

Act 188 of 2018 – Rental Housing Advisory Board recommendations for January 2019

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Acknowledgements

Ensuring that all Vermonters have a safe and healthy place to call home is an ongoing endeavor that requires the attention and commitment of many individuals, coalitions and agencies.

Acknowledgements go out to the legislators and advocates who kept this issue on the agenda and were instrumental in the passage of Act 188 of 2018. In particular, thanks to those residents and landlords who shared personal experiences and stories that helped to bring to light the real personal costs of unhealthy housing and lent their faces to the effort of humanizing the need for proper code enforcement.

Thanks to the members of the Rental Housing Advisory Board who were called upon to volunteer their time and expertise to this issue. It is only by bringing a multitude of perspectives together to describe all aspects of such a complicated issue that we can hope to find a sensible solution. The paths through and around the challenges inherent in the desire to fairly ensure housing is safe and healthy have been well trodden and the civility and respect each member brought to this latest iteration has been refreshing and heartening.

Thanks to the State agency staffers who contributed to the investigation and discussion. Meg McCarthy, and Shayla Livingston, of the Vermont Department of Health, were instrumental in educating Board members on the current system and capacities at their Department to support the existing rental housing inspection system. Their responsiveness has been appreciated. Mike Desrochers, at the Division of Fire Safety, was also essential to the Board's understanding of the role Fire Safety inspectors play in ensuring the safety of Vermonters throughout the State. All were very gracious with their time and knowledge.

Enormous thanks are due to all of the Town Health Officers around Vermont who are engaging in this work regularly, and almost all on a volunteer basis. Without their efforts the problems occurring with unsafe and unhealthy housing would be far more dire and frequent than they are today. Theirs should not be a thankless, uncompensated job and it is the hope of the Rental Housing Advisory Board that this is an early, significant step in moving towards a system that better reflects the importance of the effort that is being carried out by our volunteer Town Health Officers.

Report prepared on behalf of the Rental Housing Advisory Board by Shaun Gilpin, Housing Policy Specialist at the Department of Housing and Community Development.

Message from the Chair

The residential rental business is a significant part of Vermont's economy. According to the U.S. Census Bureau's American Community Survey, in 2017 an estimated \$900 million was paid in rents for 78,000 homes in Vermont. This business and exchange of funds occurs in the absence of any centralized oversight or licensing requirement. While a majority of property owners renting out housing units in Vermont are aware of and abide by the Rental Housing Health Code, the understanding and enforcement of these minimum requirements is not consistent throughout the State, which can result in real consequences. The burden of ensuring Vermonters have access to livable and healthy rental housing falls squarely on Vermont municipalities that in most cases are not staffed or prepared to take this on.

This issue has been reviewed and studied at least three times in in the last few decades with a similar conclusion that state government must take a much more proactive role in the oversight of rental housing habitability. This needs to start with a system that identifies where rental housing units are located and the collection of data on what the volume of the problem is regarding unhealthy homes. The minimum housing standards created years ago are not a high bar, but the current system of municipal responsibility is woefully inadequate.

A State agency must "own" this public issue and provide the necessary leadership to develop a system that works for all Vermonters – tenants, landlords, and communities. Below is a summary of recommendations and the report submitted by the Rental Housing Advisory Board (RHAB). Detail of their meetings can be found at <https://accd.vermont.gov/housing/partners/Act188> . The RHAB represents a good balance of interests and they will continue their role of providing input on this critical issue, but the legislature must provide for the needed capacity to develop a comprehensive system of code enforcement.

Summary of Recommendations of the Rental Housing Advisory Board¹

Phase I

- Expressly identify the Department of Health as the agency responsible for overseeing all aspects of rental housing code enforcement - at least until another agency is charged with this responsibility.
- Provide for 2 staff positions at the Department of Health to provide training and technical support for Town Health Officers and develop a comprehensive system for rental housing code enforcement.

¹ Additional details of these bullets are included in the Recommendations section below.

- Add clarifying language to existing statute requiring Town Health Officers to send written inspection reports to the Department of Health. Create a data collection system for housing inspection reports housed at the Department of Health.
- Expressly authorize the Department of Health to provide legal guidance and assistance to municipalities regarding rental housing habitability and provide resources necessary to carry out this function. Amend State statute to facilitate municipal enforcement of minimum housing standards.
- Provide resources for the maintenance of RentalCodes.org website to be maintained and operated by the Department of Health.
- Direct state agencies and associations to coordinate with the Department of Housing and Community Development for the development of rental data.

Phase II

- Utilizing data collection from Phase I, continue work with State agencies to design a professionalized inspection system.

Introduction

Act 188 of 2018, [*An act relating to improving rental housing safety*](#), made several changes to Vermont statute in order to address concerns about the safety of rental housing and the enforcement of rental housing health code. One of the provisions of this law established the Rental Housing Advisory Board (RHAB). As per 03 V.S.A. §2477, this 11-member Board is to be created and supported by the Department of Housing and Community Development and is to include representation from tenants, landlords, municipalities and members of the public. It is charged with the following powers and duties:

- (1) to act as an advisory group to the Governor, General Assembly, and appropriate State agencies on issues related to rental housing statutes, policies, and regulations;
- (2) to report regularly to the Vermont Housing Council on its deliberations and recommendations;
- (3) to work with appropriate State agencies on developing adequate data on the location and condition of Vermont's rental housing stock;
- (4) to provide guidance to the State on the implementation of programs, policies, and regulations better to support decent, safe, and sanitary housing, including recommendations for incentives and programs to assist landlords with building repairs;
- (5) to provide information to community partners, municipalities, landlords, and tenants, including educational materials on applicable rental housing statutes, regulations, and ordinances; and
- (6) in preparation for a natural disaster, to collect information regarding available resources, disaster-related information, and community needs, and, in the event of a natural disaster, work with government authorities in charge of disaster response and communication.

In addition to these broad duties, Section 2 of Act 188 directs the RHAB to provide recommendations to the General Assembly for the 2019 legislative session. Namely:

- (a) On or before January 15, 2019, the Rental Housing Advisory Board created in 3 V.S.A. § 2477 shall submit to the General Assembly potential legislation or policy changes to better support decent, safe, and sanitary rental housing that address the following issues:

(1) recommendations for one State agency to be responsible for overseeing all aspects of rental housing code enforcement; and

(2) whether to retain or modify the current system of rental housing code enforcement, including current statutory provisions for issuance of health orders for violations of a rental housing health code.

Board Recommendations – January 2019

The Rental Housing Advisory Board has been meeting regularly since July 2018 to discuss the existing system of rental housing habitability code enforcement. Throughout the discussion and public outreach, it has become clear that the existing system needs improvement. While there are several municipalities that conduct their own code enforcement programs, a vast majority rely on volunteers to act as Town Health Officers who are tasked with ensuring public health, which includes compliance with rental housing health codes. Such a structure has resulted in inconsistent enforcement and often overburdened and frustrated volunteers. Municipalities largely feel as though they lack the expertise and resources to pursue cases where voluntary compliance is elusive. And the complaint-based nature of inspections can often cause tenants to fear retaliation, landlords to lament it as a stall tactic to prolong evictions, and Health Officers to feel as though they act as much as mediators as unbiased arbiters of the code. In short, the existing system is woefully inadequate and in need of improvement.

The Board acknowledges that more than simply health and habitability codes affect the provision of rental housing, however, health is a pressing issue and should be addressed while the Rental Housing Advisory Board, in consultation with State Agencies and municipalities, continues work on quantifying and addressing issues of rental housing habitability. The Board intends to consider more comprehensive alternatives to consolidating responsibility for ensuring that all rental housing meets minimum standards established by the Vermont Legislature.

In discussing what changes should be made to deploy a more effective program for ensuring the essential aspects of health and safety in rental housing the Rental Housing Advisory Board consistently came up against the difficulty of “right-sizing” a program without robust data on the extent of the problem. Without consistent reporting practices for housing code complaints, or even a solid understanding of the number or location of a majority of Vermont’s rental units, it is impossible to know what resources should be made available to effectively conduct a code enforcement system. Acknowledging this challenge, and the reality of scarce resources, the Rental Housing Advisory Board recommends a two-phase improvement process. This is to begin with increasing support for existing Town Health Officers and improving data collection. Once there is a better understanding of the scope and depth of the problem, steps can be taken to move toward more a professionalized inspection program.

Phase I

1. **Expressly identify the Department of Health as the agency responsible for overseeing all aspects of rental housing code enforcement - at least until another agency is charged with this responsibility.**

As the overseer of public health concerns, the appointing authority for Town Health Officers, and the enforcement authority over the Lead Law, the Department of Health is

the most obvious State agency to take responsibility for overseeing rental housing code enforcement until a comprehensive system is developed and implemented. The resources needed to conduct this oversight need to be expanded. The Department must take on the leadership to explore the long-term options for a more professional system of rental housing code enforcement.

2. **Provide for 2 staff positions at the Department of Health to provide training and technical support for Town Health Officers and develop a comprehensive system for rental housing code enforcement.**

The current staffing level to provide assistance to Town Health Officers is insufficient. While existing Department of Health staff make a commendable effort to assist the broad constituency of volunteer Health Officers, this task is not the singular focus of any Department staff member.

New dedicated staff should be responsible for responding to Town Health Officer questions regarding the inspection process and provide guidance in difficult cases. They should also schedule and conduct regular training sessions on the roles and responsibilities of Health Officers as well as best practices. These trainings should incorporate the information currently purveyed in the existing trainings conducted in partnership with the Vermont League of Cities and Towns. These individuals should be responsible for collecting and maintaining data on inspection reports.

As the individuals with the broadest perspective and knowledge of the current rental housing health inspection system, these newly dedicated staff members will be essential to assisting in the design of a more robust alternative. State agencies that are involved in the provision of safe rental housing, particularly Division of Fire Safety and Department of Housing and Community Development, should be directed to work with the Rental Housing Advisory Board to analyze new health and safety complaint data and propose an adequately resourced alternative to the volunteer enforcement system.

3. **Add clarifying language to existing statute requiring Town Health Officers to send written inspection reports to the Department of Health. Create a data collection system for housing inspection reports housed at the Department of Health.**

A better understanding of the extent and nature of habitability violations, particularly in our rural communities, is essential to our ability to address substandard housing effectively. Act 188 compelled Town Health Officers to produce a written report upon conducting an inspection and provide a copy to both landlord and tenant. According to existing statute 18 V.S.A. 602a(b), all public health violations are to be reported to the Department of Health, however, clearer, more direct language should be added to statute expressly requiring Town Health Officers to send written inspection reports to

the Department of Health. It is understood by the Board that an exceedingly small proportion of the inspection reports in rental housing units that identify a violation of the rental housing health code are reported to the Department of Health. Furthermore, the Department of Health does not have systems in place to efficiently collect and organize such information.

Town Health Officers should be required by statute to report information about rental housing inspections to the Department of Health. Whether the entire inspection report or some sub-section of information is to be reported should be left to the discretion of the Department of Health in collaboration with Town Health Officers. The Department should be directed to either create a new electronic database or augment an existing one that can store information on code inspections to increase the understanding of the number of complaints and the results of inspections. Ongoing maintenance of this database should be included in this directive.

4. **Expressly authorize the Department of Health to provide legal guidance and assistance to municipalities regarding rental housing habitability and provide resources necessary to carry out this function². Amend State statute to facilitate municipal enforcement of minimum housing standards.**

Many municipal representatives repeatedly reported that they lack the financial resources and legal acumen to pursue litigation against persistent code violators. This is a significant obstacle to the efficacy of the existing code enforcement system. The Department of Health should be authorized to provide guidance to municipalities on legal matters regarding the steps necessary to enforce corrective action of code violations and unpaid code violation penalties.

The Rental Housing Advisory Board, after review by a subcommittee with experience in legal matters, also recommends the following changes be amendments be made to Vermont Statute in order to enhance the ability of municipalities to gain compliance with minimum housing standards:

4 VSA § 1102 Judicial Bureau Jurisdiction

- (a) The Judicial Bureau shall have jurisdiction of the following matters:
(29) Violations of the Rental Housing Health Code of the Department of Health or municipality pursuant to 18 VSA § 603.

...

² The Vermont Department of Health provided the Rental Housing Advisory Board with a memorandum outlining their legal capacity to assist municipalities and Town Health Officers. See Appendix 1.

(d) Three hearing officers appointed by the Court Administrator shall determine waiver penalties to be imposed within the Judicial Bureau's jurisdiction, except: (1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979 and 18 V.S.A. § 603. For purposes of municipal violations the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

18 V.S.A § 603 (b) is amended to read:

- (b) A local health officer may impose a fine of not more than \$200 per day for each violation that is not corrected by the date provided in the written inspection report, or when a unit is re-rented to a new tenant prior to the correction of the violation. A waiver fine shall be 50 percent of the imposed fine amount.

Fines imposed pursuant to this section where the cumulative penalty is \$800 or less shall be brought before the Judicial Bureau pursuant to Title 4 and this section. If the penalty for continuing violations is greater than \$800, or injunctive relief is sought, the action shall be brought in the Civil Division of the Superior Court.

The complaint shall be signed by the issuing municipal official. The original copy shall be filed with the Judicial Bureau, a copy shall be retained by the issuing municipal official, and two copies shall be given to the defendant.

The municipal official may void or amend the municipal complaint issued by that official by so marking the complaint and sending it to the Judicial Bureau. Procedure and enforcement of orders from the Judicial Bureau shall be as stipulated in 24 V.S.A. § 1979 and 1981.

5. **Provide resources for the maintenance of RentalCodes.org website to be maintained and operated by the Department of Health.**

In response to recommendations from the Rental Housing Safety Committee Report of 2010, a website was created to act as a clearinghouse of information on Vermont's rental housing codes. The maintenance of this site, at address "RentalCodes.org" was funded for five years under the responsibility of Vermont Housing Finance Agency. The site currently has neither financial support for maintenance and updating nor a parent organization tasked with ensuring it is up-to-date. As a result, the information is becoming outdated and knowledge of the site's existence is sparse. This important resource should be supported.

6. Direct state agencies and associations to coordinate with the Department of Housing and Community Development for the development of rental data.

Acknowledging a need for information regarding rental housing beyond the aspects of health, state agencies should be directed to coordinate in ongoing efforts by the Department of Housing and Community Development to better quantify the existing rental housing stock. Act 188 requires the Tax Department make available certain information filed on required Landlord Certificates to begin a more complete way to identify the location of rental properties. However, it is acknowledged that this may not be as accurate or as robust as needed. In order to address a number of policy priorities and enhance the State's ability to make educated funding and policy decisions regarding investments in housing, the Department of Housing and Community Development has begun preliminary investigation on the potential to compile information towards the comprehensive compilation of data on rental housing units. To the extent possible, state agencies should be directed and stakeholder associations encouraged to coordinate with DHCD on assessing the extent of available information and how it can be centrally compiled. DHCD should work with the Vermont Association of Listers and Assessors, the Tax Department, Vermont Center for Geographic Information, 911 Dispatch and others to investigate and design a more cost effective and efficient collection of rental housing information. The information collected should include the location, age of building, number of units, type of units, School Property Account Number, owner name and contact information, and manager name and contact information, if known. "Efficient" shall take into account the time for the reporting entity to provide the desired information as well as the time to make it accessible to the public in a searchable form. The transition should be as smooth as possible for the towns and reporters. (This likely could require an amendment to the program used by towns to report on their grand list to the State.) This would be an opportunity to get information important to many other state agencies into a data system readily available to all. A report on DHCD's conclusion should be due January 15, 2020.

It has been brought to the attention of the Rental Housing Advisory Board during the drafting of this report that the Department of Taxes is imminently issuing a Request for Proposals to create improved record keeping software for information currently encapsulated in the Grand List of each municipality. This effort should include collaboration with municipalities and the Department of Housing and Community Development to address shared information needs.

Phase II

As data is being collected about the frequency of problems and improved support is given to existing Town Health Officers, the Rental Housing Advisory Board recommends taking steps toward a professionalized system of rental housing inspections. This will require that the data collection system be designed in such a way as to be maximally accessible to inspection personnel and those who would benefit from the resulting information. Ultimately, the reporting mechanism by which an inspector notifies the Department of Health about a housing code violation complaint and subsequent findings should take the form of a broadly accessible portal, the design of which is largely informed by the additional Department of Health staff assigned to this effort per the Phase I recommendation.

While the size and scope of such a program is to be informed by the aforementioned data collection, it would likely manifest as a series of regional offices with professional or trained housing inspectors. The Department of Health currently conducts an inspection program for food and lodging establishments and some health care facilities. As noted above, the Division of Fire Safety also operates regional offices for fire code inspections, particularly for new construction. Whether the infrastructure inherent in either of these programs could be utilized and expanded to include rental housing inspections is worthy of further review. The Department of Health currently possesses the greatest level of authority over the provisions of the rental housing health code and stands to provide the greatest perspective on immediate possibilities to better support the system as it currently exists. There is, however, notable infrastructure at the Division of Fire Safety that are currently engaged in conducting a regional inspection program for fire safety interests in new construction, including computer software for collection of inspection information and legal infrastructure to administer fines and hear appeals. These assets should be considered when developing a long-term solution to professionalize the rental housing health inspection system.

Discussions about the important aspects of such a system can commence in parallel to the Phase I data collection and technical assistance enhancements. One major element to be investigated is the institution of a registry of existing rental units. It is worthy of note that most Board members, as well as members of the public who engaged with this process, were surprised to learn that the State has no consistent or comprehensive way to quantify or locate existing rental units. Collecting this information in a centralized fashion would allow for the possibility of regularly scheduled health inspections in addition to complaint-based inspections. As noted below in the Additional Considerations section, many Town Health Officers who provided comment noted that they would support a system of regular inspections. The belief was that such a schedule could identify issues before they become significant and problematic. It could also result in reducing the frequency with which a Town Health Officer is placed in the difficult situation of being inserted into a contentious relationship between a landlord and tenant,

which is often the case with complaint-based inspections. Several communities have begun to move in this direction.

Board Responses to Act 188

As noted above, in addition to the broad duties laid out in 03 V.S.A. §2477, Act 188 of 2018 specifically requested that the Rental Housing Advisory Board respond to several specific areas. Namely:

(1) recommendations for one State agency to be responsible for overseeing all aspects of rental housing code enforcement; and

(2) whether to retain or modify the current system of rental housing code enforcement, including current statutory provisions for issuance of health orders for violations of a rental housing health code.

Addressing (1) it is important to note that there are numerous codes, including items such as wastewater provisions and fire safety requirements, that include but are not limited to rental housing. The only code that is exclusively applied to rental housing is the rental housing health code. With this set of codes as the primary focus of “rental housing code enforcement”, the RHAB considered three clear options regarding the appropriate “agency of authority” for enforcing the rental housing habitability code: the Department of Housing and Community Development, the Division of Fire Safety, and the Department of Health.

As the smallest of these three entities, the Department of Housing and Community Development (DHCD) seemed least likely to be able to oversee such a program without an incredible expansion of its existing resources and staffing. The Housing Division of DHCD currently consists of just two full time staff, one of whom is tasked with overseeing provisions of the mobile home park statutes and registration of mobile home parks. The Housing Division does not currently have, nor has it ever had, the infrastructure to conduct an inspection program. Furthermore, there is no existing statutory authority provided to DHCD to enforce housing safety or habitability outside of mobile home parks. Vesting DHCD with oversight responsibility of rental housing habitability codes would require resource allocation and statutory changes akin to establishing an entirely new State Agency and, for these reasons, the RHAB does not feel this would be the most appropriate agency to exert authority over the rental housing habitability code.

The Division of Fire Safety (DFS), within the Department of Public Safety, was another apparent option as the agency of authority. DFS is currently charged with inspection for compliance with fire safety codes and has regional inspection offices throughout the state. DFS inspectors are currently under resourced and spread increasingly thin and their focus has been primarily on permits for new construction. There have been

attempts to alleviate capacity issues by executing contracts with a number of municipalities to conduct their own fire safety code programs, although at times, this comes at the cost of decreasing permit revenue for the Division because some agreements include plan review functions. New plan review agreements are currently on hold due to Fire Safety's budget. The Division does support municipalities entering into inspection agreements for existing buildings, as the division does not turn over revenue in those instances. It is also important to note that, while current Town Health Officers are tasked with identifying basic fire safety concerns, there is significant technical experience necessary to ensure more complicated matters (e.g. protection from hazards, electrical safety, exiting and proper heating system safety to reduce carbon monoxide poisonings). Fire and life safety analysis requires substantial specialized training beyond what is expected of a volunteer Town Health Officer. The Division of Fire Safety should continue to be a valuable resource when such concerns are noted. It should be noted the division continues to provide technical support to local health officers. While the Division of Fire Safety has inspectors employed by the State, their training is primarily in building construction and not in health-related issues such as lead exposure, mold, sanitation, trash disposal, water, heat, vermin control, and a variety of issues related to basic living standards. An assessment of the assets that exist at the Division of Fire Safety to conduct regional housing inspections would be appropriate to consider in the discussion of steps to professionalize the code enforcement system in Phase II of the recommendations contained herein.

The Department of Health is currently the agency with greatest responsibility over the efficacy of the rental housing habitability code and local health officials (18 V.S.A. Chapter 11). All Town Health Officers and their deputies are submitted to the Commissioner of Health for appointment and can be removed by the Commissioner for cause. The Department of Health supports the Town Health Officers with a comprehensive handbook, forms, legal updates, a Town Health Officer list serve, and individual consultations. The Department also provides education to current Town Health Officers regarding their roles and responsibilities as well as conducting training sessions in partnership with the Vermont League of Cities and Towns. Despite this relatively high level of direct contact with the existing system of code enforcement, the funding presently made available to explicitly oversee the current Town Health Officer program amounts to only 0.10 FTE – or four hours per week of a full-time staff member. In order to improve on the current system, or indeed maintain an appropriate level of support for Town Health Officers, the Department of Health needs more resources to be allocated to this function. In the past, the Department of Health did fund staff in their regional offices who served as a resource to Town Health Officers. This funding seems to

have been withdrawn and the situation has been exacerbated by the difficulty of recruiting volunteer Town Health Officers.

As the agency responsible for the majority of aspects involved in rental housing health, **the Rental Housing Advisory Board recommends that the Department of Health be deemed the State agency explicitly responsible for overseeing all aspects of rental housing health code enforcement.** Additional details regarding expectations on the extent of this responsibility in the short- and long-term are outlined further in the Committee Recommendations section.

Addressing (2) the RHAB received feedback on the existing system that constituted broad dissatisfaction. Therefore, **the Board recommends modification of the current system of rental housing code enforcement.**

When investigating (2), the RHAB was asked to consider nine subcategories. These charges are laid out below along with brief descriptions of the conclusions reached by the Board. Several elements have been incorporated in the recommendations described in the following section and others are in need of continued discussion by the Board over the coming years.

i. Professionalize or otherwise improve the current system of Town Health Officers

ii. Regionalize rental housing code enforcement

Items (i) and (ii) are an essential goal for a long-term improvement of code enforcement. It has been acknowledged that the resources required to implement professionalization on a regional level of the code enforcement system are not currently allocated.

In the short term, the RHAB recommends at least 2 FTE at Department of Health be charged with supporting the existing Town Health Officer system by providing technical assistance, running an enhanced training program, and collecting data about code violations that will inform the appropriate size for a professionalized system to address non-compliance. It has been repeatedly acknowledged that our existing lack of data to understand the size and spread of the problem is a significant hindrance to designing an efficient response infrastructure. Collecting this data will be paramount to overcoming this barrier in a fiscally responsible way. This effort will also require additional resources to establish a system that is accessible to both rental housing inspectors and those interested in the resulting inspection reports. The Department of Health is undergoing several IT projects aimed at improving data collection for various public health priorities not least of which is the identification of homes that are suspected to contain lead paint and contractors certified to address these issues. The timelines for implementing such systems can be long and the expectations surrounding the resources that need to be made available to create robust platforms to collect and present this information need to be realistic.

*Regarding regionalization, it was noted that there exists in current statute the authority for municipalities to submit to the Commissioner of Health for approval the creation of “health districts”. Such districts are authorized to recommend for appointment the same person to act in the role of Town Health Officer for the entire district. Such an arrangement could provide for the pooling of resources to support this function and allow for greater experience to be gained by the Officer. While no health districts have been officially sanctioned, there are several municipalities that are functionally acting as a health district by recommending for appointment the same persons to act as Health Officer. **Planning for some sort of regional system of other options is not likely to happen unless a state agency is given the responsibility and capacity to do this.***

iii. Create a public-private system of rental housing code inspections and enforcement

There may be a variety of ways to approach this but there has not been substantial investigation of how this could be structured. As noted above, the need for a better understanding of the extent of the issue of habitability violations precedes the ability to analyze the viability of creating a public-private partnership. Data collection is a prerequisite.

iv. Allow self-certification by property owners of compliance with applicable rental housing codes

The prospect of self-certification has been met with responses from the Town Health Officer and Fire Safety community that range from lukewarm to negative. Considering the low compliance rate of the Essential Maintenance Practice requirements of the existing Lead Law, which compels self-certification that steps have been taken to remediate or stabilize lead paint, it is expected that a self-certification of habitability would not add considerable value to the existing system of complaint-based habitability inspections.

v. Require inspection reports to utilize a hazard index rating system similar to that used by the Department of Public Safety’s Division of Fire Safety to standardize timelines for repair and amounts of fines

While the Rental Housing Advisory Board received an introduction to the Division of Fire Safety’s Hazard Index Rating System, it has not been a major topic of discussion. Such a system seems unlikely to be necessary in the current framework and may hinder the existing discretion that Town Health Officers have mentioned through the public outreach efforts as a necessary element of their process. A Hazard Index may be worth considering upon implementation of a more professionalized system of code enforcement officers.

vi. Require landlords and tenants, as applicable, to submit an action plan for correcting violations within the time line for correction

There is some disagreement amongst Board members about the efficacy and need for a Corrective Action Plan. The recently updated inspection form, provided by Department of Health and now required to be used by Town Health Officers, includes fields to input basic requirements and time frames for corrections of code violations. Whether a deadline for correction of a

violation without details about the ensuing steps is adequate is a topic worthy of further discussion. The Rental Housing Advisory Board membership generally suggests for now that submittal of an action plan for corrections to a violation should be left to the discretion of the Town Health Officer and not be a requirement.

vii. Enable a landlord or tenant to appeal inspection report to address habitability issues

Yes. Particularly when fines are being assessed, the integrity of the code enforcement system will rely in part on the ability for disagreements or appeals to be heard. Currently, this process exists by way of the Select Board and/or Board of Health of the municipality wherein the property in question exists. Appeal processes must be considered in any changes to the administration of fines or provision of property liens.

viii. Make inspection reports available to the public online

Inspection reports are currently public records – although they are not always treated as such. The Rental Housing Advisory Board membership is not yet ready to suggest that these reports be made available online – it is unclear whether there is the capacity at the municipal level to do this consistently. Rather, the recommendations should include the suggestion that inspection reports be kept in a way that ensures public availability – as per existing statute – and that these reports be made easily available upon request.

ix. Enable a local health officer to file a report of violation in the land records as a lien on the property if a landlord does not comply with inspection report

As discussed above, the Rental Housing Advisory Board is supportive of recommending that unpaid fines for violations be allowed to be filed as a property lien. The particulars of this are still under discussion.

Background and Act 188 Rationale

Without healthy housing options it is difficult, if not impossible, to maintain a healthy lifestyle. This truism is intuitively understood and is becoming empirically supported in a growing body of research about the importance of healthy housing. An understanding of the close connection between maintaining physical and mental health and having a safe and healthy home is demonstrated by increasing numbers of partnerships between Vermont hospitals and housing providers as well as the Vermont Department of Health's "Health in All Policies" initiative. Healthy housing is important regardless of ownership structure, however, the inherent lack of resident control over important structural elements in a rental unit can make it difficult for tenants to ensure their homes are healthy.

A successful rental housing transaction requires the good faith of both property owners and tenants. While the charge of this Board inherently supposed a focus on the issues arising from a breakdown of relationships between landlord and tenant, it was not lost on members of the Board that these are generally the exception to what are otherwise many copacetic rental agreements. A majority of landlords seek to provide a needed service of quality, safe, healthy housing and are responsible and attentive in that business. A majority of tenants acknowledge how their actions contribute to ensuring a safe, healthy and desirable unit and neighborhood and are responsible in supporting this mutual aim. It is, unfortunately, the instances when these relationships break down that are the focus of this Board. Throughout the process of developing the recommendations contained here it was made clear by practitioners that an abdication of responsibility on behalf of either party can have deleterious consequences with effects far beyond individual rental units. Available rental housing is necessary for a vibrant community and the systems to ensure it is a beneficial endeavor to provide it, and that it is provided in a way that ensures the safety and health standards we have grown to expect is essential.

The residential rental business is a significant part of Vermont's economy. According to the U.S. Census Bureau's American Community Survey, in 2017 an estimated \$75 million was paid each month for 78,000 rented homes in Vermont³. This annual exchange of nearly \$900 million occurs in the absence any centralized oversight or licensing requirement. While a majority of property owners renting out housing units in Vermont are aware of and abide by the Rental Housing Habitability Code, this understanding and the enforcement of these minimum requirements is not consistent throughout the State, which can result in real consequences. This is particularly true in aging housing stock. According to the U.S. Census, approximately 69% of Vermont's rental housing stock was constructed prior to the year 1980. The maintenance required to ensure that these units meet minimum safety and health standards

³ A table indicating the number of rental units by municipality is contained in Appendix 2 with indications as to which of these units are subject to regular habitability inspections

is ongoing and must not be ignored if we are to foster a rental housing market that meets the needs of Vermont residents.

A report released in January 2018 by Vermont Legal Aid, entitled “Renters at Risk” highlighted the negative effects of unhealthy rental housing – particularly for low-income households – and the ongoing need in Vermont to address this issue. Their series of interviews underscored the costs to the healthcare system, homeless shelters, and tenants themselves when health issues arise from unhealthy housing. These burdens fall disproportionately on those with the least ability to pay for remediation or relocation. Attention brought to this issue precipitated the bill that became Act 188, creating the Rental Housing Advisory Board as well as making several statutory changes intended to continue addressing this problem.

The Rental Housing Advisory Board is not the first group established to investigate this issue and they have worked to progress past efforts. In 1999 the Legislature asked for a report on Rental Housing and Safety Standards, and in 2008 legislation was passed that created a Rental Housing Safety & Habitability Study Committee. This committee released their final report in February 2010 that laid out a number of recommendations aimed at improving the rental housing habitability code enforcement mechanism. While several of the recommendations have been acted upon, including the creation of a website for rental housing code information and statutory authority for municipalities to administer fines for code violations, many of the recommendations are still valid and were brought up during discussions of the Rental Housing Advisory Board. It is worth noting that there have been significant evolutions in technology available in the ensuing eight years between these reports and much of the data collection and management that was suggested in 2010 would be far easier to implement with software being deployed by most Vermont municipalities in 2018. There have also been apparent shifts in attitudes about the extent of the problem and significantly increased concerns about the existing capacity of many municipalities to maintain the responsibility for rental housing habitability code enforcement. In short, a vast majority of Vermont’s municipalities lack the resources to reasonably assure the maintenance of minimum health and safety standards of their rental housing. The growing concern about this issue is evidenced by the Vermont League of Cities and Towns adopting as a policy priority for the 2019-2020 legislative biennium support for the professionalization of the Health Officer inspection system. A letter drafted informing the Commissioner of the Department of Housing and Community Development of this legislative priority is included in the Appendix 3.

Throughout the process of investigating the issue of enforcing the rental housing health code, the Rental Housing Advisory Board heard from numerous Town Health Officers and municipal representatives about the challenges of maintaining this existing enforcement role. Most of Vermont’s Town Health Officers are either completely volunteer roles or receive minimal stipends for the vitally important work of ensuring safety and health in rental housing. As housing availability remains relatively stagnant and the existing stock continues to age, many Health Officers reported that this function, which is only a

portion of the duties assigned to Town Health Officers under statute, is taking an increasing proportion of their time. During the development of the recommendations included in this document, it has become clear to the members of the Rental Housing Advisory Board that this arrangement is no longer tenable. While many Officers reported that they are often successful with achieving voluntary compliance, the cases where the offending party is not willing to comply with the habitability code are difficult and expensive to litigate. Municipalities with limited legal resources are often unable to continue enforcement action to reach compliance, leaving tenants and municipalities with substandard housing. The existing system was often referred to as “broken” and it was reported that many rural towns are finding it increasingly difficult to recruit and maintain Town Health Officers.

As we continue to maintain the laudable goal of ensuring that all Vermonters have a safe, healthy place to live, these challenges are indicative of the need for systemic change. Given the complexity of this issue and the pressures present on all involved parties, the Rental Housing Advisory Board is comprised of individuals sensitive to these unique needs. The Board also recognized the reality that a lack of centralized data on the location and quality of existing housing units as well as the number of serious code complaints makes it difficult to design an appropriately sized and resourced alternative to the current system. For this reason, the recommendations included in this report reflect a two-tiered approach, structured so as to make efficient use of scarce resources while concretely addressing a known issue.

Everyone needs a safe, healthy place to live in order to maintain a healthy and productive life. To that end, Vermont has long instituted a habitability code intended to ensure that opportunity for all who live here. While there have been successful implementations of this system in some communities, it has not proven to be uniformly effective and can cause undue costs on municipalities, Town Health Officers, landlords, and tenants alike. The members of this Board are hopeful that the recommendations contained herein will be taken into consideration and constitute a fair, practical step forward in the process of supporting the healthfulness of our rental housing and the communities in which it exists.

Rental Housing Advisory Board Description

The Rental Housing Advisory Board (RHAB) consists of 11 members. Three of such members represent tenants, three represent landlords – both private and publicly subsidized - three represent municipalities, and the remaining two seats are members of the public. Board members serve three-year terms and annually elect a Board Chair from their membership. Board members are to be appointed by the Commissioner of the Department of Housing and Community Development. The Department is also to provide staff support to the RHAB with additional support and information from the Department of Health and Department of Public Safety as needed.

After deliberation between staff of the Department of Housing and Community Development as well as outreach to stakeholders throughout the state, the following individuals were appointed to the Rental Housing Advisory Board by Commissioner Katie Buckley. Once appointed, RHAB membership elected Sarah Carpenter to serve as Board Chair.

Rental Housing Safety Advisory Board Members - 2018-2021				
CATEGORY	NAME	ORGANIZATION	TOWN	COUNTY
Landlords (for-profit)	Jon Hale	Hale Resources (Bennington Prop. Management.)	Bennington	Bennington
Landlords	Angela Zaikowski	Vermont Landlords Association	STATE	STATE
Landlords (non-profit)	Eileen Peltier	Downstreet	Barre	Washington
Tenants	Wendy Morgan	Vermont Legal Aid	STATE	STATE
Tenants	Dale Joy	Brattleboro Tenant	Brattleboro	Windham
Tenants	Pam Favreau	Resident Coordinator Housing Trust Rutland County, (formerly VT Tenants, Director and COTS)	Rutland	Rutland
Municipal	Matthew Cetin	Barre Fire Marshall and Town Health Officer	Barre	Washington
Municipal	Karen Horn	VT League of Cities and Towns	STATE	STATE
Municipal	James Arisman	Marshfield Health Officer/Constable	Marshfield	Washington

Public	Sarah Carpenter*	Vermont Housing Finance Agency	STATE	STATE
Public	Erhard Mahnke	Vermont Affordable Housing Coalition	STATE	STATE

Staff support: Shaun Gilpin, Housing Policy Specialist, Department of Housing and Community Development

*Elected Board Chair in July 2018

The Rental Housing Advisory Board, in the interest of crafting recommendations called for by January 15, 2019, met monthly beginning in July of 2018 through November 2018. Meetings were open to the public and meeting times were posted on the Agency of Commerce and Community Development’s website as well as listed with the Secretary of Administration through the Department of Libraries. All meetings included participation from Department of Housing and Community Development Staff with frequent participation by staff from Department of Health and the Department of Public Safety’s Division of Fire Safety.

Additional subcommittee meetings and correspondences were conducted between monthly meetings. Members met again in early January to discuss this document. Meeting Agendas and Notes can be found on the webpage established by the Department of Housing and Community Development to facilitate the work of the Rental Housing Advisory Board [<https://accd.vermont.gov/housing/partners/Act188>]. During several of the meetings throughout 2018, Board members flagged items that were topics of interest for further investigation which were separate from or tangential to the recommendations requested in the enabling legislation. Several of these considerations are outlined in greater detail below. The Rental Housing Advisory Board looks forward to continuing to act as an advisory committee on these issues to the bodies described in 3 V.S.A. §2477.

Public outreach was conducted through a number of venues. The Town Health Officer listserv was used to garner comments on the existing system of code enforcement on an ongoing basis throughout this process. This communication tool was also used to notify Town Health Officers of a public hearing conducted on the evening of November 5, 2018 in Berlin. Approximately 12 members of the public, representing Town Health Officers and other rental housing inspectors from seven different Vermont municipalities were present and voiced their opinions about challenges and possible improvements to the existing code enforcement system. Meeting notes from this event can be found at the webpage linked above. The Rental Housing Advisory Board discussed these comments and took them into consideration when crafting the recommendations discussed below. Additional public outreach included presentations on the results of Act 188 before audiences at the Town Fair event, hosted by Vermont League of Cities and Towns as well as the biennial Statewide Housing Conference, hosted by Vermont Housing Finance Agency.

Additional Considerations

In the course of discussing the above recommendations, several topics were raised that were deemed separate from or tangential to the recommendations due to the General Assembly in January 2019. The Rental Housing Advisory Board intends to continue to work investigating these issues. In the interest of providing a fuller picture of the considerations behind the recommendations a brief description of the questions and conclusions reached to date are included below. This list is by no means exhaustive of the points of discussion, which can be gleaned from the meeting notes included in the appendices, and does not constitute any ranking or prioritization of future discussions.

Municipalities with Code Enforcement

A number of Vermont communities have been conducting their own professional code enforcement systems for years and several more are voluntarily moving in that direction. According to information from the Division of Fire Safety, eleven communities throughout the State have existing memoranda of understanding to conduct safety inspections that would normally fall under the authority of the Division. Fire Safety does not have authority or jurisdiction over health codes and some municipalities elect to conduct minimum housing standard inspections in addition to the inspection of public buildings under the agreement with Fire Safety. These range in sophistication with some communities requiring that rental units be registered and charging fees for regular inspections, to several communities that simply conduct fire safety inspections for new construction. In designing a system that could be implemented throughout the State, the Rental Housing Advisory Board intends to connect directly with these communities to hear about challenges and opportunities that arose when creating and implementing such systems.

Several municipalities have recently moved toward or are contemplating implementing programs for regular inspection of rental units. Most recently St. Johnsbury began implementing a registry and inspection program. They chose to phase in the program by beginning with no-fee registration of existing units in the primary year and have begun creating a regular inspection schedule in addition to the existing complaint-based inspections. An annual rental unit registration fee starting in 2019 will assist with the funding of a full-time inspection office. The hope is that this will help to alleviate the issues with aging rental stock and to improve the quality and marketability of housing in the town. Interestingly, it was reported that one step taken to answer concerns raised by area landlords was to invite inspectors from other municipalities – Barre City in particular – to public meetings on the matter in order to describe their experience. The Barre Fire Marshal and Town Health Officer discussed the beneficial aspects of a regular rental inspection system, namely that they could use positive inspection reports as a marketing tool and also utilized official inspections as a hedge against frivolous claims of code violations during legal proceedings, and that inspections could be of conditions for which either the landlord or tenant is responsible.

At the time of this writing, the Selectboard of Brattleboro approved a proposal to move toward a regular inspection program and registration. The voluntary movement of communities toward a more systematic inspection regime speaks to the growing understanding of the extent of the need to improve housing conditions and an interest in a more comprehensive approach.

Resource needs for landlords

The discussion of maintaining high quality rental housing stock is not complete without an acknowledgement of the needs of small-scale landlords. Throughout the discussion by the Rental Housing Advisory Board it was understood that a significant proportion of Vermont's rental housing stock is managed by "mom-and-pop" landlords – those holding four or fewer rental units. These small business people come into the rental market through various pathways, both intentional and unintentional – such as the inheritance of property in the latter instance. These small-scale landlords are important contributors to Vermont's rental housing stock, yet many are not well equipped to run a rental business. Throughout the outreach process, numerous Town Health Officers recalled instances where they found themselves engaged with small-scale landlords that were not aware of the rental housing health code, including lead paint regulations. Additionally, the Board heard with some frequency of instances where the landlord was low- or moderate-income themselves and lacked the access to readily available capital to make necessary repairs. These circumstances create difficult scenarios for a Town Health Officer who is forced to reckon with the reality that aggressively pursuing compliance with the existing code could cause a tenant to be displaced and a relatively low-income property owner losing an important source of revenue – this, despite the fact that no one was willfully neglectful but lacked the means to address issues with the unit.

These dual issues can be addressed through increased resources for landlord and tenant education about their rights and responsibilities as well as grant and loan programs for small-scale landlords. Educational materials describing the rights and responsibilities of landlords and tenants within Vermont's rental housing laws have been created in the past. Unfortunately, there have not been resources made available to create ongoing training opportunities to serve this need. Such a program should be considered, and models exist within Vermont that could be implemented on a larger scale with adequate funding.

Additionally, there have been several recent programs aimed at assisting small-scale landlords with financial resources – both grant funds and inexpensive loan products – to improve aging rental units. Such programs are not unique to Vermont, nor is the issue of aging housing stock and financially strapped property owners.

One promising example has been conducted by NeighborWorks of Western Vermont (NWWVT), targeting the town of Bennington. In their program, NWWVT, offers relatively small grants to small-scale property owners who are interested in making habitability improvements to rental units that have been

taken out of the rental market due to health concerns. Landlords enrolled in the program were compelled to make a 200% match to the grants awarded, which could consist of low-interest loans from NWWVT or other sources. So far, this program has been quite successful in bringing units in the neighborhood back onto the market in a healthy state and affordable to working people in the area. Efforts are underway to attempt the recreation of similar opportunities throughout the State and these efforts should be supported. Such programs benefit both renters, who have more healthy housing options, and landlords who may find the profit margins on marketable units too tight to warrant improvement without such assistance.

A key element in the success of both education and financial assistance programs is the ability to spread the word about the existence of these opportunities. No amount of financial resources will affect satisfactory outcomes without an awareness of their existence and the process through which to access them. In considering both approaches it will be imperative to consider ways by which efficient outreach campaigns could be conducted to reach existing landlords.

Rental Registry

The rental of residential units in Vermont is a business activity that requires no licensing or State registration. While several municipalities across the state conduct their own registration process for rental units, there is not a centralized location where information on existing rental housing units can be found. This has been noted at times of distress, such as the aftermath of Tropical Storm Irene, when significant energy was spent assisting disaster victims with relocation in the absence of knowledge about where rental units exist. It is also made apparent by the number of municipal planning grants and Community Development Block Grants that are administered each year to conduct housing needs assessments and market studies in our communities which are seeking to understand their housing needs. A more consistent understanding of the existing rental housing stock would allow Vermont to be more resilient in response to disasters, to utilize planning funds more efficiently, make better decisions when funding housing development, and make it easier for those considering a move to the State to find adequate housing. For these reasons and more, a statewide registry of rental units has been considered numerous times in recent history. In fact, the fact that there was not a repository for this information at the state level came as a surprise to many of the individuals contacted in the process of creating these recommendations.

In years past, the mechanism by which such information would be collected and maintained was considered a significant hurdle, but technology has advanced considerably in the intervening years. Not least of which is the near universal adoption of software created by the New England Municipal Resource Center (NEMRC) by Vermont municipalities to manage their Grand Lists. Such a platform could allow for an efficient and effective implementation of a registry of rental units without significant cost. This would complement, and perhaps someday make obsolete, the charge created by Act 188 of 2018 to

the Department of Taxes to publish by October 2019 select information from the Form LC-142 (Landlord Certificate) required for the Renter Rebate program.

Further consideration of the costs and benefits of creating and maintaining such a dataset of rental units should be a focus of the Rental Housing Advisory Board going forward.

Municipal Needs

Currently, the responsibility for ensuring rental housing meets the existing habitability standards falls to municipalities. The ability to address such needs is inconsistent throughout the State and, based on reports from municipal officials contacted, can often be prohibitively burdensome. Many reported that a lack of knowledge about the location of rental units can make both habitability enforcement and land use decisions difficult. Furthering this difficulty is a perceived lack of legal support in habitability cases that cannot be addressed through voluntary compliance.

As noted above, the potential benefits on the municipal level of a registry of rental units include more informed planning as well as more consistent habitability enforcement. Few municipalities have the capacity to create such a system independently and a statewide approach should be considered.

One concern that was perennially raised in the public outreach of the Rental Housing Advisory Board was a lack of guidance regarding the legal process of enforcing a Health Order. While it was noted that a vast majority of habitability issues in rental housing are successfully addressed by achieving voluntary compliance, those instances that do require a Health Order, fines, and/or further enforcement actions are particularly vexing for even medium-sized municipalities with full-time staff. The steps required to compel repairs or maintenance of a rental unit are not clear to many municipal officials. The result appears to be municipal attorneys who are hesitant to pursue cases against code violators and municipal officials who feel unsupported in their efforts to ensure healthy housing within their communities. This gap needs to be closed and the process of orders and appeals made clearer. The Rental Housing Advisory Board intends to continue investigating avenues to better utilize the skills and resources at the Department of Health and the Office of the Attorney General to assist in such matters. It will also be greatly beneficial to create model bylaws for municipalities to utilize their authority to administer fines and possibly property liens for code violations.

Appendix 1 – Vermont Department of Health Legal Memo

To: Rental Housing Advisory Board
From: Margaret O. Vincent and Lillian Colasurdo
Date: December 18, 2018
Re: Rental Housing Code Enforcement

Introduction

The Vermont Rental Housing Advisory Board has asked the Department of Health for information about the current system of rental housing code enforcement including provisions for legal services. In summary, the statutes give the State Board of Health, the Health Commissioner and local health officials a shared responsibility for the habitability of rental housing. State and local governments are generally responsible for their own expenses. However, local health officers “may call upon State health officials for technical or other assistance,” and they are entitled to “legal representation at state expense” if they are sued for their official acts. The several statutes that describe the Advisory Board’s mandate and the code enforcement system are discussed below.

Act No. 188 and the Rental Housing Advisory Board

In May 2018, the Legislature enacted a law “relating to improving rental housing safety.” Act No. 188 (2018). This law directed the Department of Housing and Community Development to create a Rental Housing Advisory Board consisting of 11 members appointed by the Department’s commissioner. *Id.*, Section 1; 3 V.S.A. § 2477(a)(1). The Advisory Board is staffed by the Department and receives additional support from the Department of Health and the Department of Public Safety. *Id.*, Section 1; 3 V.S.A. § 2477(b).

The purpose of the Advisory Board is “to act as an advisory group to the Governor, General Assembly, and appropriate State agencies on issues related to rental housing statutes, policies and regulations.” 3 V.S.A. § 2477 (c)(1). The Board’s immediate task is to prepare a report to the

Legislature on possible statutory and policy changes to better support safe rental housing. Act No. 188 (2018), Sec. 2(a). The report is due January 15, 2019.

Among other things, the Advisory Board's report must examine "the current system of rental housing code enforcement" and consider proposals that might "improve the current system of town health officers." *Id.*, Sec. 2(a)(2) and 2(b)(1). The Legislature directed the Department of Health to provide the Board with information about the current system for local health officers and code enforcement. *Id.*, Sec. 3(a). The Board has asked the Department to supply this information, including information about any legal support that the State provides to local health officials.

The current system for state and local health officials

Current statutes create a State Board of Health within the Department of Health and authorize the appointment of local health officials. Members of the State Board of Health are appointed by the Governor and confirmed by the Senate. *See* 18 V.S.A. § 101. The Board has broad regulatory and enforcement authority, *see* 18 V.S.A. §§ 102, 109, and has promulgated rules that establish minimum health standards for rental housing. *See* Vermont Department of Health Rules and Regulations, Chapter 6, Subchapter 6, Rental Housing Health Code. The Commissioner of Health has enforcement authority and may issue health orders to protect the public. *See* 18 V.S.A. §§ 109, 126.

The statutes also provide for local health officers and local boards of health. The Commissioner appoints local health officers for each town or city on the recommendation of the selectboard or city council. *See* 18 V.S.A. § 601. The local health officer and the selectboard (or city council) constitute the local board of health. *See* 18 V.S.A. § 604.

Local health officers investigate health hazards and enforce the public health laws. *See* 18 V.S.A. § 602a. "[I]n consultation with the Department" local health officers may enforce health orders. *Id.* Selectboards, like the Commissioner, may issue health orders. *See* 18 V.S.A. § 126.

The compensation of local health officers and the reimbursement of their expenses is "under the control of the selectboard" of the municipality. 18 V.S.A. § 602. Local health officers "shall not incur significant expense without the consent and approval of the selectboard." 18 V.S.A. § 615. The compensation of state officials and employees and their expenses are funded by the Legislature through annual appropriations.

Discussion

There are currently 336 local health officers and deputy local health officers in the State of Vermont. Some municipalities employ full-time local health officers. The problems they address include violations of the Rental Housing Health Code, animal bites, homeowners who may be creating a public health risk, and businesses that are not abiding by the Department's regulations or causing a public health hazard.

Local health officers typically investigate complaints by speaking with the complainant and the alleged offending party. If the officer finds that a rule has been violated or that there is a significant public health risk, they serve a notice of intent to seek a public health order. A health order may direct a person to prevent, remove, or destroy a public health hazard, mitigate a significant public health risk, or correct any violation of a public health law or permit requirement. 18 V.S.A. § 126. The recipient of the notice is entitled to a hearing in front of the local board of health to determine if a health order should be issued. In many instances the health officer can resolve the matter through voluntary compliance. 18 V.S.A. § 124.

Although local health officers are municipal officers – and in some instances full-time municipal employees – they “may call on state health officials for technical or other assistance.” 18 V.S.A. § 617(b). Consistent with this statute the Department has assigned two of its employees to answer general questions presented by the local health officers. Several subject matter experts within the Division of Environmental Health are available to answer their technical questions. The Department offers annual trainings for local health officers and has prepared a manual for their use outlining their general duties.

In addition, the State provides an appellate forum for local enforcement actions. The State Board of Health hears appeals from any person “aggrieved by an act, decision, or order of the... local board of health, or selectboard...” 18 V.S.A. § 128. The Department of Health and the Attorney General's Office provides administrative and legal support to the Board in these appeals. 18 V.S.A. § 102.

Other statutes authorize the Attorney General to represent the State and to “advise the elective and appointive State officers on questions of law relating to their official duties ...” 3 V.S.A. §§ 152, 159. To that end the Attorney General has appointed two Assistant Attorneys General to represent the Department of Health and the State Board of Health. Their many duties include providing legal counsel to the technical staff in the Division of Environmental Health and to other Department employees who enforce the public health laws and assist local enforcement efforts.

There is no parallel authority for the Attorney General to represent or advise municipal officials in public health matters. A town, through its selectboard, can decide whether to issue a public health order or take other enforcement action. *See* 18 V.S.A. §§ 126, 127, 130. By statute the towns control the expenses that may be incurred for the prevention, removal, or destruction of any public health hazard. 18 V.S.A. § 615. Depending on the town's budget and the type of public health hazard, the selectboard may decide to ask their town attorney to provide legal counsel in enforcement matters.

There is one exception to the rule that the Attorney General does not represent local officials. 18 V.S.A. § 624 directs the State to provide legal representation to local health officers sued on account of their official acts. In most instances this representation would be provided by the Attorney General's Office. *See* 3 V.S.A. § 1102. Please note that these statutes apply only to civil claims against a local health officer and do not apply to lawsuits that challenge decisions made by the local health boards.

Appendix 2 – Rental Housing Units by Municipality

Source: U.S. Census Bureau, American Community Survey Estimates, 2012-2016

NOTE: Data for smaller towns and villages may be unreliable due to large margins of error in sample. County totals are equal to the sum of all towns in county once villages are filtered out, however, some subsidized units are entered at the village level.

Rental Units coded as “For seasonal, recreational or occasional use” are not included in the totals below.

“Subsidized units (DOARH)” includes all Vermont apartments with rents made affordable to low income residents by public, project-based subsidies.

Key:	County Total	Muni' with Inspection Schedule
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Location	Geography type	County	Total rental stock	Subsidized units (DOARH)
Addison	Town	Addison County	62	-
Bridport	Town	Addison County	125	-
Bristol	Town	Addison County	546	25
Bristol Village	Village	Addison County	308	-
Cornwall	Town	Addison County	117	-
East Middlebury	Village	Addison County	8	24
Ferrisburg	Town	Addison County	240	-
Goshen	Town	Addison County	9	-
Granville	Town	Addison County	43	-
Hancock	Town	Addison County	33	5
Leicester	Town	Addison County	75	-
Lincoln	Town	Addison County	70	-
Middlebury	Town	Addison County	1,491	267
Middlebury Village	Village	Addison County	1,321	-
Monkton	Town	Addison County	130	-
New Haven	Town	Addison County	154	-
Orwell	Town	Addison County	93	-
Panton	Town	Addison County	52	-
Ripton	Town	Addison County	56	-
Salisbury	Town	Addison County	100	-

Shoreham	Town	Addison County	65	-
Starksboro	Town	Addison County	73	-
Vergennes	Town	Addison County	466	146
Waltham	Town	Addison County	17	14
Weybridge	Town	Addison County	53	-
Whiting	Town	Addison County	38	-
Addison County	County	Addison County	4,108	481
Arlington	Town	Bennington County	265	37
Arlington Village	Village	Bennington County	177	-
Bennington	Town	Bennington County	2,458	531
Bennington Village	Village	Bennington County	1,773	-
Dorset	Town	Bennington County	141	20
Dorset Village	Village	Bennington County	69	-
Glastenbury	Town	Bennington County	1	-
Landgrove	Town	Bennington County	2	-
Manchester	Town	Bennington County	618	121
Manchester Center	Village	Bennington County	345	36
Manchester Village	Village	Bennington County	227	-
North Bennington	Village	Bennington County	185	33
Old Bennington	Village	Bennington County	3	-
Peru	Town	Bennington County	32	-
Pownal	Town	Bennington County	340	-
Readsboro	Town	Bennington County	70	24
Readsboro Village	Village	Bennington County	66	-
Rupert	Town	Bennington County	39	-
Sandgate	Town	Bennington County	30	-
Searsburg	Town	Bennington County	10	-
Shaftsbury	Town	Bennington County	227	7
South Shaftsbury	Village	Bennington County	73	-
Stamford	Town	Bennington County	24	-
Sunderland	Town	Bennington County	73	-
Winhall	Town	Bennington County	49	-
Woodford	Town	Bennington County	29	-
Bennington County	County	Bennington County	4,408	809
Barnet	Town	Caledonia County	120	-

Barnet Village	Village	Caledonia County	13	-
Burke	Town	Caledonia County	160	-
Danville	Town	Caledonia County	128	12
Danville Village	Village	Caledonia County	43	-
East Burke	Village	Caledonia County	23	-
Groton	Town	Caledonia County	64	27
Groton Village	Village	Caledonia County	37	-
Hardwick	Town	Caledonia County	407	60
Hardwick Village	Village	Caledonia County	299	-
Kirby	Town	Caledonia County	27	-
Lyndon	Town	Caledonia County	836	76
Lyndonville	Village	Caledonia County	420	26
Newark	Town	Caledonia County	38	-
Peacham	Town	Caledonia County	21	6
Ryegate	Town	Caledonia County	41	7
Sheffield	Town	Caledonia County	29	-
St. Johnsbury	Town	Caledonia County	1,265	322
St. Johnsbury Village	Village	Caledonia County	1,149	-
Stannard	Town	Caledonia County	18	-
Sutton	Town	Caledonia County	37	-
Walden	Town	Caledonia County	44	-
Waterford	Town	Caledonia County	37	1
West Burke	Village	Caledonia County	45	15
Wheelock	Town	Caledonia County	52	-
Caledonia County	County	Caledonia County	3,324	552
Bolton	Town	Chittenden County	126	-
Buels Gore	Town	Chittenden County	6	-
Burlington	Town	Chittenden County	9,942	2,372
Charlotte	Town	Chittenden County	134	-
Colchester	Town	Chittenden County	2,213	338
Essex	Town	Chittenden County	2,536	-
Essex Junction	Village	Chittenden County	1,634	285
Hinesburg	Town	Chittenden County	346	47
Hinesburg Village	Village	Chittenden County	156	-
Huntington	Town	Chittenden County	122	-

Jericho	Town	Chittenden County	226	24
Jericho Village	Village	Chittenden County	20	-
Milton	Town	Chittenden County	743	66
Milton Village	Village	Chittenden County	312	-
Richmond	Town	Chittenden County	339	32
Richmond Village	Village	Chittenden County	187	-
Shelburne	Town	Chittenden County	857	96
Shelburne Village	Village	Chittenden County	117	-
South Burlington	Town	Chittenden County	3,251	623
St. George	Town	Chittenden County	101	-
Underhill	Town	Chittenden County	81	-
Westford	Town	Chittenden County	60	-
Williston	Town	Chittenden County	855	221
Winooski	Town	Chittenden County	1,918	685
Chittenden County	County	Chittenden County	23,856	4,789
Averill	Town	Essex County	0	-
Avery's Gore	Town	Essex County	0	-
Beecher Falls	Village	Essex County	30	-
Bloomfield	Town	Essex County	15	-
Brighton	Town	Essex County	197	11
Brunswick	Town	Essex County	2	-
Canaan	Town	Essex County	102	12
Canaan Village	Village	Essex County	45	-
Concord	Town	Essex County	96	10
Concord Village	Village	Essex County	57	-
East Haven	Town	Essex County	5	-
Ferdinand	Town	Essex County	0	-
Granby	Town	Essex County	4	-
Guildhall	Town	Essex County	13	-
Island Pond	Village	Essex County	195	44
Lemington	Town	Essex County	7	-
Lewis	Town	Essex County	0	-
Lunenburg	Town	Essex County	128	-
Maidstone	Town	Essex County	9	-
Norton	Town	Essex County	17	-

Victory	Town	Essex County	2	-
Warner's Grant	Town	Essex County	0	-
Warren's Gore	Town	Essex County	0	-
Essex County	County	Essex County	597	77
Bakersfield	Town	Franklin County	70	-
Berkshire	Town	Franklin County	136	-
Enosburg Falls	Village	Franklin County	284	106
Enosburgh	Town	Franklin County		-
Fairfax	Town	Franklin County	424	28
Fairfield	Town	Franklin County	129	8
Fletcher	Town	Franklin County	32	-
Franklin	Town	Franklin County	85	41
Georgia	Town	Franklin County	247	-
Highgate	Town	Franklin County	336	-
Montgomery	Town	Franklin County	134	-
Richford	Town	Franklin County	268	51
Richford Village	Village	Franklin County	235	-
Sheldon	Town	Franklin County	152	-
St. Albans City	Town	Franklin County	1,440	260
St. Albans Town	Town	Franklin County	588	137
Swanton	Town	Franklin County	827	80
Swanton Village	Village	Franklin County	529	-
Franklin County	County	Franklin County	5,332	711
Alburg	Town	Grand Isle County	140	29
Alburg Village	Village	Grand Isle County	52	-
Grand Isle	Town	Grand Isle County	232	40
Isle La Motte	Town	Grand Isle County	35	-
North Hero	Town	Grand Isle County	44	-
South Hero	Town	Grand Isle County	155	-
Grand Isle County	County	Grand Isle County	620	69
Belvidere	Town	Lamoille County	27	-
Cambridge	Town	Lamoille County	544	-
Cambridge Village	Village	Lamoille County	46	-
Eden	Town	Lamoille County	84	-
Elmore	Town	Lamoille County	51	-

Hyde Park	Town	Lamoille County	227	-
Hyde Park Village	Village	Lamoille County	42	-
Jeffersonville	Village	Lamoille County	213	39
Johnson	Town	Lamoille County	552	58
Johnson Village	Village	Lamoille County	280	-
Morristown	Town	Lamoille County	693	68
Morrisville	Village	Lamoille County	526	99
Stowe	Town	Lamoille County	699	95
Stowe Village	Village	Lamoille County	175	-
Waterville	Town	Lamoille County	39	-
Wolcott	Town	Lamoille County	77	-
Lamoille County	County	Lamoille County	2,993	359
Bradford	Town	Orange County	421	71
Bradford Village	Village	Orange County	247	-
Braintree	Town	Orange County	61	-
Brookfield	Town	Orange County	90	-
Chelsea	Town	Orange County	143	36
Corinth	Town	Orange County	74	-
Fairlee	Town	Orange County	153	-
Fairlee Village	Village	Orange County	61	-
Newbury	Town	Orange County	193	14
Newbury Village	Village	Orange County	53	-
Orange	Town	Orange County	37	-
Randolph	Town	Orange County	551	165
Randolph Village	Village	Orange County	474	-
Strafford	Town	Orange County	58	-
Thetford	Town	Orange County	134	-
Topsham	Town	Orange County	61	-
Tunbridge	Town	Orange County	87	-
Vershire	Town	Orange County	34	-
Washington	Town	Orange County	66	-
Wells River	Village	Orange County	95	47
Wells Village	Village	Orange County	19	-
West Fairlee	Town	Orange County	97	-
Williamstown	Town	Orange County	390	66

Williamstown Village	Village	Orange County	310	-
Orange County	County	Orange County	2,650	399
Albany	Town	Orleans County	51	-
Albany Village	Village	Orleans County	6	-
Barton	Town	Orleans County	307	62
Barton Village	Village	Orleans County	127	-
Brownington	Town	Orleans County	71	-
Charleston	Town	Orleans County	100	-
Coventry	Town	Orleans County	82	7
Coventry Village	Village	Orleans County	7	-
Craftsbury	Town	Orleans County	60	24
Derby	Town	Orleans County	464	23
Derby Center	Village	Orleans County	148	-
Derby Line	Village	Orleans County	129	11
Glover	Town	Orleans County	70	12
Glover Village	Village	Orleans County	29	-
Greensboro	Town	Orleans County	70	10
Greensboro Bend	Village	Orleans County	22	-
Greensboro Village	Village	Orleans County	28	-
Holland	Town	Orleans County	24	-
Irasburg	Town	Orleans County	70	10
Irasburg Village	Village	Orleans County	25	-
Jay	Town	Orleans County	92	-
Lowell	Town	Orleans County	94	-
Lowell Village	Village	Orleans County	18	-
Morgan	Town	Orleans County	31	-
Newport Center	Village	Orleans County	2	56
Newport City	Town	Orleans County	849	75
Newport Town	Town	Orleans County	106	-
North Troy	Village	Orleans County	92	14
Orleans	Village	Orleans County	121	20
Troy	Town	Orleans County	132	-
Troy Village	Village	Orleans County	0	-
Westfield	Town	Orleans County	35	-
Westmore	Town	Orleans County	20	-

Orleans County	County	Orleans County	2,728	324
Benson	Town	Rutland County	90	15
Benson Village	Village	Rutland County	20	-
Brandon	Town	Rutland County	532	143
Brandon Village	Village	Rutland County	219	-
Castleton	Town	Rutland County	537	59
Castleton Village	Village	Rutland County	147	-
Chittenden	Town	Rutland County	107	-
Clarendon	Town	Rutland County	192	-
Danby	Town	Rutland County	106	-
Fair Haven	Town	Rutland County	424	70
Fair Haven Village	Village	Rutland County	424	-
Hubbardton	Town	Rutland County	12	-
Ira	Town	Rutland County	16	-
Killington	Town	Rutland County	212	-
Mendon	Town	Rutland County	128	-
Middletown Springs	Town	Rutland County	68	-
Mount Holly	Town	Rutland County	44	-
Mount Tabor	Town	Rutland County	36	-
Pawlet	Town	Rutland County	123	-
Pittsfield	Town	Rutland County	55	-
Pittsford	Town	Rutland County	263	30
Pittsford Village	Village	Rutland County	49	-
Poultney	Town	Rutland County	399	48
Poultney Village	Village	Rutland County	199	-
Proctor	Town	Rutland County	182	12
Rutland City	Town	Rutland County	3,618	792
Rutland Town	Town	Rutland County	545	65
Shrewsbury	Town	Rutland County	44	-
Sudbury	Town	Rutland County	17	-
Tinmouth	Town	Rutland County	49	-
Wallingford	Town	Rutland County	216	28
Wallingford Village	Village	Rutland County	129	-
Wells	Town	Rutland County	41	-
West Haven	Town	Rutland County	17	-

West Rutland	Town	Rutland County	190	41
West Rutland Village	Village	Rutland County	190	-
Rutland County	County	Rutland County	8,263	1,303
Barre City	Town	Washington County	1,764	514
Barre Town	Town	Washington County	415	45
Berlin	Town	Washington County	227	44
Cabot	Town	Washington County	106	8
Calais	Town	Washington County	102	-
Duxbury	Town	Washington County	52	-
East Barre	Village	Washington County	52	-
East Montpelier	Town	Washington County	233	-
East Montpelier Village	Village	Washington County	0	-
Fayston	Town	Washington County	85	-
Graniteville-East Barre	Village	Washington County	81	-
Marshfield	Town	Washington County	143	16
Marshfield Village	Village	Washington County	37	-
Middlesex	Town	Washington County	73	-
Montpelier	Town	Washington County	1,749	380
Moretown	Town	Washington County	154	-
Northfield	Town	Washington County	539	91
Plainfield	Town	Washington County	156	13
Plainfield Village	Village	Washington County	97	-
Roxbury	Town	Washington County	62	-
South Barre	Village	Washington County	162	-
Waitsfield	Town	Washington County	172	42
Waitsfield Village	Village	Washington County	44	-
Warren	Town	Washington County	178	18
Waterbury	Town	Washington County	700	97
Waterbury Village	Village	Washington County	397	-
Websterville	Village	Washington County	20	-
Woodbury	Town	Washington County	40	-
Worcester	Town	Washington County	61	-
Worcester Village	Village	Washington County	14	-

Washington County	County	Washington County	7,011	1,268
Athens	Town	Windham County	34	-
Bellows Falls	Village	Windham County	805	155
Brattleboro	Town	Windham County	2,845	837
Brattleboro Village	Village	Windham County	2,087	-
Brookline	Town	Windham County	30	-
Dover	Town	Windham County	261	33
Dummerston	Town	Windham County	121	-
Grafton	Town	Windham County	59	-
Guilford	Town	Windham County	188	24
Halifax	Town	Windham County	34	-
Jacksonville	Village	Windham County	37	-
Jamaica	Town	Windham County	69	-
Londonderry	Town	Windham County	232	24
Marlboro	Town	Windham County	51	-
Newfane	Town	Windham County	129	-
Newfane Village	Village	Windham County	22	-
North Westminster	Village	Windham County	114	9
Putney	Town	Windham County	277	36
Putney Village	Village	Windham County	133	-
Rockingham	Town	Windham County	1,025	-
Saxtons River	Village	Windham County	73	17
Somerset	Town	Windham County	0	-
Stratton	Town	Windham County	22	-
Townshend	Town	Windham County	114	52
Vernon	Town	Windham County	183	78
Wardsboro	Town	Windham County	55	-
West Brattleboro	Village	Windham County	633	-
Westminster	Town	Windham County	292	-
Westminster Village	Village	Windham County	40	-
Whitingham	Town	Windham County	114	9
Wilmington	Town	Windham County	246	7
Wilmington Village	Village	Windham County	55	-
Windham	Town	Windham County	13	-
Windham County	County	Windham County	6,394	1,281

Andover	Town	Windsor County	47	-
Ascutney	Village	Windsor County	38	-
Baltimore	Town	Windsor County	7	-
Barnard	Town	Windsor County	58	-
Bethel	Town	Windsor County	275	25
Bethel Village	Village	Windsor County	167	-
Bridgewater	Town	Windsor County	134	14
Cavendish	Town	Windsor County	140	16
Cavendish Village	Village	Windsor County	22	-
Chester	Town	Windsor County	368	66
Chester-Chester Depot	Village	Windsor County	179	-
Hartford	Town	Windsor County	1,664	119
Hartland	Town	Windsor County	400	-
Hartland Village	Village	Windsor County	99	-
Ludlow	Town	Windsor County	433	82
Ludlow Village	Village	Windsor County	276	-
North Hartland	Village	Windsor County	48	-
North Springfield	Village	Windsor County	139	297
Norwich	Town	Windsor County	277	24
Norwich Village	Village	Windsor County	89	-
Perkinsville	Village	Windsor County	7	-
Plymouth	Town	Windsor County	61	-
Pomfret	Town	Windsor County	57	-
Proctorsville	Village	Windsor County	60	-
Quechee	Village	Windsor County	115	22
Reading	Town	Windsor County	43	-
Rochester	Town	Windsor County	121	22
Rochester Village	Village	Windsor County	51	-
Royalton	Town	Windsor County	642	15
Sharon	Town	Windsor County	175	-
South Royalton	Village	Windsor County	385	-
Springfield	Town	Windsor County	1,335	130
Springfield Village	Village	Windsor County	792	-
Stockbridge	Town	Windsor County	47	-

Weathersfield	Town	Windsor County	145	-
West Windsor	Town	Windsor County	106	156
Weston	Town	Windsor County	57	-
White River Junction	Village	Windsor County	607	94
Wilder	Village	Windsor County	132	36
Windsor	Town	Windsor County	659	-
Windsor Village	Village	Windsor County	588	-
Woodstock	Town	Windsor County	364	26
Woodstock Village	Village	Windsor County	232	-
Windsor County	County	Windsor County	7,615	1,144
Vermont	State	State	79,899	13,566

Units Subject to regular inspection schedule*	27,287
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*Includes units in municipalities with regular inspection programs plus subsidized units

Appendix 3 – Vermont League of Cities and Towns Letter



January 4, 2019, 2018

Commissioner Katie Buckley
Department of Housing and Community Affairs
Deane C. Davis Building – 6th Floor
One National Life Drive
Montpelier, VT 05620-3520

Dear Commissioner Buckley:

I am writing on behalf of the 246 VLCT member cities and towns regarding the responsibility of town health officers in addressing issues related to rental housing and compliance with the rental housing health code.

Housing is the most basic component of health, safety, stability and self-sufficiency. Without safe housing, few people can attend to any of their other essential needs. Assuring adequate housing, particularly in the rental market is a state obligation. While several cities and towns have implemented robust inspection programs, in the majority of instances administration of the rental housing health code has been left to local volunteer officials with no particular training in housing matters. The Rental Housing Advisory Board heard from many Town Health Officers about efforts to address adequacy of, and complaints about rental housing, as well as from multiple state agencies about the inadequate resources dedicated to assuring safe rental housing. The current system must be strengthened and resources dedicated to the Vermont Department of Health in order to assure that the Vermont “safety net” is a reality in the future.

At the VLCT Annual Meeting on October 3, 2018, the membership adopted the following policy for the 2019- 2020 biennium:

4.01 Housing, (2) VLCT supports establishing and funding a professionally staffed statewide program for inspection of rental housing and enforcement of rental housing codes that provide for delegation to municipalities who determine that municipal administration and enforcement is optimal.

Sincerely,

Sponsor of:

VLCT Employment
Resource and Benefits
Trust, Inc.

VLCT Municipal
Assistance Center

VLCT Property and
Casualty Intermunicipal
Fund, Inc.



Karen B. Horn, Director,
Public Policy & Advocacy

Cc: Rental Housing Advisory Committee Members