

**ARTICLE 7.8 UNSAFE BUILDINGS OR STRUCTURES** [Article Repealed and New Article Enacted by Amd. Ord. 82-94 10/18/94]

**Section 7.8.1 Application:**

(A) Except as inconsistent with the provisions of this chapter, all building codes and building requirements adopted by this title as well as those codes adopted in Section 96.16, are hereby adopted and incorporated as fully as if set out at length herein and the provisions therein shall be controlling in the use, maintenance, and occupancy of all buildings and structures within the jurisdiction of the City. Amendments to any of the above codes or code sections which are adopted by the City shall be considered amendments hereto.

(B) This chapter shall apply to all unsafe buildings and structures, as defined in Section 7.8.2 of this chapter and shall apply equally to new and existing conditions. To the extent that the provisions of this chapter are inconsistent with any codes adopted herein and any ordinances pertaining to the elimination or repair of unsafe buildings, this chapter shall supersede those codes and ordinances.

**Section 7.8.2 Definitions:**

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(B) Words not defined herein shall have the meanings stated in the Standard Building Code, Standard Mechanical Code, Standard Plumbing Code, Standard Gas Code, Standard Fire Codes (as adopted in 96.16), as those codes have been adopted and/or amended by the City or other applicable codes duly adopted and/or amended by the City.

"Applicable Governing Body." The City of Delray Beach.

"Approved." Approved by the Chief Building Official or his designee.

"Building." Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for 50% or more of its perimeter. The term "Building" shall be construed as if followed by the words "or parts thereof." For the purpose of this chapter, each portion of a "Building" separated from other portions by a fire wall shall be considered as a separate "Building." "Building" shall also include a structure which was partially constructed in a manner such that it would have qualified as a "Building" if completed but which has been damaged or left incomplete so that it no longer has enclosing walls for 50% of its perimeter.

## **SECTION 7.8.2 (B)**

"Building Official." The Chief Building Official who is charged with the administration and enforcement of this chapter, or the duly authorized designee of the Chief Building Official.

"Codes." Wherever reference is made in this chapter to any code, the meaning will be that conveyed by that particular code as amended by the City or if not specifically named, to the codes mentioned in section 7.8.2(B) above.

"Cost of Alterations or Repairs." The estimated cost of repairs or alterations if done by a professional contractor, duly licensed and hired to effect those repairs or alterations, as determined by the Chief Building Official or his designee using generally accepted practices for estimating cost.

"Department." The Community Improvement Department charged with the enforcement of this chapter.

"Dilapidated." In a state of decay or disrepair due to a lack of maintenance and upkeep; deteriorated due to lack of adherence to standard codes.

"Fire Official or Inspector." Building Inspectors, Fire Inspectors, Code Enforcement Officers, Engineers, etc. employed by the City and whose regular job functions include inspecting buildings, structures, properties, etc.

"Legally Cognizable Interest." The interest of an owner, tenant, person or entity having a recorded lien on the subject real property as shown by a title search conducted within 30 days prior to the date of Notice of Unsafe Building/Structure.

"Office of the Recorder." The Recorder of deeds of a county.

"Owner." Any person, agent, firm, or corporation having a fee simple legal or equitable interest in the property.

"Structure." Anything which is built, erected or constructed. This definition includes, among other things, docks, dolphins, piers, boat lifts, fences, posts, buildings (see above), walls, pilings, signs, canopies, tents, stairs, stoops, awnings, slabs, asphalt or concrete driveways, poles, septic tanks, and other items as determined by the Chief Building Official.

"Unsafe Building or Structure." Any building or structure that has any of the following conditions, such that the life, health, property, or safety of the general public, building or structure occupants, or any others are endangered:

## **SECTION 7.8.2 (B) (1)**

(1) Whenever any means of egress or required egress or portion thereof is blocked, partially blocked, not of adequate size or not arranged or provided to provide a safe and unobstructed path of travel to the outside in case of fire or panic.

(2) Whenever required fire doors, fire protection equipment, means of egress, closing devices, or fire resistance rating materials are in disrepair, in a dilapidated or nonworking condition or installed incorrectly or are inadequate.

(3) Whenever the stress in any member of a building or structure or portion thereof, due to all imposed loads, including dead load, exceeds the working stress allowed in the Standard Building Code for new buildings.

(4) Whenever a building, structure, or portion thereof has been damaged by fire, flood, earthquake, wind, or any other cause to the extent that the structural integrity of the building or structure is less than it was prior to the damage and is less than the minimum requirement established by the Standard Building Code for new buildings.

(5) Whenever any exterior appendage or portion of a building or structure is not securely fastened, attached, or anchored such that it is capable of resisting wind, seismic, or similar loads as required by the Standard Building Code for new buildings.

(6) Whenever, for any reason, a building, structure, or portion thereof is in a dilapidated condition due to lack of maintenance or is manifestly unsafe or unsanitary for the purpose for which it is actually being used or for the purpose for which it was designed to be used.

(7) Whenever any building, structure, or portion thereof, as a result of decay, deterioration, dilapidation or any other reason is likely to fully or partially collapse.

(8) Whenever any building, structure, or portion thereof has been constructed or maintained in violation of a specific requirement of the standard codes of the City.

(9) Whenever any building, structure, or portion thereof is in a condition as to constitute a public nuisance such as, but not limited to, being left open and unattended, or being abandoned by its owners, or lacks security to prevent entry, or is without operational, electrical, water or sewer service, or lacks security to prevent entry or is left partially complete, but not guarded or not adequately guarded against unauthorized entry.

(10) Whenever any building, structure, or portion thereof is unsafe, unsanitary, not provided with adequate egress, or which constitutes a fire or health hazard, or is otherwise dangerous to human life, or, which in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

## SECTION 7.8.2 (B) (11)

(11) Whenever a requirement is lacking and which is necessary for the strength or stability of an existing or proposed building or structure, or for the safety or health of the occupants thereof, such as, but not limited to, hot and cold water supply and electricity, and even if not specifically covered by this chapter or other codes, as determined by the Chief Building Official, in accord with the standards set forth herein.

**Section 7.8.3 Maintenance of Buildings or Structures Required; Responsibility:** All buildings or structures, both existing and new, and all parts thereof, including all materials, fixtures or appliances installed therein shall be maintained in a safe, secure and sanitary condition. All policies, procedures, requirements and safeguards which are required by the Standard Building Code, Life Safety Code, Fire Prevention Code or Standard Housing Code and/or any other applicable codes adopted by the City, or as may be amended from time to time, in a building when erected, altered, repaired, moved or occupied, shall be maintained in good working order. The owner, or his designated agent, shall be responsible for the maintenance of buildings and structures.

### **Section 7.8.4 Requirements for Alterations, Additions, or Repairs:**

(A) Subject to the provisions of Paragraph (C) of this subsection, alteration, repair, or rehabilitation work may be made to an existing building or structure without requiring the entire building or structure to comply with all the requirements of this code, provided that the alteration, repair, or rehabilitation work conforms to the requirements of the code for new construction. However, if an existing building or structure is damaged by fire or otherwise requires repairs in excess of 50% of its replacement cost as proven by independent appraisal, the entire building or structure shall be made to conform to all current codes and Land Development Regulations for new buildings and current land use regulations. Additionally, any buildings or structure containing a nonconforming use must comply with current Land Development Regulations if required repairs exceed 10% of the replacement cost of the structure or building as determined as noted above.

(B) Additions to existing buildings must be made in conformity with current codes. However, existing buildings or structures need not be modified to comply with current codes except where the addition involves replacement or reconstruction of materials in the original structure or otherwise affects the safety or materials in the original structure. Any reconstruction or replacement materials or related repairs shall conform with current codes.

(C) Whenever more than 25% of a roof covering is replaced within a 12 month period, the entire roof covering shall be made to conform with the requirements of the code for new buildings.

## SECTION 7.8.4 (D)

(D) Repairs, alterations, and additions may not be made so as to extend or increase an existing nonconformity or hazard.

**Section 7.8.5 Chapter Remedial:** This chapter is declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof which are public safety, health, and general welfare through structural strength, stability, security, maintenance, sanitation, adequate light and ventilation, electrical power, hot and cold water supplies and safety to life and property from fire, health and other hazards incident to the construction, security, moving, alteration, repair, removal, demolition, use, and occupancy of buildings or structures.

**Section 7.8.6 Enforcement Officer Designated:** The provisions of this chapter shall be enforced by the Chief Building Official and/or his designee. The Chief Building Official or his designee may utilize the Fire Department, Code Enforcement Division, Environmental Services, etc. to aid in the enforcement of the provisions of this chapter.

**Section 7.8.7 Liability of Enforcement Personnel:** Any officer or employee, or member of a board, charged with the enforcement of this chapter acting for the City in the discharge of their duties, shall not thereby render themselves personally liable, and are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of their duties. Any suit brought against any officer or employee because of an act performed in the enforcement of any provision of this chapter shall be defended by the City Attorney or Special Counsel retained by the City Commission, until the final termination of the proceedings, providing the individual acted within the scope of his authority.

### **Section 7.8.8 Authority to Make Inspections; Initiating Abatement:**

(A) The Chief Building Official or his designee, Building Inspectors, Code Enforcement Officers, Fire Department Officials, etc. are authorized to make any inspections and recommend any actions to the Chief Building Official or his designee as may be required to enforce the provisions of this chapter.

(B) After the Chief Building Official or his designee has determined that a building, structure, or portion thereof is unsafe, he may initiate proceedings to abate the unsafe conditions.

**Section 7.8.9 Investigation; Notice:**

(A) The Chief Building Official or his designee shall cause a title search to be made of the affected property to determine the names of all persons having an interest in the property. The Chief Building Official or his designee shall then prepare and issue a Notice of Unsafe Building/Structure directed to the owner of record and all persons having a legal interest in the property, including all known tenants. The notice shall contain, but not be limited to, the following information:

(1) The street address and legal description of the building, structure, or premise, as disclosed by the title search and/or County or City records.

(2) A statement indicating that the building or structure has been declared unsafe by the Chief Building Official or his designee and a detailed report documenting the conditions determined to have rendered the building or structure or portion thereof unsafe under the provisions of this chapter.

(3) The action required to be taken as determined by the Chief Building Official or his designee.

(a) The notice shall require that all necessary permits be secured and the repair work be commenced within 60 days from the date of service of the Notice of Unsafe Building/ Structure, and continued to completion within 6 months from the date the permits are available for issuance. The notice shall also set forth the provisions of Section 7.8.4 of this chapter.

(b) If the building or structure is to be vacated, the notice shall indicate the time within which vacation is to be completed.

(c) If emergency action was taken by the Chief Building Official or his designee pursuant to 7.8.12(C), the notice shall state the emergency action taken and any costs incurred.

(4) The notice shall state what action shall be taken by the City in the event that repairs are not made in accordance with the directions in the Notice of Unsafe Building/Structure. The Chief Building Official or his designee may in that case bring the matter before the Code Enforcement Board or order the building to be vacated and demolished or boarded up in accordance with the standards set forth in Section 7.8.12 of this chapter.

(5) A statement advising that any person having a legal interest in the property may appeal the finding of the Chief Building Official or his designee to the Board of Adjustment and that the appeal shall be in writing in the form specified in Section 7.8.14 and 7.8.16 of this Chapter, and must be received by the Chief Building

## SECTION 7.8.9 (A) (5)

Official or his designee no later than thirty (30) days from the date of service of the Notice of Unsafe Building/Structure and that failure to deliver an appeal in the correct form in the time specified will constitute a waiver of all rights to an administrative hearing. **[Amd. Ord. 47-07 10/16/07]**

(B) The Notice of Unsafe Building/Structure and all attachments thereto shall be served upon the owners of record and posted on the property in conspicuous locations. A copy of the Notice and all attachments thereto shall also be served on any person determined from a title search to have a legal interest in the property.

(C) The Notice of Unsafe Building/Structure shall be served either personally or by dual service of certified or registered mail, return receipt requested, and postage paid first class mail to each person required to receive notice at the address as it appears in official public records as disclosed by a title search and a review of County tax roll records or any other address as is known by the Chief Building Official or his designee to be the address of those required to receive service or address of those authorized to receive service. If addresses are not available for any persons, firms, companies, corporations, etc. required to be served, except owners of record, after reasonable efforts are made to determine such address(es), the notice to those persons, firms, companies, corporations, etc. shall be mailed by first class mail to the address of the building or structure involved in the proceedings. Notice to tenants shall be by posting the premises and shall be effective on the date of such posting. The failure of any person to receive notice, other than the owner(s) of record, shall not invalidate any proceedings under this chapter. Service by certified or registered mail, return receipt, as herein described shall be effective on the date the notice was received as indicated on the return receipt. Where notice is not received by certified or registered mail or personally, the notice shall be effective the date of first class mailing as above. In those cases where the address of the actual owner(s) of record can not be determined after reasonable efforts are made to locate such address(es), notice to such owner(s) of record may be given by one advertisement of a "Notice of Unsafe Building/Structure" in a newspaper of general circulation in the county where the affected building or structure is located. In the case of advertisement of a Notice of Unsafe Building/Structure, the service date shall be the publication date.

### **Section 7.8.10 Posting of Premises for Vacating or Demolishing:**

(A) In addition to the above notice requirements, Unsafe Building/Structure notices shall be posted at or near each exit and/or entrance to the effected building or structure and shall contain:

#### **UNSAFE BUILDING/STRUCTURE DO NOT ENTER OR OCCUPY**

It is a violation of Land Development Regulations of the City of Delray Beach to enter or occupy this building/structure or to remove or deface this notice without written permission from the Chief Building Official.

## SECTION 7.8.10 (A)

The notice shall be signed and dated by the Chief Building Official or his designee.

(B) This notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm, or corporation or their agents to remove the notice or to enter or occupy this building/structure without prior written permission of the Chief Building Official or his designee.

**Section 7.8.11 Recording of Affidavit I, Affidavit III:** If the remedial action required under Section 7.8.12 of this chapter is not commenced within 60 days from the date of service of the Notice of Unsafe Building/Structure on the owner of record, the Chief Building Official or his designee shall file in the public records of the County Affidavit I describing the property and certifying that the building or structure is unsafe and that the owner of record has been served. This affidavit shall remain on file until the conditions rendering the building or structure unsafe have been abated or corrected and inspected by the Chief Building Official or his designee. When the unsafe conditions are abated or corrected and inspected, the Chief Building Official or his designee shall file Affidavit III in the public records indicating that the building or structure is no longer unsafe as a result of those conditions specified in the subject notice pursuant to Section 7.8.12 of this chapter.

**Section 7.8.12 Standards for Determining Action to be Taken by Building Official:** The following actions shall be taken by the Chief Building Official or his designee when ordering the repair, vacation, demolition or boarding up of an unsafe building or structure or portion thereof:

(A) If the building or structure poses an immediate hazard to the life or to the safety of the occupant or user thereof, or to the neighborhood, or to the public, or to the property of others, it shall be ordered immediately vacated. Additionally, where the building is not repaired in the time permitted, it will be ordered vacated and demolished, in accordance with the general guidelines in this section.

(B) The building or structure will be ordered demolished when the condition of the building structure or portion thereof is sufficiently unsanitary, unsafe, unsecured, unguarded or detrimental to neighboring properties due to lack of completion, upkeep or exterior maintenance and where the required repairs are not performed within the time prescribed in the Notice of Unsafe Building/Structure or by order of the Board of Adjustment, and where the continued existence of the structure poses a hazard to the health or safety of the public or the occupants or users of the effected building or to the property of others. This applies even if the building is secured against entry and where the building is sufficiently damaged, unsound, unsafe, unsanitary or detrimental to property values in the vicinity due to incomplete condition or lack of maintenance and upkeep. **[Amd. Ord. 47-07 10/16/07]**

## SECTION 7.8.12 (C)

(C) In certain cases where the Chief Building Official or his designee, based upon his own experience and knowledge, or upon the advice of fire officials, determines that an immediate peril exists and that certain preventative action must be taken immediately without notice or title search to prevent injury to occupants, neighbors or the public or destruction of the property of neighbors or the public, the Chief Building Official or his designee may order immediate preventative actions which may include, but shall not be limited to, vacating the property, demolition, erecting fences or other barricades, boarding up, ordering the disconnection of power and water supplies and the City may assess the costs of such action as a lien upon the property in accordance with this chapter. In the aforementioned cases, a Notice of Unsafe Building/Structure shall be served after preventative action is taken in the same manner as when action is taken after service. An appeal to the Board of Adjustment based upon an emergency action is proper only as it relates to costs incurred by the City, providing such appeal is received in the form prescribed by Sections 7.8.9, 7.8.14, and 7.8.16, and is received by the Chief Building Official no later than 30 days after service of the Notice of Unsafe Building/Structure. **[Amd. Ord. 47-07 10/16/07]**

(D) The Chief Building Official or his designee shall have the authority to approve one extension of time to complete repairs to make a building or structure safe or to complete demolition. Such extension shall not exceed 60 days from the original expiration date for repair or demolition. The extension shall only be granted where the Chief Building Official or his designee determines that a good faith effort is being made to correct the unsafe condition, and that the extension will not unreasonably endanger the public. The building official may require that premises be guarded by fencing, barricading or other means until all repairs are made or demolition is completed.

### **Section 7.8.13 [Deleted by Ord. 47-07 10/16/07]**

### **Section 7.8.14 Appeals, Generally; Board of Adjustment: [Amd. Ord. 47-07 10/16/07]**

(A) Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer or bureau of the governing body of the City, affected by any decision of the Chief Building Official concerning interpretation, administration, or enforcement of the following provisions of the Land Development Regulations: **[Amd. Ord. 47-07 10/16/07]**

- (1) Building Regulations: Article 7.1 except Sections 7.1.5 through 7.1.7
- (2) Gas Code: Article 7.3
- (3) Mechanical Code: Article 7.5
- (4) Plumbing Code: Article 7.6
- (5) Electrical Code: Article 7.2
- (6) Housing Code: Article 7.4
- (7) Unsafe Building/Structure: Article 7.8
- (8) Moving Buildings: Article 7.10

## SECTION 7.8.14 (B)

(B) It is the intent of this subchapter that all questions of interpretation, administration, and enforcement shall first be presented to the Chief Building Official. Questions shall be presented to the Board of Adjustment only as an appeal of the Chief Building Official's determination. Appeals shall be filed in writing via certified U.S. Mail return receipt requested, and received by the Chief Building Official no later than 30 days after receipt of a written decision from the Chief Building Official except as specified in 7.8.9. The form of the appeal is as specified in 7.8.16. The Chief Building Official shall forth with transmit to the Board all papers constituting the record on which the appeal is based. **[Amd. Ord. 47-07 10/16/07]**

**Section 7.8.15 Decisions, Generally:** In exercising its powers, the Board of Adjustment, so long as the action is in conformity with the terms of existing ordinances, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make the order, requirement, decision, or determination as should be made, and to that end shall have powers of the Chief Building Official from whom the appeal is taken. **[Amd. Ord. 47-07 10/16/07]**

### **Section 7.8.16 Appeals, Authorized Form:**

(A) For all authorized matters other than Unsafe Building/ Structure, any person or persons who have an interest adversely impacted by the Chief Building Official's decision may file an appeal.

(B) For Unsafe Building/Structures, any person entitled to service in accordance with the provisions of Section 7.8.9 may appeal any action of the Chief Building Official or his designee.

(C) Appeals must be in the form described below:

(1) Identification of the land, and building or structure by street address and/or legal description, as appropriate.

(2) A statement identifying the legal interest of the appellant or the interest of the appellant adversely impacted by the Chief Building Official's decision.

(3) A statement identifying specific portions or sections of the Notice of Unsafe Building/Structure or written decision of the Chief Building Official which are being appealed.

(4) A statement detailing the issues on which the appellant desires to be heard in relation to (3) above.

(5) The legal signature of the appellant(s) and his official mailing address(es).

## SECTION 7.8.16 (D)

(D) Upon receipt of an appeal, the Board of Adjustment shall fix a date, time, and location for the hearing of the appeal. The hearing date shall not be more than 30 days from the date the appeal was received by the Chief Building Official unless the appellant agrees to a later date or the City demonstrates good cause. **[Amd. Ord. 47-07 10/16/07]**

(E) **Waiver of Appeal**: All appeals must be received by the Chief Building Official no later than 30 days from the date of service the Notice of Unsafe Building/Structure or 30 days after receipt of the Chief Building Official's written decision which is appealed. Failure to appeal within the time period specified shall constitute a waiver and shall make the decision of the Building Official a final decision or order.

### **Section 7.18.17 Hearing; Failure to Appear at Hearing, Board of Adjustment** **[Amd. Ord. 47-07 10/16/07]**

(A) Scope of hearing:

(1) The hearing shall offer the appellant(s) reasonable opportunity to be heard on only those specific matters or issues raised in his written appeal. Other persons having a legally cognizable interest in the property but who did not register a written appeal may be heard at the Board of Adjustment's discretion on only those matters or issues raised by the appellant on his appeal and only to the extent that they affect the legally cognizable right of the person seeking to intervene in the appeal. **[Amd. Ord. 47-07 10/16/07]**

(2) The Chief Building Official or his designee shall offer relevant testimony to the Board and/or the Chief Building Official may call others to testify who may offer relevant testimony.

(3) The appellant or other person with a legally cognizable interest may appear at the hearing in person or through his attorney or other designated representative.

(4) The Board, in hearing appeals under this chapter, shall determine whether the decision of the Chief Building Official or his designee as to the unsafe condition of the structure or the remedial action required or his interpretation, administration or enforcement of relevant matters, as related to those matters raised by the appellant, is appropriate under the guidelines of this chapter. With regard to emergency actions, the Board's sole determination shall be to determine whether the costs incurred were reasonably related to the action undertaken.

(B) The failure of any person to appear at the hearing set by the Board of Adjustment without permission from the Board shall constitute a waiver of his right to an administrative hearing on the Notice of Unsafe Building/Structure or other matter appealed. The Board of Adjustment may, for good cause shown, excuse the failure to appear and set a new hearing date. **[Amd. Ord. 47-07 10/16/07]**

**Section 7.8.18 Rules of Procedure for Hearing Appeals, Board of Adjustment: [Amd. Ord. 47-07 10/16/07]**

(A) **Reasonable Dispatch:** The Board of Adjustment shall proceed with reasonable dispatch to conclude any matter before it. [Amd. Ord. 47-07 10/16/07]

(B) **Form of Hearing Notice to Appellant(s):**

(1) The Hearing Notice shall include, but not be limited to, the following information:

- (a) The date, time, and place of the hearing;
- (b) The legal description and/or address of the subject property, as applicable;
- (c) A statement that persons may be represented by counsel; and
- (d) A statement that appellants may present all relevant testimony on those issues which they intend to raise in accordance with their appeal request as addressed to the Chief Building Official.

(C) **Procedures for Hearing:**

(1) The Hearing Notice shall be served personally or by certified mail, return receipt requested, at least 7 days prior to the hearing date unless the appellant waives such requirement.

(2) The Board of Adjustment may grant a continuance for good cause. [Amd. Ord. 47-07 10/16/07]

(3) When the hearing is scheduled, the Board of Adjustment shall: [Amd. Ord. 47-07 10/16/07]

- (a) Hear from the Chief Building Official or his designees or others who may offer relevant testimony as to and as applicable to:
  - (i) The Notice of Unsafe Building/Structure and all attachments thereto or other matters being appealed.
  - (ii) Proof of service of the Notice of Unsafe Building/Structure on the owner of record and on any person determined from official public records to have a legal interest in the property or proof of service or receipt by the appellant(s) of any other written decision which is being appealed.

## SECTION 7.8.18 (C) (3) (a) (iii)

- (iii) The time of posting the Notice of Unsafe Building/Structure, including time to vacate, if any, and the location of the notices on the building or structure
  - (iv) The particulars of the defects and conditions determined to have rendered the building or structure or portion thereof unsafe under the provisions of this chapter, with photographs as necessary.
  - (v) The recommended corrective actions to be taken and the reasons for the recommendations.
  - (vi) Corrective actions, if any, already undertaken.
  - (vii) The reasons and bases supporting the written decision made by the Chief Building Official which is being appealed.
- (b) Hear from other interested parties present in accordance with requirements of this chapter.

### (4) **Evidence:**

- (a) The Hearing before the Board of Adjustment shall not be required to be conducted in accordance with the technical rules relating to evidence and testimony. **[Amd. Ord. 47-07 10/16/07]**
- (b) In any proceedings under this chapter any member of the Board shall have the power to administer oaths and affirmations and to certify official acts.
- (c) Oral evidence shall be taken only on oath or affirmation.
- (d) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence. The further use of hearsay evidence shall be limited to that which would be admissible in civil court.
- (e) Relevant evidence shall be admitted if it is the type 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 might make improper the admission of evidence over objection in civil courts.

(5) The Board of Adjustment may inspect any building, structure or portion thereof involved in the appeal during the course of the hearing, provided the following are complied with: **[Amd. Ord. 47-07 10/16/07]**

- (a) Notice of an inspection is given to the appellant prior to the inspection;

## SECTION 7.8.18 (C) (5) (b)

- (b) The appellant is allowed to be present during the inspection; and
- (c) The Board members conducting the inspection state for the record, upon completion of their inspection, the conditions observed and any conclusions drawn therefrom.

(6) When an appeal is heard before the Board itself, any member who does not hear the evidence presented shall not vote or take part in the decision.

(7) The Board of Adjustment may be provided independent counsel, including counsel from the City Attorney's office, to advise it during the course of an appeal hearing. **[Amd. Ord. 47-07 10/16/07]**

### (D) **Decision of the Board:**

(1) The Board, if requested, shall determine whether the finding of the Chief Building Official or his designee that the building or structure is unsafe is proper under the guidelines of this chapter, and whether the mandated corrective action is necessary to render the building safe under the guidelines of this chapter. In cases where demolition has been ordered if repairs are not made, the Board shall, if requested, determine that demolition is proper. The Board may uphold the determination of the Chief Building Official or his designee, may send the matter back for further investigation and review by the Chief Building Official or his designee, or may make a finding that the condition complained of by the Chief Building Official or his designee does not render the building unsafe within the guidelines of this chapter, or that the corrective action required by the Chief Building Official or his designee is beyond what is required under this chapter to render the building safe.

As to any other matter or appeal, the Board may affirm, deny or modify the written decision of the Chief Building Official in accordance with codes and ordinances adopted by the City.

(2) The Board shall issue its written decision within 15 working days of the conclusion of the hearing. The decision shall be in writing and shall set forth the evidence presented and the findings of the Board. The effective date of the Board's final decision shall be the date of the written decision. The Board may grant one and only one extension of the time specified for making repairs and that extension may not exceed 60 days from the date of the Board's written decision to grant an extension. The Board may require the appellant to take actions to ensure the safety of the public or occupants during the extension period.

## **SECTION 7.8.18 (E)**

(E) **Recourse:** If the appellant or the City is aggrieved by the decision of the Board, nothing in this chapter shall be construed to deprive him or the City of seeking redress in a court of competent jurisdiction. The appeal must be filed within 30 days from the effective date of the Board's final written decision and shall constitute a stay of any enforcement by the Chief Building Official or his designee except an order to vacate which was unappealed or upheld by the Board.

### **Section 7.8.19 Staying of Notice Under Appeal to Board of Construction Appeal:**

(A) As to an order to vacate issued in accordance with Section 7.8.9(3)(a) or 7.8.12(C) of this chapter, enforcement of any notice issued by the Chief Building Official or his designee under the provisions of this chapter shall be held in abeyance during the course of an appeal. In the event that an order to vacate was issued pursuant to the aforementioned sections of this chapter, the Chief Building Official shall certify in writing as soon as practicable after the notice of appeal has been filed that, in his opinion, a stay of enforcement of an order to vacate would cause imminent peril to the life or safety of natural persons, or the property of persons other than the appellant. The certification shall set forth in detail those conditions causing the peril. An appellant desiring to challenge the order to vacate may request an emergency hearing of the Board of Adjustment. The hearing shall be held within 72 hours of the appellant's request. **[Amd. Ord. 47-07 10/16/07]**

(B) As to other matters under appeal, an appeal stays all proceedings in furtherance of the action appealed from, unless the Chief Building Official from whom the appeal is taken certifies to the Board of Adjustment after the Notice of Appeal is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In this case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment at an emergency hearing of the Board as requested by the appellant, as noted above, or by a court of competent jurisdiction. **[Amd. Ord. 47-07 10/16/07]**

### **Section 7.8.20 Failure to Comply with Final Order or Decision:**

(A) Any person who, after the order or decision of the Chief Building Official or his designee or the decision of the Board of Adjustment becomes final, fails or refuses to act in accord with the direction of that order shall be in violation of this chapter and may be prosecuted in accordance with Chapter 37 of the Code of Ordinances of the City or the City may seek relief through a court of competent jurisdiction. **[Amd. Ord. 47-07 10/16/07]**

(B) Alternatively, where persons fail to comply with the final order of the Chief Building Official or his designee or the Board of Adjustment, the Chief Building Official will require the building to be immediately vacated and demolished or boarded up as provided in Section 7.8.12. Except in emergency situations, the Chief Building Official or his designee

## SECTION 7.8.20 (B)

shall mail a Final Notice by certified and first class mail 15 days prior to demolition or boarding up to all persons who were required to receive Notice of Unsafe Building/Structure and shall post the Final Notice on the effected building/structure. The Final Notice shall state: **[Amd. Ord. 47-07 10/16/07]**

(1) That the building or structure has been determined to be unsafe by a final order of the Chief Building Official or Board of Adjustment. **[Amd. Ord. 47-07 10/16/07]**

(2) That repairs were not effected as required.

(3) That all persons having a legally cognizable interest were served with notice that the failure to make the required repairs would result in an order to vacate and/or to demolish or to board-up the building.

(4) That the building must be vacated immediately, if it has not already been vacated.

(5) Advising that the building shall be demolished or boarded up, and stating an approximate date of demolition or boarding up.

(6) The approximate costs of boarding up or demolition and that such costs, if not paid, shall be charged as a lien against the property and that other costs incurred will be added to the total cost along with a 10% administrative fee.

(C) The Chief Building Official shall also execute an Affidavit II to be included with the above Final Notice which shall state that the continued existence of the structure creates a danger to the health, safety, or welfare of the public, or is a danger or detriment to the property of the public, along with the reasons therefor, and the factual support for those reasons.

(D) No person shall obstruct or interfere with the implementation of any action required by the Final Notice of the Chief Building Official, his designee or the Board of Adjustment. Any person found interfering with or obstructing such actions shall be in violation of this chapter and shall be prosecuted as provided in Section 7.8.22. **[Amd. Ord. 47-07 10/16/07]**

(E) **Performance of Work:** The demolition or board-up of an unsafe building as required in the Final Notice of the Chief Building Official or the final decision by the Board of Adjustment shall be performed in an expeditious and workmanlike manner. **[Amd. Ord. 47-07 10/16/07]**

### **Section 7.8.21 Recovery of Cost of Demolition; Liens:**

(A) Whenever the Chief Building Official or his designee is required to take emergency action as described in Section 7.8.12(C) or where compliance with a Final

## SECTION 7.8.21 (A)

Notice is effected by the City, the City administration is authorized and directed to keep an accurate account of all expenses incurred, including but not limited to photographs, recording notices and affidavits, demolition, vacation, barricading, boarding-up, title searches, mailings, asbestos inspections, septic tank emptying, fencing, asbestos removal, utility disconnections, legal notice advertising or any other expenses necessitated by the demolition or board-up of the building/structure, and based upon same certify the cost involved for that work with respect to each parcel of property. The City shall also add to the total of such costs a 10% administrative charge to cover the expense of administering and inspecting the work performed, overhead, and other contingent expenses. The cost of advertising shall be added to the total costs as a separate expense.

(B) If the City has the condition abated and payment is not received within 30 days after the mailing of an invoice for the appropriate expenses incurred together with administrative costs, an invoice requesting payment of the total costs and administrative charges shall be sent to the last known address of the record owner. In the event the invoice remains fully or partially unpaid 30 days after the date of mailing the invoice, the cost shall be reported by the City Manager to the City Commission. Thereupon the City Commission shall, by resolution, assess that cost against the parcel. The resolution shall describe the land and show the cost of effecting compliance, whether by demolition and removal or otherwise, actually incurred by the City and the additional 10% administrative expenses. The assessment shall also include costs of collection and reasonable attorney fees, and shall be legal, valid, and binding obligations against the subject property. The resolution shall become effective 30 days from the date of adoption, and the assessment contained therein shall become due and payable no later than 30 days after the mailing date of the Notice of Assessment, after which interest shall accrue at the rate of 8% per annum on any unpaid portion.

(C) The City shall send an invoice for the total amount due, a copy of the Notice of Assessment along with a copy of the Commission resolution, to the last known address of the record owner. Service shall be by personal delivery or by certified mail, postage prepaid, return receipt requested. In the event that the assessment remains fully or partially unpaid after 30 days of the mailing date or personal delivery of the Notice of Assessment, the City shall cause to be recorded in the official records of the County, against those properties for which payment in full has not been received, an affidavit certifying: that a resolution assessing those costs against the subject property was passed by the City Commission; the amount remaining unpaid including recording costs and any additional administrative costs authorized by City policies; the date the resolution was passed and the number of the resolution; that the assessment remains unpaid as of the date of the affidavit; that interest in the amount of 8% per annum of the unpaid balance shall accrue; and that the affidavit is recorded by the City pursuant to this chapter. In the event payment in full with interest accrued is received, the City shall cause a satisfaction for such assessment to be recorded. The Notice of Assessment resolution shall be in substantially the following form:

**CITY OF DELRAY BEACH  
UNSAFE BUILDING/STRUCTURE  
NOTICE OF ASSESSMENT**

\_\_\_\_\_  
**DATE**

**TO:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PROPERTY:** \_\_\_\_\_

You, as the record owner of, or holder of an interest in, the above described property are hereby advised that a cost of \_\_\_\_\_ by resolution of the City Commission of the City of Delray Beach, Florida, dated \_\_\_\_\_, 19\_\_, has been levied against the above described property.

The costs were incurred as a result of an abatement action regarding the above described property. You were given notice on \_\_\_\_\_ that the Chief Building Official had determined that a building/structure located on the above described property was unsafe. You were advised in that notice of the action that would be taken to remedy that unsafe condition and that the action would be initiated by the City if you failed to act.

\_\_\_\_\_ You failed to appeal the decision of the Chief Building Official to the Board of Adjustment although you were informed of your right to an appeal and of the procedures for obtaining an appeal. You have also failed to take the corrective action required in the Notice of Unsafe Building/Structure.

\_\_\_\_\_ You appealed the decision of the Building Official to the Board of Adjustment. You were given written notification on \_\_\_\_\_ that you were required to take the corrective action required by the decision of the Board of Adjustment within a stated period of time. You failed to take the action as required by the order of the Board of Adjustment.

\_\_\_\_\_ You appealed the decision of the Building Official to the Board of Adjustment on \_\_\_\_\_. The Board of Adjustment upheld the decision of the Building Official.

The City of Delray Beach has therefore taken remedial action to remove the unsafe condition existing on the above described property on \_\_\_\_\_ at a cost of \_\_\_\_\_ which includes a ten percent (10%) administrative fee. If you fail to pay this cost within thirty (30) days, that cost plus additional administrative and recording costs shall be recorded in the official Records of Palm Beach County, Florida against the above-described property.

## SECTION 7.8.21 (C)

THE CITY MAY ENFORCE THE ASSESSMENTS BY EITHER AN ACTION AT LAW OR FORECLOSURE OF THE LIEN, WHICH SHALL BE FORECLOSED IN THE SAME MANNER AS MORTGAGES ARE FORECLOSED UNDER STATE LAW. IN EITHER TYPE OF ACTION, THE CITY SHALL BE ENTITLED TO INTEREST AT THE RATE OF 8% FROM THE DATE OF ASSESSMENT, COLLECTION COSTS, AND REASONABLE ATTORNEY'S FEES. SUCH LIENS SHALL BE ON A PARITY WITH GENERAL CITY TAXES AND SHALL HAVE PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES, INCLUDING MORTGAGES.

Copies of all notices referred to in this notice are available in the office of the Chief Building Official.

**BY ORDER OF THE CITY COMMISSION**

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**City Clerk**

(D) The City may enforce the assessments by either an action at law or foreclosure of the lien, which shall be foreclosed in the same manner as mortgages are foreclosed under state law. In either type of action, the City shall be entitled to interest at the rate of 8% from the date of assessment, collection costs, and reasonable attorney's fees. Such liens shall be on a parity with general City taxes and shall have priority over all other liens and encumbrances, including mortgages.

### **Section 7.8.22 Violations; Providing for Independent Judicial Proceeding**

(A) Any person or his agent, who shall violate a provision of this chapter or fail to comply therewith, including orders and findings of the Board of Adjustment, may be prosecuted and punished in accordance with Chapter 37 of the City's Code of Ordinances. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed or continued. The administration may alternatively seek enforcement in a court of competent jurisdiction. **[Amd. Ord. 47-07 10/16/07]**

(B) Any person, firm or corporation who violates any provision of this chapter for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding \$500 or imprisonment for a term not exceeding 30 days or both. Each day any violation shall continue to exist shall constitute a separate offense.

(C) All remedies and procedures in this chapter are not exclusive and shall not prevent the City from instigating an independent legal action in a court of competent jurisdiction.