



INTERNATIONAL PROPERTY MAINTENANCE CODE[®]

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COMMENTARY

2003

2003 International Property Maintenance Commentary®

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PREFACE

Significant changes in the plumbing industry, as well as in manufacturing technology, had become so commanding that a radically new approach to the design and installation of plumbing systems seemed an imperative. The reply to that imperative was the *International Property Maintenance Code*, a document emphasizing prescriptive and performance-related provisions.

As a follow-up to the *International Property Maintenance Code*, we offer a companion document, the *International Property Maintenance Code Commentary*. The basic appeal of the Commentary is thus: it provides in a small package and at reasonable cost thorough coverage of many issues likely to be dealt with when using the *International Property Maintenance Code* — and then supplements that coverage with historical and technical background. Reference lists, information sources and bibliographies are also included.

Throughout all of this, strenuous effort has been made to keep the vast quantity of material accessible and its method of presentation useful. With a comprehensive yet concise summary of each section, the Commentary provides a convenient reference for plumbing regulations. In the chapters that follow, discussions focus on the full meaning and implications of the code text. Guidelines suggest the most effective method of application, and the consequences of not adhering to the code text. Illustrations are provided to aid understanding; they do not necessarily illustrate the only methods of achieving code compliance.

The format of the Commentary includes the full text of each section, table and figure in the code, followed immediately by the commentary applicable to that text. Each section's narrative includes a statement of its objective and intent, and usually includes a discussion about why the requirement commands the conditions set forth. Code text and commentary text are easily distinguished from each other. All code text is shown as it appears in the *International Plumbing Code*, and all commentary is indented below the code text and begins with the symbol ❖.

Readers should note that the Commentary is to be used in conjunction with the *International Property Maintenance Code* and not as a substitute for the code. **The Commentary is advisory only**; the code official alone possesses the authority and responsibility for interpreting the code.

Comments and recommendations are encouraged, for through your input, we can improve future editions. Please direct your comments to the Codes and Standards Development Department at the Chicago District Office.

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Chapter 1: Administration

Purpose

Chapter 1 establishes the necessary legal basis for enforcement of the code by the authority having jurisdiction. All of the police powers inherent in enforcing minimum standards for the use and maintenance of buildings must follow the line of authority, from the Constitution to the state to the actual enforcer. Chapter 1 defines the role and responsibilities of the authority having jurisdiction. To protect all parties from an unfair enforcement action, this chapter also sets forth the due process that requires corrective actions to be accomplished in a constitutional manner. Police powers are not unlimited and this chapter identifies those limitations.

General Comments

The law of building regulation is grounded on the police power of the state. This power is the source of all authority to enact building regulations. In terms of how it is used, police power is the power of the state to legislate for the general welfare of its citizens. This power enables the passage of laws such as a property maintenance code. It is from the police power delegated by the state legislature

that local governments are able to enact building regulations. If the state legislature has limited this power in any way, the municipality may not exceed these limitations. While the municipality may not further delegate its police power (e.g., by delegating the burden of determining code compliance to the building owner, contractor or architect), it may turn over the administration of building regulations to a municipal official, such as a code official, provided that he or she is given sufficient criteria to clearly establish the basis for decisions as to whether or not a proposed building conforms to the code.

Chapter 1 of the code is largely concerned with maintaining “due process of law” in enforcing the provisions contained in the body of the code. Only through careful observation of the administrative provisions can the code official reasonably hope to demonstrate that “equal protection under the law” has been provided. While it is generally assumed that the administrative and enforcement sections of a code are geared toward the responsibilities of the code official, the provisions also establish the rights and privileges of the design professional, contractor and building owner.

SECTION 101 GENERAL

- ❖ This section sets forth the scope and intent of the code as it applies to existing structures.

101.1 Title. These regulations shall be known as the *Property Maintenance Code* of [NAME OF JURISDICTION], hereinafter referred to as “this code.”

- ❖ The purpose of this section is to identify the adopted regulations by insertion of the name of the adopting jurisdiction into the code.

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

- ❖ This section establishes the broad purpose of the code—to protect the public health, safety and welfare in

both existing residential and nonresidential structures and on all existing premises.

Four specific areas are addressed in greater detail in subsequent sections:

- Establishing minimum maintenance standards for such elements as basic equipment, light, ventilation, heating, sanitation and fire safety.
- Fixing responsibility among owners, operators and occupants for following the code.
- Regulating the use of existing structures and premises.
- Providing for administration, enforcement and penalties.

These four categories provide communities with the tools to reduce risks created by deteriorated or unsafe buildings and help communities upgrade and maintain other existing structures.

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and

safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the *International Existing Building Code*.

- ❖ The code is intended to provide requirements addressing the public health, safety and welfare as they relate to the use and maintenance of existing structures and premises. The code requires existing structures and premises that are not in compliance with the code to be altered or repaired to meet the code. The code requirements are intended to represent the minimum acceptable level of public health and safety. The *International Existing Building Code*® (IEBC®) is listed as the required code for all repairs, alterations, additions and change of occupancies to existing structures.

101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

- ❖ Only invalid sections of the code (as established by the court of jurisdiction) can be set aside. This is essential to safeguard the application of the code text to situations whereby a provision of the code is declared illegal or unconstitutional. This section would preserve the legislative action that put the legal provisions in place.

SECTION 102 APPLICABILITY

- ❖ This section sets forth the administrative provisions for applying the code to various conditions related to its application.

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

- ❖ The scope of the code as described in Section 101 is referenced in this section. The most restrictive code requirement is to apply where different requirements may be specified in the code for a specific installation.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

- ❖ This section contains general maintenance requirements. The code specifically prohibits the disconnection of any required utilities for an occupied dwelling. This helps to safeguard persons who have a physical condition and are dependent on these systems. Some examples of this include: a person who has to have electricity to power a kidney dialysis machine; a patient who is on an oxygen system full time; or someone with particularly bad allergies who needs to have an air-conditioning system to help filter the air. Any safety system that exists in a building must be maintained. A fire protection or safety system is not to be removed from a building if it is required by the code or a previous regulation or code that was in effect when the building was built. This section also specifies that the owner or the owner's agent is responsible for maintenance, not the tenants of rental property.

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the *International Existing Building Code*. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *International Zoning Code*.

- ❖ Repairs, additions or alterations are to be done as required by the *International Existing Building Code*® (IEBC®). It is the intent of the *International Property Maintenance Code*® (IPMC®) not to affect any of the requirements in the *International Zoning Code*® (IZC®).

102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and insanitary.

- ❖ Section 110 establishes one set of criteria and procedures that may be used to demolish dangerous, unsafe or insanitary buildings. This section permits a jurisdiction to continue to use any remedies already adopted for demolishing buildings. In essence, a community may employ several procedures for removing dangerous buildings. It is advisable that one procedure be chosen over another to avoid confusion and errors in processing the demolition action.

102.5 Workmanship. Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

- ❖ All repairs, materials, alterations and installations must be executed in a skilled manner that allows the performance intended and anticipated by the code to be achieved, and must meet the criteria of the definition of "workmanlike" in the code (see the definition of "Workmanlike" in Chapter 2).

Equipment needs to comply with the manufacturer's installation instructions for proper operation and safety.

102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

❖ This section provides the code official with the widest flexibility in enforcing the code when the building in question has historic value. This flexibility, however, is not provided without conditions. The most important criterion for application of this section is that the building must be specifically classified as being of historic significance by a qualified party or agent. Usually this is done by a state or local authority after considerable scrutiny of the historical value of the building. Most, if not all, states have such authorities, as do many local jurisdictions. The agencies with such authority typically exist at the state or local government level.

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

❖ A referenced standard or portion thereof is enforceable to the same extent as if the content of the standard were included in the body of the code. For example, Section 604.2 references the ICC *Electrical Code*® (ICC EC™) for sizing the electrical main service for a building. The use and application of referenced standards are limited to those portions of the standards that are specifically identified in the code. It is the intention of the code to be in harmony with the referenced standards. If conflicts occur because of scope or purpose, the code text governs.

102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare not specifically covered by this code shall be determined by the code official.

❖ Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare not specifically covered by this code shall be determined by the code official.

Evolving technology in our society will inevitably result in a situation or circumstance in which the code is comparatively silent on an identified hazard. The reasonable application of the code to any hazardous, unforeseen condition is provided for in this section. Clearly such a section is needed as well as the code official's judicious and reasonable application. The purpose of the section, however, is not to impose requirements that may be preferred over explicit code requirements. Additionally, the section can be utilized to implement the general performance-oriented language of the code to specific enforcement situations.

SECTION 103 DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION

103.1 General. The department of property maintenance inspection is hereby created and the executive official in charge thereof shall be known as the code official.

❖ The executive official in charge of the property maintenance department is named the "code official" by this section. In actuality, the person who is in charge of the department may hold a different title, such as building commissioner, existing building inspector, housing inspector or construction official. For the purpose of the code, that person is referred to as the "code official."

103.2 Appointment. The code official shall be appointed by the chief appointing authority of the jurisdiction; and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.

❖ This section establishes the code official as an appointed position from which he or she cannot be removed, except for cause subject to a due process review.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the code official shall have the authority to appoint a deputy code official, other related technical officers, inspectors and other employees.

❖ This section provides the code official with the authority to appoint other individuals to assist with the administration and enforcement of the code. These individuals have the authority and responsibility as designated by the code official.

103.4 Liability. The code official, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department of property maintenance inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

❖ The code official is not intended to be held liable for those actions performed in accordance with the code in a reasonable and lawful manner. The responsibility of

the code official in this regard is subject to local, state and federal laws that may supersede this provision. This section further establishes that the code official (or subordinates) is not liable for costs in any legal action instituted in response to the performance of lawful duties. These costs are to be borne by the jurisdiction. The best way to be certain that the code official's action is a "lawful duty" is to always cite the applicable code section on which the enforcement action is based.

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the following schedule.

[JURISDICTION TO INSERT APPROPRIATE SCHEDULE.]

- ❖ A published fee schedule must be established for permits and inspections. Ideally, the department should generate revenues that cover operating costs and expenses. The permit fee schedule is an integral part of this process.

SECTION 104 DUTIES AND POWERS OF THE CODE OFFICIAL

104.1 General. The code official shall enforce the provisions of this code.

- ❖ The duty of the code official is to enforce the code. Because the code official must also act on all questions related to this responsibility, except as specifically exempted by statutory requirements or elsewhere in the code, he or she is the "authority having jurisdiction" for all matters relating to the code and its enforcement. It is the duty of the code official both to interpret and to determine compliance with the code. Code compliance will not always be easy to determine and will require the judgement and expertise of the code official.

104.2 Rule-making authority. The code official shall have authority as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures; to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering methods involving public safety.

- ❖ The code official has the administrative authority to promulgate rules and regulations that serve to interpret or supplement the provisions of the code as long as such rules conform to the intent of the code. Most importantly, these rules are not intended to set aside or waive any code provisions, but are intended to implement code compliance. Additionally, the rules are not to conflict with accepted engineering practices or reduce the level of safety prescribed by the code. The most frequent use of this authority is the promulgation of the administrative rules and procedures for the department's

efficient and effective operation. An example of the content of administrative rules is the type of work that is required to be inspected, and the notice that must be provided to the department for such inspections. Certain conditions may exist or arise that are geographically dependent, and the department may promulgate rules related to the climate, soils or other local environmental conditions.

104.3 Inspections. The code official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

- ❖ The code official or designee is required to make the necessary inspections to determine compliance with the code, or may accept written reports of inspections by an approved agency. The inspection of the work in progress or accomplished is another significant element in determining code compliance. While a department does not have the resources to inspect every aspect of all work, the required inspections are those that are dictated by administrative rules and procedures based on many parameters, including available inspection resources. In order to expand the available resources, the code official may approve an inspection agency that, in his or her opinion, possesses the proper qualifications to perform the inspections. When unusual or complex technical issues arise relative to inspections, the code official has the authority to seek the opinion and advice of experts. A technical report from an expert requested by the code official can be used to assist in the approval process.

104.4 Right of entry. The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.

- ❖ This section establishes the right of the code official to enter the premises in order to make the inspections required by Section 104.3. The right to enter structures or premises is limited. First, to protect the right of privacy, the owner or occupant must grant the code official permission before an interior inspection of the property can be conducted. Permission is not required for inspections that can be accomplished from within the public right-of-way. Second, such access may be denied by the owner or occupant. Unless the inspector has reasonable cause to believe that a violation of the code exists, access may be unattainable. Third, code officials must present proper identification (see commentary, Section 104.5) and request admittance during reasonable hours—usually the normal business hours of the establishment—to be admitted. Fourth, inspections

must be aimed at securing or determining compliance with the provisions and intent of the regulations that are specifically within the established scope of the code official's authority.

Searches of a private residence to gather information for the purpose of enforcing codes, ordinances or regulations are considered unreasonable and are prohibited by the Fourth Amendment to the U.S. Constitution. "Reasonable cause" in the context of this section must be distinguished from "probable cause," which is required to gain access to property in criminal cases. The burden of proof establishing reasonable cause may vary among jurisdictions. Usually, an inspector must show that the property is subject to inspection under the provisions of the code; that the interests of the public health, safety and welfare outweigh the individual's right to maintain privacy; and that such an inspection is required solely to determine compliance with the provisions of the code.

Many jurisdictions do not recognize the concept of an administrative warrant and may require the code official to prove probable or reasonable cause in order to gain access upon refusal. This burden of proof is usually more substantial, often requiring the code official to stipulate in advance why access is needed (usually access is restricted to gathering evidence for seeking an indictment or making an arrest), what specific items or information is sought, its relevance to the case against the individual subject, how knowledge of the relevance of the information or items sought was obtained and how the evidence sought will be used. In all such cases, the right to privacy must always be weighed against the right of the code official to conduct an inspection to verify that the public health, safety and welfare are not in jeopardy. Such important and complex constitutional issues should be discussed with the jurisdiction's legal counsel. Jurisdictions should establish procedures for securing the necessary court orders when an inspection is deemed necessary following a refusal.

104.5 Identification. The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

- ❖ This section requires the code official (including by definition all authorized representatives) to carry identification in the course of conducting the duties of the position. The identification removes any question as to the purpose and authority of the inspector.

104.6 Notices and orders. The code official shall issue all necessary notices or orders to ensure compliance with this code.

- ❖ An important element of code enforcement is the necessary advisement of deficiencies, which is accomplished through notices and orders. The code official is required to issue orders to abate illegal or unsafe conditions. Section 107 contains additional information for these notices.

104.7 Department records. The code official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

- ❖ In keeping with the need for an efficiently conducted business practice, the code official must keep official records pertaining to fees collected, inspections, notices and orders issued. Such documentation provides a valuable source of information if questions arise throughout the life of the building and its occupancy regarding outstanding preexisting code violations or conditions.

104.8 Coordination of inspections. Whenever in the enforcement of this code or another code or ordinance, the responsibility of more than one code official of the jurisdiction is involved, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the code official having jurisdiction.

- ❖ This section requires code officials who have jurisdiction on an individual project to coordinate their enforcement activities to avoid subjecting the permit applicant, the building owner or the building occupants to redundant or conflicting inspections and orders, and undue inconveniences. This section also obligates inspectors to report to the appropriate code official any apparent, suspected or actual code violation that is observed during the course of conducting the inspection for which they are responsible. For example, a property maintenance code inspector may observe a fire code violation while performing an inspection. This observation must be reported to the fire code official having jurisdiction. This interaction among inspectors and enforcement agencies enhances the quality and thoroughness of inspections. Violations or conditions that are unnoticed or overlooked by one inspector could be picked up by another. For instance, it is common for inspectors to inform other inspectors of work that is being conducted without a permit.

SECTION 105 APPROVAL

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen

health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

❖ The code official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the code official has the authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the intent of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision; rather, it is intended to provide for the acceptance of equivalent protection. For example, a code official might decide to accept the installation of a sprinkler system throughout the building instead of upgrading certain walls to have a fire resistance rating. The modification of requirements would be based on the equivalent protection of the sprinkler system to the upgraded walls. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation or the expense of correcting one cannot constitute a practical difficulty.

Filing the details of a modification action is necessary if the reasons for the modification are subject to review. Comprehensive written records are an essential part of an effective administrative system. Unless clearly written records of the considerations and documentation utilized in the modification process are created and maintained, subsequent enforcement action will be difficult to support and inconsistent.

105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

❖ The code is not intended to inhibit innovative ideas or technological advances. A comprehensive regulatory document cannot envision and then address all future innovations in the industry. As a result, the code must be applicable to and provide a basis for the approval of an increasing number of newly developed, innovative materials, systems and methods for which no code text or referenced standards yet exist. The fact that a material, product or method of construction is not specifically described in the code is not an indication that its use is intended to be prohibited. The code official is expected to apply sound technical judgement in accepting materials, systems or methods that, while not anticipated by the drafters of the current code text, can be demonstrated to offer equivalent performance. The code official is responsible for determining if a requested alternative provides the equivalent level of protection of

the public health, safety and welfare as required by the code.

105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

❖ To provide the basis on which the code official can make a decision regarding an alternative material or type of equipment, sufficient technical data, test reports and documentation must be provided for evaluation by the code official. If evidence satisfactory to the code official proves that the alternative equipment, material or construction method is equivalent to that required by the code, he or she is obligated to approve it. Any such approval cannot have the effect of waiving any requirements of the code. The burden of proof of equivalence lies with the applicant that proposes the use of alternative equipment, materials or methods.

105.3.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall be permitted to approve appropriate testing procedures performed by an approved agency.

❖ The code official must require the submission of any appropriate information and data to assist in the determination of equivalency. This information must be submitted before a permit will be issued. The type of information required includes test data in accordance with the referenced standards, evidence of compliance with the referenced standard specifications and design calculations. If no test standard is available, the owner or owner's agent is to propose the test procedures and submit them to the code official for review and approval. A research report issued by an authoritative agency, such as ICC Evaluation Service, is particularly useful in providing the code official with the technical basis for evaluation and approval of new and innovative plumbing materials and components. The use of authoritative research reports can greatly assist the code official by reducing the time-consuming engineering analysis necessary to review materials and products. Failure to adequately substantiate a request for the use of an alternative is a valid reason for the code official to deny a request.

105.3.2 Test reports. Reports of tests shall be retained by the code official for the period required for retention of public records.

❖ The testing agency must be approved by the code official. The testing agency should have technical expertise, test equipment and quality assurance to properly conduct and report the necessary testing.

105.4 Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

- ❖ The code criteria for materials and equipment have changed over the years. Evaluation of testing and materials technology has facilitated the development of new criteria that the old materials may not satisfy. As a result, used materials are required to be evaluated in the same manner as new materials. Used (previously installed) equipment must be equivalent to that required by the code if it is to be used again in a new installation.

SECTION 106 VIOLATIONS

106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

- ❖ Violations of the code are prohibited. This is the basis for all citations and correction notices with regard to code violations.

106.2 Notice of violation. The code official shall serve a notice of violation or order in accordance with Section 107.

- ❖ The code official is required to notify the person responsible for violating the code. The section that is allegedly being violated must be cited so that the responsible party can respond to the notice.

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

- ❖ This section classifies a violation as a “strict liability offense,” which is defined in Section 202; thus, it is not required to prove that the person intended to violate the code or was negligent in doing so. All that is required for conviction is that the notice of violation for correction was properly served and that the person failed to comply. This aids jurisdictions in prosecuting code violators.

The code official must pursue, through the use of legal counsel of the jurisdiction, legal means to correct the violation.

Any extensions of time for the violations to be voluntarily corrected must be for a reasonable, bona fide cause or the code official may be subject to criticism for

“arbitrary and capricious” actions. In general, it is better to have a standard time limitation for correction of violations. Departures from this standard must be for a clear and reasonable purpose, usually stated in writing by the violator. The code provides a mechanism for the municipality to recover costs expended on a property to be recovered through placing a lien on the property. For example, if an unimproved lot had to be mown throughout the summer growing season, the cost of the mowing could be recovered through a lien on the property.

106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

- ❖ An adopting jurisdiction is permitted to assess penalties for violations of the code. The penalties include monetary fines as well as possible imprisonment. The severity of the fine or penalty is left for the jurisdiction to establish. The local jurisdiction, through its council and attorney or other administrative authority, will normally designate the range for the dollar amount of fines; however, the judge will determine the actual fine. This encourages support and agreement from all parties when enforcement action is taken. Fines should be large enough to discourage noncompliance with the code, but not so large as to be inappropriate for the violation being charged.

Each day a violation continues unabated after proper notice has been served is to be deemed a separate offense and may be charged as such. In general, it is better to cite violations daily. This action may expedite a court hearing or cause the owner to correct the violations rather than risk exorbitant fines or imprisonment. Whether or not to cite violations on a daily basis is a policy decision and should be made in cooperation with the attorney who will prosecute the cases.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

- ❖ Despite the assessment of a penalty in the form of a fine or imprisonment against a violator, the violation itself must still be corrected. Failure to make the necessary corrections will result in the violator being subject to additional penalties as described in the preceding section.

SECTION 107 NOTICES AND ORDERS

107.1 Notice to person responsible. Whenever the code official determines that there has been a violation of this code or has

grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

❖ Written notice must be given to the person responsible for the property (i.e., occupant) when the code official observes a violation of the code. When a property is condemned, the person responsible for the property must be informed of the intent to placard and vacate the structure.

The person responsible must be notified when a building is placarded. This is important because both the person responsible and the owner can be charged with a violation of the code if they fail to vacate the structure.

It is also important for the code official to keep copies of all written notices issued. If the person responsible for the property or occupants fail to abide by a verbal order, the code official needs something more substantial to pursue enforcement action. If further enforcement procedures are warranted, the code official will need a complete chronological written documentation of all notices and orders that have been issued.

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

❖ The notice required by Section 107.1 must:

- Be in writing. A verbal notice is unreliable.
- Clearly identify the property. The address of the property is sufficient when it is readily available. The legal description may be necessary when the address for the property is missing or if the land is vacant and lacks an address.
- State why the notice is being issued, and identify what part of the code is being violated.
- Include a correction order, and state what repairs need to be made to bring the property back into compliance with the code.
- Allow a reasonable time for compliance. This is subjective. A reasonable time must not only include adequate time to allow owners to make repairs, but must also address the risk to the occupants and the public. As an example, if a portion of a building is collapsing, the owner may be-

lieve that a reasonable time to correct the damage should be several weeks or even months; however, a collapsing wall creates an immediate danger to the public. The code official should require completion of all repairs within a few days or, in extreme cases, in a matter of hours.

- Provide the person responsible for the property with a notice of his or her right to seek modification or withdrawal of the order by appealing to a board of appeals according to Section 111.
- Inform the person responsible for the property of his or her authority to file a lien upon such real estate that any action has been taken pursuant to Section 106.3.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

❖ Proper service of all notices is crucial. Improper or inadequate service may make it impossible to pursue enforcement satisfactorily. Proper service requires one of the following methods:

- Delivery personally to the owner or the responsible person designated by the owner. This is the most effective form of service. Usually, personal service is provided by a personal service company (i.e., a third-party agency), the code official or the sheriff's office in the jurisdiction where the person to be served lives.
- Delivery by certified or registered mail addressed to the owner or the owner's designated agent at the last known address with a return receipt requested. This is a valid method of service, but sometimes it is not reliable. The owner may refuse to accept or ignore the service if he or she knows the jurisdiction plans to send notices. Also, it may take 10 to 14 days before the code official is notified by the post office that service could not be made. If the notice required the owner or owner's agent to correct something in a short time, the time for compliance may pass before the code official is aware the post office has not made the delivery.
- If the certified or registered letter is returned as undelivered, posting a copy in an easy-to-see place in or about the structure will suffice. Since the code official must wait until the post office returns undelivered certified letters before they can be posted, this form of service is very time consuming.

All of the services noted above may be expensive and time consuming. In some communities, the courts

may consider service to be valid if the notice was sent to the last known address of the owner or owner's agent by regular postage and the notice was not returned by the post office. This method of service is obviously much cheaper and usually faster than waiting for the return of a certified letter. It must, however, be acceptable to the court system. The jurisdiction's attorney should be consulted to determine that the type of service is legally acceptable, reasonably cost effective and timely.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4.

❖ This section references Section 106.4, which establishes penalties for violating provisions of the code.

107.5 Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

❖ When a property has a pending violation order, it is unlawful for an owner to sell, transfer, mortgage, lease or otherwise dispose of the property without either following the order or advising the buyer, mortgagee, etc., of the pending violation. The owner must prove that the buyer has received notice of pending violations by providing the code official with a signed, notarized receipt from the new transferee.

Determining who is the current owner of a building is a frustrating and difficult activity. To evade code enforcement action, owners will frequently transfer ownership of their property. This provision of the code permits the code official to cite the seller if he or she did not provide the code official with the required notification when the property was transferred; thus, even though the seller may avoid complying with the outstanding violation orders, he or she can still be charged with a violation for failing to provide proof that the transferee was aware of the pending orders.

SECTION 108 UNSAFE STRUCTURES AND EQUIPMENT

108.1 General. When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

❖ This section provides a brief description of conditions where the code official is given the authority to condemn an existing structure or equipment. Where a structure or equipment is "unlawful," as described in the text of this section, that structure or equipment does not comply with the requirements of the code. The deficiencies are such that an unsafe condition or a condition that is unfit for human occupancy exists.

108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

❖ Any building that endangers life, health, safety or property is unsafe. A building is considered dangerous if it meets one or more of the following conditions:

- It lacks adequate protection from fire;
- It contains unsafe equipment; or
- All or part of the building is likely to collapse.

Only structures with major defects or life-threatening conditions are considered unsafe. Minor defects, such as an inadequate number of electrical outlets or damaged plaster, do not necessarily create an unsafe structure, even though they are violations of the code.

108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

❖ Equipment may become unsafe when it is a hazard to life, health, property or safety.

The judgement of the code official is critical in determining when equipment should be deemed unsafe. If uncertain about appropriate enforcement action, he or she should seek additional expertise and advice and, if necessary, err on the side of safety.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

❖ The following conditions are reasons for declaring a building unfit for occupancy: unsafe; unlawful; lacks maintenance to a serious degree; disrepair; insanitary; vermin or rat infested; contains filth; lacks essential

equipment and its location is hazardous to the occupants or the public.

The list of reasons for declaring a structure unfit requires subjective judgement. Because the consequences of declaring a structure unfit for occupancy are severe, the code official should carefully and thoroughly document all conditions that contributed to that determination.

108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

- ❖ An unlawful structure is one that has serious deficiencies such that an unsafe condition or a condition that is unfit for human occupancy exists. An unlawful structure does not mean one where there are criminal activities.

108.2 Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

- ❖ Code officials are granted the authority to condemn, placard and vacate any building that they determine to be unsafe, unlawful or unfit for occupancy. Also, code officials may remove unsafe equipment from use.

No one is permitted to reoccupy or reuse any building or equipment until the code official has given his or her approval. Unsafe structures, unsafe equipment, buildings that are unfit for human occupancy and unlawful structures are further defined in subsequent sections.

The ability to condemn and vacate structures is a powerful enforcement tool. It protects occupants from danger and prevents owners from collecting income on their properties. Before condemning or vacating structures, the code official should establish a clearly defined list of violations that warrant such actions. Additionally, it is critical to document all of the violations found in each building to be condemned. When practical, photographs should be taken of violations. Should litigation become necessary, photographs provide documents that have a powerful impact.

Open, vacant buildings are an attractive nuisance to children, a potential fire hazard, a harborage for rodents and insects and a potential home for vagrants. Vacant buildings also create a blighting influence within a community.

The code official is authorized to condemn as unfit those buildings that are vacant and open to trespass but not in danger of collapse. When the owner has been ordered to secure an open building but fails to do so,

the code official must secure the structure by contracting with a public or private agent to close up the building.

The costs for closing buildings are to be charged to the property in the form of a lien. Generally, once a lien has been filed against a property, it must be satisfied before the property can be sold. This section authorizes collection by any other legal resource. It also allows collection by additional methods such as small claims judgements, collection agency actions and personal liens. This enhances the chances of cost recovery.

108.3 Notice. Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

- ❖ The condemnation notice is required to be posted at the structure, and the owner or responsible person is to be served notice in accordance with the procedure in Section 107.3, in the form prescribed in Section 107.2. If the notice also includes condemned equipment, the notice must also be placed on that equipment.

108.4 Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard bearing the word “Condemned” and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

- ❖ If the owner fails to comply with the notice, a placard indicating that the structure is condemned as unfit for human occupancy or use should be posted on the property or equipment. This placard should also show the penalty for illegal occupancy of the building or equipment, and for removing the placard.

Immediate enforcement action should be pursued when there is an illegal occupancy of a condemned building or equipment. The credibility of the code enforcement program is dependent upon the public's belief that the code will be adequately enforced.

Any owner or other person responsible for complying with a correction order who has failed to comply, must vacate the property immediately after the time for correction has passed. All occupants should be given reasonable time to find other accommodations.

108.4.1 Placard removal. The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

- ❖ Only the code official is authorized to remove a condemnation placard. The code official is to remove the

placard only when the defect or defects have been corrected as required by the code. Any other person who removes or defaces a placard is in violation of the code and subject to its penalties.

108.5 Prohibited occupancy. Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

❖ It is important that any unsafe structure be vacated to help prevent possible injury to or death of its occupants. The code official has the authority to require a condemned building to be vacated. Anyone who continues to occupy a placarded building or equipment and any owner who permits another to occupy a placarded building or equipment are subject to the penalties provided by the code.

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 which 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 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 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 of any premises upon which is located any structure, which in the code official's judgment is so old, 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 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, to demolish and remove such structure.

❖ This section describes the 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 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.

110.2 Notices and orders. All 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 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.

❖ When 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. When 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 at the

highest price obtainable. 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

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. An aggrieved party may not appeal a code requirement. The intent of the appeal process is not to waive or set aside a code requirement; it is to provide a means of reviewing a code official's decision on an interpretation or application of the code or reviewing the code official's decision to approve or reject the equivalency of protection to the code requirement.

111.2 Membership of board. The board of appeals shall consist of a minimum of 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 have no 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 is new each year. The number of mem-

bers is to be determined by the chief appointing authority.

111.2.1 Alternate members. The chief appointing authority shall appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

- ❖ This section authorizes the chief appointing authority to appoint two alternate members who are to be available if the principal members of the board are absent or disqualified. Alternate members must possess the same qualifications as the principal members.

111.2.2 Chairman. The board shall annually select one of its members to serve as chairman.

- ❖ It is customary to determine chairmanship annually so that a regular opportunity is available to evaluate and either reappoint the current chairman or appoint a new one.

111.2.3 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

- ❖ All members must disqualify themselves regarding any appeal in which they have a personal, professional or financial interest.

111.2.4 Secretary. The chief administrative officer shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

- ❖ The chief administrative officer is to designate a qualified clerk to serve as secretary to the board. The secretary is required to file a detailed record of all proceedings in the office of the chief administrative officer.

111.2.5 Compensation of members. Compensation of members shall be determined by law.

- ❖ Members of the board of appeals are not required to be compensated unless required by the local municipality or jurisdiction.

111.3 Notice of meeting. The board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

- ❖ The board must meet within 20 days of the filing of an appeal or at regularly scheduled meetings. This provides adequate time to coordinate the board members' schedules, and also requires that the board consider the appeal in a timely manner.

111.4 Open hearing. All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected

shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the board membership.

- ❖ All hearings before the board must be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected must be heard.

The quorum of two-thirds of the board is to be present for the board to take any official action.

111.4.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

- ❖ The board is required to establish and make available to the public written procedures detailing how hearings are to be conducted. Additionally, this section provides that, although strict rules of evidence are not applicable, the information presented must be deemed relevant.

111.5 Postponed hearing. When the full board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

- ❖ When all members of the board are not present, either the appellant or the appellant's representative may request a postponement of the hearing. This request may be made even though a quorum is present.

111.6 Board decision. The board shall modify or reverse the decision of the code official only by a concurring vote of a majority of the total number of appointed board members.

- ❖ A concurring vote of a majority of the members present is needed to modify or reverse the decision of the code official.

111.6.1 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

- ❖ A formal decision is required to provide an official record. Copies are to be furnished to both the appellant and the code official. The code official is bound by the action of the board of appeals, unless it is the opinion of him or her that the board of appeals has acted improperly. In such cases, relief through the court having jurisdiction may be sought by corporate counsel.

111.6.2 Administration. The code official shall take immediate action in accordance with the decision of the board.

- ❖ To avoid any undue hindrance in the progress of construction, the code official is required to act without delay based on the board's decision. This action may be to enforce the decision or to seek judicial relief if the board's action can be demonstrated to be inappropriate.

111.7 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

❖ This section allows any person to request a review by the court of jurisdiction with regard to perceived errors of law. Application for such review must be made after the decision of the board is filed with the chief administrative officer. This helps all those concerned to observe due process.

111.8 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

❖ The purpose of this section is to specify that if an appeal is made, the jurisdiction is not to enforce its notice or order until such appeal has been heard by the board of appeals. This does not apply, of course, to imminent danger notices.

Bibliography

The following resource materials are referenced in this chapter or are relevant to the subject matter addressed in this chapter.

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Chapter 2: Definitions

Purpose

Codes, by their very nature, are technical documents. As such, literally every word, term and punctuation mark can add to or change the meaning of the intended result. This is even more so with a performance code where the desired result often takes on more importance than the specific words.

Furthermore, the code, with its broad scope of applicability, includes terms inherent in a variety of construction disciplines. These terms can often have multiple meanings, depending on the context or discipline being used at the time.

For these reasons, it is necessary to maintain a consensus on the specific meaning of terms contained in the code. Chapter 2 performs this function by stating clearly what specific terms mean for the purpose of the code.

General Comments

The words or terms defined in this chapter are deemed to be of prime importance in either specifying the subject matter of code provisions or in giving meaning to certain terms used throughout the code for administrative or enforcement purposes.

Section 201 addresses the practical concerns encountered when interpreting the code in relation to the use of gender, tense and singular versus plural. This section also provides the code official with guidance for finding definitions of those words or terms not defined herein.

Section 202 provides an alphabetical listing of those terms that are commonly used throughout the code and that are required for the effective application of code requirements.

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

❖ In the application of the code, the terms used have the meanings given in Chapter 2.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

❖ While the definitions contained in Chapter 2 are to be taken literally, gender and tense are to be considered interchangeable. This is so that any grammatical inconsistencies within the code text will not hinder the understanding or enforcement of the requirements.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code*, *International Fire Code*, *International Zoning Code*, *International Plumbing Code*, *International Mechanical Code*, *International Existing Building Code* or the *ICC Electrical Code*, such terms shall have the meanings ascribed to them as in those codes.

❖ When a word or term appears in the code and that word or term is not defined in this chapter, other references

may be used to find its definition, such as the *ICC Electrical Code*® (ICC EC™), *International Building Code*® (IBC®), *International Residential Code*® (IRC®), *International Fire Code*® (IFC®), *International Plumbing Code*® (IPC®), *International Mechanical Code*® (IMC®), *International Fuel Gas Code*® (IFGC®), *International Private Sewage Disposal Code*® (IPSDC®), *International Property Maintenance*® (IPMC®), *International Existing Building Code*® (IEBC®), *International Energy Conservation Code*® (IECC®) and *International Zoning Code*® (IZC®). These codes contain additional definitions (some parallel and duplicative) that may be used in the enforcement of either the code or other codes by reference.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

❖ Another resource for defining words or terms not defined herein or in other codes is their "ordinarily accepted meanings." The intent of this statement is that a dictionary definition may suffice, provided that the definition is in context.

Oftentimes, construction terms used throughout the code may not be defined in Chapter 2 or in a dictionary. In such case, one would first turn to the definitions contained in the referenced standards (see Chapter 8) and then to published textbooks on the subject in question.