

INTERNATIONAL PROPERTY MAINTENANCE CODE

PM3-06/07

103.2, 103.3, 103.4

Proposed Change as Submitted:

Proponent: Rebecca Baker, Jefferson County, CO, Chair, ICC Ad Hoc Committee on the Administrative Provisions in the I-Codes (AHC-Admin)

Revise as follows:

SECTION 103 DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION

103.1 General. (No change to current text)

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.~~

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(s) ~~code official, other-related technical officers, inspectors and other employees.~~ Such employees shall have powers as delegated by the code official.

103.4 Liability. The code official, ~~officer~~ member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance 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 or by reason of an act or omission 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.

103.5 Fees. (No change to current text.)

Reason: Consistency and coordination among the I-Codes is one of the cornerstones of the ICC Code Development Process. This holds true for not only the technical code provisions but also for the administrative code provisions as contained in Chapter 1 of all the I-Codes.

In response to concerns raised by the ICC membership since publication of the first editions of the I-Codes, the ICC Board established the Ad Hoc Committee on the Administrative Provisions in the I-Codes (AHC-Admin) to review Chapter 1 administrative provisions in each code in the International Codes family and improve the correlation among the I-Codes through the code development process. In order to ensure that this correlation process will continue in an orderly fashion, it is also anticipated that future code development and maintenance of the administrative provisions of the I-Codes family will be overseen by a single, multi-discipline code development committee.

The AHC-Admin is submitting a series of code change proposals designed to provide consistent and correlated administrative provisions among the I-Codes using existing I-Code texts, as noted. The intent of this correlation effort is not to have absolutely identical text in each of the I-Codes but, rather, text that has the same intent in accomplishing the administrative tasks among the I-Codes. While some proposed text may be "new" because it was judged by the AHC to be necessary to this particular code, it is not new to the I-Code family, since it already exists in one or more of the International Codes. Unless otherwise noted, there are no technical changes being proposed to these sections. A comparative matrix of current I-Codes Chapter 1 text may be found on the ICC website at www.iccsafe.org/cs/cc/admin/index.html.

This proposal focuses on the department of inspection. A section-by-section discussion follows:

103.2: The purpose of this change is to correlate with current Section 103.2 of the *International Building Code*, *International Residential Code* and *International Existing Building Code*, and Section 301.2 of the *ICC Electrical Code*---*Administrative Provisions*.

The AHC felt that text relating to the removal of the code official should be deleted because it is a local personnel procedural matter that is outside the scope of the code. Removal from office is not usually associated with an administrative code chapter, but is more frequently found in state statute, a union contract or civil service law.

A similar correlating proposal has also been submitted to the *International Fire Code*, *International Mechanical Code*, *International Plumbing Code*, *International Wildland-Urban Interface Code* and *International Private Sewage Disposal Code*.

103.3: The purpose of this proposed change is to provide correlation with Section 103.3 of the *International Building Code*, *International Residential Code* and *International Existing Building Code*, and Section 301.3 of the *ICC Electrical Code---Administrative Provisions*.

The new text provides the code official with an important administrative tool in assigning personnel to assist with the administration and enforcement of the code within the department.

A similar correlating proposal has also been submitted to the *International Fire Code*, *International Mechanical Code*, *International Plumbing Code*, *International Wildland-Urban Interface Code* and *International Private Sewage Disposal Code*.

103.4: The purpose of this proposed change is to provide correlation with Section 104.8 of the *International Building Code*, *International Residential Code*, *International Existing Building Code*, the texts of which the AHC felt provide a more logical presentation of the provision. It will also afford important protection to members of the appeals board who typically serve voluntarily and might not personally have the liability protection afforded by the revised text.

A similar correlating proposal has been submitted to the *International Fire Code*, *International Mechanical Code*, *International Plumbing Code*, *International Wildland-Urban Interface Code* and *International Private Sewage Disposal Code*.

Cost Impact: The code change proposal will not increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: To be consistent with other code committee actions and at the request of the proponent this code change was disapproved so as not to provide further inconsistencies between the administrative provisions of the I-codes.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

Rebecca Baker, Chair, ICC Ad Hoc Committee on the Administrative Provisions in the I-Codes, requests Approval as Submitted.

Commenter's Reason: The ICC Ad-Hoc Committee on the Administrative Provisions in the I-Codes (AHC-Admin) was tasked with reviewing Chapter 1 administrative provisions in each of the I-Codes and attempting to correlate applicable provisions through the code development process.

This change was proposed by the AHC-Admin to correlate the IPMC with Sections 103.2, 103.3 and 104.8 of the IBC, IRC and IEBC. Specifically, the language in 103.2 was struck because the committee felt that removal of the code official is an administrative personnel matter and, therefore, does not belong in the code. Section 103.3 spells out that employees shall have powers as delegated by the code official, thus enhancing the code official's ability to efficiently manage the department.

Importantly, the changes to Section 103.4 would include the board of appeals members along with the code official and department employees that are protected from personal liability in the discharge of their duties for those actions performed in accordance with the code in a reasonable and lawful manner. In most jurisdictions, the board of appeals members are citizen volunteers and should be protected from liability exposure. Without such protection, it would be difficult to attract volunteers to serve on the board of appeals.

The AHC-Admin requests that the committee action be overturned and that PM3-06/07 be approved as submitted so that this important and reasonable protection will be provided for volunteer members of the board of appeals and the IPMC will be correlated with Sections 103.2, 103.3 and 104.8 of the IBC, IRC and IEBC. Approval as submitted would also provide correlation with the IMC since an identical code change proposal was approved as submitted by that committee.

Final Action: AS AM AMPC____ D

PM9-06/07

103.4, 104.7, 105.1, 106.3, 107.1, 107.2, 107.4 (new), 107.5, 108.1.1, 108.1.4, 108.2, 108.2.1 (new), 108.3, 108.4, 109.6, 110.1, 110.3, Appendix A (new)

Proposed Change as Submitted:

Proponent: Wayne R. Jewell, City of Southfield, Michigan, representing Hazard Abatement in Existing Buildings Committee

1. Revise as follows:

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 or member of the board of appeals because of an act performed by that officer or employee or member of the board of appeals 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 employee or member of the board of appeals 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 or employee or member of the board of appeals 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.

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, or the period for retention of public records, unless otherwise provided for by other regulations.

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 and served upon the owner of the building.

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 or civil infraction as determined by the local municipality, 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.

If the order of demolition is not complied with, the code official shall institute the proceedings prescribed in this code to cause the building to be demolished.

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.

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 or order 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 at their address as it appears on the last equalized assessment roll of the jurisdiction. Additionally, a copy shall be served on each of the following or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. Notices Orders for condemnation procedures shall also comply with Section 108.3.

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.~~ Include an address and legal description of the real estate sufficient for identification of the premises upon which the building is located.
3. ~~Include a statement of the violation or violations and why the notice is being issued.~~ Include a statement of the violation or violations found to render the building or portion thereof dangerous, including citations to provisions of the code and why the notice or order 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. A statement of the action required to be taken as determined by the building official.~~
 - 4.1. If the building official has determined that the building or structure must be repaired. The notice shall provide identification of what permits are required for corrective work. Work, including the preparation of construction documents or physical repair, shall commence and be completed within such time as the building official shall determine as reasonable under all of the circumstances.
 - 4.2. If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure be vacated within a time certain from the date of the

order as determined by the building official to be reasonable. The order to vacate shall further include a listing of the dangerous conditions and citations of sections of the code, that were the basis of rendering such a determination.

- 4.3. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable but not to exceed 60 days from the date of the order; that all required permits be secured therefore within 60 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.
- 4.4. As an alternate to demolition of the structure, the owner of the property shall be advised of the option of boarding up the building in an approved manner. This will allow the property owner to maintain ownership of the property and avoid immediate demolition proceedings. The purpose of this provision is to ensure the safety of the public and to allow the property to be held for future repair and development.
5. ~~Inform the property owner of the right to appeal.~~ Inform the property owner of the right to appeal, provide a copy of the appeal form, provide the rules for appeals and advise the time limit to appeal. The property owner must also be advised that if an appeal is not initiated within the time limit, the right to appeal the decision is forfeited.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

2. Add new text as follows (renumber subsequent sections):

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

~~107.4~~ **107.5 Penalties** (No change to current text)

3. Revise as follows:

107.6 ~~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, without notifying the purchaser and or the mortgage company of the details of the condemnation notice and order. The owner of record shall be responsible for correcting all deficiencies in the notice and order, or appealing the notice and order. The code official shall be advised of any transfer of property, while the subject property is under abatement proceedings.~~

108.1.1 Unsafe structures. An unsafe structure or portion thereof is one that is found to be dangerous based on the provisions of this code 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.

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 the provisions of the International Building code, International Residential, previously adopted code or law.

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, in accordance with Section 108.2.1, 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.

4. Add new text as follows:

108.2.1 Boarding standard. When the building official causes a premises to be closed or secured, it is intended to be a temporary safeguard preventing access to the premises or structure or from being a nuisance. All doors or windows shall be covered with solid materials that are fastened or connected to prevent the free access to the structure by persons. To consider the structure or premises closed, secure and not readily accessible all openings shall be boarded or secured in an approved manner.

5. Revise as follows:

108.3 Notice. Whenever the code official has condemned a structure or equipment under the provisions of this section, ~~notice~~ an order shall be posted in a conspicuous place in or about the structure affected by such ~~notice~~ an order 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~~ order pertains to equipment, it shall also be placed on the condemned equipment. The ~~notice~~ order shall be in the form prescribed in Section 107.2.

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~~ cause to be posted 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.~~ The placard shall be dated and signed by the code official and shall include a brief concise statement of the reason(s) for the condemnation and penalties provided for occupying the premises, operating the equipment or removing the placard.

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

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 after review is so ~~old~~, deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to board up and hold for future repair or 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~~ When such a structure is capable of being made safe by repairs, it is the owner's option to repair and make safe and sanitary, board up and secure for future repair, or to demolish and remove. Where there has been a cessation of normal construction of any structure for a period of more than two years, the code official shall order the owner to demolish and remove such structure, or board up for future repair.

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 the materials, rubble, foundations and debris removed and the lot cleared. ~~such demolition work shall be completed~~ 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.

6. Add new Appendix A after last chapter as follows:

APPENDIX A
BOARDING STANDARD

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance

A101 GENERAL

A101.1 General. All windows and doors shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102 MATERIALS

A102.1 Boarding sheet material. Boarding sheet material shall be minimum ½-inch thick wood structural panels complying with the *International Building Code*.

A102.2 Boarding framing material. Boarding framing material shall be minimum nominal 2-inch by 4-inch solid sawn lumber complying with the *International Building Code*.

A102.3 Boarding fasteners. Boarding fasteners shall be minimum 3/8-inch diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *International Building Code*.

A103 INSTALLATION

A103.1 Boarding sheet material. The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.2 Windows. The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The boarding framing material shall be cut minimum 2 inches wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the top and below the bottom of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.3 Door walls. The door opening shall be framed with boarding framing material secured at the entire perimeter and at not more than 24 inches on center horizontally. Blocking shall also be secured at not more than 48 inches on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches on center.

A103.4 Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner

Reason: The ICC Board approved the development of a new code with the scope including a compilation of current provisions in the I-Codes which address hazards such as those from fire as well as the development of new requirements relative to issues such as hazardous conditions due to structural issues. This would provide a single source code book for all disciplines to be used by building owners to bring their existing building stock up to minimum standards and enforcing agencies when performing inspections of existing buildings. The Hazard Abatement of Existing Buildings Committee (HAEB) was formed to develop this code.

During this 06/07 cycle, the committee is proposing multiple unsafe conditions requirements for inclusion within the text of the existing International Codes, predominately the *International Property Maintenance Code* and the *International Fire Code*. These requirements will later be extracted from these International Codes and placed into a new International Code dealing primarily with unsafe conditions and the abatement thereof. It is intended that the maintenance of these provisions remain with the committee of origin. The draft of this new International Code is currently scheduled to be put through the 07/08 code change process for both public proposals and public comments. The first edition of this new code is currently scheduled for 2009.

Several proposals will be coming from the HAEB Committee to address changes in the administrative and technical provisions of certain I Codes. Some of those changes will be made to what has historically been identical language for all of the I Codes. This is being done purposefully to address the needs of dealing with the administrative provisions and appeals processes based on addressing hazards in buildings that are already occupied. The I codes that have administrative provisions that directly relate to construction are not being changed, they are appropriate for dealing with issues related to a building under construction. Dealing with occupied buildings is different, addressing a violation notice or order from the Building Official doesn't mean an interruption of a construction schedule, it could mean the interruption of business and the have large economic consequences along with the exposure of occupants to a hazard. We are attempting to create a change of process to more appropriately handle these issues of occupied buildings and the varying level of technical expertise of those persons that may initially be involved in responding to an administrative action and/or an appeal of such administrative action. We have attempted to outline actions to be a more definitive series of actions and steps to protect the due process rights of handling issues related to safe occupancy and a level of hazard that may be present within a building. Actions exercised under these provisions could cause the disruption of on going business by need to vacate a building or portion thereof or actions that could result in the demolition of real property.

This proposal focuses on the necessary changes to existing or the addition of new text to provide an administrative procedure that provides for adequate notice to all parties of interest in a building. This basic foundation of notice and process will demonstrate recognition of a building owner's due process rights while still dealing directly with hazardous conditions that may exist in an occupied or vacant building.

A section-by-section discussion follows:

103.4: Member of the Board of Appeals was added to this section because the members of an appeals board need to be protected from suit for decisions that they make in response to the conditions found in a building or structure. The need to have protection from threat of retaliation by a building owner to protect the safety and lives of persons occupying a building or the ordering of the removal of a building that is in such disrepair or dangerous condition that demolition is necessary.

104.7: The option of record retention to be the established period for retention of public records was added because actions that are taken to remove the building or a portion thereof are still required to be retained for a time period established by each state. A department should not be permitted to destroy records related to such actions immediately because the building has now been demolished....

105.1: The details of a modification should be served to the owner of the building because such action is keeping with good due process and notice of action regarding a building.

106.3: This section has been modified to clarify that the code official is permitted to begin proceedings for the demolition of a structure if an order for demolition has not been complied with. This reinforces the intent of the code with respect to orders of demolition.

107.1: The required distribution of the notice or order of violation has been expanded to include each person on the last assessment roll, the mortgage holder or deed of trust, the holder of lease of record, and the holder of any estate or other legal interest in the building or land because more persons have interest in a building or structure than an owner. Actions taken can impact their financial standing or interest in the property and they have right to know of such actions to protect that interest.

107.2: The requirements for the form of notice have been revised to provide a complete notice of property identification, complete list of violations found and the actions necessary to remedy the violations and provide notice that an appeals process is available if they so desire to use it. This establishes that the owner did receive a complete notice of and will protect the enforcing agency from a lack of clarity on notice or the extent of violations or the need for action on the part of the owner.

107.4: The requirements for proof of service have been added because it will be necessary at times to confirm either in court or in an appeal hearing that notices have been served and either received or refused by owners or parties of interest

107.5: The revisions to the transfer of ownership limitations are necessary because the prior language was restrictive as it would only allow sale, transfer, lease, mortgage or otherwise dispose of a building without having the grantee, mortgagee, lessee or transferee acknowledge receipt of the notice and comply without condition to making the corrections or repairs. This eliminates the right of a new owner to appeal a violation.

108.1.1: This section has been revised to clarify that an unsafe condition can include a portion of a structure.

108.1.4: This section has been expanded to further clarify that the building code, whether it is the IBC, IRC or previously adopted code, is also to be considered when determining if a structure is unlawful.

108.2: Revised only to refer to 108.2.1 for boarding requirements.

108.2.1: This new section provides a means that the boarding caused by a community is of a temporary safeguard to prevent access to the structure. Temporary safeguards caused by a community are not to be considered reason to stop proceeding because the building or structure is in a dangerous or unsafe condition. The language further explains that to consider a building or structure closed, secure from access it must be boarded in an approved manner.

108.3: Order is a more appropriate term than notice because it is declaring a specific action "condemnation" regarding the physical condition of a structure or equipment.

108.4: The placard should contain a date, signed by the code official and should contain the reasons for the condemnation because this is the public with notice of the hazard related to the current condition of the structure or equipment. Even a trespasser has right to notice of a hazardous condition.

109.6: The time limitation for scheduling a hearing is proposed in a related proposal by this committee to Section 111. This section has been revised to coordinate with that proposal.

110.1: This section has been revised to allow an owner to board and secure a structure for future repair.

110.3: This section has been expanded to require rubble, foundations, debris to be removed and the lot cleared when demolition of a structure has been ordered. This will allow a jurisdiction to charge these costs against the real estate and have a site left in a condition more suitable for redevelopment.

Appendix A Boarding Standard: Appendix A provides minimum specifications for boarding a structure. This can be utilized by a jurisdiction as a set of minimum requirements in order to result in consistent boarding quality. Also provide a reasonable means to eliminate having to approve numerous methods or materials for the boarding and securing of a structure.

Cost Impact: The code change proposal will not increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: The attempts made at refining the notice and service provisions create the potential for greater differences between this code and jurisdictions that have their own notice and service provisions. Therefore the existing language is preferred. Further, Item 4.4 in Section 107.2 seems to allow an unsafe building to be boarded up by the owner indefinitely, which does not seem to be in line with the intent of the IPMC.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because public comments were submitted.

Public Comment 1:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee requests Approval as Modified by this public comment.

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 or order 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 at their address as it appears on the jurisdictions most recent record of ownership, last equalized assessment roll of the jurisdiction. Additionally, a copy shall be served on each of the following or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. Notices Orders, for condemnation procedures shall also comply with Section 108.3.

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 an address and legal description of the real estate sufficient for identification of the premises upon which the building is located.
3. Include a statement of the violation or violations found to render the building or portion thereof dangerous, including citations to provisions of the code and why the notice or order is being issued.
4. A statement of the action required to be taken as determined by the building official.

- 4.1. If the building official has determined that the building or structure must be repaired. The notice shall provide identification of what permits are required for corrective work. Work, including the preparation of construction documents or physical repair, shall commence and be completed within such time as the building official shall determine as reasonable under all of the circumstances.
- 4.2. If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure be vacated within a time certain from the date of the order as determined by the building official to be reasonable. The order to vacate shall further include a listing of the dangerous conditions and citations of sections of the code, that were the basis of rendering such a determination.
- 4.3. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable but not to exceed 60 days from the date of the order; that all required permits be secured therefore within 60 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.
- 4.4. ~~As an alternate to demolition of the structure, the owner of the property shall be advised of the option of boarding up the building in an approved manner. This will allow the property owner to maintain ownership of the property and avoid immediate demolition proceedings. The purpose of this provision is to ensure the safety of the public and to allow the property to be held for future repair and development. If the building official determines that the building does not present a hazard to the public, the owner shall be permitted to securely board the building against entry and maintain it in safe and sound condition. Securing the building for future redevelopment in this manner shall not extend beyond one year, unless approved by the building official.~~
5. Inform the property owner of the right to appeal, provide a copy of the appeal form, provide the rules for appeals and advise the time limit to appeal. The property owner must also be advised that if an appeal is not initiated within the time limit, the right to appeal the decision is forfeited.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

107.6 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, without notifying the purchaser and or the mortgage company of the details of the condemnation notice and or order. The owner of record shall be responsible for correcting all deficiencies in the notice and or order, or appealing the notice and or order. The code official shall be advised of any transfer of property, while the subject property is under abatement proceedings.

Add 2 figures to Appendix A as follows:

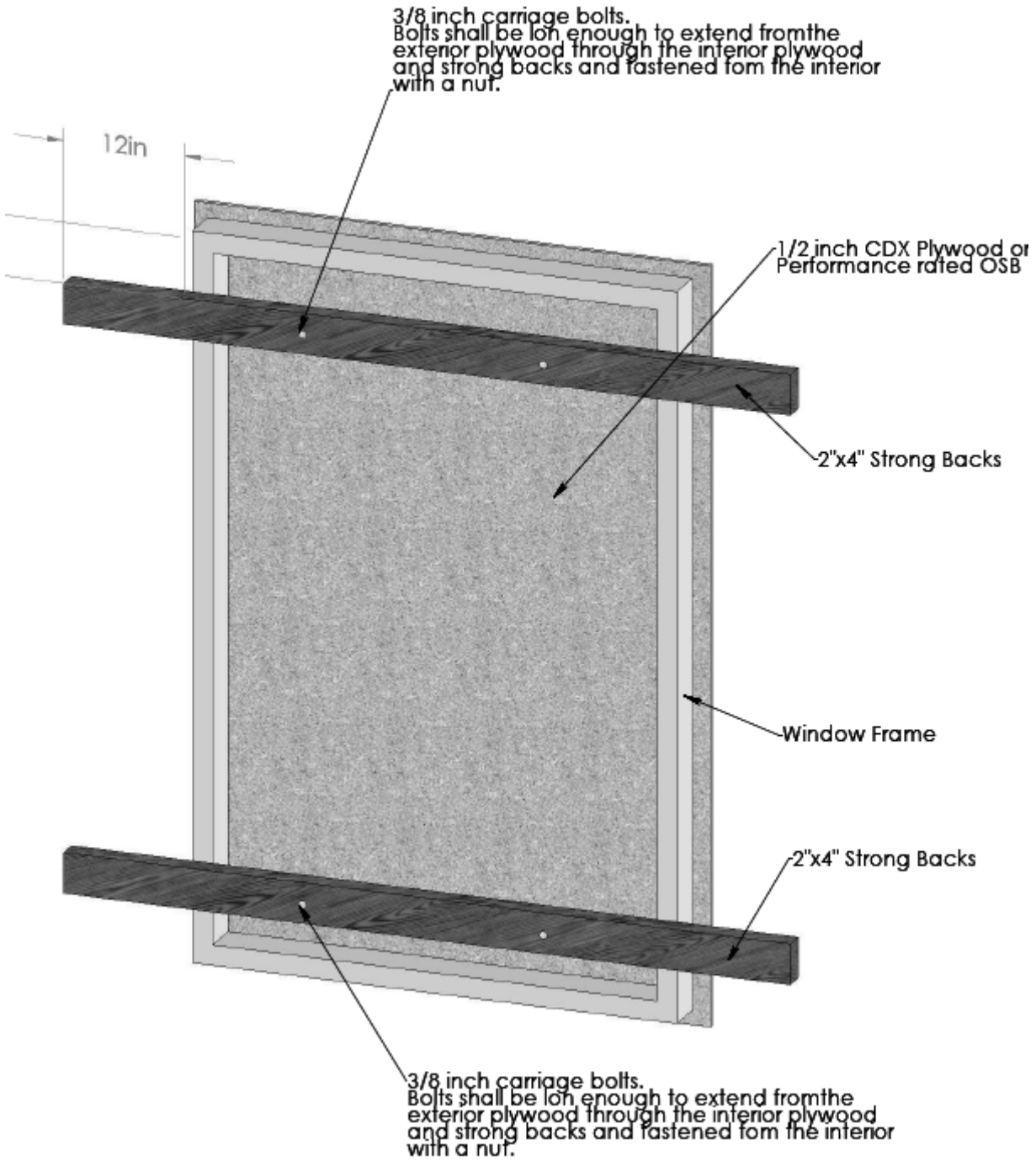
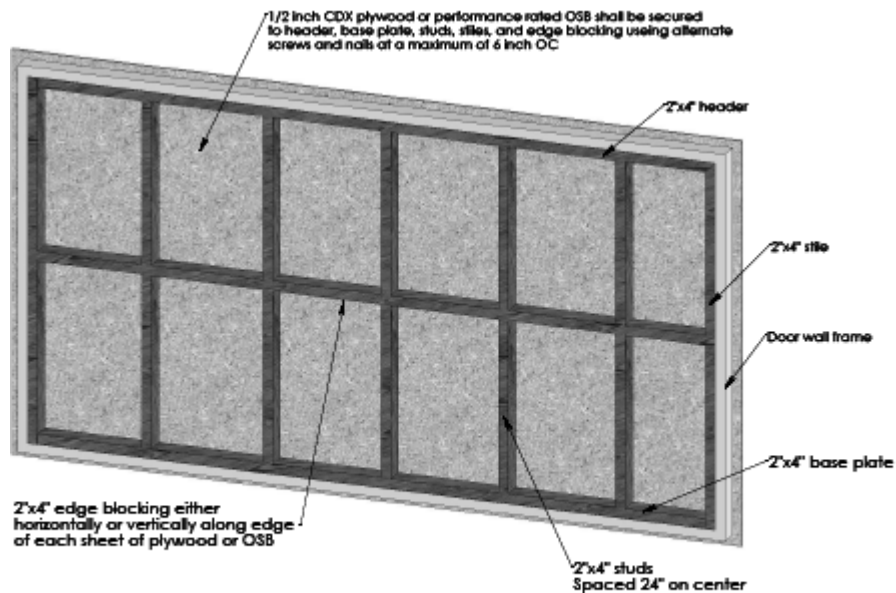


FIGURE A103.2
BOARDING OF WINDOWS AND DOORS



**FIGURE A103.3
BOARDING OF DOOR WALLS**

(Portions of proposal not shown remain unchanged)

Commenter's Reason: The sentences proposed to be deleted from section 107.1 address the committee concerns by reducing the potential burden on the code official, and relieving the potential for conflict between the code and local provisions for notice and service.

The committee indicated that the original proposal allowed an unsafe building to be boarded up for an indefinite period of time. The proposed modification to section 107.2, item 4.4 would allow vacant buildings to be secured against entry, provided that they do not pose a hazard to the public. This will permit them to be stockpiled for eventual reuse, and can be used to retain historic resources. Historic buildings retained in this manner have often become valuable to the redevelopment of neighborhoods and entire districts in older cities. Further, a limit of one year has been placed on a boarded building, unless approved by the code official.

For substantiation on the proposed boarding appendix please see the reason statement for the original proposal.

The two added Figures (A103.2 and A103.3) clearly illustrate the boarding requirements and will aid in both compliance enforcement.

Public Comment 2:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee requests Approval as Modified by this public comment.

Modify proposal as follows:

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 or order 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 at their address as it appears on the jurisdictions most recent record of ownership, last equalized assessment roll of the jurisdiction. ~~Additionally, a copy shall be served on each of the following or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. Notices Orders. for condemnation procedures shall also comply with Section 108.3.~~

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 an address and legal description of the real estate sufficient for identification of the premises upon which the building is located.
3. Include a statement of the violation or violations found to render the building or portion thereof dangerous, including citations to provisions of the code and why the notice or order is being issued.
4. A statement of the action required to be taken as determined by the building official.
 - 4.1. If the building official has determined that the building or structure must be repaired. The notice shall provide identification of what permits are required for corrective work. Work, including the preparation of construction documents or physical repair, shall commence and be completed within such time as the building official shall determine as reasonable under all of the circumstances.
 - 4.2. If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure be vacated within a time certain from the date of the order as determined by the building official to be reasonable. The order to vacate shall further include a listing of the dangerous conditions and citations of sections of the code, that were the basis of rendering such a determination.

- 4.3. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable but not to exceed 60 days from the date of the order; that all required permits be secured therefore within 60 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.
- 4.4. ~~As an alternate to demolition of the structure, the owner of the property shall be advised of the option of boarding up the building in an approved manner. This will allow the property owner to maintain ownership of the property and avoid immediate demolition proceedings. The purpose of this provision is to ensure the safety of the public and to allow the property to be held for future repair and development. If the building official determines that the building does not present a hazard to the public, the owner shall be permitted to securely board the building against entry and maintain it in safe and sound condition. Securing the building for future redevelopment in this manner shall not extend beyond one year, unless approved by the building official.~~
5. Inform the property owner of the right to appeal, provide a copy of the appeal form, provide the rules for appeals and advise the time limit to appeal. The property owner must also be advised that if an appeal is not initiated within the time limit, the right to appeal the decision is forfeited.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

107.6 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, without notifying the purchaser and or the mortgage company of the details of the condemnation notice and or order. The owner of record shall be responsible for correcting all deficiencies in the notice and or order, or appealing the notice and or order. The code official shall be advised of any transfer of property, while the subject property is under abatement proceedings.

APPENDIX A BOARDING STANDARD

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance

A101-GENERAL

A101.1 General. All windows and doors shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102-MATERIALS

A102.1 Boarding sheet material. Boarding sheet material shall be minimum 1/2 inch thick wood structural panels complying with the *International Building Code*.

A102.2 Boarding framing material. Boarding framing material shall be minimum nominal 2 inch by 4 inch solid sawn lumber complying with the *International Building Code*.

A102.3 Boarding fasteners. Boarding fasteners shall be minimum 3/8 inch diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *International Building Code*.

A103-INSTALLATION

A103.1 Boarding sheet material. The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.2 Windows. The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The boarding framing material shall be cut minimum 2 inches wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the top and below the bottom of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.3 Door walls. The door opening shall be framed with boarding framing material secured at the entire perimeter and at not more than 24 inches on center horizontally. Blocking shall also be secured at not more than 48 inches on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches on center.

A103.4 Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.

(Portions of proposal not shown remain unchanged)

Commenter's Reason: The sentences proposed to be deleted from section 107.1 address the committee concerns by reducing the potential burden on the code official, and relieving the potential for conflict between the code and local provisions for notice and service.

The committee indicated that the original proposal allowed an unsafe building to be boarded up for an indefinite period of time. The proposed modification to section 107.2, item 4.4 would allow vacant buildings to be secured against entry, provided that they do not pose a hazard to the public. This will permit them to be stockpiled for eventual reuse, and can be used to retain historic resources. Historic buildings retained in this manner have often become valuable to the redevelopment of neighborhoods and entire districts in older cities. Further, a limit of one year has been placed on a boarded building, unless approved by the code official.

This modification also eliminates the boarding appendix.

Public Comment 3:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee requests Approval as Modified by this public comment.

Replace proposal with the following:

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

APPENDIX A BOARDING STANDARD

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance

A101 GENERAL

A101.1 General. All windows and doors shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102 MATERIALS

A102.1 Boarding sheet material. Boarding sheet material shall be minimum ½-inch thick wood structural panels complying with the *International Building Code*.

A102.2 Boarding framing material. Boarding framing material shall be minimum nominal 2-inch by 4-inch solid sawn lumber complying with the *International Building Code*.

A102.3 Boarding fasteners. Boarding fasteners shall be minimum 3/8-inch diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *International Building Code*.

A103 INSTALLATION

A103.1 Boarding sheet material. The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.2 Windows. The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The boarding framing material shall be cut minimum 2 inches wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the top and below the bottom of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.3 Door walls. The door opening shall be framed with boarding framing material secured at the entire perimeter and at not more than 24 inches on center horizontally. Blocking shall also be secured at not more than 48 inches on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches on center.

A103.4 Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.

Add 2 Figures to Appendix A as follows:

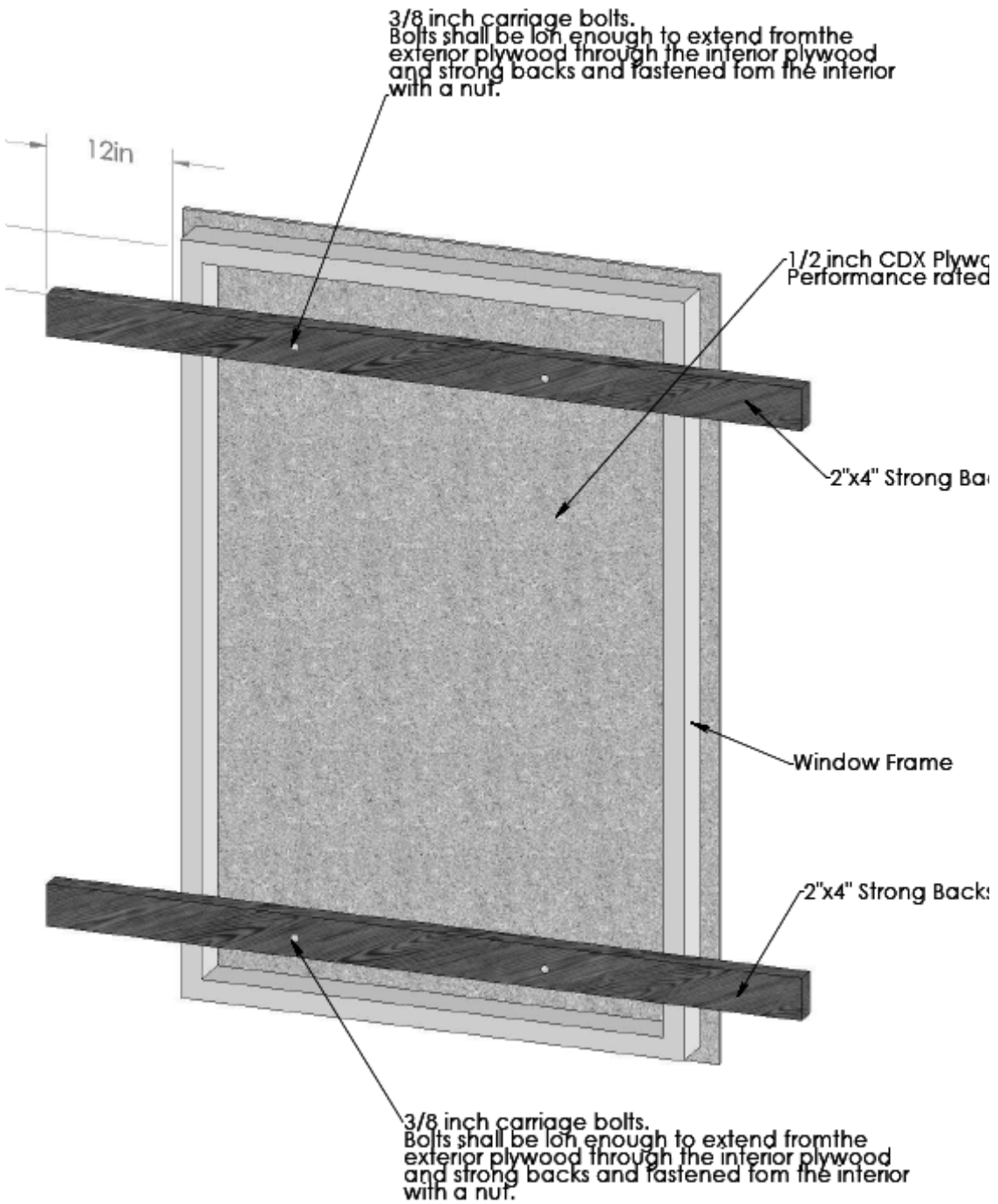
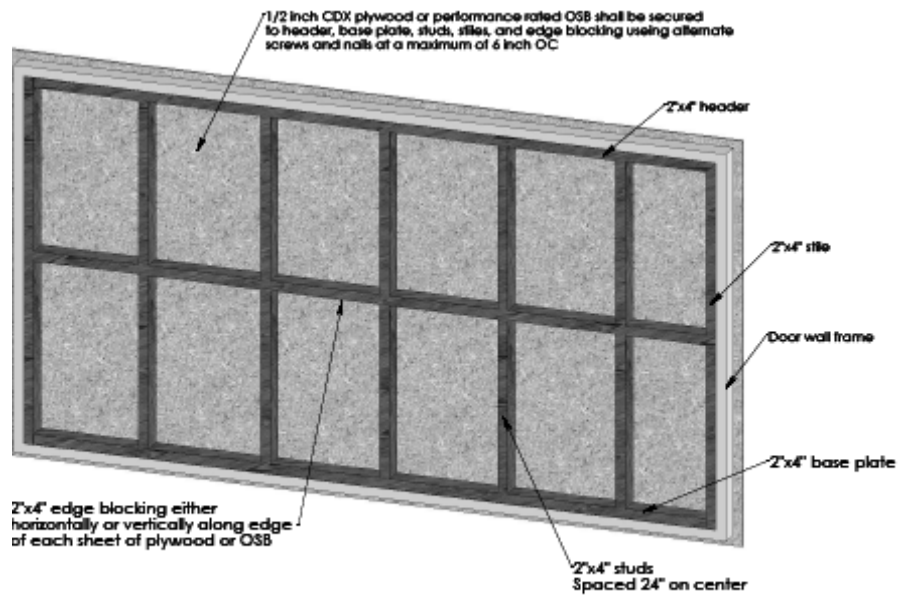


FIGURE A103.2
BOARDING OF WINDOWS AND DOORS



**FIGURE A103.3
BOARDING OF DOOR WALLS**

Commenter's Reason: This modification retains only the boarding options contained in Section 110.1 and the boarding appendix from the original proposal. This addresses the committee's form and notice concerns but still allows for boarding as an option to demolition. The two added Figures (A103.2 and A103.3) clearly illustrate the boarding requirements and will aid in both compliance enforcement.

PM11-06/07

111, 111.1, 111.2, 111.2.2 (new), 111.3, 111.4, 111.4.1, 111.8, Appendix B (new), Appendix C (New)

Proposed Change as Submitted:

Proponent: Wayne R. Jewell, City of Southfield, Michigan, representing Hazard Abatement in Existing Buildings Committee

1. Revise as follows:

SECTION 111 MEANS OF APPEAL

111.1 Application for appeal. Any person directly affected by 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. The application for appeal shall be filed on the application provided by the jurisdiction, and returned to the code official within the period approved by the jurisdiction, after the notice was served. Within a jurisdiction that does not have a standard period for appeal, a limit of 30 days shall apply.~~ An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under 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.

The application for appeal shall include a brief statement of the relief sought and the reasons why it is claimed that the order or action be reversed, modified or otherwise set aside. Any applicable information relating to this application shall also be specified in the appeal.

111.2 Membership of board. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be created a board of appeals. The board of appeals shall consist of a minimum of ~~three~~ five 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 board of appeals shall consist of one design professional registered in the practice of engineering, one design professional registered in the practice of architecture, one fire protection engineering professional, two general contractors and others as determined by 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 board of appeals shall be appointed by the governing body for a staggered 3 year term. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the code official. Appeals to the board shall be processed in accordance with the provisions contained in Section 111.6 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the code official, who shall make them accessible to the public.

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.

111.2.2 Chairman. The board shall annually select one of its members to serve as chairman. The chairman of the board of appeals shall be a professional engineer, architect, fire protection professional or other design professional registered within the jurisdiction and be elected by the board.

111.2.3 Disqualification of member. A member shall not hear an appeal in which that member has 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.

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

~~**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.~~

111.3 Processing of appeal. Upon receipt of any appeal filed pursuant to this section, the code official shall present it no later than 10 days to the board of appeals.

111.4 Scheduling and noticing appeal for hearing. As soon as practicable after receiving the written appeal, the board of appeals shall fix a date, time and place for the hearing of the appeal by the board. Such date shall not be less than 10 days nor more than 60 days from the date the appeal is filed with the code official. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the board either by having a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addresses to the appellant at the address shown on the appeal.

111.5 Effect of failure to appeal. Failure of any person to file an appeal in accordance with the provisions of Section 111.3 shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

~~**111.4**~~ **111.6 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. Only those matters specifically raised by the appellant shall be considered in the hearing of the appeal.

~~**111.4.1**~~ **111.6.1 Procedure for conduct of hearing appeals.** 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. All rules shall be provided to appellant in advance of the hearing date.

~~**111.5**~~ **111.7 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.

411.6 111.8 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.

411.6.4 111.8.1 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.

411.6.2 111.8.2 Administration. The code official shall take immediate action in accordance with the decision of the board.

411.7 111.9 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.

411.8 111.10 Stays of enforcement order under appeal. Except for vacation orders made pursuant to Section 107.2, 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 during the pendency of an appeal therefrom which is properly and timely filed..

2. Add new text as follows: (Underline not shown on Appendix B for clarity)

**APPENDIX B
APPEAL APPLICATION FORM**

Appellant Information:

Name: _____

Address: _____

Telephone Number: _____

Email Address: _____

Property Owner Information:

Name: _____

Address: _____

Telephone Number: _____

Email Address: _____

Order Under Appeal:

Date of Order: _____

Description of Order: _____

Received from Jurisdiction: _____

Building Official: _____

Property Detailed in APPEAL:

Name of Jurisdiction: _____

Property I.D. Number: _____

Legal Description: _____

Legal Address of Property: _____

Type of APPEAL:

- Order for Demolition:
- Order to Vacate Building:
- Order to Repair Building:

Occupancy Classification: (check the most appropriate)

Residential:

- Detached one- and two-family dwellings or multiple single-family dwellings (townhouses), not more than three stories in height with a separate means of egress and their accessory structures

- Group R-1 (transient)
Boarding House
Hotel
Motel
- Group R-2 (non-transient)
Boarding House
Apartment House
Convent
Dormitory
Monastery

- Group R-3
One or two family dwelling more than three stories in height
Child Care for five or fewer persons for less than 24 hours
Adult Day Care for five or fewer persons for less than 24 hours

- Group R-4
Assisted living facilities with more than 5 but less than 16 occupants

Non-Residential:

- Group A – places of public assembly
- Group E – Education through 12th grade
- Group H – High-Hazard
Explosives
Flammable and Combustible materials
Deflagration hazards
Health hazards
- Group M – Mercantile
- Group U – Utility
- Group B – Business
- Group F – Factory
- Group I – Institutional
Hospitals
Group homes
Assisted living facilities
Correctional facilities
- Group S – Storage

Reason for Appeal: (attach additional sheets if required)

Explain relief sought, why it is claimed that the protested order or action should be reversed, modified or otherwise set aside.

SECTION C102
NOTICE

C102.1 Form of notice of hearing. The notice to the appellant shall be substantially in the following form, but shall be permitted to include other additional information.

You are hereby notified that a hearing will be held before the board of appeals, or hearing examiner on a specific date, time and location. You shall be permitted to be present at the hearing. You shall be permitted to be, but need not be, represented by counsel. You shall be permitted to present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You shall be permitted to request the issuance of subpoenas to compel the attendance of witnesses and the production of records, documents, engineering or inspection reports or other information by filing an affidavit therefore with the board of appeals or hearing examiner.

SECTION C103
SUBPOENAS

C103.1 Filing an affidavit. The board of examiners shall obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witnesses; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

C103.2 Cases referred to examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

C103.3 Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

SECTION C104
CONDUCT OF HEARING

C104.1 Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

C104.2 Oral evidence. Oral evidence shall be taken only on oath or affirmation.

C104.3 Hearsay evidence. Hearsay evidence shall be permitted for the purpose of supplementing or examining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

C104.4 Admissibility of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which makes improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

C104.5 Exclusion of evidence. Irrelevant and unduly repetitious evidence shall be excluded.

C104.6 Rights of parties. Each party shall have these rights, among others:

- (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) To introduce documentary and physical evidence;
- (3) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
- (4) To impeach any witness regardless of which party first called the witness to testify;
- (5) To rebut the evidence;
- (6) To be represented by anyone who is lawfully permitted to do so; and
- (7) The agenda shall provide adequate time for introduction of evidence and the cross-examination of witnesses. If the allocated time is inadequate, a new hearing shall be scheduled at a later date.

C104.7 Official Notice

C104.7.1 Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of the this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

C104.7.2 Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C104.7.3 Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or by oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

C104.7.4 Inspection of the premises. The board or the hearing examiner shall be permitted to inspect any building or premises involved in the appeal during the course of the hearing, provided that; notice of such inspection shall be given to the parties before the inspection is made, the parties shall be given an opportunity to be present during the inspection, and the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

SECTION C105 METHOD AND FORM OF DECISION

C105.1 Hearing before board itself. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote or take part in the decision.

C105.1 Hearing before examiner. If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time, not to exceed 90 days from the date the hearing is closed, submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it shall be adopted by the board if that is the decision of the board in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

C105.3 Consideration of report by board. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not fewer than 5 days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

C105.4 Exceptions to report. Not later than two days before the date set to consider the report, any party shall be permitted to file written exceptions to any part or all of the examiner's report and shall be permitted to attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party shall be permitted to present oral argument to the board.

C105.5 Disposition by the board. The board shall adopt or reject the proposed decision in its entirety, or shall be permitted to modify the proposed decision.

C105.6 Proposed decision not adopted. If the proposed decision is not adopted as provided in Section C105.5, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in Section C105.2 hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

C105.7 Form of decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

C105.8 Effective date of decision. The effective date of the decision shall be stated therein.

Reason: The ICC Board approved the development of a new code with the scope including a compilation of current provisions in the I-Codes which address hazards such as those from fire as well as the development of new requirements relative to issues such as hazardous conditions due to structural issues. This would provide a single source code book for all disciplines to be used by building

owners to bring their existing building stock up to minimum standards and enforcing agencies when performing inspections of existing buildings. The Hazard Abatement of Existing Buildings Committee (HAEB) was formed to develop this code.

During this 06/07 cycle, the committee is proposing multiple unsafe conditions requirements for inclusion within the text of the existing International Codes, predominately the *International Property Maintenance Code* and the *International Fire Code*. These requirements will later be extracted from these International Codes and placed into a new International Code dealing primarily with unsafe conditions and the abatement thereof. It is intended that the maintenance of these provisions remain with the committee of origin. The draft of this new International Code is currently scheduled to be put through the 07/08 code change process for both public proposals and public comments. The first edition of this new code is currently scheduled for 2009.

This purpose of this proposal is to prepare a document that can be used by code enforcement personnel as well as building owners. Building owners generally do not have access to architects, engineers and lawyers on their staff and are not trained in the code enforcement profession. Building owners will not have copies of these codes in their library and will likely require more education and training in the abatement process. It is important to provide the building owner with more information that would normally be provided to a general contractor that is experienced with the code enforcement process. The purpose of this proposal is to update the information contained in the 1997 Uniform Code for the Abatement of Dangerous Buildings, add new information for the appeal application process and ensure that all details contained in this code conforms with local state laws throughout the USA.

111.1: The revisions to this section, Application for Appeal, are summarized as follows:

(a) The appeal to a notice or order by the building official shall be filed on an application form. This will eliminate any misunderstandings in appealing an order for demolition and ensure that the proper language has been used in accordance with state law. One standard application form can be used for appealing all notices and orders, customized as required, throughout the USA. A building owner that receives an order for demolition is not sufficiently familiar with the appeal process. By providing an application for appeal with the order for demolition, the building owner will be able to effect a legal appeal within the time period. Case law exists regarding appeals where the building owner was denied the right to appeal because the correct language was not used. This will eliminate any future problems with building owners and standardize the abatement appeal process.

(b) A 30 day appeal period has been stated where this is not already defined by state law.

(c) Details required on the appeal application are also listed.

Section 111.2: The revisions to this section, Membership of the Board, are summarized as follows:

(a) Board of appeals is defined.

(b) Membership in the board of appeals is defined. Recommendation is to include one engineer, one architect, one fire protection professional, two general contractors and others as determined by the jurisdiction. The intent is to have a qualified board of appeals represented with a varied engineering and construction background.

(c) A three year staggered term is designated for the board.

(d) Rules and procedures shall be adopted by the board.

(e) All decisions and findings shall be in writing to the appellant.

(f) Appeals shall be processed in accordance with Section 111.6 of this code.

(g) Copies of all rules or regulations adopted by the board shall be delivered to the building official and made available to the public.

111.2.2: The credentials of the chairman have been expanded requiring qualification as an engineer, architect, fire protection professional or other design professionals, registered within jurisdiction and elected by the board. This will ensure that the board of appeals is chaired by design professionals, qualified by their education and experience within the design and construction industry.

111.3: This section has been replaced with new Sections 111.3, 111.4 and 111.5. These sections provide more detail for scheduling an appeal. The building official shall present the appeal to the board of appeals within 10 days.

~~444.4~~ **111.6:** At the hearing, only matters raised by the appellant are to be heard. This is important because this allows the preparation of a meeting agenda by the board of appeals. If the appeal is related to electrical systems, there is no need to bring up plumbing or structural issues in the appeal hearing. Appeal hearings must be arranged within a specified period of time. Failure to appeal within the specified period, waives the right to appeal.

~~444.4~~ **111.6.1:** This section has been revised to require the rules for hearings to be given to the applicant in advance of the hearings. This is important to verify in advance exactly what the rights of the appellant in this hearing are. Case law exists where the appellant was excluded the right to cross examine witnesses, excluded the right to reschedule the hearing if a key witness is out of town on business and excluded the right to obtain public documents. This has occurred without any written procedures. Written procedures will eliminate any misunderstandings on how the hearing will be organized.

~~444.8~~ **111.10:** This section has been revised to specify that except for vacation orders, all orders are stayed during the appeals process, when filed on time. This clause conforms with local state laws.

Appendix B: The purpose of Appendix B is to introduce a standardized appeals application form that can be utilized by a jurisdiction, in order to standardize the appeals process, throughout the USA. This form contains the important information required to properly identify the property, building type and reasons for the appeal. Certain jurisdictions may already have an appeals form and this would not be required. This form will be useful within jurisdictions that do not already have an appeals form. This base template could also be customized by a local jurisdiction to include headings and specifics related to state law.

A building owner that receives an order for demolition is not sufficiently familiar with the appeal process. By providing an application for appeal with the order for demolition, the building owner will be able to affect a legal appeal within the time period. Case law exists regarding appeals where the building owner was denied the right to appeal because the correct language was not used. This will eliminate any future problems with building owners and standardize the abatement appeal process.

Appendix C: Appendix C introduces hearing procedures that can be utilized by jurisdictions that need to adopt such procedures. These hearing procedures were based on Section 5, Appeal, and Chapter 6, Procedures for the Conduct of Hearing Appeals, of the 1997 Uniform Code for the Abatement of Dangerous Buildings.

Case law exists where the appellant was excluded the right to cross examine witnesses, excluded the right to reschedule the hearing if a key witness is out of town on business and excluded the right to obtain public documents. This has occurred without any written procedures. Written procedures will eliminate any misunderstandings on how the hearing will be organized.

Cost Impact: The code change proposal will not increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: The committee felt that the revised board of appeals provisions were too stringent and would be hard for smaller jurisdictions to comply with. Further, language such as the term "present" in Section 111.3 seems subjective and undefined. Also, the term "hearing examiner" is not defined and may be an unfamiliar term to many jurisdictions. Lastly, these requirements may be in conflict with many state and local laws.

Assembly Action:

Approved as Submitted

Individual Consideration Agenda

This item is on the agenda for individual consideration because an assembly action was successful and public comments were submitted.

Public Comment 1:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee requests Approval as Modified by this public comment.

Modify proposal as follows:

SECTION 111 MEANS OF APPEAL

111.1 Application for appeal. Any person directly affected by 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. The application for appeal shall be filed on the application provided by the jurisdiction, and returned to the code official within the period approved by the jurisdiction, after the notice was served. Within a jurisdiction that does not have a standard period for appeal, a limit of 30 days shall apply. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under 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.

The application for appeal shall include a brief statement of the relief sought and the reasons why it is claimed that the order or action be reversed, modified or otherwise set aside and a fee established by the jurisdiction. Any applicable information relating to this application shall also be specified in the appeal.

111.2 Membership of board. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be created a board of appeals. The board of appeals shall consist of a minimum of ~~five~~ 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 board of appeals shall consist of one design professional registered in the practice of engineering, one design professional registered in the practice of architecture, one fire protection engineering professional, two general contractors and others as determined by the jurisdiction.~~ The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and 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 board of appeals shall be appointed by the governing body for a staggered 3 year term. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the code official. Appeals to the board shall be processed in accordance with the provisions contained in Section 111.6 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the code official, who shall make them accessible to the public.

111.2.2 Chairman. The board shall annually select one of its members to serve as chairman. ~~The chairman of the board of appeals shall be a professional engineer, architect, fire protection professional or other design professional registered within the jurisdiction and be elected by the board.~~

111.3 Processing of appeal. Upon receipt of any appeal filed pursuant to this section, the code official shall ~~present~~ determine if the appeal is complete. If the appeal is determined incomplete, it shall be returned to the appellant with explanation. A complete appeal shall be transmitted within it no later than 10 days to the board of appeals.

(Portions of proposal not shown remain unchanged)

Commenter's Reason: The committee commented that the revised board of appeals provisions for board members were too stringent and would be hard for smaller jurisdictions. Regardless of any difficulty created for regulators, regulated parties are entitled to due process and some burden on governments is appropriate. However, jurisdictions are entitled to collect fees for their official actions, including appeals. This comment includes a direct reference to such fees.

Section 111.2 is proposed to be amended to reduce the board of appeals to three members and to require only members who are qualified by training and experience similar to the IBC Board of Appeals language. This would substantially reduce the burden on smaller jurisdictions, as would the change to section 111.2.2, so that the chair would no longer be required to be a registered design professional.

This comment also proposes to amend section 111.3, not only to remove the word "present," which the committee was concerned about, but also to allow the code official to make a determination of completeness of an appeal before transmitting it to the board of appeals.

The term "hearing examiner", while not defined, has a clear scope of duties contained within the provisions of Appendix C for the conduct of their role within the hearing process

Public Comment 2:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee requests Approval as Modified by this public comment.

Modify proposal as follows:

111.1 Application for appeal. Any person directly affected by 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. The application for appeal shall be filed on the application provided by the jurisdiction, and returned to the code official within the period approved by the jurisdiction, after the notice was served. Within a jurisdiction that does not have a standard period for appeal, a limit of 30 days shall apply. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under 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.

The application for appeal shall include a brief statement of the relief sought and the reasons why it is claimed that the order or action be reversed, modified or otherwise set aside and a fee established by the jurisdiction. Any applicable information relating to this application shall also be specified in the appeal.

111.2 Membership of board. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be created a board of appeals. The board of appeals shall consist of a minimum of ~~five~~ 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 board of appeals shall consist of one design professional registered in the practice of engineering, one design professional registered in the practice of architecture, one fire protection engineering professional, two general contractors and others as determined by the jurisdiction.~~ The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and 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 board of appeals shall be appointed by the governing body for a staggered 3 year term. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the code official. Appeals to the board shall be processed in accordance with the provisions contained in Section 111.6 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the code official, who shall make them accessible to the public.

111.2.2 Chairman. The board shall annually select one of its members to serve as chairman. ~~The chairman of the board of appeals shall be a professional engineer, architect, fire protection professional or other design professional registered within the jurisdiction and be elected by the board.~~

111.3 Processing of appeal. Upon receipt of any appeal filed pursuant to this section, the code official shall ~~present~~ determine if the appeal is complete. ~~If the appeal is determined incomplete, it shall be returned to the appellant with explanation. A complete appeal shall be transmitted within~~ it no later than 10 days to the board of appeals.

**APPENDIX C
PROCEDURES FOR CONDUCT OF HEARING APPEALS**

~~The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance~~

**SECTION C101
GENERAL**

C101.1 General. ~~The procedures for conduct of hearing appeals shall be in accordance with this appendix. All rules shall be provided to appellant in advance of the hearing date.~~

C101.2 Hearing examiners. ~~The board shall appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the board for decision.~~

C101.3 Record. ~~A record of the entire proceedings shall be made by tape recording or any other means of permanent recording determined to be appropriate by the board.~~

C101.4 Reporting. ~~The proceedings at the hearing shall also be transcribed and a copy provided to the parties of interest. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees shall be established by the board, but shall in no event be greater than the cost involved.~~

C101.5 Continuances. ~~The board shall grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances shall be granted except by the examiner for good cause shown so long as the matter remains before the examiner.~~

C101.6 Oaths and certification. ~~In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.~~

C101.7 Reasonable due process. ~~The board and its representatives shall proceed with reasonable due process to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.~~

**SECTION C102
NOTICE**

C102.1 Form of notice of hearing. ~~The notice to the appellant shall be substantially in the following form, but shall be permitted to include other additional information.~~

~~You are hereby notified that a hearing will be held before the board of appeals, or hearing examiner on a specific date, time and location. You shall be permitted to be present at the hearing. You shall be permitted to be, but need not be, represented by counsel. You shall be permitted to present any relevant evidence and will be given full opportunity to cross examine all witnesses testifying against you. You shall be permitted to request the issuance of subpoenas to compel the attendance of witnesses and the production of records, documents, engineering or inspection reports or other information by filing an affidavit therefore with the board of appeals or hearing examiner.~~

**SECTION C103
SUBPOENAS**

C103.1 Filing an affidavit. The board of examiners shall obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witnesses; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

C103.2 Cases referred to examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

C103.3 Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

**SECTION C104
CONDUCT OF HEARING**

C104.1 Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

C104.2 Oral evidence. Oral evidence shall be taken only on oath or affirmation.

C104.3 Hearsay evidence. Hearsay evidence shall be permitted for the purpose of supplementing or examining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

C104.4 Admissibility of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which makes improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

C104.5 Exclusion of evidence. Irrelevant and unduly repetitious evidence shall be excluded.

C104.6 Rights of parties. Each party shall have these rights, among others:

- (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) To introduce documentary and physical evidence;
- (3) To cross examine opposing witnesses on any matter relevant to the issues of the hearing;
- (4) To impeach any witness regardless of which party first called the witness to testify;
- (5) To rebut the evidence;
- (6) To be represented by anyone who is lawfully permitted to do so; and
- (7) The agenda shall provide adequate time for introduction of evidence and the cross examination of witnesses. If the allocated time is inadequate, a new hearing shall be scheduled at a later date.

C104.7 Official Notice

C104.7.1 Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of the this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

C104.7.2 Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C104.7.3 Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or by oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

C104.7.4 Inspection of the premises. The board or the hearing examiner shall be permitted to inspect any building or premises involved in the appeal during the course of the hearing, provided that; notice of such inspection shall be given to the parties before the inspection is made, the parties shall be given an opportunity to be present during the inspection, and the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

**SECTION C105
METHOD AND FORM OF DECISION**

C105.1 Hearing before board itself. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote or take part in the decision.

C105.1 Hearing before examiner. If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time, not to exceed 90 days from the date the hearing is closed, submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it shall be adopted by the board if that is the decision of the board in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

~~**C105.3 Consideration of report by board.** The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not fewer than 5 days prior to the date fixed, unless it is otherwise stipulated by all of the parties.~~

~~**C105.4 Exceptions to report.** Not later than two days before the date set to consider the report, any party shall be permitted to file written exceptions to any part or all of the examiner's report and shall be permitted to attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party shall be permitted to present oral argument to the board.~~

~~**C105.5 Disposition by the board.** The board shall adopt or reject the proposed decision in its entirety, or shall be permitted to modify the proposed decision.~~

~~**C105.6 Proposed decision not adopted.** If the proposed decision is not adopted as provided in Section C105.5, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in Section C105.2 hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.~~

~~**C105.7 Form of decision.** The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.~~

~~**C105.8 Effective date of decision.** The effective date of the decision shall be stated therein.~~

(Portions of proposal not shown remain unchanged)

Commenter's Reason: The committee commented that the revised board of appeals provisions were too stringent and would be hard for smaller jurisdictions. Regardless of any difficulty created for regulators, regulated parties are entitled to due process and some burden on governments is appropriate. However, jurisdictions are entitled to collect fees for their official actions, including appeals. This comment includes a direct reference to such fees.

Section 111.2 is proposed to be amended to reduce the board of appeals to three members and to require member to only be qualified by training and experience similar to the language in the IBC for the Board of Appeals. This would substantially reduce the burden on smaller jurisdictions, as would the change to section 111.2.2, so that the chair would no longer be required to be a registered design professional.

This comment also proposes to amend section 111.3, not only to remove the word "present," which the committee was concerned about, but also to allow the code official to make a determination of completeness of an appeal before transmitting it to the board of appeals.

This modification also eliminates the proposed Appendix C to address committee concerns voiced at the committee hearings.

Public Comment 3:

Linda Lichtenberger, Chair, ICC Property Maintenance Code Committee requests Disapproval.

Commenter's Reason: Disapproval is consistent with the committee recommendation. The Committee felt that the revised board of appeals provisions were too stringent and would be hard for smaller jurisdictions to comply with. Many jurisdictions do not have people with these credentials living in their communities. Cost could be incurred if a small jurisdiction was forced to hire professionals as listed to serve on the board of appeals. The requirement of a registered design profession is over qualification for a property maintenance appeal board chairman and may be impossible for a small jurisdiction to find suitable persons to serve. Further, language and referenced terms were undefined. Roberts Rules of Order are sufficient for meeting procedures. Lastly, these requirements may be in conflict with many state and local laws. The committee was not comfortable with the possibility of unforeseen ramifications due to the cumbersome, complex and complicated language in the proposal.

PM22-06/07

305.3

Proposed Change as Submitted:

Proponent: Thomas P. Mahar, New York State Department of State

Revise as follows:

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Deteriorated lead-based paint shall be encapsulated or removed using approved lead-safe working practices. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

Reason: The basic IPMC document, in section 305.3 devotes one sentence to "Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered." However, the accompanying **2003 IPMC Commentary** devotes well over a half -page of text on the hazards of lead-based paint. Because the **Commentary** is not the official code text and also because many code officials do not obtain a copy of this document, they may not be aware of the significant threats posed by lead-based paint. The purpose of this code change is to

add language which alerts the code official of the danger and also direct the code official to other areas where additional assistance is available, including the ICC Hazard Abatement for Existing Building Code.

The proposal is superior to the current provision because it provides some helpful information while the current code provision offers no information on the dangers associated with lead-based paint. The reason for including the helpful information here in this particular code section is that lead-based paint is the most significant source of high-level exposure for children in the U.S. The highest risk is for pre-1946 housing, with continued high risk for all housing built before the federal ban on high-lead paint in 1977. Nationally, tens of millions of existing housing units were built prior to the ban, and many of these units are in increasingly dilapidated condition.¹ Multiple studies have demonstrated household lead dust as the major source of lead exposure for young children.² Lead paint can also be disturbed during renovation of older housing if lead-safe work practices are not followed. Within New York State, lead is the leading recognized environmental poison for children. Exposure to lead is associated with a range of serious health effects on children, including detrimental effects on cognitive and behavioral development with serious personal and social consequences that may persist throughout their lifetime. The federal Center for Disease Control and Prevention (CDC), along with the President's Task Force on Environmental Health Risks and Safety Risks for Children (2002), have called for the elimination of childhood lead poisoning.³ Lead poisoning is a completely preventable condition. The purpose of the proposed addition to this code section is to alert the code official that older housing stock is a big potential source of lead and to educate the code official in considering effective solutions and coordinating efforts with other agencies.

Bibliography:

1. Silbergeld, EK. Preventing lead Poisoning in Children. Annual review of Public Health. 18:1877-210, 1997
2. Chilson, JJ. The road to primary prevention of lead toxicity in children. Pediatrics 107(3): 581-3, March 2001
3. NYSDOH. Eliminating Childhood Lead poisoning in New York State by 2010. NY State Dept. of Health, June 2004

Cost Impact: The code change proposal will not increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: The proposed lead based paint maintenance requirements are not consistent with lead paint abatement practices currently utilized.

Assembly Action:

None

Note: The original proposal has been changed to reflect current 2006 IPMC language. The term "Deteriorated" was part of the original proposal.

Individual Consideration Agenda

This item is on the agenda for individual consideration because public comments were submitted.

Public Comment 1:

Thomas P. Mahar, New York State Department of State, requests Approval as Modified by this public comment.

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Deteriorated lead-based paint shall be ~~encapsulated~~ repaired or removed using approved lead-safe working practices. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

Commenter's Reason: In Orlando, there was much floor discussion to both modify the proposal as submitted and to disapprove it (some comments came from new home-builders). Unfortunately, we lost track of the basic reason for this proposal - to add code language to alert the code official of the danger present in older housing and direct the code official to other areas where additional assistance is available. Lead poisoning is a completely preventable condition. The code official can recognize that older housing stock is a big potential source of lead and consider coordinating efforts with other agencies. The current code provision offers no information on the dangers associated with lead-based paint. Further, this proposal will not affect new housing - there has been a federal ban on high-lead paint since 1977. But, there are ten of millions of existing housing units built prior to the ban, and many of these units are in increasingly dilapidated condition.

Public Comment 2:

Jane Malone, Alliance for Healthy Homes, requests Approval as Modified by this public comment.

Replace proposal with the following:

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chalking, chipping, flaking or abraded paint shall be repaired, removed or covered. Deteriorated lead-based paint shall be repaired using lead-safe work practices as described in Section 305.3.1, and the underlying condition causing paint failure shall be repaired. In properties built before 1978, paint is presumed to be lead-based paint unless it has been determined lead-free by a lead-based paint inspection or risk assessment that has been conducted consistent with ASTM standards. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

305.3.1. Lead safe work practices. The following methods shall not be used when removing, repairing, or disturbing painted surfaces that contain lead-based paint: open flame burning or torching; machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control; abrasive blasting or sandblasting without HEPA local exhaust control; heat guns operating above 1100 degrees

Fahrenheit or charring the paint; dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. in any one interior room or space; paint stripping using a solvent that contains methylene chloride without powered mechanical ventilation. Occupants and their belongings shall be protected from exposure to paint debris and dust. Doors, windows, ducts and floors in the work area shall be covered with plastic sheeting or other impermeable material to prevent the spread of lead contaminated dust and debris outside the work area. After paint-disturbing activities have been completed, the plastic sheeting or other impermeable material shall be wet-cleaned or wiped and then removed. Then the walls, windowsills, and floors in the work area shall be washed with a wet mop or cloth and cleaned using a vacuum cleaner with an efficient filtration system, and washed again with a wet mop or cloth to ensure that no debris or dust is left behind.

305.3.2 Clearance Testing. The code official is permitted to order clearance lead dust testing by an independent certified lead-based paint inspector or risk assessor or sampling technician if the requirements of 305.3.1 are not met during the repair of deteriorated lead-based paint. The testing shall be conducted according to ASTM standards and shall consist of a visual examination, collection of dust samples from four floors and four window sills, submission of the samples to an EPA-approved laboratory, and disclosure of the lab results to the owner and tenants. If the property fails clearance, it shall be re-cleaned until it passes a clearance test.

Commenter's Reason: The original proposed change – inserting “Deteriorated lead-based paint shall be encapsulated or removed using lead-safe work practices” - was rejected because the proposed requirements were “not consistent with current lead paint abatement practices currently utilized. This rationale for rejecting the proposal is only partially correct, since the second requirement in the proposal, “using lead safe work practices,” is perfectly consistent with most federal and state abatement rules and practices. Indeed the Environmental Protection Agency forbids the use of unsafe practices¹. Since federal and state rules require abatement certification² for persons performing lead-based paint encapsulation and removal, it is more correct to state that the problem with the first part of the proposed requirements is that it triggers the certification requirement whenever deteriorated lead-based paint needed attention, than that there is “inconsistency.” Discussion of AMPC-proposed changes in order:

Adding chalking to the conditions of concern in the first sentence in 305.3 provides the code official an opportunity to require correction of a common condition³ that appears as lead-based paint deteriorates.

Inserting in 305.3 a new sentence with the requirement to repair deteriorated lead-based paint using lead-safe work practices retains the original proposal to require lead-safe work practices but reduces the scope and cost of the change, resulting in the protection of many more occupants. The modern standard of care for deteriorated lead-based paint is repair using lead-safe practices, not wholesale removal or encapsulation. Repair is cheaper than removal or encapsulation, can be performed by non-certified persons, and is less risky than removal (which stirs up a lot of dangerous lead dust). Including in the repair requirement the correction of the underlying cause of the paint deterioration ensures prevention of future paint deterioration (and resultant danger to occupants). Inserting in 305.3 a new sentence with a presumption of lead-based paint is important because not everyone knows when lead-based paint was banned for residential use. Without this definition, a property owner may assume lead-based paint is not lead-based and fail to use lead-safe work practices, resulting in the creation of hazards and poisoning of occupants. This presumption makes it the responsibility of the owner to either prove that paint is lead-free or use lead-safe work practices, and a clear standard of proof for the code official.

The definition of lead-safe work practices included in 305.3.1 conforms to regulations of the US Department of Housing and Urban Development⁴ the American Society of Testing and Materials⁵ and current practice and requirements in many states and localities.

The proposed clearance requirement in 305.3.2 provides the code official with an opportunity to respond to non-compliance with lead-safe work practices requirement by ordering clearance testing⁶, which allows the official to ensure that lead hazards have not been left behind to endanger occupants (or to order further clean-up if there are lead hazards).

¹ EPA regulation at 42 CFR 745.227(e)(6)

² EPA regulations at 42 CFR 745.233 (federal); 42 CFR 745.325(a)(4) (federally approved state programs)

³ HUD Guidelines, 1995

⁴ HUD regulation at 24 CFR Part 30

⁵ ASTM Standard E 2052-99, sections 9, 10, 15

⁶ HUD regulation at 24 CFR 30; ASTM Standard E 2052-99 section 15

PM23-06/07

306

Proposed Change as Submitted:

Proponent: David W. Cooper, Stairway Manufacturers' Association

Revise as follows:

306.1 General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface. Where the guarded elevation exceeds one story in height guards shall comply with current new construction codes of the jurisdiction for guard opening limitations.

Exception: Guards shall not be required where exempted by the adopted building code.

Reason: Add new requirements to the code. This change will result in less guard related accidents in the built environment.

The data, testing, and studies reviewed by the ICC Code Technology Committee (CTC) in their investigation of climb resistant guards support the fact that bringing existing buildings up to current standards will demonstrably affect a decrease in guard related accidents by decreasing the number of fall through accidents. Studies they have reviewed point to the majority of accidents related to guards being in existing buildings built prior to enforcement of the well known 4 inch sphere rule with particular concern for R-2 balconies being noted. These studies and other critical information in support of this change may be viewed at <http://www.iccsafe.org/cs/cc/ctc/climbable.html>.

The added text is purposefully simple and open to interpretation. By using the word story in reference to the guarded elevation the intent to offer better protection at upper floors however is accomplished. Having this requirement in the code will validate those jurisdictions already enforcing smaller opening limitations.

This will not affect changes to guard height that could be more costly. Although costs will be of significance, the addition of in-fill elements to restrict the opening limitations could be accomplished easily with minor modification to the guard system already required in the IPMC. In addition the one-story limitation further addresses the concern to eliminate the majority of more serious injuries while providing a reasonable step in the right direction that most jurisdictions will readily adopt. Although we would support more restrictive options for changes to this section, this proposal is offered to assure that some action be taken in this cycle directed to reducing guard accidents in the built environment.

Bibliography: Childhood Injuries Due to Falls From Apartment Balconies and Windows., G R Istre, M A McCoy, M Stowe, K Davies, D Zane, R J Anderson and R Wiebe, INJ. Prev. 2003;9;349-352, doi: 10.1136/ip.9.4.349, <http://ip.bmjournals.com/cgi/content/full/9/4/349>

Cost Impact: The code change proposal will increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: No data was submitted to justify the requirement for the modification of existing guards to meet the opening requirements for new construction. Further, the one story height is not a defined term and can lead to misapplication. Lastly, these requirements could cause an existing guard to be modified multiple times as the codes evolve.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

David W. Cooper, representing Stairway Manufacturer's Association, requests Approval as Submitted.

Commenter's Reason: This is an issue that needs to be addressed in the Property Maintenance Code and needs to come before the body of the ICC for their consideration.

The simple fact is that most guard related accidents could be eliminated with the adoption of PM23 or PM24, as both would seriously reduce the major cause related to falling through the guard. I call your attention to the supporting documentation noted in the supporting statement of the proposal.

PM24-06/07

306.1, 306.2 (New)

Proposed Change as Submitted:

Proponent: David W. Cooper, Stairway Manufacturers' Association

Revise as follows:

SECTION 306 HANDRAILS AND GUARDRAILS

306.1 General Handrails. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

306.2 Guards. Every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Guards shall not be less than 36 inches (914 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface. Open guards shall have balusters or ornamental patterns such that a 4 inch (102 mm) diameter sphere cannot pass through.

Exceptions:

1. Guards shall not be required where exempted by the adopted building code.
2. Guards on the side of stairs shall be not less than 34 inches (864 mm) high and shall not allow a 4 3/8 inches (107 mm) diameter sphere to pass through.

Reason: To add new requirements to the code. This change will result in less guard related accidents in the built environment by implementing currently accepted standards.

This proposal offers clarity by separating the handrail and guard requirements into different sections with the intent to draw attention to the new requirements for guards without changing the handrail requirements.

The data, testing, and studies reviewed by the CTC in their investigation of climb resistant guards support the fact that bringing guards of existing buildings up to current standards will affect a decrease in guard related accidents. In addition this same information shows that the 4-inch sphere rule makes a significant difference by decreasing the number of fall through accidents. These studies and other critical information in support of this change may be viewed at <http://www.iccsafe.org/cs/cc/ctc/Climbable.html>. Having these current requirements in the code will validate those jurisdictions already implementing this well-known standard and further promote the adoption in all jurisdictions.

Bibliography: Childhood Injuries Due to Falls From Apartment Balconies and Windows, G R Istre, M A McCoy, M Stowe, K Davies, D Zane, R J Anderson and R Wiebe, INJ. Prev. 2003;9;349-352, doi: 10.1136/ip.9.4.349, <http://ip.bmjournals.com/cgi/content/full/9/4/349>

Cost Impact: The code change proposal will increase the cost of construction.

Analysis: The committee needs to make its intent clear with respect to 306.2 as it relates to this proposal and PM25&26-06/07.

Committee Action:

Disapproved

Committee Reason: No data has been submitted to justify this guard requirement for existing buildings. Further, the opening limitation requirements are more restrictive than those allowed for Group S, F, I-3 and H in the IBC. Also, there are no provisions dealing with historic buildings which may cause an enforcement problem when dealing with historic buildings.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

David W. Cooper, representing Stairway Manufacturer's Association, requests Approval as Submitted.

Commenter's Reason: This is an issue that needs to be addressed in the Property Maintenance Code and needs to come before the body of the ICC for their consideration.

The simple fact is that most guard related accidents could be eliminated with the adoption of PM23 or PM24, as both would seriously reduce the major cause related to falling through the guard. I call your attention to the supporting documentation noted in the supporting statement of the proposal.

Analysis: The requirements within this public comment are different than those in the public comment to PM26-0607 with respect to handrail and guard height. If both public comments are approved by the membership there will be a conflict in these provisions.

PM26-06/07

306.1, 306.2 (New), 306.3 (New)

Proposed Change as Submitted:

Proponent: Timothy J. Moss, National Ornamental & Miscellaneous Metals Association

Delete and substitute as follows:

**SECTION 306
HANDRAILS AND GUARDRAILS**

~~**306.1 General.** Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.~~

~~**Exception:** Guards shall not be required where exempted by the adopted building code.~~

306.1 General. Handrails and guards required in accordance with Section 306.2 and 306.3 shall be designed and installed in accordance with the provisions of the *International Building Code*.

306.2 Handrails. Every exterior and interior stairway shall have a handrail on each side. Handrail height, measured vertically above stair tread nosings, or finish surface of landing or walk surface, shall be uniform, not less than 34 inches (864 mm) and not more than 38 inches (965 mm).

306.3 Guards. Guards shall be located along open-sided walking surfaces, including mezzanines, industrial equipment platforms, stairs, ramps and landings which are located more than 30 inches (762 mm) above the floor or grade below. Guards shall be adequate in strength and attachment in accordance with Section 1607.7 of the *International Building Code*. Guards shall form a protective barrier not less than 42 inches (1067 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface. Guards shall not have openings which allow passage of a sphere 4 inches (102 mm) in diameter up to a height of 36 inches (914 mm).

Reason: The purpose of the proposed code change is to provide consistency with the requirements in the IRC and IBC. The handrail height requirements and the 4 inch guard opening requirements will then match those requirements in the 2000 and subsequent IRC and IBC.

Cost Impact: The code change proposal will increase the cost of construction.

Analysis: The committee needs to make its intent clear with respect to 306.2 as it relates to this proposal and PM24&25-06/07.

Committee Action:

Disapproved

Committee Reason: The requirements for handrails on both sides of stairs, without exception, are more restrictive than for new construction in the IBC. Further, the opening limitation requirements appear to be more restrictive than those allowed for Group S, F, I-3 and H in the IBC, which would result in modification of guards that currently meet the requirements for new construction.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

Todd Daniel, National Ornamental & Miscellaneous Metals Association, requests Approval as Modified by this public comment.

Modify proposal as follows:

**SECTION 306
HANDRAILS AND GUARDRAILS**

~~306.1 General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762mm) high or more than 42 inches (1067mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762mm) high above the landing, balcony, porch, deck, or ramp or other walking surface.~~

~~**Exception:** Guards shall not be required where exempted by the adopted building code.~~

306.1 General. Handrails and guards required in accordance with section 306.2 and 306.3 shall be designed and installed in accordance with the provisions of the *International Building Code*.

306.2 Handrails. Every exterior and interior stairway shall have a handrail on each side. Handrail height, measured vertically above stair tread nosings, or finish surface on landing or walking surface, shall be uniform, not less than 34 inches (864 mm) and not more than 38 inches (965 mm)

Exception: Handrails shall not be required where exempted by the adopted building code.

306.3 Guards. Guards shall be located along open-sided walking surfaces, including mezzanines, industrial equipment platforms, stairs, ramps and landings which are located more than 30 inches (762 mm) above the floor or grade below. Guards shall be adequate in strength and attachment in accordance with section 1607.7 of the International Building Code. Guards shall form a protective barrier not less than 42 inches (1067 mm) high above the floor of the landing, balcony, porch, deck or ramp or other walking surface. Guards shall not have openings which allow passage of a sphere 4 inches (102 mm) in diameter up to a height of 36 inches (914 mm).

Exception: Guards shall not be required where exempted by the adopted building code.

Commenter's Reason: The original proposal presented language that was more restrictive than the current IBC & IRC family of codes. However with the addition of the 2 exceptions added to the originally proposed text any requirement that is more restrictive than the currently adopted building code would not be required. Therefore the exceptions rectify the conflict within the original proposal.

Analysis: The requirements within this public comment are different than those in the public comment to PM24-0607 with respect to handrail and guard height. If both public comments are approved by the membership there will be a conflict in these provisions.

PM34-06/07

606.1

Proposed Change as Submitted:

Proponent: Daniel J. Winslow, CNY Elevator Consultants LLC

Revise as follows:

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certification of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, ~~or the certificate shall be available for public inspection in the office of the building operator or the certificate shall be posted in a publicly conspicuous location approved by the code official.~~ The inspection and tests shall be performed at not less than the periodical intervals listed in ASME A17.1, Appendix N, except where otherwise specified by the authority having jurisdiction.

Reason: To meet the intent of the code, which requires that the certificate of inspection be publicly available.

The intent of the code is to require that the certificate of inspection be available to the public. Whereas the "office of the building operator" is not generally accessible to the public, the language does not meet the intent of the code.

In most cases the certificate of inspection should be posted in the elevator or on the escalator or dumbwaiter. The current code language allowing the certificate of inspection to be in the "office of the building operator" does not meet the intent of the code to make the certificate "available" to the public.

The code change proposal revises the language to clarify that the certificate is required to be in a publicly conspicuous location. Additionally, the revised language allows a building operator to request the inspection certificate be placed in a location other than in the elevator, or on the escalator or dumbwaiter, provided that location is a publicly conspicuous location and approved by the Code Official.

Cost Impact: Whereas the certificate is already required to be publicly available, whereas the proposed code change proposal is editorial in nature and only clarifies the intent of the code, whereas The proposed code change proposal only provides the Code Official discretion regarding location of posts, whereas the need for inspections, and the frequency of inspections are not affected, The code change proposal will not increase the cost of construction.

Committee Action:

Approved as Submitted

Committee Reason: Placing the elevator certificate of inspection in the office of the building operator may not be feasible because there may not be an office of the building operator or there may be multiple offices for the building operations. The proposed language provides reasonable options.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

Lawrence Brown, CBO, National Association of Home Builders, requests Approval as Modified by this public comment.

Modify proposal as follows:

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certification of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator, or the certificate shall be posted in a publicly conspicuous location approved by the code official. The inspection and tests shall be performed at not less than the periodical intervals listed in ASME A17.1, Appendix N, except where otherwise specified by the authority having jurisdiction.

Commenter's Reason: This modification retains the current proposed change, and reinstates the prescriptive optional method deleted in the Proposal. There is no need to restrict the availability of the certificate as proposed. If the elevator exists than there is usually an annual license and inspection by the jurisdiction. The jurisdiction knows who to contact as a matter of record. If someone believes there is a problem they can either contact the management or the local jurisdiction to resolve their concerns. It is unlikely an inspector or other representative of the jurisdiction needs to have the actual certificate posted in a conspicuous location – a location where the certificate may be damaged or stolen. If located in the office of the building operator it is NOT hidden from the public. It is still obtainable if so desired. In fact, many jurisdictions only require a sign stating where the certificate can be viewed, or who to contact if there are problems. Considering small restaurants and other similar establishments, having the certificate in the manager's office will pose no hardship on the code official.

PM35-06/07

Chapter 8 (New)

Proposed Change as Submitted:

Proponent: Wayne R. Jewell, City of Southfield, Michigan, representing Hazard Abatement in Existing Buildings Committee

Add new text as follows:

CHAPTER 8 **HEALTH AND SANITATION**

SECTION 801 **GENERAL**

801.1 Scope. The provisions of this chapter shall govern the review and assessment of health and sanitation for maintaining the safety of a building or structure or portion thereof.

801.2 Responsibility. The owner shall maintain a building or structure and exterior property in compliance with the *International Property Maintenance Code*. The owner of the structure shall repair or replace elements or components in compliance with these requirements.

SECTION 802 **GENERAL REQUIREMENTS FOR MAINTAINING HEALTH AND SANITATION**

802.1 Performance of building elements and components. Elements and components of buildings shall be maintained in accordance with this section and shall remain in good health and sanitary state, and not deteriorate to an extent so as to pose a threat to the public health, safety or welfare. If elements and components of the structure or portion thereof are determined to be unsafe according to this chapter, they shall be replaced or repaired according to Section 802.2.

802.2 Components. All structures or components thereof determined to be unsafe shall be replaced or repaired by the owner according to the provisions of the building code.

Exceptions:

1. The structure or component thereof is permitted to be removed or demolished according to the provisions of this code.

2. When, in the opinion of the Code Official, repair of the element or component to its original sanitary and health standards will satisfy the requirements of Section 802.1.

SECTION 803 **EQUIPMENT**

803.1 Equipment. Any equipment associated with a building or structure that poses a threat to health or safety, the building or structure, it shall be determined to be unsafe and shall be replaced or repaired according to the provisions of Section 802.2.

SECTION 804 **COMPONENT SERVICEABILITY**

804.1 Component serviceability. Materials in elements and components of the building or structure thereof not maintained and that have fallen below their health and sanitary state shall be determined to be unsafe and shall be replaced or repaired according to the provisions of Section 802.

804.2 Health and sanitary state of materials. In addition to the other requirements for component serviceability referenced in Section 804.1, the conditions described below shall indicate that the material has fallen below its health and sanitary state and shall be replaced or repaired according to the provisions of Section 802.2 unless substantiated otherwise by an approved method:

1. Indoor Air Quality (IAQ) that has been subjected to any of the following conditions:
 - 1.1. Asbestos
 - 1.2. Carbon Monoxide
 - 1.3. Radon
 - 1.4. Dust
 - 1.5. Mold
 - 1.6. Excessive dampness
 - 1.7. Excessive tobacco smoke
 - 1.8. Inadequate ventilation
2. Lead that is present in dangerous amounts.
3. Potable water that has been subjected to any of the following conditions:
 - 3.1. Lead
 - 3.2. Corrosion
 - 3.3. Chemical
 - 3.4. Excessive chlorination
 - 3.5. Inadequate water temperature
4. Pesticides present in dangerous amounts in components of a building or structure.
5. Other chemicals that are present including but not limited to the following:
 - 5.1. Urethane based paint.
 - 5.2. Controlled or illegal substances.
 - 5.3. Significant rust.
 - 5.4. Other harmful chemicals
6. Volatile Organic Compounds (VOC) that are present in dangerous amounts including but not limited to arsenic treated wood.
7. Insects and vermin that are present in dangerous amounts including but not limited to the following:
 - 7.1. Mice and rats.
 - 7.2. Cockroaches dust mites fleas, flies, bedbugs, ticks, lice, mosquitoes, termites.
8. Human or animal disease, waste or remains that is present in an uncontrolled manner.
9. Rubbish and garbage that is present in an uncontrolled manner.

**SECTION 202
GENERAL DEFINITIONS**

HEALTH AND SANITARY STATE. The state above which a normal occupancy of a building or structure produces no adverse effects to health or safety.

Reason: The ICC Board approved the development of a new code with the scope including a compilation of current provisions in the I-Codes which address hazards such as those from fire as well as the development of new requirements relative to issues such as hazardous conditions due to structural issues. This would provide a single source code book for all disciplines to be used by building owners to bring their existing building stock up to minimum standards and enforcing agencies when performing inspections of existing buildings. The Hazard Abatement of Existing Buildings Committee (HAEB) was formed to develop this code.

During this 06/07 cycle, the committee is proposing multiple unsafe conditions requirements for inclusion within the text of the existing International Codes, predominately the *International Property Maintenance Code* and the *International Fire Code*. These requirements will later be extracted from these International Codes and placed into a new International Code dealing primarily with unsafe conditions and the abatement thereof. It is intended that the maintenance of these provisions remain with the committee of origin. The draft of this new International Code is currently scheduled to be put through the 07/08 code change process for both public proposals and public comments. The first edition of this new code is currently scheduled for 2009.

This purpose of this proposal is to add a correlated Chapter 8 to the IPMC that specifies unique health and sanitation aspects of a building causing it to fall beneath a standard deemed to be safe. Items 1 through 9 seek to identify by quantitative or qualitative means various affects on health and sanitation within a building or structure. For example, the potable water supply may be affected by lead, corrosion, chemicals (that include chlorination) or even inadequate temperature. These specific items are an attempt to give the Code Official the tools they need to more specifically identify hazards that affect health and sanitation. In the instance of human remains or disease care was given to those buildings where the purpose was specifically to house these types of uses, but to clarify that if kept in an "uncontrolled manner" the building could be deemed unsafe. In certain instances where these elements existed in all buildings (insects, vermin, etc) care was given to quantify a "dangerous level" to be determined by the code official.

In all cases, the intent is to give the Code Official a more thorough description of what identifies significant levels of specific aspects that create a health and sanitation danger.

Cost Impact: This code change proposal will not increase the cost of construction.

Committee Action:

Disapproved

Committee Reason: The current general language in the IPMC is enough to cover these specific health and sanitation requirements. Further, some of the proposed terminology such as "excessive tobacco smoke" are difficult to consistently determine and are therefore unenforceable.

Assembly Action:

None

Individual Consideration Agenda

This item is on the agenda for individual consideration because a public comment was submitted.

Public Comment:

Wayne R. Jewell, Chair, ICC Hazard Abatement in Existing Buildings Committee, requests Approval as Modified by this public comment.

Modify proposal as follows:

**CHAPTER 8
HEALTH AND SANITATION**

**SECTION 801
GENERAL**

801.1 Scope. The provisions of this chapter shall govern the review and assessment of health and sanitation for maintaining the safety of a building or structure or portion thereof.

801.2 Responsibility. The owner shall maintain a building or structure and exterior property in compliance with the *International Property Maintenance Code*. The owner of the structure shall repair or replace elements or components in compliance with these requirements.

**SECTION 802
GENERAL REQUIREMENTS FOR MAINTAINING HEALTH AND SANITATION**

802.1 Performance of building elements and components. Elements and components of buildings shall be maintained in accordance with this section and shall remain in good health and sanitary state, and not deteriorate to an extent so as to pose a threat to the public health, safety or welfare. If elements and components of the structure or portion thereof are determined to be unsafe according to this chapter, they shall be replaced or repaired according to Section 802.2.

802.2 Components. All structures or components thereof determined to be unsafe shall be replaced or repaired by the owner according to the provisions of the building code.

Exceptions:

1. The structure or component thereof is permitted to be removed or demolished according to the provisions of this code.
2. When, in the opinion of the Code Official, repair of the element or component to its original sanitary and health standards will satisfy the requirements of Section 802.1.

**SECTION 803
EQUIPMENT**

803.1 Equipment. Any equipment associated with a building or structure that poses a threat to health or safety, ~~the building or structure,~~ it shall be determined to be unsafe and shall be replaced or repaired according to the provisions of Section 802.2.

**SECTION 804
COMPONENT SERVICEABILITY**

804.1 Component serviceability. Materials in elements and components of the building or structure thereof not maintained and that have fallen below their health and sanitary state shall be determined to be unsafe and shall be replaced or repaired according to the provisions of Section 802.

804.2 Health and sanitary state of materials. In addition to the other requirements for component serviceability referenced in Section 804.1, the conditions described below shall indicate that the material has fallen below its health and sanitary state and shall be replaced or repaired according to the provisions of Section 802.2 unless substantiated otherwise by an approved method:

1. Indoor Air Quality (IAQ) that has been subjected to any of the following conditions in excess of industry standards:
 - 1.1. Asbestos
 - 1.2. Carbon Monoxide
 - 1.3. Radon
 - 1.4. Dust
 - 1.5. Mold
 - 1.6. Excessive dampness
 - 1.7. Excessive tobacco smoke
 - 1.8. Inadequate ventilation
2. Lead that is present in dangerous amounts.
3. Potable water that has been subjected to any of the following conditions in excess of industry standards:
 - 3.1. Lead
 - 3.2. Corrosion
 - 3.3. Chemical
 - 3.4. Excessive chlorination
 - 3.5. Inadequate water temperature
4. Pesticides present in dangerous amounts in excess of industry standards in components of a building or structure.
5. Other chemicals in excess of industry standards that are present including but not limited to the following:
 - 5.1. Urethane based paint.
 - 5.2. Controlled or illegal substances.
 - 5.3. Significant rust.
 - 5.4. Other harmful chemicals
6. Volatile Organic Compounds (VOC) in excess of industry standards that are present in dangerous amounts including but not limited to arsenic treated wood.
7. Insects and vermin that are present in dangerous amounts according to industry standards including but not limited to the following:
 - 7.1. Mice and rats.
 - 7.2. Cockroaches dust mites fleas, flies, bedbugs, ticks, lice, mosquitoes, termites.
8. Human or animal disease, waste or remains in dangerous amounts according to industry standards that is present in an uncontrolled manner.
9. Rubbish and garbage in dangerous amounts according to industry standards that is present in an uncontrolled manner.

**SECTION 202
GENERAL DEFINITIONS**

HEALTH AND SANITARY STATE. The state above which a normal occupancy of a building or structure produces no adverse effects to health or safety.

Commenter's Reason: The existing language in the IPMC does not identify any specific conditions that are proposed to be included in the new chapter Eight. Code Officials need to have more than just a general prohibition on 'unsafe' or 'unsanitary' conditions to provide basis for enforcement, which is a means for assuring public health and safety. The provisions in this chapter will include guidance to the Property Maintenance Official or Inspector that more accurately defines unsafe levels and seeks to establish a threshold beyond which any variety of cause for health or sanitation is determined to be 'unsafe'. These specifics more thoroughly illustrate what an unsafe condition is. The added prepositional phrase "in excess of industry standards" is intended to provide a reference for the Inspector to use as necessary when dangerous conditions exceed what is acceptable to the jurisdiction. It is expected that the inspector would base any action to abate a condition on a national standard relating to such condition.