

**ATTACHMENT 2: Marked-Up Alameda Municipal Code (AMC) Sections
Concerning Imminently Hazardous Structures Showing Changes
Recommended By AAPS
March 2, 2010**

Note: The following recommendations were submitted by AAPS to the HAB on August 3, 1999 in response to the "summary demolition" of the Webb Avenue Garage at 2411 Webb Avenue ordered by the Building Official. The Webb Avenue Garage was on the Historic Building Study List.

The AAPS recommendations are intended to give the Building Official options besides "demolition or destruction" to abate imminently hazardous buildings and also to improve notification.

The procedures in AMC Sections 13-10.9 and 13-10.13 below are similar to those in Sections 13-9.6 and 13-9.7, which are not included in this document. AAPS's recommendations for Sections 13-10.9 and 13-10.13 therefore also apply to Sections 13-9.6 and 13-9.7.

13-10.7 Appeal Procedure; Administrative Hearing.

a. Appeal. The owner, any ~~mortgagee~~ mortgagee, ~~or beneficiary under any deed of trust or other person~~ may appeal the determination of the Building Official to the City Manager by filing a written notice of appeal with the City Clerk within ten ~~(10)~~ days of the date of service of the Notice and Order. The appeal shall identify the property and state the grounds for appeal with all material facts in support thereof. If the building or structure alleged to be unfit is a historical monument or is listed on the Historic Building Study List then any interested person may appeal the determination of the Building Official to the City Manager in the same manner.

b. Hearing of Appeal. In the event the owner or a mortgagee or beneficiary or other person appeals the Notice and Order, the City Manager shall set a hearing before a Hearing Officer designated by the City Manager, said hearing to be not more than thirty ~~(30)~~ days from the filing of the appeal.

c. Notice of Hearing. Notice of hearing shall be served personally or by first class mail, postage prepaid, addressed to the person who filed the appeal, and shall specify the time and place when and where the designated Hearing Officer will hear and decide the appeal. Such notice shall be served not less than ten (10) days prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.

d. Waiver of Hearing. Failure of the person filing the appeal to appear at the hearing after notice has been served pursuant to subdivision (c) of this subsection shall be deemed a waiver of the hearing and an admission by said owner of the truth of the charges made in the Notice and Order.

e. Determination by Hearing Officer. The Hearing Officer shall determine whether the building, structure or any portion thereof is dangerous, unsafe, or a violation of the Alameda Building Code section 203 and whether charges in the Notice and Order are true, and if so order its repair, rehabilitation, vacation, or demolition by the owner, City work crews or a private contractor. The hearing shall be conducted pursuant to the Uniform Housing Code, Chapter 13, Procedures for Conduct of Hearing Appeals. The decision of the Hearing Officer is final.

f. Service of Decision of Hearing Officer. The Hearing Officer shall serve a copy of his or her decision on the owner and on any mortgagee or beneficiary under any deed of trust in the same manner as set forth in subdivision (c) of this subsection.

1. The Hearing Officer shall only consider evidence that is relevant to the following issues:

(a) Whether the conditions of the building or structure listed in the Notice and Order constitute a public nuisance; and

(b) Whether the time frame and method of abatement by repair, rehabilitation, vacation or demolition as listed in the Notice and Order are reasonable under the circumstances; and

(c) Whether the City may abate the conditions causing the public nuisance if the owner fails to do so.

(Ord. No. 2701 N.S. § 2; Ord. No. 2808 N.S. § 2)

13-10.8 Recovery of Costs.

a. Cost of Abatement.

1. If City work crews or City contractors perform the abatement, the Building Official shall keep an account of the costs and expenses of abating such nuisance and shall render a statement of such costs to the owner and any mortgagee, or beneficiary under any deed of trust persons receiving the Notice and Order. Such persons shall be individually liable to the City for any and all costs and expenses to the City involved in abating the nuisance.

2. Costs and expenses as referred to in this section shall include, but are not limited to, any and all direct costs related to personnel salaries and benefits, operational overhead, rent, interest, fees for experts, consultants or contractors,

legal costs or expenses including attorney's fees, claims against the City arising as a consequence of the nuisance or violation, and procedures associated with collecting moneys due hereunder.

b. Report of Costs Transmitted to Council; Hearing.

1. The Building Official shall present to the City Council for consideration a report of costs for abating the nuisance. The Council shall fix a time, date and place for hearing the report, and any protests or objections thereto. The City Clerk shall cause notice of hearing to be served on the owner and on any mortgagee or beneficiary under any deed of trust in the same manner as set forth in subsection 13-10.7(c). Such notices shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour and place when the City Council will hear and pass upon the report of the Building Official containing the proposed charge for abatement, and any objections or protests which may have been filed by any person interested in or affected thereby.

2. The cost and expenses of abatement of any action taken hereunder shall be assessed against the subject property upon which the building or structure is located as a lien, special assessment or made a personal obligation of the owner; except, that in the event the courts shall decide the action taken under this Article was improper, no recovery of costs shall be allowed.

3. Any amounts received from sale of material shall be a credit against any cost of abatement, and in the event the amount received for the sale of material exceeds the expenses of razing or removing the building or structure, then such excess shall be deposited with the City Treasurer to the credit of the owner or

other person legally entitled thereto, and such excess shall be payable to said owner or other person on demand and upon producing evidence of ownership satisfactory to the Treasurer.

c. Recovery of Costs and Expenses of Abatement Costs by Special Assessment.

1. If the City Council orders that the abatement costs shall be charged against the property, the City Manager, or his or her designee, shall prepare a Notice of Special Assessment.

2. The City Manager, or his or her designee, shall deliver the Notice of Special Assessment to the County Auditor who shall place it on the County Assessment Roll pursuant to California Government Code section 38773.5.

3. The Notice of Special Assessment shall include a copy of the Council's confirmation of costs and shall summarize the abatement action. The City Manager may record a copy of this Special Assessment Notice to inform any subsequent purchasers or owners about the abatement action and costs.

4. The City Manager, or his or her designee, shall file a withdrawal of this Notice with the County Recorder when either: (1) the owner pays in full the abatement costs; or (2) the County Auditor or Tax Collector posts a lien on the property pursuant to California Government Code section 38773.5.

d. Collection of Assessment; Penalties and Foreclosure. Pursuant to the provisions of California Government Code section 38773.5, the County Tax Collector may collect the amount of the assessment at the same time and in the same manner as ordinary municipal taxes and impose the same penalties and

procedures, including the sale of the property, in the case of delinquency, as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to the special assessment.

e. Alternative Procedures. As an alternative to the recovery of abatement costs as set forth in this subsection, the Council may follow the procedures set forth in California Code of Regulations, Title 25, section 70.

(Ord. No. 2701 N.S. § 2)

13-10.9 Summary Abatement.

a. Definition. For purposes of this subsection, "Imminently Hazardous Building" or "Imminently Hazardous Structure" is a building or structure or portion thereof, which is in a condition of structural weakness or instability from whatever cause that it is an immediate danger to life, health or safety of the public or property and that such hazard is so imminent that the risks ~~therefrom~~there from require summary or immediate action to avoid serious harm to the public or property.

b. Determination of Imminently Hazardous Building or Structure; Summary Abatement. If the Building Official shall determine that a building or structure is an Imminently Hazardous Building or an Imminently Hazardous Structure and that the time imposed for repair, alteration, demolition, or destruction under this Article is unreasonably long considering the condition of the structure and the danger to the public or property, the Building Official may order the immediate repair, alteration, demolition, or destruction of said building or structure pursuant

to the provisions of this subsection. If said building or structure is a Historic-Cultural Resource, any action by the Building Official shall follow the procedure set forth in Subsection 13-21.4 (a). If additional time is needed to determine if repair or alteration is feasible, the Building Official may order street and sidewalks closures and/or the erection of street and sidewalk barriers to insure the public is protected while repair or alteration is being considered.

(Ord. No. 2701 N.S. § 2)

13-10.10 Notice.

The Building Official shall post, or cause to be posted, a copy of a notice prepared in accordance with subsection 13-10.5 on the property and serve, or cause to be served, a copy of the notice on the owner of the property and on any mortgagee or beneficiary under any deed of trust, or if unable to effect personal service prior to the date of hearing, to make all reasonable efforts under the circumstances to transmit a copy of said notice to the owner and mortgagee or beneficiary under any deed of trust by telephone, telecopier, or other reasonable means, of the time, place and date of the hearing which shall be held prior to the destruction of the building.

(Ord. No. 2701 N.S. § 2)

13-10.11 Hearing.

The hearing shall be conducted before a Hearing Officer appointed by the City Manager, and shall be conducted pursuant to the Uniform Housing Code,

Chapter 13, Procedures for Conduct of Hearing Appeals. The decision of the Hearing Officer shall be final. The City Manager shall give not less than three (3) days written notice of the hearing.

(Ord. No. 2701 N.S. § 2)

13-10.12 Preservation of evidence.

In the event the Building Official determines that the condition of the Imminently Hazardous Building or Imminently Hazardous Structure is such that any delay in repair, alteration, demolition, or destruction ~~or removal~~ will constitute an unreasonable risk to the public or property, the Building Official shall record all evidence, including, but not limited to, the statements of any experts, photographs and video recordings of the condition of the building or structure, engineering calculations, and the findings of the Building Official which support the immediate repair, alteration, demolition or destruction of the building.

(Ord. No. 2701 N.S. § 2)

13-10.13 Summary Abatement Without Hearing.

In the event that it is not reasonable to hold a hearing under the circumstances, the Building Official shall make a reasonable attempt to notify the owner, and mortgagees, and beneficiaries -under any deed of trust of his or her intended action. The Building Official shall record all evidence, including the statement of any experts and photographs and video recordings of the condition of the

building or structure, together with a statement of his or /her findings ~~which that~~ support the immediate repair, alteration, demolition, or destruction of the building or structure. The Building Official shall mail certified mail, return receipt requested, postage prepaid, to the owner and mortgagees and beneficiaries under any deed of trust a written statement containing the following:

(a) the address of the property; (b) record of attempts to notify the owner or beneficiaries under the deed of trust of the summary abatement; (c) the findings of the Building Official which required the immediate repair, alteration, demolition, or destruction of the building or structure; and (d) the location and summary of the evidence which supports the finding to summarily abate the Imminently Hazardous Building or Imminently Hazardous Structure.