

# **APPENDIX D**

## **City of Oakland Ordinances**

Title 15 BUILDINGS AND CONSTRUCTION

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## **Article I General Provisions**

### **15.24.010 Purpose of chapter.**

A major purpose of this chapter is to provide a just, equitable, expedient and practicable method whereby structures that are damaged by earthquake may be altered, repaired, restored, rehabilitated or demolished. (Prior code § 18-1.01)

### **15.24.020 Scope of chapter.**

The provisions of this chapter shall apply to all structures that are damaged by earthquake. (Prior code § 18-1.02)

**15.24.030 Inspections.**

The City Health Officer, the Fire Marshal, the Planning Director, and the Building Official are authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter. No owner, occupant or any other person having charge, care or control of any structure or premises shall fail or refuse, after authorized demand made as herein provided, to promptly permit entry therein by the Planning Director, Fire Marshal, City Health Officer or the Building Official for the purpose of inspection and examination pursuant to this chapter. (Prior code § 18-1.03)

**15.24.040 Definitions.**

For the purpose of this chapter, certain words, phrases, terms and their derivatives shall be construed as specified in this section. Words, phrases, and terms that are used in this chapter, but not specifically defined, shall have the meaning set forth in the applicable local, state, or federal code, if appropriate. Other such words, phrases and terms shall be accorded their ordinary meanings.

“Abandoned Historic Structure” means an earthquake-damaged historic structure that has been posted “unsafe” or “limited entry” by the Building Official and is a structure that is not occupied, inhabited, or used for its intended purposes, and is unsecured. For purposes of this chapter, an abandoned historic structure is unsecured when it is unprotected from unauthorized entry by members of the public or from damage and deterioration caused by the effects of environmental elements.”

“Abatement” means action necessary to make safe or demolish any earthquake-damaged structure.

“Abatement plan” means a plan prepared pursuant to Section 15.24.130 of this chapter.

“Building Official” means the city of Oakland Building Official or his or her designee.

“Current code” means the current edition of the California State Building Code, as amended from time to time and as amended by the city of Oakland.

“Damage assessment report” means a report prepared pursuant to the requirements of this chapter.

“Earthquake-damaged structure” means a structure damaged by earthquake, resultant aftershocks or other earthquake-related occurrences.

“Fire Marshal” means the city of Oakland Fire Marshal or his or her designee.

“Health Officer” means the Alameda County Health Officer or his or her designee.

“Historic structure” means a structure that meets one of the following requirements:

1. On the National Register of Historic Places;
2. Is a California Registered Historical Landmark or is a California Point of Historical Interest;
3. Has been declared to be a historic landmark by the Oakland City Council;
4. Is contributory to an S-7 preservation combining zone; or
5. on the preservation study list pursuant to Section 17.12.060 of the city of Oakland zoning regulations and has received either an “A” or “B” rating in the Oakland cultural heritage survey.

“Immediate hazard and danger” means a structure which has been determined by the Building Official to constitute an immediate health and safety hazard because the structure, or some portion thereof, has been damaged by earthquake, and is determined by the Building Official, using accepted practices, to be subject to immediate failure, detachment, dislodgment or collapse and is likely to injure persons, damage property or cause serious public safety problems.

“Planning Director” means the city of Oakland Planning Director or his or her designee.

“Public nuisance” means a structure that is an immediate hazard and danger.

“Public structure” means a structure for which a governmental entity is legally responsible, because of contract, lease or otherwise, for the repair of the structure.

“Structure” means and includes a building, bridge, fence, pole, street, wall, wire or other structure. The term “structure” includes portions of a structure.

“Temporary abatement” means nonpermanent repair work that causes a structure to cease being an immediate hazard and danger. Temporary abatement shall include, but shall not be limited to, netting, bracing, facade alterations and other temporary repair works.

“Working day” means Monday through Friday, except officially designated city of Oakland holidays. (Prior code § 18-1.04)

**15.24.050 Alteration, repair, restoration and rehabilitation standards.**

Except as otherwise expressly provided in this chapter, the following regulations and standards shall apply to and govern the alteration, repair, restoration and rehabilitation of earthquake-damaged structures:

A. When the cost, as determined by the Building Official, of the alteration, repair, rehabilitation or restoration work is less than twenty-five thousand dollars (\$25,000.00), or, if the alteration, repair, rehabilitation or restoration work is not subject to the requirements of subsection B or C of this section, the actual alteration, repair, restoration or rehabilitation work shall comply substantially with current code. Alteration costs unrelated to earthquake damage

will not be considered, when calculating the twenty-five thousand dollars (\$25,000.00) threshold.

B. The entire structure, after the structure is altered, repaired, restored or rehabilitated, shall be made to substantially comply with current code, as explained in subsection D of this section, if as a result of earthquake damage, the pre-earthquake seismic lateral capacity of the structure has been reduced by ten percent or more and the structure is one of the following:

1. An unreinforced masonry building, as defined by Chapter 12.2 of Division 1 of Title 2 of the Government Code, as amended from time to time;
2. A structure with either an "A," "E" or "I" occupancy classification, as defined by the current code;
3. A residential structure containing five or more units;
4. A structure that is four or more stories in height;
5. A structure with concrete, tilt-up construction;
6. An office or retail structure with an occupancy load greater than one hundred (100);
7. A structure that is an "essential facility," as defined in the current code; or
8. A structure housing, supporting or containing toxic or explosive substances that would be dangerous to the safety of the general public, if released.

C. The entire structure shall be made to substantially comply with current code, as explained in subsection D of this section, if the structure is not governed by either subsection A or B of this section, and if, as a result of earthquake damage, the pre-earthquake, seismic lateral capacity of the structure has been reduced by twenty (20) percent or more. However, earthquake-damaged single-family dwellings (Uniform Building Code occupancy category R3) shall be governed by the provisions of subsection (D)(4) of this section.

D. If, as a result of earthquake damage, the pre-earthquake, seismic lateral capacity of the structure has been reduced to an extent exceeding the limits indicated in subsections B and C of this section, the following shall apply:

1. The entire structure shall be made to substantially comply with the structural requirements of the current code, however the value of ZIC/Rw, (as set forth in Section 2312(e)(2)(A) of the current code), when used to determine the total design base shear in a given direction, need not exceed 0.133.
2. The Building Official may approve an alternative procedure, if the owner's or applicant's engineer or architect can demonstrate by rational analysis, to the satisfaction of the Building Official, that the structure, after alteration, repair, rehabilitation or restoration, will provide that level of safety as required by the intent of this chapter.
3. Unreinforced masonry bearing wall buildings may use appropriate provisions of the Structural Engineers Association of California/California Building Officials (SEAOC/CABO) Joint Recommended Unreinforced Masonry Building Seismic Strengthening Provisions, dated January 15, 1990 and as amended from time to time.
4. Single-family dwellings (UBC occupancy category R3) shall be made to substantially comply only with the foundation, foundation attachment and cripple wall requirements of the current code. However, the structural capacity of the building above the cripple walls shall be fully analyzed and all major deficiencies in lateral load carrying capacity shall be corrected.
5. Fire and life safety features of the upgraded portions of the public structure shall meet the requirements of the current code.

Proposed alterations, repairs, restoration and rehabilitation of structure shall include an evaluation of the effects of such work to the building in its entirety. This evaluation shall include, but not be limited to, an investigation of the effects of any induced eccentricity and changes in the foundation and in story stiffness as a result of the proposed improvements.

In each case, the Building Official, using accepted practices in the building trades, shall have the authority to determine the seismic lateral capacity of each structure damaged by an earthquake. The term "pre-earthquake lateral capacity," as used in this section, shall mean the ultimate capacity of those elements that have participated in withstanding the lateral forces imposed on the building, whether they are designed structural elements or not. (Prior code § 18-1.05)

#### **15.24.060 Variance.**

In all cases in which a variance is requested, the applicant should include the request and justification for the variance in the damage assessment report prepared pursuant to Section 15.24.080 of this chapter. In addition, in any case in which a variance is granted, it shall be required that the structure, once altered, repaired, restored or rehabilitated, as a minimum, substantially complies with the structural requirements of the current code, with the design force level of base shear (the total design lateral force or shear at the base of the structure) reduced by no more than twenty-five (25) percent.

In addition to all other requirements imposed by this section, the granting of variances shall be subject to the following:

##### **A. Force Level Variances.**

1. The applicant may propose a design force level that reduces current code force requirements for base shear by no more than twenty-five (25) percent. Proposals for design force level reduction shall be limited to five percent intervals (i.e., five percent, ten percent, fifteen (15) percent, twenty (20) percent or twenty-five (25) percent), provided the cost/benefit ratio requirements described below are satisfied.

The applicant shall provide the city with the following information:

1. The cost of altering, repairing, restoring or rehabilitating the structure to current code force;
  2. The cost of altering, repairing, restoring or rehabilitating the structure to the design force proposed by the applicant;
  3. The cost of altering, repairing, restoring or rehabilitating the structure to seventy-five (75) percent of current code force;
  - 3a. The cost of altering, repairing, restoring or rehabilitating the structure to its pre-earthquake lateral capacity;
  4. The calculation which represents current code force requirements for the structure;
  5. The calculation which represents the proposed design force for the structure;
  6. The calculation which represents seventy-five (75) percent of the current code force requirements for the structure;
  - 6a. The calculation which represents the pre-earthquake lateral capacity of the structure.
2. Upon receipt of the information of subsection (A)(1) of this section, the city shall use the following formulae to determine Ratio "A" and Ratio "B" and to determine whether a variance may be granted pursuant to subsection (A) (1) of this section:

a. Ratio "A" shall equal:

- $$\frac{1 \text{ (cost of current code force)} - 2 \text{ (cost of proposed design force)}}{4 \text{ (current code force)} - 5 \text{ (proposed design force)}}$$

b. \*Ratio "B" shall equal:

- $$\frac{2 \text{ (cost of proposed design force)} - 3 \text{ (cost of 75\% of current code force)}}{5 \text{ (proposed design force)} - 6 \text{ (75\% of current code force)}}$$

\* If the proposed design force calculation is the same as 75% of current code, then Ratio "B" shall be determined by the following formula:

Ratio "B" shall equal:

- $$\frac{2 \text{ (cost of proposed design force)} - 3a \text{ (cost of pre-earthquake lateral capacity)}}{5 \text{ (proposed design force)} - 6a \text{ (pre-earthquake lateral capacity)}}$$

A variance shall be granted, if Ratio "A" is 1.25 times or more greater than Ratio "B" and the difference between the cost of altering, repairing, restoring or rehabilitating the structure to the current code force level and the cost of altering, repairing, restoring or rehabilitating the structure to the proposed design force level is more than three percent of the replacement value of the structure.

If the applicant is not eligible to receive a variance pursuant to the above formula, a variance shall be granted, if the applicant is able to show that the required improvements under this chapter will make the achievement of required force levels economically unfeasible. As used in this section, the term "economically unfeasible" shall mean any set of facts that show that the market will not support a reasonable return on the investment that the applicant will have to make to provide the required force levels.

B. Structural and Life Safety Variances.

1. Structural Variances. Whenever it is determined, pursuant to Section 15.24.050 of this chapter, that an entire structure must be altered, repaired, restored or rehabilitated to conform to current code requirements, the Building Official, if he or she finds that there are practical difficulties involved in meeting current code requirements, may grant variances for individual cases, provided that he or she first finds that a special individual reason makes the strict letter of the current code impractical to meet.

2. Life Safety Variances. The Building Official may accept equivalences which meet the intent of Section 15.24.050 (D)(5) of this chapter.

Each variance application shall be approved or disapproved by the Building Official within fifteen (15) working days of the date of receipt of such application by the Building Official, or at the time the damage assessment report is approved or disapproved, whichever is later. (Prior code § 18-1.06)

### **15.24.070 Appeals--Life safety and structural.**

Unless otherwise stated herein, any decision of the Building Official relating to structural or life safety determinations may be appealed by the building permit applicant to the Board of Examiners and Appeals. Such appeal shall be made within ten working days after the date of the Building Official's decision. Such appeal shall be made on a form prescribed by the Building Official and shall be filed with the Building Official. The appeal shall be heard by the Board of Examiners and Appeals within thirty (30) working days of the date of receipt of the appeal by the city. Not less than five working days prior to the hearing date, the Building Official shall give notice to the appellant of the date, time and place of hearing. The Board shall be authorized to continue the appeal from time to time.

In considering the appeal, the Board shall determine whether, based upon the record, the Building Officials erred or

abused his or her discretion. Error or abuse of discretion is shown, if it is established that the Building Official failed to follow the provisions of this chapter.

The decision of the Board shall be in writing and shall be considered final and nonappealable on the date it is issued. A copy of the Board's decision shall be mailed or otherwise delivered to the appellant by the Building Official within five working days of the date of the Board's decision. (Prior code § 18-1.07)

#### **15.24.080 Damage assessment report.**

Except as otherwise expressly set forth in this chapter, the owner, or the owner's agent, prior to the start of any alteration, repair, restoration or rehabilitation work on an earthquake damaged structure, shall obtain applicable permits and file with the Building Official a damage assessment report prepared by an architect, or civil or structural engineer licensed by the state of California. A damage assessment report shall be required only for those earthquake-damaged structures that have been posted by the Building Official as "unsafe" structures or "limited entry" structures, provided that a damage assessment report, also, shall be required for all earthquake-damaged structures for which the cost of the alteration, repair, rehabilitation or restoration work, as determined by the Building Official, is twenty-five thousand dollars (\$25,000.00) or more. Alteration costs unrelated to earthquake damage will not be considered, when calculating the twenty-five thousand dollar (\$25,000.00) threshold. No damage assessment report shall be required in any other case, unless expressly set forth in this chapter. The damage assessment report shall include the following:

- A. A list of all owners of the structure;
- B. The address of the structure;
- C. An assessment which details the before and after earthquake condition of the structure, including but not limited to, vertical load capacity, exterior and interior ornamentation and appendages, fire, and life safety elements, and Title 24 (California Code of Regulations) energy and accessibility elements, where applicable;
- D. A proposed program for repairing the structure, existing damage, hazards and public nuisance. The proposed program shall include a fully developed conceptual design that details the extent of the proposed repair, restoration and rehabilitation work, and the approximate cost of all repairs; and shall include a plan which identifies and describes any proposed modification to exterior finishes, whether or not necessitated by the proposed repairs;
- E. A list of all variances or equivalences that will be requested.
- F. Any other information required by any other section of this chapter and any other information determined by the Building Official, in a particular case, to be necessary because of the facts of that case;
- G. For single-family dwellings (UBC occupancy category R-3), a description of any major deficiency in lateral load carrying capacity above the level of the foundation or cripple wall, if any, that has been identified by the owner's engineer or architect, and a method of correcting that deficiency. Cost estimates for correcting identified deficiencies shall be included.

For purposes of this chapter, the report submitted to the city pursuant to this section shall not be considered filed, unless the express provisions of this section are met. Within ten working days after receipt of any such document, the Building Official shall notify the applicant whether the document is complete for filing. If notice is not given within the required time period, the document, at the end of the ten working day period, shall be considered complete for filing. However, the Building Official, thereafter, shall not be prohibited from requesting additional information from the applicant. Damage assessment reports shall be reviewed, approved or disapproved by the Building Official within thirty (30) working days after the reports are filed, provided that damage assessment reports for nonhistorical Uniform Building Code occupancy category R3 structures shall be reviewed, approved or disapproved within fifteen (15) working days after the reports are filed.

Prior to preparation of the damage assessment report, the owner or the owner's agent of each structure described in Section 15.24.050B of this chapter shall participate in a pre-design conference with the Building Official. (Prior code § 18-1.08)

#### **15.24.090 Penalties.**

- A. It is unlawful for the owner of any structure to fail to provide the city, within the required period, with a valid damage assessment report. After written notice from the city to the owner, the following penalties shall be imposed upon owners who fail to comply with the damage assessment report requirements of this chapter:
  1. Except as otherwise provided herein, a five thousand dollar (\$5,000.00) penalty shall be imposed upon the owner of each historic structure and each structure identified in Section 15.24.050(B)(1) through (8) of this chapter, if a valid damage assessment report is not filed with the city within the one hundred twenty (120) working day period described in this chapter. Beginning at the end of the one hundred twenty (120) day period, a fine of one thousand dollars (\$1,000.00) per month, for each month the owner fails to submit a valid damage assessment report to the city, shall be imposed upon said owner.

However, the maximum fine imposed upon such owner shall not exceed fifteen thousand dollars (\$15,000.00). A penalty of five hundred dollars (\$500.00) shall be imposed upon the owner-occupied Uniform Building Code occupancy category R3 structure, if a valid damage assessment report is not filed with the city within the one hundred eighty (180) working day period described in this chapter.

2. For all other structures for which a damage assessment report is required by this chapter, a penalty of one thousand dollars (\$1,000.00) shall be imposed upon the owner of each structure who fails to provide the city with a valid damage assessment report within the required one hundred eighty (180) working day period identified in this chapter. Beginning at the end of the one hundred eighty (180) working day period, a fine of two hundred dollars (\$200.00) per month, for each month said owner fails to submit a valid damage assessment report to the city, shall be imposed upon said owner. However, the maximum fine imposed upon such owner shall not exceed three thousand dollars (\$3,000.00).

B. Assessed Against Property. The penalties imposed pursuant to this chapter shall be assessed against the real property to which the penalties relate and shall, in addition, be a personal obligation of the owner of the subject real property. The Building Official shall give the owner of such premises a written notice showing the amount of the penalty and requesting payment thereof. If the amount of such penalty is not paid to the Building Official within five working days after the date of such notice, the Building Official shall forward a report of the penalty to the City Council for confirmation.

The property owner shall be given at least ten working days' notice of the confirmation hearing before the City Council. Said notice shall be in writing. The amount of the penalty shall be confirmed by the City Council, unless the City Council finds, based upon evidence in the record, that the Building Official erred in imposing or computing the amount of the penalty. If such error is found, the City Council may modify the amount of the penalty, as warranted. Upon confirmation of the penalty, the City Council shall direct that the Building Official shall record in the Office of the County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

#### Notice Of Lien

Pursuant to Chapter 15.24 of the Oakland Municipal Code, a penalty in the amount of \_\_\_\_\_ was assessed by the Building Official, and confirmed by the Oakland City Council, against the herein described real property and said amount has not been paid, nor any part thereof, and the City Council does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon said real property until said sum has been paid in full. The real property herein above mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California and particularly described as follows, to wit:

\_\_\_\_\_

(insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Building Official  
City of Oakland

C. Occupancy Permit Revocation. In addition to imposing the penalties set forth in subsection (A)(1) of this section, the Building Official, after notice to the owner, may revoke the occupancy permit for any structure for which an owner fails to satisfy the deadlines imposed by this chapter. The notice of revocation shall provide the owner with the right to provide the Building Official with evidence that the occupancy permit shall be revoked either because the structure is not subject to the provisions of this chapter or because the Building Official did not follow the provisions of this chapter.

Any decision by the Building Official to revoke an occupancy permit pursuant to this subsection C may be appealed by the owner or his or her agent to the Director of Public Works. Any such appeal shall be made within ten working days of the date of the Building Official's decision. The appeal shall be made on a form approved by the Building Official and shall show how the Building Official has either committed error or has abused his or her discretion.

On appeal, the Director of Public Works shall affirm the decision of the Building Official, unless the Director finds, based upon the evidence in the record, that the Building Official has either committed error or abuse of discretion. The decision of the Director shall be in writing and shall be final. (Prior code § 18-1.09)

#### **15.24.100 Other remedies.**

Notwithstanding any other provision of this chapter, the city shall be authorized to exercise any other remedy at law or equity for the enforcement of this chapter.

The Building Official shall have the authority, upon reasonable notice to the building permit applicant, to suspend the building permit and to stop the prosecution of work thereunder, if there is evidence that any term, condition or provision of the building permit or this chapter has been violated. (Prior code § 18-1.10)

#### **15.24.110 Seismic hazard exemption.**

Any earthquake-damaged structure which is structurally upgraded under the procedures of this chapter and is in compliance with the structure upgrade standards specified in Section 15.24.050 of this chapter, shall not, within a period of fifteen (15) years, or as otherwise determined by California law from time to time, be identified as a seismic hazard to life pursuant to any other building standards adopted by Oakland after the date of the building

permit, unless such building no longer meets the structural upgrade standards under which it was reconstructed. (Prior code § 18-1.11)

#### **15.24.120 Certification.**

The owner of each earthquake-damaged structure, for which a damage assessment report is required, shall provide the Building Official with a certification by a California licensed architect, or civil or structural engineer that his or her proposed repair program and the plans submitted for altering, repairing, restoring and rehabilitating said structure have been prepared to comply with applicable provisions and standards of this chapter. The certification required by this section shall be filed with the Building Official at the time application is made for building permits. (Prior code § 18-1.12)

### **Article II Immediate Hazard and Danger Structures**

#### **15.24.130 Abatement and administration.**

The Building Official, Fire Marshal, Planning Director and Health Officer are authorized to enforce the provisions of this chapter. Such authority, subject to the express provisions of this chapter, shall include, but shall not be limited to, the authority to order the abatement, alteration, repair and demolition of any structure that is an immediate hazard and danger. All abatement, alteration, repairs, restoration and demolition of immediate hazard and danger structures under this chapter shall be conducted in accordance with the procedure set forth pursuant to subsection B of this section. It is unlawful for any person to abate, alter, repair, restore or to demolish any immediate hazard and danger structure without prior permission from the Building Official and without following the applicable procedure set forth in this chapter. It is unlawful for any owner to fail or neglect to comply with any valid order of abatement of the Director of Public Works or Building Official made pursuant to this chapter.

A. Assessment of Immediacy. The Building Official shall determine whether the conditions associated with specific structures cause such structures to be immediate hazards and dangers.

B. Immediate Hazard and Danger Abatement Procedure. Structures which the Building Official determines to be an immediate hazard and danger, as described herein, shall be subject to the following process:

1. Notice and Order. If the circumstances and time permit, the Building Official shall post the structure and notify, by hand-delivery, telephone, telegraph, facsimile or other reasonable means, the property owner, and any other party of record with an equitable or legal interest in said property, that the structure is an immediate hazard and danger and, as such, constitutes a public nuisance and must be abated. The notice shall set forth those factors which, in the opinion of the Building Official, make the structure an immediate hazard and danger. The notice shall provide that within forty-eight (48) hours from the time of issuance of the notice, the owner or other party of record shall submit an acceptable abatement plan, as defined herein, to the Building Official.

No prior notice shall be required, where the Building Official, after a consideration of all the facts, determines in writing that the structure is an immediate hazard and danger and that it must be abated immediately and that time and circumstances do not permit the giving of prior notice to the owner. In those cases where time and circumstances do not permit the city to give the owner notice prior to abatement, the Building Official may cause the public nuisance to be abated by the city with city forces or city contractors and the cost of abatement shall constitute a special assessment against the subject real property. The assessment shall be made and collected in the manner set forth in this chapter. In all other cases, the city, at the time of giving notice, shall record a copy of the notice against the subject property in the records of the Alameda County Recorder.

2. Appeal. The decision of the Building Official determining a structure to be an immediate hazard and danger may be appealed by the property owner or other interested party of record to the Director of Public Works of the city or his or her designee. Any such appeal shall indicate the basis of error by the Building Official and shall be hand-delivered to the Building Official within forty-eight (48) hours of the time of issuance of the notice given pursuant to this chapter. No appeal shall be considered filed, or effective, unless the appellant files a timely abatement plan with the Building Official. To be considered timely, the abatement plan must be filed within the time required by this chapter. Failure to appeal within the required forty-eight (48) hour appeal time period shall constitute a waiver of the right to appeal to the Director of Public Works and the Building Official's determination and order shall stand.

3. Form of Appeal. All appeals of the Building Official's notice and order to abate shall:

- a. Indicate the basis of error by the Building Official; and
- b. Contain the telephone number (business and residence), home address and business address of the appellant.

4. Hearing. At the time of receiving a valid appeal, the Building Official shall schedule an appeal hearing before the Director of Public Works. The appellant shall be notified of the date, time and place of the hearing at the time the appeal is filed. Whenever practicable, the hearing shall be held within twenty-four (24) hours of the time a valid appeal is filed.

At the hearing, the appellant shall have the right to call witnesses, submit evidence and to cross-examine the witnesses of the city. All witnesses shall be sworn. A record of the entire proceedings shall be made by tape recording. Any relevant evidence may be admitted regardless of the existence of any common law or statutory rule

which might make improper the admission of such evidence over objection in civil actions in the courts of this state. At the close of the hearing, the Director of Public Works, or his or her designee, shall act to either uphold, overrule or modify the determination and order of the Building Official. The determination and order of the Building Official shall be upheld, unless the Director, or his or her designee, finds, based upon the evidence in the record, that the Building Official erred in determining that the structure is an immediate hazard and danger. The decision of the Director, or his or her designee, with the reasons therefor, may be given orally on the record. If given orally, the decision shall be memorialized in writing and served upon the appellant within twenty-four (24) hours of the time an oral decision is rendered.

If the Director, or his or her designee, upholds the decision of the Building Official, the property owner or other interested party of record shall be ordered to abate the public nuisance within the time set forth in the order. If the structure is determined not to be an immediate hazard and danger, the Building Official's determination and order shall be vacated. The decision of the Director shall be final on the date it is rendered.

5. Abatement Plan. In those cases that the city provides notice and receives a timely abatement plan, the Building Official shall review the plan immediately and shall determine whether the plan is acceptable. To be acceptable, the plan must be reasonably calculated to cause immediate abatement of the public nuisance. If the abatement plan is approved, the owner or other interested party of record, within twenty-four (24) hours of obtaining approval of the plan from the Building Official or Director or Public Works, or his or her designee, shall abate the public nuisance in accordance with the order of the Building Official or the Director of Public Works, or his or her designee, and terms of the plan. Within twenty-four (24) hours of completion of the abatement work, the owner or other interested party of record shall provide the Building Official with a written certification from the owner's architect, structural or civil engineer which certifies that "the public nuisance," as described in the Building Official's abatement notice, has been abated.

If the work performed pursuant to the abatement plan amounts to temporary abatement, the owner or other party of record, prior to proceeding with permanent repairs, shall obtain required permits and file a damage assessment report with the Building Official. The damage assessment report shall comply with the provisions of Section 15.24.080 of this chapter and shall be filed with the city within the time period set forth in this chapter. The damage assessment report shall be reviewed and approved according to the procedure set forth in this chapter.

In those instances where the property owner or other interested party of record either does not respond to the Building Official's notice of abatement, responds untimely, responds timely but fails to abate the public nuisance within the required time period, the immediate hazard and danger structure shall be subject to abatement by the Building Official. In all such cases that the city determines to exercise its abatement powers under this chapter, the costs of abatement incurred by the city shall constitute a special assessment against the real property abated.

At the time the Building Official or the Director of Public Works orders abatement work to be done by the city or the city's contractors, the Building Official shall record a notice of prospective lien against the subject property. Such notice shall include a description of the proposed abatement work and an estimate of its costs.

Immediately upon completion of any abatement work, including but not limited to preparatory work and inspections, by the city and the city's contractor, the Building Official shall prepare a report of assessment. Said report shall describe the work performed, the date(s) on which it was performed and the costs incurred by the city. The Building Official shall cause a copy of said report to be served on the subject property owner and all other interested parties of record. Said report shall be accompanied by a notice of the date, time and place of the confirmation hearing before the Oakland City Council. Said notice shall provide the owner or other interested party with at least five working days' prior notice of said confirmation hearing. In those cases in which the city abates the public nuisance without providing the owner or other party of record with prior notice, the notice shall state why the immediate hazard and danger structure was abated.

The notice and report shall be placed in a sealed envelope, postage prepaid, addressed to the owner or other interested party at his or her last known address as the same appears on the last equalized assessment rolls of the city, and deposited, registered or certified mail, return receipt requested in the United States mail. Service shall be deemed completed at the time of deposit in the United States mail.

A copy of the report of the assessment shall be posted in the Office of the City Clerk at least three days prior to the time when the report will be submitted to the City Council.

At the time set forth in the notice, the City Council shall hear the matter and either modify or confirm the assessment report. The Council shall confirm the report as presented by the Building Official, unless the Council, after a review of the evidence in the record, finds that either the work assessed was not performed or that there was an error made in calculating the amount owed. After the assessment is made and confirmed, it shall be a lien on the said property, until said sum, with interest at the maximum legal rate per annum, has been paid in full. Interest shall begin to run on the date the amount is confirmed.

Such lien attaches upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes.

C. Public Nuisance. All structures or portions thereof which, after inspection by an authorized city official, are determined to be an immediate hazard and danger either to the public, occupants of the subject structure or any adjacent structure are declared to be public nuisances and shall be abated by the owner in accordance with the procedure specified in this chapter.

D. Suspension of Abatement Work. Notwithstanding any provision herein to the contrary, the Building Official shall be authorized to suspend abatement work by the city, or the city's contractor, and allow the property owner or other interested party to complete the abatement work. All costs incurred by the city prior to the suspension, including inspection, abatement and monitoring costs shall be collected in the manner set forth in subsection B of this section.

E. Change of Status. Once the conditions making a structure an immediate hazard and danger have been abated pursuant to this chapter, the structure shall no longer be considered an immediate hazard and danger. However, if the abatement work is temporary in nature, as determined by the Building Official, the structure shall remain subject to the provisions of this chapter. (Prior code § 18-2.01)

#### **15.24.140 General standards.**

The following standards shall be followed by the Planning Director, Fire Marshal, Health Officer and Building Official in approving or ordering the abatement, alteration, repair, restoration, rehabilitation, vacation or demolition of any immediate hazard and danger structure:

A. If the structure reasonably can be immediately repaired or secured so that it will no longer exist as an immediate hazard and danger structure, it shall be ordered to be immediately repaired or secured; otherwise, it shall be ordered to be demolished.

B. If a structure is determined to be an immediate hazard and danger to either the public, occupants of the subject structure or any adjacent structure, it may be ordered vacated. Nothing contained herein, however, shall require the city to abate any immediate hazard and danger. (Prior code § 18-2.02)

#### **15.24.150 Right of entry.**

Whenever necessary to make an inspection to enforce any provision of this chapter, or, whenever the Planning Director, Fire Marshal, City Health Officer or the Building Official has reasonable cause to believe that there exists in any structure any condition which makes such structure an immediate hazard and danger, so as to constitute a public nuisance, as defined herein, the Planning Director, the Fire Marshal, City Health Officer and the Building Official may enter such structure at all reasonable times to inspect the same or to perform any duty authorized or imposed upon them by this chapter. (Prior code § 18-2.03)

#### **15.24.160 Violation--Penalty.**

Any person violating any provision of Section 15.24.130 through 15.24.150 of this chapter shall be guilty of a misdemeanor. (Prior code § 18-2.04)

### **Article III Nonhistoric, Earthquake-Damaged Structures**

#### **15.24.170 Damage assessment report--Performance of work.**

Except as otherwise expressly set forth in this chapter, it is unlawful to alter, repair, restore or rehabilitate an earthquake-damaged structure, unless there exists for the structure a valid building permit and a damage assessment report, prepared pursuant to Section 15.24.080 of this chapter, that has been approved by the Building Official.

After written notice from the Building Official, the owner of each earthquake-damaged structure, which meets the requirements of Section 15.24.050(B)(1), (2), (3), (4), (5), (6), (7), or (8) of this chapter, shall provide the Building Official, within one hundred twenty (120) days of the date of the Building Official's notice, a damage assessment report for the structure identified in the notice. Unless otherwise expressly stated in this chapter, damage assessment reports for all other earthquake-damaged structures shall be submitted to the Building Official by the owner within one hundred eighty (180) working days of the date of notice from the Building Official.

All damage assessment reports shall be prepared pursuant to and in conformance with the provisions of Section 15.24.080 of this chapter. In each case in which a damage assessment report is disapproved, the Building Official, in his or her notice to the applicant, shall state the reasons for disapproval. (Prior code § 18-3.01)

#### **15.24.180 Design review and appeals.**

Unless otherwise stated in this chapter, the owner or the owner's agent, prior to the start of any alterations, abatement works, repair, restoration or rehabilitation works on, or the making of any significant changes to, a nonhistoric, earthquake-damaged structure that is subject to design review under city codes and regulations, shall submit a design review application to the city and have it approved by the Planning Director. The design review application shall be submitted at the same time the assessment report is filed.

Design review applications shall be reviewed and approved or disapproved by the Planning Director. To aid in his or her review of an application, the Planning Director may obtain advice from the Building Official or outside professionals. Except as otherwise stated herein, the Planning Director's decision shall be made within thirty (30) working days of the date of the city's receipt of a completed design review application. Upon receipt of each design review application, the Planning Director may, at his or her discretion, refer the application to the City Planning Commission rather than acting on it himself or herself. If the application is referred to the Planning Commission, the Planning Commission's decision on the application should be made within forty-five (45) working days of the date the application was received by the city. In all other cases, the Planning Director's decision shall be made within thirty (30) working days of the date of the city's receipt of the completed design review application. Applications for altering, abating, repairing, restoring or rehabilitating or demolishing any nonhistoric structure that is subject to design review shall be required to meet the applicable criteria of the city's zoning regulations and applicable criteria of this chapter.

Unless otherwise stated in this chapter, any decision of the Planning Director or Building Official relating to the damage assessment report or the Planning Director's decisions relating to the design review application may be appealed by any interested person as follows:

- A. If the appeal involves only structural or life safety issues, which if implemented will not affect the exterior characteristics of the structure, the appeal shall be made and decided pursuant to the procedures and provisions of Section 15.24.070 of this chapter. Such appeals may only be made by the building permit applicant; and
- B. If the appeal involves issues or proposals that may affect structural or life safety components and the exterior characteristics of the structure, the appeal shall be made and decided pursuant to the procedures set forth in Section 15.24.190D of this chapter.
- C. If the appeal involves only issues or proposals that will affect only the exterior characteristics of the structure, with no implications for the structural or life safety portions of the structure, the appeal shall be made and decided pursuant to the procedures set forth in other applicable city codes and regulations. (Prior code § 18-3.02)

## **Article IV Historic, Earthquake-Damaged Structures**

### **15.24.190 Earthquake-damaged historic structures.**

Notwithstanding any other law, procedure, regulation or provision of this chapter, it is unlawful for any person to alter, abate, repair, restore, rehabilitate, demolish, or make significant changes to any earthquake-damaged structure that is a historic structure, unless the procedures of this chapter have been followed and applicable permissions have been granted, including but not limited to applicable building or demolition permits.

The provisions of the State Historic Building Code, as contained in Part 8, Title 24 of the California Administrative Code and as amended from time to time, may be used for the alteration, abatement, repair, restoration and rehabilitation of historic earthquake-damaged structures.

A. **Damage Assessment Report Required.** Prior to the start of any alterations, abatement works, repairs, restoration or rehabilitation works on, or the making of any significant changes to, an earthquake-damaged historic structure, the owner, or the owner's agent, shall obtain required permits and submit a damage assessment report to the city and have it approved by the Building Official and the Planning Director. The damage assessment report shall be submitted to the city within one hundred twenty (120) days of the date of the Building Official's notice to the applicant indicating that one is required. All damage assessment reports shall be prepared pursuant to and in conformance with the provisions of Section 15.24.080 of this chapter. Damage assessment reports shall be reviewed, approved or disapproved by the Building Official and the Planning Director within thirty (30) working days after the report is filed.

B. **Design Review.** Unless otherwise expressly provided in this chapter, the owner or the owner's agent, prior to the start of any alterations, abatement works, repairs, restoration or rehabilitation works on, or the making of any significant changes to, an earthquake-damaged historic structure, shall submit a design review application to the city and have it approved by the Planning Director. The design review application shall be submitted at the same time the damage assessment report is filed.

Except as otherwise set forth herein, design review applications shall be reviewed and approved or disapproved by the Planning Director. To aid in his or her review of an application the Planning Director may obtain advice from the Building Official or outside professionals. Except as otherwise stated herein, the Planning Director's decision shall be made within thirty (30) working days of the date of the city's receipt of a completed design review application. Upon receipt of each design review application, the Planning Director shall notify the Landmarks Board of the receipt of said application. Any member of the Landmarks Board, within five working days of the date of said notice, may notify the Planning Director in writing that he or she wishes the application to be considered by the Landmarks Board. If such notice is given by a member of the Board, the Planning Director shall immediately forward the

application to the Board and the subject application shall be considered and a recommendation, if any, shall be made to the Planning Director by the Landmarks Board within thirty (30) working days of the date of the application. In all such cases, the Planning Director's decision shall be made within forty-five (45) working days of the date of the city's receipt of the completed design review application. Applications for altering, abating, restoring or rehabilitating or demolishing historic structures which are contributory to an S-7 preservation combining zone shall be required to satisfy the criteria of Sections 17.84.010 through 17.84.070 and 17.136.070 of the city's zoning regulations. Applications for altering, abating, repairing, restoring or rehabilitating or demolishing any other historic structure shall be required to meet the criteria of Sections 17.102.030 and 17.136.070 of the city's zoning regulations.

Alteration, repair, restoration, rehabilitation, and demolition applications for structures that are on either the National Historic Register, the State Historic Record, either California Registered Historical Landmarks, California Points of Historical Interest, on the National Register of Historic Places, or that have been declared to be landmarks by the Oakland City Council shall be forwarded by the city to the State Office of Historic Preservation for consideration, after an interim approval has been made by the city pursuant to this chapter. Said referral shall be made within five working days of a final decision made by the city. Within five working days of receiving a determination from the state, the Planning Director shall notify the permit applicant of the state's approval or disapproval of his or her application. There shall be no referral to the state of the city's decisions on applications related to any potentially historic structures. As used herein, the term "potentially historic structure" shall mean structures described in subsection 5 of the "historic structure" definition in Section 15.24.040 of this chapter.

C. Appeals. Unless otherwise stated in this chapter, any decision of the Planning Director or Building Official relating to the damage assessment report or the Planning Director's decisions relating to the design review application may be appealed by any interested person as follows:

1. If the appeal involves only structural or life safety issues, which if implemented will not affect the exterior or historic characteristics of the structure, the appeal shall be made and decided pursuant to the procedures and provisions of Section 15.24.070 of this chapter. Such appeals may only be made by the building permit applicant.
2. If the appeal involves issues or proposals that may affect structural or life safety components and the exterior or historic characteristics of the structure, the appeal shall be made and decided pursuant to the procedures set forth in subsection D of this section.
3. If the appeal involves only issues or proposals that may affect only the exterior or historic characteristics of the structure, with no implications for the structural or life safety portions of the structure, the appeal shall be made and decided pursuant to the procedures set forth in other applicable city codes and regulations.

D. Board of Earthquake Appeals for Historic Structures Procedure. In order to provide for final interpretations of the provisions of Article IV of this chapter, there is established a Board of Earthquake Appeals for Historic Structures. The Board shall consist of seven members, including three members from the Board of Examiners and Appeals, three members from the Planning Commission and one member from the Landmarks Board. Board of Earthquake Appeals for Historic Structures members shall be appointed to and removed from the Board by their respective boards pursuant to procedures adopted by each board.

Appeals to the Board of Earthquake Appeals for Historic Structures shall be made within ten working days after the date of a decision by the Building Official or Planning Director. The Building Official's and Planning Director's decision shall be considered final, if no appeal is taken within the ten working days appeal period. Thereafter, no appeal shall be allowed.

Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning Director. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Director or Building Official. Upon receipt of the appeal, the Planning Director shall place the matter on the agenda of the next available meeting of the Board of Earthquake Appeals for Historic Structures. Not less than ten working days prior to the hearing date, the Planning Director shall give notice to the appellant of the date, time and place of the hearing.

In considering the appeal, the Board shall determine whether, based upon the record, the Building Official or Planning Director erred or abused his or her discretion. Error or abuse of discretion is shown, if it is established that the Building Official or Planning Director failed to follow the provisions of this chapter.

The decision of the Board shall be made in writing, shall be nonappealable and shall be considered final on the date it is issued. A copy of the Board's decision shall be mailed or otherwise delivered to the appellant by the Planning Director within five working days of the date of the Board's decision. (Prior code § 18-4.01)

### **15.24.200 Securing earthquake-damaged historic structures.**

Notwithstanding any other law, procedures, regulation or provision of this chapter, this article shall govern the duty of owners and other interested parties of record to secure earthquake-damaged historic structures. The procedures, including appellate procedures, set forth in this article shall govern over any conflicting procedures contained in any other law, procedure or regulation.

A. Duty to Secure. It is unlawful for any owner or other interested party of record to maintain or to allow an earthquake-damaged historic structure to be maintained as an abandoned historic structure. It shall be the duty of the owner and other interested parties of record of each earthquake-damaged historic structure to secure each

such structure to prevent unauthorized entry by members of the public and to prevent damage and deterioration caused by the effects of environmental elements. It is unlawful for the owner or interested party of record of any earthquake-damaged historic structure to fail to secure such structure pursuant to the requirements of this article.

B. Order To Secure. The Building Official, upon determining that an earthquake-damaged historic structure is being maintained as an abandoned historic structure, shall provide the owner with an order to secure. The order to secure shall be in writing and shall be delivered personally or by certified mail to the property owner and any other party of record with an equitable or legal interest in said property. The order shall set forth those factors which, in the opinion of the Building Official, cause the structure to be an abandoned historic structure. The order shall provide that, within five days from the date set forth in the order, the owner shall begin and prosecute to completion the work of securing the structure pursuant to the terms of the order and of this article. The order shall include a date by which the work must be completed. The Building Official, in establishing such date, shall take into consideration the condition of the structure and the amount of work that must be done to secure it.

The decision of the Building Official determining that an earthquake-damaged historic structure is an abandoned historic structure may be appealed to the Director of Public Works or his or her designee by the property owner or any other interested party of record. Any such appeal shall be in writing and shall indicate the basis of error by the Building Official and shall be hand-delivered to the Building Official within five days of the date set forth in the Building Official's order. Failure to appeal within the required five-day period shall constitute a waiver of the right to appeal to the Director of Public Works and the Building Official's determination and order shall stand as final. An appeal that is properly and timely filed shall cause the Building Official's determination and order to be suspended until such time as the matter is heard and resolved by the Director of Public Works.

C. Hearing. At the time of receiving a valid appeal, the Building Official shall schedule an appeal hearing before the Director of Public Works. The appellant shall be notified of the date, time and place of the hearing at the time the appeal is filed. The hearing shall be held as soon as practicable.

At the hearing, the appellant shall have the right to call witnesses, submit evidence and to cross-examine the witnesses of the city. All witnesses shall be sworn. A record of the entire proceeding shall be made by tape recording. Any relevant evidence may be admitted regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in the courts of this state. At the close of the hearing, the Director of Public Works or his or her designee shall act to either uphold, overrule or modify the determination and order of the Building Official. The determination and order of the Building Official shall be upheld, unless the Director or his or her designee finds, based upon submitted evidence in the record, that the Building Official erred in determining that the subject structure is an abandoned historic structure. The decision of the Director or his or her designee must be made within two days and may be given orally or in writing. If given orally, the decision shall be memorialized in writing and served upon the appellant within five days of the date of the oral decision.

If the Director or his or her designee upholds the decision of the Building Official, the property owner or other interested party of record shall be ordered to secure the structure within the time set forth in the decision by the Director or his or her designee. If the Building Official is determined to have erred, his or her determination and order shall be vacated. The decision of the Director or his or her designee shall be final on the date it is rendered.

D. Specifications for Securing Earthquake-Damaged Historic Structures. All openings, including, but not limited to, doorways, windows, cracks, gaps, holes and other apertures, shall be secured to meet the following minimum standards so as to prevent unauthorized entry by members of the public and to prevent damage and deterioration caused by the effects of environmental elements:

1. Securing of earthquake-damaged historic structures shall consist of emplacement of one-half inch exterior grade plywood, on the exterior side with paint matching the predominate color of the structure, across all openings on the ground level floor and floor immediately accessible to entry, other than those where mechanical assistance would be required to effect entry. Plywood shall be cut to the size of the opening and fastened by means of two-inch by four-inch strongback placed on the inside of the building and attached with metal bolts. There shall be no nailing of the plywood to the window frame or sash. At least one door providing entry to each unit of the structure shall be secured by means of one-half inch exterior grade plywood cut to the door opening size and fastened by means of hinges and secured with a hasp and padlock. The lock shall be a MASTER-3NKA or equivalent. Broken windows on upper floors shall be secured by one-half inch exterior grade plywood, painted on the exterior side with paint matching the predominate color of the structure. Plywood shall be cut to the size of the opening and placed on the interior side of the window and shall be fastened by means of two-inch by four-inch strongback placed on the inside of the structure and attached with metal bolts.

2. All doors and windows not secured as set forth in subsection (D)(1) of this section, shall be kept closed and locked.

3. All other openings, including cracks, gaps, holes and other apertures, which either may be used to gain unauthorized entry or may allow environmental elements to invade the interior portions of the structure shall be secured with appropriate building materials, with the exterior portions of the materials, being painted the color matching the predominate color of the structure that surrounds the secured opening.

4. All secured areas, in compliance with applicable codes and regulations, shall be kept free of graffiti, bills, posters and litter.

E. Penalties. It is unlawful for the owner or any other interested party of record to maintain, or cause to be maintained, an abandoned historic structure, or to fail to comply with an order to secure imposed by the Building

Official, the Director of Public Works or his or her designee. After written notice from the city to the owner or other interested party of record, the following penalties shall be imposed upon owners who fail to comply with the provisions of this article:

1. Except as otherwise provided herein, a five-hundred-dollar (\$500.00) penalty shall be imposed upon the owner or other interested party of record of each abandoned historic structure for each day, or partial day, such structure is maintained as an abandoned historic structure. For purposes of this article, each day, or partial day, that a structure remains an abandoned historic structure shall be considered a separate violation of this article.

2. If the work of securing the structure is completed by the city or its contractors, the penalty imposed upon the owner or other interested party of record shall be a penalty which either equals the amount required by subsection (E)(1) of this section or ten percent of the actual costs incurred by the city in securing or having the structure secured pursuant to the provisions of this article, whichever is greater.

3. The penalties imposed pursuant to this article shall be assessed in the manner and pursuant to the procedures set forth in Section 15.24.090B of this chapter. In addition, the penalties shall be a personal obligation of the owner of the subject real property.

F. Occupancy Permit Revocation. In addition to imposing the penalties set forth in subsection E of this section, the Building Official, following the procedures set forth in Section 15.24.090C of this chapter, may revoke the occupancy permit for any abandoned historic structure for which an owner fails to satisfy the requirements of this article. The procedures and regulations governing appellate review of the Building Official's revocation decision shall be as set forth in Section 15.24.090C of this chapter.

G. Right of Entry. Whenever an order to secure of the Building Official, Director of Public Works or his or her designee is not complied with within the time set forth in the order, the Building Official, Director of Public Works or his or her designee, whichever is applicable, shall be authorized to enter the structure and to secure it pursuant to the requirements set forth in subsection D of this section. Instead of using city forces to perform the work, the Building Official, Director of Public Works or his or her designee, subject to the city's contracting regulations, may order the work to be performed by contractors. Contractors hired by the city, in prosecuting the work authorized by this article, shall have the same rights of entry accorded the Building Official, Director of Public Works or his or her designee.

H. Costs of Securing. All costs and expenses incurred by the city, including staff costs resulting from the contracting process, shall become a personal obligation of the owner of the related real property and, in addition, shall become a special assessment against the property.

At the time the Building Official, Director of Public Works or his or her designee, orders security work to be done by the city or the city's contractors, the Building Official shall record a notice of prospective lien against the subject property. Such notice shall include a description of the proposed security work and an estimate of its costs.

Immediately upon the completion of any work of securing an abandoned historic structure by city forces or city contractors, the Building Official shall prepare a report of assessment. Said report shall describe the work performed, the dates on which it was performed and the costs incurred by the city. The Building Official shall cause a copy of the report to be served on the subject property owner and all other interested parties of record. Said report shall be accompanied by a notice of the date, time and place of the confirmation hearing before the Oakland City Council. Said notice shall provide the owner or other interested party with at least five working days' prior notice of said confirmation hearing.

The notice and report shall be placed in a sealed envelope, postage prepaid, addressed to the owner or other interested party at his or her last known address as the same appears on the last equalized assessment rolls of the city, and deposited, registered or certified mail, return receipt requested in the United States mail. Service shall be deemed complete at the time of deposit in the United States mail.

A copy of the report of the assessment shall be posted in the Office of the City Clerk at least three days prior to the time when the report will be submitted to the City Council.

At the time set forth in the notice, the City Council shall hear the matter and either modify or confirm the assessment report. The Council shall confirm the report as presented by the Building Official, unless the Council, after a review of the evidence in the record, finds that either the work assessed was not performed or that there was an error made in calculating the amount owed. After the assessment is made and confirmed, it shall be a lien on said property, until said sum, with interest at the maximum legal rate per annum, has been paid in full. Interest shall begin to run on the date the amount is confirmed.

Such lien shall attach upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedures for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes. (Prior code § 18-4.02)

## **Article V Mandatory Earthquake Damage Abatement Program**

### **15.24.210 Purpose of article.**

The purpose of this article is to provide for the abatement of the public nuisances created by earthquake-damaged buildings and to promote the health, safety, and general welfare of the community by requiring a level of maintenance of property which will protect and preserve the appearance, social and economic stability of the city and which will also protect the public from the health and safety hazards and the impairment of property values which result from the neglect and deterioration of property. The purpose is also to protect and preserve earthquake-damaged historic buildings which may be in a state of disrepair resulting in degradation of their historic fabric. As such, all proposals for abatement of earthquake-damaged historic structures shall be subject to all applicable city, state and federal approval processes and permitting requirements. (Prior code § 18-5.01)

### **15.24.220 Scope of article.**

Subject to Section 15.24.230, the scope of this article shall include any building in Oakland which has been damaged by earthquake, has been designated by the city as an "Unsafe Building" or posted "Limited Entry" has been abandoned and is a public nuisance, as defined by this article. (Prior code § 18-5.02)

### **15.24.230 Application of article.**

The provisions of this article shall apply to privately owned buildings that are public nuisances, as defined by Section 15.24.250, and that are located in the city's central business district, as described in Section 15.24.220, except this article shall not apply to the following:

- A. A detached Group R Division 3 Occupancy, single-family dwelling; or
- B. Accessory building serving Group R Division 3 Occupancy, single-family dwelling.

Notwithstanding any other provision of this chapter, or any provision of any other law or regulation, the provisions of this article shall apply only to the buildings described in this section and Section 15.24.220. For purposes of this article, the term "central business district" shall mean that geographical area of the city: commencing at the point of intersection of the Embarcadero Street with Castro Street; thence northerly along the Castro Street to the intersection of 22nd Street and San Pablo Avenue; thence southerly along San Pablo Avenue to the 21st Street; thence easterly along 21st Street to the extension of the rear lot line of the northwest corner lot of 21st Street and Telegraph Avenue; thence northerly along the rear lot lines of properties facing Telegraph Avenue from the west to West Grand Avenue; thence along West Grand Avenue to Harrison Street; thence southerly along the Harrison Street to the Lakeside Drive; thence southerly along Oak Street to the point of intersection extension of Oak Street to the city limits on the Oakland Estuary; thence westerly along the Oakland Inner Harbor to the intersection of Oakland Harbor and extension of Castro Street; thence northerly along the extension of Castro Street to the point of commencement. (Prior code § 18-5.03)

### **15.24.240 Inspections.**

Inspection authority for the purposes of enforcing and implementing the provisions of this article shall be as set forth in Section 15.24.030 of this chapter, provided that the city may use any legal means, including inspection warrants, to gain access to buildings governed by this article. (Prior code § 18-5.04)

### **15.24.250 Definitions.**

For the purpose of this article, certain words, phrases, terms and their derivatives shall be construed as specified in this section. Words, phrases, and terms that are used in this article, but not specifically defined, shall have the meaning set forth in the applicable local, state, or federal code, if appropriate. Other such words, phrases and terms shall be accorded their ordinary meanings.

"Abandoned building" means any earthquake-damaged building which has been vacant for more than a year.

"Abatement" means action necessary to remove the conditions which cause an earthquake-damaged building to be a public nuisance. The term "abatement" shall include the words "abatement work" and "abate."

"Building," subject to the provisions of Sections 15.24.220 and 15.24.230, means any structure used or intended for supporting or sheltering any use or occupancy.

"City Planning Director" means the city of Oakland Director of City Planning Department or his or her designee.

"Conceptual abatement plan (CAP)" means a program of proposed actions to be undertaken for abatement of public nuisances in an earthquake-damaged building pursuant to the provisions of this article, including all required approval processes and permits. The CAP shall provide information on the extent of the damage, estimated cost of repair, proposed abatement work and schedule, present condition of the exterior and shall include building plans and/or recent photographs, Damage Assessment Report approved by the city and a maintenance program for any building proposed to be repaired for nonoccupancy. If the earthquake-damaged building is a historic structure, the

CAP shall reflect the requirements of all applicable city, state and federal codes and statutes governing such structures.

“Current Uniform Code for Building Conservation (current UCBC)” means the latest edition of the Uniform Code for Building Conservation, as adopted by the International Conference of Building Officials.

“Day” means a calendar day.

“Office of Economic Development and Employment Director” means the city of Oakland Director of the Office of Economic Development and Employment or his or her designee.

“Office of Public Works Director” means the city of Oakland Director of the Office of Public Works or his or her designee.

“Owner” means any individual, group of individuals, corporation, firm or any other entity holding a legal or equitable interest in a piece of real property, as recorded in the records of the Alameda County Recorder’s Office. The term “legal owner” does not include those individuals of entities holding only an equitable interest.

“Public nuisance” means any building located in the city’s central business district that has been damaged by earthquake and, because of facade and/or structural damage, poses a threat to adjacent properties or humans and has been designated either “limited entry” or “unsafe” by the city’s Building Official.

In addition to the definitions set forth in this section, the definitions set forth in Section 15.24.040 of this chapter, where applicable, shall apply to this article. To the extent the definitions of this article conflict with definitions of any other section of this chapter or any other law or regulation, the definitions of this article shall govern and supersede all other definitions. (Prior code § 18-5.05)

### **15.24.260 Earthquake Damage Abatement Board (EDAB).**

To provide for an efficient and equitable review of certain actions and requirements pursuant to the provisions of this article, there shall be and is created an Earthquake Damage Abatement Board (EDAB). The EDAB shall be composed of the Directors of the Office of Economic Development and Employment, City Planning and the Office of Public Works and two at-large community members. The two at-large community members shall be appointed by the Mayor and confirmed by the City Council. The at-large members shall serve, without compensation, at the pleasure of the Mayor and Council and may be removed pursuant to the procedures established by Section 501 of the Charter of the city of Oakland. One of the two at-large members shall have an architectural and preservation background and the other one shall have a real estate and business background. The Building Official shall act as secretary to said Board but shall have no vote upon any matter before the Board.

The EDAB shall adopt rules of procedure for conducting its business and shall render all decisions, which shall be supported by written findings, in writing.

The authority of the Board shall be limited to the following:

A. General Authority. The general authority of the EDAB shall be as follows:

1. Verifying that the CAP complies with this article;
2. Establishing intermediate and ultimate time frames to commence and complete the abatement work;
3. Granting extensions, if “good cause” is demonstrated. As set forth herein, the term “good cause” shall mean a factual showing by the applicant that he or she has made a good faith effort to comply with the provisions of this chapter and that, because of particular facts, the granting of an extension would be equitable;
4. The EDAB shall have no authority to approve the CAP.

B. Appellate Authority. The appellate authority of the EDAB shall be to determine whether:

1. The Building Official abused his or her discretion in determining that a building is a public nuisance.
2. The Building Official erred in determining and/or calculating the cost of abatement work to be or actually performed by the city or its contractors.
3. The Building Official erred in providing notice pursuant to Sections 15.24.290 and 15.24.300.

The EDAB shall have no authority to review any decision or finding of the Building Official, unless such decision or finding falls within one of the appellate categories established by subsection A or B of this section. (Prior code § 18-5.06)

### **15.24.270 Mandatory abatement required.**

Every owner of each earthquake-damaged building that has been finally determined, pursuant to the provisions of this article, by the city to be a public nuisance shall abate, within the time established by the city, such public nuisance.

No owner shall refuse or fail to carry out the abatement orders of the city that are made pursuant to this article. Refusal or failure to comply with any such order shall be unlawful and shall be constituted as a violation of this article. (Prior code § 18-5.07)

### **15.24.280 Identification of buildings.**

From time to time and whenever necessary, the Building Official shall compile a list which shall contain every

earthquake-damaged building that is described in Sections 15.24.220 and 15.24.230. Each building of the list, until it is abated, shall be designated a public nuisance. (Prior code § 18-5.08)

### **15.24.290 Notification of owner.**

Upon determining that a particular earthquake-damaged building is a public nuisance, the Building Official shall send a notice of abatement to the building's owner(s). The content of the notice and the procedures relating to its issuance shall be as set forth in Section 15.24.300, subsections A and C. (Prior code § 18-5.09)

### **15.24.300 Notice content and procedures.**

A. Contents of Building Official's Notice of Abatement. The Building's Official Notice to the owner, as required by Section 15.24.290, shall contain:

1. The street address and a legal description of the property sufficient for identification of the premises upon which the building is located;
2. A statement that the Building Official has determined pursuant to this article, that the subject building is a public nuisance;
3. A statement setting forth the reasons which support the Building Official's determinations;
4. A statement ordering the owner to submit, within thirty (30) days of the date of the notice and order of abatement, seven copies of a conceptual abatement plan (CAP), as defined in Section 15.24.250, to the EDAB;
5. A statement indicating that the EDAB's review of the CAP shall not constitute approval and the owner's repair or demolition plan must be approved by all applicable city, state and federal bodies;
6. A statement ordering the owner to attend a public hearing on the CAP. The public hearing shall be conducted by the EDAB. The date of the hearing shall be included in the notice and order of abatement;
7. A statement advising the owner that the owner, within the time set forth in this article and pursuant to the provisions of Section 15.24.320, may appeal the Building Official's public nuisance determination to the EDAB. The owner shall be advised further that failure to seek a timely appeal, shall constitute a waiver of his or her right to subsequently appeal the validity of the Building Official's determinations;
8. A statement advising the owner that, if the owner fails to either make a timely appeal of the Building Official's public nuisance determination to the EDAB or fails to comply with the notice and order within the time specified, the Building Official, pursuant to this article, shall be authorized to record a notice of noncompliance and public nuisance against the owner's property. Also, the owner shall be advised that, in such case, the city shall be authorized, but not required, to proceed with the abatement work and shall charge the costs of such abatement, plus an amount equal to forty (40) percent of such cost, which shall compensate the city for administering the abatement contract and supervising the abatement work, to the property owner and that such amount, after confirmation and recordation, shall constitute a lien against the subject property;
9. A statement advising the owner that the filing of an appeal, in and of itself, will not suspend the date by which the owner must submit the CAP or attend the public hearing on the CAP described in the notice and order of abatement;
10. A statement indicating that the owner's repair or demolition plan shall be subject to all applicable city, state and federal permit requirements, including, but not limited to, environmental review and design review requirements, and that the governing city, state or federal body, not the EDAB, shall determine whether to issue the required permits;
11. A statement indicating that the owner, at the time of applying for applicable city, state and federal permits and approvals, must submit a copy of the CAP, as reviewed and determined complete by the EDAB, to the approving and permitting agency.

B. Contents of Notice of EDAB'S Determination. The Building Official shall notify the owner of the EDAB's review determination, as required in Section 15.24.340. The contents of the notice shall be as follows:

1. A statement ordering the owner to abate the public nuisance and informing the owner what work has to be completed to cause the abatement of the public nuisance;
2. A statement ordering the owner to commence and complete the abatement work within the intermediate and/or ultimate time frame(s) set by the EDAB;
3. A statement indicating that the owner's repair or demolition plan must be approved by each city, state and federal board, commission, council, department and office with governing jurisdiction, and that all such approvals and permits must be obtained prior to the start of any demolition or repair work;
4. A statement advising the owner that, if the owner fails to comply with the notice and order within the time specified, the Building Official, pursuant to this article, shall be authorized to record a notice of noncompliance and public nuisance against the owner's property. Also, the owner shall be advised that, in such case, the city shall be authorized, but not required, to proceed with the abatement work and shall charge the costs of such abatement, plus an amount equal to forty (40) percent of such cost, which shall compensate the city for administering the abatement contract and supervising the abatement work, to the property owner and that such amount, after confirmation and recordation, shall constitute a lien against the subject property.

C. Notice Procedure. When issuing notices described in this section and Sections 15.24.290 and 15.24.340, the

Building Official shall follow the procedures set forth below:

1. Service of Notice and Order. The notice and order shall be served upon the owner, posted on the property, served on the owners of all properties lying within three hundred (300) feet, in any direction, of the property on which the public nuisance exists and on any other entity, organization or individual who, prior to the issuance of notice hereunder, requests in writing that notice be given under this subsection. The city's failure to provide any such requested notice shall not prohibit the city from taking actions under this article, nor shall it serve as a basis for invalidating any action already taken. The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceeding hereunder as to any other person duly served or relieve any duly served person from any duty or obligation imposed on him or her by the provisions of this article.

2. Method of Service. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his or her address as it appears on the last equalized assessment roll of the county or as known to the Building Official. If no address of any such person so appears or is known to the Building Official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

3. Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail shall be affixed to the copy of the notice and order retained by the Building Official. (Prior code § 18-5.10)

#### **15.24.310 Time of completion.**

Every notice and order of abatement of the EDAB shall contain a time of completion date. The order also may contain intermediate completion dates for specific portions of the abatement work. The time of completion date(s) shall be the date(s), as determined by the EDAB, by which the owner must complete the abatement work required by this article. In determining the time of completion date(s), the EDAB shall consider the nature of the public nuisance, the time needed to acquire other required permits and approvals, the age and location of the building, the extent of the earthquake damage, historic building designation, the potential development of the site and the provisions of this article. The date(s) established by EDAB shall be reasonably related to these factors and the purposes established by Section 15.24.210. The owner's economic condition or the economic viability of the building shall not be considered in establishing intermediate and/or ultimate completion dates. (Prior code § 18-5.11)

#### **15.24.320 Appeal of Building Official's determination.**

Any person, or his or her representative, entitled to service under Section 15.24.300C may appeal any of the determinations of the Building Official that are described in Section 15.24.260B. No other determinations of the Building Official shall be appealable.

Any such appeal shall be made in writing, on a form approved by the Building Official, within five days of the date of the Building Official's notice of order and abatement. The written appeal shall include:

- A. A brief statement setting forth the legal or equitable interest, if any, of each of the appellants in the building and land involved in the appeal;
- B. A brief statement in ordinary and concise language which cites the specific subsection of Section 15.24.260 under which the appeal is brought, together with any facts claimed by the appellant to support his or her contentions that the Building Official erred or abused his or her discretion;
- C. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action or an order should be reversed, modified or otherwise set aside;
- D. The signatures of all parties named as appellants and their official mailing address. (Prior code § 18-5.12)

#### **15.24.330 Processing and hearing of appeal of Building Official's determination.**

Appeals brought pursuant to Section 15.24.260B shall be heard and decided by the EDAB within fifteen (15) days of the date of receipt of the appeal by the city. Not less than ten days prior to the hearing date, the Building Official shall give written notice to the appellant, and any other party who has indicated that he or she wants notice of the appeal, of the date, time and place of the hearing. The EDAB shall be authorized to continue the appeal from time to time. The EDAB, upon request of the appellant, if good cause appears, may extend the period in which the appeal must be decided.

In considering the appeal, the EDAB's decision, depending upon the matter appealed, shall be based upon at least one of the subsections of Section 15.24.260B.

The decision of the EDAB shall be in writing, supported by findings and shall be final on the date it is issued. The decision of the EDAB, in response to owner's appeal of the Building Official's determination, shall be nonappealable. Within ten days of the date of the EDAB's decision, the Building Official shall mail, certified, or otherwise deliver a copy of the EDAB decision to the appellant and any other party who has requested a copy of the decision. (Prior code § 18-5.13)

#### **15.24.340 Conceptual abatement plan public hearing.**

In each case in which an owner is notified to submit a conceptual abatement plan, the Building Official, within sixty (60) days of the date of that notice, shall schedule a public hearing on the CAP before the EDAB. The Building Official shall provide at least seven days' prior notice of the subject hearing to all persons entitled to notice under Section 15.24.300C.

Prior to submitting the CAP to the EDAB, the Building Official shall review the CAP and make recommendations to the EDAB. The EDAB shall not be bound by the Building Official's recommendations.

Upon receipt of the CAP, the EDAB shall hold a noticed public hearing and shall determine whether the CAP complies with the requirements of this article and whether if implemented, the CAP will cause the abatement of the public nuisance that is the subject of the CAP. If the EDAB finds that the CAP complies with this article, it shall issue a notice and order of abatement which shall indicate the commencement and completion dates for the abatement work. Also, the notice and order of abatement shall indicate any intermediate date(s) set by the EDAB. If the EDAB finds that the CAP does not comply with the minimum requirements of this article, the owner shall be in violation of this article and subject to penalties per Section 15.24.380 and city action per Section 15.24.360, unless the EDAB, for good cause, grants an extension. The determination of the EDAB shall be made in writing, supported by findings, and shall be final on the date it is made. Within five days of the date of the determination of the EDAB, the Building Official shall mail, certified, or personally deliver, a copy of the determination and shall issue a notice and order of abatement to the owner, all persons entitled to notice under Section 15.24.300C and to any other person who has requested special notice. The contents of the notice and the procedures relating to its issuance shall be as set forth in Section 15.24.300B and C. The determination of the EDAB shall be final and shall not be appealable to the City Council. (Prior code § 18-5.14)

#### **15.24.350 Standards for repair and demolition.**

The provisions of the State Historic Building Code, as contained in Part 8, Title 24 of the California Administrative Code, and as amended from time to time, may be used for the alteration, abatement, repair, restoration and rehabilitation of historic earthquake-damaged structures.

For abatement of an earthquake-damaged building, at least one of the following standards shall be used to comply with this article's abatement requirements:

A. Repair for Occupancy. If the building is to be used for occupancy, it shall be repaired in accordance with Articles I, II, III, and IV of this chapter, whichever is applicable.

B. Demolition. If the owner chooses to demolish the building, he or she shall follow the procedures set forth in Oakland Demolition Ordinance No. 10892 C.M.S. (Chapter 15.36), Oakland zoning regulations and other applicable laws and regulations, including, but not limited to, other applicable city, state and federal laws and regulations governing historic structures.

C. Repair for Nonoccupancy. If the owner does not want to repair the building for occupancy, he or she shall abate the public nuisance by following the standards outlined below:

1. Repair only damaged portion of structural systems in accordance with the current code, or any other lesser standard that will reasonably protect the public safety, as determined on a case-by-case basis by the Building Official. The public safety shall be considered reasonably protected if the facade and/or structural elements of the building, which were damaged by earthquake, will no longer constitute a public nuisance, as defined by this article.
2. Repair exterior in accordance with the standards described below:

The exterior of the buildings shall be repaired such that it shall not substantially impair the visual, architectural, or historic value of the earthquake-damaged building. Consideration shall be given to design, form, scale, color, materials, texture, lighting, detailing, and ornamentation, landscaping, signs, and any other relevant design element or effect, and, where applicable, the relation of the above to the original design of the building. Subject to subsection (C)(5) of this section the exterior shall be repaired in accordance with the current code, or equivalent standard, as determined by the Building Official.

The damaged portion of the potential falling hazards, such as parapets, cornices, decorative statuary, veneer, awnings, and rooftop tanks or equipment near edges of buildings, shall be repaired in accordance with the current code, or equivalent standard, as determined by the Building Official.

Any existing scaffolds, fences and/or other temporary structures around the building shall be removed.

All the openings including, but not limited to, doorways and windows, shall be secured by one-half inch plywood, painted on the exterior side with paint matching the predominate color of the structure. Plywood shall be placed on the interior side of the opening and shall be fastened by means of two-inch by four-inch strongback placed on the inside of the structure and attached with metal bolts. The design securing the openings shall be reviewed by the

Building Official.

3. Exterior repair of historic buildings which are contributory to a S-7 preservation combining zone shall be required to satisfy the criteria of Sections 17.84.010 through 17.84.070 and 17.136.070 of the city's zoning regulations and any other applicable code, regulation or law. Exterior repair of other historic buildings shall be required to meet the criteria of Sections 17.102.030 and 17.136.070 of the city's zoning regulations and any other applicable code, regulation or law. Exterior repair of all other buildings which are subject to design review under the zoning regulations shall be required to satisfy the criteria of Section 17.136.070 and any other applicable code, regulation or law.

4. Maintenance. All buildings repaired for nonoccupancy standards, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by this article shall be maintained in conformance with the applicable standards under which repaired. Exterior of the buildings shall be kept free of graffiti, bills, posters and litter. The owner shall be responsible for maintenance of the buildings. To determine compliance with this subsection, the Building Official may cause any building to be reinspected. Failure to comply with the provisions of this subsection shall constitute a violation of this article and shall resubject the owner to all of the mandatory abatement provisions of this article.

5. As an exception, the Building Official may allow the ground floor of a building to be occupied in accordance with Section 15.24.390. (Prior code § 18-5.15)

### **15.24.360 Damage abatement work performed by city.**

A. Damage Abatement Work. When any building owner fails to submit the CAP, or to accomplish the abatement work in compliance with the notice of the Building Official, the EDAB shall recommend that the city prepare the abatement plan. The city may, but shall not be required to, perform the inspection and prepare the damage abatement plan and submit to EDAB for its review. If the city elects to prepare the plan, EDAB shall hold a public hearing to determine the appropriate abatement action on the building. The owner and other parties described in Section 15.24.300c of this article shall be given seven days' prior notice of the hearing. The EDAB shall inform the owner and the Building Official of its decision in writing.

If the EDAB recommends and the city elects to perform the abatement work, the Building Official may issue an order to have the work accomplished by personnel of the city or by private contract under his or her direction. Plans and specifications thereof may be prepared by the Building Official or his or her staff or he or she may employ such architectural and engineering assistance on a contract basis as he or she may deem reasonably necessary.

B. Costs. The cost of preparing the abatement plan and performing such work, plus an administrative fee of forty (40) percent of such cost, to cover the cost for the city administering and supervising the contract against the property involved, shall be made a personal obligation of the property owner and shall constitute a lien against the property. The cost of repair or demolition performed by the city shall be recovered from the owner in accordance with the lien procedures of Section 15.24.410.

C. The city shall be authorized to accept or reject any EDAB recommendation that the city perform the abatement work. The city's decision, which shall be based upon whether available resources exist, shall be entirely discretionary and nonappealable. (Prior code § 18-5.16)

### **15.24.370 Design review.**

The owner or the owner's agent or the city, prior to start of any repair or demolition work under this article, shall submit a design review application to the City Planning Department and have it approved.

The procedures for design review for each nonhistoric building and each historic building shall be in accordance with Sections 15.24.180 and 15.24.190B, respectively, of this chapter. (Prior code § 18-5.17)

### **15.24.380 Penalties.**

It is unlawful for the owner of any earthquake-damaged building subject to this article to fail to provide the city, within the required period, with an acceptable CAP or not to proceed and complete the abatement work within the time specified by the EDAB. After written notice from the city to the owner, the following penalties shall be imposed upon owners who fail to comply with the requirements of this article:

Except as otherwise provided herein, a ten-thousand-dollar (\$10,000.00) penalty shall be imposed upon the owner of the earthquake-damaged building, if an acceptable CAP is not filed with the city within the period described in this article. Beginning at the end of the specified period, a fine of ten thousand dollars (\$10,000.00) per month, for each month the owner fails to comply with the requirements of this article, shall be imposed upon said owner.

However, the maximum fine imposed upon such owner for each building shall not exceed sixty thousand dollars (\$60,000.00).

The penalties imposed pursuant to this chapter shall be assessed against the real property to which the penalties relate and shall, in addition, be a personal obligation of the owner of the subject real property. For purposes of this section, this personal obligation requirement shall apply to individuals and entities. The Building Official shall give

the owner of such premises a written notice showing the amount of the penalty and requesting payment thereof. If the amount of such penalty is not paid to the Building Official within five days after the date of such notice, the Building Official shall forward a report of the penalty to the EDAB for confirmation. The property owner shall be given at least ten days' notice of the confirmation hearing before the EDAB. Said notice shall be in writing. The amount of the penalty shall be confirmed by the EDAB, unless the EDAB finds, based upon evidence in the record, that the Building Official erred in imposing or computing the amount of the penalty. If such error is found, the EDAB may modify the amount of the penalty, as warranted. Upon confirmation of the penalty, the EDAB shall direct that the Building Official shall record in the Office of the County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

**Notice Of Lien**

Pursuant to Chapter 15.24, Article V of the Oakland Municipal Code, a penalty in the amount of \$ \_\_\_\_\_ was assessed by the Building Official, and confirmed by the Earthquake Damage Abatement Board (EDAB), against the herein described real property and said amount has not been paid, nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon said real property until said sum has been paid in full. The real property herein above-mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California and particularly described as follows, to wit:

\_\_\_\_\_  
 \_\_\_\_\_  
 (insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
 Building Official  
 City of Oakland

Such lien attaches upon recordation of the notice of lien. The description of the parcel in the notice of lien shall be that used for the same parcel as the County Assessor's map book for the current year. The County Assessor shall enter each assessment on the county tax roll opposite the affected parcel of land. The amount of the assessment shall be collected and shall be subject to the same penalties and the same procedures for foreclosure and sale, in case of delinquencies, as provided for ordinary municipal taxes. (Prior code § 18-5.18)

### **15.24.390 Ground floor occupancy.**

After abatement work of earthquake damage on a building has been completed, the Building Official, without allowing full occupancy of a building, may issue a certificate of occupancy for use of the ground floor of a building, if he or she determines, based upon substantial evidence, that the public nuisance has been abated and that no substantial hazard will result from occupancy of the ground floor area of the building. In all cases where the Building Official issues a certificate of occupancy for use of the ground floor in a building, all abatement work done on the ground floor must meet current code. (Prior code § 18-5.19)

### **15.24.400 Fees.**

The owner shall pay the fee as established by the master fee schedule to the Development Services Department to recover the cost for implementation of this article. (Prior code § 18-5.20)

### **15.24.410 Abatement liens.**

The City Council shall in each instance determine whether the city shall elect to prepare a CAP and/or perform abatement work as recommended by the EDAB. The Building Official shall provide the owner and any other party entitled to notice pursuant to Section 15.24.300C with at least seven days' prior notice of the meeting at which the City Council will be asked to determine whether the city should elect to prepare the CAP and/or perform the abatement work. The notice shall include a description of the proposed abatement work and the Building Official's estimate of the costs. Such owner and other party shall have the right to appear before the City Council to contest or oppose the EDAB's recommendation that the city prepare the CAP and/or perform the abatement work. In those instances where the city elects to prepare the CAP and/or perform the abatement work, the costs incurred by the city, in addition to being a personal obligation of the owner, shall constitute a special assessment against the property on which the public nuisance existed. At the time the city elects to prepare the CAP or perform the abatement work, the Building Official shall record a notice of prospective lien against the subject property. Such notice shall include a description of the prepared abatement work and an estimate of its costs. The notice shall indicate that the actual costs may exceed the city's estimate. Immediately upon completion of preparation of any CAP or performance of any abatement work by the city and/or

the city's contractor, the Building Official shall prepare a report of assessment. Said report shall describe the work performed, the date(s) on which it was performed and the costs incurred by the city. The Building Official shall cause a copy of said report to be served on the subject property owner. Said report shall be accompanied by a notice of the date, time and place of the confirmation hearing before the Oakland City Council. Said notice shall provide the owner with at least five days' prior notice of said confirmation hearing.

The notice and report shall be placed in a sealed envelope, postage prepaid, addressed to the owner or other interested party at his or her last known address as the same appears on the last equalized assessment rolls of the city, and deposited, registered or certified mail, return receipt requested in the United States mail. Service shall be deemed completed at the time of deposit in the United States mail.

A copy of the report of the assessment shall be posted in the Office of the City Clerk at least three days prior to the time when the report will be submitted to the City Council.

At the time set forth in the notice, the City Council shall hear the matter and either modify or confirm the assessment report. The Council shall confirm the report as presented by the Building Official, unless the Council, after a review of the evidence in the record, finds that either the work assessed was not performed or that there was an error made in calculating the amount owed. After the assessment is made and confirmed, in addition to being a personal obligation of the owner, it shall be a lien on the said property, until said sum, with interest at the maximum legal rate per annum, has been paid in full. Interest shall begin to run on the date the amount is confirmed.

Such lien attaches upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, or on before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedures for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes. (Prior code § 18-5.21)

#### **15.24.420 Access to private property.**

In each case in which the city, in implementing the provisions of this article, requires access to private property to enable the city to either perform an inspection, prepare a CAP and/or perform abatement work, the city shall seek prior approval for entry from the legal owner. If the legal owner fails or refuses to grant rights of entry to the city, the city shall obtain entry by any legal means, including, but not limited to, court order. (Prior code § 18-5.22)

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Title 15 BUILDINGS AND CONSTRUCTION

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**Chapter 15.28 UNREINFORCED MASONRY BUILDINGS**

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**15.28.010 Title.**

This chapter shall be known as the unreinforced masonry (URM) ordinance. (Prior code § 18-6.01)

**15.28.020 Purpose.**

It is generally acknowledged that the city will experience earthquakes in the future due to its proximity to both the San Andreas and Hayward faults, and may reasonably be expected to experience moderate to severe ground shaking in the event of a significant earthquake. Such ground shaking may result in serious injury or death due to damage or collapse of buildings in Oakland. Buildings constructed of unreinforced masonry have been widely recognized for experiencing life safety hazardous damage including partial or total collapse during moderate to strong earthquakes.

The purpose of this chapter is to promote public safety by mitigating the potential hazards of those buildings in Oakland that were built of unreinforced masonry walls and were subject to the building code prior to November 26, 1948 (the effective date of the building code requiring earthquake resistant design of buildings). The purpose of this chapter is also to promote public safety and welfare by reducing the risk of death or injury that may result from the effects of earthquakes on existing unreinforced masonry buildings.

The provisions of the retrofit standards for unreinforced masonry buildings in this chapter are intended as minimum standards to reduce the risk of life loss or injury. Compliance with these provisions will not meet the requirements of the current code and will not necessarily prevent loss of life or injury, or prevent earthquake damage to rehabilitated buildings.

Furthermore, the intent of this chapter is to mandate a portion of the state recommended standard (Uniform Code for Building Conservation). In doing so, it is the intent of this chapter to continue to construe the building as a potential hazardous building upon completion of the mandatory portion of this chapter and until such time that the building is upgraded to the Uniform Code for Building Conservation. (Prior code § 18-6.02)

#### **15.28.030 Scope.**

The provisions of this chapter shall apply to all existing unreinforced masonry buildings constructed to building standards prior to the November 26, 1948 Oakland Building Code. This chapter shall not apply to any of the following:

- A. A detached Group R Division 3 Occupancy or a detached Group R Division 1 Occupancy having only five living units or less; or
- B. Accessory buildings serving Group R Division 3 Occupancies or accessory buildings serving Group R Division 1 Occupancies having only five living units or less; or
- C. A building which has been structurally upgraded after November 26, 1948 to comply with the earthquake regulation of the Oakland Building Codes in effect at the time the building permit was obtained from the city of Oakland. (Prior code § 18-6.03)

#### **15.28.040 Authority.**

The Building Official or designee is authorized and directed to enforce all provisions of this chapter.

Unless otherwise noted, the provisions of the current code shall apply; however, this chapter shall not preclude the enforcement of any federal, state or other local codes, laws or ordinances.

The Building Official shall have the power to render interpretations of this chapter and to adopt and enforce rules and regulations supplemental to this chapter as he or she may deem necessary in order to clarify the application of the provisions of this chapter. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this chapter. (Prior code § 18-6.04)

#### **15.28.050 Right of entry.**

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Building Official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the Building Official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Building Official by this chapter; provided that:

- A. If such building or premises be occupied, he or she shall first present proper credentials and request entry; and
- B. If such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of an inspection warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the Building Official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. (Prior code § 18-6.05)

#### **15.28.060 Definitions.**

For the purposes of this chapter, certain words, phrases, terms and their derivatives shall be construed as specified in this section. Words, phrases, and terms that are used in this article, but not specifically defined, shall have the meaning set forth in the applicable local, state or federal code, if appropriate. Other such words, phrases and terms shall be accorded their ordinary meanings.

“Building,” for the purpose of determining occupant load, means any contiguous or interconnected structure; for purposes of engineering evaluation, means the entire structure or portion thereof which will respond to seismic

forces as a unit.

“Complexity of work,” for the purpose of prioritizing buildings, shall be based on cost and difficulty of upgrading work.

“Current code (current UBC)” means the current edition of the California State Building Code, as amended from time to time and as amended by the city of Oakland.

“Current Uniform Code of Building Conservation (current UCBC)” means the seismic provision for unreinforced masonry bearing wall buildings in the current edition of the Uniform Code of Building Conservation as adopted by the California State Building Code.

“Day” means calendar day.

“Historic structure” means a structure that meets one of the following requirements:

1. Is listed on the National Register of Historic Places;
2. Is a California Registered Historical Landmark or is a California Point of Historical Interest;
3. Is a landmark pursuant to Section 17.102.030 of the Oakland zoning regulations;
4. Is contributory to an S-7 preservation combining zone pursuant to Section 17.84.010 of the Oakland zoning regulations; or
5. Has received an “A” or “B” rating in the Oakland cultural heritage survey. Prior to the issuance of a building permit for work pursuant to this chapter, the URM building shall be surveyed and rated by the Oakland cultural heritage survey to determine if the building is a historic structure, as defined herein.

“Masonry” means that form of construction composed of stone, brick, concrete, gypsum, hollow clay tile, concrete, block or tile or other similar building units or materials or combination of these materials.

“Nonstructural falling hazards” means any ornamentation and appendage on the exterior of the building that is constructed of dense materials such as masonry or concrete attached directly or indirectly to unreinforced masonry, which may fall onto pedestrians or adjacent buildings or occupants of buildings, such as cornices, chimneys, balconies, stacks, towers, decorative statuary, and roof top tanks or equipment on buildings. For the purpose of this chapter, lintels, veneers and sills shall not be considered falling hazards.

“Nonstructural URM wall elements” means any URM wall element which does not participate in resisting lateral or vertical forces on the building by design or actual condition.

“Owner” means any individual or group of individuals or firm or any other entity holding legal or equitable title to the real property.

“Potentially hazardous URM building” means any URM building, other than those exempted from this chapter per Section 15.28.030 that does not meet the applicable retrofit standards specified in Sections 15.28.080 and 15.28.090.

“Reinforced masonry” means any masonry construction that meets the minimum reinforcing requirements which are as follows: the minimum area of reinforcing bars shall be not less than 0.001 times the gross cross-sectional area of the wall, not more than two-thirds of which may be used in either direction and no required vertical reinforcement shall be less than three-eighths inch in diameter.

“Structural deficiencies” means structural elements which do not meet the applicable standards identified in Sections 15.28.080 and 15.28.090.

“Structural URM wall elements” means any non-bearing URM wall element, whether intentionally designed or not, that participates in resisting lateral forces caused by earthquake motion.

“Unreinforced masonry (URM)” means any masonry construction that does not meet the minimum reinforcement requirements of reinforced masonry, as defined in this section.

“URM building” means any building containing walls constructed, wholly or partially, with unreinforced masonry. Types of unreinforced masonry buildings include but are not limited to:

1. “URM bearing wall building or structure” means any structure which has unreinforced masonry wall which provides support for a floor or roof for which the total superimposed load exceeds one hundred (100) pounds per linear foot of wall.
2. “Frame building or structure with URM walls” means any structure with a structural frame of concrete, steel, or wood, with either infill walls or nonbearing walls constructed of unreinforced masonry or structural URM wall elements.
3. “Building with URM veneer” means any structure other than 1 and 2 of this definition with nonstructural unreinforced masonry exterior facing for the purpose of ornamentation, protection or insulation. (Prior code § 18-6.06)

### **15.28.070 URM buildings hazard mitigation process.**

The following process shall be followed for abatement of the hazards posed by potentially hazardous URM buildings.

A. Establish List and Priority and Notify Owner. The Building Official shall establish and maintain a list of potentially hazardous URM buildings and shall notify the owners in writing that their buildings have been identified as potentially hazardous and of their obligation to mitigate the potential hazard in compliance with this chapter. The notice shall include the priority level for each building, as determined by the Building Official, and shall refer the owner to the appropriate time period for compliance, as specified in subsection C of this section. The time period

shall commence on the date of the notice.

The priority levels for each potentially hazardous URM building will be determined by the Building Official and shall be based on the type of soil on which the building is located, number of stories, pedestrian and vehicle traffic adjacent to the building, use of building, number of occupants and complexity of retrofit work.

The owner may appeal the priority level of his or her building in accordance with Section 15.28.160B.

B. Filing Engineer's Report and Building Permit Application. The owner shall file with the Building Official an engineering analysis report (EAR) with an acceptable building permit application to comply with the applicable mandatory retrofit standard within the time specified in subsection C of this section. The requirements of the EAR shall be in accordance with Section 15.28.100.

C. Schedule to Complete Work. The owner shall file a building permit application and complete the retrofit work in accordance with the applicable mandatory retrofit standard in Sections 15.28.080B and 15.28.090 within the time specified in the following tables. Failure to comply with the program within the specified time frame shall be in violation of this chapter and subject to the penalties and remedies described in Sections 15.28.150 and 15.28.160.

**Table 1  
Buildings with URM Bearing Walls**

<b>Priority Level</b>	<b>Submission of Building Permit Application for Mandatory Standard (years)</b>	<b>Construction Complete (years)</b>
1	1.0	2.0
2	2.0	3.0
3	3.0	4.0

**Table 2  
Frame Building with URM Infill Walls  
and Buildings with URM Veneer**

<b>Priority Level</b>	<b>Submission of Building Permit Application for Mandatory Standard (years)</b>	<b>Construction Completion (years)</b>
1	3.0	5.0
2	4.0	6.0
3	5.0	7.0

Note:

Time interval is measured from the date of the notice.

D. Removal of Building from City's URM List. URM bearing wall building, upgraded to the mandatory retrofit standard in Section 15.28.080B, shall be issued a "Certificate of Compliance of the Mandatory Requirements," but remain on the city's list of potentially hazardous URM buildings. After the building has been upgraded or demonstrated to be in compliance with the applicable voluntary standards for URM bearing wall building in Section 15.28.080C or the mandatory standard for URM infill wall and URM veneer building in Section 15.28.090, to the satisfaction of the Building Official and the final inspection of the building permit work is approved, the Building Official shall remove that building from the inventory list of potentially hazardous URM buildings. URM bearing wall building upgraded to the voluntary standard in Section 15.28.080C shall be exempted from any further seismic mitigation legislation per Section 15.28.110.

E. Historic Buildings. Prior to the issuance of a building permit for work pursuant to this chapter, the URM building shall be surveyed and rated by the Oakland cultural heritage survey to determine if the building is a historic structure as defined herein.

All historic structures may use the applicable provisions in the State Historical Building Code established under Part 8 in Title 24 of the California Code of Regulations.

F. Environmental Impact Mitigation. The owner shall provide advance written notice to tenants of the intent to perform the seismic retrofit activities, apprise tenants of the work schedule, provide dust barriers as needed, avoid unsafe or hazardous conditions for both tenants and construction workers during construction, remove debris, take vermin and pest control measures if necessary, provide alternative services if normal utilities are interrupted, and take corrective measures to minimize safety concerns regarding hazardous materials created by the retrofit activity consistent with the mitigation plan attached to the Negative Declaration ER90-47. (Prior code § 18-6.07)

### **15.28.080 Voluntary and mandatory retrofit standards for bearing wall buildings.**

A. General. The owner of a building with URM bearing walls shall upgrade his or her building to the mandatory retrofit standards specified in subsection B of this section, within the time specified in Section 15.28.070C. Upgrading the building to the voluntary standards specified in subsection C of this section will cause the removal of the building from the city's inventory list of URM buildings as indicated in Section 15.28.070D.

Exception: Buildings with only some URM walls (that includes URM bearing walls) will not be subject to the upgrade standard in this section and will be removed from the city's URM list provided:

1. All the URM wall elements provide less than one percent of the total lateral load resisting system in all directions as defined in this chapter, and less than five percent of the vertical load carrying system.
2. When required by the Building Official, the engineer/architect provides acceptable analysis and documentation, to substantiate compliance with this exception.

B. Mandatory Retrofit Standards for Bearing Wall Buildings.

1. Building Elements To Be Upgraded. As a minimum, the following elements shall be upgraded to mitigate potential falling hazards:

- a. Secure the roof and floors to the building's exterior walls if such attachment is lacking or determined as inadequate. The connections between roof/floors and walls shall be designed for the out of plane forces on the walls (tension bolts);
- b. Brace or reinforce parapets;
- c. Remove, upgrade or repair nonstructural falling hazards;
- d. Stairways, corridors, exit balconies, exit courts and exit passageways in all buildings covered by this chapter shall be protected from falling hazards.

2. Design Standard and Excluded Building Elements. In designing the upgrades for the above items, the minimum lateral forces specified in the current UCBC shall apply to elements in subsection (B)(1)(a) of this section and current code shall apply to elements in subsections (B)(1)(b) and (c) of this section.

Walls, parapets, and other building elements which due to their locations or the height of the adjacent structure pose negligible hazards to life and adjacent property in the event of failure or instability, (such as parapets on the sides of buildings which are adjacent to another building of equal or more in height) may be excluded from the required work within the specified time in Section 15.28.070C provided the owner agrees to execute an agreement with the city to defend, hold the city harmless and indemnify the city for any damage, injury or loss of life that may arise as a result of changed conditions to the adjacent structure (such as removal of the adjacent building). The owner must record the agreement with the County Recorder, and supply a copy of the recorded agreement to the city.

C. Voluntary Retrofit Standards for Bearing Wall Buildings. If the owner elects to voluntarily upgrade his or her building to the retrofit standard in this subsection his or her building will be removed from the city's potentially hazardous URM list.

1. The entire building shall be retrofitted in accordance with the current UCBC. All destructive materials testing in accordance with the current UCBC is required only when those elements are used as part of the structural design. The decision of whether or not to test existing materials is fully the responsibility of the engineer/architect, and the city assumes no liability for damage, injury or harm caused by such testing. However, in the absence of acceptable test data, the engineer/architect shall use allowable stresses from existing materials in accordance with the current UCBC or as approved by the Building Official.

2. Proposed alterations, additions, restoration and rehabilitation of buildings with URM bearing walls shall include an evaluation of the effects of such work to the building in its entirety. This shall include, but not be limited to, an investigation of the effects of any induced eccentricity and changes in the foundation and in story stiffness as a result of the proposed improvements.

3. Stairways, corridors, exit balconies, exit courts and exit passageways in all buildings covered by this chapter shall be protected from falling debris. Vertical supports for stairways shall be shown to retain their integrity after an earthquake.

Exception: When the lower story or stories of a building are of URM construction (or, contain at least one URM bearing wall) but the structural system of the upper stories consists of the only wood frame or steel stud construction, then only the URM stories need be upgraded to the standards set forth in subsection C of this section, and the other stories need not be upgraded. NOTE: This alternative does not satisfy the upgrade standard referenced in Sections 15.28.110 and 15.28.120. (Prior code § 18-6.08)

### **15.28.090 Mandatory retrofit standards for frame buildings with URM walls and buildings with URM veneer.**

The owner of a framed building with URM infill walls and buildings with URM veneer shall upgrade his or her building to the retrofit standards specified in this section, within the time specified in Section 15.28.070C.

As a minimum, the following elements shall be upgraded to mitigate the potential falling hazards:

- A. Brace or reinforce parapets and remove, upgrade or repair nonstructural falling hazards. In designing the upgrade for these items the current code shall apply;
- B. Stairways, corridors, exit balconies, exit courts and exit passageways in all buildings covered by this chapter shall be protected from falling hazards;

C. Walls, parapets, and other building elements which due to their locations or the height of the adjacent structure pose negligible hazards to life and adjacent property in the event of failure or instability such as parapets on the sides of buildings which are adjacent to another building of equal or more in height, may be excluded from the required work within the specified time in Section 15.28.070C provided the owner agrees to execute an agreement with the city to defend, hold the city harmless and indemnify the city for any damage, injury or loss of life that may occur due to the absence of the upgrade work and agrees to perform the upgrade work at some future time to abate any hazards that may arise as a result of changed conditions to the adjacent structure. The owner must record the agreement with the County Recorder, and supply a copy of the recorded agreement to the city. Exception: Buildings with only some interior URM walls composed of structural URM elements that provide less than one percent of the total existing lateral resisting system in all directions and/or nonstructural URM interior wall elements as defined in this chapter, will not be subject to the structural upgrade standard in this section. When required by the Building Official, the engineer/architect shall provide an acceptable analysis and documentation to substantiate that the building qualifies for this exception. (Prior code § 18-6.09)

### **15.28.100 Engineering analysis reports (EARs).**

A. General. The EARs shall be filed with the applicable building permit and prepared to demonstrate the proposed permit work will comply with the applicable standards specified in Section 15.28.080 for the bearing wall buildings or Section 15.28.090 for frame buildings with URM infill walls and for buildings with URM veneer.

B. Preparer of Report. Building owners shall employ a civil or structural engineer or architect, registered by the state of California, herein called "engineer/architect," to prepare the engineering plan and calculations acceptable to the Building Official for the proposed retrofit work applicable to the building permit application and to prepare the EARs in accordance with this section.

C. Scope of Analysis. The scope of analysis need only address the proposed permit work with the following information:

1. Building Permits for Mandatory Upgrade Work. The following analysis for the mandatory upgrade of URM bearing wall buildings and the upgrade for frame buildings with nonbearing URM walls and for buildings with URM veneer shall be performed:
    - a. Parapet stability;
    - b. Nonstructural falling hazards anchorage and stability;
    - c. Wall to diaphragm anchorage for tension anchors (for bearing wall buildings only);
    - d. Evaluation of falling hazards for exits.
  2. Building Permit for Voluntary URM Bearing Wall Upgrade Work. The following analysis for the voluntary upgrade of URM bearing wall buildings shall be performed:
    - a. General compliance with the current UCBC:
      - i. Required retrofitting,
      - ii. Materials testing;
    - b. Structural analysis:
      - i. Out-of-plane loads on walls; tension anchors and bracings,
      - ii. Wall to diaphragm anchors for shear,
      - iii. In-plane strengthening of walls; repairs and repointing,
      - iv. Diaphragm capacity,
      - v. Other analysis as required by current UCBC,
      - vi. Integrity of stairway and falling hazards for exits.
- D. Format of Report. The engineering reports for all building permits shall conform with the format in this subsection. This format is not meant to be a constraint on the engineer/architect preparing the report, but rather it shall be considered as the minimum acceptable information to be submitted.
1. General Information.
    - a. Date report is completed;
    - b. The building address with the County Assessor's parcel number;
    - c. Name of building (if any);
    - d. Name, address, and telephone number of owner;
    - e. Names, addresses, and telephone numbers of property beneficiaries;
    - f. The type of occupancy uses within the building and the occupant loads;
    - g. The number of residential, commercial and other units in the building;
    - h. The dates of original design, construction, additions or substantial structural alternations (if known) of the building;
    - i. The name of the original designer and contractor (if known), and the name and address of the designer and contractor (if known), for any subsequent additions or substantial structural alternations;
    - j. Affirmative of whether or not the original building plans are available and name and address of person who has plans;
    - k. Scaled plan to show footprint of building in relation to property line (if known), sidewalk, and street area, and adjacent buildings;

1. Photos or sketches of elevation to show adjacent buildings.
2. Summary of Existing Conditions. The engineer/architect shall investigate the building for compliance with the applicable standard in Section 15.28.080 or 15.28.090 related to the proposed building permit application, describe the vertical load carrying systems and identify any URM bearing walls. The engineer/architect shall also include a description of all parapets and nonstructural falling hazards, their construction, supports, materials and any testing and test data.
3. Deficiencies and Corrective Measures. The engineer/architect shall submit structural analysis in accordance with the applicable provisions in subsection C of this section to identify deficiencies and design corrective measures to meet the minimum requirements of the applicable retrofit standards.
4. Proposed Upgrade/Corrective Work. The engineer/architect shall describe the upgrades or corrective work required for the building under the proposed building permit and provide an estimated cost for the work.
5. Engineer/Architect Certification. Name, work address, work phone number, California state professional license number and signature of engineer/ architect who authored the report. (Prior code § 18-6.10)

#### **15.28.110 Future retrofitting legislation.**

A. No URM building which has been upgraded to the standard set forth in this section shall, within a period fifteen (15) years after completion of the work required for such upgrade, or such other period as the state of California may from time to time adopt, be identified as a "seismic hazard to life" pursuant to any other seismic mitigation building standard adopted by the city, unless:

1. Such building no longer meets the structural upgrade standards under which it was retrofitted; or
2. The occupancy classification for such building is changed.

B. A building qualifies for this exemption from future retrofitting legislation if it meets the following standard:

1. For URM bearing wall buildings, complete building upgrade to the standards of Section 15.28.080C;
2. For any frame building with URM infill walls, or building with URM veneer, complete building upgrade to the city's Interim Standard Ordinance No. 11274 C.M.S. (Prior code § 18-6.11)

#### **15.28.120 Change of occupancy.**

URM bearing wall buildings may change their current occupancy classification to the uses listed below without meeting the seismic provisions for a new building in the current code (UBC) if the entire building complies with the seismic retrofit standard of the UCBC in effect at the time of the change in use and the standards in Section 15.28.080C:

Current occupancy may be changed to:

<b>Group</b>	<b>Description of Occupancy</b>
A	3-Drinking and dining establishment if the A-3 component is less than 2 stories and is occupied by no more than 100 occupants
	4-Stadiums, reviewing stands and amusement parks
B	All B uses as defined in the UBC (i.e., repair garages, offices, retail, small drinking and dining establishment)
H	4
M	All uses defined in the UBC (i.e., private garbage)
R	All residential uses as defined in the UBC

(Prior code § 18-6.12)

#### **15.28.130 Addition, alteration or repair.**

Whenever addition, alteration or repair work to a potentially hazardous URM building involves any one of the following conditions, the building shall be upgraded to comply with the applicable standards specified in Sections 15.28.080C and 15.28.090 prior to the approval of the addition, alteration, or repair work shall mean the cumulative addition, alteration or repair work performed on the building within any four-year period.

- A. The total cost for all addition, alteration and repair work exceeds fifty (50) percent of the total replacement cost of the existing building. The valuation of the work and the replacement cost of the existing building shall be determined by the Building Official.
- B. Vertical loading is increased by five percent on the affected supporting elements of the roof or floor of a building.
- C. More than fifty (50) percent of the total floor and roof areas of the building are involved in substantial structural

alteration.

D. The cumulative area of additions excluding basement additions, exceeds thirty (30) percent of the total floor and roof areas of the building excluding basement.

When the owner believes the Building Official made an error in his or her determination of this section, the owner may appeal the determination to the Board of Examiners and Appeals in accordance with Section 15.28.160C.

(Prior code § 18-6.13)

#### **15.28.140 Design review.**

A. Nonhistoric Structures. For nonhistoric structures, the owner or owner's agent prior to the start of any alterations, restoration, retrofit or making of any significant changes to a nonhistoric, unreinforced masonry structure that is subject to design review under city codes and regulations shall submit a design review application to the city and have it approved by the Planning Director. The design review application shall be submitted prior to or in conjunction with the filing of the building permit application and the engineering analysis report. A building permit application for complete demolition of nonhistoric structure is not subject to design review.

Design review applications shall be reviewed and approved or disapproved by the Planning Director. To aid in his or her review of an application, the Planning Director may obtain advice from the Building Official or outside professionals. The Planning Director's decision will be made within forty-five (45) days of the date of the city's receipt of a completed design review application. However, upon receipt of each design review application, the Planning Director may, at his or her discretion, refer the application to the City Planning Commission rather than acting on it himself or herself. If the application is referred to the Planning Commission, the Planning Commission's decision on the application will be made within sixty (60) days of the date the application was received by the city. Applications for altering, abating, repairing, restoring or rehabilitating any nonhistoric structure that is subject to design review shall be required to meet the applicable criteria of this chapter. Any decision of the Building Official relating to the structural upgrading design requirements or of the Planning Director related to the design review application for a nonhistoric structure can be made in accordance with Section 15.28.160D.

B. Unless otherwise expressly provided in this chapter, the owner or the owner's agent, prior to the start of any alterations, restoration, retrofit, or the making of any significant changes to a URM historic structure, shall submit a design review application to the city prior to or in conjunction with the filing of the building permit application and engineering analysis report, and have it approved by the Planning Director.

Except as otherwise set forth in this chapter, design review applications shall be reviewed and approved or disapproved by the Planning Director. To aid in his or her review of an application, the Planning Director may obtain advice from the Building Official or outside professionals. The Planning Director's decision will be made within forty-five (45) days of the date of the city receipt of a completed design review application. However, upon receipt of a completed design review application, the Planning Director will notify the Landmarks Preservation Advisory Board. If such notice is given by a member of the Board, the Planning Director shall immediately forward the application to the Board and the subject application shall be considered and a recommendation, if any, shall be made to the Planning Director by the Landmarks Board within forty-five (45) days of the date of the application. In all such cases, the Planning Director's decision will be made within sixty (60) working days of the date of the city's receipt of the completed design review application. Applications for altering, abating, restoring or rehabilitating or demolishing historic structures which are contributory to an S-7 preservation combining zone shall be required to satisfy the criteria of Sections 17.84.010 through 17.84.070 and 17.136.070 of the city's zoning regulations. Applications for altering, repairing, restoring or rehabilitating or demolishing any other Historic Structure shall be required to meet the criteria of Sections 17.102.030 and 17.136.070 of the city's zoning regulations. Any decision of the Building Official relating to the structural upgrading design requirements or the Planning Director relating to the design review application for a historic structure may be appealed in accordance with Section 15.28.160E. (Prior code § 18-6.14)

#### **15.28.150 Penalties for noncompliance.**

All monetary penalties shall be credited to the Seismic Safety Division of the Office of Planning and Building to fund the implementation and enforcement of this chapter.

It is unlawful for the owner of a potentially hazardous URM building subject to this chapter to fail to comply with the provisions of this chapter. After written notification thereof from the city to the owner, the following penalties shall be imposed upon owners who fail to comply with the requirements of this chapter:

A. Failure to File Building Permit Application and Engineering Analysis Report on Time. Each owner who fails to file a building permit application and Engineering Analysis Report for any building subject to this chapter within the time period specified in Section 15.28.070C for such building shall, in addition to any other penalty or remedy which may be assessed pursuant to this chapter or other applicable law, be fined the sum of one thousand dollars (\$1,000.00). This penalty shall attach the day following the last day of the period during which the owner is to file said application and report. The maximum fine under this subsection shall be five thousand dollars (\$5,000.00) per building.

B. Failure to Complete Upgrades. Each owner who fails to complete the building upgrades required by this chapter within the period specified in Section 15.28.070C for such building shall, in addition to any other penalty or remedy

which may be assessed pursuant to this chapter or other applicable law, be fined the sum of two thousand dollars (\$2,000.00). This penalty shall attach the day following the last day of the period during which the owner is to complete said upgrades. An additional two thousand dollar (\$2,000.00) penalty shall be imposed each calendar month thereafter that the owner fails to complete said upgrades. The maximum fine under this subsection shall be ten thousand dollars (\$10,000.00) per building.

C. Noncompliance Actions. In addition to the fines, authorized by subsections A and B of this section, the Building Official may take the following actions in the event of any failure to comply with the requirements of this chapter:

1. Notify all parties with financial interest in the property (such as mortgage lenders, lien holders, insurance bearers) and the tenants that the building is a potentially hazardous URM building and is in violation with this chapter;
2. File a statement with the County Recorder Office describing the potential hazards of the building and the violations of this chapter. Upon correction of the violation of this chapter the Building Official will file a release of any order of unreinforced masonry building hazard mitigation that may have been recorded;
3. Post a sign on building to designate it as a potentially hazardous URM building. The signs shall be located at well lighted locations, readily visible by the occupants and public when entering the building and shall be protected from damage. Location, form and content of the sign is subject to the Building Official's approval. The building owner shall be responsible for installing and maintaining the signs and immediately replacing them, at the owner's expense, as necessary. When the owner corrects all violations of this chapter to the satisfaction of the Building Official, the posting of the building required by this section shall be removed. However, if the owner violates any aspect of this chapter after the posting has been removed, the Building Official will report the building immediately.
4. The Building Official may revoke the certificate of occupancy permit upon thirty (30) days' notice and evacuate the building three years after the due date of completion of the work as specified in Section 15.28.070C, if the owner fails to complete the mandatory upgrade work within the specified time in Section 15.28.070C. The certificate of occupancy permit will be reissued after the upgrade work is completed and the final inspection for the building permit is approved. The owner may appeal any action or penalty for noncompliance in accordance with Section 15.28.160F. (Prior code § 18-6.15)

### **15.28.160 Appeals process.**

A. Exemption from URM Program. If the owner believes that his or her building is not a potentially hazardous URM building or is otherwise exempted from the provisions of this chapter, the owner shall submit evidence, such as original drawings or test results, to substantiate the claim. The Building Official will review the evidence submitted by the owner and will remove the building from the city's list of potentially hazardous URM buildings if the Building Official determines that the building is exempted or in compliance with this chapter.

B. Appeal of Priority Level. If the owner of a priority level 1 or 2 URM building can demonstrate by written notice evidence his or her inability to obtain financial assistance to perform the mandatory upgrade or believes the Building Official made an error in determining the priority level for his or her building, the owner may appeal the Building Official's determination of the priority level to the Board of Examiners and Appeals. The appeal shall be filed with the Building Official within ninety (90) days of the date of notification and the Board shall not be authorized to extend the schedule to complete the work beyond the priority 3 work schedule.

Such appeal shall be made on a form prescribed by, and filed with, the Building Official. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Building Official. The appeal will be heard by the Board of Examiners and Appeals within thirty (30) days of the date of receipt of the appeal by the city. Not less than seven days prior to the hearing date, the Building Official shall give notice to the appellant of the date, time and place of the hearing. The Board shall be authorized to continue the hearing from time to time.

In considering the appeal, the Board shall determine whether, based upon the record, the Building Official erred or abused his or her discretion. Error or abuse of discretion is shown if it is established that the Building Official failed to follow the provisions of this chapter.

The decision of the Board shall be in writing and shall be considered final and nonappealable on the date it is issued. A copy of the Board's decision shall be mailed or otherwise delivered to the appellant by the Building Official within seven days of the date of the Board's decision.

C. Appeal of Addition, Alterations, or Repair. When the owner believes the Building Official made an error in his or her determination regarding additions, alterations or repairs, the owner may appeal the determination to the Board of Examiners and Appeals. Such appeal shall be made within thirty (30) days after the date of the Building Official's written decision.

Such appeal shall be made on a form prescribed by, and filed with, the Building Official. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Building Official. The appeal will be heard by the Board of Examiners and Appeals within thirty (30) days of the date of receipt of the appeal by the city. Not less than seven days prior to the hearing date, the Building Official shall give notice to the appellant of the date, time and place of the hearing. The Board shall be authorized to continue the hearing from time to time.

In considering the appeal, the Board shall determine whether, based upon the record, the Building Official erred or abused his or her discretion. Error or abuse of discretion is shown if it is established that the Building Official failed to follow the provisions of this chapter.

The decision of the Board shall be in writing and shall be considered final and nonappealable on the date it is

issued. A copy of the Board's decision shall be mailed or otherwise delivered to the appellant by the Building Official within seven days of the date of the Board's decision.

D. Appeal of Design Review of Nonhistoric Structures. Any decision of the building Official relating to the structural upgrading design requirements or of the Planning Director relating to the design review application for a nonhistoric structure that is subject to design review, may be appealed by interested persons as follows:

1. If the appeal involves only administrative, structural or life safety issues which will not affect the exterior characteristics of the structure, the appeal shall be made and decided pursuant to the procedures and provisions of subsection C of this section. Such appeal may only be made by the building permit applicant.
2. If the appeal involves administrative, structural or life safety issues that may affect the exterior characteristics of the structure, the appeal shall be made and decided pursuant to the procedures set forth in subsection (E)(2) of this section.
3. If the appeal involves issues or proposals that will affect only the exterior characteristics of the structure, with no implications for the structural or life safety portions of the structure, the appeal shall be made and decided pursuant to the procedures set forth in other applicable city codes and regulations.

E. Appeal of Design Review of Historic Structures. Any decision of the Building Official relating to the structural upgrading design requirements or of the Planning Director relating to the design review application for a historic structure, may be appealed as follows:

1. If the appeal involves only administrative, structural or life safety issues which will not affect structure, the appeal shall be made and decided pursuant to the procedures and provisions of subsection C of this section. Such appeals may only be made by the building permit applicant.

2. If the appeal involves administrative, structural or life safety issues that may affect the exterior or historic characteristics of the structure, the appeal may be taken by any interested person and shall be made and decided pursuant to the following procedure:

a. Appeals to the Board of Earthquake Appeals for Historic Structures shall be made within fifteen (15) days after the date of a decision by the Building Official or Planning Director. The Building Official's and Planning Director's decision shall be considered final, if no appeal is taken within the fifteen (15) day appeal period. Thereafter no appeal shall be allowed.

b. Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning Director. The appeal shall state specifically wherein it is claimed there was an error of discretion by the Planning Director or Building Official. Upon receipt of the appeal, the Planning Director shall place the matter on the agenda of the next available meeting of the Board of Earthquake Appeals for Historic Structures. Not less than seven days prior to the hearing date, the Planning Director shall give notice to the appellant and to the owner if different from the appellant specifying the date, time and place of the hearing.

c. In considering the appeal, the Board shall determine whether, based upon the record, the Building Official or Planning Director erred or abused his or her discretion. Error or abuse or discretion is shown if it is established that the Building Official or Planning Director failed to follow the provisions of this chapter.

d. The decision of the Board shall be made in writing, shall be nonappealable and shall be considered final on the date it is issued. A copy of the Board's decision shall be mailed or otherwise delivered to the appellant and to the owner if different from the appellant by the Planning Director within seven days of the date of the Board's decision.

E. Appeal of Noncompliance Penalties and Action. Any decision by the Building Official to impose penalties or take actions in the event of any failure to comply with the requirements of this chapter may be appealed by the owner or the owner's agent to the Board of Examiners and Appeals. Any such appeal shall be made within thirty (30) days of the date of the Building Official's mailing of notification. The appeal shall be made on a form approved by the Building Official and shall show how the Building Official has either committed an error or has abused his or her discretion.

In considering the appeal, the Board shall determine whether, based upon the record, the Building Official erred or abused his or her discretion. The decision of the Board shall be in writing and shall be final. The certificate of occupancy will not be revoked until the decision of the Board is final and in writing. (Prior code § 18-6.16)

### **15.28.170 Recovery of penalties.**

The penalties imposed on the building owner shall be assessed against the real property subject to this chapter and shall, in addition, be an obligation of the owner of the subject property. In the event the owner of a building is a group of individuals, firms, or other entities or any combination thereof, the obligation imposed by this section shall be joint and several. The Building Official shall give the owner of such premises a written notice showing the amount of the fine and requesting payment thereof. If the amount of such fine is not paid to the Building Official within thirty (30) days after the date of such notice, the Building Official shall forward a report of the penalties to the City Council for confirmation.

The property owner shall be given at least fifteen (15) days' written notice of the confirmation hearing before the City Council. The amount of the penalties shall be confirmed by the City Council, unless the City Council finds, based upon evidence in the record, that the Building Official erred in imposing or in computing the amount of the penalty. If such error is found, the City Council may modify the amount of the penalty, as warranted.

Upon confirmation of the penalty, the City Council shall direct the Building Official to record in the Office of the

County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

**Notice of Special Assessment Plan**

Pursuant to Chapter 15.28 of the Oakland Municipal Code, the penalty of \_\_\_\_\_ was assessed by the Building Official, and confirmed by the Oakland City Council, against the described real property and said amount has not been paid, in full, and the City of Oakland does hereby claim a special assessment lien upon the hereinafter described real property in said amount; the same shall be a lien upon said real property until said sum has been paid in full. The real property herein above mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California and particularly described as follows to wit:

\_\_\_\_\_  
 \_\_\_\_\_  
 (Insert Description of Property)

Dated This \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

\_\_\_\_\_  
 Building Official

Such lien attaches upon recordation of the notice of special assessment lien. The description of the parcel in the notice of lien shall be that used for the same parcel as the County assessor's map book for the current year. The County Assessor shall enter each assessment on the county tax roll opposite the affected parcel of land. The amount of the assessment shall be collected and shall be subject to the same penalties and the same procedures for foreclosure and sale, in case of delinquencies, as provided for ordinary municipal taxes. (Prior code § 18-6.17)

**15.28.180 Remedies.**

It is unlawful for the owner of any building within the scope of this chapter to violate any provision of this chapter. In addition to the penalties in Section 15.28.150 the following remedies are available to the city and may be imposed independently or in combination with each other at the sole discretion of the Building Official, unless otherwise noted herein.

- A. Maintenance of a potentially hazardous URM building beyond the time specified in Section 15.28.070C for completion of upgrades to such building shall be and is declared a public nuisance.
- B. The city may seek injunctive relief on behalf of the public to enjoin a building owner's violation of this chapter.
- C. The city may withhold the issuance of any building permit and/or may suspend the existing building permits on the subject building unless otherwise authorized by the building permits on the subject building unless otherwise authorized by the Building Official for emergency repairs.
- D. The Building Official, after written notice to the owner, may revoke or suspend the occupancy permit for any structure for which the owner violates any of the provisions of this chapter. The notice of revocation or suspension shall provide the owner the right to provide the Building Official with evidence that the occupancy permit should not be revoked or suspended either because the structure is not subject to the provisions of this chapter or because the Building Official did not follow the provisions of this chapter.
- E. Any person violating any provision of this chapter shall be guilty of an infraction.
- F. These remedies are not exclusive and the city may utilize any other remedies available at law of equity. (Prior code § 18-6.18)

**15.28.190 Fees.**

The Office of Planning and Building may impose fees to implement this chapter pursuant to the master fee schedule. (Prior code § 18-6.19)

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