

Shenandoah County, VA
Thursday, October 3, 2013

Chapter 71. BUILDING CONSTRUCTION

[HISTORY: Adopted by the Board of Supervisors of Shenandoah County as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

- Unsafe buildings — See Ch. 76.
- Licensing of contractors — See Ch. 81.
- Erosion and sediment control — See Ch. 87.
- Subdivision of land — See Ch. 142.
- Zoning — See Ch. 165.
- Fees — See Ch. A170.

Article I. Uniform Statewide Building Code

[Adopted 8-29-1973, as amended through 7-27-1978; amended in its entirety 9-23-1997 by Ord. No. 97-7]

§ 71-1. Adoption of standards by reference.

There is hereby adopted by reference in the County of Shenandoah the Virginia Uniform Statewide Building Code, the provisions of which are adopted and shall control all matters concerning the design, construction, alteration, enlargement, repair, removal, demolition, conversion, use, location, occupancy and maintenance of all buildings, and all other functions which pertain to the installation of systems vital to all buildings and their service equipment as defined by the Virginia Uniform Statewide Building Code, and shall apply to existing and proposed buildings or structures in the County of Shenandoah.

§ 71-2. Building Inspection Department.

Remove

The Department of Building Inspection is hereby created and shall be staffed by a Building Official and Inspector who shall be appointed by the Board of Supervisors of Shenandoah County, and whose responsibility it shall be to enforce the provisions of the Virginia Uniform Statewide Building Code as stated in Article 102.1 of the Virginia Uniform Statewide Building Code. The cost of enforcement may be defrayed through the levying of fees as provided in § 36-105 of the Code of Virginia. The Chief Building Official shall be responsible for the organization and daily operation of the Department in concurrence with the Board of Supervisors of Shenandoah County.

§ 71-3. Permits required.

Remove

It shall be unlawful to construct, enlarge, alter or demolish a structure; or change the occupancy of a building or structure requiring greater strength, exitway or sanitary provisions; or change to a prohibited use; or to install or alter any equipment for which provision is made or the installation of which is regulated by said code without first filing an application with the Building Official, in writing, and obtaining the required permit(s) therefor, except that ordinary repairs, as defined in said code, which do not involve any violation of said code shall be exempt from this provision.

§ 71-4. Fees.

In accordance with the current edition of the Virginia Uniform Statewide Building Code, before a building permit shall be issued the owner, person, firm or corporation doing the work shall pay to the Treasurer of Shenandoah County a fee based on the schedules as shall be adopted and amended from time to time by the Board of Supervisors in a format resolution. *Editor's Note: See Ch. A170, Fees.*

§ 71-5. Licensing of contractors.

All persons or firms doing contract work in the county shall be subject to the provisions of Chapter 81, Contractors, Licensing of.

§ 71-6. Code Enforcement in incorporated towns.

In that, according to the Virginia Code, each governing body is responsible for the enforcement of the Virginia Uniform Statewide Building Code by hiring Building Officials, or by contracting for the enforcement thereof, therefore, the County of Shenandoah may enforce the Virginia Uniform Statewide Building Code in those incorporated towns with which contracted arrangements are agreed to.

§ 71-7. Appeals.

Remove

The owner of a building or structure may appeal from a decision of the Building Official pursuant to § 71-17.

§ 71-8. Other rules and regulations.

Remove

Other rules and regulations necessary for the enforcement of the Virginia Uniform Statewide Building Code may be promulgated by the Building Official with the concurrence of the Board of Supervisors of Shenandoah County.

§ 71-9. Definitions.

Remove

Words, terms and phrases used in this article shall be defined and carry the same meaning as used in the Virginia Uniform Statewide Building Code.

§ 71-10. Violations and penalties.

Remove

Violations of this article or the Statewide Building Code shall be punishable as provided in § 36-106 of the Code of Virginia. *Editor's Note: Ordinance No. 98-5, adopted 5-26-1998; updated these penalties pursuant to § 36-106 of the Code of Virginia.*

Article II. Board of Appeals

~~REMOVE ALL~~

[Adopted 1-27-1983]

§ 71-11. Membership.

[Amended 9-23-1997 by Ord. No. 97-7] The Board of Building Code Appeals shall consist of five members appointed by the Board of Supervisors. Members may be eligible for reappointment. All members shall be appointed or reappointed for five-year terms.

§ 71-12. Qualifications.

Appeals Board members shall be selected by the Board of Supervisors on the basis of their ability to render fair and competent decisions regarding application of the code and shall, to the extent possible, represent different occupational or professional fields associated with the construction or repair and/or maintenance of buildings; however, at least one member shall be an experienced builder, and, if available, one member shall be a licensed engineer or architect.

§ 71-13. Officers.

[Amended 3-8-1983] The Board shall, each year, select two of its members to serve as Chairman and Vice Chairman, respectively. The Building Official shall designate an employee from the Department to serve as Secretary to the Board. The Secretary shall keep a detailed record of all proceedings on file in the County Building Department.

§ 71-14. Alternates and absence of members.

[Added 3-8-1983] The Board of Supervisors may appoint alternate members who may sit on the Board in the absence of any regular members of the Board and, while sitting on the Board, shall have the full power and authority of the regular member. An alternate member shall vote on questions in the absence of a regular member or when a regular member disqualifies himself due to possible conflict of interest.

§ 71-15. Conflict of interest.

A member of the Board shall not vote on any question in which that member is engaged as contractor or material dealer or in the preparation of plans or specifications or in which he has any personal interest.

§ 71-16. Meetings.

The Board shall meet upon notice of the Chairman or at stated periodic meetings if warranted by the volume of work. The Board shall meet within 10 working days of the filing of an appeal.

§ 71-17. Application for appeal.

- A. The owner of a building or his agent may appeal to the local Building Code Board of Appeals from a decision of the Building Official when it is claimed that:
- (1) The Building Official has refused to grant a modification of the provisions of the Uniform Statewide Building Code;
 - (2) The true intent of the Uniform Statewide Building Code has been incorrectly interpreted;
 - (3) The provisions of the Uniform Statewide Building Code do not fully apply; or
 - (4) The use of a form of construction that is equal to or better than that specified in the Uniform Statewide Building Code has been denied.
- B. Applications for appeals shall be submitted, in writing, to the Board of Building Code Appeals on forms supplied by the Building Official. The Board of Supervisors may require the payment of an appeals fee to offset expenses incurred thereto.

§ 71-18. Public nature of hearing.

The hearing of all appeals shall be open to the public. The appellant, the appellant's representative, the Building Official and any other person whose interest may be affected by the matter on appeal shall be given an opportunity to be heard.

§ 71-19. Postponement of hearing.

[Amended 3-8-1983] If at least five members and alternates of the Board are not present to consider a specific appeal, either the appellant, the Building Official or their representatives may, prior to the start of the hearing, request a postponement of the hearing.

§ 71-20. Voting.

The Board shall affirm, modify or reverse the decision of the Building Official by a concurring vote of a majority of the members. Failure to secure a concurring vote of a majority of the members shall be deemed a confirmation of the decision of the Building Official, except that the appellant shall be entitled to further hearing before the full Board if there were not at least five members present when the vote was taken.

§ 71-21. Form of decision.

Every action of the Board shall be by resolution. Certified copies shall be furnished to the appellant and to the Building Official.

§ 71-22. Enforcement of decision.

The Building Official shall take immediate action with the decision of the Board.

§ 71-23. Appeal to the State Board.

Any person aggrieved by a decision of the County Board of Building Code Appeals who was a party to the appeal or any officer or member of the county government may appeal to the State Building Code Technical Review Board pursuant to the current edition of the Uniform Statewide Building Code.

§ 71-24. Consideration of other matters.

[Amended 9-23-1997 by Ord. No. 97-7] The Board of Building Code Appeals shall, in an advisory capacity, consider matters brought before it relating to the interpretation and enforcement of Chapter 81, Contractors, Licensing of.

Shenandoah County, VA
Thursday, October 3, 2013

Chapter 76. BUILDINGS, UNSAFE

~~DELETE ENTIRE CHAPTER~~

[HISTORY: Adopted by the Board of Supervisors of Shenandoah County 9-25-1975. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 71.

CODE OF VIRGINIA REFERENCES

Authority to require removal of unsafe buildings — See § 15.2-906.

§ 76-1. Applicability.

The following regulations shall apply to buildings and structures which are or hereafter may be determined to be unsafe under the terms of this chapter, notwithstanding that buildings and structures erected after the adoption of the Uniform Statewide Building Code *Editor's Note: See Ch. 71, Building Construction, Art. 1.* shall be regulated under the provisions of that code, except that if the construction of such buildings or structures were exempt from that code then the provisions of this chapter shall apply.

§ 76-2. Removal or securing of unsafe buildings or structures.

All buildings or structures that are or hereafter shall become unsafe, unsanitary or deficient in adequate exitway facilities or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or which by reason of illegal or improper use, occupancy or maintenance shall be deemed unsafe buildings or structures. All unsafe buildings shall be taken down and removed or made safe and secure as the County Building Official may deem necessary and as provided in this chapter. A vacant building, unguarded or open at door or window, shall be deemed a fire hazard and unsafe within the meaning of this chapter.

§ 76-3. Examination and record of damaged building.

The County Building Official shall examine every building or structure reported as dangerous, unsafe structurally or constituting a fire hazard, and he shall cause the report to be filed in a docket of unsafe structures and premises, stating the use of the building, the nature and estimated amount of damages, if any, and estimated cost of repair.

§ 76-4. Service of notice.

If an unsafe condition is found in a building or structure, the County Building Official shall serve on the owner, agent or person in control of the building or structure a written notice describing the building or structure deemed unsafe and specifying the required repairs or

improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the County Building Official his acceptance or rejection of the terms of the order.

§ 76-5. Restoration of unsafe building.

A building or structure condemned by the County Building Official may be restored to safe condition, provided that no change of use or occupancy is contemplated or compelled by reason of such reconstruction or restoration, except that if the damage or cost of reconstruction or restoration is in excess of fifty percent (50%) of its replacement value, exclusive of foundations, such building shall be made to comply in all respects with the requirements for materials and methods of construction of buildings erected under provisions of the Uniform Statewide Building Code.

§ 76-6. Posting unsafe notice.

[Amended 9-23-1997 by Ord. No. 97-7] If the person addressed with an unsafe notice cannot be found within the County after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person and a copy of the unsafe notice shall be posted in a conspicuous place on the premises; and such procedure shall be deemed the equivalent of personal notice. The notice shall be mailed by registered mail, return receipt requested, sent to the last known address of the property owner and published in a newspaper having general circulation in the County in accordance with applicable provisions of §§ 15.2-1426 and 15.2-1427 of the Code of Virginia.

§ 76-7. Disregard of unsafe notice.

[Amended 9-23-1997 by Ord. No. 97-7] Upon refusal or neglect of the person served with an unsafe notice to comply with the requirements of the order to abate the unsafe condition, the Commonwealth's Attorney of Shenandoah County shall be advised of all the facts and he shall institute the appropriate action to compel compliance. No action shall be taken by the County for at least thirty (30) days following the later of the return of the receipt or newspaper publication.

§ 76-8. Vacating buildings.

When, in the opinion of the County Building Official, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building, the County Building Official is hereby authorized and empowered to order and require the inmates and occupants to vacate the same forthwith. He shall cause to be posted at each entrance to such building a notice reading as follows, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or of demolishing the same: "THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE COUNTY BUILDING OFFICIAL."

§ 76-9. Closing streets and adjacent buildings.

When necessary for the public safety, the County Building Official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe buildings and prohibit the same from being used.

§ 76-10. Cost of repairs or demolition.

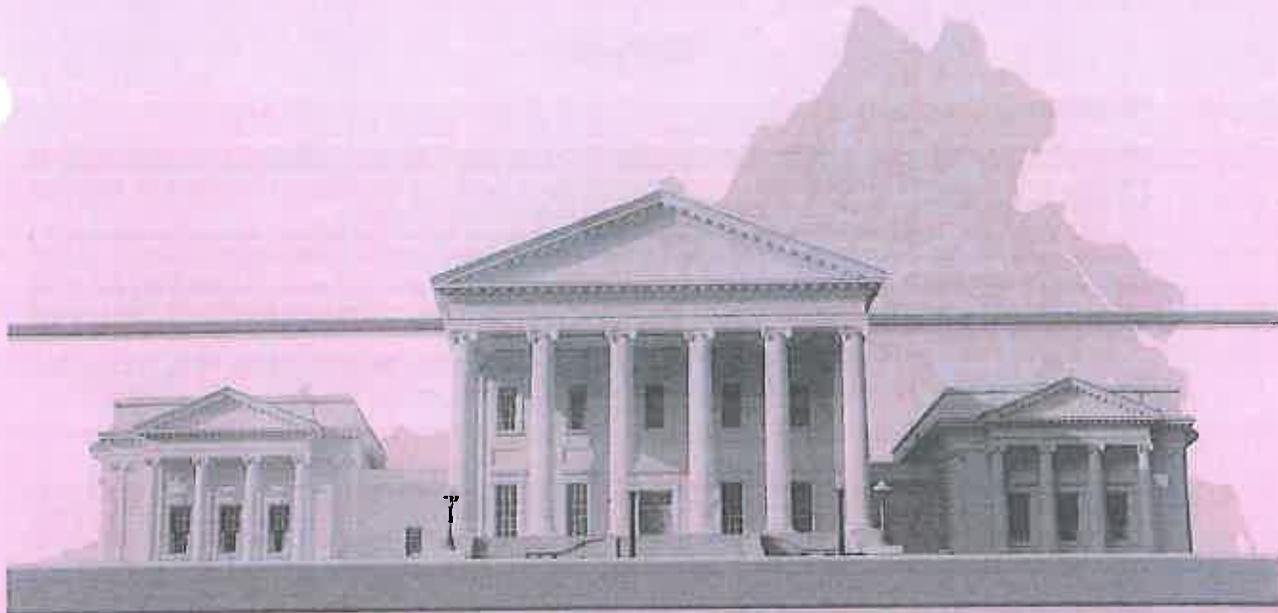
Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. 1. The cost of making required repairs or of demolishing the building, as the case may be, is the responsibility of the owner or his agent. The costs of repair and removal by the County that remain unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid taxes and enforceable in the same manner as provided in §§ 589.1-3940 et seq. and 58.1-3965 et seq. of the Code of Virginia.

§ 76-11. Appeal.

A decision rendered by the County Building Official in the enforcement of this chapter may be appealed to the Board of Supervisors, provided that such appeal is made within thirty (30) days in a manner and form to be specified by the County Building Official; provided, however, that a decision rendered under §§ 76-8 and 76-9 is not subject to appeal. Before rendering a decision in favor of the appellant the Board of Supervisors must serve as a committee of the whole and conduct an on-site investigation of the buildings or structures in question and clearly determine that the condition of the same poses no threat to the health, safety or general welfare of citizens of Shenandoah County.

§ 76-12. Violations and penalties.

Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. 1. Persons failing to comply with provisions of this chapter shall, upon conviction, be subject to fine and imprisonment as a Class 1 misdemeanor. Each day of violation beyond the time limit set by the County Building Official shall constitute a separate offense.



VIRGINIA MAINTENANCE CODE

**PART III OF THE
VIRGINIA UNIFORM STATEWIDE
BUILDING CODE**

2009
EFFECTIVE MARCH 1, 2011

PREFACE

Introduction

The Virginia Uniform Statewide Building Code (USBC) is a state regulation promulgated by the Virginia Board of Housing and Community Development, a Governor-appointed board, for the purpose of establishing minimum regulations to govern the construction and maintenance of buildings and structures.

The provisions of the USBC are based on nationally recognized model building and fire codes published by the International Code Council, Inc.. The model codes are made part of the USBC through a regulatory process known as incorporation by reference. The USBC also contains administrative provisions governing the use of the model codes and establishing requirements for the enforcement of the code by the local building departments and other code enforcement agencies.

In keeping with the designations of the USBC used previously, since the 2009 editions of the International Codes are incorporated by reference into this version of the USBC, it is known as the 2009 edition of the USBC.

Arrangement

The USBC is part of the Virginia Administrative Code (VAC), the official compilation of state regulations published under the authority and guidance of the Virginia Code Commission. Due to the difference in the section numbering system between the VAC and the model codes incorporated by reference into the USBC, the USBC utilizes a dual section numbering system. In the USBC, the VAC section numbers are listed first, followed by a section number matching the model code system. In this printing of the USBC, the VAC section numbers are omitted and only the model code numbering system is utilized. The version of the USBC containing both the VAC section numbers and the model code numbering is available from the Virginia Department of Housing and Community Development (DHCD) and may also be accessed through the website of the Virginia Code Commission or by subscription to the VAC.

Overview

The USBC is divided into three stand-alone parts. Part I contains regulations specific to the construction of new buildings and structures and alterations, additions and change of occupancy in existing buildings and structures and is known as the Virginia Construction Code. Part II contains optional regulations specific to the rehabilitation of existing buildings that may be used as an acceptable alternative to the Virginia Construction Code. Part II is known as the Virginia Rehabilitation Code. Part III of the USBC contains the regulations for the maintenance of existing structures which is enforced at the option of the local governments. It is known as the Virginia Maintenance Code.

Codes Purchased from ICC

The 2009 edition of the USBC is being made available in pamphlet form as in past editions of the USBC. In addition to the pamphlet form of the USBC published by DHCD, the International Code Council (ICC) publishes versions of the Virginia Construction Code, Virginia Rehabilitation Code, Virginia Maintenance Code and a series of Virginia specific trade codes. In the ICC published versions, marginal markings are provided to distinguish between text which is part of the International Codes and text which is part of the state regulations. Double vertical lines in the margins within the body of the codes indicate state amendments to the International Codes. As in the standard printings of the International Codes, a single vertical line in the margins within the body of the code indicates a technical change from the previous edition of the International Codes. Deletions from the previous editions of the International Codes are indicated in the form of an arrow (→) in the margin where an entire section, paragraph, exception or table has been deleted or an item in a list of items or a table has been deleted.

Technical Assistance

The local building departments and enforcing agencies may be contacted for further information concerning the USBC. Contact information for DHCD is below.

**DHCD, Division of Building and Fire Regulation
Technical Assistance Services Office
600 East Main Street, Suite 300
Richmond, Virginia 23219-2430
Phone: (804) 371-7150 – Email: taso@dhcd.virginia.gov
Website: www.dhcd.virginia.gov**

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CHAPTER 1
ADMINISTRATION

SECTION 101
GENERAL

101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the Virginia Maintenance Code.

101.2 Incorporation by reference. Chapters 2 - 8 of the 2009 International Property Maintenance Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the Virginia Maintenance Code. The term "IPMC" means the 2009 International Property Maintenance Code, published by the International Code Council, Inc. Any codes and standards referenced in the IPMC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

101.3 Numbering system. A dual numbering system is used in the Virginia Maintenance Code to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IPMC. IPMC numbering system designations are provided in the catch-lines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Maintenance Code use only the IPMC numbering system designations. The term "chapter" is used in the context of the numbering system of the IPMC and may mean a chapter in the Virginia Maintenance Code, a chapter in the IPMC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

101.4 Arrangement of code provisions. The Virginia Maintenance Code is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 8 of the IPMC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IPMC which are specifically identified. The terminology "changes to the text of the incorporated chapters of the IPMC which are specifically identified" shall also be referred to as the "state amendments to the IPMC." Such state amendments to the IPMC are set out using corresponding chapter and section numbers of the IPMC numbering system. In addition, since Chapter 1 of the IPMC is not incorporated as part of the Virginia Maintenance Code, any reference to a provision of Chapter 1 of the IPMC in the provisions of Chapters 2 - 8 of the IPMC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 8 of the IPMC or in the state amendments to the IPMC means the Virginia Maintenance Code, unless the context clearly indicates otherwise. The term "this code," or "the code," where used in a code or standard referenced in the IPMC means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means Part I of the Virginia Uniform Statewide Building Code, also known as the "Virginia Construction Code," unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IPMC, in the codes and standards referenced in the IPMC and in the state amendments to the IPMC may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

101.6 Order of precedence. The provisions of Chapter 1 of this code supersede any conflicting provisions of Chapters 2 - 8 of the IPMC and any conflicting provisions of the codes and standards referenced in the IPMC. In addition, the state amendments to the IPMC supersede any conflicting provisions of Chapters 2 - 8 of the IPMC and any conflicting provisions of the codes and standards referenced in the IPMC. Further, the provisions of Chapters 2 - 8 of the IPMC supersede any conflicting provisions of the codes and standards referenced in the IPMC.

101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the scope of the code, enforcement, fees, permits, inspections and disputes. Any provisions of Chapters 2 - 8 of the IPMC or any provisions of the codes and standards referenced in the IPMC which address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IPMC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 - 8

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of the IPMC or of the codes and standards referenced in the IPMC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IPMC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Note: The order of precedence outlined in Section 101.6 may be determinative in establishing how to apply the definitions in the IPMC and in the referenced codes and standards.

**SECTION 102
PURPOSE AND SCOPE**

102.1 Purpose. In accordance with Section 36-103 of the Code of Virginia, the Virginia Board of Housing and Community Development may adopt and promulgate as part of the Virginia Uniform Statewide Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Further, in accordance with Section 36-99 of the Code of Virginia, the purpose of this code is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

102.2 Scope. In accordance with Section 36-98 of the Code of Virginia, the Virginia Maintenance Code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

102.3 Exemptions. This code shall not regulate those buildings and structures specifically exempt from the Virginia Construction Code, except that existing industrialized buildings and manufactured homes shall not be exempt from this code.

**SECTION 103
APPLICATION OF CODE**

103.1 General. This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures.

103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.

103.2.1 Maintenance of nonrequired fire protection systems. Nonrequired fire protection systems shall be maintained to function as originally installed. If any such systems are to be reduced in function or discontinued, approval shall be obtained from the building official in accordance with Section 103.8.1 of the Virginia Construction Code.

103.3 Continued approval. Notwithstanding any provision of this code to the contrary, alterations shall not be required to be made to existing buildings or structures which are occupied in accordance with a certificate of occupancy issued under any edition of the USBC.

103.4 Rental inspections. In accordance with Section 36-105.1:1 of the Code of Virginia, these provisions are applicable to rental inspection programs. For purposes of this section:

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“Dwelling unit” means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

“Owner” means the person shown on the current real estate assessment books or current real estate assessment records.

“Residential rental dwelling unit” means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit that has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with this code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided for in subdivision 3 of this subsection, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section; and
2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize a locality-wide rental inspection district and a local governing body shall limit the boundaries of the proposed rental inspection district to such areas of the locality that meet the criteria set out in this subsection; or
3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of this code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the

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property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to \$50. For purposes of this subsection, notice sent by regular first-class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for above, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants of such property.

If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10% of the dwelling units, of a multifamily development, that includes all of the multifamily buildings that are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce these provisions, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in the fee schedule established pursuant to this section.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under these provisions to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants.

Except as provided for above, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with these provisions, provided that there are no violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided above, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of this code during the exemption period, the building department may revoke the exemption previously granted under this section.

A local governing body may establish a fee schedule for enforcement of these provisions, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

The provisions of this section shall not in any way alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (Section 55-217 et seq.) or Chapter 13.2 (Section 55-248.2 et seq.) of Title 55 of the Code of Virginia.

The provisions of this section shall not alter the duties or responsibilities of the local building department under Section 36-105 of the Code of Virginia to enforce the USBC.

Unless otherwise provided for in Section 36-105.1:1 of the Code of Virginia, penalties for violation of this section shall be the same as the penalties provided for violations of other sections of the USBC.

SECTION 104
ENFORCEMENT, GENERALLY

104.1 Scope of enforcement. This section establishes the requirements for enforcement of this code in accordance with Section 36-105 of the Code of Virginia. The local governing body may also inspect and enforce the provisions of the USBC for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

If the local building department receives a complaint that a violation of this code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the code official or his agent to have access to the subject dwelling, the code official or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and request that the magistrate or court grant the code official or his agent an inspection warrant to enable the code official or his agent to enter the subject dwelling for the purpose of determining whether violations of this code exist. The code official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

Note: Generally, official action must be taken by the local government to enforce the Virginia Maintenance Code. Consultation with the legal counsel of the jurisdiction when initiating or changing such action is advised.

104.1.1 Transfer of ownership. In accordance with Section 36-105 of the Code of Virginia, if the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

104.2 Fees. In accordance with Section 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

104.3 State buildings. In accordance with Section 36-98.1 of the Code of Virginia, this code shall be applicable to state-owned buildings and structures. Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings.

104.3.1 Certification of state enforcement personnel. State enforcement personnel shall comply with the applicable requirements of Sections 104.4.2 through 104.4.4 for certification, periodic maintenance training, and continuing education.

104.4 Local enforcing agency. In jurisdictions enforcing this code, the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official. The local governing body may also utilize technical assistants to assist the code official in the enforcement of this code. A permanently appointed code official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting code official and within 60 days after retaining or terminating a technical assistant.

Note: Code officials and technical assistants are subject to sanctions in accordance with the VCS.

104.4.1 Qualifications of code official and technical assistants. The code official shall have at least five years of building experience as a licensed professional engineer or architect, building, fire or trade inspector, contractor, housing inspector or superintendent of building, fire or trade construction or at least five years of building experience after obtaining a degree in architecture or engineering, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The code official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction, building, fire or housing inspections, plumbing, electrical or mechanical trades, fire protection, elevators or property maintenance work. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional certification requirements.

104.4.2 Certification of code official and technical assistants. An acting or permanent code official shall be certified as a code official in accordance with the VCS within one year after being appointed as acting or permanent code official. A technical assistant shall be certified in the appropriate subject area within 18 months after becoming a technical assistant. When required by a locality to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A code official or technical assistant in place prior to April 1, 1995, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

104.4.3 Noncertified code official. Except for a code official exempt from certification under the exception to Section 104.4.2, any acting or permanent code official who is not certified as a code official in accordance with the VCS shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 104.4.2.

104.4.4 Requirements for periodic maintenance training and education. Code officials and technical assistants shall attend periodic maintenance training as designated by DHCD. In addition to the periodic maintenance training required above, code officials and technical assistants shall attend 16 hours of continuing education every two years as approved by DHCD. If a code official or technical assistant possesses more than one BHCD certificate, the 16 hours shall satisfy the continuing education requirement for all BHCD certificates.

104.4.5 Conflict of interest. The standards of conduct for code officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (Section 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

104.4.6 Records. The local enforcing agency shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspections in accordance with The Library of Virginia's General Schedule Number Six.

104.5 Powers and duties, generally. The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.

104.5.1 Delegation of authority. The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

104.5.2 Issuance of modifications. Upon written application by an owner or an owner's agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

104.5.2.1 Substantiation of modification. The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.

104.5.3 Inspections. The code official may inspect buildings or structures to determine compliance with this code and shall carry proper credentials when performing such inspections.

104.5.4 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit, inspection and approval provisions of the Virginia Construction Code shall not be construed as authorization to extend the time limits established for compliance with this code.

104.5.4.1 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reasonable time unless an

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emergency condition exists as provided under the unsafe building provisions of Section 105. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

104.5.4.2 Notice of violation. If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed. The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. The notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the building provisions of Section 105. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the time frame established for any reinspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

104.5.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13 VAC 5-51) for maintenance of fire protection devices, equipment and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

104.5.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the code official may issue or obtain a summons or warrant.

104.5.7 Penalties and abatement. Penalties for violations of this code shall be as set out in Section 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

**SECTION 105
UNSAFE STRUCTURES OR STRUCTURES UNFIT FOR HUMAN OCCUPANCY**

105.1 General. This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

Note: Structures which become unsafe during construction are regulated under the Virginia Construction Code.

105.2 Inspection of unsafe or unfit structures. The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.

105.3 Unsafe conditions not related to maintenance. When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in

effect when the structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the structure to remedy the condition.

105.3.1 Limitation to requirements for retrofitting. In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any structure. However, conditions may exist in structures constructed prior to the initial edition of the USBC because of faulty design or equipment that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the Virginia Construction Code applicable to newly constructed buildings or structures.

105.4 Notice of unsafe structure or structure unfit for human occupancy. When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner's agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section.

Note: Whenever possible, the notice should also be given to any tenants of the affected structure.

105.4.1 Vacating unsafe structure. If the code official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe structure, the code official shall be authorized to order the occupants to immediately vacate the unsafe structure. When an unsafe structure is ordered to be vacated, the code official shall post a notice with the following wording at each entrance: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL." After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the structure.

105.5 Posting of notice. If the notice is unable to be issued by personal service as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

105.6 Posting of placard. In the case of a structure unfit for human habitation, at the time the notice is issued, a placard with the following wording shall be posted at the entrance to the structure: "THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." In the case of an unsafe structure, if the notice is not complied with, a placard with the above wording shall be posted at the entrance to the structure. After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure. In addition, the placard shall not be removed until the structure is determined by the code official to be safe to occupy, nor shall the placard be defaced.

105.7 Revocation of certificate of occupancy. If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the Virginia Construction Code.

105.8 Vacant and open structures. When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 105.6, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

105.9 Emergency repairs and demolition. To the extent permitted by the locality, the code official may authorize emergency repairs to unsafe structures or structures unfit for human habitation when it is determined that there is an immediate danger of any portion of the unsafe structure or structure unfit for human habitation collapsing or falling and when life is endangered. Emergency repairs may also be authorized where there is a code violation resulting in the immediate serious and imminent threat to the life and safety of the occupants. The code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, whenever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 105.4 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with Sections 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality may be requested to institute appropriate action against the property owner to

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recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (Section 58.1-3490 et seq.) and 4 (Section 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing.

105.10 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

**SECTION 106
APPEALS**

106.1 Establishment of appeals board. In accordance with Section 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the Virginia Construction Code shall be permitted to serve as the appeals board required by this section.

106.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period. The LBBCA shall meet at least once annually to assure a duly constituted board, appoint officers as necessary and receive such training on the code as may be appropriate or necessary from staff of the locality.

106.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

106.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (Section 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

106.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

106.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if

agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

106.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be sent to all parties by certified mail. In addition, the resolution shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

106.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (Section 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

CHAPTER 2 DEFINITIONS

Change Section 201.3 of the IPMC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Plumbing Code, International Mechanical Code, International Existing Building Code or NFPA 70, such terms shall have the meanings ascribed to them in those codes, except that terms defined in the Virginia Construction Code shall be used for this code and shall take precedence over other definitions.

Add the following definitions to Section 202 of the IPMC to read:

STRUCTURE UNFIT FOR HUMAN OCCUPANCY. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

UNSAFE EQUIPMENT. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.

UNSAFE STRUCTURE. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so

AG Op. COUNTIES, CITIES AND TOWNS. AUTHORITY, 85-86 Va. AG 62

COUNTIES, CITIES AND TOWNS. AUTHORITY OF LOCAL GOVERNING BODY TO ADOPT
ORDINANCE REQUIRING REPAIR OR REMOVAL OF UNSAFE BUILDING UNDER § 15.1-11.2
LIMITED BY UNIFORM STATEWIDE BUILDING CODE

The Honorable L. Dale McGhee,
County Attorney for the County of Henry

November 7, 1985

You ask whether the Board of Supervisors of Henry County has the authority to adopt an ordinance to require the removal, repair or securing of any building, wall, mobile home or other structure which might endanger the health or safety of county residents. You refer to § 15.1-11.2 of the Code of Virginia, which authorizes a locality to adopt an ordinance requiring the removal, repair or securing of any building, wall or other structure. As you point out, mobile homes, which are the object of your concern, are not specifically included in the language of this enabling statute. ✓

The scope of local building regulations, such as those adopted under authority of § 15.1-11.2, has been circumscribed by statutory provisions relating to adoption and enforcement of the Uniform Statewide Building Code, §§ 36-97 through 36-119. Section 36-98 provides that the Board of Housing and Community Development (the "Board") shall promulgate a Uniform Statewide Building Code (the "Building Code"). The Building Code supersedes the building codes and regulations of counties and municipalities. See *Fairfax County v. M.&S., Inc.*, 222 Va. 230, 279 S.E.2d 158 (1981). ✓

The term "building regulations" is defined in § 36-97(7) as:

"[A]ny law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the State or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure." (Emphasis added.) [Page 63]

An ordinance adopted pursuant to § 15.1-11.2 concerns the alteration, repair, maintenance and use of structures. Furthermore, § 124.1 of the Building Code (1981 ed.), as adopted by the Board, has provisions similar to those of § 15.1-11.2. It is my opinion, therefore, that an ordinance adopted under § 15.1-11.2 is a "building regulation" superseded by the Building Code to the extent of the Building Code's coverage. Compare, e.g., Reports of the Attorney General: 1977-1978 at 473, 77-78 Va. AG 473; 1973-1974 at 426, 73-74 Va. AG 429. The Building Code also provides for the demolition of buildings in § 122.

Certain types of buildings and structures are exempted from the provisions of the Building Code and could be regulated by local ordinance to a limited extent. *See, e.g.,* Reports of the Attorney General: 1979-1980 at 362, 79-80 Va. AG 362; 1973-1974 at 261, 73-74 Va. AG 261. Buildings and structures exempted from the Building Code as a matter of definition, under § 36-97, are subject to certain local regulations. Thus, for example, farm buildings and structures not used for residential purposes are exempted. *See* § 36-97(12) and (18); Reports of the Attorney General: 1984-1985 at 411, 84-85 Va. AG 411; 1980-1981 at 192, 80-81 Va. AG 192A; 1974-1975 at 545, 74-75 Va. AG 545.

Pursuant to § 36-103,¹ certain buildings also are "grandfathered" and remain subject to the building regulations in effect at the time the buildings were constructed or when the building permit for the exempt building was issued. The subsequent reconstruction, renovation, repair or demolition of such buildings or structures, however, are subject to the pertinent provisions of the Building Code. *See* Reports of the Attorney General: 1983-1984 at 431, 83-84 Va. AG 431; 1979-1980 at 361, 79-80 Va. AG 361; 1977-1978, *supra*. Furthermore, § 36-103 authorizes the Board to adopt minimum regulations for the maintenance of existing buildings. I am advised that the Board is in the process of adopting such regulations. When these regulations are adopted, they will supersede the local regulations governing grandfathered buildings. *See* 1983-1984 Report of the Attorney General, *supra*.

In my opinion, an ordinance enacted under § 15.1-11.2 would be applicable only to limited maintenance aspects of grandfathered buildings, pursuant to § 36-103, and to buildings exempt from the Building Code as a matter of definition, pursuant to § 36-97. The renovation, repair or demolition of grandfathered buildings or structures, however, is regulated by the Building Code. Finally, the maintenance aspects of a local ordinance governing grandfathered buildings and structures would be superseded when the Board promulgates minimum regulations governing such maintenance.

The next question to be considered is whether mobile homes are subject to the provisions of the Building Code or are exempt as a matter of definition.

The construction of mobile homes is regulated by the Industrialized Building Unit and Mobile Home Safety Law, §§ 36-70 through 36-85.1 (the "Mobile Home Safety Law"). Section 36-119 provides that nothing in the Building Code shall amend, supersede or repeal the rules and regulations prescribing standards promulgated under the Mobile Home Safety Law. The Mobile Home Safety Law, however, regulates and is directed only at the *construction* of mobile homes. *See* § 36-72. The Mobile Home Safety Law has no provision concerning the maintenance, removal, repair or destruction of existing mobile homes.

The term "building" is defined in the Building Code in § 36-97(12) as "a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. . . ." In my opinion, a mobile home which is occupied or used by persons is a "building" within this definition,² and, therefore, is subject to the provisions of the Building Code concerning the alteration, repair, removal or demolition of buildings.³

In answer to your specific inquiry, it is my opinion that the Board of Supervisors of Henry County does not have the authority to adopt the ordinance proposed. An ordinance adopted under § 15.1-11.2 may be applied only to the maintenance of buildings and structures [Page 64] grandfathered under the Building Code and to those buildings and structures exempted from the Building Code as a matter of definition. The reconstruction, renovation, repair, removal and securing of buildings and structures subject to the provisions of the Building Code, including mobile homes, even though grandfathered, must be carried out in compliance with the provisions of the Building Code.

FOOTNOTES

¹ Section 36-103 provides as follows: "Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, minimum building regulations for existing buildings to insure the protection of public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent provisions of the Building Code. The provisions of this section shall be applicable to equipment."

² Mobile homes are expressly regulated by the Building Code in other areas as well. An example of this express regulation is § 623.0 of the Building Code (1981 ed.), which regulates the anchorage and tiedown requirements for mobile homes.

³ See §§ 113.0, 120.0, 122.0 and 124.0 of the Building Code (1981 ed.).

DEFINITIONS FROM PART III OF THE USBC CHAPTER TWO

UNSAFE EQUIPMENT. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.

UNSAFE STRUCTURE. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

APPENDIX A

A101 GENERAL

A101.1 General. All windows and doors shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102 MATERIALS

A102.1 Boarding sheet material. Boarding sheet material shall be minimum 1/2-inch (12.7 mm) thick wood structural panels complying with the International Building Code.

A102.2 Boarding framing material. Boarding framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102 mm) solid sawn lumber complying with the International Building Code.

A102.3 Boarding fasteners. Boarding fasteners shall be minimum 3/8-inch (9.5 mm) diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the International Building Code.

A103 INSTALLATION

A103.1 Boarding installation. The boarding installation shall be in accordance with Figures A103.1(1) and A103.1(2) and Sections A103.2 through A103.5.

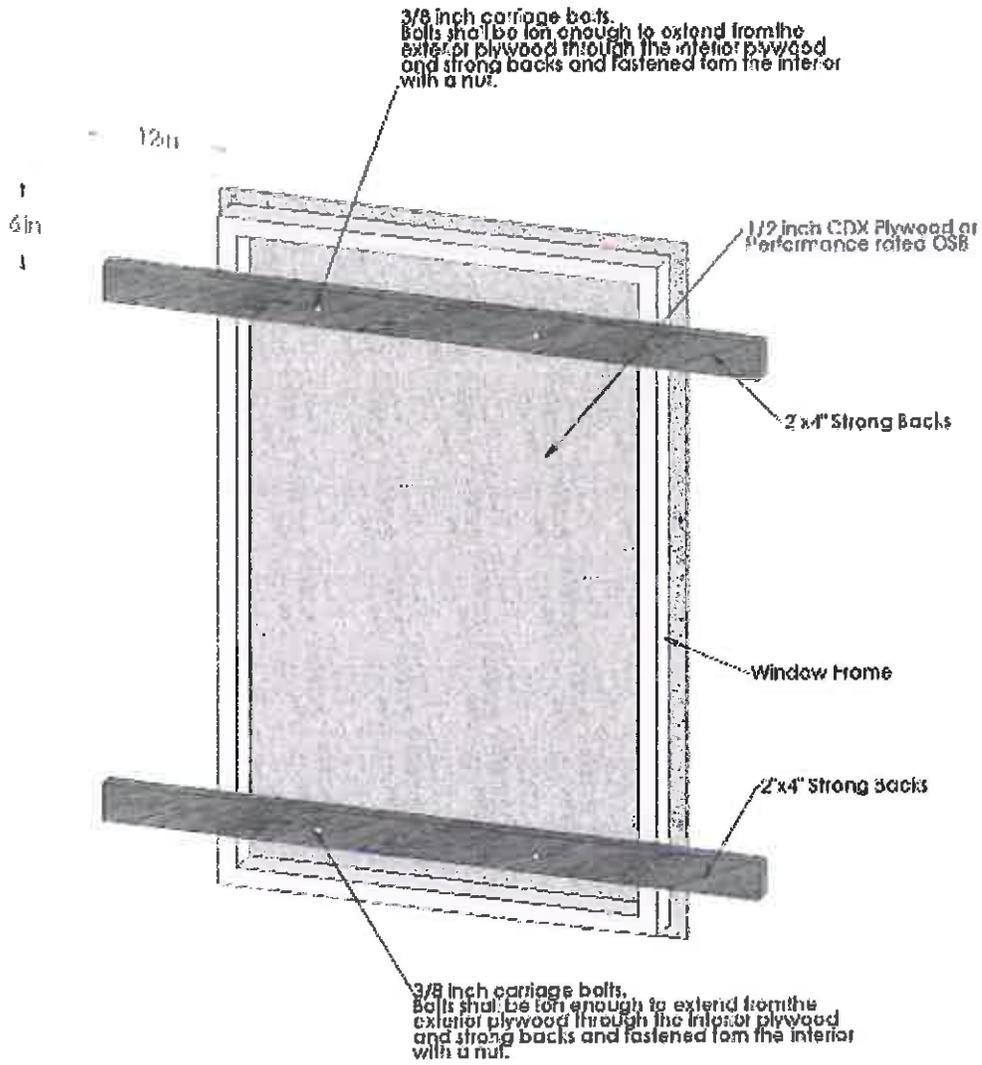


FIGURE A103.1(1) BOARDING OF DOOR OR WINDOW

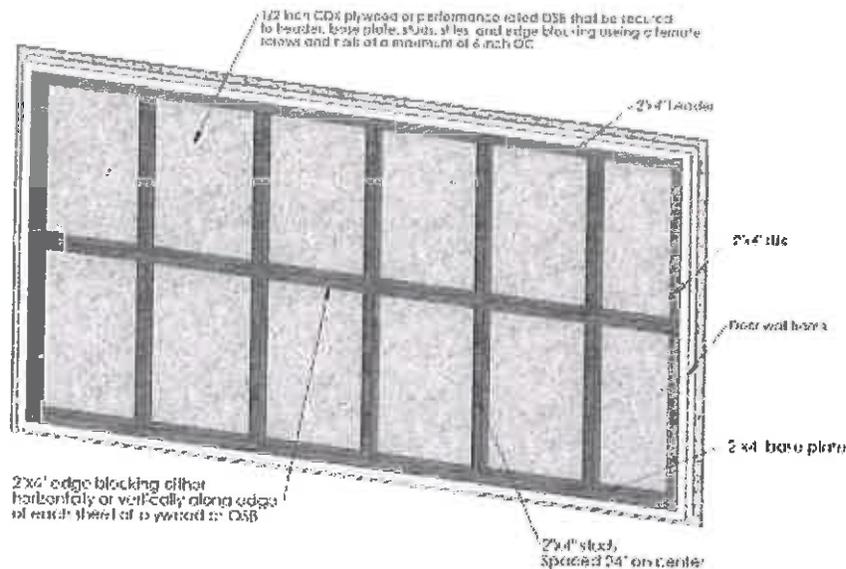


FIGURE A103.1(2) BOARDING OF DOOR WALL

A103.2 Boarding sheet material. The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.3 Windows. The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The 2-inch by 4-inch (51 mm by 102 mm) strong back framing material shall be cut minimum 2 inches (51 mm) wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the bottom and below the top of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.4 Door walls. The door opening shall be framed with minimum 2-inch by 4-inch (51 mm by 102 mm) framing material secured at the entire perimeter and vertical members at not more than 24 inches (610 mm) on center. Blocking shall also be secured at not more than 48 inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches (152 mm) on center.

A103.5 Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.