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Memorandum

TO: Municipalities and Rental Housing Health and Safety Partners
FROM: Michael Desrochers, Executive Director - Division of Fire Safety
SUBJECT: Rental Housing Health and Safety Code
DATE: January 4, 2024

This memorandum is provided to explain how the Division of Fire Safety will administer the new Rental Housing Health and Safety Program, which went into effect officially January 1, 2024. We would like to thank you for your patience as we have experienced lengthy delays in hiring inspectors, training inspectors, working out our internal procedures while responding to this summer's catastrophic flooding. This memorandum provides a brief history of how we arrived here and expresses the importance of working in collaboration to provide safe and healthy housing. Our vision moving forward is to administer an effective inspection program promoting safe and healthy housing through inspection, education, training and building local partnerships. We will take advantage of the resources we have within the Department of Public Safety and the Division of Fire Safety to promote awareness to tenants and landlords of their shared responsibilities in the complex environment of rental housing. We look forward to working with our many municipal partners, landlords, tenants, legal advocacy groups, State agencies, nonprofits, and the many housing partners across Vermont.

History:

On May 28, 2018, **Act 188 (An Act Relating to Improving Rental Housing Safety)** was signed into law. The law created the Rental Housing Advisory Board consisting of 11 members. The board representation was as follows: 3 members were local municipal health officers, 3 members represented tenants, 2 members represented the public and 3 members represented landlords. The Division of Fire Safety and the Vermont Department of Health, although not official members of the Advisory Board, were directed to provide technical assistance to the Board. The Division of Fire Safety and the Health Department attended and actively participated in all Rental Housing Advisory Board Meetings.

The Board was directed to answer eleven questions, one of which was should there be a single agency responsible for overseeing all aspects of rental housing code enforcement within the State? Act 188 directed the Rental Housing Advisory Board to submit a legislative report outlining their recommendations, which are now found in Act 181. In assisting the Rental Housing Advisory Board with answering some of these questions, a survey was sent out to all town health officers seeking the number of complaints received on an annual basis and what type of code violations were most often noted. This survey **was not** sent out to those jurisdictions having active programs in place because throughout the report period it was clear local municipalities with active programs in place wanted to continue their programs. As a result, we calculated the average number of complaints, including a high percentage of those requiring one or more follow-up inspections. Based upon the survey results, Fire Safety developed a draft budget to hire new full-



time inspectors, as well as submitting a report detailing the anticipated overhead costs associated with running a rental housing inspection program within the Division.

ACT 181 Overview:

On June 7, 2022, **Act 181 (An Act Relating to Rental Housing Health and Safety and Affordable Housing)** was signed into law transferring primary enforcement responsibility of Vermont's Rental Housing Health and Safety Code to the Division of Fire Safety (a link to Act 181 is provided at the end of this memorandum.). This transfer of primary responsibility **does not** eliminate local health officer jurisdiction, nor does it prevent a local health officer from continuing to conduct inspections. Key components of Act 181 included naming the Division of Fire Safety as the primary authority over Rental Housing Health and Safety Code Enforcement, as well as the duty to promulgate administrative rules regulating rental housing. The new rules made minimal changes to the existing Rental Housing Health and Safety Code previously adopted by the Department of Health. The Division of Fire Safety also created a new inspection checklist, which is very similar to the checklist local health officers utilize today (the checklist can be found on our home page link provided at the report). Although the Division of Fire Safety is now the primary State agency overseeing Rental Health and Safety Code Enforcement, there remains clear statutory authority allowing local municipalities to continue operating their existing rental housing health and safety program. For those municipalities with an existing municipal inspection agreement with the Division of Fire Safety to conduct fire & life safety inspections, there are no changes needed to the agreement to conduct rental housing health and safety inspections under Act 181. Although the rental housing health and safety program is covered under a separate statute, the authority to enforce health and safety is concurrent with that of Division personnel.

Legal Authority and Responsibilities:

Act 181 (An Act Relating To Rental Housing Health And Safety And Affordable Housing) Section 4 "Transition" (b) Upon the adoption of rules governing rental housing health and safety pursuant to the authority in 20 V.S.A. § 2677:

- (1) The Department of Public Safety in the State government entity with primary authority to enforce State laws governing rental housing health and safety;
- (2) The Department of Public Safety and local health officials have concurrent authority to enforce State and local laws governing rental housing health and safety pursuant to 18 V.S.A. chapter 11; 20 V.S.A. chapter 172, subchapter 2; 24 V.S.A. chapters 83 and 123; and applicable municipal law; and
- (3) the Department of Health, the State Board of Health, and local health officials have concurrent authority to enforce State and local laws governing public health hazards and public health risks, as those terms are defined in 18 V.S.A. § 2, pursuant to 18 V.S.A. chapters 1, 3, and 11.

18 V.S.A., Chapter 11 § 602a. DUTIES OF LOCAL HEALTH OFFICERS

(a) A local health officer, within his or her jurisdiction, shall:

- (1) Upon receipt of information regarding a condition that may be a public health hazard, conduct an investigation.
- (2) enforce the provisions of this title, the rules promulgated, and permits issued thereunder.
- (3) prevent, remove, or destroy any public health hazard, or mitigate any significant public health risk in accordance with the provisions of this title;
- (4) in consultation with the Department, take the steps necessary to enforce all orders issued pursuant to chapter 3 of this title; and

- (5) have the authority to assist the Department of Public Safety in inspecting rental housing pursuant to 20 V.S.A. chapter 172, provided that if the local health officer inspects a rental property without an inspector from the Division, the officer shall issue an inspection report in compliance with 20 V.S.A. § 2677(b)(2).

Program Administration Overview and Summary:

The Division of Fire Safety is aware that there are communities in Vermont lacking adequate resources to respond to rental housing health and safety complaints. We also have several larger more populated municipalities managing ongoing and largely effective inspection programs. This program has been designed to allow existing rental housing programs to continue and builds a more predictable program in those communities lacking adequate resources. This program, as a reminder, is complaint based only.

- The Division of Fire Safety (DFS) hired 4 Assistant State Fire Marshals dedicated to responding to housing complaints. We have 4 regional offices, Williston, Waterbury, Rutland and Springfield, and each office has 1 full-time dedicated rental housing inspector.
- Fire Safety has developed a web page which provides a copy of the inspection checklist, a fillable complaint form which can be completed online and electronically submitted to our regional offices. The instructions will direct the tenant to contact the owner or property manager to attempt to resolve the issue before submitting a complaint to us. The complaint form once submitted, will be automatically directed to the appropriate regional office based on the zip code where the complaint is alleged.
- Should a town clerk, town administrator, local health officer, fire chief, zoning administrator or any other municipal entity receive a complaint, we are encouraging the use of our web page to submit that complaint. The page also provides resources and valuable safety information for local officials, tenants, and landlords.
- Local municipalities with rental housing inspection programs are expected to continue operating their programs. The new law does stipulate that you are required to provide a copy of the inspection report in a timely manner to the tenant and landlord. If you have existing enforcement action and or existing complaints you are working through, please continue working through these.

Short Term Rentals:

We understand that there has been confusion expressed over short-term rentals and inspection authority. The Division of Fire Safety has always had inspection authority over short term rentals, while the Health Department historically exempted short term rentals from the purview of the Rental Housing Health and Safety Code.

Pursuant to 20 V.S.A., Chapter 172, Rental Housing includes Short Term Rentals as defined by 18 V.S.A. 4301. Fire Safety, in response to a complaint alleging unsafe or unsanitary health conditions, **will** inspect short-term rentals for compliance with the Rental Housing Health and Safety Code. It should be noted that we will not conduct pro-active inspections on short-term rentals as we do not have adequate resources to do so. Additionally, we caution towns against creating registries or requiring inspections of short-term rentals to be conducted by the Division of Fire Safety as we will not be performing these absent of a formal complaint.

In closing, the Division of Fire Safety is committed to working collaboratively with all municipalities and alongside all stakeholders as we recognize there is a lot of work to be done moving forward. As we continue to develop our inspection program, our hope is to provide additional training, and we are optimistic we can build a solid relationship between our local officials, rental housing health and safety inspectors, electrical inspectors, and plumbing inspectors.

Resources:

- ACT 181
<https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT181/ACT181%20As%20Enacted.pdf>
- 2023 Rules:
<https://firesafety.vermont.gov/sites/firesafety/files/documents/RRHHS%20Code%202022%20.pdf>
- Web Page Link:
https://firesafety.vermont.gov/rental_housing_healthandsafety