

SCOPE AND ADMINISTRATION

asures to correct the unsafe condition. If this is not done promptly, the code official has the authority to directly abate the unsafe conditions and bill the owner for the abatement work in accordance with the code.

108.7 Record. The *code official* shall cause a report to be filed on an unsafe condition. The report shall state the *occupancy* of the structure and the nature of the unsafe condition.

- ❖ The code official must file a report on each investigation of unsafe conditions, stating the occupancy of the structure and the nature of the unsafe condition.

SECTION 109 EMERGENCY MEASURES

109.1 Imminent danger. When, in the opinion of the *code official*, there is *imminent danger* of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building *occupants* or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the *code official* is hereby authorized and empowered to order and require the *occupants* to vacate the *premises* forthwith. The *code official* shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its *Occupancy* Has Been Prohibited by the *Code Official*." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

- ❖ If the code official has determined that failure or collapse of a building or structure is imminent, failure has occurred that results in a continued threat to the remaining structure or adjacent properties or any other unsafe condition as described in this section exists in a structure, he or she is authorized to require the occupants to vacate the premises and to post such buildings or structures as unsafe and not occupiable. Unless authorized by the code official to make repairs, secure or demolish the structure, it is illegal for anyone to enter the building or structure. This will minimize the potential for injury.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the *code official*, there is *imminent danger* due to an unsafe condition, the *code official* shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the *code official* deems necessary to meet such emergency.

- ❖ This section recognizes the need for immediate and effective action in order to protect the public. This section empowers the code official to cause the necessary work to be done to temporarily minimize the imminent danger without regard for due process. This

section has to be viewed critically insofar as the danger of structural failure must be "imminent"; that is, readily apparent and immediate.

109.3 Closing streets. When necessary for public safety, the *code official* shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, *public ways* and places adjacent to unsafe structures, and prohibit the same from being utilized.

- ❖ The code official is authorized to temporarily close sidewalks, streets and adjacent structures as needed to provide for the public safety from the unsafe building or structure when an imminent danger exists. Since the code official may not have the direct authority to close sidewalks, streets and other public ways, the agency having such jurisdiction (e.g., the police or highway department) must be notified.

109.4 Emergency repairs. For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

- ❖ The cost of emergency work may have to be initially paid for by the jurisdiction. The important principle here is that the code official must act immediately to protect the public when warranted, leaving the details of costs and owner notification for later.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the *owner* of the *premises* or *owner's* authorized agent where the unsafe structure is or was located for the recovery of such costs.

- ❖ The cost of emergency repairs is to be paid by the jurisdiction, with subsequent legal action against the owner to recover such costs. This does not preclude, however, reaching an alternative agreement with the owner.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

- ❖ Anyone ordered to take an emergency measure or to vacate a structure because of an emergency condition must do so immediately.

Thereafter, any affected party has the right to appeal the action to the appeals board to determine whether the order should be continued, modified or revoked.

It is imperative that appeals to an emergency order occur after the hazard has been abated, rather than before, to minimize the risk to the occupants, employees, clients and the public.

SECTION 110 DEMOLITION

110.1 General. The *code official* shall order the *owner* or *owner's* authorized agent of any *premises* upon which is located any structure, which in the *code official's* or *owner's*

SCOPE AND ADMINISTRATION

authorized agent judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the *code official* shall order the *owner* or *owner's* authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless *approved* by the building official.

❖ This section describes conditions where the code official has the authority to order the owner to remove the structure. Conditions where the code official may give the owner the option of repairing the structure or boarding the structure for future repair are also in this section. The code official should carefully document the condition of the structure prior to issuing a demolition order to provide an adequate basis for ordering the owner to remove the structure. Note that Appendix A contains boarding provisions, but must be specifically referenced in the adopting ordinance of the jurisdiction to be mandatory.

110.2 Notices and orders. Notices and orders shall comply with Section 107.

❖ Before the code official can pursue action to demolish a building in accordance with Section 110.1 or 110.3, it is imperative that all owners and any other persons with a recorded encumbrance on the property be given proper notice of the demolition plans (see Section 107 for notice and order requirements).

110.3 Failure to comply. If the *owner* of a *premises* or *owner's* authorized agent fails to comply with a demolition order within the time prescribed, the *code official* shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

❖ Where the owner fails to comply with a demolition order, the code official is authorized to take action to have the building razed and removed. The costs are to be charged as a lien against the real estate. To reduce complaints regarding the validity of demolition costs, the code official will obtain competitive bids from several demolition contractors before authorizing any contractor to raze the structure.

110.4 Salvage materials. Where any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including

the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

❖ The governing body may sell any valuables or salvageable materials for the highest price obtainable. The costs of demolition are then to be deducted from any proceeds from the sale of salvage. If a surplus of funds remains, it is to be remitted to the owner with an itemized expense and income account; however, if no surplus remains, this must also be reported.

SECTION 111 MEANS OF APPEAL

[A] 111.1 Application for appeal. Any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

❖ This section allows a person with a material or definitive interest in the decision of the code official to appeal that decision. The aggrieved party may not appeal a code requirement. The appeal process is not intended to waive or set aside a code requirement, but to provide a means of reviewing a code official's decision on an interpretation or application of the code or to approve or reject the equivalency of protection to the code requirement.

[A] 111.2 Membership of board. The board of appeals shall consist of not less than three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The *code official* shall be an ex-officio member but shall not vote on any matter before the board. The board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms.

❖ The concept of the board is to provide an objective group of persons who review the matters brought to them and make a collective decision. The members of the board are not to be employees of the jurisdiction and are to have sufficient knowledge and experience to act on the concerns that are heard. A minimum of three board members is specified for a fair and impartial hearing process. Staggered terms are appropriate for uniform changeover such that a minimum number of board members are new each year. The number of members is to be determined by the chief appointing authority.

[A] 111.2.1 Alternate members. The chief appointing authority shall appoint not less than two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate