

Standards of Maintenance Guide

2014 PDF Version of Original 1996 Guide

Note to Reader: This is a PDF version of the Guide that was originally prepared in 1996 by the Ministry of Municipal Affairs and Housing and formerly available as a web page. It is accompanied by a Standards of Maintenance Sample Bylaw, also available in PDF.

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2014 Update

This is a PDF version of the Standards of Maintenance Guide was originally prepared in 1996 by the Ministry of Municipal Affairs and Housing and formerly available online as web pages. Apart from minor changes in format, the Guide content remains the same as the online version.

Introduction

Over the last few years, the provincial government has provided local government with several new planning powers to assist in planning and protecting affordable housing. As a result of amendments to the Municipal Act adopted in July 1994, local governments can now enact a standards of maintenance bylaw to enforce basic levels of maintenance for rental accommodation. Local governments will be able to use this bylaw to ensure that apartment buildings, secondary suites, houses and condominiums that are rented and any other types of rental housing meet minimum standards of comfort and safety.

A standards of maintenance bylaw provides local government with the ability to meet the needs of tenants who live in unsafe and unhealthy accommodation due to poor building maintenance. The province has heard from many tenants who are frustrated by the sub-standard and deteriorating housing conditions in which they find themselves. The 1992 report of the Provincial Commission on Housing Options noted that while the location and extent of poor housing was generally well known to community organizations and local government officials, there was no mechanism to allow local officials to require improvements. Local governments also indicated an interest in using a standards of maintenance bylaw to expand their authority to maintain the affordable housing stock in their community and protect it from premature demolition. The Commissioners concluded that most municipalities would be willing to enact minimum maintenance standards bylaws if they had the authority to do so.

Now that the authority to adopt a standards of maintenance bylaw exists, a model bylaw has been provided to serve as a starting point for use in drafting a bylaw suited to local conditions.

Customizing the Bylaw for Your Community

A model standards of maintenance bylaw makes up the last section of this guide. This section includes some points about how to ensure that the bylaw meets community needs.

Compliance with Other Local Regulations

A standards of maintenance bylaw will, of course, have to be consistent with current local regulations and municipal bylaws, such as the zoning bylaw, noise and nuisance bylaw, unsightly premises bylaw and refuse bylaw. Before passing a standards of maintenance bylaw, council may wish to evaluate existing regulations and decide whether the standards of maintenance bylaw can complement other enforcement activities. For example, the Fire Services Act, the Health Act and other bylaw provisions provided by the Municipal Act (such as Section 932, Nuisances and Disturbances) provide other opportunities to regulate specific aspects of rental accommodation.

In addition, section 1025 of the Municipal Act provides the possibility of broader powers for regulating the condition of rental properties that have heritage significance.

Public Consultation Process

Local governments may want to conduct some form of public consultation process to determine the level of need and support for a standards of maintenance bylaw. Organizations that may desire input and participation include property owners associations, tenant groups and neighbourhood planning committees.

Definitions

Prior to drafting a standards of maintenance bylaw, municipalities should review the definitions section of the model bylaw in light of the definitions that are used within the municipal zoning and other related bylaws. In section 2 of the model bylaw, provision is made for Municipal Act and the Interpretation Act definitions to apply when not specified in the bylaw.

Several of the definitions in the model bylaw have been taken directly from the Residential Tenancy Act. This is because the Municipal Act ties the provision for standards of maintenance to specific terms found in the Residential Tenancy Act. These definitions should only be changed following legal advice and a review of the Residential Tenancy Act.

Responsibility for Administration

The model bylaw assumes that the building inspector will administer the bylaw. There are parts of the model bylaw that assume technical knowledge of electrical, gas and plumbing building standards. Local governments should determine if they have the expertise available to inspect these parts of the home. Consideration should be given to excluding them if it is simply impractical to enforce these parts of the bylaw.

Notice to Comply

The bylaw can make a provision for the Building Inspector to serve a notice to comply and to state the consequences of failure to comply with the notice. The Building Inspector should follow the same procedures for notices under this bylaw as would be followed under other bylaws.

It is suggested that a procedures manual be prepared which addresses such issues as the service of notice. These procedures could be adopted as policies of council but not be incorporated into the actual bylaw itself.

The procedure manual should address how notice will be served to property owners who do not live in the community or where the property is held by a numbered company. The procedure manual could also include a process for keeping the tenant and complainant informed, subject to freedom of information legislation and privacy protection policies.

Penalties and Enforcement

There are a number of penalties or enforcement tools which a municipality may use to address situations where a property owner fails to comply with a standards of maintenance bylaw.

Municipalities will want to consider the utility of the methods they currently use to enforce bylaws and the resources they have available in order to determine which tools will work best.

The Offence Act. The model bylaw assumes that the municipality will prosecute the property owner in court for contravening the bylaw. The maximum penalty currently allowed under the Offence Act is \$2000. Should local governments adopt section 7, *Penalties* as in the model bylaw, no amendment needs to be made to the bylaw if and when the Offence Act limit is changed.

Municipal Tickets. As an alternative to seeking a summary conviction and penalties under the Offence Act, the municipality may want to consider implementing a Municipal Ticket Information Authorization Bylaw and deal with offences to the standards of maintenance bylaw by ticketing. The authority to use

ticketing as a means of enforcing bylaws and the fines that can be charged are found in section 934.1 of the Municipal Act.

Licence Remedies. If the property owner has a business licence to rent accommodation under section 498 of the Municipal Act, the municipality may want to consider suspending the licence under section 513 of the Municipal Act, if the owner has been convicted of an offence under the standards of maintenance bylaw. Another remedy under section 513 is revocation of the licence. This remedy is only available after a show cause hearing under section 513(3).

Notice on Title. A council may also, by resolution, decide to file a notice in the land titles office against the title of a property that does not comply with the standards of maintenance bylaw. This notice serves as a warning to future purchasers of the property and may serve as an immediate incentive to the current owner to comply. The process that council must follow is detailed in section 750.1 of the Municipal Act.

Bylaw Contravention Notice

Section 735 of the Municipal Act enables local government, by bylaw, to bring a building up to a standard specified in a bylaw where the building contravenes a bylaw. If this part of the Act is being used, the council must provide 30 days written notice to the owner, tenant or occupier of the real property. The owner, tenant or occupier of the real property have 10 days to make an appeal which would be heard in court where an order will be made.

Local Government Remedial Action. Section 299 of the Municipal Act gives council general authority to, by bylaw, take remedial action on a building that does not comply with a bylaw, if the property owner fails to take the action, following a municipal inspection. The local government may also recover the expenses, costs and interest incurred through this action by adding them to municipal taxes payable on that property.

Inclusion of Provisions to Regulate Hotels

Each community will have to decide whether or not to have specific regulations for hotels used as residential premises. The bylaw includes some of the basic categories for regulating hotels. Aspects not included in the model bylaw, such as minimum dimensions of housekeeping units, will vary between local governments depending upon municipal land use bylaws.

Other Considerations

In regions where ice, snow and freezing temperatures are common, municipalities may want to add specific standards of maintenance for 1) plumbing facilities, 2) heating systems, and 3) the provision of heating fuels. These standards would be intended to prevent the freezing of water lines, the failure of heating systems and the prevention of accidents and hazards.

Appeal Process

Each local government will have to decide on whether or not the bylaw should include a process for landlords or property owners to appeal a notice to comply with the bylaw.

There are a number of options which may be included in the appeal process. These include whether the process should:

- consist of an appeal to Council;
- consist of a set of maximum time frames in which the appeal will be considered (i.e. ... *if submitted within 15 days of the serving of the Notice to Comply.*);
- include a list of reasons that may be considered valid for the appeal (i.e. the required works would exceed the standards of maintenance bylaw);
- include a process for dismissing an appeal.

Administrative fairness should be a principle in developing an appeal process. For example, the property owner should be given reasonable periods of time to make an appeal and be given ample opportunity to make a representation stating their case.

What The Legislation Says About Standards of Maintenance Section 734 (1) of the Municipal Act states that a council may, *for the health, safety and protection of persons and property, and subject to the Health Act and the Fire Services Act and their regulations, by bylaw (n) require the maintenance of residential premises* as defined in the Residential Tenancy Act that are subject to a *tenancy agreement* as defined in that Act, in accordance with the standards specified in the bylaw, to the extent that the standards do not exceed those established by the building code for the Province established by the Minister under section 740 (of the Municipal Act).

Tenancy Agreement

In the Residential Tenancy Act, a *tenancy agreement* means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises and occupation of a room or premises in a hotel.

Residential Premises

Purpose built apartment buildings, secondary suites, housing complexes built with federal or provincial funds (social housing) and individual houses that are subject to a tenancy agreement would clearly be included as residential premises. The definition of a *residential premises* found in the Residential Tenancy Act also includes:

- a manufactured home
- a manufactured home pad
- a room or premises in a hotel occupied by a hotel tenant,
- caretakers premises, and
- employment premises,

but does not include premises, under a single lease, occupied for business purposes with a dwelling unit attached.

Hotel Accommodation

Residential premises includes a room or premises in a hotel occupied by a hotel tenant and in the Residential Tenancy Act hotel means:

a hotel, motel, inn, rooming house and apartment hotel and any prescribed class of premises, but does not include a facility

(a) owned or operated by a non-profit society incorporated under the Society Act, a municipality, a regional district, a college designated under the College and Institute Act or a university named in the University Act, or

(b) in which the landlord resides and which contains fewer than a total of 5 bedrooms or rooms used as bedrooms.

Therefore, a standards of maintenance bylaw would not apply in most boarding or lodging and shared accommodation situations or to commercial tenancies.

Hotel Tenants

In order for hotel accommodation to be subject to a standards of maintenance bylaw, the hotel unit must be occupied by a hotel tenant. As defined by the Residential Tenancy Act a hotel tenant means: *an individual who is*

(a) occupying a room or premises in a hotel where the hotel contains rooms or premises that the individual usually occupies as his residence, and

(b) paying rent of less than a prescribed amount per day or, where no amount is prescribed, less than \$20 per day

in circumstances where that occupation is considered, at common law, to be a licence to occupy land or premises, but does not include an individual who is occupying a room or premises in a hotel that has a peak season during which the daily rent for the room or premises has, in a peak season within the previous 12 months, exceeded the maximum amount of the daily rent that can be paid by a hotel tenant under paragraph (b).

Licensed and Unlicensed Community Care Facilities

There are a variety of licensed and unlicensed care facilities and semi-care services within the province. If a community care facility is either owned or operated by a non-profit organization, it is unlikely to be considered a residential premises as defined by the Residential Tenancy Act and therefore cannot be subject to a standards of maintenance bylaw.

In the case of all other community care facilities, there are many factors to consider in determining whether a standards of maintenance bylaw would apply. In some cases, the contractual agreement between the facility and the facility user may imply that a residential tenancy agreement exists and therefore the standards of maintenance bylaw may also apply.

For example, in circumstances where compensation is given for residency as part of the agreement for exclusive possession of the premises, a security deposit is given, or if one months notice is required to be given by the parties to vacate the premises, then the occupation may constitute a tenancy agreement. Where the relationship is unclear, an arbitrator may make an order whether the Residential Tenancy Act is applicable and the occupancy is a residential tenancy as defined in the Act.

Residential Property

The Residential Tenancy Act also includes a definition of residential property which assists in determining the scope of the definition of residential premises. A residential property is *a building in which, and includes land on which, residential premises are situated*. A standards of maintenance bylaw can clearly deal with all living areas, but in some cases may not extend to the yard and buildings and parts of the building external to the actual living areas such as elevators, lobbies and hallways.

Local government can use the *unsightly property* provisions of the Municipal Act and sections of the Fire Services Act to deal with maintenance and safety issues on the property and the Health Act to deal with a range of sanitary and health issues related to the upkeep of the property.

Allowable Standards

The legislation is clear that a standards of maintenance bylaw can not set standards that exceed those in the current British Columbia Building Code. Municipalities have the ability to exceed the British Columbia Building Code when they adopt building standards bylaws; however, in the case of a standards of maintenance bylaw, the provincial standards apply.

It is also important to note that the Building Code does not establish maintenance standards, it provides the minimum standard for new construction, or some alterations or renovation to existing structures. Therefore, while a complaint about a residential rental accommodation may result in improved living conditions, not every complaint will result in achieving the current Building Code standard.

Unauthorized Suites

It should be noted that compliance with the provisions of a standards of maintenance bylaw does not imply that the rental unit has satisfied the requirements of other bylaws. For example, it may be possible in some municipalities that a complaint by the tenant under the standards of maintenance bylaw will result in the owner of an unauthorized (or illegal) secondary suite being required to upgrade facilities or standards, without necessarily having the unit shut down.

At a later date, however, a complaint by a neighbour with respect to the zoning bylaw may result in the shutting down of the unit due to the fact that it is not a permitted use in that zone.

Maintaining Standards Using The Residential Tenancy Act

While a standards of maintenance bylaw will provide a useful tool to ensure safe and healthy rental accommodation, it is important to note that the Residential Tenancy Act does spell out both tenants and landlords responsibilities for dealing with regular and emergency repairs.

Regular Repairs

If tenants believe that a routine repair is required to their rental premises, they should first ask the landlord to make the repair. If the landlord does not make the repair, the tenant can apply for arbitration. If an arbitrator orders the landlord to make the repair and the landlord still does not do it within the time limit given by the arbitrator, the order may also permit the tenant to spend up to one month of rent to complete the necessary repairs. Or, the arbitrator may order that the tenant pay a lower rent to match the reduced value of the suite until the ordered repairs have been made by the

landlord. For example, if one of the two bedrooms in the suite can not be used because repairs have not been made, the arbitrator may reduce the rent to that of a one-bedroom suite.

Emergency Repairs

Under recent amendments to the Residential Tenancy Act, a tenant of a residential premises may be permitted to make emergency repairs to the residential property or premises. The new section 9.2 of the Residential Tenancy Act states the conditions and circumstances under which a tenant is entitled to make emergency repairs.

Situations requiring emergency repairs include blocked or major leaks to water pipes, sewer pipes or plumbing fixtures, a major leak in the roof, inoperable central or primary heating systems, and defective locks that would let anyone enter the premises without a key. In order to be considered emergency repairs, the need for repairs must be urgent and necessary for the health and safety of persons or the preservation and use of the residential property or residential premises.

Landlords must post an emergency contact name and telephone number in an easy-to-see place in the rental premises. If the tenant has made at least two reasonable efforts to reach the landlord or the landlords emergency contact person and no one has responded within a reasonable period of time, the tenant can have the emergency repairs done. The tenant must provide receipts and a written account of what happened, and the landlord must reimburse the tenant for reasonable repair costs. If the landlord does not reimburse the tenant for some or all of the repair costs, the tenant may deduct the remaining amount from subsequent rent payments. If the landlord disagrees with the repairs or the costs, the landlord may apply for arbitration to resolve the dispute.

Deliberate Damage

Should a tenant deliberately damage a rental property, the landlord can apply for assistance at the Residential Tenancy Branch. An Information Officer may, with the landlords permission, contact the tenants to let them know that an arbitrator may order the tenants to pay for any repair costs for damages to the suite. Tenants could also be subject to a \$5,000 fine.

For more information on the use of the Residential Tenancy Act for repairs, contact:

The Residential Tenancy Branch
Telephone: 1-800-665-8779

A Model, Not a Prescription

The following model standards of maintenance bylaw provides an example which local governments can alter, modify or customize to suit their particular needs and community concerns. The resources available to the community for inspections and the capacity to enforce the bylaw must also be taken into account. Each community must carefully examine the model to ensure that it meets the needs and standards that are unique to that community.

It is strongly recommended that local governments obtain legal advice from their solicitors when modifying or adopting the model bylaw.

The model standards of maintenance bylaw is designed to serve as a starting point for those communities where tenants have expressed concern about their ability to ensure safe and healthy rental accommodation. Any questions can be directed to:

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