



Building Standards and Codes

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TECHNICAL BULLETIN

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Source Documents: 2016 Uniform Code Supplement
19 NYCRR Part 1225 – International Fire Code
19 NYCRR Part 1226 – International Property Maintenance Code

Topic: Due Process Issues - Unsafe Structures

This document provides guidance to assist code enforcement officials, and the attorneys for local governments (cities, towns, and village) that employ code enforcement officials, in recognizing and complying with Constitutional “due process” requirements when addressing *unsafe structures* and when posting (or “placarding”) an *unsafe structure* with a “do not occupy” notice.¹

NOTE: The Department of State and the Division of Building Standards and Codes are not authorized to give legal advice, and this document is not intended to give legal advice. This document is intended to provide general information that may be useful to code enforcement officials. Code enforcement officials are urged to contact the attorney for the local government that employs them for legal advice and further information.

Effective October 3, 2016, the Uniform Code will consist of the 2015 editions of the International Code Council family of codes (the “2015 I-Codes”), as amended by the 2016 Uniform Code Supplement. Chapter 1 of each of the I-Codes is amended and restated as Chapter 1 of the 2016 Uniform Code Supplement.

Section 101.2.6 of Chapter 1 of the 2016 Uniform Code Supplement contains a number of general provisions relating to the 2015 International Fire Code.

- Section 101.2.6.7 of Chapter 1 of the 2016 Uniform Code Supplement (entitled “Unsafe structures and equipment”) provides that If during the inspection of a premises, building or structure, or any building system or equipment, in whole or in part, the Authority Having Jurisdiction discovers “a clear and imminent threat to human life, safety or health,” the Authority Having Jurisdiction “shall exercise its powers in due and proper manner so as to

¹ The Uniform Code provides that the “do not occupy” notice should state that “This Structure is Unsafe and its Occupancy Has Been Prohibited by the code enforcement official.”

extend to the public protection from the hazards of threat to human life, safety, or health.”

- Section 101.2.6.7.8 of Chapter 1 of the 2016 Uniform Code Supplement (entitled “Imminent danger”) provides that the occupants “shall vacate premises when there exists:

“1. Imminent danger of failure or collapse of a building or structure which endangers life;

“2. A structure where the entire or part of the structure has fallen and life is endangered by the occupation of the structure;

“3. Actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials; or

“4. Operation of defective or dangerous equipment.

“There shall be posted at each entrance to such structure a notice reading as follows: ‘This Structure is Unsafe and its Occupancy Has Been Prohibited by the code enforcement official.’ It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or demolishing the structure.”

Section 101.2.7 of Chapter 1 of the 2016 Uniform Code Supplement contains a number of general provisions relating to the 2015 International Property Maintenance Code.

- Section 101.2.7.4.1 of Chapter 1 of the 2016 Uniform Code Supplement (entitled “Unsafe structures”) is substantially similar to Section 101.2.6.7, discussed above.
- Section 101.2.7.9 of Chapter 1 of the 2016 Uniform Code Supplement (entitled “Imminent danger”) is substantially similar to Section 101.2.6.7.8, discussed above.

While the Authority Having Jurisdiction must take appropriate action to protect owners, occupants, and the public at large from unsafe buildings, it is important to bear in mind that the right of an owner or tenant to occupy a building he or she owns or rents is a Constitutionally protected property right that cannot be taken away without “due process” of law. This point is emphasized in Section 107.1 of Chapter 1 of the 2016 Uniform Code Supplement, which provides as follows:

107.1. Due process. Nothing in this Chapter 1, or elsewhere in the Uniform Code, or in any regulation promulgated pursuant to Executive Law § 381(1), shall be construed as authorizing any governmental unit or agency responsible for administration and enforcement of the Uniform Code to do so in a manner that deprives any person or entity of due process of law. In particular, but not by way of limitation, nothing in this Chapter 1 relating to posting, placarding and/or condemnation of buildings or structures that are unsafe, unfit for human occupancy or unlawful shall be construed as authorizing

any governmental unit or agency responsible for administration and enforcement of the Uniform Code to post, placard or condemn any such building or structure and/or to remove any owner or occupant or cause any owner or occupant to be removed from any such building or structure without providing such notice and opportunity to be heard (and, if applicable, right of appeal) as may be required under the applicable circumstances by applicable Constitutional provisions.

Basically, “due process” of law involves giving an owner or other occupant of a buildings “notice” and “opportunity to be heard” *before* the Authority Having Jurisdiction puts a “do not occupy” notice on a building. The “notice” should include:

- notice of the Authority Having Jurisdiction’s intention to put a “do not occupy” notice on the building;
- notice of the Authority Having Jurisdiction’s reasons for doing so (including citations to the specific Uniform Code sections that the Authority Having Jurisdiction claims to be violated);
- notice of the right of the owner / occupant to be heard (that is, the right of the owner / occupant to present to some municipal official or body, other than the code enforcement official who proposes to put the “do not occupy” notice on the building, reasons why the owner / occupant believes that the code enforcement official’s proposed action should not be taken); and
- notice of the time within which the owner / occupant must request a hearing and the manner in which the owner / occupant must make that request.

It is also important to bear in mind that in general, in a case of **imminent danger** (for example, if the building is on fire, or about to collapse, or filled with toxic fumes, or subject to some other condition that makes it imminently dangerous for a human to remain in the building), Constitutional due process requirements do not require the Authority Having Jurisdiction to give owners and occupants notice and opportunity to be heard before placing a “do not occupy” notice on the building and requiring the owners and occupants to vacate the building. However, in a case of imminent danger that justifies immediate placarding of a building, owners and occupants must typically be given an opportunity for a post-action hearing, notice of their right to such a post-action hearing, and notice of when and how to request such a post-action hearing. This point is emphasized in Section 107.1.2 of Chapter 1 of the 2016 Uniform Code Supplement, which provides as follows:

107.1.2 Imminent danger. In cases of imminent danger, posting, placarding, and condemning a building or structure and removing owners and occupants or causing owners and occupants to be removed without first providing an opportunity to be heard shall be permitted to the extent consistent with applicable Constitutional provisions, provided that the affected persons and entities are afforded the opportunity for a post-action hearing to the extent required by applicable Constitutional provisions.

Code enforcement officials should contact the attorney for the local government that employs them for advice and guidance on whether, in any given case, the situation involves a matter of imminent danger that justifies placing a “do not occupy” notice on the building and requiring the owners and occupants to vacate the building before giving owners and occupants notice and opportunity to be heard.

Finally, each local government responsible for enforcing the Uniform Code is required to adopt of local law, ordinance or regulation that established the local government’s code enforcement program (see 19 NYCRR section 1203.2(a)). That program must include certain features, including procedures for “identifying and addressing unsafe structures and equipment” (see 19 NYCRR section 1203.3(f)). Those procedures should include provisions calling for notice and opportunity to be heard consistent with Constitutional due process requirements. This point is made during the Basic Training Program for code enforcement officials in New York State.² Code enforcement officials should contact the attorney for the local government that employs them for advice and guidance on Constitutional due process requirements and the applicable provisions of the local government’s code enforcement program relating to notice and opportunity to be heard.

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² The Code Enforcement Basic Training Course entitled “**Remedies**” outlines “Due Process.” Enforcement procedures must follow steps prescribed by Law, and must also be appropriate to the case, and just to the parties affected. It is strongly suggested to consult with the municipal attorney or other municipal officer before proceeding. Local laws must not exceed Constitutional limitations, and in general will prescribe the following:
1.) Document, notify and allow time for response.2.) Utilize remedies fitting to the problem
3.) Protection against practices which fall short of fundamental fairness 4.) Equal Protection: the laws must operate alike upon all, cannot subject the individual to arbitrary exercise of governmental power.