

Title 7
ABATEMENT

Chapters:

7.05 Abatement

Chapter 7.05

ABATEMENT

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7.05.010 Definitions:

For purposes of this Chapter, the following words and phrases shall have the following meanings:

“Building Officer” shall mean the individuals authorized by the Town to act as a Building Officer, Town Engineer, Fire Marshall or his/her designee, Mayor, Code Enforcement Officer or Law Enforcement Officer or the Towns Planning and Zoning Commission.

“Noncompliant Building” shall mean any buildings or structures which, from any cause, may be in a state which endangers the life, limb, health, morals, property, safety or welfare of the general public, or is otherwise noncompliant with Town, State or Federal Law which, as a result, may be required to be repaired, vacated or demolished in order to remedy the issue or violation. This definition includes, but is not limited to:

1) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

2) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

5) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stress permitted in the Building Code for such buildings.

7) Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

8) Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary or the purpose of supporting such building (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9) Whenever, for any reason, the building or structure, or any portion thereof is manifestly unsafe for the purpose for which it is being used.

10) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

11) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

12) Whenever a building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children, (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this Town, as specified in the Building code or Housing Code, or of any law or ordinance of this state or Town relating to the condition, location or structure of buildings.

14) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like areas, height and occupancy in the same location.

15) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

16) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.

17) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

7.05.020 Purpose and Scope - It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by the Building Code, Housing Code or otherwise available at law, whereby noncompliant buildings may be required to be repaired, vacated or demolished. The provisions of this code shall apply to all noncompliant buildings which are now in existence or which may hereafter become noncompliant buildings in this jurisdiction.

7.05.030 Enforcement

a. **Administration** - The building officers are all individually and collectively authorized to enforce the provisions of this code and are authorized to make inspections and take any actions as may be required or desirable to enforce the provisions of this code.

b. **Right of Entry** - Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building Officer has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Building Officer or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Building Officer by this code, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he 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. If such entry is refused, the Building Officer or his authorized representative shall have recourse to every remedy provided by law to secure entry.

7.05.040. Abatement of Noncompliant Buildings

All buildings or portions thereof which are determined after inspection by the Building Officer to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this Chapter.

7.05.060 Notices and Orders of Building Officer

1. **Commencement of Proceedings** - Whenever a building officer has inspected or caused to be inspected any building or has found and determined that such building is a noncompliant building; they shall commence proceedings to cause the repair, vacation or demolition of the building.

2. **Notice and Order** - The Building Officer shall issue a notice and order directed to the record owner of the building or property. The notice and order shall contain:

a. The street address and a legal description sufficient for identification of the premises upon which the building is located.

b. A statement that the Building Officer has found the building to be noncompliant with a brief and concise description of the conditions found to render the building noncompliant.

c. A statement of the action required to be taken as determined by the building officer.

(i) If the Building Officer has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 30 days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances.

(ii) If the Building Officer has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the Building Officer to be reasonable.

(iii) If the Building Officer has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the Building Officer shall determine is reasonable (not to exceed 30 days from the date of the order); that all required permits be secured therefore within 15 days from the date of the order, and that the demolition be completed within such time as the Building Officer shall determine is reasonable.

d. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official

(i) will order the building vacated and posted to prevent further occupancy until the work is completed, and

(ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

e. Statements advising

(i) that any person having any record title or legal interest in the building may appeal from the notice and order of any action of the Building Officer to the Town Council, provided the appeal is made in writing as provided in this code and filed with the Building Officer within 30 days from the date of service of such notice and order; and

(ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

3. Service of Notice and Order - The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the Building Officer or disclosed from the official public records;

(i) the holder of any mortgage or deed of trust or other lien or encumbrance of record;

(ii) the owner or holder of any lease of record; and

(iii) the holder of any other estate or legal interest of record in or to the building or the land on which it is located.

The failure of the Building Officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him by the provision of this section.

4. 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 address as it appears on the last equalized assessment roll of the county or as known to the Building Officer. If no address of any such person so appears or is unknown to the Building Officer, 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 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.

5. 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 persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the Building Officer.

7.05.070 Recordation of Notice and Order

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the Building Officer shall file in the office of the county recorder a certificate describing

the property and certifying (i) that the building is a dangerous building and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the Building Officer shall file a new certificate with the county recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

7.05.080 Repair, Vacate and Demolition

The following standards shall be followed by the Building Officer (and by the Town Council if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure.

1. A building declared a noncompliant building under this ordinance either shall be required to be in accordance with the current building code or shall be demolished at the option of the building owner.
2. If the building or structure is in such condition as to make it immediately to the life, limb, property or safety of the public or its occupants, it shall be vacated.

7.05.090 Notice to Vacate

1. Posting - Every notice to vacate shall, in addition to being served as provided in this Chapter, be posted at or upon each exit of the building and shall be in substantially the following form:

**DO NOT ENTER
UNSAFE TO OCCUPY**
**It is a misdemeanor to occupy this building,
or to remove or deface this notice**
Building Officer
Town of Marbleton

2. No person shall remain in or enter any building, which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code. Violation of this provision constitutes a misdemeanor punishable by a fine not to exceed \$750.00 and/or incarceration up to six months.

7.05.100 Appeals

1. In order to provide for reasonable interpretation of the provisions of this code and to hear appeals provided for hereunder, the Town Council is designated as the board of appeal for any provision of this Chapter, except for criminal proceedings which shall utilize the general appellate procedure for such actions.
2. Any person entitled to service herein may appeal from any notice and order or any action of the Building Officer under this code by filing at the office of the Building Officer a written appeal containing:
 - a. A heading in the words: "Before the Town Council of the Town of Marbleton".
 - b. A caption reading: "Appeal of _____ giving the names of all appellants participating in the appeal.
 - c. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
 - d. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

e. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.

f. The signatures of all parties named as appellants and their official mailing addresses.

g. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 30 days from the date of the service of such order or action of the Building Officer; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with the code herein, such appeal shall be filed within 10 days from the date of the service of the notice and order of the Building Officer

3. Upon receipt of any appeal filed pursuant to this section, the Building Officer shall present it at the next regular or special meeting of the Town Council.

4. Scheduling and Noticing Appeal for Hearing - As soon as practicable after receiving written appeal, the Town Council shall fix a date, time and place for the hearing of the appeal by the board. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed with the Building Officer. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

7.05.110 Effect of Failure to Appeal

Failure of any person to file an appeal in accordance with the provisions of this Section shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order or any portion thereof.

7.05.120 Scope of Hearing on Appeal

Only those matters or issues specifically raised by the appellant shall be considered in the hearing on the appeal.

7.05.130 Procedure for Conduct of Hearing Appeals

1. Hearing Examiners - The Mayor or designee shall conduct appellate hearings as examiner. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted by him to the Council for decision.

2. Record - A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.

3. Oaths-Certification - In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

4. Reasonable Dispatch - The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

7.05.140 Form of Notice of Hearing

The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the Town Council or name of hearing examiner) at _____ on the _____ day of _____, _____, at the hour of _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses

and the production of books, documents or other things by filing an affidavit therefore with (Town Council or name of hearing examiner.)

7.05.150 Subpoenas

1. Filing of Affidavit - The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit is defective in any particular.

2. Penalties - Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his possession or under his control as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

7.05.160 Enforcement of the Order of the Building Officer or Town Council

1. General - After any order of the Building Officer or the Town Council made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor punishable by a fine up to \$750.00 and/or up to six months incarceration.

2. Failure to Obey Order - If, after any order of the Building Officer or Town Council made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Building Officer may (i) cause such person to be prosecuted under subsection I of this section and/or (ii) institute any appropriate action to abate such building as a public nuisance.

3. Failure to Commence Work - Whenever the required repair or demolition is not commenced within thirty (30) days after any final notice and order issued under this code become effective:

a. The Building Officer shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

**NONCOMPLIANT BUILDING
DO NOT OCCUPY**
**It is a misdemeanor to occupy this building,
or to remove or deface this notice.**
Building Officer of the Town of Marleton

b. No person shall occupy any building, which has been posted as specified in this subsection. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the Building Officer have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code.

c. The Building Officer may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris there from removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

7.05.170 Extension of Time to Perform Work

Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the offer if allowed additional time, the Building Officer may, in his

discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the Building Officer determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Officer's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal his notice and order.

7.05.180 Interference with Repair or Demolition Work Prohibited

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this code; or with any person to whom such building has been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

7.05.190 Performance of Work of Repair or Demolition

1. Procedure - When any work of repair or demolition is to be done by the Town pursuant to this Chapter, the Building Officer shall issue his order therefore to the director of public works and the work shall be accomplished by personnel of this jurisdiction or by private contract under the direction of said director, or he may employ such architectural and engineering assistance on a contract basis as he may deem reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedure shall be followed.

2. Costs - The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owners, whichever the governing body of this jurisdiction shall determine is appropriate.

3. The director of public works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building done pursuant to the provisions of Chapter. Upon the completion of the work of repair or demolition, said director shall prepare and file with the clerk of this jurisdiction, a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located.

7.05.200 Personal Obligation or Special Assessment

1. General - The governing body of this jurisdiction may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.

2. Personal Obligation - if the governing body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.

3. Special Assessment - If the governing body of this jurisdiction orders that the charge shall be assessed against the property it shall constitute a special assessment against and a lien upon the property. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

2. Interest - All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 10% per annum compounded from and after said date.

