

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

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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 boards of health to ensure compliance with these minimum standards; and
- (C) Facilitate the use of legal remedies available to occupants of substandard housing.

410.002: Scope

- (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. Applicable requirements of Massachusetts General Law, 780 CMR: *Massachusetts State Building Code* and other specialized codes included in M.G.L. c. 143, § 96 shall be adhered to in the design, construction, and maintenance of buildings, structures and equipment.
- (B) The provisions of 105 CMR 410.000 shall not apply to any residence:
  - (1) Otherwise required to conform to minimum habitation standards specified in other chapters of the State Sanitary Code, or otherwise exempt by statute;
  - (2) Used exclusively as a temporary overnight shelter;
  - (3) Owned by an agency of the Commonwealth;
  - (4) In any hospital, convalescent, nursing home, or rest home, licensed by the Department of Public Health in accordance with the provisions of M.G.L. c. 111, § 51 or 71 unless regulations pertaining to such facilities require compliance with 105 CMR 410.000; or
  - (5) On a federal military base or where enforcement is otherwise pre-empted by federal law.
- (C) It is the duty of the local health official to identify violations and 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.
- (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 105 CMR 410.000 except as supplemented by 105 CMR 410.600 through 410.950.

#### 410.003: General Provisions

(A) No owner shall allow a person to occupy, offer to rent, or occupy as owner-occupant any residence 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).

(D) An owner may only remove owner-installed optional equipment when a unit has been vacated or prior to a new tenancy.

(E) Every occupant of a residence, upon reasonable notice and if possible by appointment, shall give the owner thereof, or the owner's representative, access to the residence for the purpose of effecting compliance with the provisions of 105 CMR 410.000. Access shall be at a reasonable time and shall include, but not be limited to, any cooperation required for repairs, alterations, pest elimination, and service of utilities. An owner shall provide at least 48 hours' notice to the occupant, except for emergency repairs for which no notice is required.

(F) Every occupant of a residence shall maintain the residence in a sanitary condition.

#### 410.010: Definitions

Affected Person(s) means the occupants if the person responsible for correcting the violation is the owner, and the owner if the person responsible for correcting the violation is the occupant of any residence on which an order to correct has been served.

Alternative Housing means a single family, owner-occupied residence, whether mobile or permanent, that is approved by the board of health pursuant to 105 CMR 410.710 to alter standards set forth in 105 CMR 410.000 for heating, plumbing, electrical, and sanitary facilities and minimum square footage requirements in order to reduce energy use or environmental impact.

Asbestos means:

- (1) Chrysotile, amosite, crocidolite; or
- (2) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

Asbestos-Containing Material (ACM) means any material containing 1% or more asbestos as determined by a laboratory using protocols set forth in the "Method for the Determination of Asbestos in Bulk Building Materials" found in EPA report EPA/600/R-93/116, or another method as directed by the Massachusetts Department of Environmental Protection. The term includes, but is not limited to, sprayed-on and troweled-on materials applied to ceilings, walls, and other surfaces; insulation on pipes, boilers, tanks, ducts, and other equipment, structural and non-structural members; tiles; asphalt roofing or siding materials; or asbestos-containing paper.

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

Board of Health means a municipal board of health, a municipal health department, other municipal entity when acting under local authority to enforce the State Sanitary Code, 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.

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 are not 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 may include, but are not limited to, mattresses, 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.

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.

Compliance with Accepted Standards means meeting all the requirements of 105 CMR 410.000 and correcting any violation of 105 CMR 410.000 in a work person-like manner and 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 elimination of pests, 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 means a condition meeting the standard set forth in 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 410.630 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, safety, 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.

Department means the Massachusetts Department of Public Health.

Dwelling Unit means the room or group of rooms within a residence used or intended for use by an individual, family, or household for living, sleeping, cooking, and eating, and other areas of which the occupant has exclusive use.

Entry Door of a Residence means any door of a residence which provides access to the common areas of the residence from the exterior of the residence except that when there are two doors which enclose an entryway between the common areas of the residence and the exterior of the residence 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 residence or access to the outside of the residence.

Excess Moisture means the unwanted presence of moisture or water on permeable surfaces in a residence that occurs on a periodic, chronic or acute basis and presents a risk of mold growth.

Exterior Openable Window means any window designed and installed to open to the outside of the residence.

Exterminate means to eliminate pests.

Fuel means the electricity or any combustible fuel such as oil, gas, coal, wood or biofuel pellets, 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 system of building components, including but not limited to, newel posts, upper and lower rails, and balusters, or solid construction.

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.

Heating System means:

- (1) A central furnace, boiler or device that heats air or water which is distributed through vents, ducts, pipes, or radiators;
- (2) A series of hard-wired electrical heaters or heating/air conditioning units permanently installed and secured to a structural element; or
- (3) Gas-fired kitchen stoves with factory installed heaters.

Homeless Shelter means a residence operated by a service agency which provides temporary, overnight sleeping accommodations and offers transitional assistance to homeless individuals and families in need of permanent housing.

Humus/Composting Toilet means a self-contained system, approved in accordance with 310 CMR 15.000: *State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion, of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, consisting of a composter with a separate toilet fixture from which no liquid or solid waste materials are discharged to the surface or subsurface environment and from which a humus/compost-like end product is produced.

Incinerating Toilet means a self-contained waterless system that does not require connection to a sewer system or in ground septic system, except to dispose of graywater, approved in accordance with 248 CMR 10: *Uniform State Plumbing Code*.

Manufactured Home means a structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

Manufactured Housing Community 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 providing a route of exit from the interior of a dwelling unit or rooming unit to a public way.

Mechanical Ventilation means a system designed to remove air from a room or space to the outdoors by using a fan or other mechanical means and to provide active or passive make up air.

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 any person living or sleeping in a residence.

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 legal title to any residence, or parcel of land, vacant or otherwise, including a manufactured housing community;
- (2) Has care, charge or control of any residence, or parcel of land, vacant or otherwise, including a manufactured housing community, in any capacity including, but not limited to, personal representative, agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title;
- (3) Is a mortgagee in possession of any such property;
- (4) Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (5) Is an officer or trustee of the association of unit owners of a condominium.

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 any of the following that may cause disease, injury or other health risk to humans or pets, or act as a disease vector, or cause damage to property:

- (1) Insects, including but not limited to, mosquitoes, bees, flies, ants, termites, cockroaches and bed bugs;
- (2) Arachnids, including but not limited to, spiders, daddy long legs, scorpions, and ticks;
- (3) Rodents; or
- (4) Other unwanted animal life.

Pest Infestation means the recurrent presence of pests.

Potable Water means water from any source that has been approved by the Department of Environmental Protection or board of health.

Provide means to supply and pay for.

Recyclable means any type of refuse designated by the local community through rules, regulations, or policies 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 building or structure used for, or intended for, human habitation and every other structure or condition located within the physical boundaries of the same lot. Residences include, but are not limited to, single or multi-unit structures, rooming houses, manufactured homes, homeless shelters, temporary housing, alternative housing, and condominiums.

Rooming House means every residence or part thereof which contains one or more rooming units in which space is rented for compensation by the owner or operator to four or more persons not within the second degree of kindred to the person compensated, rental of which is based on a contractual agreement between owner and an individual or household for rent of a rooming unit and use of shared facilities. Rooming houses include, but are not limited to, boarding houses, hotels, motels, inns, lodging houses, bed and breakfast operations, dormitories, fraternity and sorority houses, hostels, and other similar residences.

Rooming Unit means the room or group of rooms used for sleeping and living in a rooming house that are rented to an individual or household.

Rubbish means waste materials, including but not limited to, such material as paper, rags, cartons, boxes, wood, rubber, leather, 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 dwelling unit or rooming unit 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 Emergency 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.

Temporary Housing means any structure used for human habitation which is:

- (1) A mobile structure, including a tent, that is attached to the ground, to another structure, or to any utility system, on the same premises for less than 30 calendar days; or
- (2) A mobile or permanent 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 for intermittent periods of time not to exceed 90 consecutive days.

Violation means any condition in a residence, 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 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 measures water supplied to a residence to enable the owner to charge the occupant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area.

Wood or Pellet Stove means a stove that burns wood, compressed wood pellets, or biomass pellets and is designed to radiate heat from the stove wall to provide heat to a room. A wood or pellet stove does not include the necessary vents, ducts, pipes, or radiators to distribute heat to the entire dwelling unit.

Work Person-Like Manner means the way work is completed in accordance with accepted trade practices and regulatory requirements.

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) For dwelling units and shared kitchen facilities, the owner shall provide and maintain, in compliance with the manufacturer's intended use, the following facilities suitable to store, prepare and serve foods in a sanitary manner:

- (1) Cabinets, pantry or shelving;
- (2) A countertop;
- (3) A kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils;
- (4) The space and proper facilities for the installation of a refrigerator with freezer, cooktop and oven;
- (5) A conventional cooktop and oven unit with at least 1.7 cubic feet of oven area except and to the extent the occupant is required to provide and maintain these items under a written rental agreement; and
- (6) A refrigerator with freezer containing a combined storage area of at least 11.0 cubic feet except and to the extent the occupant is required to provide and maintain these items under a written rental agreement.

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

(C) The wall above the countertop containing a sink in a kitchen or pantry shall have a smooth, nonabsorbent, easily cleanable surface, and form a watertight seal with the countertop. Gypsum board is an allowable substrate above the countertop provided it is coated with paint, or other appropriate material, applied in accordance with the manufacturer's recommendations. The surface shall extend at least 24 inches above the countertop where

practical.

(D) The floor surfaces of every kitchen and pantry shall be smooth, noncorrosive, and nonabsorbent. Wood flooring 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.

(E) If the owner of a residence provides use of shared facilities for cooking, the owner shall ensure these facilities are:

- (1) Separate from any rooming unit;
- (2) Accessible without passing through any part of another dwelling unit or rooming unit; and
- (3) Maintained in a clean and sanitary condition and all food contact surfaces sanitized at least once every 24 hours and more often if necessary.

#### 410.110: Bathroom Facilities: Sinks, Toilets, Tubs, and Showers

(A) The owner shall provide a bathroom which:

- (1) Is not used for living, sleeping, cooking or eating purposes;
- (2) Is accessible from within the building without passing through any part of another dwelling unit or rooming unit; and
- (3) Has a door capable of being closed. Bathrooms in homeless shelters shall not require a door capable of being closed provided the entry to the bathroom is designed to block the view from an adjacent room or common area.

(B) Each bathroom shall include:

- (1) A toilet with a toilet seat. When more than one toilet is required by 105 CMR 410.110(E) each toilet shall be separated by walls or partitions and a door and each urinal shall be separated by walls or partitions to afford privacy;
- (2) A sink in the same room as the toilet provided that:
  - (a) If the sink 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.
  - (b) The kitchen sink may not be substituted for the sink required by 105 CMR 410.110(B)(2); and
- (3) A bathtub or shower.

(C) Facilities required by 105 CMR 410.110 shall have smooth and impervious surfaces and be free from defects which make them difficult to keep clean or create a risk of injury.

(D) For any residence in which the bathroom facilities required by 105 CMR 410.110 are shared facilities the owner shall ensure the facilities are maintained in a clean and sanitary condition and the fixtures are sanitized at least once every 24 hours and more often if necessary.

(E) For every eight occupants of each rooming house in which bathroom facilities are not provided in each room, with the exception of homeless shelters, the owner shall provide:

- (1) One toilet with a toilet seat and sink. One urinal may be substituted for each toilet for up to ½ of the total number of toilets required in any bathroom used exclusively by males; and
- (2) A bathtub or a shower.

#### 410.120: Approved Toilets

The following are approved for residential use:

(A) Flush toilets.

(B) Humus/Composting toilets provided they meet the requirements of 310 CMR 15.000: *State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion, of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage.*

(C) Incinerating toilets provided they meet the requirements of 248 CMR 10.00: *Uniform State Plumbing Code.*

(D) A privy, as defined in 310 CMR 15.000: *State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion, of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, or chemical toilet, provided it is approved in writing by the board of health. The board of health shall not approve a privy or chemical toilet that:

- (1) Endangers the health of any person; or
- (2) Causes objectionable odors or other undue annoyance.

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.

#### 410.130: Potable Water/Sanitary Drainage

- (A) The owner shall provide a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of every occupant.
- (B) For each residence the owner shall provide and maintain 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: *State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion, of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*; or
  - (3) A lawful connection to a privately owned wastewater treatment facility permitted in accordance with 314 CMR 3.00: *Surface Water Discharge Permit Program* or 314 CMR 5.00: *Ground Water Discharge Permit Program*.
- (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 the water 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, ultra-low-flush toilets and water conservation devices on all showers and faucets in the dwelling unit;
  - (3) Having a written rental agreement on the commencement of a new tenancy 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 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 rental agreement that describes the details of the water submetering and water billing arrangements.
- (D) If an owner is submetering water under M.G.L. c. 186, § 22 the 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.
- (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.

#### 410.140: Plumbing Connections

- (A) Every required kitchen sink, bathroom sink, and shower or bathtub shall be connected to the hot and cold water lines of the water distribution system and to a sanitary drainage system in compliance with accepted standards as defined in 105 CMR 410.010.
- (B) Every flush toilet shall be connected to the water distribution system and to a sanitary drainage system in compliance with accepted standards as defined in 105 CMR 410.010.

#### 410.150: Hot Water

The owner shall provide and maintain in good operating condition 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<sup>0</sup>F (43<sup>0</sup>C) and not greater than 130<sup>0</sup>F (54<sup>0</sup>C) for fixtures other than

a bathtub or shower.

(C) In a temperature range of not less than 110<sup>0</sup> F (43<sup>0</sup>C) and not greater than 120<sup>0</sup>F (48<sup>0</sup>C) for a bathtub or shower.

(D) 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.

#### 410.160: Heating Systems

(A) The owner shall provide and maintain in good operating condition a 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 heating system:

- (1) Fireplace;
- (2) Wood or pellet stove; or
- (3) Portable electric space heater.

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

- (1) Any portable space heater that has a barometric fed fuel control and a fuel supply tank located less than 42 inches from the center of the burner, included but not limited to, parlor heaters, cabinet heaters, or room heaters;
- (2) Heating appliances adapted for burning propane, kerosene, range oil or number one fuel oil;
- (3) Portable wick type space heaters; and
- (4) Unvented propane or natural gas-fired space heaters not approved in accordance with 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*.

#### 410.170: Venting

(A) All devices that combust fuel including, but not limited to, furnaces, boilers, wood stoves, pellet stoves, water heaters and space heaters permitted under 410.160, shall be properly vented to the outdoors in compliance with accepted standards as defined in 105 CMR 410.010 except unvented propane or natural gas-fired space heaters approved in accordance with 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*.

(B) All electric and gas clothes drying equipment shall be vented to the outdoors except electric dryers listed and labeled as ventless by the manufacturer.

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

#### 410.180: Temperature Requirements

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

- (1) At least 68<sup>0</sup>F (20<sup>0</sup>C) between 7:00 A.M. and 11:00 P.M.; and
- (2) At least 64<sup>0</sup>F (17<sup>0</sup>C) between 11:01 P.M. and 6:59 A.M.

(B) At no time shall the heating system, required by 105 CMR 410.160(A), used during the heating season cause the temperature to exceed 78<sup>0</sup>F (25<sup>0</sup>C) in any room.

(C) The temperature shall be measured at a height of five feet above floor level on a wall any point more than five feet from the exterior wall.

(D) A board of health may alter the heating season, as defined in 105 CMR 410.180(A), by ending it no earlier than May 15<sup>th</sup> or delaying the start date no later than September 30<sup>th</sup> in a particular year for all residences within its jurisdiction, by posting notice of such alteration on the municipality's website. The board of health's decision to alter the heating season shall not be required to conform to the provisions for the granting of a variance required by 105 CMR 410.700.

410.200: Provision and Metering of Electricity or Gas

- (A) The owner shall provide the electricity or gas used in each dwelling unit unless:
- (1) Such electricity or gas 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 410.300(F); and
  - (2) A written rental agreement provides for payment by the occupant.
- (B) If the owner is required by 105 CMR 410.000 or by a written rental agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit or other area under the exclusive use of an occupant of that residence, then such electricity or gas may be metered through meters which serve more than one dwelling unit.
- (C) Owners shall allow occupants access to their dwelling unit's electrical distribution panel at all times, except when the owner provides electricity and provides access to the electrical distribution panel by continuous building management supervision, pursuant to 527 CMR 12.00: *Massachusetts Electrical Code*.
- (D) If it is determined upon inspection that electricity or gas may not meet the requirements of 105 CMR 410.200(A), the board of health shall immediately notify the local plumbing or electrical inspector of any possible violations observed.

410.210: Provision of Oil

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

- (A) Oil is provided through a separate oil tank which serves only that dwelling unit; and
- (B) The occupant is required to provide the oil under a written rental agreement.

410.220: Natural and Mechanical Ventilation

- (A) Habitable rooms, and rooms with a toilet, bathtub or shower shall have:
- (1) Windows, skylights, or doors through the exterior walls or roofs that can be easily opened with a combined opening of at least 4% of the floor area of that habitable room or room containing a toilet, bathtub or shower; or
  - (2) Mechanical ventilation capable of exhausting air to the outdoors.
- (B) When the board of health has determined that natural ventilation is insufficient to remove excess moisture, mechanical ventilation is required.
- (C) Mechanical ventilation shall be installed and maintained in accordance with 780 CMR: *Massachusetts State Building Code*.
- (D) Each mechanical ventilation system shall be equipped with a readily accessible means for shut-off, unless such system is designed to run constantly or is barometrically controlled.

410.230: Owner's Laundering Responsibilities:

If an owner of a residence, including a rooming house and homeless shelter, provides bed linens, towels, pillows or mattresses to occupants:

- (A) Bed linens and towels shall be laundered between use by different individuals. If continuously used by one individual, linens shall be cleaned at least weekly. Shared towels are prohibited.
- (B) Blankets shall be replaced when worn. Each blanket shall be laundered between use by different individuals. If used continuously by one individual, each blanket shall be cleaned at least every three months, and more often if needed.
- (C) Pillow covers and mattress covers shall be cleaned when soiled and at least every three months.

- (D) Mattresses shall be clean and in good condition. Each mattress shall be cleaned or replaced when soiled or when not in good condition.

410.235: Owner's Installation, Maintenance and Repair Responsibilities

The owner shall ensure proper installation, in compliance with accepted standards, and shall maintain in operable condition free from leaks, obstructions or other defects, all facilities and equipment which the owner is required to provide, and all owner installed equipment:

- (A) The facilities and equipment the owner is required to provide include, but are not limited to:
- (1) Sinks;
  - (2) Bathtubs and/or Showers;
  - (3) Toilets;
  - (4) Waterheating facilities;
  - (5) Gas pipes;
  - (6) Heating system;
  - (7) Water pipes;
  - (8) Conventional cooktop and oven, as required by 105 CMR 410.100 except and to the extent the occupant is required to provide these items under a written rental agreement;
  - (9) Catch basins, drains, vents and other similar supplied fixtures;
  - (10) Connections to water, sewer and gas lines;
  - (11) Subsurface sewage disposal system, if any;
  - (12) Electrical light fixtures, switches, outlets and wiring;
  - (13) Smoke detectors and carbon monoxide alarms as required by 780 CMR: *Massachusetts State Building Code* and 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*;
  - (14) All heating and ventilating equipment; and
  - (15) Refrigerator with freezer, as required by 105 CMR 410.100, except and to the extent the occupant is required to provide these items under a written rental agreement.
- (B) All owner-installed optional equipment, including, but not limited to:
- (1) Dishwashers;
  - (2) Clothes washing machines and dryers;
  - (3) Garbage grinders;
  - (4) Sub-metering devices designed to measure the usage of water;
  - (5) Air conditioners;
  - (6) Microwave ovens; and
  - (7) Range ventilation hoods.
- (C) Following any maintenance or repair, the owner shall ensure that:
- (1) All debris has been properly disposed;
  - (2) The area is clean; and
  - (3) All surfaces exposed to moisture have been dried.

410.240: Occupant's Installation and Maintenance Responsibilities

- (A) The occupant shall ensure proper installation in compliance with accepted standards and shall maintain free from leaks, obstructions and other defects, all occupant owned and installed equipment including, but not limited to:
- (1) Dishwashers;
  - (2) Clothes washing machines and dryers;
  - (3) Garbage grinders;
  - (4) Air conditioners;
  - (5) Microwave ovens;
  - (6) Range ventilation hoods;
  - (7) Electrical light fixtures;
  - (8) Conventional cooktop and oven, if required to provide under written rental agreement; and
  - (9) Refrigerator with freezer, if required to provide under written rental agreement.
- (B) Every occupant of a dwelling or rooming unit shall keep all facilities and appliances for which they have exclusive access in a sanitary condition and exercise reasonable care in their proper use and operation. Facilities

and appliances include, but are not limited to:

- (1) Sinks;
- (2) Bathtubs and/or showers;
- (3) Toilets;
- (4) Conventional cooktop and oven;
- (5) Smoke detectors and carbon monoxide alarms;
- (6) Refrigerator with freezer;
- (7) Dishwashers;
- (8) Microwave Ovens;
- (9) Range ventilation hoods;
- (10) Garbage grinders; and
- (11) Air conditioners.

#### 410.250: Asbestos-Containing Material

Every owner shall maintain all asbestos-containing 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-containing material. Every owner shall correct any violation of 105 CMR 410.250 in compliance with accepted standards as defined in 105 CMR 410.010.

#### 410.260: Means of Egress

- (A) 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: *Massachusetts State Building Code*.
- (B) No person shall cause obstruction of any means of egress or passageway.
- (C) In a single unit residence, the occupant shall maintain free from obstruction all means of egress.
- (D) In a multi-unit residence:
  - (1) The owner shall maintain free from obstruction every means of egress in common areas used or intended for use by occupants of more than one dwelling unit, except as provided for in 105 CMR 410.570(C)(2)
  - (2) The owner shall ensure every means of egress is maintained at all times in a safe, operable condition. For all exterior stairways, fire escapes, egress balconies and bridges, the owner shall ensure:
    - (a) They are maintained free of snow and ice;
    - (b) All corrodible structural parts thereof are painted or otherwise protected against rust and corrosion;
    - (c) All wood structural members are treated to prevent rotting and decay; and
    - (d) All joints where these structural elements tie directly into the building's structural system are sealed to prevent water from damaging or corroding the structural elements.
  - (3) The occupant shall maintain free from obstruction all means of egress within their dwelling unit or rooming unit.
  - (4) The occupant is responsible for maintaining free of snow and ice, the means of egress under their exclusive use and control, provided there is a written rental agreement that clearly identifies the occupant's responsibility.

#### 410.270: Locks

- (A) The owner shall provide, install and maintain locks in the following manner and shall comply with the requirements of 780 CMR: *Massachusetts State Building Code* and 521 CMR: *Architectural Access Board Regulations*, and M.G.L. c. 143 § 3R so that:
  - (1) Every residence shall be capable of being secured against unlawful entry.
  - (2) Every entry door of a dwelling unit shall be capable of being secured against unlawful entry.
  - (3) The main entry door of a 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. If two doors enclose an entryway between the common areas of the residence and the exterior of the residence, only one door must meet this requirement. This requirement shall not apply to:
    - (a) Lodging houses, as defined in M.G.L. c. 140, § 22;
    - (b) Dormitories of charitable, educational or philanthropic institutions;

- (c) Housing Authorities, as defined in M.G.L. c. 121B; or
- (d) Homeless shelters.

(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, keypad, or other specialized-knowledge in order to avoid entrapment in the building.

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

(B) The owner of a residence, except in a homeless shelter, shall provide a key to the occupant for:

- (1) The main entry door to the residence;
- (2) The occupant's dwelling unit or rooming unit; and
- (3) Areas common to their unit.

#### 410.300: Electricity Supply and Illumination

The owner of a residence shall provide the following for electrical supply and illumination:

(A) Habitable rooms other than a kitchen:

- (1) Two separate wall-type receptacle outlets in accessible locations, on different walls, and at least 10 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 accessible locations in addition to the refrigerator with freezer and conventional cooktop and oven outlets.

(C) 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 or sensors, and light fixtures in good working order if light from an adjacent area does not provide sufficient illumination for the safe and reasonable use of the following spaces:

- (a) Laundry;
- (b) Pantry;
- (c) Foyer;
- (d) Hallway;
- (e) Stairway;
- (f) Closet;
- (g) Storage place; and
- (h) Cellar;

(2) Electric light switches or sensors, and light fixtures in good working order shall be installed in the following spaces:

- (a) Porch;
- (b) Deck;
- (c) Passageway;
- (d) Exterior stairway; and
- (e) Fire escape.

(3) In residences containing more than one dwelling unit or rooming unit, light fixtures in good working order that are motion-sensor operated, on timers, or always on to ensure sufficient illumination for the safe and reasonable use of every shared:

- (a) Foyer;
- (b) Hallway;
- (c) Stairway;
- (d) Porch;
- (e) Deck;
- (f) Passageway;
- (g) Exterior stairway; and
- (h) Fire escape.

(E) Lightbulbs in all required light fixtures in common areas.

(F) Payment of electrical service in residences containing two or three 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:

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

(2) Any requirement for an occupant to pay for lights in common areas shall begin only upon commencement of a new tenancy.

#### 410.310: Auxiliary Emergency Lighting Systems and Exit Signs

The owner of every residence of 10 or more units shall provide and maintain in good working order the auxiliary emergency lighting systems and exit signs required by M.G.L. c. 143, § 21D.

#### 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 be of sufficient amperage to meet the reasonable needs of the occupants.

(C) Exemption for residences more than 600 feet from electrical service:

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.

#### 410.330: 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 residence that is required to be equipped with smoke detectors and carbon monoxide alarms in accordance with M.G.L. c. 148, §§ 26 C-F<sup>1/2</sup> and 780 CMR: *Massachusetts State Building Code*, 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*, and 248 CMR 10.00: *Uniform State Plumbing Code* and in compliance with accepted standards.

(B) The board of health shall immediately notify the chief of the local fire department of any violation of 105 CMR 410.330 which is observed during an inspection of any residence.

(C) If any 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 410.330 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: Owner/Manager Contact Information and Notice of Occupants' Legal Rights and Responsibilities

(A) Every owner of a residence who does not reside therein shall post signage, which contains the owner's name, street address and telephone number, and, if applicable:

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

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

(3) The name, street address and telephone number of a property manager who does not reside in the building.

(B) The telephone number of the owner or property manager shall be regularly monitored, but no less than once every 12 hours, unless the owner has provided occupants with an alternative contact person and phone number for periods of temporary absence.

(C) Every owner of a residence shall provide to each occupant or post in a location specified in 105 CMR 410.400(D) a copy of the Notice of Occupants' Legal Rights and Responsibilities issued by the Department;

(D) Postings required by 105 CMR 410.400 shall be on durable material not less than 20 square inches in size and placed at the residence adjacent to the mailboxes or within the interior of the residence in a location visible to the occupants.

#### 410.410: 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 excess moisture.

(B) No room shall be considered habitable if more than  $\frac{3}{4}$  of its total 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 dwelling unit 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 shall contain a minimum of 100 square feet of habitable floor 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 used for sleeping by one occupant shall contain at least 70 square feet of floor space.

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

(5) Homeless shelters are exempt from 105 CMR 410.420(D)(1)-(4) but must provide an alternating sleeping configuration to allow for six feet of separation head to head between bed occupants, wherever feasible.

#### 410.430: Natural Light and Obstructions

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

(1) Habitable rooms other than a kitchen.

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

(B) 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, that portion so obstructed shall not be included as contributing to the required minimum total glass area.

#### 410.440: Temporary Housing

(A) No person may allow temporary housing to be occupied without the written permission of the board of health.

(B) All temporary housing shall be subject to the requirements of 105 CMR 410.000, except as the board of health may otherwise provide in its written permission.

#### 410.460: Homeless Shelters

All homeless shelters shall comply with 105 CMR 410.000 with the following exceptions:

(A) Homeless shelters are not required to provide a bathroom door capable of being closed to afford privacy as required by 105 CMR 410.110(A)(3), provided entry into the room is designed to block the view from an adjacent

room or common area.

(B) Homeless shelters are not required to comply with the toilet and bathroom ratios established in 105 CMR 410.110(E).

(C) Homeless shelters are not required to have a lock with a striker mechanism or provide keys to all occupants, as required by 105 CMR 410.270(A)(3) and (B).

(D) Homeless shelters are exempt from the minimum square footage requirements established in 105 CMR 410.420(D), provided the space should be configured to provide at least six feet head-to-head separation between bed occupants, wherever feasible.

(E) Homeless shelters are not required to comply with the installation of screens on doorways required by 105 CMR 410.540(C).

(F) Homeless shelters are not required to comply with the inspection requirement in 105 CMR 410.550(F), provided they establish pest management policies that include periodic inspection for pest infestation.

#### 410.470: Lead-based Paint Hazards 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 Building and Structural Elements

(A) Every owner of a residence shall maintain all buildings and structural elements in compliance with accepted standards so they are in good repair and in every way fit for the intended use, including:

- (1) Protected from wind, rain and snow, and are watertight, free from excess moisture or the appearance of mold, and pest resistant; and
- (2) Free from holes, cracks, loose plaster, or defects that render the area difficult to keep clean, create an injury risk, or provide an entry or harborage for pests.

(B) In the event of leaks and flooding, the owner shall ensure all surfaces have been dried within 48 hours from the time they are notified or the end of the event, whichever is sooner.

#### 410.510: Occupant's Responsibility Regarding Building and Structural Elements

Every occupant of a residence shall exercise reasonable care in the use of all building and structural elements of the residence.

#### 410.520: Protective Railings and Walls

(A) Every owner of a residence shall provide:

- (1) A safe handrail on at least one side of a stairway as required by 780 CMR: *Massachusetts State Building Code*.
- (2) A wall or guard no less than 30 inches in height on the open side of all stairways replaced or constructed before August 28, 1997. Any such guard replaced or constructed after August 28, 1997 shall be not less than 34 inches in height.
- (3) A wall or guard no less than 36 inches in height, enclosing every porch, balcony, mezzanine, landing, roof deck or similar place, which is 30 inches or more above the ground. Any such wall or guardrail along open sided floor areas, mezzanines and landings in Use Group R-3, replaced or constructed after August 28, 1997, shall not be less than 42 inches in height.

(B) All guards and balusters must be placed at intervals of no more than four inches, or six inches if constructed before August 28, 1997. Ornamental patterns between the guardrail or handrail and floor or stair may not allow for a sphere four inches in diameter to pass through the opening or six inches in diameter if constructed before August 28, 1997.

(C) Balusters or ornamental work constructed or replaced after August 28, 1997 may not be constructed so as to

create a horizontal climbing risk (a “ladder effect”) notwithstanding any other regulatory provision to the contrary.

#### 410.530: Weathertight Elements

- (A) An exterior openable 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 minimize the infiltration of air or moisture.
- (B) A door leading from a residence or dwelling unit to the exterior shall be considered to be weathertight only if:
- (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 of the door; or
    - (b) A storm door is affixed to the prime door frame in such a way as to minimize the infiltration of air or moisture.
- (C) Building and structural elements shall be considered weather-tight when all cracks and spaces not part of heating, ventilating, or air conditioning systems are sealed to prevent infiltration of exterior air or moisture.

#### 410.540: Installation of Screens

- (A) The owner shall provide and install screens for exterior openable windows so that:
- (1) They are in place during the period from April 1<sup>st</sup> to October 31<sup>st</sup> 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 410.540(A).
- (C) The owner shall provide and install screen doors for all doorways opening directly to the outside from any dwelling unit or rooming unit where the screen doors 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 1<sup>st</sup> to October 31<sup>st</sup> in each year;
  - (2) They are 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.
- (D) Homeless shelters are not required to comply with the installation of screen doors established in 105 CMR 410.540(C).

#### 410.550 Elimination of Pests

Owners and occupants are responsible for the control and elimination of pests as follows:

- (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 they have not maintained structural or other building elements necessary to keep pests from entering.
- (B) The owner of a residence containing two or more dwelling units, including a homeless shelter or a rooming

house, shall maintain it and its premises free from infestation and shall be responsible for pest elimination.

(C) Extermination shall be accomplished by:

- (1) Eliminating the harborage places of insects and rodents;
- (2) Removing or making inaccessible materials that may serve as food or breeding ground for pests;
- (3) Poisoning, spraying, fumigating, trapping pests; or
- (4) Any other recognized and legal pest elimination method.

(D) All use of pesticides within the interior of a residence shall be in accordance with applicable laws and regulations pursuant to the Massachusetts Department of Agricultural Resources Pesticide Program, including those appearing at 333 CMR 13.00 *Standards for Application*.

- (1) Pesticide applicators or their employers must give at least 48 hours pre-notification to occupants of all residential units prior to any commercial application of pesticides for the control of indoor household or structural indoor pests.
- (2) Pre-notification shall be made in writing and contain the following information:
  - (a) Name and phone number of the company making the application;
  - (b) Proposed date of application;
  - (c) Locations to be treated; and
  - (d) Names, EPA Registration Numbers, and active ingredients for the pesticide products that may be used.
- (3) Owners and occupants shall:
  - (a) Provide access to common areas, dwelling units, and rooming units, upon receipt of notice required by 105 CMR 410.550(D)(1) and (2); and
  - (b) Adhere to all instructions provided by the pesticide applicator in preparing the common areas and units prior to the application of pesticides.

(E) The occupant of a residence shall maintain their dwelling unit or rooming unit in a sanitary manner so as to prevent the attraction of pests.

(F) The owner of a residence, except for a homeless shelter, shall conduct an inspection of each unit prior to a new occupancy to identify the presence of pests. Homeless shelters shall establish pest management policies that include periodic inspection for pest infestation as outlined in 105 CMR 410.550(G).

(G) Owners shall make the documented inspection results and actions taken available upon request by the board of health. Documentation shall include:

- (1) Monitoring the presence of pests;
- (2) Eliminating entry points for pests;
- (3) Documenting results of the inspection; and
- (4) Documenting actions taken as a result of the inspection to include:
  - (a) Repairs made;
  - (b) Location of pesticides applied and by whom; and
  - (c) Date and results of a follow-up inspection.

#### 410.560: Refuse

(A) Except as provided in 105 CMR 410.560(C) and 105 CMR 410.560(E)(4), the owner of any residence that contains two or more dwelling units, the owner of any rooming house, homeless shelter, manufactured housing community, and the occupant of any residence containing one dwelling unit shall be responsible for and pay for the final collection and ultimate disposal of refuse.

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

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

(D) Storage:

- (1) Garbage or mixed garbage and rubbish shall be stored in watertight receptacles with tight-fitting covers. Receptacles and covers shall be durable, pest-resistant and deter access by wildlife.
- (2) Plastic bags or biodegradable liners shall be used as a liner to store garbage or mixed garbage and rubbish in the required receptacles.

(3) If a dumpster or cart-based automated or semi-automated system is used for storage and collection of garbage or mixed garbage and rubbish, no liner shall be required.

(4) Recyclables and garbage or mixed garbage and rubbish shall be stored in a manner that does not obstruct an egress, cause disease or health risk to humans or pets, or cause damage to property or the environment and is in accordance with the municipality's requirements.

(E) Collection:

(1) The owner of any residence shall provide a sufficient number of receptacles required by 105 CMR 410.560(D)(1) for the storage of refuse and recyclables before final collection or ultimate disposal.

(2) 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 1.00: *Massachusetts Comprehensive Fire Safety Code*. Dumpsters shall be covered, protected from leakage, and placed on an impervious material.

(3) The occupants of each residence shall be responsible for the proper placement of their refuse in the receptacles provided by the owner, in any dumpster or suitable container if provided by the owner, or according to the municipality's requirements.

(4) 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.

(5) Refuse shall be put out for collection in accordance with local municipal requirements, but no earlier than the day before collection. Garbage put out the day before collection must be placed in containers meeting the requirements of 105 CMR 410.560(D)(1).

(6) 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 regular municipal collection system;

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

(3) 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;

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

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

410.570: Maintenance of Areas in a Sanitary and Safe Condition

(A) Land:

The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean, safe, 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) Residences:

The occupants of any residence shall be responsible for maintaining, in a sanitary condition and free of refuse or other filth or causes of sickness, that part of the residence which they exclusively occupy or control.

(C) Common Areas:

(1) In any residence, the owner shall be responsible for maintaining in a clean, sanitary, and safe condition free of refuse or other filth or causes of sickness, that part of the residence which is used in common by all the occupants of a residence 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 dwelling unit in a 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 residence abutting a private passageway or right-of-way owned or used in common with other residence(s) which the owner or the occupants have the right to use, or are in fact using, shall be responsible for maintaining the portion of the property they are using in a sanitary condition free of refuse, other filth or causes of sickness.

410.600: Inspection Upon Request

(A) The board of health shall inspect a dwelling unit or rooming unit and common areas upon receipt of a written, oral, telephonic, or electronic request for inspection from an occupant of that dwelling or rooming 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 is anonymous or requests the board of health keep their name confidential.

(B) The board of health shall investigate complaints or requests for inspection concerning a residence received from a person who is not an occupant of that residence 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, owners, managers and/or maintenance staff 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 as 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 if provided, 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);
- (5) Date the inspection is conducted; and
- (6) Any decision not to conduct an inspection requested by a person who is not an occupant.

410.610: Inspection Form

Each board of health shall adopt and use an inspection report form available from the Department, or any other inspection report form provided it includes, at a minimum, the following:

(A) Specifically labeled spaces for:

- (1) The name of the inspector;
- (2) The date and time of the inspection or investigation;
- (3) The location of the residence inspected;
- (4) 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) A description of the conditions constituting violations;
- (6) 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) A determination by the official inspecting the premises whether the violations noted are listed in 105 CMR 410.630(A), and whether the effect of any violation(s) or conditions not listed in 105 CMR 410.630(A) may endanger or materially impair the health, safety, or well-being of any person(s) occupying the premises; and
- (8) The signature of the inspector preceded by the following statement: "This inspection report is signed and certified under the pains and penalties of perjury."; and

(B) A copy of *Occupants' Legal Rights and Responsibilities* issued by the Department.

410.620: Conduct of Inspections

(A) At the time of the inspection, the inspector shall record violations of 105 CMR 410.000.

(1) If assistance of a specialized inspector, 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 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 410.640 through 410.680. The board of health shall use its best efforts to schedule the separate inspection promptly, at a mutually satisfactory time for all individuals involved.

(3) A copy of 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)* 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) At the beginning of an inspection, an occupant shall be informed of their right to a comprehensive 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 dwelling or rooming unit in which occupants have access to that area.

(3) From September 15<sup>th</sup> to May 31<sup>st</sup>, 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.

(4) Where an inspection reveals a condition or conditions which present such an imminent threat to the life, health or safety of the occupants that immediate steps must be taken by the inspector to order compliance, an inspection required by 105 CMR 410.620(B) may be delayed until after such steps are taken, but such inspection shall be completed in a timely manner.

(C) A verbal 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.

(D) Pest Inspections:

The inspector 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 dwelling or rooming unit;

(b) Common areas adjacent to the dwelling or rooming unit;

(c) All units adjacent to the dwelling or rooming unit where the presence of bed bugs have been confirmed; and

(d) Exterior perimeter of the residence.

(2) Rodents and Other Unwanted Animal Life:

(a) Interior of dwelling or rooming unit;

(b) Common areas adjacent to the dwelling or rooming unit;

(c) Accessible attics, basements and crawl spaces; and

(d) Exterior perimeter of the residence.

(E) Excess Moisture Inspections:

(1) An inspector who discovers the existence of excess moisture or appearance of mold during an inspection shall investigate the potential sources. Potential sources of excess moisture or causes of mold which should be investigated include but are not limited to:

(a) Plumbing leaks;

(b) Structural defects which allow moisture to enter;

(c) Improperly maintained mechanical or natural ventilation; and

(d) Improperly maintained heating, air conditioning or ventilation ductwork.

(2) Environmental testing shall not be required to determine the existence of excess moisture or appearance of mold. If such testing is conducted, those results shall not be used as the sole determinant of the existence of excess moisture or appearance of mold.

#### 410.630: Conditions Deemed to Endanger or Materially Impair Health or Safety

- (A) The following conditions, when found to exist in a residence, shall always be deemed conditions which may endanger or materially impair the health, or safety and well-being of a person or persons occupying the premises:
- (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, required by 105 CMR 410.130, 410.140, and 410.150, for a period of 24 hours or longer.
  - (2) Failure to provide heat as required by 105 CMR 410.180 or improper venting or use of a space heater or water heater prohibited by 105 CMR 410.160(C) and 410.170
  - (3) Shutoff and/or failure to restore electricity, gas, or water.
  - (4) Failure to provide the electrical facilities required by 105 CMR 410.300(A) through (E).
  - (5) Failure to provide a safe supply of water required by 105 CMR 410.130(A).
  - (6) Failure to provide a toilet, sink, shower or bathtub and maintain a sewage disposal system in operable condition required by 105 CMR 410.110(A) and (B), and 410.130(B).
  - (7) Failure to provide and maintain as required by 105 CMR 410.100(A):
    - (a) A kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils.
    - (b) If supplied by the owner, a conventional cooktop and oven, or a refrigerator with freezer.
  - (8) Failure to provide and maintain adequate exits, or the obstruction of any exit, passageway or common area caused by any object, including refuse, which prevents egress in case of an emergency required by 105 CMR 410.260.
  - (9) Failure to comply with the security requirements of 105 CMR 410.270(A).
  - (10) Failure to comply with any provisions of 105 CMR 410.560 and 410.570, which results in any accumulation of 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.
  - (11) 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.)
  - (12) Roof, foundation, or other structural defects in violation of 105 CMR 410.500 that may expose the occupant or anyone else to fire, burns, shock, accident or other dangers or impairment to health or safety.
  - (13) Failure to install or maintain electrical, plumbing, heating and gas-burning facilities in compliance with accepted standards as defined in 105 CMR 410.010 for plumbing, heating, gasfitting and electrical wiring or failure to maintain such facilities required by 105 CMR 410.235 and 410.240, so as to expose the occupant or anyone else to fire, burns, shock, accident or other danger or impairment to health or safety.
  - (14) 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 410.250.
  - (15) Failure to provide a smoke detector or carbon monoxide alarm required by 105 CMR 410.330.
  - (16) Failure to provide and maintain a railing or guard for every stairway, porch, balcony, roof or similar place with balusters spaced as required by 105 CMR 410.520.
  - (17) Failure to maintain the premises free from pests required by 105 CMR 410.550(A) and (B).
  - (18) Any other violation of 105 CMR 410.000 not enumerated in 105 CMR 410.630(A) shall be deemed to be a condition which may endanger or materially 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 inspector may determine that any condition that violates 105 CMR 410.100 through 410.570 is a condition that 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.

#### 410.640: Timeframes for Correction of Violations

- (A) If an inspection or examination as provided for in 105 CMR 400.100 and/or 105 CMR 410.600 reveals that a residence does not comply with the provisions of 105 CMR 410.000, the board of health or its designated agent shall:
- (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 in 105 CMR 410.630(A).

(2) Within seven calendar days after the inspection, order the owner or occupant to correct, within 30 calendar days of service, any violations not listed in 105 CMR 410.630(A).

(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 410.860, has been conducted.

410.650: Residence Unfit for Human Habitation; Hearing; Condemnation; Order to Vacate; Demolition

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

If an inspection conducted pursuant to 105 CMR 400.100 or 105 CMR 410.600 reveals that an occupied residence or portion thereof is unfit for human habitation, the board of health shall, subject to 105 CMR 410.650(B), (C), or (D) issue a written finding that the 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 residence or portion thereof is occupied, the board of health shall, prior to issuing a finding under 105 CMR 410.650(A), provide written notice to the occupant(s) and owner which shall include:

- (1) Identification of the 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 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 residence or portion thereof and requiring the occupant(s) to vacate the residence or portion thereof; and
- (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 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 in accordance with 105 CMR 410.680.

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

If the residence or portion thereof is occupied, then the board shall, prior to issuing a finding under 105 CMR 410.650(A), and at least five calendar days after service of the notice required by 105 CMR 410.650(B), conduct a public hearing to determine whether the 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 person shall be given an opportunity to be heard, to present witnesses or documentary evidence and to show why the residence or portion thereof should or should not be found unfit for human habitation, and why an order to vacate and an order to 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 residence or portion thereof is unfit for human habitation without providing the notification or hearing specified in 105 CMR 410.650(B) and (D). This emergency determination must include a written explanation of the conditions presenting an immediate danger. The board of health shall send the owner and each affected person a copy of the finding of unfitness for human habitation and a copy of the determination of immediate danger, which shall include a statement advising of their right to a hearing in accordance with 105 CMR 410.800(A).

(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 residence or portion thereof is unfit for human habitation, the board may issue an order condemning the residence or portion thereof and an order to vacate the residence or portion thereof, and an order requiring the owner to secure the residence or portion thereof.
- (2) If the 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 410.800 through 410.860.
- (3) No 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 residence or portion thereof to be occupied is fit for human habitation.

(G) Demolition:

If, one year after the issuance of an order to secure, compliance with 105 CMR 410.000 has not been achieved, then the board of health may cause the 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) A reinspection to determine compliance with an existing order shall be conducted within:

- (1) 24 hours after the date for compliance of violations specified in 105 CMR 410.640(A); or
- (2) Seven calendar days after the date for compliance of violations specified in 105 CMR 410.640(B).

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

(C) The inspector shall identify, in writing, all violations corrected and those that remain uncorrected at the time of the reinspection. A verbal or written summary of the conditions noted during the reinspection shall be given to the occupant or the occupant's representative at the conclusion of the reinspection. A written summary shall be provided at the time of the reinspection if requested by the occupant or the occupant's representative.

#### 410.670: 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 *Occupants' Legal Rights and Responsibilities* issued by the Department.

(B) Except as otherwise specified under the emergency provisions of 105 CMR 400.200(B), any order issued under the provisions of 105 CMR 410.000 shall:

- (1) Include a statement of the violations, conditions, or defects identified in 105 CMR 410.630(A); and, in the case of occupied 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, safety, or well-being of an occupant;
- (2) 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 person has a right to appear at said hearing;
- (3) Include the timeframe for compliance pursuant to 105 CMR 410.640;
- (4) Indicate the requirement for a reinspection(s) pursuant to 105 CMR 410.660(A) and (C);
- (5) 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
- (6) In an order to an owner, advise the owner that the conditions which exist may permit the occupant of the residence 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 inspector shall forward a copy of the inspection report and a letter so stating to the person responsible for correcting the violation and the affected person within seven calendar days of completion of the inspection.

#### 410.680: Service of Orders and Notices

(A) All orders and notices issued under 105 CMR 410.000 shall be served on the persons responsible for correcting the violation.

(B) Service of all orders and/or notices on the person responsible for correcting the violation shall be served:

- (1) In person by a person authorized to serve civil process;
- (2) By a civil process server leaving a copy at the person's last and usual place of abode;
- (3) By sending a copy by registered or certified mail, return receipt requested;
- (4) If the person's last and usual place of abode is unknown, by posting a copy in a conspicuous place on or about the dwelling or portion thereby affected and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building or premises affected is situated; or
- (5) By a parcel delivery service that documents service with an electronic copy of a signature.

(C) A copy of every order or subsequent notice issued under the provisions of 105 CMR 410.640 or 410.650 to a person responsible for correcting the violation shall also be personally delivered or sent by first class mail to the affected persons, except that when a violation in a common area affects more than three dwelling units and the owner is the person responsible for correcting the violation, the notification required by 105 CMR 410.680(C) 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 410.650 that is served on an occupant of the affected premises shall also be personally delivered or sent by first class mail to the owner of the affected premises.

(E) A copy of every order issued under the provisions of 105 CMR 410.650 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 using a delivery service that collects an electronic copy of a signature as proof of receipt.

#### 410.700: Variances

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

- (1) Conditions Deemed to Endanger or Materially Impair Health or Safety, required by 105 CMR 410.630(A), except as authorized in 105 CMR 410.710;
- (2) Alternative Housing requirements specified in 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 applicant has proved the same degree of protection required under 105 CMR 410.000 can be achieved without strict application of the particular provision(s);
- (3) When insurance is utilized, the applicant has provided written confirmation from the insurance carrier confirming the continuation of full coverage(s) if the minimum health and safety provision(s) are varied;
- (4) 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;
- (5) All affected persons have been notified in writing of the date, time, and place of a hearing to consider the variance;
- (6) All affected persons have been given the opportunity to be heard to show why the variance should or should not be granted; and
- (7) The petitioner is notified within three calendar days of the board's decision to grant the variance.

(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) Made available to the Director of the Community Sanitation Program at the Department by request;
- (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 persons by the owner and attached to the rental 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) 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 persons have been notified in writing and have been given an opportunity to be heard, in accordance with the requirements of 105 CMR 410.800 through 410.860.

(G) A variance from 105 CMR 410.270 may be granted only in writing by the Massachusetts State Building Code Commissioner when in their opinion, other security measures are in force which adequately protect the occupants of such residence (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 410.700(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: Permit Requirements For 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 in single-family residences or owner-occupied dwelling units:

- (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) 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, as defined in M.G.L. c. 40A § 11, 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 seven calendar days;

- (2) The owner shall record at the Registry of Deeds for the city or town where the residence is located a deed restriction as approved by the board of health;
- (3) The owner shall submit a copy of the record of the deed restriction 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 subject to the terms of the permit are made to the property or ownership of the property changes. Modifications subject to the terms of the permit 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 accordance with the requirements for an order and hearing as required by 105 CMR 410.800 through 410.860. The board of health shall submit a copy of the modification or revocation to the Director of the Community Sanitation Program within seven calendar days.

#### 410.800: 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 and all affected persons, pursuant to 105 CMR 410.000 (except for an order issued after the requirements of 105 CMR 410.650 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 inspect upon request any premises as required by 105 CMR 410.000; provided, such petition must be filed within 30 calendar days after such inspection was requested;
  - (2) 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) To find after an inspection violations of 105 CMR 410.000 when 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 issue an order as required by 105 CMR 410.640; 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.

#### 410.810: Hearing Notice

(A) Upon receipt of a petition, the board of health shall inform the petitioner and other affected persons in writing 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.

#### 410.820: Time for Hearing

The hearing shall be commenced no later than 14 calendar days 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.

#### 410.830: Hearing Procedures

At the hearing the petitioner and other affected persons 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 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.

#### 410.840: Final Decision after Hearing; Failure to Comply with Final Order

The board of health shall notify the petitioner and all affected persons in writing of its decision to sustain, modify, or withdraw the order within five calendar 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.

#### 410.850: 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.

#### 410.900: Condemnation, Placarding and Vacating Residences

(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 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 corrected.

(D) If any person refuses to leave a residence or portion thereof which has been ordered condemned and vacated and has been placarded in accordance with M.G.L. c. 111 § 127B and 105 CMR 410.640 through 410.930, such person may be forcibly removed by the board of health or by state or local police authorities upon request of the board of health.

(E) When a residence or portion thereof has been condemned and placarded as unfit for human habitation and the occupant of a condemned dwelling unit or rooming unit is not the owner of the residence, the owner shall provide comparable, suitable housing for the occupant for the following time period, or whichever is shortest:

- (1) The remaining term of the lease or rental period;
- (2) Such time as the residence is deemed suitable for habitation by the board of health;
- (3) Such time as the occupant finds alternative, permanent housing and voluntarily terminates tenancy.

(F) The board of health may undertake to demolish any residence after an order for its destruction has been properly served on the owner and every mortgagee of record in accordance with the requirements of notice and hearing in 105 CMR 410.650 and 410.800 through 410.860, and M.G.L. c. 111, § 127B.

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

#### 410.910: Penalties for Interference with Inspections

Any owner, occupant, or other person who refuses, 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 \$10.00 nor more than \$500.00.

410.920: 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.

410.930: 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.

410.940: Correction of Violations by Board of Health; Expenses

(A) If a failure to comply with an order requiring that any 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 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.