitary condition and the fixtures are sanitized at least once every 24 hours.

410.152: Privies and Chemical Toilets Prohibited; Exceptions

~~No privy or chemical toilet shall be constructed or continued in use; provided, that the board of health may approve in writing the construction or continued use of any privy or chemical toilet which it determines will not (a) endanger the health of any person; or (b) cause objectionable odors or other undue annoyance. When so approved, a privy or chemical toilet may, subject to written authorization of the board of health in accordance with 310 CMR 15.00, qualify as a toilet within the requirements of 105 CMR 410.150(A) (see 105 CMR 410.840).~~

~~In no event may a privy be located within 30 feet of any building used for sleeping or eating, or of any lot line or street.~~

410.120: Privies and Chemical Toilets

(A) No privy shall be constructed, nor shall an existing privy be continued in use without the written permission of the board of health.

(B) No chemical toilet shall be used without written the permission of the board of health.

(C) A privy or chemical toilet shall not:

- (1) Endanger the health of any person.**
- (2) Cause objectionable odors or other undue annoyance.**
- (3) Be located within 30 feet of any building used for sleeping or eating, or of any lot line or street.**

(D) A privy or chemical toilet may, subject to written authorization of the board of health in accordance with 310 CMR 15.000, qualify as a toilet notwithstanding the requirements of 105 CMR 410.110(A)(1).

410.180: Potable Water

The owner shall provide, for the occupant of every dwelling, dwelling unit, and rooming unit, a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the occupant, connected with the public water supply system, or with any other source that the board of health has determined does not endanger the health of any potential user. (See 105 CMR 410.350 through 410.352).

In dwellings that are in compliance with the requirements of M.G.L. c. 186, § 22, the owner may charge the occupants for actual water usage in accordance with M.G.L. c. 186, § 22. An owner may not shut off or refuse water service to an occupant on the basis that the occupant has not paid a separately assessed water usage charge.

Examination of the water system shall include an examination of the plumbing system and its actual performance. If possible, such examination shall occur at the times and under such conditions as the occupant has identified the system as being insufficient.

410.300: Sanitary Drainage System Required

The owner shall provide, for each dwelling, a sanitary drainage system connected to the public sewerage system, provided, that if, because of distance or ground conditions, connection to a public sewerage system is not practicable, the owner shall provide, and shall maintain in a sanitary condition, a means of sewage disposal which is in compliance with 310 CMR 15.00: *Subsurface Disposal of Sanitary Sewage (Title V)*. (See 105 CMR 410.840.)

In dwellings that are in compliance with the requirements of M.G.L. c. 186, § 22, the owner may charge the occupants for the cost of sewer service in accordance with M.G.L. c. 186, § 22.

410.130: Potable Water/Sanitary Drainage

(A) The owner shall provide for the occupant of every residence a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the occupant. This supply shall be connected to the public water supply system or with any other source that the board of health has determined, in writing, does not endanger the health of any potential user.

(B) For each dwelling the owner shall provide and maintain in a sanitary condition a sanitary drainage system consisting of:

- (1) A lawful connection to the public sewerage system;**
- (2) A means of on-site sewage disposal in compliance with 310 CMR 15.000 Massachusetts Department of Environmental Protection; or**
- (3) A lawful connection to a privately owned wastewater treatment facility permitted in accordance with 314 CMR 3.00 or 5.00 Massachusetts Department of Environmental Protection.**

(C) If the owner intends to separately bill the occupant for water or sewer costs, then the owner must be in compliance with all requirements of M.G.L. c. 186, § 22, including, but not limited to:

- (1) Installing and maintaining, when necessary, a water submetering device that measures only water that is supplied for the exclusive use of the particular residence and only to an area within the exclusive possession and control of the occupant of such residence;**

(2) Installing, or causing to be installed, water conservation devices on all showers, faucets, and toilets in the residence;
(3) Having a written letting agreement with the occupant that describes the details of the water submetering and water billing arrangements; and
(4) Filing a certificate, on a form provided by the Department, with the board of health or other appropriate municipal agency charged with enforcing the State Sanitary Code, and signed by the owner under the pains and penalties of perjury, that the residence is in compliance with M.G.L. c. 186, § 22. The owner shall have a licensed plumber sign the certificate certifying that the water submetering devices and ultra-low-flush toilets have been installed in accordance with accepted plumbing standards and the requirements of M.G.L. c. 186, § 22, and shall attach appropriate documentation to verify the services provided by the licensed plumber. The owner shall also provide a copy of the certificate to the occupants of each residence with the written letting agreement that describes the details of the water submetering and water billing arrangements.

(D) An owner may not shut off or refuse water service to an occupant on the basis that the occupant has not paid a separately assessed water/sewer usage charge in residences that are in compliance with the requirements of M.G.L. c. 186, § 22.

(E) The owner shall allow occupants access to any water submeters that affect their residence in order to ensure that such submeters are functioning properly.

410.350 140: Plumbing Connections

(A) Every required kitchen sink, wash basin and shower or bathtub shall be connected to the hot and cold water lines of the water distribution system (~~See 105-CMR-410.180~~) and to a sanitary drainage system (~~See 105-CMR-410.300~~) in accordance with accepted plumbing standards **248 CMR Massachusetts Plumbing Code.**

(B) Every provided toilet shall be connected to the water distribution system (~~See 105-CMR-410.180~~) and to a sanitary drainage system (~~See 105-CMR-410.300~~) in accordance with accepted plumbing standards **248 CMR Massachusetts Plumbing Code.**

410.190: ~~Hot Water~~

~~The owner shall provide and maintain in good operating condition the facilities capable of heating water. The owner shall also provide the hot water for use at a temperature of not less than 110°F (43°C) and in a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures which normally need hot water for their proper use and function, unless and to the extent the occupant is required to provide fuel for the operation of the facilities under a written letting agreement. The hot water shall not exceed 130°F (54°C).~~

~~Inspection of the hot water system shall include an examination of the hot water system and its actual performance. If possible, such examination shall occur at the times and under such conditions as the occupant has identified the system to be insufficient.~~

410.150: Hot Water

The owner shall provide and maintain in good operating condition the facilities capable of heating and **delivering hot water:**

(A) In a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures which normally need hot water for their proper use and function.

(B) In a temperature range of not less than 110°F (43°C) and not greater than 130°F (54°C) for fixtures other than a bathtub or shower.

(C) In a temperature range of not less than 100°F (38°C) and not greater than 112°F (44°C) for a bathtub and shower.

410.200: Heating Facilities Required

~~(A) The owner shall provide and maintain in good operating condition the facilities for heating every habitable room and every room containing a toilet, shower or bathtub to such temperature as required under 105 CMR 410.201.~~

~~(B) Portable space heaters, parlor heaters, cabinet heaters, room heaters and any similar heaters having a barometric fed fuel control and its fuel supply tank located less than 42 inches from the center of the burner as well as the type of heating appliance adapted for burning kerosene, range oil or number one fuel oil and any portable wick type space heaters shall not be used and shall not meet the requirements of 105 CMR 410.200. (See M.G.L. c. 148, §§ 5A and 25B.)~~

410.160: Heating Systems

(A) The owner shall provide and maintain in good operating condition a central heating system that includes a distribution system capable of heating every habitable room and every room containing a toilet, shower, or bathtub to such temperature required by 105 CMR 410.180.

(B) The following shall not meet the requirements of a central heating system:

- (1) Fireplace;**
- (2) Woodstove;**
- (3) Pellet stove;**
- (4) Portable electric space heater; or**
- (5) Unvented propane or natural gas-fired space heaters (527 CMR Massachusetts Fire Code).**

(C) The following are prohibited from use in any residence:

- (1) Any portable space heater, parlor heater, cabinet heater, or room heater that has a barometric fed fuel control and a fuel supply tank located less than 42 inches from the center of the burner.**
- (2) Heating appliances adapted for burning propane, kerosene, range oil or number one fuel oil.**
- (3) Portable wick type space heaters.**

410.202: Venting

~~Space heaters and water heaters, except electrical ones, shall be properly vented to a chimney or vent leading to the outdoors.~~

410.170: Venting

(A) All devices that combust fuel must be properly vented. Such devices including, but are not limited to, furnaces, boilers, space heaters, and water heaters, shall be properly vented to the outdoors in accordance with 527 CMR Massachusetts Fire Code, 248 Massachusetts Plumbing Code, and 780 CMR Massachusetts Building Code.

(B) All electric and gas clothes drying equipment shall be vented to the outdoors.

(C) All electric hoods for ranges shall be vented to the outdoors unless listed and labeled as ductless or recirculating by the manufacturer.

410.201 180: Temperature Requirements

(A) The owner shall provide heat in every habitable room and every room containing a toilet, shower, or bathtub from September 15th through May 31st inclusive so that it shall be:

- (1) shall be a At least 68°F (20°C) between 7:00 A.M. and 11:00 P.M.; and**
- (2) shall be a At least 64°F (17°C) between 11:01 P.M. and 6:59 A.M. every day other than during the period from June 15th to September 15th, both inclusive, in each year except and to the extent the occupant is required to provide the fuel under a written letting agreement**
- (3) Shall at no time exceed 78°F (25°C) during the heating season.**

(B) At no time shall the central heating system, required by 105 CMR 410.160(A), used during the heating season cause the temperature to exceed 78°F (25°C) in any room.

~~(B)~~ **(C)** The temperature may be read and the requirement shall be met at a height of ~~five~~ **three** feet above floor level on a wall any point more than ~~five~~ **two** feet from the exterior wall.

~~(C)~~ The number of days per year during which heat must be provided in accordance with 105 CMR 410.000 may be increased or decreased through a variance granted in accordance with the provisions of 105 CMR 410.840 notwithstanding the prohibitions of the first clause of the first sentence of 105 CMR 410.840(A).

(D) A board of health may alter the number of heating days required by 105 CMR 410.180(A) in any year by posting notice of such alteration on the municipality's website. The board of health's decision to alter the number of heating days shall not be required to conform to the provisions for the granting of a variance required by 105 CMR 410.700.

410.354: Metering of Electricity, Gas and Water

~~(A)~~ The owner shall provide the electricity and gas used in each dwelling unit unless

- ~~(1)~~ Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by 105 CMR 410.254(B); and
- ~~(2)~~ A written letting agreement provides for payment by the occupant.

~~(B)~~ If the owner is required, by 105 CMR 410.000 or by a written letting agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit, then such electricity or gas may be metered through meters which serve more than one dwelling unit.

~~(C)~~ If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit, except as allowed by 105 CMR 410.254(B).

~~(D)~~ If the owner intends to separately bill the occupant for water or sewer services in accordance with the provisions of M.G.L. c. 186, § 22, then the owner must be in compliance with all requirements of M.G.L. c. 186, § 22, including, but not limited to:

- ~~(1)~~ Installing and maintaining, when necessary, a water submetering device that measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the occupant of such dwelling unit;
- ~~(2)~~ Installing, or causing to be installed, water conservation devices on all showers, faucets, and toilets in the dwelling unit;
- ~~(3)~~ Having a written letting agreement with the occupant that describes the details of the water submetering and water billing arrangements; and
- ~~(4)~~ Filing a certificate, on a form provided by the Department of Public Health, with the Board of health or other appropriate municipal agency charged with enforcing the State Sanitary Code, and signed by the owner under the pains and penalties of perjury, that the dwelling unit is in compliance with M.G.L. c. 186, § 22. The owner shall have a licensed plumber sign the certificate certifying that the water submetering devices and ultra-low flush toilets have been installed in accordance with accepted plumbing standards and the requirements of M.G.L. c. 186, § 22, and shall attach appropriate documentation to verify the services provided by the licensed plumber. The owner shall also provide a copy of the certificate to the occupants of each dwelling unit with the written letting agreement that describes the details of the water submetering and water billing arrangements.

~~(E)~~ The owner shall allow occupants to have access to any water submeters that affect their dwelling unit in order to ensure that such submeters are functioning properly.

410.200: Provision and Metering of Electricity or Gas

(A) The owner shall provide the electricity or gas used in each residence unless:

- (1) Electricity or gas is metered through a meter which serves only the residence or other area under the exclusive use of an occupant of that residence except as allowed by 105 CMR 410.300(F); and**
- (2) A written letting agreement provides for payment by the occupant.**

(B) If the owner is required by 105 CMR 410.000 or by a written letting agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a residence, then such electricity or gas may be metered through meters which serve more than one residence.

(C) If the owner is not required to pay for the electricity or gas used in a residence, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the residence is metered through meters which serve only such residence, except as allowed by 105 CMR 410.300(F).

(D) Owners shall provide occupants with access to their dwelling unit's electrical distribution panel when:

(1) The occupants are required to pay for electrical service in accordance with 105 CMR 410.200(A);

(2) The owner, as defined by 105 CMR 410.010, does not reside within the residence; or

(3) A facility manager is not available within one hour's notice.

(E) If it is determined upon inspection that electricity or gas may not meet the requirements of 410.200(A), the board of health shall immediately notify the local plumbing or electrical inspector of any possible violations observed.

410.355 210: Provision of Oil

The owner shall provide for the oil used for heating and/or hot water in each dwelling-unit **residence** unless:

(A) Such oil ~~Oil~~ is provided through a separate oil tank which serves only that dwelling-unit **residence**; and

(B) ~~The occupant is required to provide the oil under a written letting agreement. provided however, that 105 CMR 410.000 shall only apply to tenancies created or renewed after July 1, 1994.~~

410.280 220: Natural and Mechanical Ventilation

The owner shall provide for each habitable room, and room containing a toilet, bathtub, or shower, ventilation to the outdoors consisting of: **as follows:**

(A) **Habitable rooms**

(1) Windows skylights, ~~or doors or transoms in~~ **through** the exterior walls ~~or roofs~~ that can be easily opened to a minimum **with a combined opening** of at least 4% of the floor area of that habitable room or room containing a toilet, bathtub or shower, provided, that a skylight which if open exposes the interior of the dwelling to direct rainfall shall not satisfy this requirement; or

(2) ~~mechanical~~ **Mechanical** ventilation capable of exhausting air to the outdoors at the following **the ventilation rates specified in 105 CMR 410.220(C).** rates

(B) **Rooms containing a toilet, bathtub, or shower**

On or before September 1, 2016, mechanical ventilation capable of exhausting air to the outdoors at **the ventilation rates specified in 105 CMR 410.220(C).** the following rates:

(C) **Ventilation rate requirements**

The following minimum ventilation rates shall be provided in all rooms where mechanical ventilation is required or provided in accordance with 780 Massachusetts Building Code and 271 CMR Uniform Sheet Metal Installation Rules. Ventilation rates are measured in cubic feet per minute (cfm).

<u>Occupancy Classification</u>	<u>Ventilation Rate (cfm)</u>
Habitable rooms other than bath, toilet or shower rooms	100 cfm
Bath, toilet or shower rooms	50 cfm

(D) Each mechanical ventilation system specified in required by 105 CMR 410.280 220(A) and (B) shall be equipped with a readily accessible means for either shut-off. or volume reduction. and any other ventilation system shall be equipped with a readily accessible means for shut-off. (See 105 CMR-

410.351.)

410.281: Ventilation Shut-off

Each mechanical ventilation system required by 105 CMR 410.280(B) (C) shall be equipped with an readily accessible means for either shut-off or volume reduction, and any other ventilation system shall be equipped with a readily accessible means for shut-off. (See 105 CMR 410.351.)

410.351: Owner's Installation and Maintenance Responsibilities

The owner shall install or cause to be installed, in accordance with accepted plumbing, gasfitting and electrical wiring standards, and shall maintain free from leaks, obstructions or other defects, the following:

(A) all facilities and equipment which the owner is or may be required to provide including, but not limited to, all sinks, washbasins, bathtubs, showers, toilets, waterheating facilities, gas pipes, heating equipment, water pipes, owner installed stoves and ovens, catch basins, drains, vents and other similar supplied fixtures; the connections to water, sewer and gas lines; the subsurface sewage disposal system, if any; all electrical fixtures, outlets and wiring, smoke detectors and carbon monoxide alarms, and all heating and ventilating equipment and appurtenances thereto; and

(B) all owner-installed optional equipment, including but not limited to, refrigerators, dishwashers, clothes washing machines and dryers, garbage grinders, and submetering devices designed to measure the usage of electricity, gas or water.

410.230: Owner's Installation and Maintenance Responsibilities

The owner shall install or cause to be installed, in accordance with 780 CMR Massachusetts Building Code, 527 CMR Massachusetts Fire Code, 527 CMR 12 Massachusetts Electrical Code, 248 CMR Massachusetts Plumbing Code, 271 CMR Uniform Sheet Metal Installation Rules, and shall maintain in operable condition free from leaks, obstructions, or other defects, the following:

(A) All facilities and equipment which the owner is required to provide including, but not limited to:

- (1) Sinks;
- (2) Washbasins;
- (3) Bathtubs;
- (4) Showers;
- (5) Toilets;
- (6) Water heating facilities;
- (7) Gas pipes;
- (8) Heating equipment;
- (9) Water pipes;
- (10) Cook tops and ovens;
- (11) Catch basins, drains, vents, and other similar supplied fixtures;
- (12) Connections to water, sewer, and gas lines;
- (13) Subsurface sewage disposal system, if any;
- (14) Electrical fixtures, outlets, and wiring;
- (15) Smoke detectors and carbon monoxide alarms; and
- (16) All heating and ventilating equipment and appurtenances thereto.

(B) All owner-installed optional equipment, including, but not limited to:

- (1) Refrigerators;
- (2) Dishwashers;
- (3) Clothes washing machines and dryers;
- (4) Garbage grinders;
- (5) Sub-metering devices designed to measure the usage of water; and
- (6) Air conditioners.

410.352: Occupant's Installation and Maintenance Responsibilities

(A) The occupant shall install in accordance with accepted plumbing, heating, gas fitting, and electrical wiring standards, and shall maintain free from leaks, obstructions and other defects, all occupant owned and installed equipment such as, but not limited to, refrigerators, clothes washing machines and dryers,

dishwashers, stoves, garbage grinders and electrical fixtures.

(B) Every occupant of a dwelling unit shall keep all toilets, wash basins, sinks, showers, bathtubs, stoves, refrigerators and dishwashers in a clean and sanitary condition and exercise reasonable care in the proper use and operation thereof.

410.240: Occupant's Installation and Maintenance Responsibilities

(A) The occupant shall install in accordance with 780 CMR Massachusetts Building Code, 527 CMR Massachusetts Fire Code, 527 CMR 12 Massachusetts Electrical Code, 248 CMR Massachusetts Plumbing Code, 271 CMR Uniform Sheet Metal Installation Rules, and shall maintain free from leaks, obstructions and other defects, all occupant owned or installed equipment including, but not limited to:

- (1) Refrigerators;**
- (2) Clothes washing machines and dryers;**
- (3) Dishwashers;**
- (4) Garbage grinders;**
- (5) Electrical fixtures; and**
- (6) Air conditioners.**

(B) Every occupant of a residence shall keep all facilities and appliances in a clean and sanitary condition and exercise reasonable care in the proper use and operation thereof. Facilities and appliances include, but are not limited to:

- (1) Toilets;**
- (2) Wash basins;**
- (3) Sinks;**
- (4) Showers;**
- (5) Bathtubs;**
- (6) Cook tops and ovens;**
- (7) Refrigerators;**
- (8) Dishwashers;**
- (9) Garbage grinders; and**
- (10) Air conditioners.**

410.353 250: Asbestos Material

Every owner shall maintain all asbestos material in good repair, and free from any defects including, but not limited to, holes, cracks, tears, or any looseness which may allow the release of asbestos dust, or any powdered, crumbled, or pulverized asbestos material. Every owner shall correct any violation of 105 CMR 410.353 250 in accordance with **310 CMR 7.00 Massachusetts Department of Environmental Protection and 453 CMR 6.00 Massachusetts Department of Labor and Workforce Development**. the regulations of the Department of Environmental Protection appearing at (310 CMR 7.00) and in accordance with the regulations of the Department of Labor and Workforce Development appearing at (453 CMR 6.00).

410.450: Means of Egress

Every dwelling unit, and rooming unit shall have as many means of exit as will allow for the safe passage of all people in accordance with 780 CMR 104.0, 105.1, and 805.0 of the Massachusetts State Building Code.

410.451: Egress Obstructions

(A) No person shall obstruct any exit or passageway.

(B) The owner is responsible for maintaining free from obstruction every exit used or intended for use by occupants of more than one dwelling unit or rooming unit.

(C) The occupant shall be responsible for maintaining free from obstruction all means of exit leading from his unit and not common to the exit of any other unit

410.260: Means of Egress

(A) Every residence shall have at a minimum two means of egress to allow for the safe passage of all people.

(B) No person shall obstruct any means of egress or passageway.

(C) The owner is responsible for maintaining free from obstruction every means of egress used or intended for use by occupants of more than one residence.

(D) The occupant shall be responsible for maintaining free from obstruction all means of egress of single unit residences.

410.480 270: Locks

(A) The owner shall provide, install and maintain locks **in the following manner and shall comply with the requirements of 780 CMR Massachusetts Building Code and 521 CMR Architectural Access Board, and M.G.L. c. 143, § 3R** so that:

(1) Every **residence** dwelling shall be capable of being secured against unlawful entry.

(2) Every entry door of a ~~dwelling unit~~ **residence** shall be capable of being secured against unlawful entry.

(3) The main entry door of a ~~dwelling~~ **residence** containing more than three dwelling units shall be so designed or equipped so as to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism, a self-closing door, and associated equipment.

~~(D) Every door of the main common entryway and every exterior door into said dwelling, other than the door of such main common entryway which is equipped as provided in the preceding sentence shall be equipped with an operating lock. (M.G.L. c. 143, § 3R.)~~

(4) Every exterior door of the residence, except the main entry door listed in 105 CMR 410.270(A)(3) shall be equipped with an operating lock.

(5) All egress doors shall be capable of being opened from the side in which egress is to be made without use of any key, knowledge, or effort in order to avoid entrapment in the building.

(6) Every openable exterior window shall be capable of being secured.

~~(F) Locking devices shall comply with the requirements of 780 CMR 1017.4.1 to avoid entrapment in the building.~~

(B) The owner shall provide a key to the occupant for:

(1) The main entry door; and

(2) The occupant's residence.

(C) If an occupant replaces the lock on the entry door to their residence, a key shall be provided to the owner.

410.250: Habitable Rooms Other than Kitchen – Natural Light and Electrical Outlets

~~The owner shall provide for each habitable room other than a kitchen:~~

~~(A) transparent or translucent glass which admits light from the outdoors and which is equal in area to no less than 8% of the entire floor area of that room.~~

~~(B) two separate wall-type convenience outlets, or one such outlet and one electric light fixture. The outlets shall be placed in practical locations and shall insofar as practicable, be on different walls and at least ten feet apart. (See 105 CMR 410.351.)~~

410.251: Kitchen Lighting and Electrical Outlets

~~The owner shall provide for each kitchen:~~

~~(A) one electric light fixture;~~

~~(B) two wall-type convenience outlets located in convenient locations; and~~

~~(C) For each kitchen over 70 square feet, transparent or translucent glass which admits light from the~~

outdoors and which is equal in area to no less than 8% of the entire floor area of that kitchen.

~~410.252: Bathroom Lighting and Electrical Outlets~~

~~The owner shall provide in each room containing a toilet, bathtub, or shower one electric light fixture. (See 105 CMR 410.150(A)(1) and 410.150(B).)~~

~~410.253: Light Fixtures Other than in Habitable Rooms or Kitchens~~

~~(A) The owner shall provide and so locate electric light switches and fixtures in good working order so that illumination may be provided for the safe and reasonable use of every laundry, pantry, foyer, hallway, stairway, closet, storage place, cellar, porch, exterior stairway and passageway.~~

~~(B) The owner shall provide working incandescent light bulbs or fluorescent tubes in all required light fixtures in all common areas of any dwelling.~~

~~410.254: Light in Passageways, Hallways, and Stairways~~

~~(A) Except as allowed in 105 CMR 410.254(B), the owner shall provide light 24 hours per day so that illumination alone or in conjunction with natural lighting shall be at least one foot candle as measured at floor level, in every part of all interior passageways, hallways, foyers and stairways used or intended for use by the occupants of more than one dwelling unit or rooming unit.~~

~~(B) In a dwelling containing three or fewer dwelling units, the light fixtures used to illuminate a common hallway, passageway, foyer and/or stairway may be wired to the electric service serving an adjacent dwelling unit provided that if the occupant of such dwelling unit is responsible for paying for the electric service to such dwelling unit:~~

~~(1) a written agreement shall state that the occupant is responsible for paying for light in the common hallway, passageway, foyer and/or stairway; and~~

~~(2) the owner shall notify the occupants of the other dwelling units.~~

~~410.257: Light Obstructions~~

~~If any light obstructing structure is located less than three feet from the outside of and extends to a level above the lower level of the transparent or translucent glass required by 105 CMR 410.250(A) and 410.251(C), that portion so obstructed shall not be included as contributing to the required minimum total glass area.~~

410.300: Electricity Supply and Illumination

The owner of a residence shall provide no less than the following:

(A) Habitable rooms other than a kitchen:

(1) Two separate wall-type receptacle outlets in accessible locations, on different walls, and at least ten feet apart where practical; or

(2) One outlet and one electric light fixture.

(B) Kitchen:

(1) One electric light fixture; and

(2) Two wall-type receptacle outlets installed in convenient locations.

(C) A room containing a toilet, bathtub, or shower:

(1) One electric light fixture.

(D) Spaces other than habitable rooms, kitchens, or rooms containing a toilet, bathtub, or shower:

(1) Electric light switches and light fixtures in good working order so that illumination may be available for the safe and reasonable use of every:

(a) Laundry;

(b) Pantry;

(c) Foyer;

- (d) Hallway;**
 - (e) Stairway;**
 - (f) Closet;**
 - (f) Storage place;**
 - (g) Cellar;**
 - (h) Porch;**
 - (i) Deck;**
 - (j) Passageway; and**
 - (k) Exterior stairway and passageway.**
- (2) Lightbulbs in all required light fixtures in common areas.**

(E) Passageways, hallways, and stairways:

- (1) Light shall be available 24 hours per day in every part of all interior passageways, hallways, foyers and stairways used or intended for use by the occupants of more than one dwelling unit or rooming unit.**
- (2) Illumination alone or in conjunction with natural lighting shall be at least one foot candle as measured at floor level.**

(F) Dwellings containing three or fewer dwelling units:

Light fixtures used to illuminate a common hallway, passageway, foyer and/or stairway may be wired to the electric service serving an adjacent dwelling unit provided that if the occupant of such dwelling unit is responsible for paying for the electric service to such dwelling unit provided:

- (1) A written agreement shall state that the occupant is responsible for paying for light in the common hallway, passageway, foyer, and/or stairway;**
- (2) The written agreement shall begin upon a new tenancy and shall not apply to an existing tenancy; and**
- (3) The owner shall provide written notification to the occupants of the other dwelling units.**

~~410.483: Auxiliary Emergency Lighting Systems and Exit Signs~~

~~The owner of every multiple dwelling of ten or more units shall provide such dwelling with an auxiliary emergency lighting system independent of the conventional lighting system, and with lighted signs indicating both a primary and secondary means of egress, by a diagram or signal so as to assure recognition by all persons regardless of their English speaking ability. Such lighting system signs shall be maintained in good working order in compliance with any applicable regulations promulgated by the Commissioner of Public Safety (See 780 CMR 1023.0, 780 CMR 1024.0 and M.G.L. c.143, § 21D).~~

410.310: Auxiliary Emergency Lighting Systems and Exit Signs

The owner of every dwelling of ten or more units shall provide and maintain in good working order and in compliance with any applicable regulations promulgated by the Commissioner of Public Safety (780 CMR and M.G.L. c. 143, § 21D):

(A) An auxiliary emergency lighting system independent of the conventional lighting system in common areas.

(B) Lighted signs on each floor indicating both a primary and secondary means of egress, by a diagram or signal so as to assure recognition by all persons regardless of their English speaking ability.

~~410.255: Amperage~~

~~The electrical service supplying each dwelling, dwelling unit, rooming house and/or rooming unit shall supply sufficient amperage to meet the reasonable needs of the occupants. Should the amperage be determined to be inadequate it shall be corrected so that it meets the amperage requirements of 527 CMR 12.00: *The Massachusetts Electrical Code*.~~

~~410.256: Temporary Wiring~~

No wiring shall lie under a rug or other floor covering, nor shall any extend through a doorway or other opening in a structural element. No temporary wiring shall be used or made available for use by any owner or occupant; provided, that extension cords which connect portable electric appliances or fixtures to convenience outlets shall not be considered temporary wiring.

410.258: Exemption of Dwellings More than 600 Feet from Electrical Service

The provisions of 105 CMR 410.250 through 410.257 regarding the furnishing of electrical facilities shall apply only if a source of electricity is available from power lines within 600 feet of the dwelling.

410.320: Electrical Service

(A) Temporary Wiring:

(1) No temporary wiring shall be used or made available for use by any owner or occupant.

(2) No owner or occupant shall place wiring under a rug or other floor covering.

(3) No wiring shall extend through a doorway or other opening in a structural element.

(4) Extension cords which connect portable electric appliances or fixtures to outlets and which have an appropriate size rating for the electrical load shall not be considered temporary wiring.

(B) Amperage:

The electrical service supplying each residence shall supply amperage to meet the reasonable needs of the occupants and shall meet the amperage requirements of 527 CMR 12 Massachusetts Electrical Code.

(C) Dwellings more than 600 feet from electrical service exemption:

The provisions of 105 CMR 410.300, 410.310, and 410.320 regarding the furnishing of electrical facilities shall apply only if a source of electricity is available from power lines within 600 feet of the residence.

410.482 330: Smoke Detectors and Carbon Monoxide Alarms

(A) The owner shall provide, install, and maintain in operable condition smoke detectors and carbon monoxide alarms in every dwelling residence that is required to be equipped with smoke detectors and carbon monoxide alarms in accordance with any provision of the Massachusetts General Laws and 780 CMR Massachusetts Building Code, 527 CMR Massachusetts Fire Code, 248 CMR Massachusetts Plumbing Code. Any applicable regulations of the State Board of Fire Prevention (527-CMR), State Board of Building Regulations and Standards (780-CMR), or the Board of Examiners of Plumbers and Gas Fitters (248-CMR)

(B) The board of health shall immediately notify the chief of the local fire department of any violation of 105 CMR 410.482 330 which is observed during an inspection of any dwelling residence.

(C) If any dwelling residence is found by the local fire department to be adequately equipped with smoke detectors and carbon monoxide alarms, the board of health shall not be authorized by 105 CMR 410.482 330 to impose any additional or differing smoke detector or carbon monoxide alarm requirement beyond that which has been found sufficient by the local fire department.

410.400: Minimum Square Footage

(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by

more than one occupant shall contain at least 60 square feet for each occupant.

410.401: Ceiling Height

(A) No room shall be considered habitable if more than $\frac{3}{4}$ of its floor area has a floor-to-ceiling height of less than seven feet.

(B) In computing total floor area for the purpose of determining maximum permissible occupancy, that part of the floor area where the ceiling height is less than five feet shall not be considered

410.402: Grade Level

No room or area in a dwelling may be used for habitation if more than $\frac{1}{2}$ of its floor-to-ceiling height is below the average grade of the adjoining ground and is subject to chronic dampness

410.481: Posting of Name of Owner

An owner of a dwelling which is rented for residential use, who does not reside therein and who does not employ a manager or agent for such dwelling who resides therein, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice constructed or durable material, not less than 20 square inches in size, bearing his name, address and telephone number. If the owner is a realty trust or partnership, the name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted. Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice. (See M.G.L. c. 143, § 3S.)

410.481 400: Owner/Manager Contact Information

(A) Every owner of a residence who does not reside therein shall post signage, on durable material and not less than 20 square inches in size, which contains, at a minimum, the owner's name, address and telephone number, and, if applicable:

(1) The name, address and a telephone number of the president of the corporation if a corporation;

(2) The name, address and a telephone number of the managing trustee or partner if the owner is a realty trust or partnership; or

(3) When employed, the name address and telephone number of the property manager or agent who does not reside therein.

(B) The telephone number shall be one which provides for response within 24 hours.

(C) The posting shall be placed at the residence adjacent to the mailboxes or within the interior of the residence in a location visible to the occupants.

410.484 410: Building Identification

The owner shall affix to every building covered by 105 CMR 410.000, a number representing the address of such building. The number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street providing vehicular access to such building (M.G.L. c. 148, § 59).

410.420: Habitability Requirements

(A) No room or area in a residence may be used for habitation if it is subject to chronic dampness.

(B) No room shall be considered habitable if more than $\frac{3}{4}$ of its floor area has a floor-to-ceiling height of less than seven feet.

(C) No area of a room where the ceiling height is less than five feet shall be considered habitable space required by 105 CMR 410.420(D).

(D) Minimum square footage:

(1) Every residence shall contain at least 150 square feet of habitable floor space for its first occupant, and at least 100 square feet of habitable floor space for each additional occupant.

(2) A rooming unit may contain a minimum of 100 square feet of living space when:

(a) The unit contains one single room for living and sleeping only; and

(b) Is occupied by no more than one person.

(3) In every residence, each room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space.

(4) In every residence, each room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

410.430: Natural Light and Obstructions

The owner shall provide transparent or translucent glass which admits unobstructed light from the outdoors equal in area to a minimum of 8% of the entire floor area in:

(A) Habitable rooms other than a kitchen.

(B) Kitchens which have a floor area greater than 70 square feet.

~~**410.430: Temporary Housing Allowed Only with Board of Health Permission**~~

~~No temporary housing may be used except with the written permission of the board of health.~~

~~**410.431: Any Exceptions to Minimum Standards Must Be Specified**~~

~~All temporary housing shall be subject to the requirements of these minimum standards, except as the board of health may provide in its written permission. (See 105 CMR 410.840.)~~

410.440: Temporary Housing and Cabins

(A) No temporary housing or cabin may be used for occupancy without having obtained the written permission of the board of health.

(B) All temporary housing and cabins shall be subject to the requirements of these minimum standards, except as the board of health may provide in its written permission.

410.450: Alternative Housing

No owner shall occupy or permit occupancy of alternative housing without obtaining a permit from the board of health issued pursuant to 105 CMR 410.710.

~~**410.037 (502): Use of Lead Paint Prohibited**~~

~~No paint that contains lead shall be used in painting any surface of any dwelling. (See 105 CMR 460.000.)~~

~~**410.502 460: Existence of Lead Paint in Residences**~~

~~**All residences must be in compliance with the requirements of 105 CMR 460.000: *Lead Poisoning Prevention and Control.***~~

~~**410.500: Owner's Responsibility to Maintain Structural Elements**~~

~~Every owner shall maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of his dwelling so that the dwelling excludes wind, rain and snow, and is rodent-proof, watertight and free from chronic dampness, weathertight, in good repair and in every way fit for the use intended. Further, he shall maintain every structural element free from holes, cracks, loose plaster, or other defect where such holes, cracks, loose plaster or defect renders the area difficult to keep clean or constitutes an accident hazard or an insect or rodent harborage.~~

410.500: Owner's Responsibility to Maintain Building and Structural Elements

Every owner of a residence shall maintain, in accordance with accepted building standards or advisories issued by the Department, all building and structural elements so that they:

(A) Exclude wind, rain, and snow, are pest-proof, watertight and free from chronic dampness, weathertight, in good repair, and in every way fit for the use intended;

(B) Are free from holes, cracks, loose plaster, or other defect where such holes, cracks, loose plaster or defect renders the area difficult to keep clean, creates an accident hazard, or provides an entry or harborage for pests; and

(C) Are free from mold and other fungi in amounts that may affect the health of the occupants.

410.505 510: Occupant's Responsibility Respecting-Regarding Building and Structural Elements

The occupant shall exercise reasonable care in the use of the floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other **all building and** structural elements of the dwelling **their residence**.

410.452: Safe Condition

The owner shall maintain all means of egress at all times in a safe, operable condition and shall keep all exterior stairways, fire escapes, egress balconies and bridges free of snow and ice, provided, however, in those instances where a dwelling has an independent means of egress, not shared with other occupants, and a written letting agreement so states, the occupant is responsible for maintaining free of snow and ice, the means of egress under his or her exclusive use and control. All corrodible structural parts thereof shall be kept painted or otherwise protected against rust and corrosion. All wood structural members shall be treated to prevent rotting and decay. Where these structural elements tie directly into the building structural system, all joints shall be sealed to prevent water from damaging or corroding the structural elements.

410.452 520: Safe Condition of Egress

(A) The owner shall maintain each means of egress at all times in a safe, operable condition and shall:

(1) Keep all exterior stairways, fire escapes, egress balconies and bridges free of snow and ice.

(2) Keep all corrodible structural parts painted or otherwise protected against rust and corrosion.

(3) Treat all wood structural members to prevent rotting and decay.

(4) Seal all joints where these structural elements tie directly into the building's structural system to prevent water from damaging or corroding the structural elements.

(B) The occupant is responsible for maintaining free of snow and ice, the means of egress under his or her exclusive use and control, provided there is a written letting agreement that clearly identifies the occupant's responsibility.

410.503 530: Protective Railings and Walls

The owner of all dwellings **Every owner of a residence** shall provide:

(A) A safe handrail **no less than 34 inches in height on each side of a stairway** for every stairway, that is used or intended for use by the occupant, as required by 780 CMR Massachusetts Building Code.

(B) A wall or guardrail no less than 30 inches in height on the open side of all stairways. Any such guardrail replaced or constructed after August 28, 1997 (effective date of Massachusetts State Building Code, Sixth Edition) shall be not less than 34 inches in height (780 CMR 1022.2.2 and 3603.14.2.1).

(B) A wall or guard no less than 34 inches in height on the open side of all stairways.

(C) A wall or guardrail **guard** no less than 36 **42** inches in height, enclosing every porch, balcony, mezzanine, landing, roof or similar place, which is 30 inches or more above the ground and that is used

or intended for use by the occupants. ~~Any such wall or guardrail for other than Use Group R-4 and along opensided floor areas, mezzanines and landings in occupancies in Use Group R-3, replaced or constructed after August 28, 1997, shall not be less than 42 inches in height (780 CMR 102 and 3603.14).~~

(D) ~~Between all required guardrails and open handrails **In all guard systems**, balusters placed at intervals of no more than six **four** inches, or any other ornamental pattern between the guardrail or handrail and floor or stair such that a sphere six **four** inches in diameter cannot pass through the opening. Any balusters or ornamental work constructed or replaced after August 28, 1997 shall have no space greater than four and ½ inches.~~

(E) Balusters or ornamental work may not be constructed so as to create a ladder effect, notwithstanding any other regulatory provision to the contrary. ~~and in all use groups other than R-4, shall not be constructed as to provide a ladder effect (780 CMR 1021 and 3603.14)~~

410.501 540: Weathertight Elements

~~(A) A window shall be considered weathertight only if:~~

- ~~(1) all panes of glass are in place, unbroken and properly caulked; and~~
- ~~(2) the window opens and closes fully without excessive effort; and~~
- ~~(3) exterior cracks between the prime window frame and the exterior wall are caulked; and~~
- ~~(4) one of the following conditions is met:~~
 - ~~(a) a storm window is affixed to the prime window frame, with caulking installed so as to fill exterior cracks between the storm window frame and the prime window frame; or~~
 - ~~(b) weatherstripping is applied such that the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash, in the case of double hung windows and 1/32 inch in the case of casement windows; or~~
 - ~~(c) the window sash is sufficiently well-fitted such that, without weatherstripping, the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash in the case of double hung windows and 1/32 inch in the case of casement windows.~~

(A) A window shall be considered weathertight only when:

- (1) All panes of glass are in place, unbroken and properly sealed;**
- (2) The window sash opens and closes fully without excessive effort; and**
- (3) One of the following conditions is met:**
 - (a) The window sash is sufficiently well-fitted such that it minimizes the infiltration of air or moisture and the space between the window sash and the prime window frame is no larger than 1/8 inch at any point on the perimeter of the sash in the case of double hung windows and 1/16 inch in the case of casement windows; or**
 - (b) A storm window is affixed to the prime window frame in such a way as to not allow the infiltration of air or moisture.**

~~(B) An exterior door or a door leading from a dwelling unit to a common passageway shall be considered to be weathertight only if:~~

- ~~(1) all panes of glass are in place, unbroken and properly caulked; and~~
- ~~(2) the door opens and closes fully without excessive effort; and~~
- ~~(3) exterior cracks between the prime door frame and the exterior wall are caulked; and~~
- ~~(4) one of the following conditions is met:~~
 - ~~(a) a storm door is affixed to the prime door frame, with caulking installed so as to fill exterior cracks between the storm door frame and the prime door frame; or~~
 - ~~(b) weatherstripping is applied such that the space between the door and the prime door frame is no larger than 1/16 inch at any point on the perimeter of the door or~~
 - ~~(c) the door is sufficiently well-fitted such that, without weatherstripping, the space between the door and the prime door frame is no larger than 1/16 inch at any point on the sides of the door or ___ inch at any point on the top or bottom of the door.~~

(B) An exterior door or a door leading from a dwelling unit to a common passageway shall be considered to be weathertight only when:

- (1) All panes of glass are in place, unbroken and properly sealed;**
- (2) The door opens and closes fully without excessive effort; and**

(3) One of the following conditions is met:

- (a) The door is sufficiently well-fitted so that it minimizes the infiltration of air or moisture and the space between the door and the prime door frame is no larger than 1/8 inch at any point on the sides, top, or bottom of the door; or**
(b) A storm door is affixed to the prime door frame in such a way as to not allow the infiltration of air or moisture.

(C) A wall, floor, ceiling or other **Building and** structural elements shall be considered weather-tight only if **when** all cracks and spaces not part of heating, ventilating, or air conditioning systems are caulked or filled in sealed as to prevent infiltration of exterior air or moisture.

~~410.551: Screens for Windows~~

~~The owner shall provide screens for all windows designed to be opened on the first four floors opening directly to the outside from any dwelling unit or room unit provided, that in an owner-occupied unit, the owner need provide screens for only those windows used for ventilation. All new or replacement screens shall be of not less than 16 mesh per square inch.~~

~~Said screens:-~~

- ~~(1) shall cover that part of the window that is designed to be opened but in no case less than the area as required in 105 CMR 410.280(A); and~~
~~(2) shall be tight fitting as to prevent the entrance of insects and rodents around the perimeter.~~
~~(3) Expandable temporary screens shall not be deemed to satisfy the requirements of 105 CMR 410.551(1) or (2).~~

~~410.552: Screens for Doors~~

~~The owner shall provide a screen door for all doorways opening directly to the outside from any dwelling unit or rooming unit where the screen door will be permitted to slide to the side or open in an outward direction, provided, that in an owner-occupied unit, the owner need provide screens only for those doorways used for ventilation. All new or replacement screens in screen doors shall be of not less than 16 mesh per square inch.~~

~~Said screen door:-~~

- ~~(1) shall be equipped with a self-closing device except where the screen is designed to slide to the side; and~~
~~(2) shall be tight fitting as to prevent the entrance of insects and rodents around the perimeter; and~~

~~410.553: Installation of Screens~~

~~The owner shall provide and install screens as required in 105 CMR 410.551 and 410.552 so that they shall be in place during the period between April first to October 30th, both inclusive, in each year.~~

410.550: Installation of Screens

(A) The owner shall provide and install screens for windows designed to open to the outside so that:

- (1) They are in place during the period from April 1st to October 31st, both inclusive, in each year;**
(2) They are no less than 16 mesh per square inch;
(3) They cover that part of the window designed to be opened, except in double hung windows where half screens shall meet this requirement; and
(4) They are tight fitting and prevent the entrance of pests.

(B) Expandable, temporary screens shall not satisfy the requirements of 105 CMR 410.550(A).

(C) The owner shall provide and install a screen door for all doorways opening directly to the outside from any dwelling unit or rooming unit where the screen door will be permitted to slide to the side or open in an outward direction so that:

- (1) They are in place during the period from April 1st to October 31st, both inclusive, in each year;**
(2) They are no less than 16 mesh per square inch;

(3) They are equipped with a self-closing device except where the screen is designed to open to the side; and

(4) They are tight fitting and prevent the entrance of pests.

410.550 560: Extermination of Insects, Rodents and Skunks Elimination of Pests

Owners and occupants are responsible for the control and elimination of pests in accordance with the requirements of 333 CMR Pesticide Board and as follows:

~~(A) The occupant of a dwelling containing one dwelling unit shall maintain the unit free from all rodents, skunks, cockroaches and insect infestation, and shall be responsible for exterminating them, provided, however, that the owner shall maintain any screen, fence or other structural element necessary to keep rodents and skunks from entering the dwelling.~~

(A) Residences containing one dwelling unit:

(1) The occupant shall maintain the unit free from all pest infestation and shall be responsible for pest elimination.

(2) The owner shall be responsible for pest elimination if an inspection by the board of health reveals the owner has not maintained structural or other building elements necessary to keep pests from entering the dwelling.

~~(B) The owner of a dwelling **residence** containing two or more dwelling units, **or a rooming house** shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them **pest elimination**.~~

~~(C) The owner of a rooming house shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation, and shall be responsible for exterminating them.~~

(C) The occupant of a residence shall maintain the unit in a sanitary manner so as to prevent the attraction of pests.

~~(D) Extermination shall be accomplished by eliminating the harborage places of insects and rodents, by removing or making inaccessible materials that may serve as their food or breeding ground, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination method. All use of pesticides within the interior of a dwelling, dwelling unit, rooming house, or mobile home shall be in accordance with applicable laws and regulations of the Department of Food and Agriculture's Pesticide Board, including those appearing at 333 CMR 13.00, which provide, among other things, that pesticide applicators or their employers must give at least 48 hours pre-notification to occupants of all residential units prior to any routine commercial application of pesticides for the control of indoor household or structural indoor pests.~~

(D) The owner of a residence containing four or more dwelling units or rooming units shall implement and maintain an Integrated Pest Management (IPM) plan by conducting onsite inspections at least every four months. The IPM plan shall be designed and implemented so as to:

(1) Eliminate entry points for pests;

(2) Ensure the residence is maintained in a clean and sanitary manner to minimize the availability of food and water for pests;

(3) Provide information to occupants regarding their role in controlling pests; and

(4) Monitor the presence of pests.

(E) An owner required by 105 CMR 410.560(D) to implement an IPM plan shall maintain a record documenting the following activities conducted within the residence:

(1) Inspection results;

(2) Complaints filed by occupants;

(3) The date, location, product name, and name of any person applying pesticides; and

(4) Modifications to the original IPM plan.

Owners shall make the record available upon request by the board of health.

410.600: Storage of Garbage and Rubbish

~~(A) Garbage or mixed garbage and rubbish shall be stored in watertight receptacles with tight-fitting covers. Said receptacles and covers shall be of metal or other durable, rodent-proof material. Rubbish~~

shall be stored in receptacles of metal or other durable, rodent-proof material. Garbage and rubbish shall be put out for collection no earlier than the day of collection.

(B) Plastic bags shall be used to store garbage or mixed rubbish and garbage only if used as a liner in watertight receptacles with tight-fitting covers as required in 105 CMR 410.600(A), provided that the plastic bags may be put out for collection except in those places where such practice is prohibited by local rule or ordinance or except in those cases where the Department of Public Health determines that such practice constitutes a health problem. For purposes of the preceding sentence, in making its determination the Department shall consider, among other things, evidence of strewn garbage, torn garbage bags, or evidence of rodents.

(C) The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall provide as many receptacles for the storage of garbage and rubbish as are sufficient to contain the accumulation before final collection or ultimate disposal, and shall locate them so as to be convenient to the tenant and so that no objectionable odors enter any dwelling.

(D) The occupants of each dwelling, dwelling unit, and rooming unit shall be responsible for the proper placement of his garbage and rubbish in the receptacles required in 105 CMR 410.600(C) or at the point of collection by the owner.

410.601: Collection of Garbage and Rubbish

The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall be responsible for the final collection or ultimate disposal or incineration of garbage and rubbish by means of:

(A) The regular municipal collection system; or

(B) Any other collection system approved by the board of health; or

(C) when otherwise lawful, a garbage grinder which grinds garbage into the kitchen sink drain finely enough to ensure its free passage, and which is otherwise maintained in a sanitary condition; or

(D) when otherwise lawful, a garbage or rubbish incinerator located within the dwelling which is properly installed and which is maintained so as not to create a safety or health hazard; or

(E) when otherwise lawful, by backyard composting of compostable material, provided that the composting operation does not attract rodents or other vectors and does not create a nuisance, and provided further that in the case of composting by an occupant, the occupant obtain the prior written permission of the owner.

(F) any other method of disposal which does not endanger any person and which is approved in writing by the board of health. (See 105 CMR 410.840.)

410.570: Refuse

(A) Except as provided in 105 CMR 410.570C, the owner of any dwelling **residence** that contains three or more dwelling units, the owner of any rooming house, **the owner of any manufactured home park**, and the occupant of any other dwelling place shall be responsible for and pay for the final collection **or** **and** ultimate disposal **or** incineration of **refuse**. by means of:

(B) Occupants of any residence shall follow the requirements established by their community for separation of recyclables, yard waste, and bulk-item materials from refuse.

(C) Occupants shall be responsible for the disposal of their bulk-items in accordance with requirements established by their community.

(D) Storage:

(A) **(1) Refuse** Garbage or mixed garbage and rubbish shall be stored in watertight receptacles with tight-fitting covers. Said **Receptacles** and covers shall be of metal or other durable, **pest-proof** rodent-proof material. Garbage and rubbish shall be put out for collection no earlier than the day of collection.

~~(B) (2) Plastic bags or **biodegradable liners** shall be used **as a liner** to store **refuse** garbage or mixed rubbish and garbage only if used as a liner in **the required receptacles**, watertight receptacles with tight-fitting covers as required in 105 CMR 410.600(A); provided that the plastic bags may be put out for collection except in those places where such practice is prohibited by local rule or ordinance or except in those cases where the Department of Public Health determines that such practice constitutes a health problem. For purposes of the preceding sentence, in making its determination the Department shall consider, among other things, evidence of strewn garbage, torn garbage bags, or evidence of rodents.~~

~~(3) **If a cart-based automated or semi-automated system is used for storage and collection, no liner shall be required.**~~

~~(4) **Recyclables shall be stored in a manner that does not create a nuisance and is in accordance with the municipality's requirements.**~~

(E) Collection:

(1) The owner of any **residence** dwelling that contains three or more dwelling units and the owner of any rooming house, and the occupant of any other dwelling place shall provide as many **a sufficient number of** receptacles **required by 105 CMR 410.570(D)(1)** for the storage of **refuse and recyclables** garbage and rubbish as are sufficient to contain the accumulation before final collection or ultimate disposal, and shall locate them so as to be convenient to the tenant and so that no objectionable odors enter any dwelling. **An owner who provides a dumpster or other suitable container, shall locate them on the property so as to be convenient to the occupant, so that no objectionable odors enter any residence, and in accordance with 527 CMR Massachusetts Fire Code.**

(2) The occupants of each dwelling unit and rooming unit **residence** shall be responsible for the proper placement of his **their** garbage and rubbish **refuse** in the receptacles **provided by the owner**, required in 105 CMR 410.600(C) or at the point of collection **in any dumpster or suitable container if provided** by the owner, or **according to the municipality's requirements.**

(3) **In municipalities with a Pay as You Throw Program in which a fee per bag of waste to be collected is charged, the occupant shall follow all municipal requirements and shall be responsible for all fees.**

(4) **Refuse shall be put out for collection in accordance with local municipal requirements, but no earlier than the day of collection unless placed in containers meeting the requirements of 105 CMR 410.570(D)(1).**

(5) **Plastic bags may be put out the day of collection, except in those places where such practice is prohibited by local rule or ordinance or in those cases where the board of health determines that such practice constitutes a health problem.**

(F) Disposal may be by means of:

(1) ~~the **The** regular municipal collection system; or~~

(2) ~~any **Any** other collection system approved by the board of health; or~~

(3) ~~when **When** otherwise lawful, a garbage grinder which grinds garbage into the kitchen sink drain finely enough to ensure its free passage, and which is otherwise maintained in a sanitary condition; or~~

(4) ~~When otherwise lawful, a garbage or rubbish incinerator located within the dwelling which is properly installed and which is maintained so as not to create a safety or health hazard; or~~

(4) ~~when **When** otherwise lawful, by backyard composting of compostable material, provided that the composting operation does not attract rodents or other vectors **pests** and does not create a nuisance, and provided further that in the case of composting by an occupant, the occupant obtain the prior written permission of the owner; or~~

(5) ~~any **Any** other method of disposal which does not endanger any person and which is approved in writing by the **board of health**. (See 105 CMR 410.840.)~~

410.602 580: Maintenance of Areas Free from Garbage and Rubbish Refuse

(A) Land:

The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean and sanitary condition and free from garbage, rubbish or other refuse. The owner of

~~such parcel of land shall correct any condition caused by or on such parcel or its appurtenance which affects the health or safety, and well-being of the occupants of any dwelling or of the general public.~~

The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean and sanitary condition and free from:

- (1) Refuse;**
- (2) Pests;**
- (3) Potential injury hazards;**
- (4) Conditions contributing to the accumulation of standing water; or**
- (5) Any other condition which affects the health, safety, or well-being of the occupants of any residence or of the general public.**

(B) Dwelling Units Residences:

The occupant of any dwelling unit **residence** shall be responsible for maintaining in a clean and sanitary condition and free of ~~garbage, rubbish,~~ **refuse or** other filth or causes of sickness that part of the dwelling **residence** which he **or she** exclusively occupies or controls.

~~(C) Dwellings Containing Less than Three Dwelling Units. In a dwelling that contains less than three dwelling units, the occupant shall be responsible for maintaining in a clean and sanitary condition, free of garbage, rubbish, other filth or causes of sickness the stairs or stairways leading to his dwelling unit and the landing adjacent to his dwelling unit if the stairs, stairways or landing are not used by another occupant.~~

(C) Common Areas:

(1) In any dwelling residence, the owner shall be responsible for maintaining in a clean, and sanitary, **and safe** condition free of ~~garbage, rubbish,~~ **refuse or** other filth or causes of sickness, that part of the dwelling **residence** which is used in common by the occupants and which is not occupied or controlled by one occupant exclusively.

(2) For common stairways, the occupants shall be responsible for maintaining the landing, porch, or deck adjacent to their residence in a clean and sanitary condition, free of obstructions, refuse, filth, causes of sickness, or potential injury hazard.

(D) Private Passage or Right of Way:

The owner of any dwelling **residence** abutting a private passageway or right-of-way owned or used in common with other dwellings **residence(s)** or which the owner or occupants under his control have the right to use, or are in fact using, shall be responsible for maintaining in a clean and sanitary condition free of ~~refuse, garbage, rubbish,~~ other filth or causes of sickness that part of the passageway or right-of-way which abuts his property and which he or the occupants under his control have the right to use, or are in fact using, or which he owns.

~~410.620: Curtailment Prohibited~~

~~No owner or occupant shall cause or allow any service, facility, equipment, or utility which is optional or required to be made available by 105 CMR 410.000 to be removed from or shut off from any occupied dwelling except for such temporary period as may be necessary during actual repairs, or alterations, or replacement and where reasonable notice of curtailment of service is given to the occupant, in writing where practical, or during temporary emergencies when curtailment of service is approved by the board of health.~~

~~If any such service or facility that a person is required to provide by 105 CMR 410.000 or has agreed to supply by a written letting agreement becomes curtailed, that person shall take immediate steps to cause its restoration. (See M.G.L. c. 186, § 14.)~~

~~410.800: General Administration~~

~~The provisions of 105 CMR 400.000: *State Sanitary Code, Chapter I* shall govern the administration and enforcement of these minimum standards except as supplemented by 105 CMR 410.810 through 410.960.~~

~~410.810: Access for Repairs and Alterations~~

~~Every occupant of a dwelling, dwelling unit, or rooming unit shall give the owner thereof, or his agent or employees, upon reasonable notice, reasonable access, if possible by appointment, to the dwelling,~~

dwelling unit, or rooming unit for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of 105 CMR 410.000.

410.820 600: Inspection upon Request

The board of health shall inspect a dwelling or dwelling unit upon receipt of a written, oral or telephonic request for inspection regardless of whether the person requesting the inspection has previously notified the owner of the dwelling of the condition(s) within the dwelling. All interior inspections shall be done in the company of the occupant or the occupant's representative.

(A) The board of health shall use its best efforts to schedule and complete an inspection at a time mutually satisfactory to the occupant and the board of health:

(1) within 24 hours after a receipt of a request when the condition or conditions alleged to exist include one of the following:

(a) failure to maintain a supply of water connected with a safe water supply as required in 105 CMR 410.180; or

(b) failure to provide heat and to provide or maintain heating facilities in proper condition as required by 105 CMR 410.200 through 410.202; or

(c) failure to provide light as required by 105 CMR 410.254 and 410.253; or

(d) failure to provide and maintain a sanitary drainage system as required by 105 CMR 410.300; or

(e) failure to maintain in safe operating condition any facilities fixtures and systems listed in 105 CMR 410.351; or

(f) termination or failure to restore promptly, water, hot water, heat electricity or gas; and

(g) failure to maintain exits unobstructed and in a safe condition as required by 105 CMR 410.451 and 410.452; or

(h) failure to maintain every entry door of a dwelling or dwelling unit as required by 105 CMR 410.480(B) and 410.480(D); or

(i) failure to maintain a dwelling unit free from leaks as required in 105 CMR 410.500; or

(j) failure to maintain a porch, balcony, roof or exterior stairway in a safe condition as required in 105 CMR 410.500, 410.503(B), and 410.503(C); or

(k) failure to maintain a dwelling or dwelling unit free from rodents, skunks, cockroaches and insect infestation as required by 105 CMR 410.550; or

(2) within five calendar days after receipt of a request when the condition or conditions alleged to exist does not include any of the violations enumerated in 105 CMR 410.820(A)(1).

(B) The board of health shall keep a record of all requests for inspections in a bound book with numbered pages. The information to be recorded shall include but need not be limited to the name, if given, of the person requesting the inspection, the time and date of each such request, the location of the dwelling, the nature of the alleged violation(s) and the date the inspection is conducted. In lieu of the above, the required records may be maintained within a computer system.

(A) The board of health shall inspect a residential unit and common areas upon receipt of a written, oral, telephonic, or electronic request for inspection from an occupant of that residential unit. The board of health shall conduct this inspection regardless of whether:

(1) The occupant requesting the inspection has previously notified the owner of the alleged condition;

(2) There is an eviction, litigation, or other dispute pending between the owner and the occupant; or

(3) The occupant requesting the inspection requests the board of health keep his/her name confidential.

(B) The board of health shall investigate complaints, or requests for inspection, concerning a residential unit received from a person who is not an occupant of that residential unit to determine if there is sufficient cause for an inspection. The investigation may consist of a visual assessment from a public way, record review, or contact with the occupants by telephone or in person.

Upon completion of the investigation, the board of health shall either conduct an inspection or, if it determines there is no justification for an inspection, record the decision in the record book

required by 105 CMR 410.600(D).

(C) The board of health shall use its best efforts to schedule and complete an inspection at a time mutually satisfactory to the occupant and the board of health.

(1) The inspection shall be conducted within one business day after the receipt of a request if alleged conditions include violations enumerated in 105 CMR 410.630(A).

(2) The inspection shall be conducted within five business days after receipt of a request if alleged conditions do not include any of the violations enumerated in 105 CMR 410.630(A).

(D) The board of health shall keep a record of all requests for inspections which shall include, but need not be limited to, the following:

(1) Name of the person requesting the inspection, which may be kept confidential by the board of health;

(2) Time and date of each request;

(3) Location of the residence;

(4) The nature of the alleged violation(s); and

(5) Date the inspection is conducted.

410.821 610: Inspection Form

Each **board of health** shall adopt and use a printed **an** inspection report form **available from the Department, or any other inspection report form provided it includes, at a minimum,** ~~which must include, but need not be limited to,~~ the following:

(A) Specifically labeled spaces for:

(1) ~~(A)~~ **The** name of the inspector;

(2) ~~(B)~~ **The** date and time of the inspection or investigation;

(3) ~~(C)~~ **The** location of the dwelling or dwelling unit **residence** inspected;

(4) ~~the date and time of any scheduled follow-up re-inspection;~~

(D) The need for an additional inspection by a specialized inspector pursuant to 105 CMR 410.620(A) and the reason that such inspection is necessary;

(5) ~~(E)~~ **a** description of the conditions constituting violations;

(6) ~~(F)~~ **a** listing of the specific provisions of 105 CMR 410.000 or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated;

(7) ~~(G)~~ **a** determination by the official inspecting the premises whether the violations **noted** are listed in 105 CMR 410.750 **630(A)**, and whether the effect of any violation(s) or conditions not listed in 105 CMR 410.750 **630(A)** may endanger or materially impair the health, or safety, or well-being of any person(s) occupying the premises; and

(8) ~~(H)~~ **The** signature of the inspector preceded by the following statement:

"This inspection report is signed and certified under the pains and penalties of perjury."

(B) A brief summary of the legal remedies available to the occupant of the affected premises, **as described in Appendix A of this regulation,** followed by this statement:

"The information presented above is only a summary of the law. Before you decide to withhold your rent or take any other legal action, it is advisable that you consult an attorney. If you cannot afford to consult an attorney, you should contact the nearest Legal Services Office which is (name of Legal Services Office), (address), (telephone number)."

410.822 620: Conduct of Inspections

~~(A) At the time of the inspection, the inspector shall record all violations if any of 105 CMR 410.000 and shall complete an inspection report form which conforms to the requirements of 105 CMR 410.821(A) and 410.821(B).~~

(1) If assistance of a specialized inspector, which who is not immediately available, is necessary to fully complete the inspection report, such report shall be completed to the fullest extent feasible at the time of the inspection, noting thereon the reason of possible violations for which a separate inspection by a specialized inspector appears to be necessary.

(2) The need for such separate inspection shall in no way delay the normal processing or issuing of orders pursuant to 105 CMR 410.830 **640 through 410.833 **680**. The board of health**

shall use its best efforts to schedule the separate inspection promptly, at a mutually satisfactory time to ~~for~~ all individuals involved.

~~(3) A copy of 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)*~~ **105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation** shall be made available upon request, free of charge or at a cost which is no greater than the board's own cost for each copy. A copy shall be made available for review at no cost.

~~(B) Each inspection of a dwelling unit shall include at a minimum the condition alleged to be in violation and all those standards found in 105 CMR 410.750(A) through (O) except as otherwise provided in 105 CMR 410.822(B)(1) through 410.822(B)(4). A violation found in a common area shall be considered as a violation which exists in each unit in the dwelling which may be affected by such violations.~~

~~(1) An occupant shall be informed of his/her right to a comprehensive inspection at the start of said inspection. A comprehensive inspection will be carried out if the occupant so requests.~~

(B) An occupant shall be informed of his or her right to a comprehensive inspection at the beginning of an inspection, and a comprehensive inspection shall be conducted if the occupant so requests.

(1) Each inspection of a residence shall include at a minimum the condition alleged to be in violation and those standards listed in 105 CMR 410.630(A).

(2) A violation found in a common area shall be considered a violation which exists in each unit in which occupants have access to and utilize the common area.

~~(2) The inspection as required in 105 CMR 410.822(B) shall not be required from September 15 to June 15, inclusive, if the complaint relates solely to the lack of heat pursuant to 105 CMR 410.200 or 410.201, however, a comprehensive inspection, will be carried out if the occupant so requests.~~

(3) From September 15 to May 31 inclusive, if the complaint relates solely to the lack of heat pursuant to 105 CMR 410.160 or 410.180 and a comprehensive inspection is requested, the comprehensive inspection will not be required during the lack of heat investigation but shall be conducted:

(a) Within one business day when violations observed or alleged are violations listed in 105 CMR 410.630(A); or

(b) Within five business days for all other violations listed in 105 CMR 410.000.

~~(3) (4) Where an inspection reveals a condition or conditions which present such an imminent threat to the life, health or safety of the occupants, and that immediate steps must be taken by the inspector to order compliance, an inspection as required in by 105 CMR 410.822 620(B) may be delayed until after such steps are taken, but such inspection shall be completed in a timely manner.~~

~~(4) Where a reinspection is made in order to determine compliance with a previously issued order, the inspection may be sufficient if it includes those items previously identified as violations unless additional violations have been identified in a subsequent complaint.]~~

~~(C) A verbal or written summary of the conditions noted during the inspection shall be given to the occupant or the occupant's representative at the conclusion of the inspection.~~ **A written summary shall be provided at the time of the inspection if requested by the occupant or the occupant's representative.**

~~Such report shall indicate the need for additional inspection by a specialized inspector, if necessary. If a written report is requested at the time of the inspection, it shall be left with the person making the request.~~

(D) Pest Inspections:

The board of health shall conduct a pest inspection in accordance with the provisions of 105 CMR 410.620 and include, at a minimum, examination of the areas relevant to the type of pest:

(1) Insects and Arachnids:

(a) Interior of residence;

(b) Common areas adjacent to the residence;

- (c) All units adjacent to the residence where the presence of bed bugs have been confirmed;
- (d) Exterior perimeter of the residence; and
- (e) Areas previously treated, as documented in accordance with the requirements of 105 CMR 410.560(E).

(2) Rodents and Other Pests:

- (a) Interior of residence;
- (b) Basement or crawl space;
- (c) Accessible attics;
- (d) Exterior perimeter of the residence; and
- (e) Areas previously treated, as documented in accordance with the requirements of 105 CMR 410.560(E).

(E) Mold Inspections:

(1) When a board of health inspector discovers the presence of mold during an inspection, he or she shall investigate the potential sources of moisture, to the best of his/her ability, in order to identify:

- (a) Plumbing leaks,
- (b) Structural defects which allow the penetration of moisture,
- (c) Improper or inoperable mechanical or natural ventilation required by 105 CMR 410.220,
- (d) Improperly maintained accessible heating and ventilation ductwork, and
- (e) Areas subject to chronic dampness or other moisture sources that may contribute to mold growth.

(2) The laboratory test results from air sampling conducted in a residence shall not in and of themselves constitute a violation of 105 CMR 410.000.

410.750 630: Conditions Deemed to Endanger or Impair Health or Safety

The following conditions, when found to exist in residential premises, shall be deemed conditions which may endanger or impair the health, or safety and well-being of a person or persons occupying the premises. This listing is composed of those items which are deemed to always have the potential to endanger or materially impair the health or safety, and well-being of the occupants or the public. Because, 105 CMR 410.100 through 410.620 state minimum requirements of fitness for human habitation, any other violation has the potential to fall within this category in any given specific situation but may not do so in every case and therefore is not included in this listing. Failure to include shall in no way be construed as a determination that other violations or conditions may not be found to fall within this category. Nor shall failure to include affect the duty of the local health official to order repair or correction of such violations pursuant to 105 CMR 410.830 through 410.833 nor shall failure to include affect the legal obligation of the person to whom the order is issued to comply with such order.

(A) The following conditions, when found to exist in residential premises, shall always be deemed conditions which may endanger or impair the health, safety, or well-being of a person or persons occupying the premises:

- ~~(A)~~ **(1) Failure to provide and maintain a supply of water sufficient in quantity, pressure and temperature, both hot and cold, to meet the ordinary needs of the occupant in accordance with required by 105 CMR 410.180 130, 410.140, and 410.190 150 for a period of 24 hours or longer.**
- ~~(B)~~ **(2) Failure to provide heat as required by 105 CMR 410.201 180 or improper venting or use of a space heater or water heater as prohibited by 105 CMR 410.200(B) 160(C) and 410.202 170.**
- ~~(C)~~ **(3) Shutoff and/or failure to restore electricity, gas, or water.**
- ~~(D)~~ **(4) Failure to provide the electrical facilities required by 105 CMR 410.250(B) 300(A) through (E), 410.251(A), 410.253 and the lighting in common area required by 105 CMR 410.254.**
- ~~(E)~~ **(5) Failure to provide a safe supply of water required by 105 CMR 130(A).**
- ~~(F)~~ **(6) Failure to provide a toilet and maintain a sewage disposal system in operable condition as required by 105 CMR 410.150(A)(1) 110(A) and (B), and 410.300 130(B).**
- ~~(G)~~ **(7) Failure to provide and maintain adequate exits, or the obstruction of any exit, passageway or common area caused by any object, including garbage or trash refuse, which prevents egress in case of an emergency required by 105 CMR 410.450 260, 410.451 and**

410.452-

~~(H)~~ **(8)** Failure to comply with the security requirements of 105 CMR 410.480~~(D)~~ **270(A)**.

~~(I)~~ **(9)** Failure to comply with any provisions of 105 CMR 410.600 **570 and 410.580**, 410.601, or 410.602 which results in any accumulation of ~~garbage, rubbish~~ **refuse**, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.

~~(J)~~ **(10)** The presence of lead based paint on a dwelling or dwelling unit in violation of 105 CMR 460.000: *Lead Poisoning Prevention and Control*. (See M.G.L c. 111, §§ 190 through 199.)

~~(K)~~ **(11)** Roof, foundation, or other structural defects that may expose the occupant or anyone else to fire, burns, shock, accident or other dangers or impairment to health or safety **required by 105 CMR 410.500**.

~~(L)~~ **(12)** Failure to install **or maintain** electrical, plumbing, heating and gas-burning facilities in accordance with accepted plumbing, heating, gasfitting and electrical wiring standards or failure to maintain such facilities ~~as are~~ required by 105 CMR 410.351 **230** and 410.352 **240**, so as to expose the occupant or anyone else to fire, burns, shock, accident or other danger or impairment to health or safety.

~~(M)~~ **(13)** Any defect in asbestos material used as insulation or covering on a pipe, boiler or furnace which may result in the release of asbestos dust or which may result in the release of powdered, crumbled or pulverized asbestos material in violation of 105 CMR 410.353 **250**.

~~(N)~~ **(14)** Failure to provide a smoke detector or carbon monoxide alarm required by 105 CMR 410.482 **330**.

~~(4)~~ **(15)** **Failure to maintain a safe handrail or protective railing for every stairway, porch, balcony, roof or similar place required by 105 CMR 410.530.**

~~(5)~~ **(16)** **Failure to maintain the premises free from pests required by 105 CMR 410.560(A) and (B).**

~~(O)~~ Any of the following conditions which remain uncorrected for a period of five or more days following the notice to or knowledge of the owner of said condition or conditions:-

(1) Lack of a kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils or lack of a stove and oven or any defect that renders either inoperable.

(2) Failure to provide a washbasin and shower or bathtub as required in 105 CMR 410.150(A)(2) and 410.150(A)(3) or any defect which renders them inoperable.)

(3) Any defect in the electrical, plumbing, or heating system which makes such system or any part thereof in violation of generally accepted plumbing, heating, gasfitting, or electrical wiring standards that do not create an immediate hazard.

(4) Failure to maintain a safe handrail or protective railing for every stairway, porch balcony, roof or similar place as required by 105 CMR 410.503(A) and 410.503(B).-

(5) Failure to eliminate rodents, cockroaches, insect infestations and other pests as required by 105 CMR 410.550.

~~(P)~~ **(17)** Any other violation of 105 CMR 410.000 not enumerated in 105 CMR 410.750 **630(A) through (O) 410.750(P)** shall be deemed to be a condition which may endanger or impair the health or safety and well-being of an occupant upon the failure of the owner to remedy said condition within the time so ordered by the board of health.

(B) The health official, upon viewing the specific condition, may include any violation listed in 105 CMR 410.100 through 410.580 which in the health official's opinion may endanger or impair the health, safety, or well-being of a person or persons occupying the premises. Conditions identified by the inspector as conditions deemed to endanger or impair the health, safety or well-being of a person shall be noted as such on the correction order and the inspection report.

~~410.700: Inspectors Duty to Classify Violations~~

Any one or more of the conditions specified in 105 CMR 410.750, when found to exist in residential premises, shall always be deemed to be conditions which may endanger or materially impair the health or safety, and well-being of an occupant or the public. The conditions specified in 105 CMR 410.750 are specifically not intended as an exhaustive enumeration of such conditions. In addition to the conditions specified in 105 CMR 410.750, the inspector shall determine if any other violations of 105 CMR 410.100 through 410.620, or any other conditions, are conditions which may endanger or materially impair the health or safety, and well-being of an occupant or the public.

~~410.830 640: Correction Orders~~ **Timeframes for Correction of Violations**

(A) If an inspection or examination as provided for in 105 CMR 400.100 (*State Sanitary Code I- General Administrative Procedures*) and/or 105 CMR 410.820 **600** (*State Sanitary Code Chapter II- Minimum Standards of Fitness for Human Habitation*) reveals that a dwelling **residence** does not comply with the provisions of 105 CMR 410.000, the board of health or its designated agent shall:

(A) (1) Within 12 hours after the inspection, order the owner or occupant to make a good faith effort to correct within 24 hours **of service** any of the violations **cited pursuant to 105 CMR 410.630(A)**.

(1) failure to maintain a supply of water connected to a safe water supply as required in 105-CMR 410.180; or—

(2) failure to provide heat and to provide or maintain heating facilities in proper condition as required by 105-CMR 410.200 or 410.201; or—

(3) failure to provide light as required by 105-CMR 410.254; or—

(4) failure to provide and maintain a sanitary drainage system as required by 105-CMR-410.300; or—

(5) failure to maintain in safe operating condition any facilities fixtures and systems listed in 105-CMR 410.351; or—

(6) termination or failure to restore promptly water, hot water, heat, electricity or gas; or—

(7) failure to maintain exits unobstructed as required by 105-CMR 410.451; or—

(8) failure to maintain every entry door of a dwelling unit as required by 105-CMR-410.480(D); or—

(9) failure to maintain a dwelling unit free from leaks as required by 105-CMR 410.500; or—

(10) failure to maintain a porch, balcony, roof or exterior stairway in a safe condition as required by 105-CMR 410.500; or—

(11) failure to maintain a dwelling or dwelling unit free from rodents, skunks, cockroaches and insect infestation as required by 105-CMR 410.550.—

(B) within seven days after the inspection order the owner or occupant to begin necessary repairs or contract in writing with a third party within five days for correction of all other violations or conditions listed in 105-CMR 410.750, 410.351 and 410.550 and to make a good faith effort to substantially correct all violations within a period determined by the board of health but not exceeding 30 days.—

(2) Within five business days after the inspection, order the owner or occupant to make a good faith effort or contract in writing with a third party to correct, within 14 calendar days of service, any of the following violations:

(a) Lack of a kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils or lack of a stove and oven or any defect that renders either inoperable required by 105 CMR 410.100(A);

(b) Failure to provide a washbasin and shower or bathtub required in 105 CMR 410.110(A)(2) and (3) or any defect which renders them inoperable;

(c) Any defect in the electrical, plumbing, or heating system which makes such system or any part thereof in violation of generally accepted plumbing, heating, gasfitting, or electrical wiring standards that do not create an immediate hazard;
or

(d) Any condition, which in the opinion of the inspector, has the potential to become a condition which may pose a threat to the health, safety or well-being of the occupants if left uncorrected for more than 14 calendar days.

(e) within five days after the dates for compliance specified in an order issued pursuant to 105-CMR-410.830, the board of health shall make an onsite inspection to determine whether there has been compliance with said order; provided, that said inspection shall be made within 24 hours of the dates for compliance specified in an order if one or more of the violations or conditions are determined to be conditions which may endanger the health or safety, and well-being of the occupant(s) as defined in 105-CMR 410.750. An inspection under 105-CMR 410.830 shall comply with the requirements of 105-CMR 410.822.

(3) Within five business days after the inspection, order the owner or occupant to correct, within 30 calendar days of service, any violations not listed in 105 CMR 410.640(A)(1) or (2).

(B) No order shall exceed 30 calendar days for the correction of violations, nor shall the timeframes listed in the original order be extended beyond the original date, unless a hearing, in

accordance with 105 CMR 410.800 through 410.850, has been conducted.

410.831 650: Dwellings Unfit for Human Habitation; Hearing; Condemnation; Order to Vacate; Demolition

(A) Finding that a dwelling residence or portion thereof is unfit for human habitation:

If an inspection conducted pursuant to 105 CMR 400.100 or 105 CMR 410.820 ~~600~~ reveals that a dwelling residence or portion thereof is unfit for human habitation, the board of health may (after complying with 105 CMR 410.831 ~~650~~(B), (C), or (D), if the dwelling residence is occupied) issue a written finding that the dwelling residence or portion thereof is unfit for human habitation. The finding shall include a statement of the material facts and conditions upon which the finding is based.

(B) Prior notification to occupant(s) and owner:

If the dwelling residence or portion thereof is occupied, the board of health shall, prior to issuing a finding under 105 CMR 410.831 ~~650~~(A), provide written notice to the occupant(s) and owner which shall include:

- (1) Identification of the dwelling residence (address and apartment number, if any);
- (2) A copy of the inspection report;
- (3) A statement that the board of health will consider issuing a finding that the dwelling residence or a specifically identified portion thereof is unfit for human habitation;
- (4) A statement that this finding may result in an order of condemnation requiring the owner to secure the dwelling residence and requiring the occupant(s) to vacate the dwelling residence;
- (5) A statement of the time and place of a public hearing which the board of health will conduct in order to determine whether the dwelling residence or portion thereof is unfit for human habitation, and whether an order to secure and vacate should be issued.

(C) Service of notice:

The notice shall be served on the occupant(s) and owner in accordance with 105 CMR 410.833 ~~680~~.

(D) Hearing if dwelling residence or portion thereof is occupied:

If the dwelling residence or portion thereof is occupied, then the board shall, prior to issuing a finding under 105 CMR 410.831 ~~650~~(A), and at least five days after service of the notice required by 105 CMR 410.831 ~~650~~(B), conduct a public hearing to determine whether the dwelling residence or portion thereof is unfit for human habitation and whether an order to secure and to vacate should be issued. At the hearing the occupant(s), owner, or any other affected party shall be given an opportunity to be heard, to present witnesses or documentary evidence and to show why the dwelling residence or portion thereof should or should not be found unfit for human habitation, and why an order to vacate and an order to ~~close-up~~ **secure** should or should not be issued.

(E) Exception to notification and hearing requirements:

If at any time the board of health determines in writing that the danger to the life or health of the occupant(s) is so immediate that no delay may be permitted, then the board of health may immediately issue a finding that an occupied dwelling residence or portion thereof is unfit for human habitation without providing the notification or hearing specified in 105 CMR 410.831 ~~650~~(B) and ~~(C)~~ **(D)**. A copy of the determination of immediate danger, and a copy of the finding of unfitness for human habitation shall be sent to each affected occupant, and to the owner. **The determination of immediate danger shall include a statement advising the owner and occupant of their right to a hearing in accordance with 105 CMR 410.800(A).**

~~**(E) Condemnation, order to vacate, order to secure.** At the same time, or at any time after the board of health issues a finding that a dwelling or portion thereof is unfit for human habitation, the board may issue an order condemning the dwelling or portion thereof and an order to vacate the dwelling or portion thereof, and an order requiring the owner to secure the dwelling or portion thereof. If the dwelling or portion thereof which is ordered to be secured is unoccupied (and therefore no public hearing was conducted prior to the issuance of the order) then the owner or any other affected person shall have the right to request a hearing in accordance with 105 CMR 410.850 through 410.860. No dwelling or portion thereof which is ordered to be secured shall be occupied without the prior written permission of the board of health based upon the board's written finding that the dwelling or portion~~

thereof to be occupied is fit for human habitation.

(E) ~~(F)~~ Condemnation, order to vacate, order to secure;

(1) At the same time, or at any time after the board of health issues a finding that a ~~dwelling~~ **residence** or portion thereof is unfit for human habitation, the board may issue an order condemning the ~~dwelling~~ **residence** or portion thereof and an order to vacate the ~~dwelling~~ **residence** or portion thereof, and an order requiring the owner to secure the ~~dwelling~~ **residence** or portion thereof.

(2) If the ~~dwelling~~ **residence** or portion thereof which is ordered to be secured is unoccupied, and therefore no public hearing was conducted prior to the issuance of the order, then the owner or any other affected person shall have the right to request a hearing in accordance with 105 CMR 410.850 ~~800~~ through 410.860.

(3) No ~~dwelling~~ **residence** or portion thereof which is ordered to be secured shall be occupied without the prior written permission of the board of health based upon the board's written finding that the ~~dwelling~~ **residence** or portion thereof to be occupied is fit for human habitation.

(F) ~~(G)~~ Demolition;

If one year after the issuance of an order to secure; compliance with the minimum standards set forth in 105 CMR 410.000 has not been effected ~~achieved~~, then the board of health may cause the ~~dwelling~~ **residence** or portion thereof to be demolished or removed provided the requirements of 105 CMR 410.800(A) have been met.

410.660: Reinspections

(A) The purpose of a reinspection is to determine compliance with an existing order and shall be conducted within:

(1) 24 hours after the date for compliance of violations required by 105 CMR 410.640(A);

or

(2) Five business days after the date for compliance of violations required by 105 CMR 410.640(B) and (C).

(B) New violations identified during the conduct of the reinspection to determine compliance with an existing order shall be addressed in a new complaint.

(C) Reinspection dates shall be calculated based on the date of service pursuant to 105 CMR 410.680(C).

410.832 670: Content of Orders Order to Correct Violations

(A) Every order authorized by 105 CMR 410.000 **shall:**

(1) Be in writing;

(2) Include a copy of the inspection report; and

(3) Include a copy of Appendix A: Summary of Legal Remedies.

(B) Subject to the emergency provisions of 105 CMR 400.200(B), any order issued under the provisions of 105 CMR 410.000 **shall:**

(1) ~~shall include~~ **Include** a statement of the violations, conditions, or defects **identified in 105 CMR 410.630(A)**; and, in the case of occupied ~~dwelling units~~ **residences**, a determination whether any violation(s) or conditions, or the cumulative effect of more than one violation or condition may endanger or materially impair the health, ~~or~~ safety, ~~and~~ or well-being of an occupant; ~~copy of all inspection reports~~

(2) ~~shall contain~~ **Contain** notice of the right to a hearing; of the deadline and proper procedure for requesting a hearing; the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices, and other documentary information in the possession of the board of health; the right to be represented at the hearing; and that any affected party has a right to appear at said hearing;

(3) ~~shall indicate~~ **Include** the time limit for compliance pursuant to 105 CMR 410.830 ~~640~~;

(4) Indicate the requirement for a reinspection(s) pursuant to 105 CMR 410.660(A) and (C);

(4) ~~(5) shall include~~ **Include** the following statement translated into any non-English language that is spoken as a primary language by greater than 1% of the population of that community.

"This is an important legal document. It may affect your rights. You should have it translated.";

and

~~(5)~~ **(6)** and, shall, in **In** an order to an owner, advise the owner that the conditions which exist may permit the occupant of the **residence**~~dwelling~~ to exercise one or more statutory remedies.

(C) If an inspection for all the standards in 105 CMR 410.000 reveals no violation of 105 CMR 410.000, the board of health shall forward a copy of the inspection report and a letter so stating to the owner **and occupant** within seven **business** days of completion of the inspection.

410.833 680: Service of Orders and Notices

~~(A)~~ All orders issued under 105 CMR 410.670 shall be served on the persons responsible for the violation. ~~Orders and/or notices issued under 105 CMR 410.831 shall be served on the owner or his agent and the affected occupants.~~

(B) All orders and/or notices shall be served:

(1) ~~personally~~ **Personally** by ~~an a~~ person authorized to serve civil process; ~~or~~

(2) by **By** leaving a copy at his **or her** last and usual place of abode; ~~or~~

(3) by **By** sending him **or her** a copy by registered or certified mail, return receipt requested if he **or she** is within the Commonwealth; ~~or~~

(4) ~~if his last and usual place of abode is unknown or outside the Commonwealth, by posting a copy in a conspicuous place on or about the dwelling or portion thereby affected.~~

(4) By sending a copy where upon delivery service is established with an electronic signature; or

(5) If his or her last and usual place of abode is unknown, by posting a copy in a conspicuous place on or about the residence or portion thereby affected.

~~(D)~~ **(C)** A copy of every order or subsequent notice issued under the provisions of 105 CMR 410.830 **640 or 410.650** to an owner shall also be personally delivered or sent by first class mail to the occupants of all affected premises, except that when a violation in a common area affects more than three ~~dwelling units or rooming units~~ **residences**, the notification required by 105 CMR 410.000 may be satisfied by posting a copy of every order or subsequent notice in a conspicuous place in **or on** the building.

(D) A copy of every order or subsequent notice issued under the provisions of 105 CMR 410.831 650 to an occupant of the affected premises shall also be personally delivered or sent by first class to the owner of the affected premises, except that when a violation in a common area affects more than three residences, the notification required by 105 CMR 410.000 may be satisfied by posting a copy of every order or subsequent notice in a conspicuous place in or on the building.

(E) All orders and/or notices issued under 105 CMR 410.650 shall be served on the owner or their agent.

~~(E)~~ **(F)** A copy of every order issued under the provisions of 105 CMR 410.831 **650** shall also be served upon every mortgagee and lien holder of record by sending it registered or certified mail, return receipt requested, **or by sending a copy where upon delivery service is established with an electronic signature.**

410.840 700: Variances

~~(A) Except for those conditions enumerated under 105 CMR 410.750(A) through (O), the board of health may vary the application of any provision of 105 CMR 410.000 with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the board of health shall not conflict with the spirit of these minimum standards or any other applicable statute, code or regulation, and provided further, such variances may be granted only after notice is given to all affected occupants and after a hearing is held.~~

(A) The board of health shall not vary the following provisions of 105 CMR 410.000:

(1) Conditions Deemed to Endanger or Impair Health or Safety, required by 105 CMR 410.630(A);

(2) Alternative Housing, required by 105 CMR 410.710;

(3) Enforcement Procedures required by 105 CMR 410.600 through 410.930;

(4) Submetering of Water and Sewer, required by 105 CMR 410.130(C), (D), and (E);

(5) Any regulatory provision that is governed by the authority of another regulatory

agency; or

(6) Any regulatory provision that is required by law.

(B) The board of health may vary the application of any provision of 105 CMR 410.000, except those conditions listed in 105 CMR 410.700(A), when:

(1) The enforcement thereof would do manifest injustice;

(2) The decision of the board of health does not conflict with the spirit of these minimum standards or any other applicable statute, code, or regulation;

(3) All affected parties have been notified in writing of the date, time, and place of a hearing to consider the variance;

(4) All affected parties have been given the opportunity to be heard to show why the variance should or should not be granted; and

(5) The petitioner is notified within three business days of the board's decision to grant the variance.

~~(B) Any variance or other modification authorized to be made by 105 CMR 410.000 may be subject to such qualification, revocation, suspension or expiration as the board of health expresses in its grant. A variance or other modification authorized to be made by 105 CMR 410.000 may otherwise be revoked, modified, or suspended in whole or in part, only after the owners and affected occupants have been notified in writing and have been given an opportunity to be heard, in conformity with the requirements for an order and hearing of 105 CMR 410.830 through 410.855.~~

(C) Any variance granted by the board of health shall be in writing and shall include:

(1) The factors determining that the enforcement of this provision in 105 CMR 410.000 would be a manifest injustice;

(2) The measures the petitioner will incorporate to ensure equal or greater protection of the health and safety of the occupants as provided by 105 CMR 410.000; and

(3) The date of expiration of the variance.

(D) The variance shall be:

(1) Filed by the board of health with the Director of the Community Sanitation Program at the Department within 14 business days of its decision to approve;

(2) Available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health;

(3) Provided to all affected occupants by the owner and attached to the letting agreement for new tenancies created while the variance is in effect; and

(4) Filed by the owner in the registry of deeds for the county or appropriate district thereof, in which the residence is located.

~~(E) A variance from 105 CMR 410.503 (B), (C) and (D) may be granted by the board of health for historic buildings provided that the board of health finds that the public health will not be compromised.~~

(E) Any variance or other modification authorized to be made by 105 CMR 410.000 may be subject to such qualification, revocation, suspension or expiration as the board of health expresses in its approval.

(F) A variance or other modification authorized to be made by 105 CMR 410.000 may otherwise be revoked, modified, or suspended in whole or in part, only after the owners and affected occupants have been notified in writing and have been given an opportunity to be heard, in conformity with the requirements of 105 CMR 410.800 through 410.850.

(G) A variance from 105 CMR 410.480 ~~270~~ may be granted only **in writing** by the Massachusetts State Building Code Commissioner when in its **his or her** opinion, other security measures are in force which adequately protect the resident(s) of such ~~residence~~dwelling. (M.G.L. c. 143, § 3R)

(H) A variance granted by the board of health shall be in effect only upon meeting the requirements established in 105 CMR 700(A) through (D).

(I) An owner may request that the variance be renewed by submitting to the board of health, at least 30 calendar days prior to expiration, a written request that contains a statement of any

relevant changes to the conditions of the residence since the original variance request or most recent renewal. The board of health may conduct an inspection of the residence prior to issuing its decision. If the board of health finds that the health and safety of the occupants and general public will not be compromised, it may renew the variance in writing. The notification requirements of 105 CMR 410.700(D) shall be followed for each variance renewal.

410.710: Permitting Alternative Housing

(A) The board of health may approve alternative housing that does not meet one or more of the following requirements of 105 CMR 410.000:

- (1) Electrical service required by 105 CMR 410.300 and 410.320;
- (2) Plumbed system for the delivery of hot and cold running water required by 105 CMR 410.130, 410.140, and 410.150;
- (3) Centralized heating system required by 105 CMR 410.160 that is capable of meeting the requirements of 105 CMR 410.180;
- (4) Sanitary drainage system required by 105 CMR 410.130 provided the following approved systems are installed:
 - (a) A toilet capable of incinerating or composting waste; and
 - (b) A grey water system; or
- (5) Minimum square footage required by 105 CMR 410.420(D).

(B) An owner shall apply to the board of health for a permit to occupy alternative housing. An application for alternative housing must include the following:

- (1) A detailed plan of alternative energy and other provisions that will provide comparable measures to protect the health and safety of the occupants and that demonstrate that the same degree of protection required under 105 CMR 410.000 can be achieved without strict application of the particular provision;
- (2) A draft deed restriction that the owner will record with the registry of deeds upon approval of a permit for alternative housing that indicates that the property has an alternative housing permit pursuant to 105 CMR 410.710(D) and that upon transfer of ownership or occupancy the property must comply with all requirements in 105 CMR 410.000 unless a new permit is issued by the board of health;
- (3) A signed, written statement by the owner that the residence subject to the alternative housing permit will only be used as owner occupied property and that the owner understands that the permit will be nullified if the property changes occupancy or is offered or used as a rental;
- (4) Documentation that any necessary variances have been obtained from other regulatory agencies when an exemption would also violate another state regulatory code; and
- (5) Payment of any applicable fee set by the board of health.

(C) Upon receipt of an application for alternative housing, the board of health shall schedule a public hearing within 30 calendar days. The applicant shall provide to the board of health verification of notice to all abutters of the date, time, and location of said hearing.

(D) Following the hearing, the board of health shall issue a written decision as to whether to grant or deny the alternative housing permit and a statement regarding the rationale for the decision. A grant of approval shall be provisional pending a comprehensive inspection by the board of health, and may contain any conditions deemed necessary by the board of health to protect the health and safety of the occupants.

(E) Upon final approval of an alternative housing permit:

- (1) The board of health shall submit a copy of the permit to the Director of the Community Sanitation Program within five business days;
- (2) The owner shall record at the registry of deeds for the city or town where the dwelling is located a deed restriction as approved by the board of health;
- (3) The owner shall submit a copy of the record to the board of health once available; and
- (4) Said permit shall not go into effect until the deed restriction has been recorded at the Registry of Deeds.

(F) The alternative housing permit shall be valid until such time as modifications are made to the property or ownership of the property changes. Modifications require resubmission of the permit

request. Failure to do so will result in the revocation of the permit. Prior to permit modification, the board of health may conduct an inspection of the residence.

(G) An alternative housing permit may be modified or revoked by the board of health for any alleged violation of the terms of the permit or any other reason necessary to protect the health and safety of the occupants only after notice to the owner and an opportunity to be heard in conformity with the requirements for an order and hearing as required by 105 CMR 410.800 through 410.850. The board of health shall submit a copy of the modification or revocation to the Director of the Community Sanitation Program within five business days.

410.850 800: Right to Hearing

Unless otherwise specified in 105 CMR 410.000, the following persons may request a hearing before the board of health by filing a written petition:

(A) Any person or persons upon whom any order **or notice** has been served, pursuant to ~~any regulation~~ of 105 CMR 410.000 (except for an order issued after the requirements of 105 CMR 410.834 ~~650~~ have been satisfied) provided, such petition must be filed within seven **calendar** days after the day the order was served;

(B) Any person aggrieved by the failure of any inspector(s) or other personnel of the board of health:

- (1) ~~to~~ **To** inspect upon request any premises as required ~~under~~ **by** 105 CMR 410.000; provided, such petition must be filed within 30 **calendar** days after such inspection was requested;
- (2) ~~to~~ **To** issue a report on an inspection as required by 105 CMR 410.000; provided, such petition must be filed within 30 **calendar** days after the inspection;
- (3) ~~upon~~ **Upon** an inspection to find violations of 105 CMR 410.000 where such violations are claimed to exist or to certify that a violation or combination of violations may endanger or materially impair the health or safety, and well-being of the occupants of the premises; provided, such petition must be filed within 30 **calendar** days after receipt of the inspection report;
- (4) ~~to~~ **To** issue an order as required by 105 CMR 410.830 ~~640~~; provided; that such petition must be filed within 30 **calendar** days after receipt of the inspection report;
- (5) To enforce the provisions of 105 CMR 410.000 pursuant to M.G.L c. 111, §127A; provided such petition must be filed within 45 calendar days after receipt of the order; or**
- (6) To follow the provisions of 105 CMR 410.700 in the approval of a variance; provided such petition must be filed within 30 calendar days of the board of health's grant of the variance.**

410.851 810: Hearing Notice

~~(A) Upon receipt of a petition, the board of health shall in writing inform the petitioner and other affected parties (affected parties shall include the occupants of all affected premises if the petitioner is an owner, and the owner if the petitioner is an occupant) of the date, time and place of the hearing and of their right to inspect and copy the board of health's file concerning the matter to be heard.~~

(B) If a written petition for a hearing is not filed with the board of health within the appropriate time provided for in 105 CMR 410.800 the right to a hearing is waived.

410.852 820: Time for Hearing

The hearing shall be commenced ~~not no~~ later than ~~30~~ **14 calendar** days after the date the order was served. **from the date of receipt of the petition for a hearing. Failure to hold a hearing within the time period specified herein shall not affect the validity of any order.** Provided, however, the hearing shall be commenced no later than:

- (1) 14 days after an order was served pursuant to 105 CMR 410.830(A) and 410.830(B) and the petitioner refuses to begin remedial activity as required pending the outcome of the hearing; or
- (2) 14 days after request for a hearing was received in instances where the petitioner alleges that an inspector or other personnel of the board of health has
 - (a) failed to inspect upon request any premises; or
 - (b) failed to issue an inspection report on an inspection as required by 105 CMR 410.000; or

- ~~(e) failed to find violations of the law where such violations are claimed to exist or to certify that such violations may endanger or materially impair the health or safety, and well-being of the occupant(s); or~~
- ~~(d) failed to issue an order as required by 105 CMR 410.830.~~

410.853 830: Hearing Procedures

At the hearing the petitioner and other affected parties shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show why an order should be modified or withdrawn, or why a dwelling **residence** should not be condemned, vacated, or demolished or why an action or failure to act by an inspector or other personnel of the board of health should be reconsidered, rescinded, or ordered. ~~Failure to hold a hearing within the time period specified herein shall not affect the validity of any order.~~

410.854 840: Final Decision after Hearing; Failure to Comply with Final Order

~~(A) The board of health shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision within not more than seven days after the conclusion of the hearing. If the board of health sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.—~~

~~(B) If a written petition for a hearing is not filed with the board of health within the appropriate time provided for in 105 CMR 410.850,~~

~~or if after a hearing the order has been sustained in whole or part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.—~~

The board of health shall notify the petitioner and all affected parties in writing of its decision to sustain, modify, or withdraw the order within three business days after the conclusion of the hearing.

(A) If the board of health sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.

(B) If after a hearing the order has been sustained in whole or part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

410.855 850: Official Hearing Record

Every notice, order, or other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city or town, or in the office of the board of health.

410.860: Appeal of Final Decisions

Any person aggrieved by the final decision of the board of health with respect to any order issued under the provisions of 105 CMR 410.000 may seek relief there from in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

410.950 900: Condemnation, Placarding and Vacating Dwellings Residences

~~(A) If a written petition for a hearing is not filed in the office of the board of health within seven days after an order of condemnation of any dwelling or portion thereof has been issued, or if after written notice that the board of health is considering ordering a dwelling or portion thereof condemned and/or vacated and demolished, or if after a hearing the order of condemnation of a dwelling or portion thereof is issued, the dwelling or portion thereof so affected by the order shall be placarded by the board of health.~~

(A) A residence or portion thereof shall be placarded as unfit for human habitation by the board of health when:

(1) A written petition for a hearing is not filed in the office of the board of health within seven calendar days after an order of condemnation of any residence or portion thereof has been issued; or

(2) After a hearing, the order of condemnation of a residence or portion thereof is issued.

(B) No dwelling **residence** or portion thereof which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the board of health.

(C) No person shall deface or remove the placard, except that the board of health shall remove it whenever the defect or defects upon which the condemnation and placarding action was based have been eliminated.

(D) If any person refuses to leave a dwelling **residence** or portion thereof which has been ordered condemned and vacated and has been placarded in accordance with 105 CMR 410.830 ~~640~~ through 410.950 **930**, such person may be forcibly removed by the **board of health** or by **state or** local police authorities ~~on~~ **upon** request of the board of health. (See also ~~150 CMR 410.830 through 410.920~~).

(E) The board of health may undertake to demolish any dwelling **residence after** an order for ~~whose~~ **its** destruction was properly served on the owner and every mortgagee of record in accordance with the requirements of notice and hearing in 105 CMR 410.831 ~~650 and 410.800~~ through 410.860, and M.G.L. c. 111, § 127B. ~~upon the completion of the work and the rendering of an account therefore to the owner of such structure, and shall be recoverable from such owner in an action of contract. Said debt, together with interest thereon at the rate of 6% per annum from the date said debt becomes due, shall constitute a lien on the land upon which the structure was located if a statement of claim, signed by the board of health, setting forth the amount claimed without interest is filed, within ninety days after the debt becomes due, with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies. Such lien shall take effect upon the filing of the statement aforesaid and shall continue for two years from the first day of October next following the day of such filing. Such lien may be dissolved by filing with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies, a certificate from the collector of the city or town that the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. Such collector shall have the same powers and be subject to the same duties with respect to such claim as in the case of the annual taxes upon real estate; and the provisions of law relative to collection of such annual taxes, the sale or taking of land for the nonpayment thereof, and the redemption of land so sold or taken shall apply to such claim.~~

(F) A claim for the expense incurred by said board in demolishing a dwelling **residence or any portion thereof** ~~so doing~~ shall constitute a debt due the city or town **in accordance with M.G.L. c. 111, § 127B, and M.G.L. c. 111, § 139.**

410.900 910: Penalties for Interference with Inspections

Any owner, occupant, or other person who refuses, ~~impeded,~~ **impedes,** inhibits, interferes with, restricts, or obstructs entry and free access to every part of the structure, operation, or premises where inspection authorized by this code is sought after a search warrant has been obtained and presented in accordance with 105 CMR 400.100(C), shall be fined upon conviction not less than ~~ten~~ **\$10.00** nor more than \$500.00.

410.910 920: Penalty for Failure to Comply with Order

Any person who shall fail to comply with any order issued pursuant to the provisions of 105 CMR 410.000 shall upon conviction be fined not less than \$10.00 nor more than \$500.00. Each day's failure to comply with an order shall constitute a separate violation. ~~See also 105 CMR 410.854(B).~~

410.920 930: Penalty for Other Offenses

Any person who shall violate any provision of 105 CMR 410.000 for which penalty is not otherwise provided in any of the General Laws or in any other provision of 105 CMR 410.000 shall upon conviction be fined not less than \$10.00 nor more than \$500.00.

410.960 940: Correction of Violations by Board of Health; Expenses

(A) If a failure to comply with an order requiring that any **dwelling residence** or its premises be properly cleaned or repaired results in a condition which endangers or materially impairs the health or well-being of the occupant or the public, the board of health may cause such proper cleaning or repair and charge the responsible person or persons as hereinbefore provided with any and all expenses incurred. Any such charges by the board of health shall not absolve the responsible person or persons from any penalty warranted by the failure to comply with the order.

(B) The board of health may also act in an emergency under the provisions of 105 CMR 400.200(B) to clean or repair any **dwelling residence** which so fails to comply with the provisions of 105 CMR 410.000 as to endanger or materially impair the health or safety, and well-being of the occupant or the public, and to charge the responsible person or persons with any and all expenses incurred.

410.950: Severability

If any provision of 105 CMR 410.000 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 105 CMR 410.000, which shall remain in full force and effect, and to this end the provisions of 105 CMR 410.000 are hereby declared severable.

REGULATORY AUTHORITY

105 CMR 410.000: M.G.L. c. 111, §§ 3 and 127A.

Appendix A: Summary of Legal Remedies Forms

THE FOLLOWING IS A BRIEF SUMMARY OF SOME OF THE LEGAL REMEDIES TENANTS MAY USE IN ORDER TO GET HOUSING CODE VIOLATIONS CORRECTED.

1. Rent Withholding (General Laws Chapter 239 Section 8A).

If Code Violations Are Not Being Corrected you may be entitled to hold back your rent payment. You can do this without being evicted if:

- A. You can prove that your ~~dwelling unit~~ **residence** or common areas contain violations which are serious enough to endanger or materially impair your health or safety and that your landlord knew about the violations before you were behind in your rent.
- B. You did not cause the violations and they can be repaired while you continue to live in the building.
- C. You are prepared to pay any portion of the rent into court if a judge orders you to pay for it. (For this it is best to put the rent money aside in a safe place.)

2. Repair and Deduct (General Laws Chapter 111 Section 127L).

This law *sometimes* allows you to use your rent money to make the repairs yourself. If your local code enforcement agency certifies that there are code violations which endanger or materially impair your health, safety or well-being and your landlord has received written notice of the violations, you may be able to use this remedy. If the owner fails to begin necessary repairs (or enter into a written contract to have them made) within five days after notice or to complete repairs within 14 days *after notice* you can use up to four months' rent in any year to make the repairs.

3. Retaliatory Rent Increases or Eviction Prohibited (General Laws Chapter 186, Section 18 and Chapter 239 Section 2A).

The owner may not increase your rent or evict you in retaliation for making a complaint to your local code enforcement agency about code violations. If the owner raises your rent or tries to evict within six months after you have made the complaint he or she will have to show a good reason for the increase or eviction which is unrelated to your complaint. You may be able to sue the landlord for damages if he or she tries this.

4. Rent Receivership (General Laws Chapter 111 Sections 127C-H).

The occupants and/or the board of health may petition the District or Superior Court to allow rent to be paid into court rather than to the owner. The court may then appoint a "receiver" who may spend as much of the rent money as is needed to correct the violation. The receiver is not subject to a spending limitation of four months' rent.

5. Search of Warranty of Habitability.

You may be entitled to sue your landlord to have all or some of your rent returned if your ~~dwelling unit~~ **residence** does not meet minimum standards of habitability.

6. Unfair and Deceptive Practices (General Laws Chapter 93A)

Renting an apartment with code violations is a violation of the consumer protection act and regulations for which you may sue an owner.

THE INFORMATION PRESENTED ABOVE IS ONLY A SUMMARY OF THE LAW, BEFORE YOU DECIDE TO WITHHOLD YOUR RENT OR TAKE ANY LEGAL ACTION. IT IS ADVISABLE THAT YOU CONSULT AN ATTORNEY, YOU SHOULD CONTACT THE NEAREST LEGAL SERVICES OFFICE WHICH IS:

(NAME)

(TELEPHONE NUMBER)