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The Maine Indoor Air Quality Council is an interdisciplinary collaborative of professionals. Our mission is to create healthy, productive, and environmentally-sustainable indoor environments through education, communication, and advocacy.

Dear Policy Committee at Maine Municipal Association:

The Maine Indoor Air Quality Council is considering submitting two pieces of legislation this session. Because of our proposals' intersection with municipal staff (clerks, code enforcement, local health officers), we are seeking your thoughts on the various components and options that could be included (or not) that achieve our goals. Your feedback on the general viability of these proposals, as well as feedback on the options we've identified or others you might also identify will help us submit bills that better meet the needs of municipalities and the communities you serve.

Thank you for your input!

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Proposal 1: Signed Affidavit Regarding Compliance with Maine Building Codes and Standards

Problem: The Maine Uniform Building and Energy Code applies statewide, but towns under 4,000 are not required to enforce. We constantly run into contractors and homeowners in the midst of projects who are still unaware of their requirement to build to MUBEC even if their community does not enforce. Adoption of a simple affidavit process would provide verification that those engaging in projects in communities that do not enforce are aware of their obligation to build to MUBEC regardless of the lack of enforcement.

Options for a Proposed Solution:

- Could apply only to towns of less than 4,000 that do not enforce the MUBEC.

- Could apply to all municipalities regardless of size or enforcement capacity (so not picking on just the small towns)
- Require all property owners, and/or their agents (builders) (include whoever is paying for the work and whoever is responsible for the design and construction of the work), when applying for a permit for construction of a new structure or a significant renovation*, shall sign an affidavit confirming that the project will comply with Maine’s state-wide codes, including:
 - 1) The Maine Uniform Building and Energy Code, comprised of:
 - a. IRC
 - b. IECC
 - c. ASHRAE 62.2 (or CSA F-326 if used)
 - d. ASTM E 1465-08
 - e. IBC
 - f. ASHRAE 62.1
 - g. ASHRAE 90.1
 - 2) Maine Plumbing Codes
 - 3) Maine Electrical Codes
 - 4) Maine Fire Safety Codes
 - 5) Are there others?

This would provide official documentation should a legal pathway of liability for a non-code compliant structure is ever needed. More importantly, the affidavit serves as a critical low-cost communications tool to raise awareness of the application of the code state-wide regardless of whether or not a municipality enforces the codes and standard.

*There used to be a definition of “significant renovation in Maine codes, but I don’t remember exactly what it is. Something like a renovation being a project that impacts at least 50% of the existing structure or maybe it was increases the size of the structure by 50%.

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Proposal 2. Amend Maine’s Warranty of Habitability

Problem: The Maine Indoor Air Quality Council (MIAQC or the Council) receives hundreds of calls every year from members of the public looking for guidance to resolve their indoor air quality concerns. The majority of these calls are from tenants with mold/moisture problems in their units, and represent tenants from all economic strata.*

**(Note: there is no agency within Maine state government that addresses this issue. Callers are referred to MIAQC.)*

Most tenants with these problems are already experiencing health effect from the chronic dampness and mold exposures, and feel their landlords are not responding in a meaningful way to resolve their concerns.

Neither Maine’s building code nor Maine’s warranty of habitability address mold and moisture problems in residential rentals. With no state agency to help, and no statutory underpinning to support their concerns, tenants are essentially adrift, seeking help from their local code officer, their local health officer, their primary care physician, or their attorney. However, unless the landlord is willing to resolve the moisture problems and do proper clean-up and repair, there is little to nothing any of these professionals can do to force a landlord to take action. The tenant is left having to sue their landlord, having to live in conditions that are making them sick, or having to seek alternative housing, which is difficult given Maine’s extremely tight housing market, with no guarantee that the next unit will be any safer for them. It should be noted that because dampness and mold is not specifically addressed in the current warranty of habitability statute, there have been NO successful lawsuits in Maine in favor of tenants with dampness and mold issues in their units.

Solution: Amend Maine’s Warranty of Habitability to specifically indicate the chronic dampness (includes leaking) and mold are a violation of the warranty of habitability.

Possible components of the legislation:

A solid definition of chronic dampness and mold that trigger a violation of the warranty of habitability. Some options:

- Massachusetts definition:

Require structural elements of a dwelling be free from “chronic dampness”, which is defined as the regular and/or periodic appearance of moisture, water, mold or fungi.

Example: Massachusetts

- Colorado definition:

Establishes a list of certain conditions that render residential rental premises uninhabitable, including if **“there is mold that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use;** or if It substantially lacks a number of other characteristics, including “Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors.”

Timelines:

MIAQC has created a comprehensive toolkit for landlords, tenants, and code enforcement/LHOs to use when dealing with mold and moisture problems in rental properties. See: [MIAQC Mold Toolkit](#). Using generally accepted standards of care from the mold investigation and remediation industries and others, we created a series of timelines for both landlords and tenants to follow. You will likely note that we used Maine’s bed bug law to provide us with this

structure. You can find our full timelines with tasks on pages 10-12 within the above referenced toolkit. However, an overview of these timelines is:

Active leaking, from whatever source, is considered an emergency event.

1. Tenants should notify their landlord immediately, and allow landlord access to the unit
2. Landlords should respond immediately and do whatever is necessary to minimize water damage, then remove/dry wet materials, fix leak/water source, do proper clean-up and repair.

For visible mold growth or mold odors

1. Tenants should investigate their units for causes they can self-correct, then notify the landlord if they have not caused the issue or cannot locate the source of the problem. Tenants should allow landlord access to their units and comply with any recommendations.
2. Within 5 days of notification, landlords should inspect the unit. Within 5 days of the inspection, landlords should create a written clean-up and repair plan that follows generally accepted best practice mold clean-up procedures and provide it to the tenant.

Enforcement options:

- Require landlords to follow accepted best practice procedures for addressing leaks quickly and proper assessment and clean-up of mold problems
- Allow tenant(s) to terminate rental agreement and move (consider a restriction like in Colorado that this option not available more than twice in a 12 month period for the same tenant.)
- Tenant can repair within \$\$ limits. Currently \$500 or no more than ½ their rent. Consider an increase in this either in statute or in AG recommendations?
- Allow tenants within a multi-family property to pool their right to repair \$\$ to achieve more significant repairs that violate the warranty of habitability
- Require a percentage of rent income to be placed in a dedicated escrow account that could be tapped into when a repair needs to be made
- Code Enforcement or Local Health Officer can issue some type of a judgment requiring the landlord to conduct specific repairs, with fines for not doing so within a reasonable period of time that they define
- Code Enforcement or local health officer can deem the property uninhabitable and force shut down of structure as rental space (displaces all occupants)