

ORDINANCE NO. 4328

TITLE: An ordinance amending Chapter 18.16 of the Albany Municipal Code by adoption of the Uniform Code for the Abatement of Dangerous Buildings, 1979 Edition, printed and copyrighted by the International Conference of Building Officials.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: ADOPTION OF THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS

That certain publication marked and designated as follows, to wit: Uniform Code for the Abatement of Dangerous Buildings, is hereby adopted by reference and incorporated into and made a part of this code of ordinances of the City of Albany.

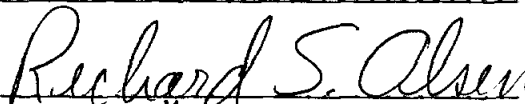
Section 2: The Building Code Board of Appeals shall be designated as the Board of Appeals for the Uniform Code for the Abatement of Dangerous Buildings.

Section 3: Section 18.16.010 through Section 18.16.110 of the Albany Municipal Code is hereby repealed.

Passed by the Council: December 12, 1979

Approved by the Mayor: December 12, 1979

Effective Date: January 11, 1980


Mayor

ATTEST:


City Recorder

**UNIFORM CODE
FOR THE ABATEMENT OF
DANGEROUS BUILDINGS**

1979 Edition



AUTHORIZED EDITION

First Printing

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by

International Conference of Building Officials

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Preface

The provisions of this code were developed in order to afford jurisdictions reasonable procedures for the classification and abatement of dangerous buildings.

This code is designed to be compatible with the Uniform Building Code and Uniform Housing Code. While the Housing Code is applicable only to residential buildings, the Uniform Code for the Abatement of Dangerous Buildings is designed to apply to all types of buildings and structures. The notices, orders and appeals procedures specified have been found to be workable and are referenced by the Uniform Building Code.

If properly followed, the provisions of this code will provide the building official with the proper legal steps in abating dilapidated, defective buildings which endanger life, health, property and public safety within concepts of fair play and justice.

Vertical lines in margins indicate a change in the text from the 1976 edition. An analysis of changes between editions in pamphlet form is published by the Conference.

RELATED PUBLICATIONS

Known widely for its Uniform Building Code, the International Conference of Building Officials publishes other related codes as well as textbooks to enable the user to improve his knowledge of code enforcement and the administration of a building inspection program. Publications are continually being added, so inquiries should be directed to Conference headquarters for a list of those available. At the time of this publication, the following publications were available:

Uniform Administrative Code. This new (1979) code covers administration areas in connection with adoption of the Uniform Building Code, Uniform Mechanical Code and related codes by a jurisdiction. It contains provisions which relate to site preparation, construction, alteration, moving, repair and use and occupancies of buildings or structures and building service equipment including plumbing, electrical and mechanical. The code is compatible with the administrative provisions of all codes published by the Conference.

Uniform Building Code. Covers the fire, life and structural safety aspects of all buildings and related structures.

Uniform Mechanical Code. Contains requirements for the installation and maintenance of heating, ventilating, cooling and refrigeration systems.

ICBO Plumbing Code. A new (1979) code which contains minimum standards for the installation, alteration and maintenance of plumbing systems and establishes minimum requirements for plumbing materials. It includes administrative provisions which are compatible with the Uniform Administrative Code and other Conference publications. Detailed requirements of the code include provisions for plumbing fixtures, plumbing materials, joints and connections, hangers and supports, testing of systems, water supply distribution, sanitary drainage systems, vents and venting, as well as fuel-gas piping and installation of water heaters.

Uniform Housing Code. Provides for the conservation and rehabilitation of housing compatible with the Uniform Building Code. Meets federal workable program requirements.

Uniform Code for the Abatement of Dangerous Buildings. Sets forth orderly procedures for remedying dangerous buildings. Follows due process provisions which reflect the latest court decisions in such matters. This code covers all structures and may be used to supplement the Uniform Housing Code and the Uniform Building Code.

Uniform Sign Code. Dedicated to the development of better sign regulation. Its requirements pertain to all signs and sign construction attached to buildings.

Uniform Building Code Standards. Presents in a compact and concise manner all of the national test, material and special design standards referred to in the Uniform Building Code.

Uniform Fire Code. Sets out provisions necessary for fire prevention

while achieving uniformity in terms and requirements with other codes published by the Conference. This code is sponsored jointly by the Western Fire Chiefs Association and the International Conference of Building Officials.

Uniform Fire Code Standards. This new (1979) publication is a companion to the Uniform Fire Code. It contains National Fire Protection Association Standards and Uniform Building Code Standards referenced by the Uniform Fire Code.

Uniform Building Security Code. A new (1979) code which establishes minimum standards to make dwelling units resistant to unlawful entry. It regulates swinging doors, sliding doors, windows and hardware in connection with dwelling units of apartment houses or one- and two-family dwellings. The level of resistance to unlawful entry established by standards in this code is directed at the novice burglar. The code gives consideration to the concerns of police, fire and building officials in establishing requirements for resistance to burglary which are compatible with fire and life safety.

Analysis of Revisions. Discusses the changes included in the latest codes published by the Conference as compared to the prior editions.

U.B.C. Supplements. Between new editions of the codes, changes approved each year are incorporated in the supplements.

Dwelling Construction under the Uniform Building Code. Designed to acquaint the home builder with basic Building Code requirements relating to dwelling construction. A useful text for apprentice training programs.

Building Department Administration. An excellent guide for improvement of skills in departmental management and in the enforcement and application of the Building Code and other regulations administered by a building inspection department. Recommended for both undergraduate and advanced study.

Training Manual in Field Inspection of Buildings and Structures. Designed to improve inspection skills and techniques. A fundamental important text for courses of study of the community college and trade or technical school level.

Illustrated Mechanical Manual. Contains a series of illustrations with explanatory text covering requirements in the Uniform Mechanical Code which respond to graphic treatment. It is highly useful for code application and for training purposes.

Plan Review Manual. Provides an understanding of the extent of Building Code provisions and illustrates application to given situations. Covers nonstructural aspects as well as providing an insight into the basic engineering considerations a plan examiner or checker must utilize.

Concrete Inspection Manual. A publication on concrete to be used for reference or as a text on concrete inspection. Of particular interest to inspectors, it is also useful to concrete technicians and craftsmen who are more concerned with the physical and practical aspects of concrete than the design.

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Chapter 1 TITLE AND SCOPE

Title

Sec. 101. These regulations shall be known as the "Uniform Code for the Abatement of Dangerous Buildings," may be cited as such, and will be referred to herein as "this code."

Purpose and Scope

Sec. 102. (a) Purpose. It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by the Building Code, Housing Code or otherwise available at law, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished.

(b) Scope. The provisions of this code shall apply to all dangerous buildings, as herein defined, which are now in existence or which may hereafter become dangerous in this jurisdiction.

Alterations, Additions and Repairs

Sec. 103. All buildings or structures which are required to be repaired under the provisions of this code shall be subject to the provisions of Section 104 (a) and (b) of the Building Code.

Chapter 2 ENFORCEMENT

General

Sec. 201. (a) Administration. The building official is hereby authorized to enforce the provisions of this code.

(b) Inspections. The health officer, the fire marshal and the building official are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this code.

(c) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

When the building official or his authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official or his authorized representative for the purpose of inspection and examination pursuant to this code.

"Authorized representative" shall include the officers named in Section 201 (b) and their authorized inspection personnel.

Abatement of Dangerous Buildings

Sec. 202. All buildings or portions thereof which are determined after inspection by the building official to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 401 of this code.

Violations

Sec. 203. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

Inspection of Work

Sec. 204. All buildings or structures within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this code and Sections 305 and 306 of the Building Code.

Board of Appeals

Sec. 205. In order to provide for final interpretation of the provisions of this code and to hear appeals provided for hereunder, there is hereby established a Board of Appeals consisting of five members who are not employees of the city. The building official shall be an ex officio member of and shall act as secretary to said board. The board shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant, with a copy to the building official. Appeals to the board shall be processed in accordance with the provisions contained in Section 501 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the building official, who shall make them freely accessible to the public.

Chapter 3 DEFINITIONS

General

Sec. 301. For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the Building Code or the Housing Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged*, copyright 1961, shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING CODE is the Uniform Building Code promulgated by the International Conference of Building Officials.

DANGEROUS BUILDING is any building or structure deemed to be dangerous under the provisions of Section 302 of this code.

HOUSING CODE is the Uniform Housing Code promulgated by the International Conference of Building Officials.

Dangerous Building

Sec. 302. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance

or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this city, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or city relating to the condition, location or structure of buildings.

14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air

or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

Chapter 4

NOTICES AND ORDERS OF BUILDING OFFICIAL

General

Sec. 401. (a) Commencement of Proceedings. Whenever the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, he shall commence proceedings to cause the repair, vacation or demolition of the building.

(b) **Notice and Order.** The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of Section 302 of this code.
3. A statement of the action required to be taken as determined by the building official.

- (i) If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefor and the work physically commenced within such time (not to exceed 60 days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances.
- (ii) If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
- (iii) If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 60 days from the date of the order); that all required permits be secured therefor within 60 days from the date of the order, and that the demolition be completed within such time as the building official shall determine is reasonable.

4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

5. Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any

action of the building official to the Board of Appeals, provided the appeal is made in writing as provided in this code and filed with the building official within 30 days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

(c) **Service of Notice and Order.** The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him by the provisions of this section.

(d) **Method of Service.** Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the last equalized assessment roll of the county or as known to the building official. If no address of any such person so appears or is known to the building official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

(e) **Proof of Service.** Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

Recordation of Notice and Order

Sec. 402. If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the building official shall file in the office of the county recorder a certificate describing the property and certifying (i) that the building is a dangerous building and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the building official shall file a new cer-

tificate with the county recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

Repair, Vacation and Demolition

Sec. 403. (a) Standards to be Followed. The following standards shall be followed by the building official (and by the Board of Appeals if an appeal is taken) in ordering the repair, vacation or demolition of any, dangerous building or structure:

1. Any building declared a dangerous building under this ordinance shall either be repaired in accordance with the current building code or shall be demolished at the option of the building owner.

2. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

Notice to Vacate

Sec. 404. (a) Posting. Every notice to vacate shall, in addition to being served as provided in Section 401 (c), be posted at or upon each exit of the building and shall be in substantially the following form:

DO NOT ENTER
UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building,
or to remove or deface this notice.

Building Official
.....of.....

(b) **Compliance.** Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued by him under Subsection (b) of Section 401, reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code. Any person violating this subsection shall be guilty of a misdemeanor.

**Chapter 5
APPEAL**

General

Sec. 501. (a) Form of Appeal. Any person entitled to service under Section 401 (c) may appeal from any notice and order or any action of the building official under this code by filing at the office of the building official a written appeal containing:

1. A heading in the words: "Before the Board of Appeals of the of....."

2. A caption reading: "Appeal of,," giving the names of all appellants participating in the appeal.

3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.

4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.

6. The signatures of all parties named as appellants and their official mailing addresses.

7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 30 days from the date of the service of such order or action of the building official; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with Section 404, such appeal shall be filed within 10 days from the date of the service of the notice and order of the building official.

(b) **Processing of Appeal.** Upon receipt of any appeal filed pursuant to this section, the building official shall present it at the next regular or special meeting of the Board of Appeals.

(c) **Scheduling and Noticing Appeal for Hearing.** As soon as practicable after receiving the written appeal the Board of Appeals shall fix a date, time, and place for the hearing of the appeal by the board. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

Effect of Failure to Appeal

Sec. 502. Failure of any person to file an appeal in accordance with the provisions of Section 501 shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order or any portion thereof.

Scope of Hearing on Appeal

Sec. 503. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

Staying of Order Under Appeal

Sec. 504. Except for vacation orders made pursuant to Section 403, enforcement of any notice and order of the building official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

Chapter 6 PROCEDURE FOR CONDUCT OF HEARING APPEALS

General

Sec. 601. (a) Hearing Examiners. The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted by him to the board for decision.

(b) Record. A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the board.

(c) Reporting. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the board, but shall in no event be greater than the cost involved.

(d) Continuances. The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by him for good cause shown so long as the matter remains before him.

(e) Oaths—Certification. In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

(f) Reasonable Dispatch. The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

Form of Notice of Hearing

Sec. 602. The notice to appellant shall be substantially in the following form, but may include other information:

“You are hereby notified that a hearing will be held before (the Board of Appeals or name of hearing examiner) at.....on the.....day of....., 19....., at the hour....., upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (Board of Appeals or name of hearing examiner).”

Subpoenas

Sec. 603. (a) Filing of Affidavit. The board or examiner may obtain the

issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit is defective in any particular.

(b) **Cases Referred to Examiner.** In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

(c) **Penalties.** Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his possession or under his control as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

Conduct of Hearing

Sec. 604. (a) Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(b) **Oral Evidence.** Oral evidence shall be taken only on oath or affirmation.

(c) **Hearsay Evidence.** Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

(d) **Admissibility of Evidence.** Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(e) **Exclusion of Evidence.** Irrelevant and unduly repetitious evidence shall be excluded.

(f) **Rights of Parties.** Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;

2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

4. To impeach any witness regardless of which party first called him to testify;

5. To rebut the evidence against him;

6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

(g) **Official Notice.** 1. **What may be noticed.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

2. **Parties to be notified.** Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

3. **Opportunity to refute.** Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

4. **Inspection of the premises.** The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

Method and Form of Decision

Sec. 605. (a) Hearing before Board Itself. Where a contested case is heard before the board itself, no member thereof who did not hear the evidence or has not read the entire record of the proceedings shall vote on or take part in the decision.

(b) **Hearing before Examiner.** If a contested case is heard by a hearing examiner alone, he shall within a reasonable time (not to exceed 90 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

(c) **Consideration of Report by Board—Notice.** The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

(d) **Exceptions to Report.** Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the

board, any party may present oral argument to the board.

(e) **Disposition by the Board.** The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.

(f) **Proposed Decision Not Adopted.** If the proposed decision is not adopted as provided in Subsection (e), the board may decide the case upon the entire record before it, with or without taking additional evidence; or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in Subsection (b) hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

(g) **Form of Decision.** The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

(h) **Effective Date of Decision.** The effective date of the decision shall be as stated therein.

**Chapter 7
ENFORCEMENT OF THE ORDER
OF THE BUILDING OFFICIAL
OR THE BOARD OF APPEALS**

Compliance

Sec. 701. (a) General. After any order of the building official or the Board of Appeals made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

(b) **Failure to Obey Order.** If, after any order of the building official or Board of Appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (i) cause such person to be prosecuted under Subsection (a) of this section or (ii) institute any appropriate action to abate such building as a public nuisance.

(c) **Failure to Commence Work.** Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this code becomes effective:

1. The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

**DANGEROUS BUILDING
DO NOT OCCUPY**

It is a misdemeanor to occupy this building
or to remove or deface this notice.

Building Official
.....of.....

2. No person shall occupy any building which has been posted as specified in this subsection. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code.

3. The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition

thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

Extension of Time to Perform Work

Sec. 702. Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the order if allowed additional time, the building official may, in his discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal his notice and order.

Interference with Repair or Demolition Work Prohibited

Sec. 703. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this code; or with any person to whom such building has been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

Chapter 8 PERFORMANCE OF WORK OF REPAIR OR DEMOLITION

General

Sec. 801. (a) Procedure. When any work of repair or demolition is to be done pursuant to Section 701 (c) 3 of this code, the building official shall issue his order therefor to the director of public works and the work shall be accomplished by personnel of this jurisdiction or by private contract under the direction of said director. Plans and specifications therefor may be prepared by said director, or he may employ such architectural and engineering assistance on a contract basis as he may deem reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

(b) Costs. The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

Repair and Demolition Fund

Sec. 802. (a) General. The legislative body of this jurisdiction shall establish a special revolving fund to be designated as the repair and demolition fund. Payments shall be made out of said fund upon the demand of the director of public works to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.

(b) Maintenance of Fund. The legislative body may at any time transfer to the repair and demolition fund, out of any money in the general fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the treasurer of this jurisdiction who shall credit the same to the repair and demolition fund.

Chapter 9

RECOVERY OF COST OF REPAIR OR DEMOLITION

Account of Expense, Filing of Report: Contents

Sec. 901. The director of public works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building done pursuant to the provisions of Section 701 (c) 3 of this code. Upon the completion of the work of repair or demolition, said director shall prepare and file with the clerk of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to Subsection (c) of Section 401.

Report Transmitted to Council—Set for Hearing

Sec. 902. Upon receipt of said report, the clerk of this jurisdiction shall present it to the legislative body of this jurisdiction for consideration. The legislative body of this jurisdiction shall fix a time, date and place for hearing said report and any protests or objections thereto. The clerk of this jurisdiction shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in this jurisdiction, and served by certified mail, postage prepaid, addressed to the owner of the property as his name and address appear on the last equalized assessment roll of the county, if such so appear, or as known to the clerk. Such notice shall be given at least 10 days prior to the date set for hearing and shall specify the day, hour, and place when the legislative body will hear and pass upon the director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

Protests and Objections—How Made

Sec. 903. Any person interested in or affected by the proposed charge may file written protests or objections with the clerk of this jurisdiction at any time prior to the time set for the hearing on the report of the director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The clerk of this jurisdiction shall endorse on every such protest or objection the date it was received by him. He shall present such protests or objections to the legislative body of this jurisdiction at the time set for the hearing, and no other protests or objections shall be considered.

Hearing of Protests

Sec. 904. Upon the day and hour fixed for the hearing the legislative body of this jurisdiction shall hear and pass upon the report of the director together with any such objections or protests. The legislative body may make such revision, correction or modification in the report or the charge

as it may deem just; and when the legislative body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the legislative body of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

Personal Obligation or Special Assessment

Sec. 905. (a) General. The legislative body of this jurisdiction may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.

(b) Personal Obligation. If the legislative body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.

(c) Special Assessment. If the legislative body of this jurisdiction orders that the charge shall be assessed against the property it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

Contest

Sec. 906. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within 30 days after the entry of such judgment.

Authority for Installment Payment of Assessments with Interest

Sec. 907. The legislative body of this jurisdiction, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed five equal annual installments. The legislative body's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

Lien of Assessment

Sec. 908. (a) Priority. Immediately upon its being placed on the assessment roll the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(b) **Interest.** All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 7 percent per annum from and after said date.

Report to Assessor and Tax Collector: Addition of Assessment to Tax Bill

Sec. 909. After confirmation of the report, certified copies of the assessment shall be given to the assessor and the tax collector for this jurisdiction, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

Filing Copy of Report with County Auditor

Sec. 910. If the county assessor and the county tax collector assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

Collection of Assessment: Penalties for Foreclosure

Sec. 911. The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

If the legislative body of this jurisdiction has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

Repayment of Repair and Demolition Fund

Sec. 912. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the treasurer of this jurisdiction who shall credit the same to the repair and demolition fund.