

available legal or equitable remedies for violation of this subsection.

(Ord. 1989 c. 11 § 1)

9-9.11 Window Falls Prevention Program in the Department of Health and Hospitals.

a. Definitions.

For the purposes of this subsection, the following terms shall have the following meanings:

Child shall mean a person age six (6) years or under.

Board shall mean the Board of Health and Hospitals.

Department shall mean the Department of Health and Hospitals.

Installation shall mean the proper equipping of windows with window safety guards in accordance with regulations issued by the Board of Health and Hospitals.

Owner shall mean a person, who alone or severally has legal titles, or has charge or control in any capacity including, but not limited to, agent, executor, administrator, trustee or guardian; or any officer or trustee of a real estate trust or association of unit owners.

Tenant shall mean a lessee, or other regular occupant of a dwelling unit with or without a lease.

Window safety guard shall mean a device designed to restrict passage or access through a window of a child age six (6) or under.

b. Established. There shall be a Window Falls Prevention Program established within the Department of Health and Hospitals. The purpose of said program shall be as follows: educating the public about the danger to children, age six (6) years and under, of falling from windows; and encouraging the voluntary installation by owners of window safety guards on windows in dwellings occupied by children age six (6) years and under.

c. Information and Assistance to Public. The Program shall conduct citywide education and outreach efforts promoting awareness about the dangers to children, age six (6) years and under of falling from open or otherwise unprotected windows. Information and technical assistance shall be made available to the public on the steps and devices that may mitigate this serious problem. The Program shall work with any and all existing agencies and departments involved with children in its outreach efforts. The Window Falls Prevention Program will also encourage owners to voluntarily install window safety guards on windows in the dwellings occupied by children age six (6) years and under.

(Ord. 1994 c. 19 §§ 1-3)

9-9.12 Inspection of Exterior Walls and Appurtenances of Buildings Requiring Periodic Inspection.

a. Definitions.

Exterior walls and appurtenances shall mean (1) any exterior wall of a building over seventy (70') feet in height, or classified as a high rise structure, or (2) any exterior wall of an unoccupied building, of over thirty-five thousand (35,000) cubic feet and excluding residential buildings that are classified as three family, two family, or single family except as required by the Commissioner.

b. Inspection Reports. Every exterior wall defined above shall be inspected in the case of an occupied structure at least once every five (5) years and in the case of an unoccupied structure at least once a year. The inspection shall be made and a report thereon prepared by a registered architect or engineer and shall be filed with the Commissioner together with a fee in the amount of one hundred (\$100.00) dollars within thirty (30) days of the inspection.

The Commissioner shall issue an exterior wall certificate only after having received satisfactory proof of inspection and the inspection report of the architect or engineer reports a safe condition. And no structure referenced in said section shall be occupied without such certificate. Prior to issuing a certificate the Commissioner may in the Commissioner's discretion require inspection by the Department at a charge of one hundred (\$100.00) dollars which must be paid prior to issuance of the certificate.

The inspection report shall be a written report by the architect or engineer certifying the results of the examination clearly documenting the condition of the exterior walls and appurtenances thereto. The report shall include a record of all significant deterioration, unsafe conditions and movement observed as well as a statement regarding the water tightness of the exterior surfaces. Such report must be signed by, or bear the professional seal of, the registered architect or engineer.

Upon the filing of an inspection report indicating the existence of an unsafe condition, the Commissioner shall affix the appropriate violation on the structure and the owners, or agent, shall immediately commence repairs to remedy the violation.

The exterior wall certificate required under this section is in addition to, and not in lieu of, any other permits or licenses which may be required by the Inspectional Services Department or other public authority concerning occupation or operation of the building or structure.

Any person or entity being the assessed owner (which shall include any trustee of a trust) or being the person in control of a structure requiring an exterior wall certificate who shall fail to have the structure inspected or fail to file the inspection report with the required fee or who shall suffer occupancy of such a structure without a valid certificate shall be punished by

a fine of one hundred (\$100.00) dollars for each day that such violation shall continue. This fine may be disposed of under the terms of G.L. c. 40, sec. 21D or in a criminal action.

(Ord. 1995 c. 8 § 6)

9-9.13 Regulating Access to Roof Areas of Buildings with Residential Units.

a. *Purpose.* It is the intent of this section to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) discouraging the inappropriate use of flat roof areas of residential buildings and (ii) regulating the use of and/or assembly of persons on flat roof areas and/or roof decks.

The Commissioner of the Inspectional Services Building Department has enforcement authority pursuant to M.G.L. c. 143, s.3, the State Building Code, and the Zoning Code of the City of Boston.

b. *Definitions.* When used in this section, unless a contrary intention clearly appears, the following terms shall have the following meanings:

City shall mean City of Boston.

Door alarm shall mean a device which causes an alarm to sound whenever the door or hatchway to which it is attached is opened, provided that said device does not substantially impede the opening and closing of the door or hatchway. Any such device which can be temporarily deactivated through the use of a key, code, or other such measure, shall be considered to be within this definition, notwithstanding the fact that it can be so deactivated, provided that the device is designed to automatically reactivate itself within a reasonable time after the deactivation event takes place. Signage on or near the device will warn users of the presence of the alarm.

Included structure shall mean any residential structure with a roof deck as defined below; not including owner occupied one or two family structures.

Owner shall mean any person(s) or entity that owns a building in the City of Boston, The rights and duties of the owner hereunder shall also be the rights and duties of any person(s) or entity that manages or controls the building.

Roof access point shall mean any doorway, passageway, or staircase through which access to any part of the roof of the building is provided that said door, passageway, or staircase connects to a portion of the interior of the building to which one (1) or more occupants has unimpeded access.

Roof deck shall mean a structure built on the roof of a building that is used for gardening, sunbathing, and other passive recreational purposes. Flat roofs, or limited areas thereof, which do not have a structure built for such purposes but are accessible through a roof access point and could nevertheless be used for such purposes shall be included in this definition.

c. *Roof Deck Permits.* Roof deck permits shall be obtained by an owner by submitting a building permit application to the Inspectional Services Department. The application shall contain any and all required plans, including but not limited to, a land survey, framing plans, and a report of a structural and safety evaluation performed and prepared by an architect or structural engineer registered/certified in the Commonwealth of Massachusetts; the structural and safety evaluation shall consider and evaluate the structural capacity of the roof and the safety features of the roof/roof deck including but not limited to handrails, guardrails, lighting, and manner(s) of egress as may be required by the State Building Code or by the regulations of the Inspectional Services Department.

Notwithstanding the foregoing, no roof deck permit shall be required where:

1. The roof deck is a flat roof, or limited area thereof, which does not have a structure built for such purpose, and;
2. The owner has either secured the roof access point(s) with a locking device(s) to the extent permitted by law or has installed a door alarm.

No roof deck may be issued a permit unless all legal requirements are met, such as zoning approval and landmark approval, as necessary; the applicant shall attach to the application copies of such approvals, if any.

No person may occupy, stand on, sit on, or use a roof deck that has not been issued a permit by the Inspectional Services Department (except for performing maintenance). No person may encourage, allow, or suffer an assembly of persons on a roof deck that has not been issued a permit by the Inspectional Services Department. Upon discovery of use or occupancy of a roof deck that does not have proof of a valid permit issued by the Inspectional Services Department, an officer of the Boston Police Department or an inspector of the Inspectional Services Department shall order the roof deck vacated until the process outlined in section c. is complete.

Inspections. The Inspectional Services Department shall have the discretion to establish the procedure by which compliance is determined, including but not limited to, determining when, how and by which professionals such inspections are to be made, including the certified documentation that is to be required for compliance, provided that their policies are reasonably calculated to ensure that every included structure in the City is inspected for compliance at least once every five (5) years.

d. *Roof Deck Complaints.* The Commissioner of Inspectional Services Department or his designee shall follow up on any credible complaint, to be defined by the Commissioner of the Inspectional Services Department, that a structure is being used as a roof deck in violation of this section. Within three (3) business days of receipt of a complaint under this section, the Inspectional Services Department shall determine whether or not a permit has been issued for use as a roof deck. Upon

investigation, if:

1. No roof deck permit has been issued and the building is not otherwise in compliance as described in section c, then a Building Inspector shall, by means of a building code violation order the owner to come into compliance by either applying for or securing a permit for a roof deck or otherwise complying into compliance by installing a locking device to the extent permitted by law or door alarm as described in section c.

If the owner does not come into compliance within thirty (30) days after the violation is issued, the Commissioner of Inspectional Services Department may file a complaint in Housing Court. Violations are written to the owner in the form of a building and/or zoning code violation and shall be subject to the penalties and fines of such building code and/or zoning code in addition to any penalties and fines authorized by this section.

2. A valid roof deck permit has been issued and/or the roof deck is in compliance with this section (as described in section c.) and other existing laws, then the matter may be turned over to the Boston Police Department for further investigation of the complaint.

3. No roof deck permit has been issued and the building is not otherwise in compliance as described in section c., and a second or subsequent credible complaint is received that a structure is being used as a roof deck in violation of this section, then the owner will be ordered to come into compliance as described in section d. 1. and simultaneously issued a violation as described in section d. 1.

e. *Enforcement and Penalties.* Each and every violation of this section or any regulations adopted hereunder is punishable by a fine of three hundred (\$300.00) dollars for the first offense and five hundred (\$500.00) dollars for each subsequent offense. A violation of this section shall not be deemed to create any presumption of negligence by an owner.

f. *Regulatory Authority.* The Commissioner of the Inspectional Services Department and the Commissioner of the Boston Police Department shall have the authority to promulgate rules and regulations necessary to implement and enforce this section.

g. *Severability.* If any provision of this section 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.

h. *Implementation.* The provisions of this section shall be effective ninety (90) days after passage.

(Ord. 2007 c.12)

9-9.14 Regulation of Student Housing.

a. For the purposes of this subsection, the following terms shall have the following meanings:

Bedroom shall mean a room occupied for sleeping purposes in a dwelling unit and contains at least 70 square feet of floor space; a room occupied for sleeping purposes in a dwelling unit for more than one occupant shall contain at least 50 square feet of floor space for each occupant.

Student Housing shall mean any privately-owned, non-owner occupied unit, building, structure, development or complex of one or more dwelling units in which the total number of full-time undergraduate students residing in the property exceeds the maximum occupancy of the total number of bedrooms in the property as documented by the data provided to the Clerk of the City pursuant to the requirements of CBC Chapter 10, Sections 10.3, 10.4 and analyzed by the City of Boston.

Unit shall be synonymous as dwelling unit, rental unit, or condominium unit.

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b. *Registration and Application for Student Housing Certificates of Occupancy.*

1. Any property or unit owner of student housing as defined in this section shall register and apply for a Certificate of Occupancy with the Inspectional Services Department and obtain an annual Certificate of Occupancy to operate student housing before September 1st of each calendar year of operation. The permit fee shall be \$15 for each student housing unit. The permit fees shall be capped at a maximum of \$2,500 per building and \$5,000 per complex.

2. The Commissioner of Inspectional Services or a designee shall have the discretion to deny a Certificate of Occupancy for Student Housing based upon but not limited to the following factors:

(a) The property is subject to CBC Chapter 9, Section 9-1.3, commonly known as the rental registry ordinance, and is not registered;

(b) One or more units in the property has outstanding sanitary, zoning, building, or environmental code violations;

(c) The property or unit owner has any outstanding property taxes, City of Boston fees, or fines; and

(d) The property or unit owner holds any financial interest in a property designated as a Problem Property pursuant to CBC Chapter 9, 9-13.1.

3. The Commissioner of Inspectional Services or designee may issue a temporary certificate of occupancy at his or her discretion.

c. *Penalties.* Any person or entity found in violation of this section shall be fined \$300 per month beginning in the first month in which the unit is found to be in violation and continuing for each subsequent month thereafter until the unit is brought into compliance. Compliance shall constitute obtaining a Certificate of Occupancy for Student Housing.

d. *Right of Appeal.* The provisions of CBC 9-9.14 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 in accordance with M.G.L. c. 40U.

e. *Pilot Program.* This ordinance shall be effective upon passage in order to establish a Pilot Program relating to student housing. The provisions of Chapter 9-9.14 shall expire on September 30, 2016.

(Ord. 2016 c. 4 § 1)

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Article 302 - MAINTENANCE OF EXTERIOR WALLS

Section 28-302.1 ¶

Section 28-302.1

§28-302.1 General. A building's exterior walls and appurtenances thereof shall be maintained in a safe condition. All buildings greater than six stories shall comply with the maintenance requirements of this article.

Exception: The requirements imposed by this article shall not apply to any part of an exterior wall that is less than 12 inches (305 mm) from the exterior wall of an adjacent building.

Section 28-302.2

Section 28-302.2

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§28-302.2 Inspection requirements. A critical examination of a building's exterior walls and appurtenances thereof shall be conducted at periodic intervals as set forth by rule of the commissioner, but such examination shall be conducted at least once every five years. The initial examination for a new building shall be conducted in the fifth year following the erection or installation of any exterior wall and/or appurtenances as evidenced by the issuance date of a temporary or final certificate of occupancy or as otherwise prescribed by rule.

1. Such examination shall be conducted on behalf of the building owner by or under the direct supervision of a registered design professional with appropriate qualifications as prescribed by the department.

2. Such examination shall include a complete review of the most recently prepared report and an inspection.

3. Such examination shall be conducted in accordance with rules promulgated by the commissioner.

Section 28-302.3

Section 28-302.3

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§28-302.3 Immediate notice of unsafe condition. Whenever a registered design professional learns of an unsafe condition through a critical examination of a building's exterior walls and appurtenances thereof, such person shall notify the owner and the department immediately in writing of such condition.

Section 28-302.4

Section 28-302.4

§28-302.4 Report of critical examination. The registered design professional shall submit a written report to the commissioner within 60 days of completing the critical examination, but not more than five year following submission of the preceding report of critical examination, certifying the results of such critical examination as either safe, unsafe or safe with a repair and maintenance program. The report shall clearly document the condition of the exterior walls and appurtenances thereof and shall include a record of all significant deterioration, unsafe conditions and movement observed as well as a statement concerning the watertightness of the exterior surfaces. Such report must be professionally certified by such registered design professional.

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§28-302.5 Repair of exterior walls, unsafe condition. Upon the notification to the department of an unsafe condition, the owner, the owner's agent or the person in charge shall immediately commence such repairs, reinforcements or other measures as may be required to secure public safety and to make the building's exterior walls or appurtenances thereof conform to the provisions of this code.

1. All unsafe conditions shall be corrected within 30 days of filing the critical examination report.

2. The registered design professional shall reinspect the premises and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the building have been corrected.

3. The commissioner may grant an extension of time of up to 90 days to complete the repairs required to correct an unsafe condition upon receipt and review of an initial extension application submitted by the registered design professional together with such additional documentation as may be prescribed by rule.

4. The commissioner may grant further extensions of time to complete the repairs required to remove an unsafe condition upon receipt and review of an application for a further extension submitted by the registered design professional together with such further documentation as may be prescribed by rule.

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Section 28-302.6

Section 28-302.6

§28-302.6 Safe condition with a repair and maintenance program. The registered design professional shall not file a report of a safe condition with a repair and maintenance program for the same building for two consecutive filing periods unless the second such report is accompanied by his or her professional certification attesting to the correction of all conditions identified in the prior report as requiring repair.

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