

## MEMORANDUM

**TO:** Zoning Board of Appeals

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

**DATE:** February 8, 2018

**RE:** 11 Stevens Avenue Appeal

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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 Officers<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>. 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)

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**\*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.  
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### **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)

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**\*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.  
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### **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 30<sup>th</sup> 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*,<sup>3</sup> 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*<sup>4</sup>
3. NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height*<sup>5</sup>

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.

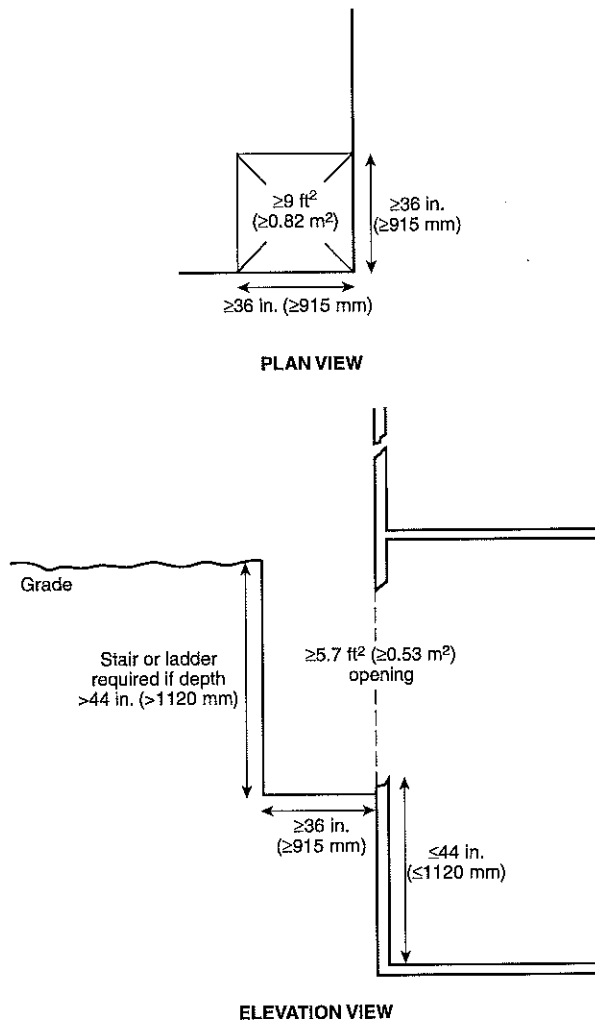
**24.2.2.3.2** It shall be a passage through an adjacent non-lockable space, independent of and remote from the primary means of escape, to any approved means of escape.

**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 ft<sup>2</sup> (0.53 m<sup>2</sup>). 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 ft<sup>2</sup> (0.82 m<sup>2</sup>) 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 ft<sup>2</sup> (0.31 m<sup>2</sup>), which is less than the required 5.7 ft<sup>2</sup> (0.53 m<sup>2</sup>). 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.]

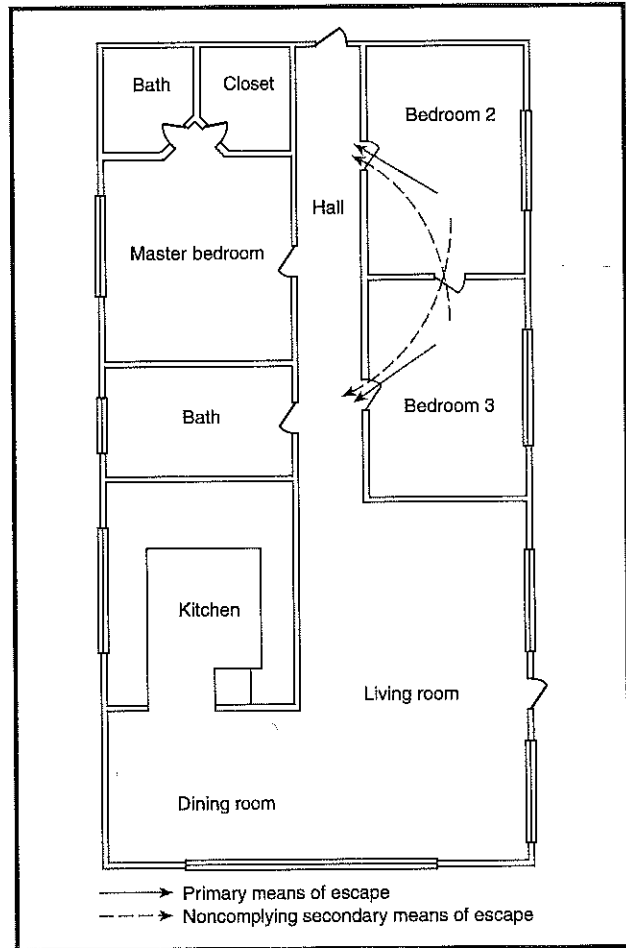
The purpose of the secondary means of escape is to provide an occupant with an alternate escape route when fire or smoke blocks the primary means of escape from the dwelling unit. The three types of sec-



**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:

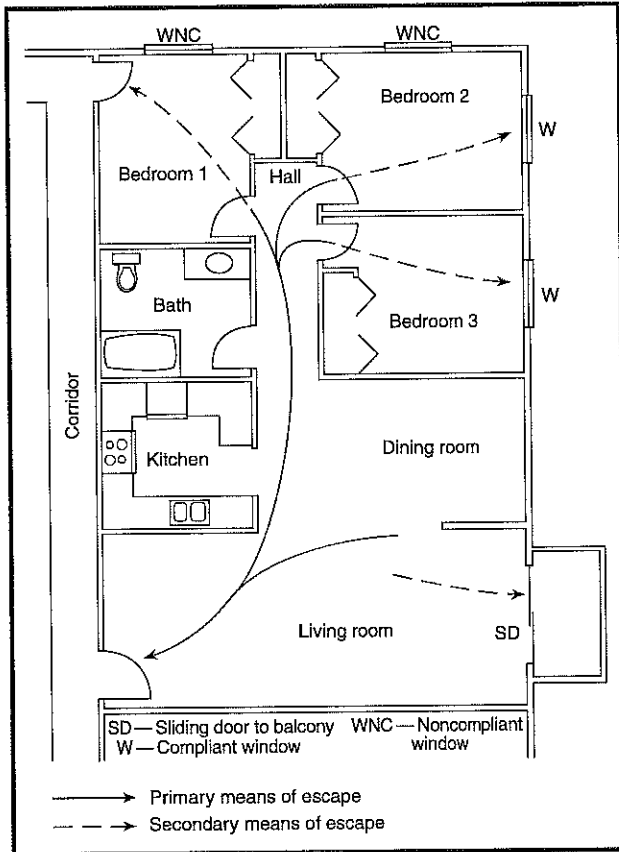
1. As stated in 24.2.2.3.1, the door, stairway, passage, or hall serving as the secondary means of escape must be independent of, and remote from, the primary means of escape required by 24.2.2.2. Exhibit 24.1 illustrates a dwelling unit where none of the windows complies with the requirements of 24.2.2.3.3 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.

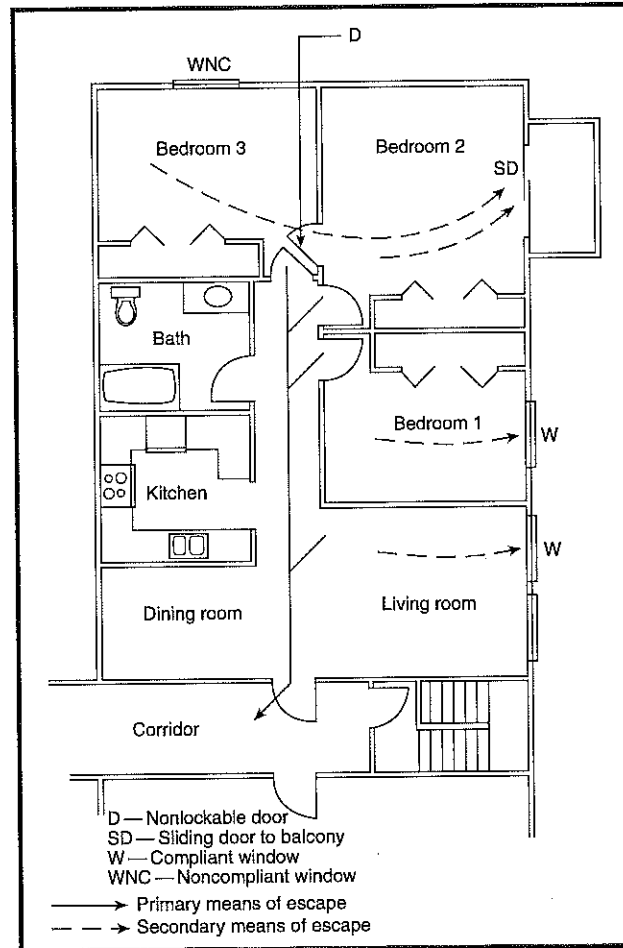
Two doors leading out of a sleeping room might not be practical or effective in most single-family dwellings. In the apartment illustrated in Exhibit 24.2, bedrooms 1 and 2 each have a window that does not comply (WNC) as a secondary means of escape. In bedroom 1, a door that meets the criteria of being 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.



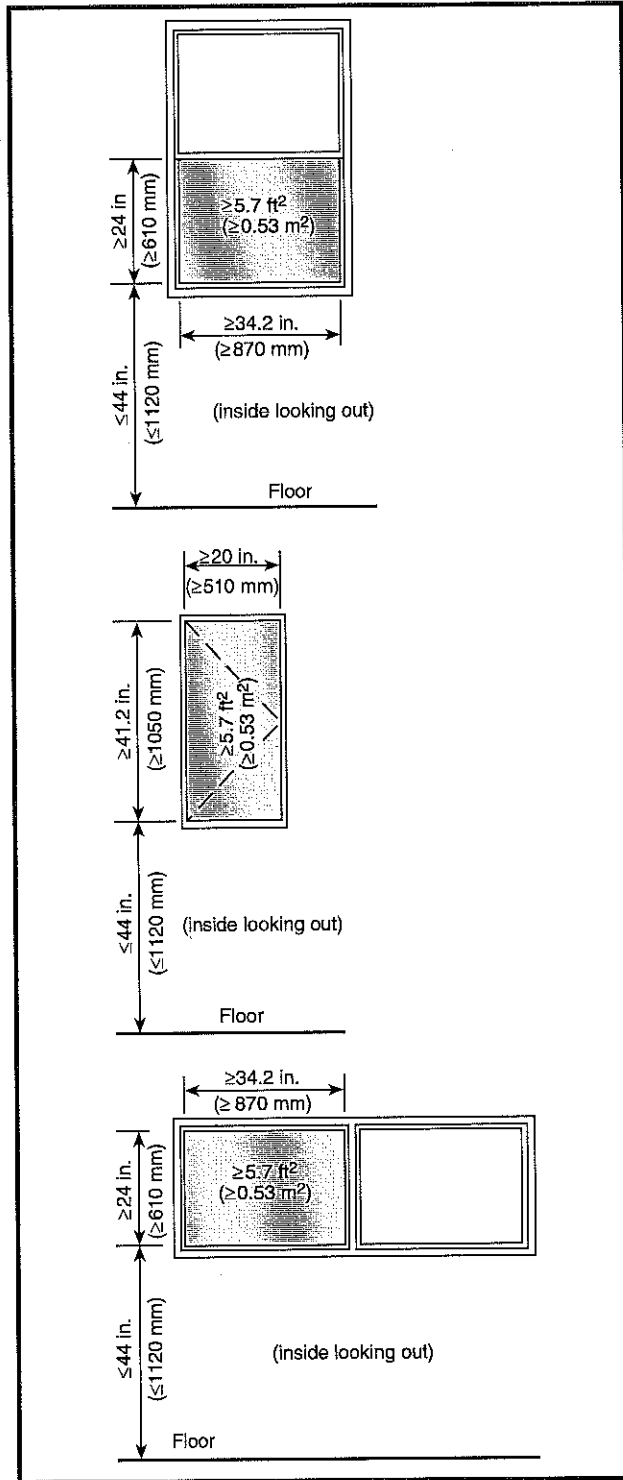
**Exhibit 24.3** Alternative secondary means of escape arrangement complying with 24.2.2.

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 ft<sup>2</sup> (185 m<sup>2</sup>) 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