

Chapter 12 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE V. - BUILDING AND STANDARDS COMMISSION

Sec. 12-320. - Authority shared with city council.

The city council may act as the building and standards commission and exercise all authority granted to the building and standards commission under this division including, without limitation, holding public hearings regarding alleged violations of the city's building and technical codes.

Sec. 12-321. - Membership; vacancies; rules; meetings.

- (a) Regular member panels. The building and standards commission shall consist of one or more five-member panels to be appointed for terms of two years. As near as practical, members shall be qualified in one or more of the fields of fire prevention, building construction, sanitation, health, and public safety.
- (b) Alternate members. The city council may appoint eight or more alternate members to serve in the absence of one or more regular members when requested to do so by the city manager. The alternate members serve for the same term and are subject to removal in the same manner as regular members. A vacancy is filled in the manner as a vacancy is filled among the regular members.
- (c) Removal; filling vacancies. The city council may remove a commission member for cause on a written charge. Before a decision regarding removal is made, the city council must hold a public hearing on the matter if requested by the commission member subject to the removal action. A vacancy shall be filled for the unexpired term.
- (d) Rules of order; appointment of officers. A majority of the entire commission shall establish rules of order and the appointment of at least a chairperson, vice-chairperson, and secretary and duties thereof. The rules of order shall be in compliance with the provisions of this division.
- (e) Meetings; oaths; authority to compel attendance of witnesses. Meetings of the commission shall be held at the call of the chairperson and at other times as determined by the commission. All meetings held by the commission shall be open to the public. Each chairperson of a panel, or in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
- (f) Minutes and other records. The commission shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. The commission shall keep records of its examinations and

other official actions. The minutes and records shall be filed immediately in the office of the commission as public records.

Sec. 12-322. - Powers and duties generally.

The commission is authorized to hold public hearings to determine compliance with, or alleged violations of, city building and technical codes, including minimum property maintenance requirements. The commission shall also hear appeals from persons aggrieved by orders or decisions of city officials made in enforcement of this chapter. The commission may further make recommendations to the city council as to any needed modifications, amendments, and changes in this chapter, and shall carry out such other duties as may be required from time to time by the city council or state law.

Sec. 12-323. - Hearing authority and procedure.

- (a) Minimum number of members in review panel. All cases heard by the commission may be heard by any panel, but at least four members of any panel must hear a case.
- (b) Concurring vote of four members required. The concurring vote of four members of the commission is necessary to take any action under this article and any other ordinance under its jurisdiction adopted by the city.
- (c) Code enforcement official must appear at hearing. The code enforcement official shall present all cases initiated by the city to be heard by the commission.
- (d) Evidence, testimony and defense. There shall be provided ample opportunity at the public hearing for the presentation of evidence or testimony by respondents, persons opposing charges, and the code enforcement official relating to alleged violations of this chapter.
- (e) Time and method of giving notice of hearing. Notice of all proceedings before the commission must be given:

 - (1) By certified mail, return receipt requested, to the record owners of the property affected, and each holder of a recorded lien against the affected property, as shown by the records in the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from any applicable instruments on file in the office of the county clerk;
 - (2) To all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property, or as close to the front door as practical; and

(3) By publication in a newspaper of general circulation within the city on one occasion.

The notice shall be mailed, published, and posted on or before the tenth day before the date of the hearing before the commission and must state the date, time, and place of the hearing.

(f) Filing copy of notice in official real property records. The commission may file notice of a proceeding before a commission panel in the official public records of real property in the county in which the affected property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file at the office of the county clerk, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest who acquires such interest after the filing of the notice.

(g) Final determination by commission. The commission may:

(1) Declare a structure or premises substandard, dangerous, or otherwise in violation of this chapter.

(2) Order an unsafe condition be abated, vacated, secured, repaired, removed or demolished within a fixed period.

(3) Order, in appropriate cases, the immediate abatement, vacation, securing, repairing, removal, or demolition of the unsafe condition, the entry onto private property to secure such abatement if it is determined that conditions exist on the property that constitutes a violation of this article or any other ordinance within its jurisdiction, and order action to be taken as necessary to remedy, alleviate, or remove any unsafe structure found to exist.

(4) Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the city, to enforce and carry out the lawful orders or directives of the panel.

(5) Determine the amount and duration of the civil penalty the city may recover as provided in this article.

(h) Notice of final determination. The commission shall:

- (1) Promptly send by first class mail, certified return receipt requested, a copy of any final decision and order to all persons to whom notice is required to be sent under this section; and
- (2) Publish an abbreviated copy of the order one time in a newspaper of general circulation in the city, within ten calendar days after the date of the mailing of the copy as required in this section, including street address or the legal description of the property, the date of hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained. A copy shall be filed in the office of the city secretary.
- (i) Effect of final determination; civil penalties. A determination made under this article is binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment in accordance with the established penalty. To enforce any civil penalty under this article, the city secretary must file with the district clerk of the county in which the city is located a certified copy of the order of the commission panel establishing the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on the penalty. If no appeals are taken from the decision of the commission panel within the required period, the decision of the commission panel is, in all things, final and binding.
- (j) Rehearing and reconsideration; stay of proceedings. Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision or order of a commission panel may request a single rehearing of the case by a second, existing, duly appointed commission panel, or if no such panel exists, the same may request reconsideration from the first panel. The request must be in writing, addressed to the commission, specifying the grounds for the request, and received by the commission or postmarked on or before the tenth day after the mailing of the notice required under this article. The rehearing or reconsideration panel shall consider the grounds for the request for rehearing or reconsideration and may approve or deny the request. Only the approval of the request for rehearing or reconsideration stays all other proceedings.
- (k) Appeal. After a final decision of the commission under this article, any owner, lienholder, or mortgagee of record remaining jointly or severally aggrieved by the final decision of the commission may appeal the decision to a court of competent jurisdiction in accordance with state law.

Sec. 12-324. - Parties against whom judgment is issued; standing to challenge judgment.

An abstract of judgment shall be issued against all parties found to be owners of the subject property or in possession of that property. A lienholder does not have standing to bring a

proceeding under this article on the ground that the lienholder was not notified of the proceedings before the commission panel or was unaware of the condition of the property, unless the lienholder had first appeared before the commission panel and entered an appearance in opposition to the proceedings.

Sec. 12-325. - Alternative authority for city to proceed in municipal court.

This article does not affect the ability of the city to proceed under the jurisdiction of the municipal court.

OPTION #1:

An owner, lienholder, or mortgagee of record may request a single rehearing by a 2nd panel.

If no 2nd panel exists, then the request will be reconsideration from the 1st panel.

Written request specifying grounds for request received within ten (10) days after final notice is mailed.

The panel may approve or deny the request.

THE 2ND PANEL MAY CONSIST OF THE CITY COUNCIL.

OPTION #2:

An owner, lienholder, or mortgagee of record may appeal the decision to district court.

Petition must be received within thirty (30) calendar days after final notice is mailed.

NO FURTHER ACTION REQUIRED BY THE COMMISSION UNLESS ORDERED BY DISTRICT COURT.