

CITY OF
PORTAGE
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CONSTRUCTION BOARD OF APPEALS

July 30, 2012

CITY OF PORTAGE
CONSTRUCTION BOARD OF APPEALS

A G E N D A

July 30, 2012

The City of Portage Construction Board of Appeals will hold a meeting on July 30, 2012 at 5:00 PM in Conference Room One, Portage City Hall, 7900 South Westnedge Avenue.

APPROVAL OF MINUTES:

*November 28, 2011

OLD BUSINESS:

None

NEW BUSINESS:

*1518 East Centre Avenue – Show Cause Hearing for vacant pole barn in disrepair.

STATEMENT OF CITIZENS:

ADJOURNMENT:

Material Transmitted

Star (*) indicates printed material within the agenda packet.

CITY OF PORTAGE CONSTRUCTION BOARD OF APPEALS

Minutes of Meeting – November 28, 2011

DRAFT

The City of Portage Construction Board of Appeals meeting of November 28, 2011 was called to order at 5:00 p.m. in Conference Room #1 of Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan.

MEMBERS PRESENT:

Carllyn Compton, Gary Gilchrist, William Koopsen, John Kounelis and Lawrence Schmidt

MEMBERS ABSENT:

George Theodoru

MEMBERS EXCUSED:

William Leach

IN ATTENDANCE:

Terry Novak, Deputy Director of Building and Housing Services and Mike Beery Building Inspector.

ELECTION OF OFFICERS:

Lawrence Schmidt was selected as Chairman and William Koopsen was selected as Vice Chairman

APPROVAL OF MINUTES:

The minutes of April 12, 2010 were approved.

BOARD ACTION:

825 Barberry Avenue – Variance requests for Outdoor Solid Fuel-Fired Furnace:

Chairman Schmidt introduced the item to the Board. Deputy Director Novak provided basic information regarding outdoor solid fuel-fired furnaces, the characteristics of the units and the rationale of the ordinance specifying where the units could be located. Deputy Director Novak discussed the requested variances and summarized the staff recommendation supporting the ordinance. The petitioner, Mr. Richard Karnemaat, 825 Barberry Avenue provided information regarding his request for the variances. Mr. Karnemaat informed the Board that he was still in the initial phase of the project and had not selected a specific make or model of outdoor furnace to install. Mr. Karnemaat indicated that in his research he discovered that the efficiency of the units had been improved which reduced the amount of smoke emitted through an improved gasification processes. Alternate locations for the outdoor furnace were discussed by the Board. Mr. Karnemaat indicated that the spot he had selected for the outdoor furnace was based on the unique configuration of his lot and topography. Mr. Karnemaat advocated that the proposed location of the outdoor furnace would place the unit further from the houses located to the east on Tranquil Street, which were in the direction of the prevailing wind.

Mr. and Mrs. Robert and Doris Tuesley, property owners of 1092 Orchard Drive were in attendance and in support of the requested variances.

Deputy Director Novak reminded the Board that they had the option of approving all of the requested variances, some of the requested variances or none of the requested variances.

After further discussion a motion was made by Vice Chairman Koopsen that the following requested variances be approved due to the uniqueness of the property, location of surrounding houses and the prevailing winds:

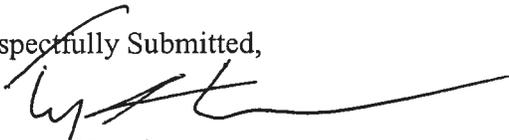
1. Reduce the required distance from the nearest residential dwelling not on the same property from 300-feet to 260-feet;
2. Reduce the distance from the property line from 100-feet to 5-feet; and
3. Reduce the 15-foot minimum chimney height above grade to the standard chimney height on the units (approximately 6-feet).

Member Gilchrist seconded the motion. The motion passed unanimously.

ADJOURNMENT:

The Board meeting adjourned at 6:10 p.m.

Respectfully Submitted,



Terry A. Novak,
Deputy Director of Building and Housing Services

TO: Construction Board of Appeals

FROM: Vicki Georgeau, ^{VB} Director of Community Development

DATE: July 24, 2012

SUBJECT: Show Cause Hearing – 1518 East Centre Avenue

CODE SECTION: Article 13, Section 42-1341 - Unsafe Structures, City of Portage Codified Ordinances

STAFF
RECOM-

MENDATION: The vacant pole barn formerly used for agricultural purposes at 1518 East Centre Avenue has not been made useable or safe in accordance with the provisions of the Codified Ordinances of the City of Portage.

In compliance with the Unsafe Structure Ordinance, a March 9, 2012 unsafe structure notice was sent certified mail and posted on the vacant pole barn advising that the property owner had 30-days to bring the property into compliance or further enforcement action would be pursued (e.g., buildings repaired or razed and debris removed from the site). On July 10, 2012, a Show Cause Hearing notice was sent certified mail and posted on the site due to the lack of action to repair or raze the pole barn.

The condition of the pole barn is substandard and continues to deteriorate and create a negative impact on the adjacent properties. A large portion of the pole barn roof is missing allowing weather and animal intrusion. The fiberglass roof panels have become brittle as a result of their age and the weathering process and are easily detached from the roof trusses. The missing roof has allowed water damage to occur to the interior of the structure, including damage to the electrical equipment within the building. Michigan Commerce Bank, owner of the property, has removed a dilapidated greenhouse and debris formerly located on the property, however, no action has occurred to correct or remove the pole barn.

As information, the property is zoned R-1B, One-family Residential. Future use of the property will need to conform to the requirements of the City of Portage Zoning Code applicable to land uses permitted in the one-family residential zoning districts. A commercial business is not permitted in the R-1A zoning district.

Staff is aware of the difficulties associated with the current real estate market and has attempted to provide the property owner with time to address the situation. However, the unsafe condition of the pole barn to creates a negative impact on the surrounding

properties and neighborhood. It is the recommendation of staff that the vacant pole barn, including the slab foundation be razed and removed from the property within 30-days. Failure to comply with the order will result in the matter being referred to City Council for a demolition order to have the building removed. The costs associated with removing the structure shall be provided in accordance with Chapter 42, Article 13, Unsafe Structures, City of Portage Codified Ordinances.

Attachments: Unsafe structure notification dated March 9, 2012
 Show Cause Hearing notification dated July 10, 2012
 Vicinity Map of 1518 East Centre Avenue
 Photographs of 1518 East Centre Avenue
 Article 13, Unsafe Structures, City of Portage Codified Ordinances

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Mr. Bart Hamlin
Michigan Commerce Bank
800 East Milham Avenue
Portage, MI 49002

March 9, 2012

Sent Certified Mail and Posted on Site

Dear Mr. Hamlin:

Re: Unsafe Structure, 1518 East Centre Avenue - Notice to Owner

According to City of Portage records, Michigan Commerce Bank is the owner of the property and the property improvements located at 1518 East Centre Avenue. On March 6, 2012 a complaint was received by the Department of Community Development regarding the dilapidated and unsafe condition of the buildings located at 1518 East Centre Avenue. On March 7, 2012, an inspection of the property was completed and the following defects, conditions and/or violations of the City Codes were identified (see attached photographs).

1. A large portion of the pole barn building roof is missing allowing weather and animal intrusion. The fiberglass roof panels have become brittle as a result of their age and weathering process and are easily detached from the roof trusses. As a result of recent high winds, building/roofing material was found on the property and had also blown across East Centre Avenue creating a potential public safety hazard. The missing roof has also allowed water damage to occur to the interior of the structure, including electrical equipment areas.
2. The former greenhouse on the property is in disrepair, is missing a roof and has lost its functionality.
3. Miscellaneous debris and building related material is located on the property.

Because of these significant violations/deficiencies and building deterioration, the above referenced building has been determined to be unsafe as defined in Section 42-1341 of the City of Portage Building and Housing Code. Action within **10 days** of receipt of this letter is required to secure or remove the remaining roof panels to eliminate the potential public health and safety risk. Within **30 days**, progress to fully repair or remove the vacant buildings and debris is required in order to avoid enforcement action, including proceedings for unsafe structures. If you choose to retain the pole barn, a State of Michigan licensed architect or engineer will need to confirm that the existing roof trusses and new roof deck material meet the requirements of the 2009 State of Michigan Building Code. As you may know, this site and building was previously used for specialized agricultural purposes and pursuant to applicable state law, construction permits or inspections were not required. Since the agricultural use has been abandoned, construction permits and inspections are now necessary.

With regard to reuse of the property, please also be aware the property is zoned R-1B, one-family residential. Any future use must meet the requirements of Division 4, Subdivision 2 of the City of Portage Zoning Code applicable to land uses permitted in the one-family residential zoning districts.

Upon receipt of this notice, please contact Terry Novak, Deputy Director of Building and Housing Services, at 269-329-4477 to discuss your schedule to correct the City Code violations, and any questions or comments you may have regarding this matter.

Sincerely,


Vicki Georgeau, AICP
Director

Attachments: Photographs of violations

c. Mr. Mick Kasten, 8065 Cox's Drive, Portage, MI 49002

cc: Terry A. Novak, Deputy Director of Building and Housing Services
Christopher Forth, Deputy Director of Planning, Development and Neighborhood Services

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July 10, 2012

Sent Certified Mail and Posted on Site

Mr. Bart Hamlin
Michigan Commerce Bank/Portage Commerce Bank
800 East Milham Avenue
Portage, MI 49002

Dear Mr. Hamlin:

RE: Notice of Show Cause Hearing – 1518 East Centre Avenue

The vacant pole barn located at 1518 East Centre Avenue has not been made safe in accordance with the provisions of the Codified Ordinances of the City of Portage, Michigan. The following defects, conditions and/or violations cited in the March 9, 2012 Unsafe Structure notice (attached) has not been properly addressed:

1. A large portion of the pole barn's roof is missing allowing weather and animal intrusion. The fiberglass roof panels have become brittle as a result of their age and the weathering process and are easily detached from the roof trusses. The missing roof has allowed water damage to occur to the interior or the strutting, including damage to the electrical equipment within the building.

As a result of these continued violations, you are hereby notified that a hearing on the condition of the pole barn will be held before the Construction Board of Appeals at 5:00 p.m. on July 30, 2012. The meeting will be held in Conference Room One of Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan. At this hearing, you will have the opportunity to show cause as to why the pole barn should not be ordered demolished or otherwise made safe. The owner and any occupant of the pole barn shall have the right at the hearing to cross-examine witnesses who testify against the owner's and/or occupant's interests and the right to produce witnesses on your own behalf, including the use of pictures, video tapes or other recording devices.

The decision of the Construction Board of Appeals may be appealed to City Council for review within ten (10) days after the decision of the Board and, after review by Council, may be appealed to the Kalamazoo County Circuit Court within twenty (20) days after the decision of the Council.

If you have any questions, please contact the Division of Building Services, Department of Development, 329-4477.

Sincerely,

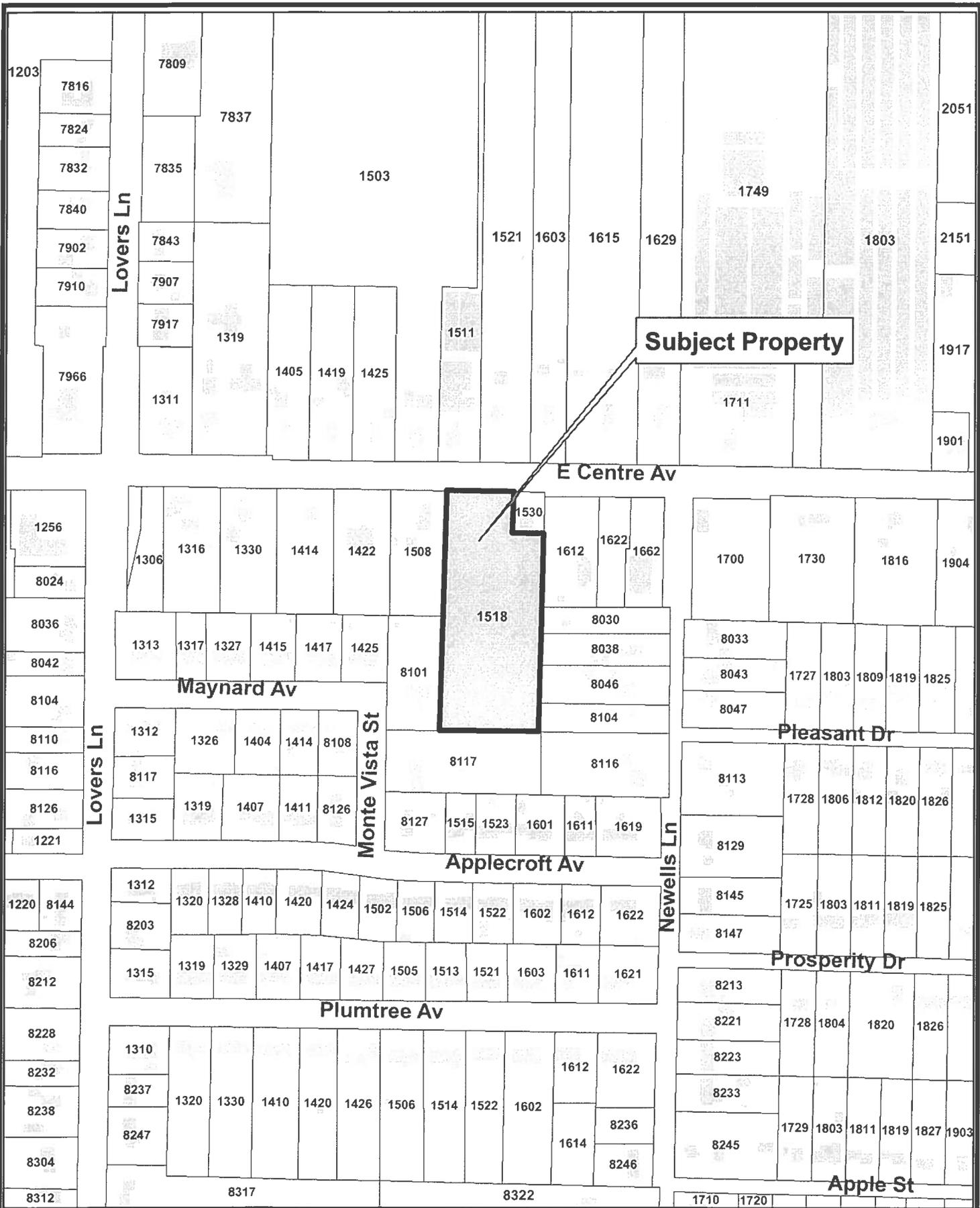

Vicki Georgeau, AICP
Director

Attachment: Copy of March 9, 2012 Unsafe Structure Notice

c. Karen Willis, 200 North Washington Square, Lansing, MI 48933

ec: Terry A. Novak, Deputy Director of Building and Housing Services
Christopher Forth, Deputy Director of Planning, Development and Neighborhood Services

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Subject Property



Imagery: March 2009

Vicinity Map

1518 E Centre Avenue

1 inch = 300 feet









ARTICLE 13. - UNSAFE STRUCTURES **1611**

- Sec. 42-1341. - General.
- Sec. 42-1342. - Unsafe structures.
- Sec. 42-1343. - Structure unfit for human occupancy.
- Sec. 42-1344. - Unlawful structure.
- Sec. 42-1345. - Notice.
- Sec. 42-1346. - Placarding.
- Sec. 42-1347. - Placard removal.
- Sec. 42-1348. - Prohibited occupancy.
- Sec. 42-1349. - Transfer of ownership.
- Sec. 42-1350. - Closing of vacant structures.
- Sec. 42-1351. - Emergency measures.
- Sec. 42-1352. - Hearings.
- Sec. 42-1353. - Hearing procedure; orders; appeals.
- Secs. 42-1354—42-1370. - Reserved.

Sec. 42-1341. - General.

When a structure is found by the director of community development to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this Code.

(Ord. No. 11-04, § 1, 12-7-2004)

State law reference— Dangerous buildings, MCL 125.538 et seq., MSA 5.2891(18) et seq.

Sec. 42-1342. - Unsafe structures.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, because such structure is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible, or that is defined as unsafe or dangerous in section 139 of Public Act No. 167 of 1917 (MCL 125.539, MSA 5.2891(19)).

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1343. - Structure unfit for human occupancy.

A structure is unfit for human occupancy whenever the director of community development finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lack maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by the Portage Code of Ordinances, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1344. - Unlawful structure.

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

(Ord. No. 11-07, § 1, 12-7-2004)

Sec. 42-1345. - Notice.

Whenever the director of community development has determined that a structure is unsafe, unfit, or unlawful, under the provisions of this article, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner and any occupant of such structure listed in the tax rolls at the assessment office. The notice shall:

- (1) Include a description of the real estate sufficient for identification. This may be a street number or other description.
- (2) Include a description of the defects, conditions and/or violations of the provisions of this article or any rule or regulation adopted pursuant thereto.
- (3) Be directed to the owner, and any occupant, of the premises list in the tax rolls at the assessor's office.
- (4) Be in writing and be served upon the person to whom it is directed personally or, in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to such person at the address shown on the tax record in the assessor's office and to a person occupying the premises. Alternatively, if the notice is returned showing that the notice was not delivered, the notice shall be posted in a conspicuous place in or about the structure affected by the notice.
- (5) With the exception of "Closing of vacant structures" pursuant to section 42-1350, and "Emergency measures" pursuant to section 42-1351, state that if the premises have not been made habitable within 30 days from the date of mailing such notice, further legal proceedings will be commenced.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1346. - Placarding.

Upon failure of the owner or person responsible to comply with the notice provisions within the time given, or in accordance with the provisions of sections 42-1350 and 42-1351, the director of community development shall post on the premises a placard reading substantially as follows:

UNSAFE
DO NOT ENTER

It is a misdemeanor to occupy this premises or structure
\$500.00 fine for removing or defacing this notice
Department of Community Development
City of Portage

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1347. - Placard removal.

The director of community development shall remove the unsafe placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes an unsafe placard without the approval of the director of community development shall be guilty of a misdemeanor.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1348. - Prohibited occupancy.

Any person who shall occupy a placarded premises and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises shall be guilty of a misdemeanor.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1349. - Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit or structure who has received or upon whom has been served a notice pursuant to this article, to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the notice 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 director of community development a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt without condition for making the corrections or repairs required by such compliance order or notice of violation.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1350. - Closing of vacant structures.

If a structure the director of community development determines is unsafe, unfit for human occupancy, or unlawful, is vacant, and is not in danger of structural collapse, the director of community development is authorized to post an unsafe placard on the premises, as provided in section 42-1346, order the structure closed up so as not to be an attractive nuisance, and post and serve a notice as provided in section 42-1345. Upon failure of the owner to close up the premises within the time specified in the correction notice, the director of community development shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected in the same manner in all respects as provided by law for the collection of taxes or any other legal means by law.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1351. - Emergency measures.

- (a) *Imminent danger.* When, in the opinion of the director of community development, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation

of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, the director of community development is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The director of community development shall cause to be posted at each entrance to such structure an unsafe placard as provided in section 42-1346. It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

- (b) *Temporary safeguards.* Notwithstanding other provisions of this Code, whenever, in the opinion of the director of community development, there is imminent danger due to an unsafe condition, the director of community development shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted, and shall cause such other action to be taken as the director of community development deems necessary to meet such emergency.
- (c) *Emergency repairs.* For the purposes of this section, the director of community development shall employ the necessary labor and materials to perform the required work as expeditiously as possible.
- (d) *Costs of emergency repairs.* Costs incurred in the performance of emergency work shall be paid by the city. The legal counsel of the city may institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.
- (e) *Hearing.* Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the construction board of appeals, be afforded a hearing as described in this article.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1352. - Hearings.

Upon expiration of the 30-day period referred to in section 42-1345(5), or in the case of the closing of vacant structures pursuant to section 42-1350, and emergency measures pursuant to section 42-1351, if the premises have not been made habitable or safe in accordance with the description of the defects, conditions and/or violations of the provisions of this article, the director of community development shall give notice to the owner, and any occupant, of the premises listed in the tax rolls at the assessor's office. Such notice shall:

- (1) Include a description of a real estate sufficient for identification. This may be a street number or other description.
- (2) Include a description of the defects, conditions and/or violations of the provisions of this article or any rule or regulation adopted pursuant thereto.
- (3) Be directed to the owner, and any occupant, of the premises.
- (4) Specify the time and place of a hearing on the condition of the premises at which time and place the person to whom the notice is directed shall have the opportunity to show cause why the premises should not be ordered demolished or otherwise made safe.
- (5) Be in writing and be served upon the person to whom it is directed personally, or, in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to such owner or other party at the address shown on the tax records at

least 15 days before the date of the hearing described in the notice. If a person to whom a notice is directed is not personally served, in addition to mailing a notice, a copy thereof shall be posted upon a conspicuous part of the premises.

- (6) Be filed with the construction board of appeals.
- (7) State that the owner, and any occupant, of the premises shall have the right at the hearing to cross examine witnesses who testify against the owner's and/or occupant's interests and the right to produce witnesses on his own behalf, including the use of pictures, videotapes or other recording devices.
- (8) State that any decision made by the construction board of appeals may be appealed to the council for review and, after review by the council, may be appealed to the circuit court within 20 days after the decision of the council.

(Ord. No. 11-04, § 1, 12-7-2004)

Sec. 42-1353. - Hearing procedure; orders; appeals.

At any hearing held pursuant to the provisions of this article:

- (1) The construction board of appeals shall take the testimony of the director of community development, or other qualified city official, the owner of the premises and any interested parties pursuant to this article. The use of pictures, videotapes or other recording devices shall be allowed into evidence at the hearing. Not more than five days after completion of the hearing, the board shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.
- (2) If the board determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the board shall enter an order that specifies what action the owner or occupant shall comply with the order. A copy of the order shall be served upon the person to whom it is directed personally or, in lieu of personal service, may be mailed by certified mail, addressed to such person at the address shown on the tax records in the assessor's office and to a person occupying the premises. Alternatively, if the notice shall be posted in a conspicuous place in or about the structure affected by the notice.
- (3) If the owner, agent or occupant fails to appear or neglects or refuses to comply with the order, the board shall file a report of its findings and a copy of such order with the city clerk for referral to the council and request that the council authorize the director of community development to take the necessary action to demolish the building or structure, maintain the building or structure, or otherwise make the building or structure safe.
- (4) The owner, agent, or occupant may appeal the decision of the board by requesting, within ten days after the board's decision, a hearing before the council. When an appeal is filed, the council shall fix a date for the hearing, reviewing the findings and order of the board, and shall give notice to the owner, agent or occupant, in the manner prescribed in this article, of the time and place of the hearing. At the hearing, the owner or occupant shall be given the opportunity to show cause why the building or structure should not be demolished, maintained, or otherwise made safe and the council shall either approve, disapprove or modify the order for demolition, maintaining or making safe of the building or structure.
- (5) The owner or occupant in whose name the property appears upon the tax rolls shall be notified of the amount of the cost of the demolition, of making the building safe, or

of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or occupant fails to pay the cost within 30 days after mailing of the notice of the amount of the cost, the city shall have a lien for the cost incurred by the city to bring the property into compliance with this article. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. The assessor shall add the costs to the next tax roll of the city and such amount shall be collected in the same manner in all respects as provided by law for the collection of taxes. Alternatively, the city may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. A city, village, or township shall have a lien on the property for the amount of the judgment obtained in such action.

(Ord. No. 11-04, § 1, 12-7-2004)

Secs. 42-1354—42-1370. - Reserved.

FOOTNOTE(S):

⁽⁶¹⁾ **Editor's note**— Ord. No. 11-04, § 1, adopted Dec. 7, 2004 amended ch. 42, art. 13 in its entirety as herein setout. The former art. 13, §§ 42-1341—42-1348, dealt with similar subject matter. See the Code Comparative Table for a detailed analysis of inclusion. [\(Back\)](#)

⁽⁶¹⁾ **Charter reference**— Authority to regulate the construction, erection, alteration, equipment, repair, moving, removal and demolition of buildings, appurtenances, etc., § 2.2(2)(vi). [\(Back\)](#)

⁽⁶¹⁾ **Cross reference**— Community quality, ch. 24. [\(Back\)](#)