

MASSACHUSETTS
TITLE 105: DEPARTMENT OF PUBLIC HEALTH
CHAPTER 410.000: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION
(STATE SANITARY CODE, CHAPTER II – Department of Public Health)
105 CMR §§ 410.001-410.990.

§ 410.001: Purpose

The purposes of *105 CMR 410.000* are to protect the health, safety and well-being of the occupants of housing and of the general public, to facilitate the use of legal remedies available to occupants of substandard housing, to assist boards of health in their enforcement of this code and to provide a method of notifying interested parties of violations of conditions which require immediate attention.

§ 410.002: Authority

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

§ 410.003: Citation

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

§ 410.010: Scope

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

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

(1) is located on a campground that is being operated in compliance with *105 CMR 420.000*, *105 CMR 430.000*, or *310 CMR 14.00*; or

(2) is otherwise required to conform with standards of fitness for human habitation elsewhere existing in the State Sanitary Code; or

(3) is used exclusively as a civil defense shelter.

(C) 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*.

§ 410.020: Definitions

Asbestos means:

(1) chrysotile, amosite, crocidolite; or

(2) in fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

Asbestos Material means asbestos or any material containing asbestos.

Board of Health means the appropriate and legally designated health authority of the city, town, county, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town, or his or its authorized agent or representative.

Chronic Dampness means the regular and/or periodic appearance of moisture, water, mold or fungi.

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Compliance means meeting all the requirements of *105 CMR 410.000*. It shall also mean correcting any violations of *105 CMR 410.000* in a work-personlike fashion and restoring all parts of the dwelling, or unit thereof, to the condition they were in before occurrence of any such violations. Compliance shall also mean in those cases where licenses or permits are required to perform work necessary to correct the violations, such as, but not limited to building, plumbing and wiring that the appropriate official certifies that the work has been completed in accordance with applicable laws and regulations.

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

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

A Condition Making a Unit Unfit for Human Habitation is a condition meeting the standard set forth in the Massachusetts General Laws under which a board of health may justify closing down, condemning, or demolishing a dwelling or dwelling unit. 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 wellbeing of an occupant means the existence of a condition, listed in *105 CMR 410.750* or any other condition so certified by the board of health to be a violation, which may expose or subject to harm, the health or safety, and the well-being of an occupant or the public.

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

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

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

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

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

Exterminate means to eliminate insects and rodents.

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.

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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.

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

Infestation means the recurrent presence of insects and/or rodents.

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

Means of Egress means a continuous and unobstructed path of travel from any point in a dwelling to an abutting public way (See *780 CMR 1002.0*).

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

Occupant means every person living or sleeping in a dwelling.

Owner means every person who alone or severally with others:

(1) has legal title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or

(2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or

(3) is a mortgagee in possession of any such property; or

(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. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. Owner also means every person who operates a rooming house.

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*.

Provide means to supply and pay for.

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

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

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Rooming Unit means the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available; provided, that cooking facilities shall not be deemed common if they can be reached only by passing through any part of the dwelling unit or rooming unit of another.

Rubbish means combustible and noncombustible waste materials, except garbage, and includes but is not limited to such material as paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, grass clippings, tin cans, metals, mineral matter, glass, crockery, dust, and the residue from the burning of wood, coal, coke and other combustible materials.

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

Temporary Housing means any tent, mobile dwelling unit, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for more than 30 days.

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

Exceptions:

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

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

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

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

Water Conservation Device means for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding 2 1/2 gallons of water per minute, for all faucets a maximum flow rate not exceeding two and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding one and 6/10 gallons of water per flush, contained within a dwelling unit.

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

§ 410.100: Kitchen Facilities

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

(1) A kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils; and

(2) a stove and oven in good repair (*see 105 CMR 410.351*) except and to the extent the occupant is required to do so under a written letting agreement; and

(3) space and proper facilities for the installation of a refrigerator.

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

§ 410.190: Hot Water

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

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

§ 410.200: Heating Facilities Required

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

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

§ 410.201: Temperature Requirements

The owner shall provide heat in every habitable room and every room containing a toilet, shower, or bathtub to at least 68 [degrees] F (20 [degrees] C) between 7:00 A.M. and 11:00 P.M. and at least 64 [degrees] F (17 [degrees] C) between 11:01 P.M. and 6:59 A.M. every day other than during the period from June 15th to September 15th, both inclusive, in each year except and to the extent the occupant is required to provide the fuel under a written letting agreement. The temperature shall at no time exceed 78 [degrees] F (25 [degrees] C) during the heating season. The temperature may be read and the requirement shall be met at a

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height of five feet above floor level on a wall any point more than five feet from the exterior wall. The number of days per year during which heat must be provided in accordance with *105 CMR 410.000* may be increased or decreased through a variance granted in accordance with the provisions of *105 CMR 410.840* notwithstanding the prohibitions of the first clause of the first sentence of *105 CMR 410.840(A)*.

§ 410.202: Venting

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

§ 410.280: Natural and Mechanical Ventilation

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

(A) windows, skylights, doors or transoms in the exterior walls or roofs that can be easily opened to a minimum of 4% of the floor area of that habitable room or room containing a toilet, bathtub or shower, provided, that a skylight which if open exposes the interior of the dwelling to direct rainfall shall not satisfy this requirement; or

(B) Mechanical ventilation capable of exhausting air at the following rates:

Occupancy Classification	Required Air Changes Per Hour
Habitable rooms other than bath, toilet or shower rooms	2
Bath, toilet or shower rooms	5

§ 410.281: Ventilation Shut-off

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

§ 410.350: Plumbing Connections

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

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

§ 410.351: Owner's Installation and Maintenance Responsibilities

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

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

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

§ 410.352: Occupant's Installation and Maintenance Responsibilities

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

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

§ 410.353: Asbestos Material

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

§ 410.354: Metering of Electricity, Gas and Water

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

(1) Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by *105 CMR 410.254(B)*; and

(2) A written letting agreement provides for payment by the occupant.

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

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

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

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

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

§ 410.402: Grade Level

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

§ 410.450: Means of Egress

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

§ 410.451: Egress Obstructions

No person shall obstruct any exit or passageway. The owner is responsible for maintaining free from obstruction every exit used or intended for use by occupants of more than one dwelling unit or

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

§ 410.452: Safe Condition

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

§ 410.482: Smoke Detectors and Carbon Monoxide Alarms

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

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

(C) If any dwelling is found by the local fire department to be adequately equipped with smoke detectors and carbon monoxide alarms, the board of health shall not be authorized by *105 CMR 410.482* 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.

§ 410.500: Owner's Responsibility to Maintain Structural Elements

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

§ 410.501: Weathertight Elements

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

- (1) all panes of glass are in place, unbroken and properly caulked; and
- (2) the window opens and closes fully without excessive effort; and
- (3) exterior cracks between the prime window frame and the exterior wall are caulked; and
- (4) one of the following conditions is met:

(a) a storm window is affixed to the prime window frame, with caulking installed so as to fill exterior cracks between the storm window frame and the prime window frame; or

(b) weatherstripping is applied such that the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash, in the case of double hung windows and 1/32 inch in the case of casement windows; or

(c) the window sash is sufficiently well-fitted such that, without weatherstripping, the space between the window sash and the prime window frame is no larger than 1/16 inch at any point on the perimeter of the sash in the case of double hung windows and 1/32 inch in the case of casement windows.

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

(1) all panes of glass are in place, unbroken and properly caulked; and

(2) the door opens and closes fully without excessive effort; and

(3) exterior cracks between the prime door frame and the exterior wall are caulked; and

(4) one of the following conditions is met:

(a) a storm door is affixed to the prime door frame, with caulking installed so as to fill exterior cracks between the storm door frame and the prime door frame; or

(b) weatherstripping is applied such that the space between the door and the prime door frame is no larger than 1/16 inch at any point on the perimeter of the door or

(c) the door is sufficiently well-fitted such that, without weather-stripping, the space between the door and the prime door frame is no larger than 1/16 inch at any point on the sides of the door or 1/8 inch at any point on the top or bottom of the door.

(C) A wall, floor, ceiling or other structural element shall be considered weathertight only if all cracks and spaces not part of heating, ventilating or air conditioning systems are caulked or filled in as to prevent infiltration of exterior air or moisture.

§ 410.502: Use of Lead Paint Prohibited

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

§ 410.503: Protective Railings and Walls

The owner of all dwellings shall provide:

(A) A safe handrail for every stairway that is used or intended for use by the occupant as required by 780 CMR: Massachusetts State Building Code.

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

(C) A wall or guardrail at least 36 inches in height, enclosing every porch, balcony, mezzanine, landing, roof or similar place, which is 30 inches or more above the ground and that is used or intended for use by the occupants. Any such wall or guardrail for other than Use Group R-4 and along

opens sided floor areas, mezzanines and landings in occupancies in Use Group R-3, replaced or constructed after August 28, 1997, shall not be less than 42 inches in height (780 CMR 102 and 3603.14).

(D) Between all required guardrails and open handrails, balusters placed at intervals of no more than six inches, or any other ornamental pattern between the guardrail or handrail and floor or stair such that a sphere six inches in diameter can not pass through the opening. Any balusters or ornamental work constructed or replaced after August 28, 1997 shall have no space greater than 4 1/2 inches and in all use groups other than R-4, shall not be constructed as to provide a ladder effect (780 CMR 1021 and 3603.14).

§ 410.504: Non-absorbent Surfaces

The owner shall provide:

(A) On the floor surfaces of every room containing a toilet, shower or bathtub and every kitchen and pantry, a smooth, noncorrosive, nonabsorbent and water proof covering. This shall not prohibit the use of carpeting in kitchens and bathrooms, nor the use of wood in the kitchen, provided they meet the following qualifications:

- (1) Carpeting must contain a solid, nonabsorbent, water repellent backing which will prevent the passage of moisture through it to the floor below; and
- (2) Wood flooring must have a water resistant finish and have no cracks to allow the accumulation of dirt and food, or the harborage of insects.

(B) On the walls of every room containing a toilet, shower or bathtub up to a height of 48 inches, a smooth noncorrosive, nonabsorbent and waterproof covering.

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

§ 410.505: Occupant's Responsibility Respecting Structural Elements

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

§ 410.550: Extermination of Insects, Rodents and Skunks

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

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

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

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

§ 410.551: Screens for Windows

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

Said screens:

(1) shall cover that part of the window that is designed to be opened but in no case less than the area as required in *105 CMR 410.280(A)*; and

(2) shall be tight fitting as to prevent the entrance of insects and rodents around the perimeter.

(3) Expandable temporary screens shall not be deemed to satisfy the requirements of *105 CMR 410.551(1)* or (2).

§ 410.552: Screens for Doors

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

Said screen door:

(1) shall be equipped with a self-closing device except where the screen is designed to slide to the side; and

(2) shall be tight-fitting as to prevent the entrance of insects and rodents around the perimeter; and

§ 410.553: Installation of Screens

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

§ 410.600: Storage of Garbage and Rubbish

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

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

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

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

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

§ 410.601: Collection of Garbage and Rubbish

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

(A) the regular municipal collection system; or

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

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

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

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

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

§ 410.602: Maintenance of Areas Free from Garbage and Rubbish

(A) Land. The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean and sanitary condition and free from garbage, rubbish or other refuse. The owner of such parcel of land shall correct any condition caused by or on such parcel or its appurtenance which affects the health or safety, and well-being of the occupants of any dwelling or of the general public.

(B) Dwelling Units. The occupant of any dwelling unit shall be responsible for maintaining in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness that part of the dwelling which he exclusively occupies or controls.

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

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

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

§ 410.620: Curtailment Prohibited

No owner or occupant shall cause any service, facility, equipment, or utility which is required to be made available by *105 CMR 410.000* to be removed from or shut off from any occupied dwelling except for such temporary period as may be necessary during actual repairs or alterations 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 or facility that a person is required to provide by *105 CMR 410.000* or has agreed to supply by a written letting agreement becomes curtailed, that person shall take immediate steps to cause its restoration. (*See M.G.L. c. 186, § 14.*)

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

The following conditions, when found to exist in residential premises, shall be deemed conditions which may endanger or impair the health, or safety and well-being of a person or persons occupying the premises. This listing is composed of those items which are deemed to always have the potential to endanger or materially impair the health or safety, and well-being of the occupants or the public. Because, *105 CMR 410.100* through *410.620* state minimum requirements of fitness for human habitation, any other violation has the potential to fall

within this category in any given specific situation but may not do so in every case and therefore is not included in this listing. Failure to include shall in no way be construed as a determination that other violations or conditions may not be found to fall within this category. Nor shall failure to include affect the duty of the local health official to order repair or correction of such violations pursuant to *105 CMR 410.830* through *410.833* nor shall failure to include affect the legal obligation of the person to whom the order is issued to comply with such order.

(A) Failure to provide a supply of water sufficient in quantity, pressure and temperature, both hot and cold, to meet the ordinary needs of the occupant in accordance with *105 CMR 410.180* and *410.190* for a period of 24 hours or longer.

(B) Failure to provide heat as required by *105 CMR 410.201* or improper venting or use of a space heater or water heater as prohibited by *105 CMR 410.200(B)* and *410.202*.

(C) Shutoff and/or failure to restore electricity, gas or water.

(D) Failure to provide the electrical facilities required by *105 CMR 410.250(B)*, *410.251(A)*, *410.253* and the lighting in common area required by *105 CMR 410.254*.

(E) Failure to provide a safe supply of water.

(F) Failure to provide a toilet and maintain a sewage disposal system in operable condition as required by *105 CMR 410.150(A)(1)* and *410.300*.

(G) Failure to provide adequate exits, or the obstruction of any exit, passageway or common area caused by any object, including garbage or trash, which prevents egress in case of an emergency *105 CMR 410.450*, *410.451* and *410.452*.

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

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

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

(K) Roof, foundation, or other structural defects that may expose the occupant or anyone else to fire, burns, shock, accident or other dangers or impairment to health or safety.

(L) Failure to install electrical, plumbing, heating and gasburning facilities in accordance with accepted plumbing, heating, gasfitting and electrical wiring standards or failure to maintain such facilities as are required by *105 CMR 410.351* and *410.352*, so as to expose the oc-

cupant or anyone else to fire, burns, shock, accident or other danger or impairment to health or safety.

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

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

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

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

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

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

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

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

(P) Any other violation of *105 CMR 410.000* not enumerated in *105 CMR 410.750(A)* through (O) 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.

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

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

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

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

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

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

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

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

(F) Demolition. If one year after the issuance of an order to secure, compliance with the minimum standards set forth in *105 CMR 410.000* has not been effected, then the board of health may cause the dwelling or portion thereof to be demolished or removed.