

9-1.3 Inspection and Re-Inspection of Rental Units

The purpose of this Ordinance is to implement a proactive rental inspection program that maximizes the effectiveness of City resources in rental property code enforcement. It identifies all rental units in the City and their owners on a continuous and recurring basis in order to accommodate the transient nature of the rental market, and prioritizes notorious problem properties in order to economically target City resources toward chronic and priority offenders. It also provides an alternative compliance plan process available to responsible owners who consistently comply with City and State code in order to expedite them through an inspection process aimed at maintaining a uniform minimum standard for conditions exhibited by rental properties in Boston in the interests of public health and safety.

A. Definitions:

1. Owner. An Owner shall be defined as a for profit or not for profit individual or corporation, an agent of a for profit or not for profit individual or corporation, or any person having legal charge of or authority over a private dwelling, tenement, lodging house, or other residential rental property dedicated to residential use.
2. Authorized Inspector. An Authorized Inspector shall be defined as any ISD inspector or any other person who (i) is a Commonwealth of Massachusetts Registered Sanitarian or a Commonwealth of Massachusetts Certified Health Officer or a Commonwealth of Massachusetts Certified Home Inspector, or has proof of training acceptable to ISD, and (ii) has demonstrated a proficiency in the application of the State Sanitary Code by satisfactorily completing the ISD certificate program for qualifying authorized professionals to perform inspections under CBC 9-1.3, and has been issued a certificate of completion.
3. Rental Unit. A non-owner occupied room or group of related rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. A rental unit shall also mean a non-owner

occupied condominium unit. Dwelling units that have current Lodging House Licenses issued by the Licensing Board for the city of Boston shall not be considered as Rental Units for the purposes of this section, and will continue to be annually licensed and inspected pursuant to M.G.L. 140 sections 22 and 25.

4. Problem Property. As defined by Ordinance 16-55.2, as it may be adopted and amended from time to time, a Problem Property is a property that meets the following criteria and is designated as such following recommendation by the Problem Properties Task Force: 1, The Police Department has been called to the property not fewer than four times within the preceding 12 month period for any incident involving any arrestable offense including but not limited to disturbing the peace, trespassing, underage drinking or assault; or 2, the Air Pollution Control Commission has received not fewer than four sustained complaints for noise within the preceding 12 month period; or 3, the Inspectional Services Department or the Public Health Commission have received not fewer than four sustained complaints within the preceding 12 month period for noxious, noisome or unsanitary conditions.
5. Commissioner means Commissioner of the Inspectional Services Department or a designee.
6. Days means consecutive calendar days

B. All owners of private residential rental housing units (“Owners”), including condominium units, in the City of Boston shall register no later than July 1st of each year with the Inspectional Services Department (“ISD”) identifying the property by street address and the number of units that they own at each address. An owner of a rental unit, who does not reside within the subject dwelling, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice constructed of durable material, not less than 20 square inches in size, bearing her/his name, address and telephone number. If the owner is a realty trust or partnership, the

name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted. Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice. P.O. Boxes do not satisfy the address requirement of this section. All owners must register each rental unit annually with ISD, and must attest to and affirm that they are familiar with their obligations to comply with this section, the State Sanitary Code (105 CMR 410), the State Building Code (780 CMR), the city of Boston Zoning Code, Federal, State and Local fair housing regulations, and all other regulations applicable to residential dwellings, and that they intend to comply with said regulations, by signing a form provided by and approved by the Commissioner of ISD. An owner owning multiple units in the same building may submit one form representing all said units. Any owner residing outside of the Commonwealth of Massachusetts must designate a Boston based resident agent authorized to accept service on the owner's behalf. All rental unit registrations shall be recorded in an electronic database of all owners for an initial fee of \$25, and annual renewal fees of \$15 for each rental unit. The Commissioner shall work to employ technology to the extent possible in order to optimize the fairness and effectiveness of the registration process in accordance with Section P.

C. The following rental units shall be exempt from the inspection requirements of this ordinance: (i) Rental units owned or operated by Federal, State, or City Government. (ii) rental units located in dwellings containing six (6) or fewer rental units, one of which is occupied by the owner. ISD will provide exempt unit owners with education materials on all code requirements relative to their units on a regular basis. All non-exempt rental units must be inspected at least once every five (5) years. In order to develop the inspection plan for the first year, and subsequent years of the five (5) year inspections cycle, ISD shall utilize data that may include, but shall not be limited to, inspection records, court records, documented constituent complaints, and any information related to the status of the property with the Problem Property Task Force or information compiled by said Task Force to prioritize a list of properties for inspection in each neighborhood.

Owners may request that ISD conduct the inspection or said owner may engage an “authorized” non- ISD inspector meeting the qualifications enumerated in paragraph “A” of this section. The procedures and fees for such inspections are set forth in paragraphs “D”, “H”, “I”, and “J” of this section. Annual comprehensive apartment inspections conducted by the Boston Housing Authority leased housing program or the Metropolitan Boston Housing Partnership leased housing program, or by other Federal, State, or City inspection programs that are accepted by ISD as being substantially equivalent, may be used to satisfy the 5-year inspection requirement. ISD shall perform periodic and random audit inspections of no less than 5% of the “Authorized” inspections that are filed with ISD.

D. Residential rental unit owners may fulfill the requirements of CBC 9-1.3 by requesting an inspection from ISD, within 30 calendar days from issuance of an inspection notice, or notifying ISD within 30 calendar days that the inspection will be completed utilizing one of the alternate methods outlined in paragraph “C”. Non-ISD inspection reports must be submitted subject to the regulations promulgated by the Commissioner according to Section P. Failed Non-ISD inspections must be accompanied by a compliance plan acceptable to ISD that will bring the subject rental unit into compliance with the minimum standards for human habitation for a residential dwelling as set forth in the Massachusetts State Sanitary Code (105 CMR 410), as it may be adopted and amended from time to time. All inspections shall include a sworn statement and shall be signed by an ISD Housing Inspector, Boston Housing Authority Housing Inspector, a Metropolitan Boston Housing Partnership Housing Inspector, or an “Authorized Inspector”. An Authorized Inspector shall be prohibited from charging more than one hundred thirty-three percent (133%) of the fee charged by the City of Boston for an inspection performed under these sections.

E. An Owner of a Unit or Units may apply to the Commissioner for a “5-Year” alternative compliance plan under this ordinance to inspect a rental Unit once every five (5) years for the compliance with the provisions of the State Sanitary Code. An Owner seeking such an alternative plan shall file an application in a format approved by the

Commissioner. The Commissioner shall issue written findings regarding the approval or denial of an alternative plan within thirty (30) business days of such application, and shall base the written findings on factors including, but not limited to, the following: (i) a review of the Owner's history of property management on file with the City of Boston and a management plan submitted for the property, (ii) a review of the Unit's history of compliance with the Massachusetts State Sanitary Code, (iii) a site visit of the property for which the exemption is sought, and (iv) if relevant, a history of compliance with CBC 9-1.3. An alternative plan approved by the Commissioner shall be subject to revocation following a hearing held by ISD if the Unit subject to the alternative plan has one (1) or more violations of the Massachusetts State Sanitary Code and if, upon proper notice of those violations to the Owner, the violations have not been corrected in the time provided in such notice. An Owner approved for an alternative plan shall be required to maintain maintenance records for any and all alternative plan Units for the duration of the effectiveness of the alternative plan, and such records shall be available for review by ISD during regular business hours or upon reasonable notice to the Owner. An Owner approved for an alternative plan shall be required to maintain compliance with all of the requirements of CBC 9-1.3.

The Commissioner shall charge a fee of: (i) fifty dollars (\$50.00) for the first unit for a five (5) year alternative compliance plan from CBC 9-1.3 and (ii) an additional ten dollars (\$10.00) for each additional unit in the same building up to a maximum of three thousand dollars (\$3000.00) per building and if two (2) or more buildings comprise a complex owned by the same Owner then the fee shall not exceed six thousand dollars (\$6,000.00). An Owner may apply for an extension of an alternative compliance plan upon expiration, provided that the Owner shall complete the entire alternative compliance plan application process and ISD may cause ten to twenty percent (10% to 20%) of the Units to be inspected pursuant to CBC 9-1.3. The Commissioner shall follow the same process and procedure as for an original alternative compliance plan application. Alternative compliance plan extensions shall be granted contingently upon a site visit, if ISD determines it is needed, and a favorable review of the unit history dating back to its last inspection. Consistent records of ownership and compliance shall be weighed

heavily in the granting of alternative compliance plan extensions and may render such an extension a formality at the discretion of ISD barring any documented circumstances examined on a case by case basis.

F. Any rental unit determined to be a Problem Property as defined by Ordinance 16-55.2, as it may be adopted and amended from time to time, must annually request an inspection from ISD. Each owner of a Problem Property shall also file with ISD an annual management plan, within 30 days of its classification as a Problem Property, outlining the remediation of any outstanding code violations or other persistent conditions requiring the landlord's affirmative response as identified by the Task Force. Said management Plan shall identify the deficiencies in the property, identify consultants and contractors engaged to proceed with any remediation work, detail any proposal made by the contractors or consultants, and set out a timeline over which the work will be completed.

G. Chronic Offender Point System: Residential rental property owners who fail to register or who repeatedly fail to comply with notices of violations, or warnings of non-compliance, or municipal fines, shall be assessed points based on the following schedule at the time of registration or at the time the violation is found (property owners cannot be assessed points under more than one of the following sections for the same violation):

- 1) Inclusion on the Problem Property list, (2 points)
- 2) Failure to comply with an ISD notice of violation under the state sanitary code (105 CMR 400 & 410) the state building code (780 CMR), or Boston zoning code, within the time frame provided, (1 point)
- 3) Failure to make a good faith effort to correct emergency violations after 2 inspections (2 points).
- 4) Failure to register and/ or complete the inspection requirements of CBC 9-1.3, (1 point).

Upon being assessed with points in excess of the amount allowed, as described in table #1 below, ISD shall notify owners of their classification as a "chronic offender" by mail,

return receipt requested. ISD shall notify owners of each point assessed by mail, return receipt requested. The owner shall have 14 days to request a hearing to contest each point assessment or their classification as a “chronic offender”. Chronic offenders are subject to fines of \$300, or the maximum allowed, for each subsequent point received in a 12 month rolling period, and may also be subject to court prosecution under the applicable codes and regulations. Chronic offenders shall be required to request an inspection of each rental unit once every three (3) year, and it shall be mandatory that ISD conduct said three (3) year inspection. Chronic offenders with less than 2 points in a rolling 12 month period shall have the chronic offenders classification removed on the last day of the 12th month following their classification.

TABLE 1

| # Rental Units owned | Point Threshold in a 12 Month period | Point Threshold in a 16 Month period |
|-----------------------------|---|---|
| 1 to 50 units | 6 | 10 |
| 51 to 500 units | 10 | 16 |
| 501 or more units | 14 | 24 |

H. All inspections performed under these sections shall be performed in accordance with the requirements of the State Sanitary Code and recorded on a form approved by the ISD. The Commissioner shall charge a filing fee of fifteen five dollars (\$15.00) for any registration or sworn statement filed by an owner, authorized Inspector or other agent of the owner; said filing fees shall be capped at a maximum of two thousand five hundred (\$2,500) per building or five thousand (\$5,000) per complex.

For an inspection performed by ISD, the Commissioner shall charge a fee of fifty dollars (\$50.00) per unit for buildings of one-to-three units and seventy-five dollars (\$75.00) per unit for all other buildings, including condominium units. This inspection fee shall provide up to two (2) inspections, for three (3) or more inspections, the Commissioner shall charge a fee of fifty dollars (\$50.00) per inspection for each rental unit inspected.

I. I. Before conducting an inspection pursuant to CBC 9-1.3 of an occupied unit, reasonable advance notice shall be provided to the occupant in writing. Results of the inspection shall be provided to both the owner and the occupant. If an owner's agent is denied access by the occupant for purposes of conducting a CBC 9-1.3 inspection, the owner of said unit shall notify ISD of such denial within seven (7) calendar days. Such denial shall be noted on a sworn, dated statement filed by an Authorized Inspector. If any person is denied access to a unit for the purposes of conducting such an inspection by the occupant, then ISD shall verify and document in writing such denial, which shall exempt the owner from the inspection requirements of CBC 9-1.3 for the period of one year. Denial of access by the occupant shall neither deem the dwelling to be in compliance with the State Sanitary Code nor bar the occupant from exercising legal rights. The Commissioner may cause the unit to be inspected pursuant to the terms herein in the manner provided for in the State Sanitary Code.

J. Decertification process for Authorized Inspectors and Owners granted an inspection waiver: All Authorized Inspectors shall perform all inspections in a manner consistent with this section and shall refer to Inspectional Services Department any issue involving imminent life safety or health problems. Authorized Inspectors accept the designation to perform these inspections with the understanding that the failure to adhere to the standards of good faith, fair dealing and honesty will result in the revocation of the status as authorized to perform these inspections, action against the professional license and if relevant, notification to authorities for criminal prosecution. ISD shall immediately revoke the approval of any Authorized Inspector, or owner who has been granted an inspection waiver, who misrepresents the condition of a unit or fails to inspect a unit with due care, misrepresents any information on the application form or any form or document submitted under this ordinance, or for any reason demonstrating a failure to honor the requirement of good faith and fair dealing. An Authorized Inspector may request a hearing once aggrieved by such a revocation of approval. A hearing shall be held within thirty (30) days upon a written request from the aggrieved party.

K. Failure to comply with any provisions of this ordinance shall be punishable by a fine as set out in Section R of the CBC 9-1.3.

L. Any and all notices, statements, inspection forms, applications including supporting documentation, and any other documents concerning an inspection pursuant to CBC 9-1.3 shall be a matter of public record.

M. In an effort to evaluate the effectiveness of the inspection programs delineated herein, the Commissioner shall annually prepare a report detailing the activities of the program no later than July 31st of each calendar year, beginning June 30th, 2014. The annual written report shall include the following items:

- a) the number of registration statements received by the Commissioner during the prior twelve (12) month period
- b) the number of Owners issued fines or citations by ISD for (i) failing to initially file a registration statement and (ii) for failing to file a registration statement within thirty (30) days of written notice from ISD.
- c) the total number of inspections performed by ISD inspectors during the prior twelve (12) months, along with a district categorized list of the number of inspections performed in such district during such period
- d) the total number of inspections performed on Problem Properties, as defined in Ordinance 16-55.2, along with a break down by district of the number of Problem Properties inspected in such district.
- e) Such other information as may be requested by the City Council

N. The provisions of CBC 9-1.3 may be enforced in accordance with the non-criminal disposition process of M.G.L. c. 40, s. 21D, provided that this section shall not preclude the City of Boston from proceeding to restrain a violation by injunction. The provisions of this ordinance may also be enforced according to Chapter 40U of the Massachusetts General Laws as accepted by the City of Boston, also known as the “Green Ticket” law.

O. Transfer or ownership of rental units must be reported to ISD within 30 days of closing. New property owners must register within 30 days of closing and must submit a reasonable maintenance plan that identifies and address the any significant code deficiencies within the subject property. If the property was acquired during its inspection year and the inspections did not occur before the transfer of ownership, then the new owner must, within 90 days, must complete any required inspection or apply for an alternative compliance plan.

P. The Commissioner shall promulgate written rules and regulations necessary to implement and enforce the provisions of CBC 9-1.3. The Commissioner will work to employ and implement technology to the extent possible in order to optimize the fairness and effectiveness of the registration and inspection processes within these rules, which may be revised from time to time.

Q. If any provision of CBC 9-1.3 shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

R. The provisions of CBC 9-1.3 shall be effective 120 days after its date of passage.

S. 9-1.3. Fines for Violation of Rental Re-Inspection

Any failure to comply with Section 9-1.3 will result in the assessment of a fine of three hundred dollars (\$300) per month beginning in the first month in which the property is found not to be in compliance and continuing for each subsequent month thereafter.