

Chapter 1: Scope and Administration

General Comments

The law of building regulation is grounded on the police power of the state. This power is the source of all authority to enact building regulations. In terms of how it is used, police power is the power of the state to legislate for the general welfare of its citizens. This power enables the passage of laws such as a property maintenance code. It is from the police power delegated by the state legislature that local governments are able to enact building regulations. If the state legislature has limited this power in any way, the municipality may not exceed these limitations. While the municipality may not further delegate its police power (e.g., by delegating the burden of determining code compliance to the building owner, contractor or architect), it may turn over the administration of building regulations to a municipal official, such as a code official, provided that he or she is given sufficient criteria to clearly establish the basis for decisions as to whether or not a proposed building conforms to the code.

Chapter 1 is largely concerned with maintaining “due process of law” in enforcing the provisions contained in the body of the code. Only through careful observation of

the administrative provisions can the code official reasonably hope to demonstrate that “equal protection under the law” has been provided. While it is generally assumed that the administrative and enforcement sections of a code are geared toward the responsibilities of the code official, the provisions also establish the rights and privileges of the design professional, contractor and building owner.

Purpose

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

PART 1—SCOPE AND APPLICATION

SECTION 101 GENERAL

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

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

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

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

and *premises*, and for administration, enforcement and penalties.

❖ This section establishes the broad purpose of the code—to protect the public health, safety and welfare in both existing residential and nonresidential structures and on all existing premises.

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

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

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

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

❖ The code is intended to provide requirements addressing the public health, safety and welfare as they relate to the use and maintenance of existing structures and premises. The code requires existing structures and premises that are not in compliance with the code to be altered or repaired to meet the code. The code requirements are intended to represent the minimum acceptable level of public health and safety. As required in Section 102.3, repairs and alterations need to comply with several *International Codes*® (I-Codes®), including the *International Building Code*® (IBC®).

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

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

SECTION 102 APPLICABILITY

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

102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

❖ The most restrictive requirement is to apply where there may be different requirements in the code for a specific situation. In cases where the code establishes a specific requirement for a certain condition, that requirement is applicable even if it is less restrictive than a general requirement mentioned elsewhere in the code.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or *premises* was constructed, altered or repaired shall be maintained in good working order. No *owner*, *operator* or *occupant* shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occu-

pied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the *owner* or the *owner's* designated agent shall be responsible for the maintenance of buildings, structures and *premises*.

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

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *International Building Code*, *International Fuel Gas Code*, *International Mechanical Code* and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *International Zoning Code*.

❖ Repairs, additions or alterations are to be done as required by the IBC, *International Fuel Gas Code*® (IFGC®), *International Mechanical Code*® (IMC®) and NFPA 70. Chapter 34 of the IBC contains provisions for repairs, alterations and additions, all of which are not in the scope of this code. It is the intent of the code not to affect any of the requirements in the *International Zoning Code*® (IZC®).

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

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

102.5 Workmanship. Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a

workmanlike manner and installed in accordance with the manufacturer's installation instructions.

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

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

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

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

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

Exception: Where enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall apply.

- ❖ A referenced standard or portion thereof is enforceable to the same extent as if the content of the standard were included in the body of the code. For example, Section 604.2 references the NFPA 70 for sizing the electrical main service for a building. The use and application of referenced standards are limited to those portions of the standards that are specifically identified in the code. It is the intention of the code to be in harmony with the referenced standards. If conflicts occur because of scope or purpose, the code text governs. The exception recognizes the extremely unlikely but possible occurrence of the code requiring or allowing something less restrictive or stringent than the product listing or manufacturer's instructions. If the code conflicts with or deviates from the conditions of the listing, this may or may not mean that the code violated the listing. For example, the listing for an appliance might allow a particular application of an appliance that is expressly prohibited by the code. In this case, the code has not violated the listing, but instead has simply limited the application allowed by the list-

ing. The intent is for the highest level of safety to prevail.

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

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

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

102.9 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

- ❖ In a situation where the code may make reference to a chapter or section number or to another code provision without specifically identifying its location in the code, assume that the referenced section, chapter or provision is in the code and not in a referenced code or standard.

102.10 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

- ❖ In some cases, other laws enacted by the jurisdiction or the state or federal government may be applicable to a condition that is also governed by a requirement in the code. In such circumstances, the requirements of the code are in addition to the other law that is still in effect, although the code official may not be responsible for its enforcement.

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION 103 DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION

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

- ❖ The executive official in charge of the property maintenance department is named the "code official" by this section. In actuality, the person who is in charge of the