

April 14, 2014

ISSUES WITH PROPOSED SELF CERTIFICATION PROGRAM

Background Issue

There is no mention of RHO v. Hayward Lawsuit outcome that made the following case law.

- a) That it is a violation of the 4th Amendment to the U.S. Constitution and Section 1954 of the California Civil Code for the City to require a “non-voluntary” inspection of a tenant occupied dwelling unit by a city inspector or a landlord under the proposed Self Certification Program. Attached, please find CAA form 19.0 revised January 2014 which lists the twelve reasons under which a landlord may enter an occupied dwelling unit. Given all of this, there are several areas where the proposed process violates the tenants’ civil rights.

9-5.302 – Mandatory Inspection Program – As written, this program still violates a residents civil rights in that it infers that the resident must allow the City to inspect their unit. It does not state that the landlord cannot provide the City with access to the unit and if the tenant refuses, the City can only inspect the residence with an inspection warrant served upon the tenant.

9-5.304 – Self Certification Program – This involves a self inspection of the interior of all rental units using a checklist that we have not yet seen. As per Civil Code Section 1954, we only have the right as per items 5, 6, 7, 8, 10 and 11 listed on Form 19.0. Landlords do not have the right to enter to perform an undefined self certification checklist inspection.

- b) Qualifying Inspections for Properties not Inspected in Last 10 Years – By definition, these locations will be newer construction rental occupied dwellings as all rental dwellings have been inspected. Again –this process involves a city inspection of 20% of the units for which a landlord cannot provide the City with access to the unit which is a violation of our tenants’ constitutional rights. Further, a landlord must notice all residents in a complex and city staff will select units the day of inspection and the landlord must ensure access to units for the inspection – something a landlord cannot provide as per RHO v. Hayward.
- c) Annual Self Certification Affidavit – Again, the Annual Landlord Self Certification Inspection with an undisclosed checklist is not permitted under Section 1954 of the Civil Code.

Issues with International Property Maintenance Code

- 1) **Potential Conflicts with Recent State Code Changes** - The IPMC incorporates a large number of sub codes that cover the same areas as the recently adopted California code revisions.

[A] 102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *International Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code* and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *International Zoning Code*.

Without a thorough peer review, this will possibly set-up numerous conflicts with the recently adopted State codes. The cited examples of space heating issues on Page 219 of the staff report reflects a real world conflict that exists in most Hayward dwellings that do not have multi-zone central heating. Most of the pre 1979 housing stock and especially the 1960's vintage stock has only one gas fired wall heater for the dwelling unit. That complies with the code when the building was constructed.

Please see the attached Page 1 and Page 21 of the IPMC. The mechanical and electrical requirements are on Chapter 6, Page 21 of the code book.

For this type of heater to heat all rooms in the unit, it must be set at a constant temperature and the individual room doors must be open so heat can go into the rooms. In practice, most people close their bedroom doors and turn the heater down at night and when they are away. They then use portable electric heaters to heat individual rooms that they occupy at the time. This practice is fully addressed in the Health and Safety and Building codes.

In addition, staff mentioned a 2013 apartment fire with functioning smoke detectors. This too is fully addressed in the current building and fire codes.

How do we resolve conflicts between State codes and the IMPC?

Time for Peer Review and Suggestions for Improvement – We need time for peer review of the Proposed Ordinance and Self Inspection checklist. Once this is done, we can then bring forward suggestions and practical solutions to the dilemmas listed above.

CHAPTER 1

SCOPE AND ADMINISTRATION

PART 1 — SCOPE AND APPLICATION

SECTION 101 GENERAL

[A] **101.1 Title.** These regulations shall be known as the *International Property Maintenance Code* of [NAME OF JURISDICTION], hereinafter referred to as “this code.”

[A] **101.2 Scope.** The provisions of this code shall apply to all existing residential and nonresidential structures and all existing *premises* and constitute minimum requirements and standards for *premises*, structures, equipment and facilities for light, *ventilation*, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of *owners*, *operators* and *occupants*; the *occupancy* of existing structures and *premises*, and for administration, enforcement and penalties.

[A] **101.3 Intent.** This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued *occupancy* and maintenance of structures and *premises*. Existing structures and *premises* that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

[A] **101.4 Severability.** If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 102 APPLICABILITY

[A] **102.1 General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

[A] **102.2 Maintenance.** Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or *premises* was constructed, altered or repaired shall be maintained in good working order. No *owner*, *operator* or *occupant* shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as other-

wise specified herein, the *owner* or the *owner's* designated agent shall be responsible for the maintenance of buildings, structures and *premises*.

[A] **102.3 Application of other codes.** Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *International Building Code*, *International Energy Conservation Code*, *International Fire Code*, *International Fuel Gas Code*, *International Mechanical Code*, *International Residential Code*, *International Plumbing Code* and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *International Zoning Code*.

[A] **102.4 Existing remedies.** The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and insanitary.

[A] **102.5 Workmanship.** Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a *workmanlike* manner and installed in accordance with the manufacturer's instructions.

[A] **102.6 Historic buildings.** The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the *code official* to be safe and in the public interest of health, safety and welfare.

[A] **102.7 Referenced codes and standards.** The codes and standards referenced in this code shall be those that are listed in Chapter 8 and considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.7.1 and 102.7.2.

Exception: Where enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall apply.

[A] **102.7.1 Conflicts.** Where conflicts occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

[A] **102.7.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

[A] **102.8 Requirements not covered by code.** Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the *code official*.

[A] **102.9 Application of references.** References to chapter or section numbers, or to provisions not specifically identi-

CHAPTER 6

MECHANICAL AND ELECTRICAL REQUIREMENTS

SECTION 601 GENERAL

601.1 Scope. The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility. The *owner* of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any *premises* which does not comply with the requirements of this chapter.

SECTION 602 HEATING FACILITIES

602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms* based on the winter outdoor design temperature for the locality indicated in Appendix D of the *International Plumbing Code*. Cooking appliances shall not be used, nor shall portable unvented fuel-burning space heaters be used, as a means to provide required heating.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

602.3 Heat supply. Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from [DATE] to [DATE] to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the *International Plumbing Code*.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from [DATE] to [DATE] to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

602.5 Room temperature measurement. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

SECTION 603 MECHANICAL EQUIPMENT

603.1 Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an *approved* chimney or vent.

Exception: Fuel-burning equipment and appliances which are *labeled* for unvented operation.

603.3 Clearances. All required clearances to combustible materials shall be maintained.

603.4 Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

603.5 Combustion air. A supply of air for complete combustion of the fuel and for *ventilation* of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

603.6 Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless *labeled* for such purpose and the installation is specifically *approved*.

SECTION 604 ELECTRICAL FACILITIES

604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.

TWENTY-FOUR HOUR NOTICE TO ENTER DWELLING UNIT/PREMISES

Pursuant to California Civil Code Section 1954, Owner/Agent hereby gives notice to:

_____, and all persons in the premises located at:

_____, Unit # (if applicable) _____
(Street Address)

_____, CA _____
(City) (Zip)

Owner/Agent or Owner's/Agent's employee(s) will enter said premises on or about _____
(Date/Time)

during normal business hours for the reason checked below:

- 1. To make necessary or agreed repairs
- 2. To do necessary or agreed decorating
- 3. To make necessary or agreed alterations or improvements
- 4. To supply necessary or agreed services
- 5. To exhibit the rental unit to prospective or actual purchasers
- 6. To exhibit the rental unit to prospective or actual mortgagees
- 7. To exhibit the rental unit to prospective tenants
- 8. To exhibit the rental unit to workmen or contractors
- 9. Pursuant to Court Order
- 10. To inspect waterbed or liquid-filled furniture
- 11. To install, repair, test, and/or maintain the smoke detector and/or carbon monoxide detector
- 12. In case of abandonment/surrender

Date

Owner/Agent

Proof of Service

To be filled out by Server AFTER service on Resident is complete

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the _____ day of _____ (month), _____ (year), on the above-mentioned resident(s) in possession, in the manner indicated below.

- BY DELIVERING** the notice personally to the Resident or to someone of suitable age and discretion at the premises at least 24 hours prior to the intended entry,
- BY LEAVING** a copy of the notice at, near, or under the usual entry door of the premises at least 24 hours prior to the intended entry in a manner in which a reasonable person would discover the notice
- BY MAILING** a copy of the notice addressed to the Resident at least 6 days prior to intended entry.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this ____ day of _____ (month), _____ (year), in _____ (city), _____ (state).

Name of Declarant (Print)

(Signature of Declarant)



INSTRUCTION SHEET (Form 19.0)

Twenty-Four Hour Notice to Enter Dwelling Unit/Premises

Purpose:

1. Owner/Agent or Owner's/Agent's employees may not enter a Resident's premises without first providing a written notice. A written notice is not required in the following cases:
 - a) In case of an emergency,
 - b) When Resident has abandoned or surrendered the premises,
 - c) When Resident consents at time of entry, or
 - d) When the Owner/Agent and Resident have agreed orally to an entry to make agreed repairs or supply agreed services. The Agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. If the entry will take place at a time that is not within one week, the Owner/Agent should provide the Resident with a written notice to enter or contact the Resident prior to entry to secure another verbal agreement to enter.
2. Upon giving reasonable notice (as defined under Service of Notice below), the Owner/Agent may enter the unit/premises during normal business hours (generally 8:00 a.m. to 6:00 p.m., Monday through Saturday, except for holidays) for the following reasons:
 1. To make necessary or agreed repairs
 2. To do necessary or agreed decorating
 3. To make necessary or agreed alterations or improvements
 4. To supply necessary or agreed services
 5. To exhibit the rental unit to prospective or actual purchasers*
 6. To exhibit the rental unit to prospective or actual mortgagees
 7. To exhibit the rental unit to prospective tenants
 8. To exhibit the rental unit to workmen or contractors
 9. Pursuant to Court Order
 10. To inspect waterbed or liquid-filled furniture
 11. To install, repair, test, and/or maintain the smoke detector and/or carbon monoxide detector
 12. When the Resident has abandoned or surrendered the premises**
 13. To provide the initial (pre-move-out) inspection prior to the termination of the tenancy if requested by Resident***

* **Prospective/Actual Purchasers:** If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person, or by telephone if the Owner/Agent has notified the Resident in writing within 120 days of the oral notice that the property is for sale and that the Owner/Agent may contact the Resident orally for the purpose described above. Use CAA Form 19.1 – Notice that Property is For Sale to start the 120 day period. Some Owner/Agents prefer to provide a written notice prior to entry to exhibit to prospective purchasers. This form can be used for that purpose.

** **Abandonment/Surrender:** The 24-Hour Notice is generally used when the Owner/Agent suspects that the property has been abandoned. In case of emergency, entry without notice may be appropriate. CAA Form 8.0 – Notice of Belief of Abandonment may be used to confirm abandonment, regain legal possession of the unit and protection against liability to the resident. It is often used when entry is gained by the 24 hour notice, and it is unclear whether or not the resident has abandoned the property. Use forms 9.0/10 Notice of Right to Reclaim Personal Property if personal property has been left behind. For more information, see CAA's White Paper – *Abandonment of Real and Personal Property* available at www.caanet.org. If you believe the unit may be abandoned and are unsure of which notice to use in your specific circumstances, please consult with your attorney.

*** **Initial (Pre-Move-Out) Inspection:** Do not use this form. Use CAA Form 19.1 – Notice of Enter to Provide Initial (Pre-Move-out) Inspection to provide the required 48 hour notice.

Preparation of Form:

In the blank after "on or about," place the approximate time entry will be made. Four (4) hours is generally viewed as reasonable because many service providers have a four (4) hour window. Example:

- (a) 10:00 a.m. on Aug. 1
- (b) Friday morning, Aug. 1
- (c) between 10:00 a.m. and 2:00 p.m. on Aug. 1



Service of Notice:

1. The notice may be personally delivered to the Resident, left with someone of suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary.
2. The notice may be mailed to the Resident. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

Pitfalls and Precautionary Notes

1. If Resident refuses entry, do not forcibly enter.
2. If, after proper notice for a purpose listed above, Resident refuses to allow the Owner/Agent to enter, Owner/Agent may then serve a Three- Day Notice to Perform Conditions or Covenants or Quit (CAA Form 11.0). If Resident does not cure the violation, Owner/Agent could file an unlawful detainer action to evict.
3. This form has been prepared by the California Apartment Association to help members comply with applicable California and Federal law. The California Apartment Association, its local Chapters, and Divisions do not make any representation or warranty about the legal sufficiency or effect of this form. Consult with an attorney if you require assistance in completing the form or to determine if use of the form is appropriate or changes to the form are necessary in any particular situation.
4. The California Apartment Association does not sanction any CAA form which has been altered or changed in any way.

