

NOTICE

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**CHAPTER 1322
ADMINISTRATION**

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SECTION 1322.01 GENERAL

1322.01.1 Scope. The provisions of this code shall apply to the maintenance and occupancy of all existing residential and nonresidential structures and all existing premises, whether built upon or undeveloped, vacant or occupied, and shall constitute required minimum maintenance standards for:

- The responsibility of owners, an owners' authorized agent, operators, and occupants;
- The occupancy of existing structures and premises;
- The maintenance of buildings, structures, and premises in a manner that is structurally sound, clean, safe, and sanitary;
- The maintenance of equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire, and other hazards;
- The maintenance of planted areas, the removal of loose trash, junk, and debris, including yard debris, and the storage of trash cans and recycling containers within the adjacent right-of-way; and
- Administration, enforcement, and penalties.

1322.01.2 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety, and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that

do not comply with these provisions shall be altered or repaired to provide a minimum level of health, safety, and welfare as required herein.

1322.01.3 Severability. If any section, subsection, sentence, clause, or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

This code shall not be deemed to be a limitation or restriction on the authority of any other City department or division, but shall be deemed an enlargement of existing authority by virtue of the constitution and statutes of the State of Ohio and the Charter and Codified Ordinances of the City of Kettering.

SECTION 1322.02 APPLICABILITY

1322.02.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

1322.02.2 Maintenance. Equipment, systems, devices, and safeguards required by this code, or a previous regulation or code under which the structure or premises was constructed, altered, or repaired, shall be maintained in good working order.

1322.02.2.1 No owner, operator, or occupant shall cause any service, facility, equipment, or utility which is required by this code to be removed from, shut off from, or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress.

1322.02.2.2 The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

1322.02.2.3 Except as otherwise specified herein, the owner, or the owner's authorized agent, shall be responsible for the required maintenance of buildings, structures, and premises as outlined in this code. Tenants, occupants, or users of a building, structure, or premises may also be responsible for the required maintenance of such building, structure, or premises as outlined elsewhere in this code.

1322.02.3 Application of Other Codes. Repairs, additions, or alterations to a structure or changes of occupancy shall be done in accordance with the procedures and provisions of the City of Kettering Zoning and Building Codes and the Ohio Fire Code. Nothing in this code shall be construed to cancel, modify, or set aside any provision of the Kettering Building Code, Zoning Code, or Subdivision Regulation.

1322.02.4 Existing Remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the City or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe, and unsanitary.

1322.02.5 Workmanship. Repairs, maintenance work, alterations, or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's instructions.

1322.02.6 Historic Buildings. The provisions of this code shall not be mandatory for existing buildings or structures officially designated as historic buildings when such buildings or structures are judged by the Chief Code Official to be safe and in the public interest of health, safety, and welfare.

1322.02.7 Manufacturers Listing. Where enforcement of a provision of this code would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall apply.

1322.02.8 Requirements not Covered by Code. Requirements necessary for the strength, stability, or proper operation of an existing fixture, structure, or equipment, or for the public safety, health, and general welfare not specifically covered by this code, shall be determined by the Chief Code Official.

1322.02.9 Application of References. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this code.

1322.02.10 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law.

SECTION 1322.03 ADMINISTRATION AND CODE ENFORCEMENT

1322.03.1 General. The Chief Code Official shall be the person responsible for enforcement of this code.

1322.03.2 Appointment. The City Manager of the City of Kettering shall appoint a designee who shall serve as the Chief Code Official.

1322.03.3 Deputies. In accordance with the prescribed procedures of this City and with the concurrence of the City Manager and the Planning and Development Director, the Chief Code Official shall have the authority to appoint deputies. The Chief Code Official shall delegate, as they see fit, any of their duties and responsibilities to one or more deputies. Such deputies shall be known as Code Enforcement Officers or Code Enforcement Inspectors.

1322.03.4 Fees. The fees for activities and services performed by the City in carrying out its responsibilities under this code shall be those fees and charges established by the Kettering City Manager in the most current Schedule for Permits, Inspections, Certificates, and Fees.

SECTION 1322.04 DUTIES AND POWERS OF THE CHIEF CODE OFFICIAL

1322.04.1 General. The Chief Code Official is authorized and directed to enforce the provisions of this code. The Chief Code Official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

1322.04.2 Inspections. The Chief Code Official shall make, or cause to be made, all inspections required or necessitated by this code to determine compliance, or shall accept and receive reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Chief Code Official is authorized to engage such experts as deemed necessary to report upon unusual technical issues that arise in the course of administering and enforcing the provisions of this code.

1322.04.3 Right of Entry. The Chief Code Official is authorized and shall have authority to enter upon any premises at any reasonable time for the purposes of delivery of notices or orders in connection with enforcement of this code. Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the Chief Code Official has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the Chief Code Official is authorized and shall have authority to enter the structure or premises at reasonable times for the purposes of inspection of surrounding grounds that are open and accessible to the public, enclosed common areas, and equipment within such areas.

Except as may be authorized by this or another section of this code, the Chief Code Official shall enter into any private interior or enclosed portion of any building or structure for the purposes of inspection only with the approval of the owner, occupant, or tenant of the same interior or closed portion of the premises. If such structure or premises is unoccupied, the Chief Code Official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused or the owner or other person having charge or control cannot with reasonable effort be found, the Chief Code Official shall have recourse to the remedies provided by law to secure entry.

In the event it is determined by the Chief Code Official, the Chief Building Official, or the Fire Marshal that all or any portion of a building, structure, or premises is causing or threatens to immediately cause an imminent danger or hazard to the public health, safety, and

general welfare, then the Chief Code Official is authorized to enter at any time and without advance notice to the owner, tenant, occupant, or user of any such structure, building, or premises for the purposes of inspection.

1322.04.4 Identification. All code enforcement officers shall carry proper identification when inspecting structures or premises in the performance of their duties under this code.

1322.04.5 Notices and Orders. The Chief Code Official shall issue all necessary notices or orders to ensure compliance with this code.

1322.04.6 Department Records. The Chief Code Official shall keep official records of all business and activities associated with the administration and enforcement of this code. Such records shall be retained in the official records for the period required for retention of such records in the applicable retention schedule.

SECTION 1322.05 APPROVALS

1322.05.1 Alternative Materials, Methods, and Equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved by the Chief Code Official. An alternative material or method of construction may be approved where the Chief Code Official finds that the proposed design is an acceptable industry standard, complies with the intent of the provisions of this code, and that the material, method, or work offered is for the purpose intended and at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability, and safety. All such approved alternative materials, methods, and equipment shall be in compliance with all other codes and laws.

1322.05.2 Required Testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the Chief Code Official shall have the authority to request manufacturer's documentation or to require tests, at no expense to the City of Kettering, to be made as evidence of compliance.

1322.05.2.1 Test Methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the Chief Code Official shall be permitted to approve appropriate testing procedures performed by an approved agency.

1322.05.2.2 Test Reports. Reports of tests shall be retained by the Chief Code Official for the period required for retention in the applicable retention schedule.

1322.05.3 Used Material and Equipment. Unless prohibited by Kettering Zoning and/or Building Codes and/or the Ohio Fire Code, the use of used materials which meet the requirements of this code for new materials is permitted. Materials, equipment, and devices shall not be reused unless such elements have been reconditioned, placed in good and proper working condition, and tested where necessary.

1322.05.4 Research Reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

SECTION 1322.06 VIOLATIONS

1322.06.1 Unlawful Acts. No person shall fail or refuse to comply with any Compliance Order of the Chief Code Official. It shall be unlawful for a person to be in conflict with or in violation of any of the provisions of this code.

1322.06.2 Notice of Violation. Notice of a violation of this code shall be given by a Notice of Violation and Order to Comply, hereinafter also referred to as Legal Notice, Notice, or Compliance Order, in accordance with Section 1322.07.

1322.06.3 Prosecution of Violation. The Chief Code Official may bring a legal proceeding to restrain or correct any violation of this code or the ORC, and any order(s) issued under either or both, and to require the removal or termination of any unlawful occupancy of a premises or structure in violation of this code or the ORC. Such action shall not preclude pursuit of other remedies prescribed in this code or the ORC.

1322.06.4 Violation Penalties. Whoever is convicted of or pleads guilty to a violation of any provision of this code may be deemed guilty of a minor misdemeanor. Any such violation shall be a strict liability offense (*malum prohibitum*) and no proof of intent shall be necessary. Each day that a violation continues shall be deemed a separate offense.

1322.06.5 Habitual Offender. Any person who commits a violation of this code after having been previously convicted by the court on two (2) separate occasions for committing a violation of this code within a thirty-six (36) month period shall be guilty of a misdemeanor of the fourth degree and shall be fined not less than One Hundred Fifty Dollars (\$150.00) as part of any sentence.

1322.06.6 Abatement of Violation. The imposition of the penalties and fees herein prescribed shall not preclude the Kettering Law Director, or their designee, from instituting appropriate action to permanently restrain, correct, or abate a violation or to prevent illegal occupancy of a building, structure, or premises or to stop an illegal act, conduct, business, or utilization of the building, structure, or premises. The Kettering Law Director may bring an action *in rem* against any premises upon which a nuisance is found. Any action taken shall be

charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

1322.06.7 Re-Inspection Fees. Any person who neglects, fails, or refuses to correct a violation within the stated compliance deadline provided under Section 1322.07.2 may be assessed a re-inspection fee for each inspection that is needed to confirm compliance after the compliance date. Such fees shall be based upon the costs incurred, including administrative expenses as established by the current Kettering Schedule for Permits, Inspections, Certificates, and Fees.

1322.06.8 Recovery of Cost and Fees. Upon completion of a re-inspection, completion of emergency repairs, or abatement of violations by the City, the Chief Code Official shall cause to be sent, by certified, pre-posted mail, a fee and cost statement to owner of the property or premises and a copy of the same shall be posted in a conspicuous location on or about the property, structure, building, or premises affected. This statement shall include a demand for payment of the fee and cost amount within thirty (30) days from the date of the statement. If the statement that was attempted to be served by certified, pre-posted mail is returned within fourteen (14) days after the date of mailing showing that it was not delivered, or is not returned within fourteen (14) days of the date of mailing, then a second statement shall be sent via regular US mail, postage pre-paid. If payment of the statement is not made within thirty (30) days of the date of service of the first statement or the date of mailing of the second statement, then the matter constitutes a nuisance and the Chief Code Official is authorized to take the necessary action to cause the amount of the statement to be collected through any available legal process, including under ORC 715.261 and certification to the Montgomery or Greene County Auditor for collection the same as other taxes and assessments are collected.

1322.06.9 Personal Accountability for Organizational Conduct.

1322.06.9.1 An officer, agent, or employee of an organization may be prosecuted for an offense committed by such organization if the officer, agent, or employee acts with the kind of culpability required for the commission of the offense, and any of the following apply:

1. In the name of the organization or in its behalf, the officer, agent, or employee engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which the officer, agent, or employee has direct responsibility;
2. The officer, agent, or employee has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

1322.06.9.2 When an officer, agent, or employee is convicted of an offense by reason of this section, the officer, agent, or employee is subject to the same penalty as if the officer, agent, or employee had acted in their own behalf.

SECTION 1322.07 NOTICES AND ORDERS

1322.07.1 Legal Notice. Whenever the Chief Code Official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, a legal notice of violation and order to comply shall be given, in the manner prescribed in Sections 1322.07.2 and 1322.07.3, to the person or persons responsible for the violation. Notices for condemnation procedures shall also comply with Section 1322.08.3.

1322.07.2 Form. Such notice prescribed in Section 1322.07.1 shall be in accordance with all of the following:

1. Be in writing;
2. Include a description of the property sufficient for identification;
3. Include a statement of the violation or violations and why the notice is being issued;
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit, building, structure, equipment, premises, or property, as the case may be, into compliance with the provisions of this code;
5. Inform the property owner of the right to appeal;
6. If applicable, include a statement of applicable cost, fees, and penalties and the City's right to file a lien in accordance with this section and Section 1322.06.

1322.07.3 Method of Service. Any notice or order of the Chief Code Official shall be deemed to be properly served if a copy thereof is:

1. Delivered personally to the owner of record or person responsible or left at the usual place of abode of the person to whom it is to be served with someone who is eighteen years or older; or
2. Sent by certified mail addressed to the last known address of the owner or person responsible;
3. If the certified notice is returned showing that it was not delivered or if the certified notice is not returned within fourteen (14) days of the date of mailing, then a copy thereof shall be sent by regular mail to the last known address of the owner or person

responsible and shall be posted in a conspicuous place in or about the structure affected by such notice.

1322.07.4 Penalties. Penalties, fees, and costs for noncompliance with orders and notices shall be as set forth in Section 1322.06.

1322.07.5 Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of any compliance order or notice of violation and shall furnish to the Chief Code Official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility, without condition, for making the corrections or repairs required by such compliance order or notice of violation.

SECTION 1322.08 UNSAFE STRUCTURES AND EQUIPMENT

1322.08.1 General. When a structure or equipment is found by the Chief Code Official to be unsafe or when a structure is found unfit for human occupancy or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

1322.08.1.1 Unsafe Structures. An unsafe structure is one that is found to be dangerous to the life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

1322.08.1.2 Unsafe Equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure.

1322.08.1.3 Structure Unfit for Human Occupancy. A structure is unfit for human occupancy whenever the Chief Code Official finds that such structure is unsafe, unlawful, or because of the degree to which the structure is in disrepair or lacks maintenance is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities, or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

1322.08.1.4 Unlawful Structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code or was erected, altered, or occupied contrary to law.

1322.08.1.5 Dangerous Structure or Premises. For the purpose of this code, any structure, premises, or portion thereof that has any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the Kettering Building Code or Ohio Fire Code as related to the requirements for existing buildings;
2. The walking surface of any required egress pathway is so warped, worn loose, deteriorated, or otherwise unsafe as to not provide safe and adequate means of egress;
3. Any portion of a building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to such an extent that it is likely to partially or completely collapse or to become detached or dislodged;
4. The building or structure, or any portion or part of the building or structure, or any member, appurtenance, or ornamentation on the exterior thereof that is not of sufficient strength or stability or is not securely anchored, attached, or fastened in place because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;
5. The building or structure, or any portion thereof, is clearly unsafe for use and occupancy;
6. The building or structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, illegal activities, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act;
7. Any building or structure that is being maintained in violation of any specific requirement or prohibition applicable to such building or structure under this code to such an extent as to present either a substantial risk of fire, building collapse, or any other threat to life and safety;

8. A building or structure, used or intended to be used, for dwelling purposes which, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate or insufficient utilities, or otherwise, is determined by the Chief Code Official to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease;
9. Any portion of the exterior premises which because of open excavations, pits, wells, cisterns, or the like, hazardous structures, deteriorated conditions, extreme unsanitary conditions, or other such conditions, is determined by the Chief Code Official to be a hazard to the general public;
10. Any portion of a building remaining on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

1322.08.2 Closing of Vacant Structures. If the structure is found vacant and unsecured, the Chief Code Official is authorized to order the structure closed up so as not to be an attractive nuisance. If the structure is found vacant, unsecured, and unfit for human habitation and occupancy and is not in danger of structural collapse, the Chief Code Official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the Chief Code Official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof, plus administrative fee, shall be charged against the real estate upon which the structure is located. Such cost and fees shall be collected in accordance with Section 1322.06.8, and shall be a lien upon such real estate and may be collected by any other legal resource.

1322.08.2.1 Minimum Standards for Effective Boarding. The effective boarding of a building shall include, but not be limited to, the securing of doors, windows, or other areas open to ingress and egress and to weather elements. Boarding shall be firmly anchored to the structure and openings wider than 48 inches and shall be reinforced against deflection as needed. A protective treatment shall be applied to all faces exposed to the elements.

1322.08.2.2 Boarded Structures. Structures remaining boarded for more than fourteen (14) days may become subject to the conditions of Section 1328.09, Non-Compliant Boarded Structures. The boarding of a structure shall not constitute compliance with the minimum maintenance standards required by this code.

1322.08.3 Notice. Whenever the Chief Code Official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or

persons responsible for the structure or equipment in accordance with Section 1322.07.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 1322.07.2.

1322.08.4 Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Chief Code Official shall post on the premises or on the defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment, or removing the placard.

1322.08.4.1 Placard Removal. The Chief Code Official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Chief Code Official shall be guilty of a minor misdemeanor and subject to penalties in Section 1322.06.4.

1322.08.5 Prohibited Occupancy. Any occupied premises condemned and placarded by the Chief Code Official shall be vacated as ordered by the Chief Code Official. No person shall occupy a placarded premises or shall operate placarded equipment, and no owner or any person responsible for the placarded premises or equipment shall let anyone occupy a placarded premises or operate placarded equipment prior to receipt of the Chief Code Official's written determination of compliance.

1322.08.6 Abatement Methods. The owner, operator, or occupant of a building, premises, or equipment deemed unsafe by the Chief Code Official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition, or other approved corrective action upon application and approval of all necessary permits. Abatement shall be done in a competent manner and upon completion be reasonably fit for its intended use as determined by the Chief Code Official. Penalties for failure to abate shall be as set forth in Section 1322.06.

1322.08.7 Record. The Chief Code Official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

SECTION 1322.09 EMERGENCY MEASURES

1322.09.1 Imminent Danger. When, in the opinion of the Chief Code Official and the Chief Building Official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or section of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Chief Code Official is hereby authorized

and empowered to order and require the occupants to vacate the premises forthwith. The Chief Code Official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy has Been Prohibited by the Chief Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition, or of demolishing the same.

1322.09.2 Temporary Safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the Chief Code Official, there is imminent danger due to an unsafe condition, the Chief Code Official shall order the necessary work to be done, including the boarding up of openings and the discontinuation of utilities, to render such structure temporarily safe, whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Chief Code Official deems necessary to meet such emergency.

1322.09.2.1 Authority to Disconnect Service Utilities. In case of emergency, the Chief Code Official shall have the authority to authorize disconnection of utility service to a building, structure or system regulated by this code where necessary to eliminate an immediate hazard to life or the public safety. The Chief Code Official shall notify the serving utility and, whenever possible, the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building structure or service system shall be notified in writing as soon as practical thereafter.

1322.09.3 Closing Streets. When necessary for public safety, the Chief Code Official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.

1322.09.4 Emergency Repairs. For the purposes of this section, the Chief Code Official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

1322.09.5 Costs of Emergency Repairs. Costs incurred in the performance of emergency work shall be paid by the City of Kettering. The Chief Code Official may then recover such costs in accordance with Section 1322.06.8.

1322.09.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Property Maintenance Appeals Board, be afforded a hearing as described in Section 1322.11.

SECTION 1322.10 DEMOLITION

1322.10.1 General. When any structure has become so deteriorated, dilapidated, or out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation or occupancy and it is unreasonable to repair the structure, the Chief Code Official shall order the owner of any premises upon which the structure is located to demolish and remove such structure; or, if it reasonable to repair the structure and the structure is capable of being made safe and sanitary by repairs, the Chief Code Official may order the owner to repair the structure and make it safe and sanitary or to demolish and remove at the owner's option. Where a certificate of occupancy has not been issued and there has been a cessation of normal construction of any structure for a period of more than six (6) months, the Chief Code Official shall order the owner to immediately resume construction in accordance with the Kettering Building Code or to demolish and remove such structure.

1322.10.2 Notices and Orders. All notices and orders shall comply with Section 1322.07.

1322.10.3 Failure to Comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the Chief Code Official shall cause the structure to be demolished and removed pursuant to Section 1328.07.

1322.10.4 Salvage Materials. When any structure has been ordered demolished and removed, the Chief Code Official or other designated City of Kettering official shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, to the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

SECTION 1322.11 MEANS OF APPEAL

1322.11.1 Application for Appeal. Any person directly affected by a decision of the Chief Code Official or a notice or order issued under this code shall have the right to appeal to the Property Maintenance Appeals Board (the "Board"), provided that a written application outlining the basis for appeal is filed with the Planning and Development Department within ten (10) days after the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. The appeal application shall include a fee in the amount established in the City of Kettering Schedule for Permits, Inspections, Certificates and Fees, the written basis for the appeal as indicated herein, and five (5) copies of the same. Should the Chief Code Official make a determination of indigence of appellant, the application fee may be waived.

1322.11.2 Membership. The Board shall consist of the following individuals or their designees: the City Manager, the City Engineer, and the Chief of Police. The City Manager shall designate a City of Kettering employee to serve as secretary to the Board. The secretary shall file a record of all proceedings in the Planning and Development Department.

1322.11.2.1 Chairperson. The Board shall annually select one of its members to serve as Chairperson.

1322.11.3 Hearing and Jurisdiction. The Board shall have jurisdiction to hear appeals that are timely filed and are appeals from a decision of the Chief Code Official. For each timely filed appeal application, the Board shall conduct a hearing within a reasonable time after the date the application is filed; however, no such hearing shall begin later than sixty (60) days after the date of filing unless the appellant consents to such hearing date in writing.

1322.11.4 Notice and Conduct of Meeting. The procedure and conduct of Board proceedings shall adhere to Robert's Rules of Order, unless otherwise provided for by written and Board adopted rules of procedure. A quorum shall consist of a majority of members of the Board membership.

1322.11.5 Postponed Hearing. When the full Board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing. Such a request constitutes a waiver of the time within which an appeal must be heard under 1322.11.3.

1322.11.6 Board Decision. The Board shall uphold, modify, or reverse the decision of the Chief Code Official only by a concurring vote of a majority of those members present at the meeting during which the decision is made.

1322.11.6.1 Records and Copies. The decision of the Board shall be recorded in the minutes of the Board meeting. Copies shall be furnished to the appellant and to the Chief Code Official upon request. However, the Board may issue a written decision with findings of fact and conclusions of law.

1322.11.6.2 Administration. The Chief Code Official shall take immediate action in accordance with the decision of the Board.

1322.11.7 Appeals from Board Decisions. Any decision of the Board may be appealed to a court of competent jurisdiction and is not appealable to Kettering City Council. The party appealing shall pay for all costs incurred in preparing the record for appeal. Unpaid costs shall be collected under Section 1322.06.8.

1322.11.8 Stays of Enforcement. Appeals of notice and orders (other than imminent danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Board.

Legislative History: Title Five enacted by Ord. 2908-80, passed 8-12-80. Title Five (Chapters 1322-1337) repealed and replaced by Ord. 3853-00, passed 11-28-2000. Ord. 4093-08; passed 2-26-08. Title Five (Chapters 1321-1327) amended by Ord. 4328-19, passed 10-08-2019.