

1. 02/15/18 - Agenda

Documents:

[02-15-18 AGENDA.PDF](#)

1.I. ZBA Application - 11 Stevens Avenue

Documents:

[11 STEVENS AVE - INTERPRETATION APPEAL.PDF](#)
[11 STEVENS AVE - ZONING MAP.PDF](#)

1.I.i. Memorandum - 11 Stevens Avenue

Documents:

[MEMO - CORP COUNSEL.PDF](#)

1.I.ii. Memo From Applicant - 11 Stevens Ave

Documents:

[11 STEVENS AVENUE - MEMORANDUM FROM APPLICANT.PDF](#)

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Eric Larsson, Chair
Donna Katsiaficas, Secretary
Kent Avery
Robert Bartels
Benjamin McCall
Joseph Zamboni

APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, February 15, 2018, at 6:30 p.m. in Room 209 on the Second Floor at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeal:

1. New Business:

A. Interpretation Appeal: 11 Stevens Avenue, Margaret E. Gaertner, owner, Tax Map 188, Block A, Lot 004; R-3 Residential Zone and R-P Residence Professional Zone: The applicant is challenging a Notice of Violation dated January 17, 2018 that cited the property owner for the lack of escape windows in the owner's bedroom under the Life Safety Code, NFPA 101 (2009) 24.2.2.3.3. Representing the appeal is the owner.

2. Adjournment



Michael Russell, Director
Permitting and Inspections Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND
ZONING BOARD OF APPEALS
Interpretation Appeal Application

APPLICANT INFORMATION:

Margaret E. Gaertner
NAME

BUSINESS NAME

11 Stevens Avenue
ADDRESS
Portland, ME 04102

917-476-8156
TELEPHONE #

APPLICANT'S RIGHT, TITLE OR INTEREST
(eg; owner, purchaser, etc)

R - 3
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

Single Family

TYPE OF RELIEF REQUESTED:

Removal of housing safety violation

SUBJECT PROPERTY INFO:

11 Stevens Avenue
PROPERTY ADDRESS

188 A004001
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER INFO (If Different):

NAME

ADDRESS

Disputed Provisions from Section 14:

None

Order, decision, determination or interpretation under dispute:

Inspection Violation No. 2 sent with
letter dated January 17, 2018

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for an appeal as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Margaret E. Gaertner
SIGNATURE OF APPLICANT

January 26, 2018
DATE

Margaret Gaertner
11 Stevens Avenue
Portland, ME 04102

January 26, 2018

Zoning Board of Appeals
City of Portland
389 Congress Street
Portland, ME 04101-3509

Dear Members of the Zoning Board of Appeals:

Reason for Appeal

I am requesting the violation regarding the escape windows in the Owner's bedroom be removed from my property at 11 Stevens Avenue as a. I believe the Housing Safety Office has misinterpreted the City's ordinances regarding the extent of what they are to inspect and b. replacing the window is unnecessary as the room already has two doors for safe escape and c. replacing this window is a financial hardship made worse by the City through their lack of internal communication.

Attached please find the violation that I am appealing (Attachment One). Please note I am not appealing the first violation and will work with Housing Safety to correct it (although I am frustrated by the conflicting directives). I am only contesting the second violation.

Background

I have owned this house since 2010 (please see deed, enclosed as Attachment Nine). The house was very rundown when I bought it and I have been making cosmetic repairs since then, and do most of the work myself. It is a one-story ranch house with 1,456 s.f. of living space on one level. All windows and exterior doors are at thus at grade.

I am the owner of the property and live here full-time. This is my primary residence. There are two large bedrooms, one of which I occupy (the "Owner's Unit" on the enclosed sketch plan) and the second bedroom (the "Rental Unit" on the enclosed sketch plan) I rent intermittently typically for 3-6 months (a "long-term rental"), occasionally as long as a year.

When the City enacted the housing rental regulations, I contacted the City to see if this applied to my situation (an owner-occupant with a roommate) and was surprised to learn that yes, it did, and yes, I needed a license.

I applied for the license, submitted a sample lease and payment in 2016, and the rental license was issued. On September 28, 2016 the house was inspected. At the time, there was a plug-in carbon monoxide detector in the Rental Unit and the inspector said I needed to have a 10 year-sealed battery detector in the Rental Unit and a smoke detector in the Living Room. I installed both as directed. He did not inspect the Owner's Unit and no

other comments or requests were made. On January 31, 2017 I paid the license fee for 2017.

In December 2017 the City conducted a routine inspection of my Rental Unit. As my rental unit was previously inspected and approved by the City and no changes have been made to it, I expected no issues. Thus, I was very surprised when during the inspection the inspector told me the CO detector was in the wrong location, even though I had installed it where directed by the City.

I was more surprised when he said he needed to inspect my own room, as the first inspection only included the rental room. Also, the City's website and ordinances make it very clear that the Owner's Unit is not subject to inspection.

City of Portland Code and other City Publications Regarding Inspections

As stated on the Housing Safety Website (<https://www.portlandmaine.gov/1656/Housing-Safety>) "A residential rental unit can be a rented apartment, house, condominium, or rented individual room." As also defined in the City Code, I have a "Rental Unit" within my Owner-Occupied, single-family dwelling:

"Sec. 6-106. Definitions.

Dwelling shall mean any house, building or part thereof which is occupied or intended to be occupied, in whole or in part, for living and sleeping by one (1) or more occupants. A dwelling may include one (1) or more dwelling units or rooming units or a combination of both.

"Sec. 6-150.1. Definitions.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any **portion** of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit."

"Sec. 6-150.1. Definitions.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence."

The City's Code (chapters 6 and 10) and website clearly state the Owner's Unit is not subject to inspection. City Code "Sec. 10-3. Amendments" clearly states that rental units are inspected, but premises covered by Chapter 24 of NFPA 101 are not subject to inspection:

"(n) Inspections. The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Life Safety Code into or upon any of the following premises: any **rental unit** subject to registration under section 6-151; any premises subject to this article, **with the exception of premises**

subject to Chapter 24 of NFPA 101; any premises when any governmental agency having jurisdiction over a particular premises should request it to do so; or any premises in response to a complaint regarding conditions governed by this Chapter. It shall be a violation of this article for any person either to interfere with or to prevent such inspection."

As my home is a one-family dwelling it is a "... premises subject to Chapter 24 of NFPA 101..." and as per the City Code thus exempted from inspection, with the exception of the Rental Unit within it. The Inspector was beyond his authority when he inspected my unit and ordered me to make this unnecessary and costly repair.

Please see Attachments Two and Three for screen shots of the City of Portland's Housing Safety website which clearly state, in two separate places, "**Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.**" (This paragraph can be found at both <https://www.portlandmaine.gov/1656/Housing-Safety> and <https://www.portlandmaine.gov/1680/Rental-Registration> .)

Safe Exits

Please see the enclosed sketch plans. Please note my roommates are not allowed in the Owner's Unit. The Owner's Unit has **two doors** that provide exits from the room. The doors are standard residential size doors and measure 6'-6" by 2'-6". The Study adjacent to the Owner's Unit is only used by the Owner and is under my exclusive control.

While the windows do not meet the size currently required to serve as an egress window, they were approved when the addition to the house was built and I am easily able to climb through them. On a practical note, should a firefighter need to enter, he/she'd have to break a window as they are locked at night and whenever I am not home. He/she can and logically would break the large picture window and enter that way (see photo in Attachment Eight).

Hardship

I am very frustrated at the lack of consistency displayed by the various inspectors. I installed the co detector and added a smoke detector as directed by one city inspector only to be told by the next inspector that the co detector is in the wrong place. I have made no other changes to the rental unit since the last inspection and changes made to the larger house (demolition of a deck and removal of a exterior door in my living room) were permitted with and approved by the City.

It is not practical for me to install a new window at this time as financially I am already overextended completing the work of removing the deck and filling in the door. I am also now facing additional financial hardship, as this room can't be rented, even though it was previously inspected and licensed and no changes have been made to it, or to the house, without City approval. It is January and the window opening, especially the existing wood sill, requires scraping, preservative application, priming and painting before a window can be installed in it. This requires several days of warm, dry weather. Contractors in the Portland area all very busy and the 30-day time period to correct this is not realistic.

I am extremely frustrated that I went through the process of applying for a permit to remove the deck and infill the door in the living room and at no time was the issue of exits or egress brought up. The City's Permitting and Inspections Office has my rental license(s) on file. I applied for the demo/building permit with the City's Permitting and Inspections Office. I didn't think removing the door in the living room was an issue because I had/have two other exterior doors from the house, one in the kitchen and one in the future dining room, that serve as exits. But in hindsight I wonder, had I left the exterior door in place in the living room would I be in this situation? If I'd known that taking a door out would mean altering my bedroom, I might have made a different plan. I'd at least have had more time to evaluate the financial implications, budget the funds, investigate options and collect bids, and do the work at a seasonally appropriate time.

Thank you in advance for your consideration of my appeal. I have followed the City's regulations and directives regarding this license and am committed to providing a safe environment to my roommates, many of whom are still my friends to this day.

Sincerely,



Margaret Gaertner
11 Stevens Avenue

Attachments

- | | |
|------------------|---|
| Attachment One | Violation issued by City of Portland Housing Safety Office |
| Attachment Two | Screenshot of City of Portland Housing Safety Office's website stating the owner's unit is not subject to registration |
| Attachment Three | Second Screenshot of City of Portland Housing Safety Office's website showing second instance stating the Owner's Unit is not subject to registration |
| Attachment Four | Sketch Floor Plan of Residence showing "Rental Unit" and "Owner's Unit" |
| Attachment Five | Sketch Floor Plan of Residence showing existing exits |
| Attachment Six | Plot plan, with setbacks noted. |
| Attachment Seven | City tax map with my property highlighted |
| Attachment Eight | Photograph of property |
| Attachment Nine | Deed for property |

**CITY OF PORTLAND
HOUSING SAFETY OFFICE**

389 Congress Street
Portland, Maine 04101

Inspection Violations

Owner/Manager GAERTNER MARGARET E		Inspector Matthew Sarapas	Inspection Date 12/29/2017
Location 11 STEVENS AVE	CBL 188 A004001	Status Violations Exist	Inspection Type Housing Safety Inspection

Code	Int/Ext	Floor	Unit No.	Area	Compliance Date
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1) 207

Violation: CARBON MONOXIDE ALARMS / LEVEL; Carbon Monoxide Alarms - One and Two-Family Dwellings: Single-station or multiple-station (interconnected) Carbon Monoxide alarms must be powered by the (A) building electrical system, or (B) 10-year non-replaceable battery and shall be positioned correctly on walls or ceilings: (1) on each level of the dwelling unit, and (2) including the basement.

NFPA 720 (2009) 9.5.1, 9.5.3, amended by State Law Title 25, Chapter 317 § 2468

Notes: First floor, per NFPA 720 alarm must be installed outside sleeping rooms. Current co alarm is installed in bedroom that is periodically rented.

2) 210

Violation: ESCAPE WINDOWS; Escape Windows - One and Two-Family Dwellings: Escape windows shall be a free and clear outside window or door operable from the inside without the use of tools, keys, or special effort. Windows shall be within 20 feet of the finished ground level or accessible by rescue apparatus (if approved), or opening onto an exterior balcony and when below ground level shall be provided with an accessible, free and clear, window well.

NFPA 101 (2009) 24.2.2.3.3

Notes: Owner's bedroom window does not meet code requirements for secondary means of escape/egress

Comments:

RENTAL HOUSING RIGHTS

389 Congress Street
Portland, ME 04101

[Pay Rental Registration Fee with Credit Card](#) (link to MuncipPAY; no login required)

GUIDANCE ON RENTAL UNITS

A residential rental unit can be a rented apartment, house, condominium, or rented individual room. A rental can be for any length of time including:

- Written leased residential rentals or month-to-month residential rentals; or
- Short-term rentals such as:
 - Summer vacation rentals or winter rentals; or
 - Overnight lodging and casual rentals such as AirBNB and irregular room or apartment rentals.
- Overnight lodging where the State has issued a food service license and as a result has inspected the property for life-safety is exempt from registering.

Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.

REGISTRATION STEPS

Completing a registration for residential rental property includes:

1. Providing contact information so that the Housing Safety Office and Fire Department can:
 - Communicate with an owner or property manager to resolve an issue with a registered building;
 - Contact the owner or property manager in an emergency; or



ONLINE PAYMENTS



NOTIFY ME@ALERTS



CONTACT US



EMPLOYMENT

NEWS FLASH

SHORT-TERM RENTAL REGISTRATION DEADLINE APPROACHING

The City is currently accepting registrations for short-term rentals. Current operators of all short-term rentals can come and register at City Hall. The City Council approved an ordinance in April that requires short-term rental units to

Select Language



Chrome File Edit View History Bookmarks People Window Help

Margaret

Citywide Parking Ban Declared Wednesday, January 17 at 10:00 PM
6:00 AM Thursday, January 18

City Council Meeting Cancelled Tonight & City Hall Closing at 3PM
Read On...

Citywide Parking Ban

PORTLAND | me

PAY & APPLY GOVERNMENT SERVICES BUSINESS COMMUNITY

Search our site...

Note: Owners and property managers that would like to register multiple properties should contact the housing safety office for detailed instructions on how to do so.

GUIDANCE ON RENTAL UNITS

A residential rental unit can be a rented apartment, house, condominium, or rented individual room. A rental can be for any length of time including:

- Written leased residential rentals or month-to-month residential rentals; or
 - Short-term rentals such as:
 - Summer vacation rentals or winter rentals; or
 - Overnight lodging and casual rentals such as AirBNB and irregular room or apartment rentals.
- Overnight lodging where the State has issued a food service license and as a result has inspected the property for life-safety is exempt from registering.

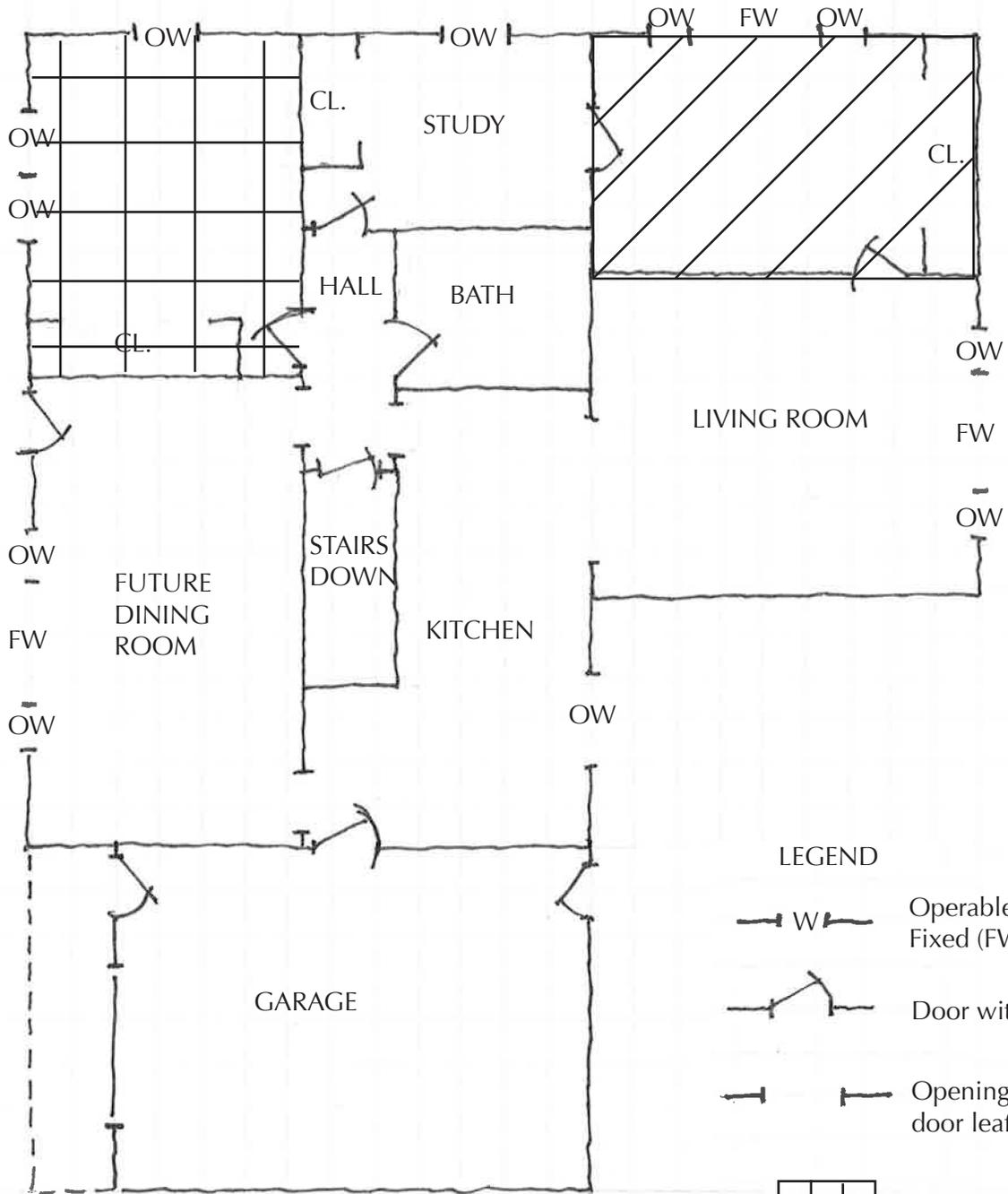
Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.

Select Language | Show All

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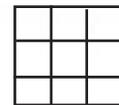
Icons: @, 4, 17, W, ID, X, PDF, 4, 4

STEVENS AVENUE

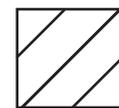


LEGEND

-  Operable (OW) or Fixed (FW) Window
-  Door with leaf
-  Opening w/o a door leaf



Rental Unit



Owner's Unit

Sketch Floor Plan

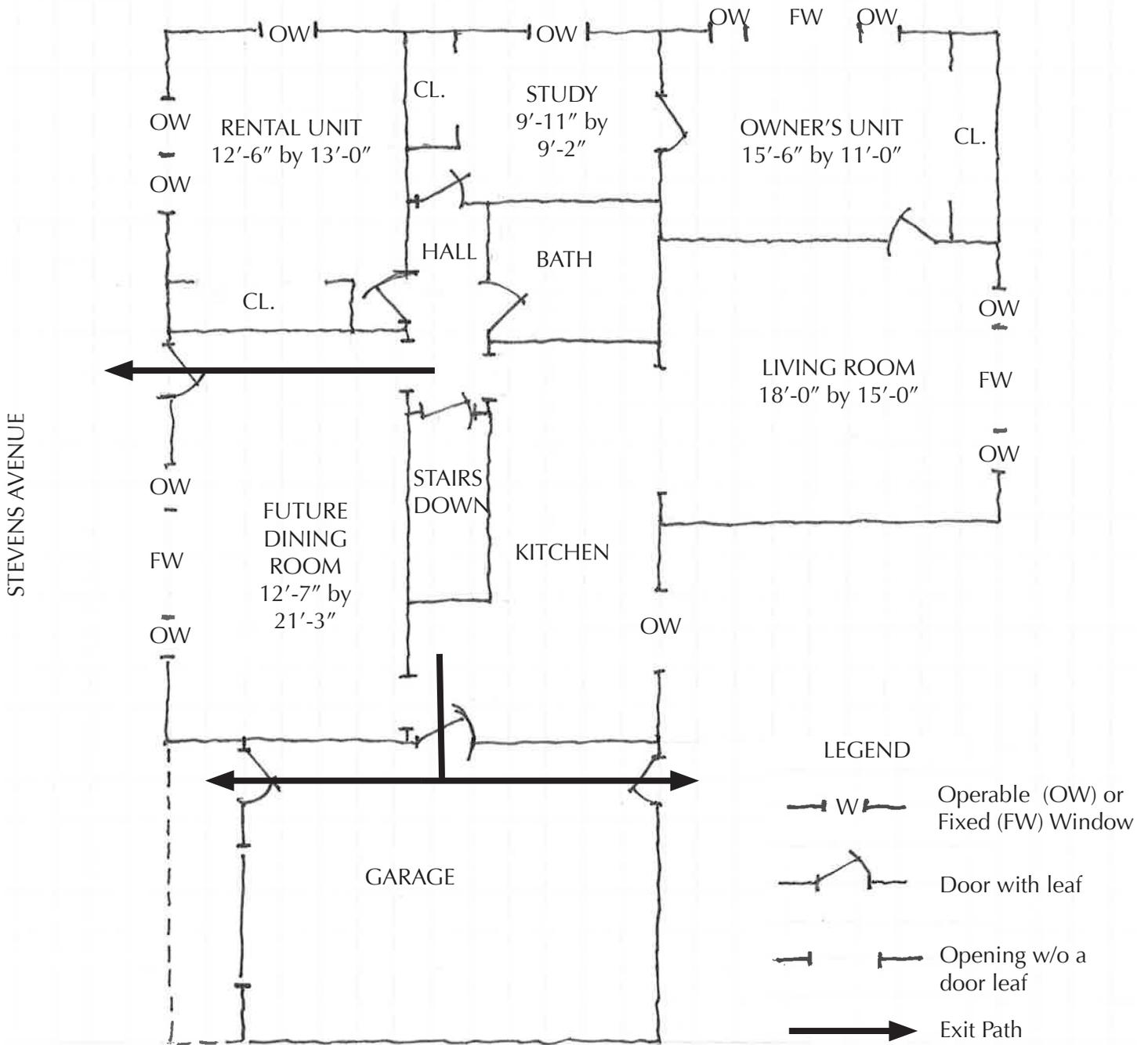
Showing Rental Unit and Owner's Unit

11 Stevens Avenue

Not to Scale

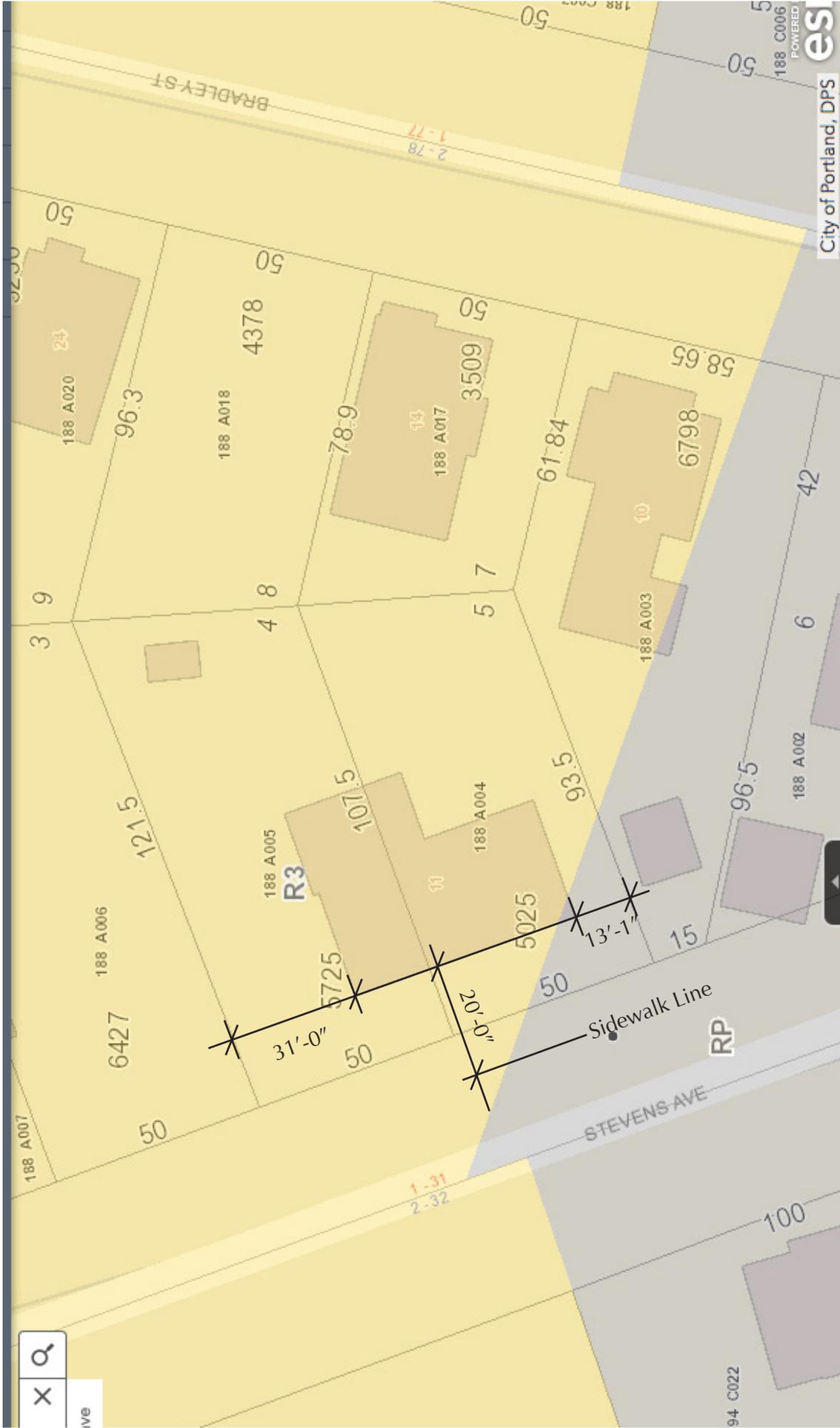
ATTACHMENT FOUR

Appeal -- 11 Stevens Avenue



Sketch Floor Plan Showing Existing Exits

11 Stevens Avenue
 Not to Scale
 Dimensions Approximate



ATTACHMENT SIX - Plot Plan
 Appeal -- 11 Stevens Avenue



ATTACHMENT SEVEN



Window in Owner's Unit

DEED OF SALE BY PERSONAL REPRESENTATIVE
(Testate Decedent)

KNOW ALL PERSONS BY THESE PRESENTS, that, I, Gail Knowles, duly appointed and acting Personal Representative of the Estate of Charles E. Lambert, deceased April 27, 2010, whose will was duly admitted to probate in the Probate Court for Cumberland County, Maine, Docket No. 2010 - 0529 and the (10) day notice to each person succeeding to an interest in the real property described below having been waived, by the power conferred by law, and every other power, for consideration paid, hereby GRANT to **Margaret E. Gaertner**, whose mailing address is 51 Tyng Street, Portland, ME 04102, the land with any buildings thereon situated at 11 Stevens Avenue, City of Portland, County of Cumberland and State of Maine, described as follows:

See Attached Exhibit A

Reference is made to a Deed to Charles E. Lambert from Robert G. Paisley and Margaret M. Paisley to Charles E. Lambert and Arvilla M. Lambert (as Tenants in Common) dated September 9, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14146, Page 8. Arvilla M. Lambert died May 25, 2004, leaving her portion of the property to Charles E. Lambert.

Witness our hands and seals this 2nd day of June, 2010.

Estate of Charles E. Lambert



Witness

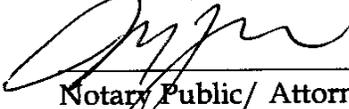
By: 
Gail Knowles of the Estate of
Personal Representative Charles Lambert

STATE OF MAINE
COUNTY OF Cumberland

June 2, 2010

Then personally appeared before me the above named Gail Knowles, Personal Representative of the Estate of Charles E. Lambert and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Estate.

Before me,



Notary Public/ Attorney at Law

Printed Name: Matthew J. McDonald
My Comm. Exp: Maine Attorney at Law

MAINE REAL ESTATE TAX PAD

EXHIBIT A

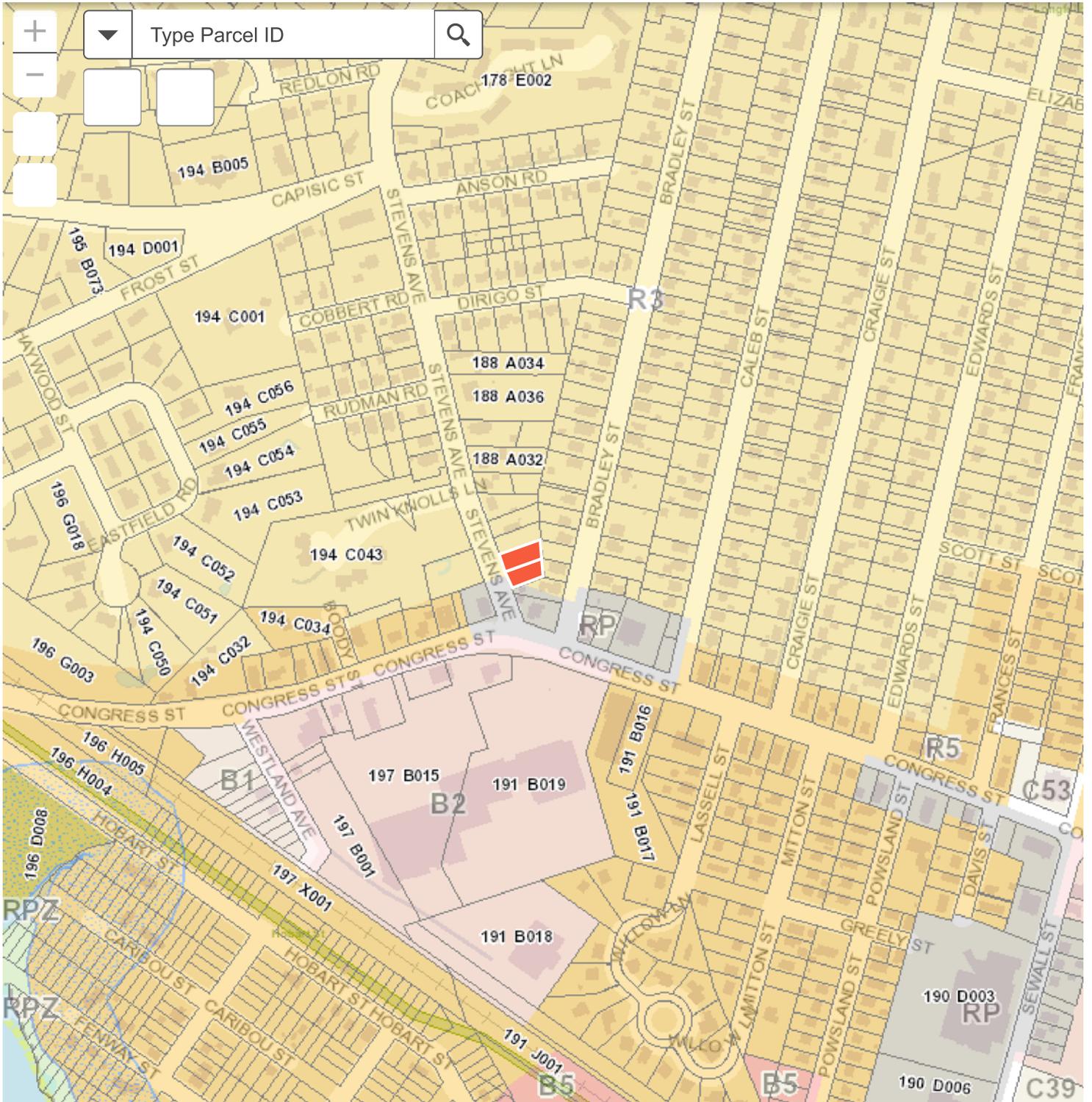
Two certain lots or parcels of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine, on the easterly side of Stevens Avenue and being lots numbered four (4) and five (5) on the plan of Bradley Terrace made by Percy H. Richardson, Civil Engineer, recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 137.

Said lots have a total frontage of one hundred (100) feet on Stevens Avenue, bounded on the northerly side by the line between lots three (3) and four (4) on said plan one hundred twenty-one and five tenths (121.5) feet, more or less, in length, on the easterly side by the boundary lines of lots seven (7) and eight(8) on said plan, and on the southerly side by a line ninety-three and five tenths (93.5) feet, more or less, in length.

2010 JUN 03 03:38:20P

Received
Recorded Register of Deeds
Jun 03, 2010 03:38:20P
Cumberland County
Pamela E. Lovley

11 Stevens Ave - Interpretation Appeal



400ft

2,922,647.976 302,146.143 Feet

MEMORANDUM

TO: Zoning Board of Appeals

FROM: Anne M. Torregrossa, Associate Corporation Counsel *AMT*

DATE: February 8, 2018

RE: 11 Stevens Avenue Appeal

This appeal involves a single-family home located at 11 Stevens Avenue. The owner and applicant, Ms. Gaertner, lives in the home and also rents out a bedroom to a tenant. Previously, the City's Housing Safety Office ("HSO") inspected the property. The Housing Safety Officer who did the initial inspection did not inspect Ms. Gaertner's personal bedroom, and only inspected the tenant's space. More recently, another Housing Safety Officer, Matthew Sarapas, went back for another inspection and did inspect Ms. Gaertner's bedroom. He found that the window in Ms. Gaertner's bedroom was not large enough to provide for a secondary means of escape in the event of a fire and required that she replace the window.

Ms. Gaertner has asserted two bases for her appeal: 1) that Matt did not have the authority to inspect her personal bedroom for compliance with the Housing Code; and 2) that she has sufficient means of escape and is not required to replace her bedroom window.

I. Authority to Inspect.

The City's Housing Safety Office ("HSO") is charged with enforcing the City's Housing Code, which is found in Chapter 6, Article V of the City of Portland Code of Ordinances ("City Code"). A copy of the Housing Code is attached for reference. Among other rights and responsibilities, Housing Safety Officers¹ have the right "to enter at any and all reasonable times into or upon any dwelling or dwelling premises within the city for the purpose of inspecting the dwelling or dwelling premises in order to determine compliance" with the Housing Code. City Code § 6-117. That authority is not limited to only rental units, and is not limited only to buildings with a minimum number of dwellings. *Id.*

Ms. Gaertner relies on language in Chapter 10, limiting the inspection authority of the Authority Having Jurisdiction ("AHJ"), which is the Fire Department. The Fire Department generally inspects rental units and buildings with three or more units. The HSO, however, inspects all rental units and also has the authority to inspect all dwellings. The reason that it is important to inspect all spaces in a building that is rented is that the compliance of the entire building impacts the safety of all of the occupants. Having one noncompliant space does not adequately protect those living in other spaces within the same building.

Therefore, Matt had the authority to inspect Ms. Gaertner's personal bedroom. More importantly, however, this is a safety matter for Ms. Gaertner and any other individuals who might eventually occupy that space.

¹ Housing Safety Officers work under the Permitting and Inspections Department Director, who is the building authority for the City.

II. Sufficiency of Means of Escape.

Among the requirements of the Housing Code is that “no person shall occupy as owner-occupant or shall another to occupy any dwelling . . . which does not comply with Chapter 10.” This includes the specific requirement that, “Every dwelling unit and every rooming unit shall have safe, unobstructed means of egress leading to safe and open spaces at ground level in accordance with applicable statutes, regulations and ordinances.” City Code § 6-116.

Chapter 10 of the City Code adopts by reference NFPA 101, Life Safety Code (2009), City Code § 10-1. Chapter 24 in NFPA 101 covers the life safety requirements for new *and existing* single family homes. NFPA 101, § 24.1.1.2. Section 24.2.2.1.1 provides that, “In dwellings or dwelling units of two rooms or more, every sleeping room . . . shall have not less than one primary means of escape and one secondary means of escape.” The secondary means of escape “shall be passage through an adjacent nonlockable space, *independent of and remote from* the primary means of escape.” NFPA 101, § 24.2.2.3.2. Alternatively, the secondary means of escape may be a window that has a minimum clear opening of 5.7 ft.². NFPA 101, § 24.2.2.3.2. Relevant portions of Chapter 24 of NFPA 101 are also attached.

Ms. Gaertner has claimed that she has the required two means of escape because she has two different doors leading from her bedroom. However, as Matt will explain further at the meeting, these doors do not provide two means of escape that are “independent and remote” from each other. Excerpts from the NFPA 101 Handbook, explaining further the requirements of independence and remoteness are also attached.

Because Ms. Gaertner does not have two means of escape that are independent and remote from each other, she must replace the window in her bedroom to provide for that second means.

2. If the building or structure is located on an island, the applicant has provided an acceptable plan to remove the demolition debris from the island and dispose of it in accordance with state and federal law prior to the expiration of the permit.

(b) A permit to demolish or remove a structure shall expire thirty (30) days after the date of its issuance, provided that, for good cause, the building official may extend the permit for periods of not more than fifteen (15) days.

(c) The person to whom a permit is issued shall dampen or cause to be dampened all debris resulting from the demolition operation to the extent necessary to prevent dust therefrom circulating in the surrounding area.

(d) The disposal of all demolition debris shall be in accordance with all state and federal law.

(e) No demolition debris shall either be disposed of or stored on any of the islands.

(Ord. 18-17/18, 8-21-2017)

Sec. 6-104. Reserved.

Sec. 6-105. Reserved.

ARTICLE V. HOUSING CODE

Sec. 6-106. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Basement shall mean the portion of a building next below the ground floor having not more than half of its clear height below the adjoining grade.

Dwelling shall mean any house, building or part thereof which is occupied or intended to be occupied, in whole or in part, for living and sleeping by one (1) or more occupants. A dwelling may include one (1) or more dwelling units or rooming units or a combination of both.

Dwelling premises shall mean the land and auxiliary buildings thereon used or intended to be used in conjunction with a dwelling.

Dwelling unit shall mean one (1) or more rooms forming a

single unit including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

Enforcement authority means and includes the building authority or his or her designee, and the health authority.

Extermination shall mean the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; poisoning, spraying, fumigating, trapping, or by any other recognized and legal pest elimination methods approved by the building authority.

Friable asbestos material shall mean any material that contains more than one (1) percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure.

Floor area shall mean the floor area inside of and between exterior walls or partitions or any combination thereof, as measured within a habitable room.

Habitable room shall mean a room used, or intended to be used, for living, sleeping, cooking, or eating purposes and excludes bathrooms, toilet rooms, laundries, pantries, halls, closets, heater rooms, utility rooms, and attics. Basement or cellar areas are not habitable rooms except as permitted in this article.

Infestation shall mean the presence within a dwelling or on premises of a dwelling of rodents, vermin, or other pests, as determined through actual observation of them or by evidence of their presence.

Lead-based paint hazard means the presence of lead in any form which exceeds the permissible concentration and which exists in an unacceptable condition.

Lead-based substance means any substance which contains lead at a level that constitutes or potentially constitutes an environmental lead hazard.

Lodging facility shall mean the use of one or more rooms, without individual bathroom or kitchen facilities, used to provide sleeping accommodations for no more than two persons, and which are available for use by the public for a fee and which are occupied,

regardless of the duration of the occupancy, in the absence of a written lease. Lodging facility does not including the following:

- (a) Sleeping accommodations, whether provided by a business or non-profit organization, where the owner or manager of such an operation routinely provides:
 - 1. Daily maid service;
 - 2. Replacement of linens and towels as demanded by guests of the establishment; and
 - 3. A centralized telephone system.
- (b) Any establishment licensed by the Maine Department of Human Services to provide health care under the direction of duly licensed health care professionals.
- (c) Dormitories, including dwelling units converted to licensed use, operated by educational institutions authorized to confer degrees.
- (d) Sleeping accommodations provided to graduate medical students under the auspices of the accreditation council on graduate medical education or a similar entity.

Multiple dwelling shall mean any dwelling containing more than two (2) dwelling units, rooming units, or combination of both.

Occupant shall mean any person, including an owner or operator, residing in or having actual possession of a dwelling unit or rooming unit.

Operator shall mean any person who has charge, care, management, or control of any dwelling or part thereof in which dwelling units or rooming units are let or offered for occupancy.

Owner shall mean any person or persons who alone, jointly, severally, or jointly and severally with others:

- (a) Shall have legal or record title to any dwelling, dwelling unit, or dwelling premises;
- (b) Shall have charge, care, or control of any dwelling, dwelling unit, or dwelling premises as an agent of the owner, executor, administrator, trustee, or guardian of the estate of the owner;

- (c) Shall have an equitable interest in a dwelling, dwelling unit, or dwelling premises under a contract or a bond for a deed with the person having legal or record title.

Rooming house shall mean any dwelling, or part thereof, containing three (3) or more rooming units in which space is rented or offered for rent by the owner or operator to be occupied or intended to be occupied by three (3) or more persons who are not related by blood or marriage to the owner or operator.

Rooming unit shall mean one (1) or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes, but not designed for food preparation, by two (2) or more persons living in common or by a person living alone.

Supplied shall mean installed, furnished, or provided by the owner at his or her expense.

(Code 1968, § 307.2; Ord. No. 310-68, § 1, 8-5-68; Ord. No. 490-74, § 1, 8-5-74; Ord. No. 114-77, § 2, 2-23-77; Ord. No. 475-86, § 1, 4-7-86; Ord. No. 159-95, 1-4-95; Ord. No. 45-04/05, 9-8-04; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 6-107. Minimum standards for dwellings established.

There are hereby established minimum standards for buildings used for dwelling purposes in the city. All such buildings not now conforming to these standards will be required to meet such minimum standards, and buildings newly constructed or converted for dwelling purposes shall meet such minimum standards. The standards set forth herein are intended to be minimum only and shall not be construed otherwise, nor shall they apply wherever a greater standard is required by any other ordinance or law.

(Code 1968, § 307.1; Ord. No. 475-86, § 1, 4-7-86)

Sec. 6-108. Minimum standards for structural elements.

No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, rooming house, rooming unit, or a combination of the same, which does not comply with the following minimum standards:

- (a) *Foundations, basements, cellars, exterior walls, roofs.* Every foundation, basement, cellar, exterior wall, and roof shall be substantially weathertight, watertight, and vermin proof; shall be structurally sound and in good

repair; and shall be safe for the intended use as well as capable of supporting whatever load normal use may cause to be placed thereon. Every exterior wall or portion thereof shall be painted or stained. Insulation shall be installed and maintained so as not to present a health or safety hazard to occupants. Water from roofs shall be so drained and conveyed therefrom as not to cause repeatedly wet floors, walls, or ceilings, or hazard to adjacent buildings or the occupants thereof.

- (b) *Interior floors, walls, ceilings and doors.* Every floor, wall, ceiling, and door shall be in a structurally sound condition and in good repair and shall be substantially vermin proof.
- (c) *Exterior windows, doors and skylights.* Every window or door, including basement or cellar door and hatchway, and skylight shall be substantially weathertight, watertight, and vermin proof and shall be kept in sound working condition and good repair.

Every exterior window shall include storm sash with screens or an alternative equally effective for heat retention and ventilation purposes, all in operable condition.

- (d) *Stairways, stairwells, stairs and porches.* Every inside and outside stairway, stairwell, stairs, and porch and any appurtenances thereto shall be structurally sound, in good repair, and safe to use.
- (e) *Chimneys, flues and vent.* Every chimney and every flue, vent, and smokepipe and any attachments thereto shall be structurally sound, in good repair, and safe to use.
- (f) *Required equipment and utilities.* Every supplied facility, piece of equipment, or utility which is required under this article shall be so constructed and installed that it will function safely and effectively and shall be maintained in good working condition.

(Code 1968, § 307.3; Ord. No. 475-86, § 3, 4-7-86)

Sec. 6-109. Sanitation and maintenance of equipment; division of responsibility therefor.

Every dwelling, dwelling unit, roominghouse, rooming unit, dwelling premises, or combination of the same, shall be kept and

maintained in a sanitary and clean condition, and facilities shall be provided, in accordance with the following division of responsibility:

- (a) *Maintenance of assigned areas.* Every occupant of a dwelling, dwelling unit, or rooming unit shall maintain in a clean and sanitary manner that part of the dwelling, dwelling unit, or rooming unit, and dwelling premises which he or she occupies and controls.
- (b) *Maintenance of shared areas.* Every owner or operator of a multiple dwelling or rooming house shall maintain in a clean and sanitary condition the shared or public areas of the dwelling and dwelling premises.
- (c) *Maintenance of supplied facilities.* Every occupant of a dwelling unit shall keep all supplied facilities, including refrigeration, plumbing and cooking equipment, in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in their proper use and operation.
- (d) *Disposal of rubbish, ashes, garbage and waste.* Separate watertight, tightly covered plastic or metal containers shall be provided, one (1) or more for garbage and other food wastes, one (1) or more for rubbish, paper, and other non-food wastes, and one (1) or more metal containers for ashes, and all such containers shall be kept covered at all times so as to prevent the ingress and egress of flies, rats or other animals. Plastic or paper bags or boxes are not considered "containers" for purposes of this section. Ashes shall be cold when placed in containers for collection. Such containers shall be cleaned periodically so that they will not become foul or offensive and shall be placed in convenient locations for removal of the contents by persons authorized to collect the same. Every occupant of a dwelling, dwelling unit, rooming house or rooming unit shall place or cause to be placed all garbage, rubbish and other waste material in such containers and shall not permit any accumulation or deposit of such substances in or about the premises except in said containers. The responsibility for the provision of such containers shall be as follows:
 - 1. It shall be the duty of every occupant of every dwelling occupied by not more than two (2) families to provide and keep within the dwelling or upon the

premises where the dwelling is situated sufficient containers to meet the above requirements.

2. It shall be the duty of the owner or operator of every multiple dwelling to provide and keep within the dwelling or upon the premises where the dwelling is situated sufficient containers to meet the above requirements.
3. It shall be the duty of every owner or operator of a rooming house to provide and keep within the dwelling or upon the premises where the dwelling is situated sufficient containers to meet the above requirements.

(e) *Rodent and vermin control.* Every dwelling, dwelling unit, rooming house, rooming unit, and dwelling premises shall be kept and maintained free from insects, rodents, or other pests in accordance with the following division of responsibility:

1. Every occupant of a dwelling unit shall be responsible for the extermination of such insects, rodents, or other pests where the infestation is confined to such dwelling unit, except as provided in subsection 6-109(e)2.
2. When infestation of a dwelling unit shall exist because of the failure of the owner or operator of a dwelling or dwelling premises to keep the same in a substantially rodent or vermin-proof condition, extermination shall be the responsibility of the owner or operator.
3. Every owner or operator of a dwelling shall be responsible for the extermination of such insects, rodents, or other pests whenever infestation exists in any two (2) or more dwelling and/or rooming units, or in shared areas or upon the dwelling premises.
4. Every owner or operator of a rooming house shall be responsible for the extermination of any insects, rodents, or other pests in the dwelling or upon the dwelling premises.

(f) *Maintenance of service to utilities.* No owner, operator

or occupant shall cause any service, facility, equipment or utility supplied in accordance with the requirements of this article to be removed, shut off, or discontinued for any occupied dwelling, dwelling unit, rooming house, or rooming unit except for such temporary interruption as may be necessary when actual repairs or alterations are being expeditiously made. For purposes of this Code, whenever it is established that the interruption was for more than twelve (12) hours within a twenty-four-hour period, the owner or operator shall have the burden of producing evidence proving the interruption was necessary and unavoidable given all the surrounding circumstances.

- (g) *Vacating of premises.* It shall be the duty of every occupant of a dwelling, dwelling unit or rooming unit, upon vacating such premises, to leave the premises in a clean and sanitary condition with no accumulation of rubbish or other debris. No owner or operator shall allow another to occupy any dwelling, dwelling unit, or rooming unit which has not been placed in a clean and sanitary condition with no accumulation of rubbish or other debris.

(Code 1968, § 307.4; Ord. No. 475-86, § 4, 4-7-86)

Sec. 6-109.5. Standards for unoccupied residential structures.

The owner of any unoccupied structure containing dwelling units or rooming units or any combination thereof shall comply with the following minimum standards:

- (a) *Foundations, basements, cellars, exterior walls, roofs.* Every foundation, basement, cellar, exterior wall and roof shall be substantially weathertight, watertight and vermin-proof; shall be structurally sound and in good repair; and shall be safe for the intended use as well as capable of supporting whatever load normal use may cause to be placed thereon. Every exterior wall or portion thereof shall be painted or stained. Water from roofs shall be so drained and conveyed therefrom as not to cause repeatedly wet floors, walls or ceilings, or hazard to adjacent buildings or the occupants thereof.
- (b) *Interior floors, walls, ceilings and doors.* Every floor, wall, ceiling and door shall be in a structurally sound condition and shall be substantially vermin-proof.
- (c) *Exterior windows, doors and skylights.* Every window or

door, including basement or cellar door and hatchway, and skylight shall be substantially weathertight, watertight and vermin-proof, and shall be kept secured to prevent ingress of people and animals.

- (d) *Stairways, stairwells, stairs and porches.* Every outside stairway, stairwell, stairs and porch and any appurtenances thereto shall be structurally sound, in good repair and safe to use.
- (e) *Chimneys, flues and vent.* Every chimney shall be structurally sound and in good repair.
- (f) *Rodent and vermin control.* All unoccupied structures and exterior property shall be kept free from rodent and vermin infestation. Where rodents and vermin are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. Every owner or operator of an unoccupied residential structure shall be responsible for the extermination of such rodent and vermin or pest whenever infestation exists.

(Ord. No. 172B-94, 2-7-94)

Sec. 6-110. Minimum standards for space and occupancy thereof.

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, dwelling unit, or rooming unit which is or would be overcrowded as determined by the following minimum standards for space and occupancy:

- (a) *Space per person.* Every dwelling unit shall contain at least one hundred (100) square feet of habitable floor area for the first occupant and at least seventy (70) square feet of additional habitable floor area for each additional occupant. For the purpose of this subsection, a child under the age of one (1) shall not be counted.
- (b) *Efficiency apartments.* A dwelling unit occupied by two (2) or more occupants which contains a room not intended primarily for cooking or sleeping, but which is properly designed and equipped or especially furnished with either a kitchenette or wall-type kitchen unit and bed-furniture properly designed for daytime storage or other daytime use, to be maintained as a combination of regular living and efficiency cooking, may contain seventy (70) square feet less habitable floor area than would otherwise be required. For the purpose of this subsection, a child

under the age of one (1) shall not be counted.

- (c) *Sleeping space.* Every room occupied for sleeping purposes in a dwelling unit and in a rooming unit shall contain at least fifty (50) square feet of habitable floor area for each occupant, except that children under one (1) shall not be counted and children more than one (1) but less than ten (10) shall be deemed one-half person.
- (d) *Size of habitable rooms.* No habitable room, other than a kitchen or dining alcove, shall contain less than sixty-five (65) square feet of floor area, nor shall the least horizontal dimension of such room be less than seven (7) feet.
- (e) *Computation of floor area.* In computing floor area for the purposes of this section, the space used for closets or other enclosed spaces and, in the case of rooms with sloping ceilings, portions of such rooms with less than four (4) feet in height shall be excluded in computing the area.
- (f) *Basement dwelling units.* Every room in any cellar or basement used for the purposes of a habitable room shall meet the following conditions:
 - 1. The ceiling shall have a clear inner height of at least seven (7) feet and shall be at least three (3) feet above the grade of the ground at the points where the required windows open.
 - 2. The floor and walls shall be water- and damp-proof and the room shall be well drained and dry.
 - 3. There shall be one (1) or more windows, the combined total sash area of which shall be not less than eight (8) square feet, or one-twelfth of total floor area, whichever is greater, which windows shall open readily for purposes of ventilation directly to the outside air.
- (g) *Notice of maximum occupancy required.* When a person lets to another for occupancy any dwelling, dwelling unit, or rooming unit, he or she shall notify the occupant in writing of the maximum number of persons permitted to occupy the premises by the provisions of this article.

(Code 1968, § 307.5)

Sec. 6-111. Minimum plumbing standards.

No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, rooming house, or rooming unit which does not comply with the following minimum standards:

- (a) *Basic facilities.* Every dwelling unit shall contain within its walls, in sound operating condition, a kitchen sink, a private flush toilet, lavatory basin, and bathtub or shower. Rooming houses and dwelling houses containing rooming units shall contain at least one (1) flush toilet, one (1) lavatory basin, and one (1) bathtub or shower for each five (5) persons or fraction thereof living within rooming units in the dwelling.
- (b) *Location of facilities.* The flush toilet, lavatory basin, and bathtub or shower shall be conveniently located within a room or compartment which affords privacy and is separate from habitable rooms, is accessible from a common hall without passing through another dwelling unit or rooming unit or without going outside of the rooming house or dwelling house, is not more than one (1) story removed from the rooming unit of any occupant intended to share such facilities, with the lavatory basin further required to be in the same room or compartment as practicable. No such facilities located in a basement or cellar shall count in computing the number of facilities required hereunder, except upon the prior approval of the building authority.
- (c) *Water supply.* Every dwelling, dwelling unit and rooming house shall be provided with a potable water supply. Every kitchen sink, lavatory basin, and bathtub or shower required by this article shall be properly connected with hot and cold water lines with adequate supply and pressure. The hot water lines shall be connected with water-heating facilities which supply water at a temperature of at least one hundred ten (110) degrees Fahrenheit at every required fixture at all times.
- (d) *Maintenance of plumbing fixtures.* All fixtures required by this article and all fixtures installed in addition thereto shall be properly installed and maintained in sound mechanical condition, free from defects, leaks, or obstructions, and in accordance with the state plumbing

code.

- (e) *Additional requirements for structures located on islands in Casco Bay.* All new or replacement plumbing fixtures to be installed in any structures located on an island in Casco Bay shall be of water conservation design, as outlined in the state plumbing code. Toilets shall have a low water volume standard of 1.6 gallons per flush or less. Other plumbing fixtures shall have a flow restriction with a maximum flow rated three (3) gallons per minute.

(Code 1968, § 307.6; Ord. No. 310-68, §§ 2, 3, 8-5-68; Ord. No. 475-86, § 5, 4-7-86; Ord. No. 165-89, 12-11-89)

Sec. 6-112. Minimum ventilation standards.

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, dwelling unit, rooming house or rooming unit unless every habitable room therein has a window or windows with a total sash area equal to at least one-twelfth of its floor area opening on a street, alley, yard or court open to the sky and constructed so that at least one-half of the sash area can be opened, except that an approved method of mechanical ventilation may be substituted for such window or windows.

(Code 1968, § 307.7)

Sec. 6-113. Minimum lighting standards.

No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, rooming house, or rooming unit which does not comply with the following minimum standards:

- (a) *Habitable rooms.* Every habitable room, other than rooms used primarily for sleeping, shall contain at least two (2) separate duplex convenience outlets or at least one (1) duplex convenience outlet and one (1) ceiling-type or wall-type electric light fixture.
- (b) *Rooms used primarily for sleeping, bathrooms, utility rooms, cellars and basements.* Every room used primarily for sleeping, water-closet compartment, bathroom, laundry room, furnace room, cellar and basement shall contain at least one (1) ceiling-type or wall-type electric light fixture.
- (c) *Passageways and common stairway.* Every passageway and

stairway shall have at least one (1) ceiling-type or wall-type electric light fixture adequate to provide safe passage.

- (d) *Extension cords.* No temporary wiring shall be used except extension cords which run directly from portable electrical fixtures to convenience outlets, ceiling or wall-type fixtures and which do not lie under rugs or other floor coverings, nor extend through doorways, transoms or similar openings through structural elements.
- (e) *Maintenance of lighting fixtures.* All fixtures required by this article and all fixtures installed in addition thereto shall be maintained in good and safe working conditions and shall be installed in accordance with the electrical code of the city.

(Code 1968, § 307.8; Ord. No. 475.86, § 6, 4-7-86)

Sec. 6-114. Minimum heating standards.

No person shall occupy as owner-occupant or shall allow another to occupy, except when used solely for seasonal occupancy between March first and October thirty-first, any dwelling, dwelling unit, rooming house or rooming unit which does not comply with the following minimum standards:

- (a) *When central heating plant not available.* When heat is not furnished by a central heating plant, each dwelling unit or rooming unit shall be provided with one (1) or more masonry flues and smoke or vent pipe connections, or equal arrangement, in accordance with the provisions of the city Code to permit the use of heating equipment capable of providing heat as required by this section.
- (b) *Heating facilities required.* Every habitable room, excepting rooms used primarily for sleeping purposes, shall be served by heating facilities which provide a minimum temperature of at least sixty-eight (68) degrees Fahrenheit, at a distance of three (3) feet above floor level, as required by prevailing weather conditions from September fifteenth through May fifteenth of each year.
- (c) *Maintenance of equipment.* All stoves, furnaces, room heaters, or domestic water heaters operated by solid, liquid, or gaseous fuel shall be properly vented and maintained in safe operating condition by the owner, operator, occupant or both.

(Code 1968, § 307.9; Ord. No. 475-86, § 7, 4-7-86; Ord. No. 156-88, 9-19-88)

Sec. 6-115. Lead-based paint hazard.

(a) This provision is intended to supplement the Lead Poisoning Control Act (22 M.R.S.A. Sections 1314 et seq.) and the regulations adopted pursuant thereto including, but not limited to, the Rules for Environmental Lead Inspections and the Rules for Abatement of Environmental Lead Hazards.

(b) When either the city's health authority, as defined in section 2-17(h), or the city's director of permitting and inspections, as defined in section 2-17(h)(10) of this Code as amended, determines that an environmental lead hazard exists in any dwelling or premises (as those terms are defined in Section 216.03-7 and Section 216.03-31 of the Rules for Abatement of Environmental Lead Hazards), he or she shall issue an order in writing to the owner (as defined in Section 216.03-28 of the Rules for Abatement of Environmental Lead Hazards), describing the environmental lead hazards and establishing a time within which such hazards shall be abated.

(Code 1968, § 307.9A; Ord. No. 490-74, § 2, 8-5-74; Ord. No. 475-86, § 8, 4-7-86; Ord. No. 159-95, 1-4-95; Ord. No. 165-15/16, 3-7-2016)

Sec. 6-116. Minimum standards for safety.

No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, rooming house, or rooming unit which does not comply with Chapter 10 of this code, including but not limited to the following minimum standards for safety from fire.

- (a) No dwelling unit or rooming unit shall be located within a building containing any establishment handling, dispensing, storing or producing flammable liquids, toxic gas vapors or fibrous materials, such as asbestos, which may endanger the lives or safety of the occupants.
- (b) Every dwelling unit and every rooming unit shall have safe, unobstructed means of egress leading to safe and open spaces at ground level in accordance with applicable statutes, regulations and ordinances.
- (c) Every hallway, stairway, corridor, exit, fire escape door or other means of egress shall be kept clear of obstructions at all times.

- (d) Storage rooms and storage lockers shall not be used for storage of refuse, rubbish or waste.
- (e) Every dwelling, dwelling unit, rooming house and rooming unit shall comply with the applicable provisions of the most current edition of the National Fire Protection Association Life Safety Code, and with all other applicable state statutes and regulations.
- (f) When the health or building authority or his or her designee determines that a dwelling contains friable asbestos material in an amount and/or location which presents an unacceptable health hazard to the occupants and/or the general public, the owner of the dwelling, upon notification from the health or building authority or a housing safety official designated by the city manager, shall remove that material or encapsulate it. Removal or encapsulation shall be conducted in accordance with all applicable federal, state and local laws and regulations.

(Code 1968, § 307.10; Ord. No. 475-86, § 9, 4-7-86; Ord. No. 188-00, §5, 4-24-00; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

***Editor's Note**—Pursuant to Council Order 165-10/11 passed on 4-4-11, Sections 6-116.1 thru 6-116.3 were repealed in their entirety.

Sec. 6-117. Inspections.

The health or building authority or his or her designee, upon showing, proper identification, shall have the right to enter at any and all reasonable times into or upon any dwelling or dwelling premises within the city for the purpose of inspecting the dwelling or dwelling premises in order to determine compliance with the provisions of this article and for the purpose of examining and inspecting any work performed under the provisions of this article, and it shall be a violation of this article for any person to interfere with or prevent such inspection.

(Code 1968, § 307.11; Ord. No. 475-86, § 10, 4-7-86; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-118. Notices.

When any violation is found to exist within the meaning of this article, the health or building authority or his or her designee shall give the owner, operator or occupant, or both a

written order or notice which shall set forth the violation and shall contain a reasonable time limit for the correction thereof.
(Code 1968, § 307.12; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-119. Reinspections.

After the expiration of the time for correction of a violation, the health or building authority or his or her designee shall make a reinspection of the premises, and if the violation has not been corrected and no appeal is pending as hereinafter provided, such authority may make such further order as he deems advisable or he may proceed to take legal action against the person liable for such violation.

(Code 1968, § 307.13; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-120. Properties unfit for human habitation; and posted against occupancy.

Any dwelling, dwelling unit, rooming house, rooming unit, or any structure or portion thereof being used for human habitation which is in violation of the provisions of this article to the extent that it is unfit for human habitation according to the standards contained herein or other applicable standards may be condemned for habitation and posted against occupancy by the building authority or his or her designee. Property unfit for human habitation shall include but not be limited to:

- (a) Properties which are either damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested in such a manner as to create a serious hazard to the health, safety, and general welfare of the occupants or the public;
- (b) Properties which lack plumbing, ventilating, lighting or heating facilities or equipment adequate to protect the health, safety and general welfare of the occupants or the public;
- (c) Properties which, because of their general condition, state of the premises, number of occupants, or location, are so unsanitary, unsafe, overcrowded or otherwise dangerous or detrimental that they create a serious menace to the occupants or the public;
- (d) Properties which contain lead-based paint substances, as defined herein;

- (e) Properties in or on which the owner, operator or occupant has failed to comply with notices or orders issued under the provisions of this article; or
- (f) Properties which are disorderly houses.

NOTE: The words "enforcement authority" would be substituted for "building authority" throughout the housing code.
(Code 1968, § 307.14; Ord. No. 475-86, § 11, 4-7-86; Ord. No. 159-95, 1-4-95; Ord. No. 36-98, § 2, 4-22-98; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-121. Notice of condemnation and posting; order to vacate.

The building authority or his or her designee shall give notice in writing to the property owner or operator of such condemnation and posting, and in the event such property is occupied, he or she shall give like notice to the occupant, which shall also include a reasonable time limit within which such property shall be vacated.

(Code 1968, § 307.15; Ord. No. 475-86, § 12, 4-7-86; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-122. Property not to be occupied again for habitation.

No property which has been condemned and posted against occupancy shall again be used for the purpose of habitation until the building authority or his or her designee shall in writing approve of its use and shall likewise authorize the removal of the posted notice.

(Code 1968, § 307.16; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-123. Notices not to be removed; property not to be used or let; exception.

It shall be a violation of this article for any person to deface or remove any such posted notice without the prior approval of the building authority or his or her designee, and it shall also be a violation of this article for any person to occupy or let to another for occupancy any property which has been condemned and posted as provided above without receiving the prior approval of the building authority or his or her designee.

(Code 1968, § 307.17; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-124. Property to be secured if not improved.

If the owner or operator of any property which has been

condemned as unfit for habitation does not proceed to make the necessary corrections to bring the property into compliance with the provisions of this article, such owner or operator shall proceed to make the property safe and secure so that no danger to life or property or fire hazard shall exist.

If the owner or operator fails to do so within a reasonable amount of time, the City may take all reasonable steps to make the property safe and secure and recoup the costs from the owner or operator. If the City takes steps to make the property safe and secure, the City shall also collect an administrative fee, as set forth in the schedule adopted pursuant to section 6-16.
(Code 1968, § 307.18; Ord. 18-17/18, 8-21-2017)

Sec. 6-125. Restriction on conveyance of property; exception.

It shall be a violation of this article for any person to sell, transfer, or otherwise dispose of any property against which an order has been issued by the building authority or his or her designee under the provisions of this article unless he or she shall first furnish to the grantee a true copy of any such order and shall at the same time notify the building authority or his or her designee in writing of the intent to so transfer either by delivering the notice to the building authority or his or her designee and receiving a receipt therefor or by registered mail, return receipt requested, giving the name and address of the person to whom the transfer is proposed. In the event of a violation of this section, such person shall be subject to a penalty as provided in section 1-15, in addition to any penalty which may be imposed for failure to comply with any order of the building authority or his or her designee.

(Code 1968, § 307.19; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-126. Responsibility hereunder may not be transferred.

No contract or agreement between owner and/or operator and occupant relating to compliance with the terms of this article shall be effective in relieving any person of responsibility for compliance with the provisions of this article as set forth herein.
(Code 1968, § 307.20)

Sec. 6-127. Appeals.

An appeal from any final decision of the building authority or his or her designee, if available by statute or otherwise by law, under the provisions of this article may be taken by an aggrieved

party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(Code 1968, § 307.21; Ord. No. 475-86, § 13, 4-7-86; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-128. Personal nonliability.

No officer or employee charged with the enforcement of this article and acting for the city in the discharge of his or her duties shall render himself or herself personally liable for any damage that may occur to any person or property as a result of his or her acts in the discharge of his or her duties. Any suit brought against any officer or employee because of any act performed by him or her under the provisions of this article shall be defended by the corporation counsel until the final determination of the proceedings therein.

(Code 1968, § 307.22)

Sec. 6-129. Exception for island properties.

The building authority or his or her designee may permit the use of buildings located on the islands for dwelling purposes which do not meet the minimum standards set forth in this article when he or she finds that it is not feasible or practicable to provide such minimum standards and the health, safety or general welfare of the occupants or the public will not be adversely affected.

(Code 1968, § 307.23; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

Sec. 6-130. Violations.

(a) Any owner, occupant, or operator of a building, structure, or premises shall be guilty of an offense and subject to the penalties and remedies provided in section 6-2 of this Chapter and 30-A M.R.S. § 4452 if that person does any of the following:

1. Violates a provision of this Article, or any codes adopted pursuant to this Article;
2. Allows a violation to occur or remain at any building, structure, or premises that he or she owns, occupies, or controls; or
3. Fails to comply with any lawful order issued pursuant to this Article.

(b) The imposition of a penalty for a violation does not excuse that violation or allow it to continue.

(Code 1968, § 307.24; Ord. No. 133-75, 2-19-75; Ord. No.165-10/11 4-4-11; Ord. 298-14/15, 7-6-2015; Ord. 18-17/18, 8-21-2017)

***Editor's Note:** Pursuant to Order 165-10/11, passed on 4-4-11 Section 6-131 was repealed in its entirety. It was later amended with new language by Order 18-17/18 on 8/21/2017.

Sec. 6-131. Enforcement.

In addition to the remedies otherwise provided, the following specific remedies shall also be available:

(a) Where any building, structure, or property is required to be secured by this article, the enforcement authority may secure the building and charge the owner, occupant, and/or operator a penalty of \$500, plus reimbursement of the actual costs of securing where:

1. The owner, occupant, and/or operator has been given notice of the requirement to secure and has failed to do so within a reasonable time; or
2. The building, structure, or property poses an imminent threat to the public if not secured before notice and an opportunity to correct can be given.

(b) The enforcement authority is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(Ord. 18-17/18, 8-21-2017)

Sec. 6-132. Lodging facility.

(a) *Statement of policy.* The intent of this section is to provide tenant-at-will status to residents of lodging facilities, as defined in section 6-106, after they have resided in a unit for thirty (30) days or more. Such lodging facilities offers sleeping accommodations but few other amenities, and residents of such housing in the past have been subjected to summary eviction procedures by landlords who purposefully characterize their rentals as "lodging houses" and thereby purport to act under state law in ejecting occupants without any recourse, regardless of the length of residency.

(b) *License registration required for lodging facilities.* No person, firm, corporation or other entity shall offer or provide lodging facilities, as that term is defined in section 6-106, without having registered pursuant to Article VI.

(c) *Application to buildings or structures with three or more units.* The requirements of this section shall apply to buildings or structures containing three (3) or more lodging facility units.

(d) *Constructive "tenant at will" status after 30 day occupancy.* Any person who has occupied a lodging facility unit situated at the same building or structure for thirty (30) consecutive days and has paid rent for that thirty (30) day period will be deemed to have achieved the status of a tenant at will as of the 30th day and may not thereafter be evicted except in accordance with the requirements of Maine's Forcible Entry and Detainer Law (14 M.R.S.A. § 6001, et seq.)

(e) *Termination of owner's interest.*

(1) Upon termination of an owner's interest in any building or structure operating as a lodging facility, whether by sale, assignment, death, appointment of a receiver or otherwise, the owner shall advise the successor in title, the City of Portland and all occupants of a lodging facility who have qualified under subsection (d) above of the status of such occupants, which shall be binding upon the successor in title as though it were the owner when the status was achieved.

(2) Notice to the City of Portland shall be addressed to:

Housing Safety Office
Permitting and Inspections Department
Portland City Hall
389 Congress Street
Portland, ME 04101

(f) *Owner's responsibility.* The owner shall remain liable to the occupants qualified under subsection (e) above until the notice required by that section has been provided.
(Ord. No. 45-04/05, 9-8-04; Ord. No. 165-15/16, 3-7-2016; Ord. 18-17/18, 8-21-2017)

Sec. 6-133. Habitation of Recreational Shelters.

(a) For purposes of this section, "recreational shelter" means any building, structure, vehicle, trailer, or other enclosure used or intended for human habitation that does not meet the standards set forth in Articles II through IV of this Chapter, or the State of Maine Manufactured Housing Act. This includes, but is not limited to, recreational vehicles, motor homes, campers, camp or truck trailers, tents, shelters, and structures on trailers capable of being towed by a motor vehicle.

(b) A recreational shelter may not be occupied as living quarters, unless it meets all of the following requirements:

- (1) The recreational shelter is a vehicle or trailer eligible for registration under Title 29-A, Chapter 5 of the Maine Revised Statutes;
- (2) The recreational shelter is fully inspected, registered and ready for highway use, except that a moveable recreational shelter that does not move under its own power may be temporarily disconnected from the vehicle used to haul it, only for the time period contained in subsection (b) (8) below;
- (3) The recreational shelter meets all of the applicable fire and life safety requirements;
- (4) The recreational shelter is weathertight, watertight, vermin proof, structurally sound and in good repair;
- (5) The use of the recreational shelter, and its connection to utilities, if any, complies with all other applicable sanitary, electrical, fire, and life safety requirements of this Code;
- (6) The recreational shelter is located entirely on residential property and is used solely by residents of that residential property or guests of those residents;
- (7) The recreational shelter, or space for the recreational shelter, is not rented or let;
- (8) The recreational shelter is not occupied as living quarters anywhere within the City of Portland for more than 30 days in any one-year period; and

(9) No more than one occupied recreational shelter may be located on a single parcel or lot at a time.
Ord. No. 19-17/18, 8-21-2017)

- Sec. 6-134. Reserved.
- Sec. 6-135. Reserved.
- Sec. 6-136. Reserved.
- Sec. 6-137. Reserved.
- Sec. 6-138. Reserved.
- Sec. 6-139. Reserved.
- Sec. 6-140. Reserved.
- Sec. 6-141. Reserved.
- Sec. 6-142. Reserved.
- Sec. 6-143. Reserved.
- Sec. 6-144. Reserved.
- Sec. 6-145. Reserved.
- Sec. 6-146. Reserved.
- Sec. 6-147. Reserved.
- Sec. 6-148. Reserved.
- Sec. 6-149. Reserved.

ARTICLE VI. RESIDENTIAL RENTAL UNIT REGISTRATION REQUIREMENTS

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, to regulate the renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015; Ord. 179-16/17, 3-27-2017)

Sec. 6-150.1. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

One- and two-family dwellings are commonly found above stores, offices, and restaurants. Locating these occupancies in proximity to each other presents a life safety challenge for the occupants of the residential dwellings. The typical configuration of these buildings creates the potential for a significant time lapse before occupants of the residential dwellings become aware of an emergency in another part of the building and take the necessary action. The provisions of 24.1.2.2 and 24.1.2.3 are intended to provide added protection for the residential occupancy during that time lapse. Therefore, these requirements are intended to apply wherever such a mixture of occupancies exists, whether in new construction or existing buildings.

24.1.3 Special Definitions.

Special terms applicable to this chapter are defined in Chapter 3 of this *Code*. Where necessary, other terms are defined in the text.

24.1.4 Classification of Occupancy.

See 6.1.8 and 24.1.1.1.

24.1.5 Classification of Hazard of Contents.

The contents of residential occupancies shall be classified as ordinary hazard in accordance with 6.2.2.

NFPA 13, *Standard for the Installation of Sprinkler Systems*,³ classifies the contents of a dwelling as *light hazard* for the purpose of designing automatic sprinkler systems. NFPA 13 classifies hazard on the basis of the challenge to the extinguishing capability of the automatic sprinkler system (light); hazard classification in this *Code* is based on the threat to life or life safety (ordinary).

24.1.6 Minimum Construction Requirements.

(No special requirements.)

24.1.7 Occupant Load.

(No requirements.)

24.2* Means of Escape Requirements

A.24.2 The phrase “means of escape” indicates a way out of a residential unit that does not conform to the strict definition of means of egress but does meet the intent of the definition by providing an alternative way out of a building. (See the definition of *means of escape* in 3.3.162.)

24.2.1 General.

The provisions of Chapter 7 shall not apply to means of escape, unless specifically referenced in this chapter.

In 24.2.1, the term *means of escape* is used in contrast to the usual term *means of egress*, because the escape paths required for a dwelling need not be the true exit access, exit, and exit discharge required for buildings intended to be occupied by the general public. The concept of means of escape is fully developed in Section 24.2. The intent is that at least one means of escape (primary) be of a high degree of quality that is similar to the means of egress components described in Chapter 7. Homes rarely have an exit arrangement complying with Chapter 7. The door through which occupants normally enter and leave the dwelling can typically serve as the primary means of escape. Another way out of the dwelling, such as through a large, operable window, is needed as the secondary means of escape. A secondary means of escape needs to be available for use if the route involving the primary means of escape becomes unusable during a fire or similar emergency.

Only the means of escape requirements of Chapter 24 are required to be met, unless Chapter 24 specifically references a means of egress provision of Chapter 7. For example, 24.2.5.1 mandatorily references the use of the provisions of 7.2.2 and 7.2.5 for stairs, ramps, and their associated guards and handrails.

24.2.2 Number and Types of Means of Escape.

24.2.2.1 Number of Means of Escape.

24.2.2.1.1 In dwellings or dwelling units of two rooms or more, every sleeping room and every living area shall have not less than one primary means of escape and one secondary means of escape.

See the definition of *living area* in 3.3.19.5.

The benefit of providing a primary and a secondary means of escape is based on the same concept as the requirements for two means of egress in other occupancies. The presence of two independent means of escape reduces the probability of a person becoming trapped by fire.

24.2.2.1.2 A secondary means of escape shall not be required where one of the following conditions are met:

- (1) The bedroom or living area has a door leading directly to the outside of the building at or to the finished ground level.

- (2) The dwelling unit is protected throughout by an approved automatic sprinkler system in accordance with 24.3.5.

The sprinkler system referred to in 24.2.2.1.2(2) must be installed in accordance with one of the following standards:

1. NFPA 13, *Standard for the Installation of Sprinkler Systems*
2. NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*⁴
3. NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height*⁵

The sprinkler provision in 24.2.2.1.2(2) is probably the most practical and common way to avoid providing secondary means of escape. The sprinkler provision might be used, for example, in an underground dwelling without windows or in a dwelling where the windows do not comply with 24.2.2.3.3. Since new one- and two-family dwellings are required to be sprinklered per 24.3.5.1, they are exempt from the requirement for secondary means of escape.

24.2.2.2 Primary Means of Escape. The primary means of escape shall be a door, stairway, or ramp providing a means of unobstructed travel to the outside of the dwelling unit at street or the finished ground level.

A door, stairway, or ramp providing a means of unobstructed travel to the outside is usually provided for the functional purposes of entering and leaving the dwelling. Therefore, the requirement for a primary means of escape is almost automatically met in a typical dwelling.

Where an attic bedroom is accessible only by means of a trap door or folding ladder, the room does not meet the *Code* requirements for primary means of escape. Such bedrooms must be provided with direct stair access. See 24.2.5.6.

The primary means of escape from a dwelling unit in an apartment building, or from a guest room in a hotel, is permitted to lead to a means of egress, such as a corridor leading to exit stairs complying with Chapter 7.

24.2.2.3 Secondary Means of Escape. The secondary means of escape, other than an existing approved means of escape, shall be one of the means specified in 24.2.2.3.1 through 24.2.2.3.3.

24.2.2.3.1 It shall be a door, stairway, passage, or hall providing a way of unobstructed travel to the outside of the dwelling at street or the finished ground level that is independent of and remote from the primary means of escape.

24.2.2.3.2 It shall be a passage through an adjacent non-lockable space, independent of and remote from the primary means of escape, to any approved means of escape.

24.2.2.3.3* It shall be an outside window or door operable from the inside without the use of tools, keys, or special effort and shall provide a clear opening of not less than 5.7 ft² (0.53 m²). The width shall be not less than 20 in. (510 mm), and the height shall be not less than 24 in. (610 mm). The bottom of the opening shall be not more than 44 in. (1120 mm) above the floor. Such means of escape shall be acceptable where one of the following criteria is met:

- (1) The window shall be within 20 ft (6100 mm) of the finished ground level.
- (2) The window shall be directly accessible to fire department rescue apparatus as approved by the authority having jurisdiction.
- (3) The window or door shall open onto an exterior balcony.
- (4) Windows having a sill height below the adjacent finished ground level shall be provided with a window well meeting the following criteria:
 - (a) The window well shall have horizontal dimensions that allow the window to be fully opened.
 - (b) The window well shall have an accessible net clear opening of not less than 9 ft² (0.82 m²) with a length and width of not less than 36 in. (915 mm).
 - (c) A window well with a vertical depth of more than 44 in. (1120 mm) shall be equipped with an approved permanently affixed ladder or with steps meeting the following criteria:
 - i. The ladder or steps shall not encroach more than 6 in. (150 mm) into the required dimensions of the window well.
 - ii. The ladder or steps shall not be obstructed by the window.

A.24.2.2.3.3 A window with dimensions of 20 in. × 24 in. (510 mm × 610 mm) has an opening of 3.3 ft² (0.31 m²), which is less than the required 5.7 ft² (0.53 m²). Therefore, either the height or width needs to exceed the minimum requirement to provide the required clear area. [See Figure A.24.2.2.3.3.]

The purpose of the secondary means of escape is to provide an occupant with an alternate escape route when fire or smoke blocks the primary means of escape from the dwelling unit. The three types of sec-

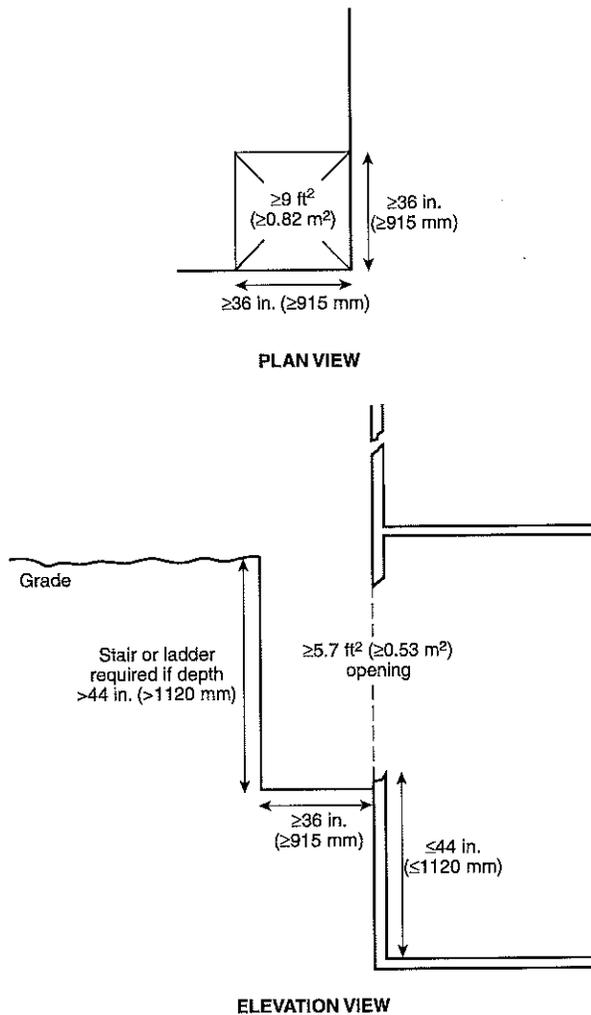


Figure A.24.2.2.3.3 Escape Window Utilizing a Window Well.

Secondary means of escape permitted by 24.2.2.3 are outlined in paragraphs 1 through 3:

1. As stated in 24.2.2.3.1, the door, stairway, passage, or hall serving as the secondary means of escape must be independent of, and remote from, the primary means of escape required by 24.2.2.2. Exhibit 24.1 illustrates a dwelling unit where none of the windows complies with the requirements of 24.2.2.3.3 and a nonlockable door is located between bedrooms 2 and 3. As a result, both the primary and secondary means of escape from bedrooms 2 and 3 lead into the same hallway. A fire in or near this hallway would affect both means of escape from these rooms. Note that if

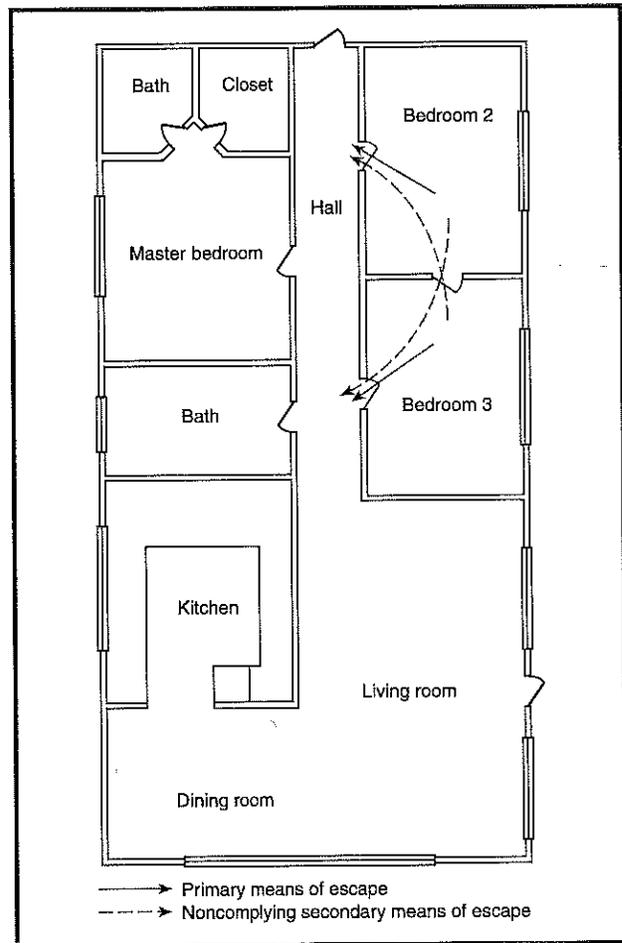


Exhibit 24.1 Noncomplying secondary means of escape arrangement.

the hallway within the dwelling unit is separated from all living spaces and leads to two separate ways out of the dwelling unit, it might be judged that the hallway does, in fact, lead to two separate, independent, and remote means of escape.

Two doors leading out of a sleeping room might not be practical or effective in most single-family dwellings. In the apartment illustrated in Exhibit 24.2, bedrooms 1 and 2 each have a window that does not comply (WNC) as a secondary means of escape. In bedroom 1, a door that meets the criteria of being independent and remote from the main door provides the secondary means of escape. Bedrooms 2 and 3 are provided with compliant windows (W) as their secondary means of escape, and the living space has a compliant sliding glass door to the balcony.

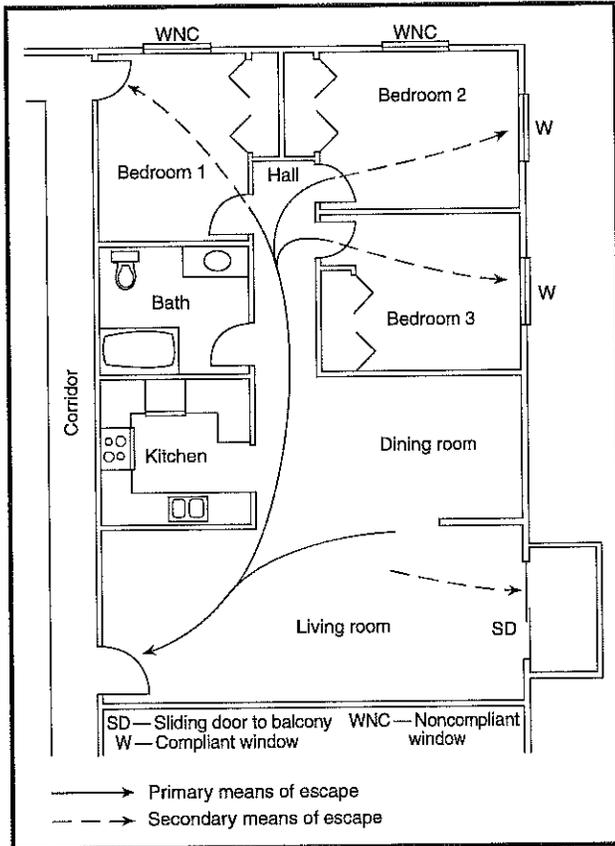


Exhibit 24.2 Secondary means of escape arrangement complying with 24.2.2.

2. Passage through an adjacent nonlockable space, as addressed by 24.2.2.3.2, is illustrated in Exhibit 24.3. In this exhibit, bedroom 3 has a window that does not comply with the provisions of 24.2.2.3.3; however, there is a compliant door between bedrooms 3 and 2 that provides a secondary means of escape to the balcony using the compliant sliding door in bedroom 2.

3. The use of an operable window providing an opening of the minimum dimensions specified in 24.2.2.3.3 is the secondary means of escape most often provided. Exhibit 24.4 illustrates the minimum dimensions required for escape windows. Note that a window providing only the minimum width and minimum height dimensions specified by 24.2.2.3.3 does not provide the required minimum area; if either the minimum width or minimum height dimension is used, the other dimension must be increased to achieve the minimum area requirement. This requirement also is illustrated in Exhibit 24.4.

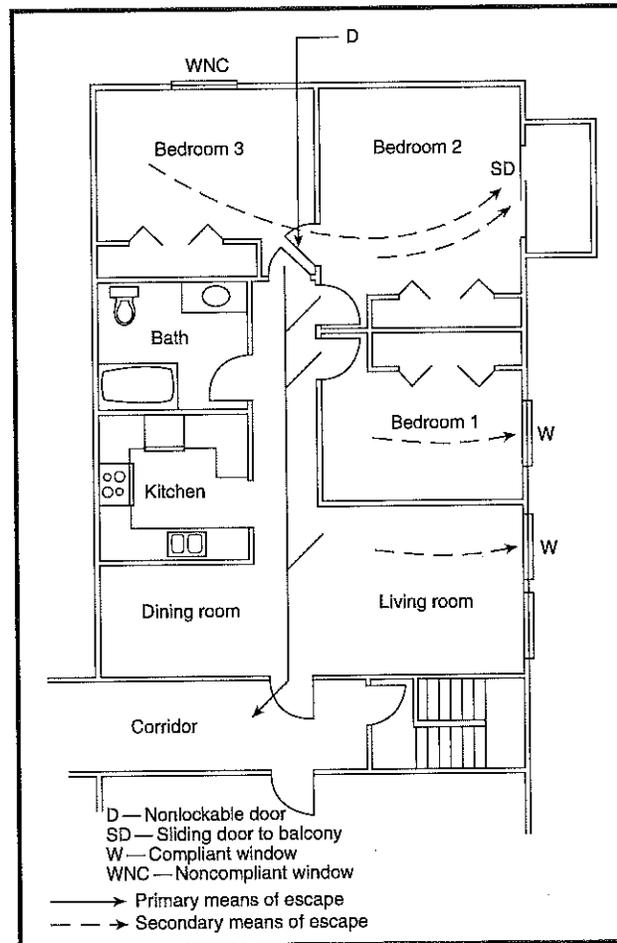


Exhibit 24.3 Alternative secondary means of escape arrangement complying with 24.2.2.

The outside window addressed in 24.2.2.3.3 must comply with one of the four accessibility arrangements outlined in paragraphs 1 through 4.

1. The first arrangement makes it possible for an occupant to drop from the window, because the window must be within 20 ft (6100 mm) of the finished ground level.

2. The second arrangement relies on the fire department to rescue an occupant from a window that is within reach of rescue apparatus. Such rescue can be achieved either by means of truck-mounted aerial ladders, by ground ladders, or by other means acceptable to the authority having jurisdiction (AHJ).

3. The third arrangement allows an occupant to reach an exterior balcony to breathe fresh air while

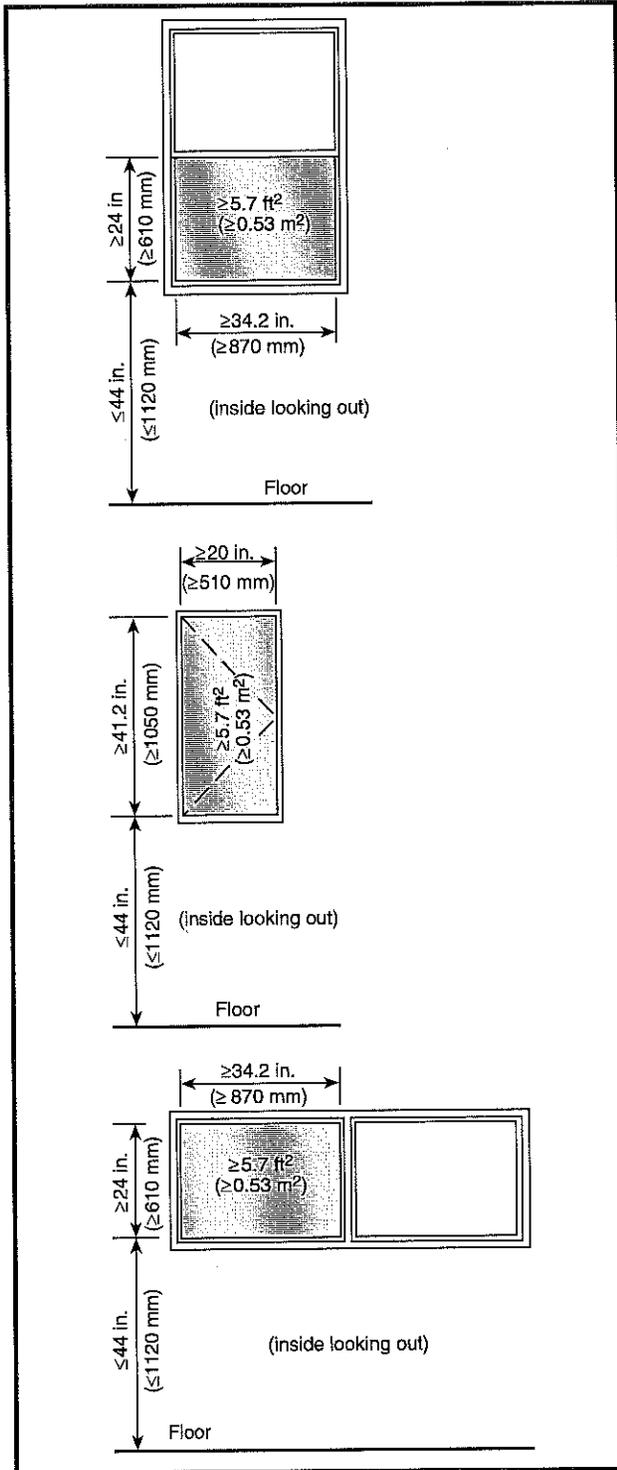


Exhibit 24.4 Escape window minimum opening dimensions.

awaiting either rescue or fire extinguishment. This method could be used where the balcony is not within reach of rescue apparatus. See Exhibit 24.2 and Exhibit 24.3 for examples of secondary means of escape utilizing balconies.

4. The fourth arrangement recognizes the increasing trend of developing or converting basements into living space, such as home offices, playrooms, or sleeping areas. Fire in these areas or the areas above them could easily block the primary means of escape, which is usually a single stair to the upper level. This option provides requirements for the size of the window well, in addition to the window size, to provide sufficient space to operate the window and move up to grade level.

Existing secondary means of escape — such as existing windows that do not meet the strict dimensional requirements of 24.2.2.3.3 — are permitted by 24.2.2.3 to continue to be used subject to the approval of the AHJ. This provision limits the impact on existing buildings, unless the means of escape is of extremely poor quality.

24.2.2.3.4 Ladders or steps that comply with the requirements of 24.2.2.3.3(4)(c) shall be exempt from the requirements of 7.2.2.

24.2.2.4 Two Primary Means of Escape. In buildings, other than existing buildings and other than those protected throughout by an approved, supervised automatic sprinkler system in accordance with 24.3.5, every story more than 2000 ft² (185 m²) in area within the dwelling unit shall be provided with two primary means of escape remotely located from each other.

24.2.3 Arrangement of Means of Escape.

Any required path of travel in a means of escape from any room to the outside shall not pass through another room or apartment not under the immediate control of the occupant of the first room or through a bathroom or other space subject to locking.

A means of escape that relies on travel through an adjacent space might not be usable if the door separating the spaces is locked against escape. One- and two-family dwellings can have rooms occupied by up to three outsiders or could be arranged so that a second family must escape through the living space of the first family. This arrangement is often found in older homes that were not originally built as duplexes but

Additional Information for the Zoning Board of Appeals Regarding the Violation at 11 Stevens Avenue

I respectfully repeat that the City had no authority to inspect the Owner's Bedroom in my house or to order my bedroom window to be changed. The issue is not which branch or division of the City inspected, but that anyone did:

1. Chapter 10, section 10-3 (m) of the City of Portland Code "Fire Prevention and Protection" specifically states "The provisions of the Life Safety Code shall apply to all rental units..." It specifically does not mention the Owner's Unit, only the Rental Unit. (Please see page 10-4, attached).
2. In Chapter 10, section 10-3 (n) of the Portland City Code inspections for rental units are allowed while inspections of premises covered by Chapter 24 of the NFPA 101 are specifically disallowed:
"Inspections. The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Life Safety Code into or upon any of the following premises: any rental unit subject to registration under section 6-151; any premises subject to this article, **with the exception of premises subject to Chapter 24 of NFPA 101; ...**" (Emphasis added; please see page 10-4, attached).
3. Chapter 24 of the NFPA (relevant pages attached) in section 24.1.1.1 states "[t]he requirements of this chapter shall apply to one- and two-family dwellings, which shall include those buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms. "
4. 11 Stevens Avenue is a one- or two-family dwelling unit and therefore, with up to three roommates, falls under Chapter 24.
5. Therefore the City, under Chapter 10 of its own Code, waived its authority to inspect 11 Stevens Avenue for Life Safety Code violations. The City also had no authority to inspect for Life Safety Code/Fire Code Prevention provisions in the owner-occupied portion of 11 Stevens Avenue, only the rental unit.
6. The City claims it has the right of inspection in this case under Section 6-116 of the City Code. However, 6-116 states it is aimed at enforcing Chapter 10, the Fire Prevention and Protection chapter, and Chapter 10 by its very terms exempts inspections of one and two family dwellings (Section 10-3 (n)).
7. The prohibition against inspections of single-family homes applies to housing safety officials, for as defined in Section 10-2, the "authority having jurisdiction" includes housing safety officials.
8. The City's argument that the safety of my roommate is affected by the owner's bedroom is ludicrous. The roommate can exit the house through either of two exterior doors, or through the windows in the roommate's room, which totals three means of escape. The size of the owner's bedroom window is irrelevant to my roommate's safety.
9. The purpose of the rental registration program is to provide for the safety of renters, not to force the improvement of the entire housing stock of Portland.

I am perfectly safe in my own home. I have two separate and independent routes of escape as my bedroom has two doors that in turn lead to two exterior doors. If the Inspector interprets that this not enough, then please note I also have two operable windows in my bedroom. With the lower sash raised, my window provides an opening that is 21" wide (1" wider than the minimum required width per NFPA) and 24" high (the required minimum height). Although the window does not meet the required total sf as per NFPA, I can easily climb out of it. The means of escape from my bedroom is not of extremely poor quality. I climbed out of my bedroom window this last Sunday in less than fifteen seconds.

In cases where the exact requirements of the Life Safety Code are not met, Section 24.2.2.3.3 of NFPA 101 (attached, see page 815) states that "[e]xisting secondary means of escape - such as existing windows that do not meet the strict dimensional requirements of 24.2.2.3.3 - are permitted by 24.2.2.3 to continue to be used subject to the approval of the AHJ. This provision limits the impact on existing buildings, unless the means of escape is of extremely poor quality."

I respectfully ask that the Zoning Board of Appeals use the authority granted to it in 10-23 of the City Code and remove this violation from my home. I am not requesting a variance, only that the common-sense accommodations for existing buildings provided in section 24.2.2.3.3 of NFPA 101 be applied to my bedroom and the violation be removed.

The window configuration found in my bedroom - a double hung window on either side of a large picture window - was very popular in the 1950s and 1960s and remains in place in thousands of homes throughout Portland. It is unrealistic to require all these homeowners to replace their windows. Building codes, including the Life Safety Code, were never intended to be punitive in nature. I don't have the money for replacing my window, and without a roommate I am strained to even meet my household expenses right now, let alone replace a window. I have a door removal project that is stalled due to lack of finances. I have no financial reserves for this work.

Thank you for your time,

Margaret Gaertner

Owner, 11 Stevens Avenue

Chapter 10 FIRE PREVENTION AND PROTECTION*

***Cross reference(s)**--Civil emergency preparedness, § 2-401 et seq.; buildings and building regulations, Ch. 6; electrical regulations for fire alarms, § 6-41; fireworks in cemeteries, § 7-138; fire protection in day-care facilities, § 8-41; selling toy balloons with flammable gases prohibited, § 17-31; following fire apparatus, § 28-99; crossing fire hose, § 28-100.

State law reference(s)--Fire prevention and fire protection, 25 M.R.S.A. § 2351 et seq.; municipal fire protection, 30-A M.R.S.A. § 3151 et seq.

- Art. I. NFPA 101: Life Safety Code, §§ 10-1--10-15**
- Art. II. NFPA 1: Fire Code, §§ 10-16--10-21**
- Art. III. Enforcement and Appeals, §§ 10-22--10-25**
- Art. IV. Hydrants, §§ 10-26--10-36**
- Art. V. Reserved, §§ 10-37--10-65**
- Art. VI. Fire Suppression Systems, §§ 10-66 - 10-90**
- Art. VII. Open Burning, §§ 10-91 - 10-99**
- Art. VIII. Signaling Systems for the Protection of Life and Property
§§ 10-100 - 10-107**

ARTICLE I. LIFE SAFETY CODE

Sec. 10-1. Adoption of National Fire Protection Association 101: Life Safety Code.

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, a code known as the National Fire Protection Association (NFPA) 101: Life Safety Code (hereinafter referred to as the "Life Safety Code") recommended by the National Fire Protection Association, being particularly the 2009 edition thereof and the whole thereof, except for such portions as are deleted, modified or amended by section 10-3, of which code not less than one (1) copy has been and now is filed in the office of the city clerk and the same is hereby adopted and incorporated as fully as if set out at length herein, and shall be controlling within the limits of the city.

(Ord. No. 188-00, § 6, 4-24-00; Ord. No. 214-01/02, § 1; Ord. No. 25-10/11, 8-16-

10)

Sec. 10-2. Definitions.

Wherever the words "authority having jurisdiction" are used in the Life Safety Code, they shall be held to mean the chief of the fire department of the City of Portland, or his or her duly authorized representative or a housing safety official designated by the city manager.

Wherever the word "municipality" or "city" is used in the Life Safety Code, it shall be held to mean the City of Portland.

Special hazard dwelling unit shall mean any structure containing twelve (12) or more dwelling units.
(Ord. No. 188-00, § 6, 4-24-00; Ord. No. 25-10/11, 8-16-10; Ord. 298-14/15, 7-6-2015)

Sec. 10-3. Amendments.

The NFPA 101: Life Safety Code adopted by section 10-1 is amended, modified and deleted in the following respects:

- (a) Section 3.3.32.8 shall be amended to read as follows:

Historic Building: A building designated a Landmark or Contributing Building within a local or National Register historic district, pursuant to Article IX of the Portland City Code.

- (b) Section 3.3.97 shall be amended to include the following:

"In the case of structures posing significant life safety risks that may result in the displacement of person(s), a fire watch not to exceed seven days, with specifications and criteria to be set by the authority having jurisdiction, may be instituted if said watch is approved by the authority having jurisdiction, the City Manager, Corporation Counsel, and the Director of Permitting and Inspections."

- (c) Section 9.7.1.1. The authority having jurisdiction shall have power to amend the water supply requirements of sections 9.7.1.1(1), 9.7.1.1(2), or 9.7.1.1(3) for individual installations where meeting such requirements are impractical, financial reasons not being a

consideration, and provided such requirements shall not be less stringent than the minimum water supply requirements for sprinkler systems in the State of Maine.

- (d) Sections 12.3.5.3(3) and (4); and Sections 13.3.5.3(1) and (2); *delete*.
- (e) Unvented fuel-fired heaters shall not be used in a bedroom or bathroom or in a manufactured home.
- (f) Section 43.6.4.1; *delete only the automatic sprinkler requirement for one and two-family⁷ dwelling units undergoing renovations.*
- (g) Section 39.3.4.4. Fire department notification shall be accomplished in accordance with section 9.6.4.
- (h) *Stair risers, guards, treads, and tread nosing.* The maximum height of risers as prescribed in Chapter 24, Section 24.2.5 is modified to permit a maximum 7 $\frac{3}{4}$ " riser for newly constructed stairs in one and two family dwellings only. The minimum height of guards as prescribed in Chapter 24, Section 24.2.5 is modified to permit a minimum guard height of 36" for newly constructed stairs in one and two family dwellings only. The minimum tread depth as prescribed in Chapter 24, Section 24.2.5 shall be amended to permit a 10" tread depth for newly constructed stairs in one and two family dwellings only. Tread nosing as prescribed in Chapter 7, Section 7.2.2.3.5 is modified to permit a nosing at least $\frac{3}{4}$ " but not more than 1 $\frac{1}{4}$ " in depth for newly constructed one and two family dwellings.
- (i) New smoke alarm installations must use photoelectric technology.

Further, in new single or multiple-station smoke alarm installations in buildings subject to NFPA 101, Chapter 31, the primary power source must be the building's electrical service and the smoke alarms must be provided with a secondary (standby) power source. Therefore, the following sections shall be *deleted*:

Section 31.3.4.5.2
Section 31.3.4.5.4

- (q) Existing buildings shall comply with the authority having jurisdiction's Standards for Building, Stair, Floor, Suite and Room designation system where practicable as determined by the authority having jurisdiction.
- (r) Section 4.6.4.3. Rehabilitation projects in buildings or structures shall not be considered historic buildings under the provisions of this Code by this fact alone. The provisions of section 43.10 shall apply to buildings or structures designated or eligible for designation or located within a historic district if deemed necessary by the Department of Planning and Urban Development or as required by Article IX of the Portland City Code or to comply with the Secretary of the Interior Standards for Historic Preservation under federal or state review requirements.

(Ord. No. 188-00, § 6, 4-24-00; Ord. No. 214-01/02, Ord. No. 25-10/11, 8-16-10; Ord. No. 215-11/12, 7-2-12; Ord. No. 53-13/14, 10-7-13; Ord. 298-14/15, 7-6-2015; Ord. 127-16/17, 2-22-2017)

Sec. 10-4. Special Hazard Dwelling Units.

(a) The following shall be located on-site in special hazard dwelling unit(s) in a fire resistant container and in a location fully accessible by the authority having jurisdiction at all times:

- (1) A detailed floor plan depicting the existing conditions of the building and, if available, a full set of building blueprints; and
- (2) Sufficient master keys to the building, as determined by the authority having jurisdiction; and
- (3) A list of special hazards within the building; and
- (4) Emergency contact information and location of any occupants requiring special assistance in the event of an emergency; and
- (5) Plans for new special hazard structures shall be filed with the authority having jurisdiction in an approved electronic format.
- (6) An approved sign shall be provided in a location approved by the authority having jurisdiction indicating the

(j) Section 7.2.2.5.5 is amended as follows:

7.2.2.5.5 *Exit Stair Path Markings*. Exit stair path marking shall be installed for all new high-rise buildings in accordance with 7.2.2.5.5.1 through 7.2.2.5.5.11.

(k) Annex B, *Elevators for Occupant-Controlled Evacuation Prior to Phase I Emergency Recall Operations*, is hereby incorporated by reference.

(l) All residential occupancies, and all new multiple occupancies containing parking structures shall be protected in accordance with NFPA 720, *Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment*, 2009 edition.

(m) The provisions of the Life Safety Code shall apply to all rental units as that phrase is defined in Portland City Code Chapter 6, §6-151.

(n) Inspections. The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Life Safety Code into or upon any of the following premises: any rental unit subject to registration under section 6-151; any premises subject to this article, with the exception of premises subject to Chapter 24 of NFPA 101; any premises when any governmental agency having jurisdiction over a particular premises should request it to do so; or any premises in response to a complaint regarding conditions governed by this Chapter. It shall be a violation of this article for any person either to interfere with or to prevent such inspection.

(o) Appeals. Appeals shall be governed by Chapter 10, Article III, Enforcement and Appeals, §10-23 of the Portland City Code.

(p) All new buildings shall comply with the authority having jurisdiction's Standards for Building, Stair, Floor, Suite and Room designation system.

CHAPTER 24

One- and Two-Family Dwellings

Although most people feel safest in their homes, fire deaths in the home account for some 80 percent of all fatalities attributable to fire in the United States. [Chapter 24](#) highlights a number of factors that significantly mitigate the fire problem. A key and unique component that is addressed in this chapter, and that is selectively applied to the other residential chapters, is means of escape (see [Section 24.2](#)). The concept of means of escape focuses on providing a second way out of an occupied room or space within a living unit, regardless of whether it is a single-family home or a dwelling unit within an apartment building. Means of escape features do not need to meet the high standards and criteria that apply to the means of egress. In short, means of escape is an important yet broadly applied concept that is intended to reduce the chance of occupants becoming trapped in a room or space if the primary egress route is unavailable.

Recognizing that the greatest number of fire fatalities occurs in what has historically been the least regulated occupancy, the *Code*, in a major shift from earlier editions, now requires, since the 2006 edition, all new one- and two-family dwellings to be protected by automatic sprinkler systems. Residential sprinkler systems have a phenomenal record of success in preventing fire deaths and injuries. Although residential sprinkler systems are designed exclusively to protect life, and not necessarily property, many homes and personal possessions have, in fact, been saved from the devastating effects of fire thanks to their installation.

While the 2006 edition of the *Code*, along with the 2006 edition of *NFPA 5000[®], Building Construction and Safety Code[®]*,¹ were the first model codes in the United States to require sprinklers in new one- and two-family dwellings, numerous communities paved the way by enacting local sprinkler legislation. For example, Scottsdale, Arizona, was among the first cities in

the United States to mandate sprinklers in new homes effective January 1, 1986. Ten years later, a report titled “Automatic Sprinklers: A 10 Year Study — A Detailed History of the Effects of the Automatic Sprinkler Code in Scottsdale, Arizona”² (commonly known as the *Scottsdale Report*), was published. The report provides compelling data to support the economic feasibility of mandating automatic sprinklers in dwellings. See the commentary following [24.3.5.1](#) for further discussion of the *Scottsdale Report*.

Prince Georges County, Maryland, is another community that is largely recognized as a leader for its residential sprinkler mandate, which became effective on January 1, 1992.

In addition to sprinklers in new one- and two-family dwellings, [Chapter 24](#) regulates interior wall and ceiling finish and mandates the installation of smoke alarms. As is the case in other residential occupancies, these features work together to greatly improve the safety of occupants.

24.1 General Requirements

24.1.1 Application.

24.1.1.1* The requirements of this chapter shall apply to one- and two-family dwellings, which shall include those buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms.

A.24.1.1.1 The *Code* specifies that wherever there are three or more living units in a building, the building is considered an apartment building and is required to comply with either [Chapter 30](#) or [Chapter 31](#), as appropriate. A townhouse unit is considered to be an apartment building if there are three

or more units in the building. The type of wall required between units in order to consider them as separate buildings is normally established by the authority having jurisdiction. If the units are separated by a wall of sufficient fire resistance and structural integrity to be considered as separate buildings, the provisions of Chapter 24 apply to each townhouse. Condominium status is a form of ownership, not occupancy; for example, there are condominium warehouses, condominium apartments, and condominium offices.

The provisions of 24.1.1.1 state that, in one- and two-family dwellings, each dwelling unit can be “occupied by members of a single family with not more than three outsiders.” The Code does not define the term *family*. The definition of *family* is subject to federal, state, and local regulations and might not be restricted to a person or a couple (two people) and their children. The following examples aid in differentiating between a single-family dwelling and a lodging or rooming house:

- (1) An individual or a couple (two people) who rent a house from a landlord and then sublease space for up to three individuals should be considered a family renting to a maximum of three outsiders, and the house should be regulated as a single-family dwelling in accordance with Chapter 24.
- (2) A house rented from a landlord by an individual or a couple (two people) in which space is subleased to 4 or more individuals, but not more than 16, should be considered and regulated as a lodging or rooming house in accordance with Chapter 26.
- (3) A residential building that is occupied by 4 or more individuals, but not more than 16, each renting from a landlord, without separate cooking facilities, should be considered and regulated as a lodging or rooming house in accordance with Chapter 26.

Considerable debate has centered on the term *family*. It is not the intent of 24.1.1.1 to define the term; however, A24.1.1.1 provides assistance in determining where the term is inappropriate and another chapter of the Code is to be used. If more than three outsiders are accommodated in rented rooms within a dwelling unit, the occupancy should be classified as a lodging or rooming house and should meet the requirements of Chapter 26. The reasoning behind this classification guideline is that outsiders do not tend to keep each other as informed as family members do with regard to conditions within the building. In addition, when occupying their rooms, they more often keep their room doors closed than do family members. The lack of communication and reduced openness and awareness justify the additional alarm system, vertical opening, and corridor wall and door requirements that apply to lodging or rooming houses.

24.1.1.2 The requirements of this chapter shall apply to new buildings and to existing or modified buildings according to the provisions of 1.3.1 of this Code.

24.1.2 Multiple Occupancies.

24.1.2.1 Multiple occupancies shall be in accordance with 6.1.14.

24.1.2.2 No dwelling unit of a residential occupancy shall have its sole means of egress pass through any nonresidential occupancy in the same building, unless otherwise permitted by 24.1.2.2.1 or 24.1.2.2.2.

24.1.2.2.1 In buildings that are protected by an automatic sprinkler system in accordance with Section 9.7, dwelling units of a residential occupancy shall be permitted to have their sole means of egress pass through a nonresidential occupancy in the same building, provided that the following criteria are met:

- (1) The dwelling unit of the residential occupancy shall comply with Chapter 24.
- (2) The sole means of egress from the dwelling unit of the residential occupancy shall not pass through a high hazard contents area as defined in 6.2.2.4.

24.1.2.2.2 In buildings that are not protected by an automatic sprinkler system in accordance with Section 9.7, dwelling units of a residential occupancy shall be permitted to have their sole means of egress pass through a nonresidential occupancy in the same building, provided that the following criteria are met:

- (1) The sole means of egress from the dwelling unit of the residential occupancy to the exterior shall be separated from the remainder of the building by fire barriers having a minimum 1-hour fire resistance rating.
- (2) The dwelling unit of the residential occupancy shall comply with Chapter 24.
- (3) The sole means of egress from the dwelling unit of the residential occupancy shall not pass through a high hazard contents area as defined in 6.2.2.4.

24.1.2.3 Multiple dwelling units of a residential occupancy shall be permitted to be located above a nonresidential occupancy only where one of the following conditions exists:

- (1) Where the dwelling unit of the residential occupancy and exits therefrom are separated from the nonresidential occupancy by construction having a minimum 1-hour fire resistance rating
- (2) Where the nonresidential occupancy is protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7
- (3) Where the nonresidential occupancy is protected by an automatic fire detection system in accordance with Section 9.6

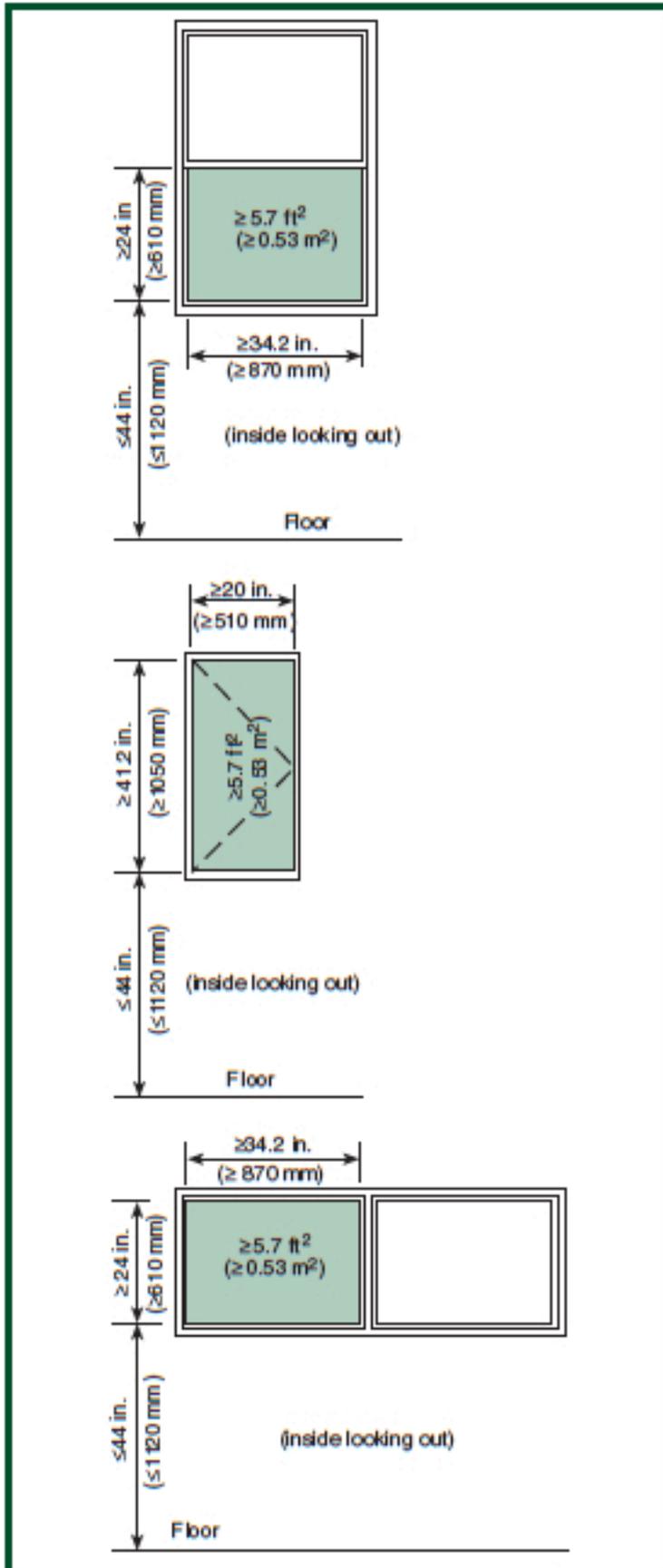


Exhibit 24.4 Escape window minimum opening dimensions.

awaiting either rescue or fire extinguishment. This method could be used where the balcony is not within reach of rescue apparatus. See [Exhibit 24.2](#) and [Exhibit 24.3](#) for examples of secondary means of escape utilizing balconies.

4. The fourth arrangement recognizes the increasing trend of developing or converting basements into living space, such as home offices, playrooms, or sleeping areas. Fire in these areas or the areas above them could easily block the primary means of escape, which is usually a single stair to the upper level. This option provides requirements for the size of the window well, in addition to the window size, to provide sufficient space to operate the window and move up to grade level.

Existing secondary means of escape — such as existing windows that do not meet the strict dimensional requirements of [24.2.2.3.3](#) — are permitted by [24.2.2.3](#) to continue to be used subject to the approval of the AHJ. This provision limits the impact on existing buildings, unless the means of escape is of extremely poor quality.

24.2.2.3.4 Ladders or steps that comply with the requirements of [24.2.2.3.3\(4\)\(c\)](#) shall be exempt from the requirements of [7.2.2](#).

24.2.2.4 Two Primary Means of Escape. In buildings, other than existing buildings and other than those protected throughout by an approved, supervised automatic sprinkler system in accordance with [24.3.5](#), every story more than 2000 ft² (185 m³) in area within the dwelling unit shall be provided with two primary means of escape remotely located from each other.

24.2.3 Arrangement of Means of Escape.

Any required path of travel in a means of escape from any room to the outside shall not pass through another room or apartment not under the immediate control of the occupant of the first room or through a bathroom or other space subject to locking.

A means of escape that relies on travel through an adjacent space might not be usable if the door separating the spaces is locked against escape. One- and two-family dwellings can have rooms occupied by up to three outsiders or could be arranged so that a second family must escape through the living space of the first family. This arrangement is often found in older homes that were not originally built as duplexes but