

ARTICLE 3

BUILDING ABATEMENT

Section	Subject Matter
9-3.101	TITLE
9-3.102	PURPOSE
9-3.103	SCOPE
9-3.104	ALTERATIONS, ADDITIONS, AND REPAIRS

ENFORCEMENT

9-3.201	CITY BUILDING OFFICIAL
9-3.202	ADMINISTRATION
9-3.203	INSPECTIONS
9-3.204	RIGHT OF ENTRY
9-3.205	ABATEMENT
9-3.206	INSPECTION OF WORK

DEFINITIONS

9-3.301	GENERAL
9-3.302	UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING

NOTICES AND ORDERS OF BUILDING OFFICIAL

9-3.401	NOTICE AND ORDER
9-3.402	POSTING OF SIGNS
9-3.403	RECORDATION

Section	Subject Matter
9-3.404	STANDARDS TO BE FOLLOWED
9-3.405	DEMOLITION, AN ALTERNATIVE TO REPAIR

APPEAL OF BUILDING OFFICIAL'S NOTICE AND ORDER

9-3.501	BUILDING ABATEMENT HEARING PANEL
9-3.502	RIGHT TO APPEAL NOTICE AND ORDER
9-3.503	FAILURE TO APPEAL NOTICE AND ORDER
9-3.504	NOTICE OF HEARING
9-3.505	EFFECT OF APPEAL
9-3.506	DECISION OF HEARING PANEL

ENFORCEMENT OF ORDER

9-3.601	FAILURE TO COMPLY WITH ORDER
9-3.602	BUILDING OFFICIAL AUTHORIZED TO DO WORK

PERFORMANCE OF WORK

9-3.701	PLANS AND SPECIFICATIONS FOR WORK
9-3.702	FINANCING OF WORK

RECOVERY OF COSTS

9-3.801	NOTICE OF LIEN/SPECIAL ASSESSMENT
9-3.802	LIEN/SPECIAL ASSESSMENT HEARING
9-3.803	REPORT OF COSTS
9-3.804	NOTICE OF REPORT
9-3.805	COLLECTION ON TAX ROLL

Section

Subject Matter

JUDICIAL REVIEW

9-3.901

JUDICIAL REVIEW OF HEARING PANEL
DECISION

ARTICLE 3

BUILDING ABATEMENT

SEC. 9-3.101 TITLE. These regulations shall be known as the Building Abatement Code of the City of Hayward, may be cited as such, and will be referred to herein as "this code."

SEC. 9-3.102 PURPOSE. It is the purpose of the provisions of this code to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy otherwise available at law or equity, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, may be required to be repaired, rehabilitated, vacated, removed, or demolished.

SEC. 9-3.103 SCOPE. The provisions of this code shall apply to all unsafe, substandard, and dangerous buildings, as herein defined, which are now in existence or which may hereafter be constructed in the City of Hayward.

SEC. 9-3.104 ALTERATIONS, ADDITIONS, AND REPAIRS. Any alterations, additions, or repairs to buildings or structures which are required to be repaired or rehabilitated under the provisions of this code shall be subject to the provisions of the Hayward Building Code.

ENFORCEMENT

SEC. 9-3.201 CITY BUILDING OFFICIAL. For the purposes of this code, Building Official shall be defined as the City Building Official of the City of Hayward or his or her designee.

SEC. 9-3.202 ADMINISTRATION. The Building Official is hereby authorized to enforce the provisions of this code. The Building Abatement Hearing Panel as established by section 9-3.500 of this article is empowered to hear appeals from notice and orders issued by the Building Official.

SEC. 9-3.203 INSPECTIONS. The Public Works Director, County Health Officer, Fire Marshal, Building Official, or their duly authorized representatives are hereby authorized to make such inspections and take such actions as may be required to enforce provisions of this code.

SEC. 9-3.204 RIGHT OF ENTRY

- (a) Upon presentation of proper credentials, the Building Official, after having obtained the consent of the owner or occupant, may enter at reasonable times during daylight hours and for probable cause, any building, structure, or premises in the City to perform any duty imposed upon him by this code.
- (b) Except in emergency situations, the Building Official shall not enter any building, structure, or premises without the consent of the owner or occupant thereof, unless he possesses an inspection warrant obtained and issued in the manner provided by sections 1822.50 et seq. of the Code of Civil Procedure of the State of California or any amendments thereto to or replacements thereof.

- (c) Except as hereinabove permitted, no person shall hinder or prevent the Building Official while in the performance of the duties described above, from entering upon, and into any building, structure, or premises under his jurisdiction, at all reasonable hours during daylight hours and for probable cause, for the purpose of inspecting the same to determine whether or not the provisions of this code are observed therein.

SEC. 9-3.205 ABATEMENT. All buildings or portions thereof which are determined after inspection by the Building Official to be unsafe, substandard, and dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal as specified in this code.

SEC. 9-3.206 INSPECTION OF WORK. All buildings within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by the Hayward Building Code.

DEFINITIONS

SEC. 9-3.301 GENERAL. For the purpose of this code, certain words, phrases, and terms, and their derivatives shall be construed as specified herein. Words, phrases, and terms used in this code, but not specifically defined herein, shall have the meanings stated therefor in the Hayward Building Code or Hayward Housing Code. Where not defined in this code or in said Building Code or Housing Code, such words, phrases, and terms shall have the meanings generally prescribed by dictionary definition.

SEC. 9-3.302 UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a public nuisance and an unsafe, substandard, and dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

- (a) Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (b) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Hayward Building Code, for new buildings of similar structure, purpose, or location.
- (c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Hayward Building Code, for new buildings of similar structure, purpose, or location.
- (d) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

- (e) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in said Hayward Building Code, for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in said Hayward Building Code for such buildings.
- (f) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (g) Whenever the building or structure, or any portion thereof, because of:
 - (1) dilapidation, deterioration, or decay;
 - (2) faulty construction;
 - (3) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (4) the deterioration, decay, or inadequacy of its foundation; or
 - (5) any other causeis likely to partially or completely collapse.
- (h) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (i) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (j) Whenever the building or structure, exclusive of the foundation shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
- (k) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become:
 - (1) an attractive nuisance to children;
 - (2) a harbor for vagrants, criminals, or immoral persons; or
 - (3) as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- (l) Whenever any building or structure has been constructed, or exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Hayward Building Code, or Hayward Housing Code, or of any law or ordinance of this state or the City of Hayward relating to the condition, location, or structure of buildings.
- (m) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion, less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the

(1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.

- (n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the County Health Officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- (o) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Marshal to be a fire hazard.
- (p) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- (q) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned for a period in excess of six months, so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

NOTICES AND ORDERS OF BUILDING OFFICIAL

SEC. 9-3.401 NOTICE AND ORDER. The Building Official shall examine or cause to be examined every building or structure or portion thereof to determine whether it is unsafe, substandard, and dangerous, and if such is found to be an unsafe, substandard, and dangerous building as herein defined, the Building Official shall notify or cause to have notified the owner of such building or structure and other persons having a beneficial or legal interest of record in the building or structure as hereinafter stated.

- (a) The notice shall contain the street address and a description sufficient for identification of the premises upon which the building is located. The notice shall state the conditions which render the building or structure an unsafe, substandard, and dangerous building. The notice shall order the correction or abatement thereof either by repair, rehabilitation, demolition, or removal within such time (not to exceed 30 calendar days from the date of the order) as the Building Official shall determine is reasonable under all of the circumstances. If in the opinion of the Building Official such conditions can be corrected or abated by repair or rehabilitation thereof, the notice shall state the repairs or rehabilitation which will be required. Such notice shall also state that if the repairs, rehabilitation, demolition, or removal are not completed within the time specified, or within such extension of time as may be granted by the Building Official, the work specified in the notice may be done or caused to be done by the Building Official and the cost thereof levied as a special assessment against the property.

If necessary, such notice may also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the Building Official. The notice shall also state that any person having any beneficial or legal interest of record in the building may appeal from the notice and order or any action of the Building Official to the Building Abatement Hearing Panel, provided the appeal is made in writing as provided in this code, and filed with the Building Official within 10 calendar days from the date of service of such notice and order, unless the Building Official determines that immediate action is necessary and must take action pursuant to chapter 1, section 102 of the Uniform Building Code. The notice shall further state that failure to appeal as provided in this code shall constitute a waiver of all right to an administrative hearing and determination of the matter and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

- (b) If such building is encumbered by a mortgage or a deed of trust, of record, and the owner of such building shall not have complied with the order of the Building Official on or before the expiration of time specified on such notice and order, the mortgagee or beneficiary under such deed of trust may, within the same period, comply with the requirements of the order of the Building Official. For good cause shown, the Building Official may extend the time within which to complete said repairs, rehabilitation, demolition, or removal.
- (c) The notice required hereinabove shall be given in the following manner:

The Building Official shall post or cause to be posted conspicuously at least one copy of the notice on the building and a copy of such notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located, as such person's name and address appear on the last equalized assessment roll of the County of Alameda. One copy of the notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to each of the following: 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 notice shall be sent to such persons at their address as appears on the last equalized assessment roll of the County of Alameda or as is known to the Building Official. If the address of any known person entitled to service of the notice and order is unknown to the Building Official, then a copy shall be mailed, addressed to such person, at the address of the building involved in the proceedings.

A declaration of posting and mailing shall be made under penalty of perjury by the person or persons who posted and/or mailed said notice, certifying to the time and manner in which such notice was given, and such declaration shall be filed in the Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward. There shall also be filed therewith any receipt card which may have been returned in acknowledgment of receipt of such notice by registered mail. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceeding taken hereunder.

SEC. 9-3.402 POSTING OF SIGNS. In those cases in which the Building Official has determined that it is necessary that such building, structure, or portion thereof be vacated forthwith, he shall cause to be posted at each entrance to such building a notice to read: 'DO NOT ENTER. UNSAFE TO OCCUPY. Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward.' Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the Building Official and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building until the required repairs, demolition, or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Hayward Building Code.

SEC. 9-3.403 RECORDATION. If compliance with the Building Official's order is not achieved within the time specified therein, and no appeal has been properly and timely filed, or an appeal has been filed but determined by the Building Abatement Hearing Panel adversely to the appellant, the Building Official shall file in the office of the Recorder of the County of Alameda a certificate describing the property and certifying that the building is an unsafe, substandard, and dangerous building and that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as an unsafe, substandard, and dangerous building on the property described in the certificate, the Building Official shall file a new certificate with the Alameda County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer unsafe, substandard, and dangerous, whichever is appropriate.

SEC. 9-3.404 STANDARDS TO BE FOLLOWED. The following standards shall be followed by the Building Official (and by the Building Abatement Hearing Panel if an appeal is taken) in ordering the repair, vacation, or demolition of any dangerous building or structure:

- (a) If the building or structure reasonably can be repaired so that it will no longer exist as a dangerous building, it shall be ordered to be repaired; otherwise it shall be ordered to be demolished.
- (b) If the building or structure is in such condition as to make it immediately dangerous to life, limb, property, or safety of the public or its occupants, it shall be ordered to be vacated.

SEC. 9-3.405 DEMOLITION, AN ALTERNATIVE TO REPAIR. An order to demolish shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by demolition.

APPEAL OF BUILDING OFFICIAL'S NOTICE AND ORDER

SEC. 9-3.501 BUILDING ABATEMENT HEARING PANEL. In order to provide for appeals from the Building Official's notice and order, there is hereby established a Building Abatement Hearing Panel. The Building Abatement Hearing Panel shall consist of three members who are not employees of the City of Hayward, and who are qualified by experience and training to pass upon matters pertaining to building construction and maintenance. Each member shall have the following minimum qualifications:

- (a) California state license as a general engineering contractor or general building contractor or four years of building construction or inspection experience involving structural, housing, electrical and plumbing construction or inspection work;
- (b) Have no conflict of interest, pecuniary interest or ethical barrier regarding the specific case the member will hear.

The Building Official shall act as secretary to said hearing panel. The City Manager shall appoint three persons to the hearing panel. The hearing panel shall render all decisions and findings in writing to the appellant with a copy to the Building Official. The hearing panel may reverse or affirm, wholly or partly, or modify any notice and order of the Building Official.

SEC. 9-3.502 RIGHT TO APPEAL NOTICE AND ORDER. Any person, firm, or corporation entitled to service under section 9-3.401 may appeal any notice and order or any action of the Building Official under this code by filing at the office of the Building Official within 10 calendar days from the date of the service of such notice and order, a written appeal to the Building Abatement Hearing Panel, except in cases where the Building Official must take immediate action pursuant to chapter 1, section 102 of the Uniform Building Code.

SEC. 9-3.503 FAILURE TO APPEAL NOTICE AND ORDER. Failure of any person, firm, or corporation to file an appeal with the Building Official within 10 calendar days from the date of service of the Building Official's notice and order shall constitute a waiver of all right to an administrative hearing and determination of the matter by the Building Abatement Hearing Panel and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

SEC. 9-3.504 NOTICE OF HEARING. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

SEC. 9-3.505 EFFECT OF APPEAL. Except for vacation orders made pursuant to section 9-3.402, enforcement of any notice and order of the Building Official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

SEC. 9-3.506 DECISION OF HEARING PANEL. The effective date of the decision of the Building Abatement Hearing Panel shall be as stated therein. The decision of the hearing panel is final. Any aggrieved party may bring an action in a court of competent jurisdiction to contest the validity of the proceedings or decision of the hearing panel as provided in Section. 9-3.901, otherwise all right to maintain any action, suit, or proceeding to set aside or modify the board's decision will be waived.

ENFORCEMENT OF ORDER

SEC. 9-3.601 FAILURE TO COMPLY WITH ORDER. After any order or decision of the Building Official or the Building Abatement Hearing Panel made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every

day or portion thereof during which any violation of any provisions of this code is committed, continued, or permitted and, upon conviction of any violation, such person shall be punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both such fine or imprisonment.

SEC. 9-3.602 BUILDING OFFICIAL AUTHORIZED TO DO WORK. If, after any order of the Building Official or Building Abatement Hearing Panel made pursuant to this code has become final, the person(s), firm(s), or corporation(s) to whom such order is directed shall fail, neglect, or refuse to obey such order, the Building Official may cause such person to be prosecuted under section 9-3.601 of this code, and institute any appropriate action to abate such building as a public nuisance. The Building Official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order, or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble, and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled thereto.

PERFORMANCE OF WORK

SEC. 9-3.701 PLANS AND SPECIFICATIONS FOR WORK. When any work of repair or demolition is to be done pursuant to section 9-3.602 of this code, the Building Official shall issue his order and the work shall be accomplished by City personnel or by private contract. Plans and specifications therefor may be prepared by said Building Official, or architectural and engineering personnel hired on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, Standard Public Works contractual procedures shall be followed.

SEC. 9-3.702 FINANCING OF WORK. The cost of such work shall be paid from a special revolving fund to be established for such purpose and entitled 'Repair and Demolition Fund' or as authorized by the Hayward City Council on a case-by-case basis. Said costs may be made a special assessment against the property involved, in accordance with the procedure set forth in sections 9-3.801 to 9-3.805.

RECOVERY OF COSTS

SEC. 9-3.801 NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid costs, fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

SEC. 9-3.802 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing by written request within 14 days of receipt of the notice of lien/special assessment. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by the owner liable to be charged for the work of abating cited code violations and related charges associated with their property. The Building

Official shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the Building Abatement Hearing Panel may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the hearing panel, including inspection charges and administrative expenses shall, after being confirmed by the city council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to judicial review shall be governed by Section 9-3.901.

SEC. 9-3.803 REPORT OF COSTS. The Building Official shall keep an itemized account of the expense incurred by the City of Hayward in the inspection, repair or demolition of any building done pursuant to the provisions of section 9-3.602 of this code. Upon the completion of the work of repair or demolition, said Building Official shall render an annual itemized report in writing to the City Council showing the cost of abatement. The City Council shall review and confirm the annual report and lien/special assessment list, amended as necessary, by way of resolution.

SEC. 9-3.804 NOTICE OF REPORT. The City Clerk shall post a copy of the report and lien/special assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for confirmation by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 9-3.805 COLLECTION ON TAX ROLL. After City Council confirmation of the annual report and lien/special assessment list, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid liens/special assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such liens or special assessments and this lien or special assessment shall have priority of the taxes with which it is collected.

JUDICIAL REVIEW

SEC. 9-3.901 JUDICIAL REVIEW OF HEARING PANEL DECISION.

- (a) Any person aggrieved by a decision of the hearing panel ordering the abatement of a nuisance or any associated administrative penalties or reimbursement for costs set forth in an order, may seek review of the administrative decision in the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure.
- (b) If the responsible party fails to so appeal the notice and order and/or the notice of lien/special assessment, no further administrative remedy will be provided and the failure to appeal shall preclude judicial review of the hearing panel's decision.

- (c) The filing of a request for judicial review shall not stay the operation or effect of an administrative decision or order unless a court of competent jurisdiction issues a specific stay order.