

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

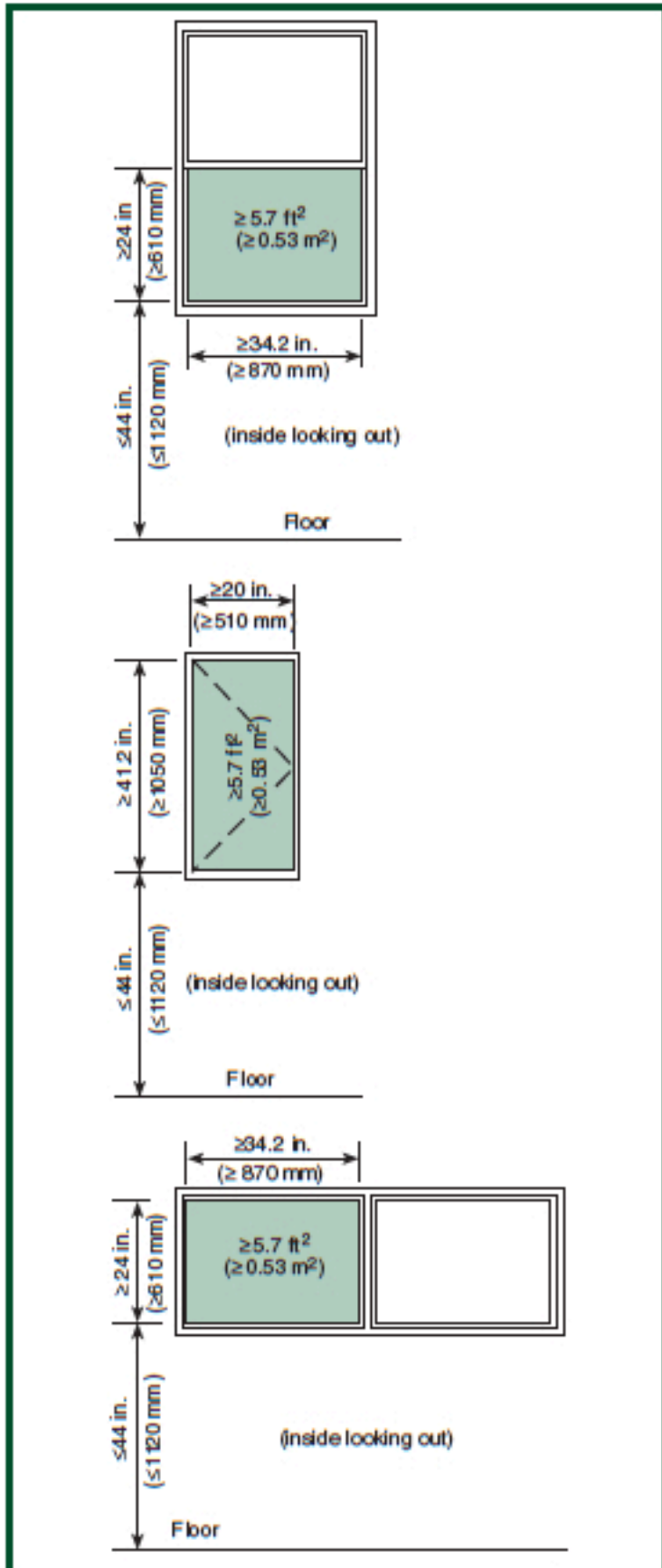


Exhibit 24.4 Escape window minimum opening dimensions.

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