

SUBCHAPTER 3  
ENFORCEMENT

**200-09. Authority. 1. JURISDICTION.** Except as otherwise regulated by this code, in addition to the duties and authority prescribed in ch. 8, city charter, the commissioner has the authority to enforce all the provisions of this code and the decisions of the board, the commission, the administrative rules of the Wisconsin department of safety and professional services and all other laws or lawful orders relating to the construction, maintenance, use, and occupancy of buildings, structures, equipment or premises when not in conflict with ch. 295, and to perform all of the various duties as prescribed in all other ordinances and state statutes in a manner to provide that the spirit and intent of the law shall be observed and public welfare and safety be assured. The commissioner shall be the final authority on interpretation of the code except where such authority is preempted by state or federal law.

**2. VARIANCES.** A variance granted from any provision of the orders of the Wisconsin department of safety and professional services granted by the department, pursuant to s. 101.02, Wis. Stats., as amended, shall apply to an identical or similar regulation of this code and be in force and effect when, in the opinion of the commissioner, such variance shall in no manner adversely affect the public safety and health. Such variance shall not apply to any such or related regulation of this code which obviously creates a higher standard of safety and health than the standard of safety and health established by the regulation of such orders as modified by said department, nor shall any such variance apply to any regulations of ch. 295.

**200-10. Enforcement of Former Code of Laws.**

**1. BUILDINGS BUILT PRIOR TO OCTOBER 9, 1914.** All buildings and structures, additions and alterations erected prior to October 9, 1914, shall comply with the provisions of chs. SPS 375 to 379, Wis. Adm. Code, for existing buildings. Buildings and structures built and subsequently changed to a more restrictive use prior to October 9, 1914, shall comply with the more restrictive provisions of chs. SPS 375 to 379, Wis. Adm. Code, on existing buildings.

**2. BUILDINGS BUILT BETWEEN OCTOBER 9, 1914, AND JANUARY 30, 1951.** Buildings and structures erected or additions or alterations made thereto between October 9, 1914, and January 30, 1951, shall comply with the provisions of the Wisconsin Administrative Code in effect at that time. Buildings changed to a more restrictive use between October 9, 1914, and January 30, 1951, shall comply with the Wisconsin Administrative Code in effect at the time.

**3. BUILDINGS BUILT AFTER JANUARY 30, 1951.** Any building or structure, addition or alteration or change in use erected or occurring after January 30, 1951, shall comply with either the provisions of the Milwaukee building code or the Wisconsin Administrative Code in effect at the time, whichever shall be more restrictive.

**200-11. Enforcement. 1. DEFINITIONS.** In this section: a. "Unsafe building" means any building, structure or dwelling unit made unsafe due to: insufficiency of stairs, exits or structural strength thereof; danger from fire; defects in construction; deterioration; removal of any appliance, device or equipment required by this code; the hazardous or illegal manner in which it is occupied or used; or which for any reason is a fire hazard or has other defects endangering life, limb or property.

b. "Building unfit for human habitation" means any building, structure or dwelling unit which is so damaged, decayed, dilapidated, unsanitary, difficult to heat, unsafe or vermin infested, that it creates a hazard to the safety or welfare of the occupants or the public; or which lacks illumination, ventilation or sanitary facilities adequate to protect the safety or welfare of the occupants or the public; or which, because of its general condition or location, is unsanitary or otherwise dangerous to the safety or welfare of the occupants or the public.

**2. ACCESS TO BUILDINGS OR STRUCTURES.** a. Right of Entry. The commissioner or a duly authorized representative, upon presentation of proper credentials, may enter at any reasonable time, any building, structure or premises to enforce this code.

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b. Special Inspection Warrant. If any owner, occupant or other person in charge of a structure subject to this code refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to any part of the structure or premises where inspection authorized by this code is sought, the commissioner may apply for and obtain a special inspection warrant pursuant to ss. 66.0119, 101.14(2)(b), Wis. Stats., as amended.

c. Access by Owner or Operator. Every occupant of a dwelling, dwelling unit, rooming unit or hotel unit shall give the owner or operator thereof, or an agent or employee, access to any part of such structure or its premises at all reasonable times for the purpose of making such inspection, maintenance, repairs or alterations as are necessary to comply with the requirements of this code.

d. The city clerk or his or her designee may enter onto the exterior premises of properties subject to s. 320-21 for the purpose of enforcing the provisions related to certificates of appropriateness under s. 320-21-11. The city clerk or his or her designee shall not enter any structures.

**3. STOPPING OF CONSTRUCTION WORK; UNSAFE CONSTRUCTION.** Whenever the construction of any building, structure, equipment, or additions thereto, or alterations, or repairs thereto, or removal, or demolition thereof is being done contrary to the regulations of this code or contrary to s. 320-21-11 or the conditions of a certificate of appropriateness issued pursuant thereto, or is being done in an unsafe or dangerous manner, or not in accordance with the approved plans, specifications, and data, or with the terms of the permit granted therefor, the commissioner may, by means of a placard posted on the premises, order such work to be stopped at once and thereafter confirm such order by a written order served on the owner of the premises and on the person engaged in doing or causing such work to be done, and any such persons shall immediately stop all such work until satisfactory evidence is presented to the commissioner that all of the provisions of the permit, this code, s. 320-21-11 and the conditions of a certificate of appropriateness issued pursuant thereto, Wisconsin Administrative Code, all other lawful orders of the Wisconsin department of safety and professional services and other laws and ordinances applicable thereto will be complied with, at which time work can again be resumed providing authority is procured from the commissioner to recommence with the work.

**4. ILLEGAL OCCUPANCY AND USE.** Whenever any existing building, structure, dwelling unit, premises or equipment, has been erected, or constructed, or is being occupied or used in violation of any provision of this code, or any term or condition of a permit issued by the department of city development, the commissioner may serve a written order on the owner of the premises, or on the person occupying, using or causing the use at or on the building, structure, dwelling unit, premises or equipment thereon; to discontinue such occupancy or use. Thereafter, no permits, other than a permit to institute full compliance with the requirements of this subsection, shall be issued for any alterations, additions, or occupancy or use of the buildings, structure, dwelling unit, premise or equipment thereon.

**5. BUILDINGS, STRUCTURES, DWELLING UNITS, EQUIPMENT WHICH ARE UNSAFE OR UNFIT FOR HUMAN HABITATION.**

a. Inspection. The commissioner may inspect any building, structure, dwelling unit or equipment thereon, which is reported or found to be damaged, dangerous, unsafe or is a fire hazard or unfit for human habitation.

b. Order to Discontinue Occupancy or Use. The commissioner may issue an order to the owner of any building, structure, dwelling unit or equipment thereon, or on the person occupying or using any such building, structure, dwelling unit or equipment, to discontinue such occupancy or use if the building, structure, dwelling unit or equipment is, in the judgment of the commissioner, in an unsafe condition or unfit for human habitation. An order to discontinue occupancy or use shall identify the code violation that causes the building, structure, dwelling unit or equipment to be unsafe or unfit for human habitation.

c. Closing of Unsafe or Unfit Buildings. If the owner or occupant of a building, structure, dwelling unit or equipment thereon, which the commissioner finds to be unsafe or unfit for human habitation, fails or refuses to discontinue the occupancy or use of such building, structure, dwelling unit or equipment within the time prescribed by the commissioner, the commissioner may commence and prosecute an action in circuit court for an order of the court requiring any person occupying a building, structure or dwelling unit whose occupancy has been prohibited under this section to vacate the premises.

d. Order to Keep Vacant. Whenever the commissioner finds a vacant building, structure or dwelling unit to be unsafe or unfit for human habitation, the commissioner may issue an order to the owner of the premises to keep the building, structure or dwelling unit vacant, and shall only permit occupancy pursuant to s. 275-33-1.

e. Temporary Safeguards.

e-1. When in the judgment of the commissioner a building or structure or part thereof is extremely unsafe and in danger of structural failure or collapse, or the property is unsafe to the public or users of the property the commissioner may order the owner or agent to immediately provide temporary safeguards, for the protection of the general public and upon installation of such safeguards, may permit the occupancy or use of the building, structure or property to continue or resume on a limited basis as directed by the commissioner. If the owner fails, neglects or cannot provide such temporary safeguards, the commissioner may, with the aid of any available public agency, provide the necessary safeguards and charge the cost thereof against the real estate upon which such building or structure or dangerous condition is located, and if that cost is so charged, it is a lien upon such real estate and may be assessed and collected as a special tax.

e-2. The commissioner may require that a registered architect or engineer design such temporary safeguards. The commissioner shall approve the drawings for such safeguards and a separate permit issued for the construction of the temporary safeguard.

6. SERVICE OF ORDERS AND PLACARDS. a. In all cases regulated in subs. 4 and 5, the commissioner shall serve the order by both mailing or delivering the order in accordance with s. 200-12-3 and by posting a copy of the order in a conspicuous place on the premises.

b. Placarding of Unfit Buildings. If a building or any part thereof is unfit for human habitation, occupancy or use but is not in danger of structural collapse the commissioner shall post a placard on the premises containing the following words: "This Building Cannot Be Used For Human Habitation, Occupancy or Use." The commissioner shall prohibit the use of the building for human habitation by requiring the owner to vacate and prohibit further occupancy or use until the necessary repairs have been made.

c. Placarding of Illegally Occupied or Unsafe Buildings. In all cases regarding illegal occupancy or use or unsafe buildings, the commissioner may post on the premises a notice to the effect that the building, structure, dwelling unit or equipment is unsafe, or has been ordered razed, or that the building or structure is illegally occupied or used and shall be vacated at once as ordered.

d. Orders and placards shall remain effective until the required repairs or alterations have been made or demolition and removal have been completed. No person may remove a posted order or placard, nor occupy, use or enter a posted or placarded building, structure or dwelling unit, except for the purpose of making the required repairs or alterations, without written permission from the commissioner.

e. Boarding of Placarded Structures. If it becomes necessary to placard a structure under sub. 4 or 5, the commissioner may, to prevent reentry and to provide for safety of persons, protection of the property, or security of personal property, order the immediate boarding of the building, structure, dwelling unit or equipment.

e-1. One attempt shall be made to contact the owner of the property based on the property recording contact information required under s. 200-51.5 or any other reasonable means of contacting the owner of record available to the inspector.

e-2. If contact is made with the owner, the owner shall begin to board the structure within one hour of contact and complete the process within 3 hours. The owner or the owner's agent may obtain a private contractor to board and secure the structure. Boards shall be installed and maintained as specified in s. 275-32-7.

e-3. If the department is unable to make contact with the owner or an authorized representative listed in the property recording under s. 200-51.5, or the owner or authorized representative requests the city to board the structure, or refuses or fails to take action to board the structure, the department may board all doors, windows and openings, as necessary. The cost of the boarding along with an administrative fee as provided in s. 200-33 shall be a lien upon the real estate and shall be assessed and collected as a special charge.

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**200-11.5. Enforcement of Codes Against Historic Structures.** Except in cases where a structure poses an immediate threat to public health and safety, the commissioner shall stay enforcement of chs. 218 and 275 of this code and s. 66.0413, Wis. Stats., against any structure which has local or national designation as an historic structure, or which is part of a local or national historic site or district, provided that the owner of such structure has obtained a mothballing certificate from the historic preservation commission, in accordance with the provisions of s. 320-21-15, and, subsequently, a mothballing permit from the department upon payment of the fee provided in s. 200-33 and in compliance with any rules and regulations of the commissioner.

### 200-12. Orders to Correct Condition.

**1. ISSUANCE OF ORDERS.** Whenever the commissioner determines, or has reasonable grounds to believe, that there exists a condition which violates any provision of the Milwaukee code over which the commissioner has enforcement jurisdiction or authority, or the conditions of a certificate of appropriateness issued pursuant to s. 320-21-11, in any building, structure or premises or in the use of any equipment covered by any provision of the Milwaukee code over which the commissioner has enforcement jurisdiction or authority, or that any person builds contrary to the plans and specifications submitted to and approved by the commissioner, or the historic preservation commission in the case of a certificate of appropriateness, or that any person omits, neglects or refuses to do any act required by any provision of the Milwaukee code over which the commissioner has enforcement jurisdiction or authority, the commissioner may order the owner, operator or occupant thereof to correct the condition. If a placard action which requires posting of the order is warranted, it shall be as prescribed in s. 200-11-6.

**2. CONTENT OF ORDERS.** All orders of the commissioner shall be in writing and:

a. Provide a description of the real estate to which the order applies sufficient for identification.

b. Identify the sections of the code to which the order applies.

c. Specify a reasonable time for compliance with the order and, when appropriate, state that any illegal occupancy or use of the building, structure, dwelling unit or equipment shall be discontinued at once, or within a period of time deemed appropriate by the commissioner.

d. Whenever the commissioner deems it appropriate, contain an outline of remedial action which, if taken, will result in compliance with the code provisions identified pursuant to par. b.

e. Advise the owner, operator or occupant of the right of appeal.

f. In the case of an order issued pursuant to s. 218-9, indicate that if the order is not complied with, the commissioner may have the building razed and removed, post a sign and publish a newspaper notice giving the building owner's name, home address and telephone number, or both raze and remove the building and post the sign and publish the notice. The costs of razing, removal, sign-posting and publication shall be assessed and collected as a special charge on the property.

**3. SERVICE OF ORDERS.** a. An order shall be served upon the owner, operator, occupant or agent of the owner or any person specified in sub. 1. The order shall be deemed to be properly served upon the owner, operator, occupant, agent or other person if served either by first class mail to the person's last known address or by delivering a copy to the person. If the person cannot be located, the order shall be deemed to be properly served if a copy of it is left at the person's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the order. If the owner has not filed with the department a current address or the name and address of the person empowered to receive service of process, as required in s. 200-51.5, it shall be deemed sufficient notice to the owner if a copy of the order is sent by first class mail to the last known address of the owner as identified by the records of the commissioner of assessments or the commissioner of neighborhood services.

b. When service has been completed as prescribed in par. a., the order shall be effective as to anyone having an interest in the premises whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner of the premises as long as the violation exists and there remains a city record of the order in a public file maintained by the commissioner.

c. An order is posted when a copy is attached on the premises in a conspicuous place.

**4. DOCUMENTS ISSUED BY COMMISSIONER OF BUILDING INSPECTION.** All orders, permits, certificates or other official documents issued by the commissioner of building inspection shall be enforceable by the commissioner of neighborhood services.

**5. INFORMATIONAL PLACARD.** In addition to any other order or placard required by this code, the commissioner of neighborhood services may affix an informational placard or placards to any building, structure, piece of equipment or vehicle found to be in violation of the zoning code.

**200-12.5. Emergency Orders. 1. ISSUANCE OF EMERGENCY ORDERS.** Whenever the commissioner finds that an emergency exists which requires immediate action to protect the public health, safety or welfare, or that any person builds contrary to the plans and specifications submitted to and approved by the commissioner, or that any person omits, neglects or refuses to do any act required by any provision of the Milwaukee code over which the commissioner has enforcement jurisdiction or authority, the commissioner may issue an order to the owner, operator or occupant thereof, reciting the existence of such an emergency and requiring that such action be taken as necessary to meet the emergency.

**2. CONTENT OF EMERGENCY ORDERS.** All emergency orders of the commissioner shall be in writing and:

a. Provide a description of the real estate to which the order applies sufficient for identification.

b. Identify the sections of the code to which the order applies.

c. Specify a time for compliance with the order and when appropriate, state that illegal occupancy or use of the building, structure, dwelling unit or equipment shall be discontinued immediately, or within a period of time deemed appropriate by the commissioner.

d. Whenever the commissioner deems it appropriate, contain an outline of remedial action which, if taken, will result in compliance with the code provisions identified pursuant to par. b.

e. Advise the owner, operator or occupant(s) of the right of appeal. Anyone who is served an emergency order under this section may, prior to the time specified for compliance, appeal to the commissioner for a review of the reasonableness of the order. An appeals hearing shall be conducted pursuant to sub. 4. The order shall specify the time period in which an appeal must be brought and the procedures for filing the appeal.

**3. SERVICE OF EMERGENCY ORDERS.** An emergency order under this section shall be served by posting the order in a conspicuous place on the premises and by sending the order by certified mail to the owner, or owner's agent, or operator, or occupant(s) or other person specified in sub. 1 in the manner provided for in s. 200-12-3. Prior to enforcing the order, the commissioner may attempt to contact all persons who are the subject of the emergency order by telephone to inform them of the contents and requirements of the emergency order.

**4. APPEALS HEARING.** a. The appeals hearing shall occur within 72 hours after receipt of the appeal.

b. The commissioner, or the person appointed as the commissioner's designee, shall conduct the appeals hearing. At the hearing, the appellant and the commissioner may be represented by an attorney and present evidence, call and examine witnesses and cross-examine witnesses of the other party. Such witnesses and the appellant shall be sworn by the commissioner.

c. The appellant's attorney may issue a request to compel the attendance of witnesses or the production of evidence. The request issued by an attorney shall be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and shall be served in the same manner as provided in s. 805.07(5), Wis. Stats. The attorney shall, at the time of issuance, send a copy of the request to all concerned parties.

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d. The commissioner shall take notes of the testimony and shall mark and preserve all exhibits. The commissioner may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality.

e. Within 20 days of completion of the hearing conducted under this subsection and the filing of briefs, if any, the commissioner shall mail or deliver to the appellant his or her written determination stating the reasons therefore. Such determination shall be a final determination.

### **200-12.7. Transfer of Orders to New Owner of Investor-Owned Residential Property.**

1. DEFINITIONS. In this section:

a. "Investor-owned" means that no owner of the premises has domiciled there for at least the last 60 consecutive days.

b. "Person" includes an individual, a partnership, a domestic or foreign limited liability company, a trust, and estate, an association, a corporation or any other legal or commercial entity.

c. "Residential property" means any premises containing a one-, 2-, or multi-family dwelling, or condominium.

d. "Sale, transfer or conveyance of ownership" means to transfer any ownership interest in a dwelling except by mortgage, gift, devise, bequest or lien foreclosure. The sale or transfer shall be deemed to occur upon the transfer of an ownership interest, the execution of a land contract or the exercise of an option to purchase property.

2. NOTIFICATION OF OUTSTANDING ORDERS TO BE PROVIDED TO NEW OWNER. Any person selling, transferring or conveying an ownership interest in a residential property that is investor-owned at the time of such sale, transfer or conveyance shall expressly inform any person acquiring or receiving an ownership interest in the property of any outstanding orders to correct violations of any provisions of the Milwaukee code over which the commissioner of neighborhood services has enforcement jurisdiction or authority.

3. TRANSFER OF ORDER TO NEW OWNER. Provided notice has been effected in accordance with the provisions of s. 200-12, whenever an ownership interest in a residential property is sold, transferred or conveyed, and such property is investor-owned at the time of such sale, transfer or conveyance and has one or more outstanding orders to correct violations of any provisions of the Milwaukee code over which the commissioner of neighborhood services has enforcement jurisdiction or authority, any person acquiring or receiving an ownership interest in the property shall be liable for compliance with each such order within the time period prescribed by the department. No additional extensions to the period for compliance shall be granted solely on the basis of the transfer of ownership.

**200-12.8. Reports on Outstanding Orders.** On or before the 7th day of each month, the commissioner shall provide, to each common council member, a written report listing every property in the member's district that, as of the first day of the month, was the subject of an order issued by the commissioner pursuant to this chapter, if the date for compliance with the order had passed.

### **200-13. Inspections. 1. REQUIRED.**

a. Following the issuance by the department of any permit for the erection, construction, installation, enlargement, alteration, repair, removal, occupancy, conversion to other uses, raising or demolition of any building, structure or equipment, the commissioner may inspect the work, at intervals sufficiently frequent to ascertain if the work is being done or executed in compliance with this code. The permit holder or an agent shall notify and allow inspection as follows:

a-1. Inspection to determine if the location of the building, structure or equipment to be constructed on any premises or the use of any premises is in compliance with approved certified survey of the premises and the terms of the permit.

a-2. Inspection to determine if the material upon which the proposed building or structure is to be placed is stable and able to support the load to be imposed upon it, and that the footings are to be of the required size, placing of reinforcing steel, if required, and foundation walls are in compliance with approved plans, data and the term of the permit.

a-3. Inspection of all wall, floor and roof framing, fire stopping, insulation and bracing when completed, and of all pipes, chimneys, ventilating and other ducts, shafts and equipment when in place, but before any such work is covered, enclosed or concealed by other construction.

a-4. Inspection of all reinforcing steel when placed and before concrete, or masonry is placed or laid in connection therewith, and of all structural parts of buildings and structures when in place, but before covering or concealing any such members, connections or structural parts.

a-5. Inspection of lath or base for interior and exterior plastering, fire-resistive protection of structural steel and other construction, but before plaster or other materials are applied.

b. The permit holder or the permit holder's representative shall notify the commissioner when the stages of construction are reached that require an inspection. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative. If upon any inspection it is found that a required inspection cannot be made because work to be inspected has been covered or concealed, the permit holder or agent shall uncover the work, as directed by the commissioner, and no approval of covered or concealed work shall be given until the required inspection can be made and the work complies with the applicable regulations of this code.

c. The commissioner, in responding to inspectional requests, may approve the work inspected, waive the inspection or issue an order to correct defective work to the permit holder or the agent in charge of the work wherein it fails to comply with the applicable regulations of this code. Any construction which does not comply with this code shall be corrected and no such construction shall be covered or concealed with additional work until approved.

d. When any of the inspections required under this subsection have been made and those portions of construction approved, the commissioner shall so record on the official permit sticker posted on the premises.

e. The commissioner may accept reports of inspections and tests from individuals or inspection agencies approved in accordance with the commissioner's written policy. The individual or inspection agency shall meet the qualifications and reliability requirements established in the written policy. If the commissioner is unable to make a required inspection or test within 2 working days of a request or an agreed upon date or if authorized for other circumstances in the commissioner's written policy, the commissioner shall accept reports for review. The commissioner shall approve the report from such approved individuals or agencies unless there is a cause to reject it. Failure to approve a report shall be in writing within 2 days of receiving it stating the reason for rejection. Reports of inspections conducted by approved third-party inspectors or agencies shall be in writing, indicate if compliance with the applicable provisions of the building code are met and be certified by the individual inspector or by the responsible officer when the report is from an agency.

f. The written policy for third-party inspectors shall establish the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalifications or pre-approval requirements before conducting third-party inspections and any other requirements and procedures established by the commissioner. In determining third-party qualifications, the commissioner may consider such items as safety and professional services certification, other state and national certifications, state professional registrations and any other factors that would demonstrate competency and reliability to conduct inspections.

## **200-14 Administration and Enforcement**

**2. EXISTING BUILDINGS AND STRUCTURES.** The commissioner may make inspections, from time to time, or as otherwise required by this code, of all existing buildings, structures or equipment to ascertain if the buildings, structures or equipment are being used, maintained and occupied in accordance with the regulations of applicable codes, all other ordinances, the Wisconsin Administrative Code, and all other laws, or lawful orders of the Wisconsin department of safety and professional services, relating to the maintenance, erection, construction, installation, enlargement, alteration, repair removal, conversion to new uses, raising, demolition, fire and health protection, use of equipment, materials, occupancy and use, and sanitation of buildings, structures, equipment or premises. The commissioner shall also make inspections to ascertain the effect of fires to determine the study of all such buildings, structures or equipment.

**3. REINSPECTION.** When violations of this code, or s. 320-21-11 or conditions of a certificate of appropriateness issued pursuant thereto, are found to exist, the commissioner may determine, upon reinspection, whether all installations, alterations, repairs, or enlargements resulting from said corrections are permanent, substantial and have been performed in a workmanlike manner.

**4. FINAL INSPECTION.** Upon the completion of any building, structure, equipment or construction for which a permit was issued and before the same is occupied or used, a final inspection may be made by the commissioner and until the building, structure, equipment or construction is in compliance with all the requirements of this code and terms of the permit, a certificate of occupancy shall not be issued. A detailed record shall be made of the final inspection.

**5. RECORDS.** The commissioner shall keep comprehensive records of all applications for permits, permits and fees therefor, approvals and certificates of occupancy issued. The commissioner shall also keep records of all inspections made and reports rendered, and of orders or citations issued, together with all correspondence and statistics on the various phases of construction and housing. All records maintained pursuant to this subsection shall be open to public inspection at reasonable hours, but shall not be removed from the office in which they are located. Certified copies of any record may be obtained upon payment of the fee specified in s. 200-33 and in compliance with any rules and regulations of the commissioner.

**6. COMMERCIAL BUILDING COURTESY INSPECTION.** The commissioner may make courtesy inspections of existing commercial buildings, as requested by the building owner or any other interested party, to ascertain if the building structures or equipment would require alterations, modifications, additions, repairs or other updates before the building, or space within the building, could be legally occupied for a particular type of use. The commissioner may charge a fee for this inspection as provided in s. 200-33.

**200-14. Assistance of Other Officials.** The commissioner in the performance of his or her duties shall receive the assistance of the commissioners of health and public works, the chiefs of the police and fire departments, of all other city officials, and the city attorney in prosecuting violations.

**200-15. Prefabricated Construction; Use of New Materials.** **1. STATE APPROVAL.** All new materials, types of construction, equipment, devices, appliances or prefabricated construction designed for use in the erection, construction, installation, enlargement, alteration or repair of any building or structure not specifically regulated by this code shall not be used until approval in writing by the Wisconsin department of commerce.



**2. CITY APPROVAL.** State approval of new materials, types of construction, equipment, devices, appliances or prefabricated construction shall be subject to review by the commissioner. The commissioner shall have the option to accept, modify or reject the state approvals. If an approval is to be modified or if it is rejected the petitioner may appeal the matter to the commission. The commissioner is precluded from acting on any state approvals affecting one and two-family dwellings the construction of which was started after June 1, 1980.

**200-16. Tests. 1.** The commissioner may make tests, or order tests to be made, to determine the structural or fire safety of the condition or use of any building or structure, or part thereof, materials, construction, equipment, devices or appliances, and all other tests as may be prescribed in this code, following which the commissioner shall either approve or disapprove the use of the buildings or structure or part thereof, materials, construction equipment, devices or appliances in accordance with this code.

**2.** The cost of any test that may be required by this code or by the commissioner or commission, shall be paid for by the owner of the premises in the case of tests involving the structural or fire safety or the condition or use of any building or structure or part thereof, materials, construction, equipment, devices or appliances, or by the person for whom the test is made of any new materials, types of construction, equipment, devices or appliances submitted for approval.

**200-16.5. Variances.** Upon written application by an owner or an owner's agent and payment of the fee provided in s. 200-33, the commissioner may approve a variance of any provision of the building and zoning code, except ch. 295, provided the spirit and functional intent of the code are observed and the public health, safety and welfare are assured. The decision of the commissioner concerning a variance shall be made in writing, and the application for the variance and the decision by the commissioner concerning the variance shall be retained in the permanent records of the department. The commissioner may require or consider a statement from a registered design professional or another person competent in the subject area of the application as to the equivalency of the proposed variance. In addition, the commissioner may require the application to include construction documents sealed by a registered design professional.

## **200-17. Standards and Appeals Commission.**

**1. MEMBERS.** a. In order to provide for reasonable interpretations of the regulations of this code in its enforcement, there is created a standards and appeals commission consisting of 7 members who shall be qualified by experience and training to pass on matters pertaining to the building code. Members shall have at least 3 years of recent experience in their qualifying field. Each member shall have been a resident of the city for at least one year immediately prior to appointment or have maintained business offices within the city for at least one year immediately prior to appointment. All members shall continue to be a city resident or maintain a business office within the city. Each member shall serve until a successor has been appointed and qualified. The commission shall consist of:

- a-1. One registered architect.
- a-2. One person experienced in real estate and property management.
- a-3. Two laypersons.
- a-4. One representative of labor.
- a-5. One builder or home improvement contractor.
- a-6. One owner of rental residential or commercial property.

b. The commissioner of the department of public works, or the commissioner's designee, shall serve as an alternate member of the commission. The alternate shall act, with full power, only when a member of the board refuses to vote because of conflict of interest or when a member is absent.

c. Commission members, except the alternate, shall be appointed by the mayor, subject to the approval of the common council, for a term of 3 years.

d. Before such appointments are made, the mayor may request recommendations from such organizations as:

- d-1. The Wisconsin Chapter of the American Institute of Architects.
- d-2. The Milwaukee Building and Construction Trades Council (A.F.L.).
- d-3. The Milwaukee Builders Association.
- d-4. The Milwaukee Board of Realtors.

e. Any member of the commission may be removed for just cause by the mayor upon notice. When any member is removed or resigns, or when a vacancy occurs, the mayor shall appoint a new member in the manner prescribed in this subsection.

## 200-17-2 Administration and Enforcement

2. ORGANIZATION. a. The commission during each annual meeting shall elect a chairman and vice-chairman who shall serve for one year. The commission shall adopt reasonable rules and regulations for conducting its meetings, hearings and investigations. The commission shall meet at least once each month for the consideration of any appeals and other matters, and shall set the time for its meetings.

b. The commissioner shall appoint one member of the department who shall act as secretary of the commission, and all minutes and records of the commission shall be filed in the department.

c. Members of the commission shall receive compensation as prescribed by ordinance.

3. POWERS AND DUTIES. a. The commission shall hear all appeals from the decision of the commissioner relative to the application and interpretations or issuance of variances in accordance with s. 200-16.5 of any regulation of this code, except appeals of orders issued under ss. 200-12.5, 218-4.5, ch. 295, the state of Wisconsin department of safety and professional services and appeals under s. 200-04-3.

b. Appeals to the commission shall be taken by filing with the commission secretary a notice of appeal specifying the grounds. The timely filing of a notice of appeal of an order issued under s. 200-12 shall stay the order until the hearing date. The secretary shall transmit to the commission all of the papers constituting the record upon which the action appealed from was taken. Appeals shall be filed with a fee as regulated in s. 200-33.

c. The commission shall have jurisdiction only in matters regulated in this code, and not specifically under the jurisdiction of any other appellate boards created pursuant to this code or the state of Wisconsin department of safety and professional services.

d. No member of the commission shall participate in any hearing or vote on any appeal in which the member has a direct or indirect financial interest, is engaged as a contractor, is engaged in the preparation of plans and specifications, or in which the member has any personal interest.

e. All decisions of the commission shall be in writing and shall be filed with the commissioner, with a copy of the decision forwarded to the appellant. The commission in its determinations shall have all the powers of the officer from whom the appeal is taken.

f. The commission shall hear all appeals relative to the enforcement of ch. 275 and by a concurring vote of the majority of its members may reverse or affirm, wholly or partly, or may modify the decision appealed from, and shall make such order or determination as in its opinion ought to be made.

g. The commission may reverse, modify in whole or in part, or affirm any order of the commissioner issued pursuant to s. 218-9 when it finds that alternatives to demolition of the structure will result in the rehabilitation and reuse of the building within a reasonable period of time. The commission shall hear appeals of such orders from any person with an ownership interest in the property, any holder of an encumbrance of record, any city of Milwaukee agency or any organization whose primary purpose is the preservation of housing and neighborhoods. Such person, agency or organization shall provide the commission with a written, detailed plan for the rehabilitation of the structure and shall demonstrate the existence of the financial resources needed to complete the rehabilitation project. The commission may allow rehabilitation of the property or allow the building to remain in a vacant and secured state, and may set reasonable terms and conditions for the granting of such relief.

h. The commission shall hear all appeals from any order of the commissioner issued pursuant to s. 218-4. For appeals brought under s. 218-4, the powers and duties of the commission shall be expressly limited to those powers and duties set forth in this paragraph. The commission shall determine whether such an order of the commissioner is reasonable as defined in s. 218-4-2-b. If the order is found reasonable, the commission shall dissolve the stay imposed pursuant to par. b, and if found not reasonable, the commission shall continue or modify the stay as the circumstances require. The commissioner may stipulate to a continuation of the stay when approved by the commission. If the commission finds that the order of the commissioner is unreasonable, the commissioner shall issue no other order under s. 218-4 in regard to the same building or part thereof until its condition is substantially changed.

i. The commission shall have the power to conduct a hearing and render a decision regarding the nonrenewal, suspension for a period of not more than 60 days, or revocation of an electrical license issued under ch. 222.

**4. APPEALS ON THE INTERPRETATION AND ENFORCEMENT OF THE CODE.**

a. The commission may hear an appeal concerning the commissioner's refusal to grant a variance under s. 200-16.5. The authority to interpret the intent of the code does not apply to appeals taken under ss. 200-12.5, 218-4 and 218-4.5, to petition for state building code variances under s. 200-17.5 or revocation of permits, certificates of occupancy or approvals made pursuant to s. 200-31 for violations of ch. 295.

b. Any decision of the commission shall be by a concurring vote of at least 5 members. Failure to secure 5 concurring votes shall be deemed a confirmation of the decision of the commissioner.

**5. TIME FOR COMPLIANCE.** Whenever at the time of final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the department, the commission shall grant such time as may be reasonably necessary for compliance.

**6. USES AUTHORIZED BY COMMON COUNCIL SPECIAL PRIVILEGE.** Any use which is in conflict with provisions of this code, except for those sections of the state administrative code adopted by reference, for which the common council has authorized the granting of a special privilege pursuant to s. 245-12 shall be deemed a variance for the duration of the special privilege.

**7. DEADLINES FOR APPEALS.** Subject to the exceptions provided in sub. 3, appeals of any order issued by the department or departmental refusal to grant a requested variance shall be made in writing within 20 days of the date of service of the order, unless the order requires compliance in less than 20 days. In such cases, appeals shall be made in writing before the end of the term required for compliance. If service of the order is made by mail, any appeal of the order shall be made in writing within 30 days of the date of the order, unless the order requires compliance in less than 30 days. In such cases, appeals shall be made in writing before the end of a period equal to the term required for compliance plus 5 additional days. In no case, however, shall the appeal period be longer than 30 days. Citations issued by the department may not be appealed to the commission.

**8. NOTIFICATION OF HEARING.**

Upon successful filing of an application for appeal, which falls under the jurisdiction of the standards and appeals commission, the appeal shall be heard at the next regularly scheduled hearing provided the appeal is filed no later than 10 working days prior to that hearing date. Appeals filed within 10 working days of the next hearing shall be heard at the following regularly scheduled hearing. In cases involving raze orders, the initial hearing will be adjourned for one cycle to serve as a public notice. The appeal hearing will then be scheduled for the following hearing date. Notices mailed by first class mail to the appellant's mailing address on the appeal application or sent electronically as requested by the appellant shall be considered proper notification of hearing if mailed 10 calendar days prior to the scheduled hearing date.

**9. FAILURE TO APPEAL.** Failure to appeal an order issued by the department shall create a rebuttable presumption that a violation existed on the date of the issuance of the order.

**200-17.5. State Building Code Variances.**

**1.** Pursuant to authority delegated to the city as agent of the state under s. 101.12, Wis. Stats., as amended, and through a memorandum of understanding with the Wisconsin department of safety and professional services, division of industry, the commissioner may evaluate, decide upon and administer petitions for variances to the rules of chs. SPS 316, 318, 320 to 325, 340, 341, 343, 361 to 366, 375 to 379 and 382, Wis. Adm. Code, as amended, and chs. SPS 375 to 379, Wis. Adm. Code, as amended, as they relate to buildings and structures in the city.

**2. a.** Authority delegated and exercised under this section shall not involve the following types of buildings and structures owned by the state of Wisconsin:

a-1. Buildings and structures owned by Milwaukee county.

a-3. Buildings and structures owned by the city of Milwaukee.

b. In addition, delegation of authority under this section shall not include the following applications:

b-1. Rules which are duplicated in other sections of the Wis. Adm. Code.

b-2. Rules taken from or based exactly upon statutory language. In these cases, the statutory language prevails.

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3. The commissioner shall exercise powers with respect to state building code variances pursuant to the process and procedures specified in ch. SPS 303, Wis. Adm. Code, as amended.

4. The commissioner shall process petitions for state building code variances within the following time frames:

a. 30 business days for standard petitions.

b. 10 business days for priority petitions.

5. The fee schedule for processing petitions for variances shall be that specified by s. SPS 302.52, Wis. Adm. Code, as amended. Refunds of 50% of fees shall be made when the required time frame under sub. 4 is exceeded.

**200-18. Building Code Task Forces.** The commissioner may establish ad hoc task forces to advise and provide technical assistance to the department as may be required in developing building code regulations. Citizen members serving on such task forces shall receive compensation as authorized by the common council.

### **200-19. Penalties.**

1. Any person who is the owner, operator or occupant of any building or premise wherein or whereon there shall be placed or there exists anything in violation of any of the regulations of this code; or who shall build contrary to the plans and specifications submitted to and approved by the commissioner; or who shall omit, neglect or refuse to do any act required in this code, except where special penalty is provided, shall, upon conviction, forfeit not less than \$150 per violation per day nor more than \$5,000 for each premises, structure or property found to be in violation, together with the cost of the action, and in default of payment thereof to imprisonment in the house of correction or county jail of Milwaukee County, for a period of not less than 6 days nor more than 90 days or until such forfeiture and cost is paid; and every person shall be deemed guilty of a separate offense for each day such violation, disobedience, omission, neglect or refusal shall continue. If the property contains more than one dwelling unit, the minimum forfeiture may be assessed against each dwelling unit found to be in violation or directly affected by the violation.

Accumulated penalties recoverable in any one action shall not exceed \$10,000. A violation of this code exists on the date that the order or citation is issued and continues to exist until remedied.

2. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating any provision of ss. 80-44-2, 200-11, 200-20-2, 200-21.5, 200-22-5, 200-24, 200-42, 200-51.7, 200-53, 200-61, ch. 207, ch. 214, ss. 218-2, 218-6, 218-9-6, 218-10, 222-11-2, 222-13-1, 222-19-1, ch. 223, ss. 225-2-1, 225-3-4, 225-3-5-a, 225-4, ch. 236, ch. 240, s. 244-3, ch. 246, s. 252-1, ch. 261, ch. 275, ch. 289, ch. 290, ch. 295 or s. 320-21-11.

3. The regulations of this code may be enforced by the city by means of injunction.

4. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the health department may issue a citation with a prior order pursuant to the citation procedure set forth in s. 50-25 to any person violating s. 200-51.5.

### **200-20. Landlord-Tenant Regulations.**

1. **APPLICABILITY; REGULATIONS.** This section applies to any tenancy, except as noted in s. 200-21, where there is no contrary provision in writing signed by both parties. Nothing in this section is intended to affect rights and duties under other provisions of this code.

a. The landlord shall:

a-1. Keep in reasonable state of repair portions of the premises over which the landlord maintains control and all equipment under the landlord's control necessary to supply services which the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator or air conditioning.

a-2. Make all necessary structural repairs.

a-3. Repair or replace any plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition.

b. If the premises are part of a building, tenants, negligence or use by one tenant does not relieve the landlord from the duty as to the other tenants to make repairs as provided in par. a.

2. **EVICTIONS.** No lessor of commercial or residential property shall take retaliatory action toward any lessee who reports building code violations existing on or about the premises by raising rents unreasonably, or by curtailing services or by eviction. It shall be a rebuttable presumption that any attempt by the lessor to initiate any of the aforesaid actions within 6 months of notification of the violations to the commissioner is in violation of this subsection, except that nonpayment of rent or commission of waste upon the premises by the lessee shall be a basis for eviction.

3. **FALSE INFORMATION.** No landlord, tenant or any other individual may submit false information to the commissioner relative to code violations supposedly existing on or about any premises in this city.

4. **PENALTY.** Any person who violates any of the provisions of this section shall upon conviction forfeit not less than \$25 nor more than \$500 together with costs of prosecution, or, in default of payment may be imprisoned in the house of correction of Milwaukee County for not to exceed 90 days. Each day during which a violation continues shall be determined a separate and distinct offense.

**200-20.5. Special Charge for Recycling Noncompliance; Landlord-Tenant.**

1. Whenever a special charge under s. 79-47-2 is assessed against property and a tenant of that property is responsible for the recycling noncompliance on account of which the order was issued, the landlord may require the responsible tenant to pay the amount of the special charge to the landlord. If more than one tenant is responsible, the landlord shall prorate the amount that each responsible tenant is required to pay. The tenant shall pay the landlord no later than 30 days after billing by the landlord.

2. A landlord may deduct, from a tenant's security deposit, the amount of a special charge under sub. 1 for which the tenant is responsible and which the tenant has not paid to the landlord, provided that this was clearly agreed upon in writing at the time the rental agreement was entered into.

**200-21. Essential Services in Residential Premises.**

1. **FINDINGS.** The mayor and common council of the city of Milwaukee do find that there has existed and do exist many instances where owners of residential properties have failed to provide essential services, make necessary repairs or provide needed maintenance of structures or equipment, which create emergency situations that constitute a substantial threat to the health, safety, property and welfare of the citizens of the city and that in order to ensure proper operation and maintenance of the structures, equipment and systems that provide essential services and safe dwellings to such residents and enforce the provisions of ch. 275, it is necessary in unspecified emergencies to authorize the commissioner to enter upon the premises to take certain actions and to recover the cost of such activity from owner or responsible agent.

2. **EMERGENCY CONDITIONS.**

a. Whenever an emergency condition exists upon residential property, whether owner-occupied or nonowner occupied, which results in either the equipment and systems to supply such premises or units of such premises with heat, hot water, electricity, sanitary facilities or fire safety components, or the building components necessary to maintain the structural integrity, becoming defective or failing to operate so that in the opinion of the commissioner such condition constitutes a substantial hazard and danger to the health, property or safety of the occupants, the commissioner may act according to the provisions of this section unless either:

a-1. The cost of proceeding under this section would exceed 40% of the assessed market value of the property as last determined by the tax assessor; or

a-2. The time needed to either complete repair or correction of the emergency condition or to, at least, effect temporary code complying measures adequate to protect the health and safety of the occupant, will exceed 40 days. If either of these 2 factors are present, the commissioner may, in exercise of sound discretion, elect not to proceed pursuant to this section and may utilize any other remedy available under law as the commissioner deems appropriate.

## 200-21-3 Administration and Enforcement

b. In this section "emergency condition" means any condition dangerous or injurious to the health or safety of the occupants of a building, or occupants of neighboring buildings, which arises out of any of the following conditions:

b-1. A mechanical failure of the heating system or such inefficient operation of such system that it fails to maintain a minimum of 60° F. inside the unit, provided that enforcement of s. 275-61-1-b shall not be affected by this section.

b-2. Lack of adequate water supply, including hot water, provided that the 24-hour notice periods applicable under sub. 3-a and b shall be read as 72 hours and 84 hours respectively when the condition involves hot water supply only.

b-3. Structural, mechanical or electrical defects which increase the hazards of fire, accident, health or other calamity.

b-4. Lack of adequate and properly functioning sanitary facilities.

b-5. A failure of the mechanical systems to function properly due to a lack of utilities or fuel when such utilities or fuel are supplied by the owner or operator.

**3. REPAIRING ESSENTIAL SERVICES.** If the commissioner determines that an emergency condition described in sub. 2 exists, and neither of the 2 factors listed in sub. 2-a are present, or if either is present, the commissioner elects to proceed under this section, the commissioner shall issue an emergency order pursuant to s. 200-12 specifically describing the violations to be corrected and the action to be taken if the order is not complied with, and attempt to immediately serve the order on the owner or such owner's agent responsible for the maintenance, operation and repair of such structures, equipment or systems. Whenever such a condition exists, the commissioner shall immediately proceed to enter upon the premises and repair or cause to have repaired such condition, in a workmanlike manner by a licensed contractor. Whenever a condition exists as a result of a lack of fuel or utilities as described in sub. 2-b-5, the commissioner shall immediately proceed to enter upon the premises and restore or cause to have restored such utilities or fuel service and shall inform the tenants that the restoration and maintenance of fuel or utility services under this section require that the tenants deposit their rental payments with the city in accordance with s. 200-22 and that such payments continue to be deposited until the city's costs associated with providing fuel and utility services have been recovered and these services have been restored by the owner or operator.

Before the commissioner may so act, one of the following 2 conditions must have been met:

a. The commissioner has been unable to give actual notice of the existence of such condition within the 24-hour period following the discovery of its existence to the owner or the owner's agent responsible for the maintenance and repair of such equipment and system or the provision of utilities or fuel services despite having employed his or her best efforts, including telephone calls and personal service, in attempts to do so.

b. The owner or the owner's agent responsible for the maintenance and repair of such equipment and systems or the provision of utilities and fuel services after having been so notified of the existence of such condition by the commissioner fails to begin to remedy such condition within 24 hours of having actual knowledge of having been so notified by the commissioner, or having so begun has not completely remedied such condition within 120 hours. If the remedy of such conditions has not been completed pursuant to this paragraph, but temporary code complying measures have been taken which adequately protect the safety and health of the occupants, the commissioner may extend, by no more than 48 hours the time period for completion of the remedy of such conditions prior to commencing to remedy the condition pursuant to this section.

**4. EVICTION ORDERS.** The commissioner shall not utilize this section to affect such repairs or provide utilities or fuel services when the unit is occupied by anyone in contravention of a valid court order issued pursuant to s. 799.44, Wis. Stats., unless such action is required to protect the health and safety of other occupants not subject to such an order.

**5. TEMPORARY EMERGENCY HOUSING.** Whenever an emergency condition described in sub. 2 exists, or wherever there is probable cause to believe that such a condition exists, and that in the opinion of the commissioner such condition cannot be remedied in time to alleviate a hazard and danger to the health and safety of the occupants, the commissioner shall, in addition to effecting repairs or providing utilities or fuel services pursuant to this section, refer the occupants, where necessary, to temporary housing. Whenever the commissioner makes such a referral, he or she must act immediately pursuant to sub. 3.

**6. FUND FOR ESSENTIAL SERVICE EMERGENCIES.** The comptroller shall set aside a fund for costs incurred by the commissioner in enforcing this section.

**7. RECOVERY OF COSTS BY CITY.** If, as a result of the enforcement of sub. 3, the commissioner expends monies of the city via the fund established in sub. 6, absent either payment or some binding written agreement for payment by the owner or the owner's agent responsible for the maintenance, repair and operation of such systems and equipment, the commissioner shall:

a. Institute within 30 days of completion of the repairs a court action to recover from such person an amount sufficient to compensate the city for the expense and labor in making such repairs or providing such utilities or fuel services as well as associated administrative costs. Administrative costs shall be deemed to be no less than \$50 per hour per inspector field hour incurred pursuant to actions under this section. Additionally, damages shall also include, but not be limited to, costs incurred by the city in providing temporary relocation housing and assistance to the occupant under this section; or

b. Assess, following proper notice and opportunity for a hearing before the commission as provided in s. 200-17, charges upon the premises involved sufficient to compensate the city in an amount equal to that computed under par. a. In the event a judgment under par. a is satisfied, such tax assessment shall be deemed satisfied also vice-versa. At the discretion of the commissioner, charges may be paid as follows:

b-1. If the total amount of the principal of such charges remaining unpaid is the sum of \$125, or over, it shall be spread equally over the first available and next succeeding 5 tax rolls.

b-2. If the total amount of the charges remaining unpaid is less than \$125, said amount shall be placed on the first available tax roll.

b-3. In addition to the principal remaining unpaid, interest shall be added at a rate of 0.7% per month or 8.4% per year, commencing after the billing date of the invoice. A 45-day grace period for payment will be granted from the date of billing, and if not paid within such period, interest will be charged on a restorative basis to the date of billing.

b-4. After being placed on the tax roll in annual installments or otherwise, such amounts of special assessments shall be paid within the time allowed for the payment of general property taxes.

If the taxpayer fails to pay a special assessment within the time allowed for payment, it shall become delinquent and be treated in the same manner and subject to the same laws as a delinquent general property tax.

**8. RETALIATION PROHIBITED.** No nonowner occupant of premises that become the subject of activity by the department under this section shall be evicted or retaliated against for having notified the department of the existence of such conditions or for having been the occupant at the time the commissioner took such action. It shall be presumed that any attempt to terminate the tenancy, or to increase charges, or to reduce services or to refuse to renew a rental agreement, or to otherwise harass or retaliate against such occupant or to reduce the level of services being rendered to such occupant during the period from the first complaint to the commissioner to 12 months after complete reimbursement to the city for the costs incurred by it in acting under this section is done in retaliation and is void and subject to a forfeiture of not less than \$100 nor more than \$2,000 for each such attempt. Such an occupant may be evicted for his or her failure to pay rent, or if the occupant commits waste upon the property, or if the occupant commits a substantial violation of a written rental agreement. In order to overcome such presumption, it must be shown by a preponderance of the evidence that such acts were based upon good cause. "Good cause" as used in this subsection means that one must show a good reason for his or her actions, other than one related to or caused by the operation of this section, including but not limited to normal rental increases due to tax increases or increases in maintenance costs.

**9. REVIEW.** Records shall be kept by the department and an annual report provided to the common council which would indicate whether this section is effective.

**10. REMEDIES.** Remedies provided under this section are not to be construed to be exclusive of any other remedy available under this code but are considered to be cumulative.

## **200-21.5 Administration and Enforcement**

**200-21.5. Legal Occupant Lists for Residential Rental Properties.** 1. LIST REQUIRED. The owner of any residential rental property shall maintain a current list of all tenants and sublessees authorized to occupy the building or buildings on such property. Upon written request to the owner, this list shall be made available to department personnel within 24 hours.

2. PENALTIES. The penalties provided in s. 200-19, including the minimum penalties, shall apply to any person found to be in violation of this section.

### **200-22. Rent Withholding.**

#### **1. NONCOMPLIANCE.**

a. Deposit in Escrow. Notwithstanding any other provision of law or any agreement, whether oral or written, if an owner of real property, except rooming houses licensed under s. 275-20, fails or neglects to comply with an order of the commissioner to correct a violation of this code or an order of the commissioner of health to comply with ss. 66-20 to 66-22, upon the expiration of the order to correct those violations and written notification by the department, the tenant of the premises is authorized to deposit rental payments into an escrow account designated by the commissioner. The only violation exempt from the provisions of this section is that rent withholding is not authorized for failure to comply with an exterior painting order issued pursuant to ch. 275. Rent withholding is available regardless of whether the commissioner has granted an extension of the order to correction violations. Rent withholdings available for failure to comply with an exterior painting order that was issued pursuant to lead poisoning prevention and control regulations or the residential rental property lead-based paint hazard control pilot project, subch. 2 of ch. 66. Rent withholding is not available if the only violation is for failure to comply with an exterior painting order issued pursuant to subch. 2 of ch. 66 and the commissioner of health has granted an extension of that order for seasonal considerations. A tenant shall not be prevented from withholding rent if other violations are past due even if exterior paint orders are or are not past due.

The tenant may commence rental deposits into the escrow account after the orders are past due, and he or she has been notified in writing by the department, provided that payment is made prior to expiration of a 5-day pay or quit notice or service of a 14-day termination notice given by the lessor under ch. 704, Wis. Stats. The owner shall be notified of rent withholding authorization by the commissioner by first class mail within 5 days. In the event that the tenant has commenced rental deposits in the escrow account, it shall be the responsibility of the owner to notify the commissioner of the service of any of the notices referenced in this section that are served after the tenant has commenced rent withholding, and to provide a copy of such notice to the commissioner. The tenant shall be allowed to deposit rent into the escrow account until the copy of the notice is received. It shall be an affirmative defense to a rent withholding under this section to show that the damage or condition on which the violation is based is caused by negligence or improper use by the tenant.

b. If the only violation remaining is failure to comply with exterior painting pursuant to ch. 275 or a violation that has been granted an extension for seasonal consideration, the department shall no longer accept deposits into the escrow account.

c. Owner Appeal. Authorization to deposit rental payments into an escrow account pursuant to par. a shall be stayed if an appeal of rent withholding authorization is made by the owner to the standards and appeals commission in the manner and within the time period provided by s. 200-17. In hearing such appeals the commission shall have the power to affirm or reverse the authorization of rent withholding or require the return to the owner of all or part of the rent paid to the city rent withholding account or postpone to a future time the commencement of rent withholding. The commission, and only the commission, may determine which, if any, of the violations was caused by the negligence of the tenants and, in such event, shall make a specific finding of such fact. This finding shall not affect the responsibility of the party charged with the duty under the code to repair and correct such violations, but the commission shall authorize rent withholding under this section in such instances to continue only until such non-tenant caused violations are certified as corrected by the commissioner.



d. Upon acceptance of rent, receipt will be mailed to the owner or agent and serve as a notice that rent has been paid. The department has no responsibility for the collection of rent.

2. DEPOSIT BY TENANT. The right of tenant to deposit rental payments into the escrow account established by this section shall not preclude or effect in any way the right to use any of the remedies provided by the laws of the state of Wisconsin pertaining to the relationship of landlord and tenant.

3. RELEASE OF FUNDS. Monies deposited in the escrow account shall be released as follows:

a. To the owner of record as recorded with the register of deeds at the time of certification by the department. Certification means that the premises, at the time of inspection for certification, are free of any violation of this code and of any violation of subch. 2 of ch. 66, except for any violation for which the commissioner of health has granted an extension for seasonal considerations.

b. Monies deposited in such escrow account may be used by the owner or agent to make repairs required to completely correct all the existing violations on the premises.

c-1. Monies deposited in the escrow account may be released by the escrow agent to the owner or agent upon presentation of approved itemized receipts for the work completed and upon certification by the department that the receipts reasonably match the work done. The escrow account shall maintain sufficient funds to cover administrative charges and maintain a minimum balance of \$150.

c-2. The entire amount of funds held in the escrow account less any administrative charges may be released by the escrow agent to the landlord or agent and contractor performing the repair work, upon presentation of approved itemized billing for the repair work completed and upon certification by the department that the receipts reasonably match the work done.

d. To any receiver for the premises appointed under s. 823.22, Wis. Stats.

e. Monies deposited in such escrow account shall be used to pay for utilities where the utilities are included as part of the rent.

f. The commissioner may withdraw monies from such escrow account to have the department of public works or a private contractor certified under s. 95-14 make repairs to protect the health, safety and welfare of the tenants. Such repairs shall include violations listed on an order of the commissioner to correct a violation of this code.

g. If the occupancy of a premises is ordered to be discontinued pursuant to s. 200-11-4 or 200-11-5, the commissioner may use such escrow monies to pay the displaced tenants relocation costs up to the amount the tenant has deposited in escrow. If the tenancy of the premises is caused to be discontinued for reasons other than eviction by the owner of record at the time the rent withholding application was filed, the commissioner may use such escrow monies to pay the tenants' reasonable relocation costs up to the equivalent of one month's rent upon proof of displacement, unless an affirmative defense is made by the property owner to the department as described in sub. 1-c.

h. The commissioner may deduct expenses as fees to cover the costs of establishing, maintaining and closing the escrow account as follows:

h-1. \$30 to establish the account.

h-2. \$5 monthly to maintain the account when no transaction occurs during the month except as specified in subd. 3.

h-3. \$25 monthly to maintain the account when no transaction has occurred for more than 6 months.

h-4. \$10 monthly to maintain the account when a transaction occurs during the month.

h-5. \$30 to close the account.

i. The commissioner may also withdraw monies from an escrow account to pay for any department fee authorized by the code.

j. If the city razes a building for which a rent withholding escrow account has been established, monies in the account shall be utilized by the commissioner to cover the city's demolition costs.

4. APPLICABILITY. The provisions of ss. 200-12 and 200-17 relating to enforcement, notice and hearings applicable to orders issued by the commissioner are made applicable to orders issued by the commissioner pursuant to this section.

## 200-22.5 Administration and Enforcement

### 5. EVICTION OR RETALIATION.

a. No person or tenant who complains to the commissioner of violations of this code or complies with this section shall be evicted for nonpayment of rent or because the person or tenant has elected to act under this section, so long as rent is being deposited by that tenant in the escrow account approved by the city for the receipt of such rental amounts.

b. No person or tenant shall be evicted or retaliated against for complaining of violations of this code or for complying with this section. It shall be presumed that any attempt to terminate the tenancy of such tenant or to evict such tenant or to raise such tenant's rental payments or to otherwise harass or retaliate against such tenant during the period from the first complaint to the commissioner to 12 months after the certification to the department that all violations have been corrected is done in retaliation for the tenant's complaint to the commissioner of a violation of this code or for his or her compliance with this section and is declared void and subject to a forfeiture of not less than \$100 nor more than \$2,000 for each such attempt; provided, however, that a tenant may be evicted for failure to pay rent into the escrow account when due or if the tenant commits waste upon the property. In order to overcome such presumption, the owner must show by a preponderance of the evidence that such acts were based upon good cause. "Good cause" as used in this paragraph means that the owner must show a good reason for his or her action, other than one related to or caused by the operation of this section, such as normal rental increases due to tax increases or increased maintenance costs.

6. PROSECUTION. Use of rent withholding shall not prohibit the commissioner from prosecuting violations of the code relating to the property.

7. COERCION. a. Any person who accepts, as a result of harassment or coercion, rental payments for premises subject to rent withholding under this section shall be subject to a forfeiture of not less than \$100 nor more than \$2,000 whether the rental payments are tendered by or on behalf of the tenant occupying the premises at the time rent withholding is authorized or by, or on behalf of, any subsequent or other tenant who occupies the premises during the existence of such rent withholding authorization. Each payment accepted shall constitute a separate violation.

b. Any tenant who willfully and maliciously uses or attempts to use this section to harass a lessor shall be subject to a forfeiture of not less than \$100 nor more than \$2,000.

### 200-22.5. Registration of Residential Properties Pending Foreclosure.

1. FINDINGS. The common council finds that a significant relationship exists among residential properties in the foreclosure process, the prevalence of blight and abandoned buildings, increased calls for police service, higher incidence of fires, both accidental and intentional, and decline and disinvestment in neighborhoods. Residential property owners involved in foreclosure have less incentive to maintain their properties, and properties in foreclosure have a higher incidence of building code violations than properties not in foreclosure. The foreclosure process may also result in abandonment. Abandoned buildings become havens for vandalism, arson and drug crimes, draining valuable governmental resources and creating a significant reduction in quality of life for the surrounding neighborhood. Registration, inspection and aggressive monitoring of residential properties in the foreclosure process help to stabilize and improve affected neighborhoods and aid in code enforcement efforts, as well as public safety. A mortgagee that does not register, inspect, secure and maintain, as required in this section, places an undue and inappropriate burden on the taxpayers of the city and poses an increased risk to public health, safety and welfare.

2. PURPOSE AND SCOPE. The purpose of this section is to establish a registration program to monitor residential properties pending foreclosure to identify at-risk properties, and to regulate the securing and maintenance of abandoned residential properties in foreclosure. This section is intended to reduce and prevent neighborhood blight, to ameliorate conditions that threaten public health, safety and welfare, to promote neighborhood stability and residential occupancy by preserving the condition and appearance of residential properties, and to maintain residential property values and assessments.

It is declared a matter of public policy and an exercise of the city's police power that mortgagees initiating foreclosure proceedings against a residential property are required to register with the city. This registration process will give city agencies the means of contacting those responsible for the foreclosure proceedings and mortgages at issue, those responsible for the inspections required in this section, and those responsible for the securing and maintenance of abandoned property as required in this section. The purpose of the registration fee is to partially recover administrative costs associated with this registry. Nothing in this section shall be construed as waiving, relieving or otherwise excusing an owner of residential property from complying with applicable building codes and ordinances, and the owner shall at all times remain responsible and liable therefor. Nothing in this section is intended to affect the right to foreclose as provided by state law.

**3. DEFINITIONS.** In this section:

a. "Abandoned property" means a property that is vacant as a result of the relinquishment of occupancy, possession or control by a mortgagor and those claiming by, through or under the mortgagor, including tenants, whether or not the mortgagor relinquished equity and title. A residential property may be deemed abandoned when there is evidence of conditions, taken separately or as a whole, which would lead a reasonable person to conclude that the property is abandoned, including:

- a-1. Presence of overgrown or dead vegetation.
- a-2. Accumulation of newspapers, circulars, flyers or mail.
- a-3. Past-due utility notices.
- a-4. Accumulation of junk, litter, trash or debris.
- a-5. Absence of window treatments, such as blinds, curtains or shutters.
- a-6. Absence of furnishings and personal items.
- a-7. Statements by neighbors, delivery agents or similarly-situated persons that the property is vacant.

a-8. Any of the items specified in s. 846.102(2), Wis. Stats.

b. "Accessible structure" means a building that is accessible through a compromised door, wall, window or similar building feature and that is unsecured in a manner that allows access to interior space by unauthorized persons.

c. "Agent" means a person or entity, including a servicing company, acting on behalf of the mortgagee regarding the mortgage or mortgage loan, the foreclosure proceedings, or the mortgaged property, including the inspection, maintenance and securing duties required in this section, except that an attorney shall not be deemed to be an agent if the attorney is retained solely to represent the mortgagee or agent in connection with the foreclosure proceedings in court.

d. "Foreclosure" means the process prescribed by ch. 846, Wis. Stats., and the process for non-judicial sale authorized by a power of sale clause in a mortgage.

e. "Mortgage" means a written instrument creating a lien on real property whereby the property is used as security or collateral for performance of an act or payment of funds. For purposes of this section, mortgage also includes a land contract.

f. "Mortgagee" means the person or entity to which the mortgage has been granted or assigned.

g. "Mortgagor" means the person or entity that granted the mortgage.

h. "Occupied property" means a residential property with a structure on which any person, including an owner, operator, or tenant, but not a trespasser, lives, sleeps, cooks or otherwise maintains actual possession.

i. "Residential property" means a property used in whole or in part for residential purposes, including single-family, 2-family and multi-family dwellings, and mixed-use commercial and residential structures, but not residential condominium units.

j. "Servicing company" means a person or entity that provides services to the mortgagee, or to an agent of a mortgagee, including debt servicing, collection of payments, administration of escrow and insurance accounts, managing loss mitigation, foreclosing, and securing and managing properties on behalf of the mortgagee or the mortgagee's agent.

**4. REGISTRATION REQUIRED.**

a. Within 5 working days of filing with the court of the foreclosure proceedings against a residential property, the mortgagee, or agent, shall register the property in the name of the mortgagee with the commissioner on a form or by an electronic process prescribed by the commissioner. This form shall include all of the following:

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a-1. Information identifying the property by address and tax key number.

a-2. The mortgagor of record and the mortgagee of record.

a-3. The register of deeds recording document number for the mortgage being foreclosed and the date of recording.

a-4. The current owner of the note or instrument secured by the mortgage, and the registered agent and registered office for that owner.

a-5. The date of recording of the lis pendens for commencement of the foreclosure proceedings.

a-6. The case number of the foreclosure action and the plaintiff in the foreclosure action.

a-7. The servicing company or other agent acting on behalf of the mortgagee, and the registered agent and registered office for that servicing company or agent.

a-8. Contact information for a person with the mortgagee or agent who will be responsible for inspecting, securing and maintaining the property, as required under this section.

b. A mortgagee or agent for a residential property in foreclosure proceedings for whom the proceedings were initiated prior to the effective date of this ordinance [city clerk to insert date], who remains subject to the foreclosure proceedings, and who has registered with the city shall be subject to the periodic inspection and other requirements of this section.

**5. AMENDMENT.** Within 20 days of a change in information for the registration of a property, including a change in ownership of the mortgage or a change in agent, servicing company or contact person, the mortgagee or the mortgagee's agent shall file an amended registration with the commissioner on a form or by an electronic process prescribed by the commissioner.

**6. TERMINATION OF REGISTRATION.** a. To terminate a registration, the mortgagee or the mortgagee's agent shall file a registration termination with the commissioner on a form or by an electronic process prescribed by the commissioner within 10 days of either of the following, whereupon the duties of the mortgagor or the agent under this section shall cease:

a-1. A court-confirmed sale of the property in foreclosure, with the deed having been issued in the foreclosure proceedings, and the deed or evidence of the deed having been recorded in the register of deeds office.

a-2. A court order dismissing the foreclosure proceedings, and a discharge of the lis pendens having been recorded in the register of deeds office.

b. The mortgagee or agent shall provide, in the termination filing, the register of deeds recording information for one of the following:

b-1. The deed or the evidence of the deed, as provided in par. a-1.

b-2. The lis pendens discharge, as provided in par. a-2.

c. If the court dismisses the foreclosure proceedings due to a discharge or satisfaction of the mortgage, the mortgagee or agent shall also provide, with the termination filing, the register of deeds recording information for the discharge or satisfaction of the mortgage.

**7. INSPECTION OF RESIDENTIAL PROPERTY.** a. Initial Inspection. Whenever a mortgagee or agent initiates foreclosure proceedings against a residential property, the mortgagee or agent shall cause a physical inspection to be made of the property not later than 30 days from the date of filing of the foreclosure proceedings. One or more photographs shall be taken of the property accurately portraying the condition of the exterior premises. Photographs shall be dated and preserved.

b. Periodic Inspections. The mortgagee or agent shall perform a re-inspection of the property subject to the foreclosure proceedings at least once every 30 days following the initial inspection until a registration termination is filed. One or more photographs shall be taken at each re-inspection and shall be dated and preserved.

c. Records. A mortgagee or agent shall maintain written records, including photographs, of any inspection or re-inspection required by this section, and, in the case of abandoned property, records of actions taken under sub. 9. Written records and photographs of inspection and re-inspection shall be made available to the commissioner upon request.

**8. NOTIFICATION OF ABANDONED RESIDENTIAL PROPERTY.** If inspection of the residential property required under sub. 7 shows the property is abandoned, or if the mortgagee or agent otherwise becomes aware of abandonment, the mortgagee or agent shall file notification of the abandoned property within 5 working days on a form or by an electronic process prescribed by the commissioner that includes a description of the external condition of the property and whether there is an accessible structure on the property. The notification filing shall identify the person residing in the 7-county area identified in s. 200-52.5-2-j authorized by the mortgagee to enter upon the property and to conduct repairs or maintenance, and secure access, as required in sub. 9.

**9. DUTY TO SECURE, MAINTAIN AND POST ABANDONED PROPERTY.** a. The property maintenance duties of a mortgagee or agent with an abandoned residential property shall be limited to the following:

a-1. Ensuring that there are no accessible structures on the premises.

a-2. Ensuring that there are no conditions upon the property presenting an immediate risk to public health, safety or welfare, including:

a-2-a. Removing or abating fire hazards.

a-2-b. Removing or containing potentially toxic materials and explosives.

a-2-c. Securing the perimeters of swimming pools, ponds or other bodies of water.

a-2-d. Maintaining public walkways and thoroughfares free from ice, snow, mud and other debris consistent with the requirements of par. d.

a-2-e. Mowing grass and eliminating weeds and other plant growth consistent with the requirements of par. d.

b. A mortgagee or agent shall include a statement in the abandonment notification identifying action taken or planned to be taken to comply with the requirements of par. a.

c. Upon filing notification of the abandoned property or at the time that notification is required to be made, and until there has been a registration termination filed regarding the abandoned property, the commissioner may make a finding that the condition of the property constitutes an immediate threat to public health, safety and welfare and, upon such finding, may issue a written order to the mortgagee or agent, or both, to abate the condition. Upon failure to comply with the commissioner's order within 10 days, the mortgagee or agent, or both, shall be responsible and shall be subject to a penalty in the same manner and to the same extent as the owner of the property under any of the following:

c-1. Section 79-12, littering of premises.

c-2. Section 79-13, sidewalks to be kept clean.

c-3. Section 80-13, odors from privy vaults, drains, sewers.

c-4. Section 80-17, hay fever weeds, etc.

c-5. Section 80-31, breeding place for flies.

c-6. Section 80-49, nuisance vehicles.

c-7. Section 105-16, icicles on buildings.

c-8. Section 214-11, storing of fuel in a dwelling.

c-9. Section 214-12, securing of pressurized gas cylinders.

c-10. Section 217-13-4, locks.

c-11. Section 236-41, hazardous substance spills.

c-12. Section 275-32-7, vacant structures.

c-13. Section 275-35, graffiti abatement.

c-14. Section 275-81-5, maintenance of premises.

c-15. Section 275-81-6, rat harborages.

d. The minimum requirements of a mortgagee or agent for preservation and protection of residential property, absent a specific order of the commissioner to abate a condition of the premises, shall be consistent with 24 CFR 203.377 and the rules, regulations and other requirements published by the federal housing administration (FHA) of the U.S. department of housing and urban development for the preservation and protection of single-family residential properties secured by FHA loans, as those requirements may be amended by FHA mortgage letters or otherwise, and as applied by the FHA to the state of Wisconsin, including guidelines related to winterization and heating systems.

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Under these guidelines, debris removal shall be deemed to include snow and ice removal, and the elimination of weeds and other plant growth, as required in s. 80-17. The commissioner may issue a written order to the mortgagee or agent, or both jointly and severally, to abate the condition. The mortgagee or agent, or both, shall be held liable for failure to abate and for repayment to the city of the reasonable costs incurred by the city related to abatement of conditions that are subject to FHA guidelines specified in this paragraph, or which are subject to an order under par. b and which threaten public health, safety and welfare.

e. A mortgagee or agent, upon receiving information or determining that the residential property is abandoned, and until the property is no longer abandoned, shall post and maintain signs affixed or adjacent to all entrances to the building indicating:

e-1. The name, address and telephone number of the agent authorized by the mortgagee to be responsible for maintenance and management of the property, as specified under sub. 8.

e-2. That no trespassing is allowed upon the premises without consent of the agent.

**10. FEES.** a. The fee for registration of residential property pending foreclosure, as provided in s. 200-33-47-a, shall be due upon registration.

b. If the registration form is filed more than 5 working days after initiation of the foreclosure proceedings, a late fee shall be charged, as provided in s. 200-33-47-b.

c. The registration form and fee may be transmitted electronically or by any other means to be determined by the commissioner. The registration shall be valid from the date the registration form is completed and filed with the commissioner and the registration fee, including any late fee, is received by the commissioner.

d. There shall be no fee for filing an amended registration or for filing a registration termination.

**11. PENALTY.** a. Failure to Register or to File Amendment. Any mortgagee or agent that fails to register as required under sub. 4, fails to file an amendment as required under sub. 5, or fails to file a termination as required under sub. 6, shall be jointly and severally responsible, and, upon conviction, shall forfeit not less than \$500 nor more than \$2,000, together with the cost of the action, and in default of payment thereof may be imprisoned as provided by law.

b. Failure to Inspect. Any mortgagee or agent that fails to inspect or re-inspect a property as required under sub. 7 shall be jointly and severally responsible, and, upon conviction, shall forfeit not less than \$250 nor more than \$1,000, together with the cost of the action, and in default of payment thereof may be imprisoned as provided by law.

c. Failure to Notify about Abandoned Property. Any mortgagee or agent that fails to file notification of an abandoned property as required under sub. 8, shall be jointly and severally responsible, and, upon conviction, shall forfeit not less than \$500 nor more than \$2,000, together with the cost of the action, and in default of payment thereof may be imprisoned as provided by law.

d. Failure to Secure and Maintain Abandoned Property. Any mortgagee or agent having a duty to register abandoned property that fails its duty to secure and maintain the property as required under sub. 9 shall be jointly and severally responsible, and, upon conviction, shall forfeit not less than \$800 nor more than \$2,500, together with the cost of the action, and in default of payment thereof may be imprisoned as provided by law.

e. Failure to Maintain Records or to Post. Any mortgagee or agent that fails to maintain or provide records required in sub. 7-c, or to post signage as required in sub. 9-e shall be jointly and severally responsible, and, upon conviction, shall forfeit not less than \$100 nor more than \$500, together with the cost of the action, and in default of payment thereof may be imprisoned as provided by law.

### **200-23. Notice to Buyer of Code Violations.**

Any owner selling property must give notice to any prospective purchaser of the existence of any notice of violation of plumbing, electrical or other state or city building codes and if the current tenant is withholding rent under s. 200-22.