



# Building Standards and Codes

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## TECHNICAL BULLETIN

**Code Effective Date:** May 12, 2020<sup>1</sup>  
**Source Document:** 19 NYCRR Part 1225 – Fire Prevention  
19 NYCRR Part 1226 – Property Maintenance<sup>2</sup>  
**Topic:** Due Process Issues - Unsafe Structures

This document provides guidance to code enforcement officials (CEO), authorities having jurisdiction (AHJ), and municipal attorneys in recognizing and complying with Constitutional “due process” requirements when addressing *unsafe structures* and when posting or placarding an *unsafe structure* with a “do not occupy” notice.

NOTE: The Department of State and the Division of Building Standards and Codes cannot give legal advice and this document is not intended to give legal advice. CEOs and AHJs are urged to contact the attorney for the local government for legal advice and further information.

Chapter 1 of the 2020 Fire Code of New York State (2020 FCNYS) contains several provisions relating to *unsafe structures* and conditions of *imminent danger*:<sup>3</sup>

- According to Section 108.1, “*the authority having jurisdiction shall exercise its powers in due and proper manner so as to extend to the public protection from the hazards of threat to human life, safety or health*” (emphasis added).
- Section 108.1.1 titled “*Unsafe structures*” indicates, in part, that “*an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or to the occupants of the structure...*” The section goes on to identify criteria that would deem the structure to be dangerous, including lacking the minimum safeguards to protect or warn occupants in the event of a fire; containing unsafe equipment; being damaged, decayed, dilapidated, or structurally unsafe; being unsafe due to such faulty construction or having an unstable foundation that partial or complete collapse is possible; or being an unsecured vacant structure.
- Section 109.1, titled “*Imminent danger*,” provides that where any of the following conditions exists, the AHJ shall require that occupants vacate the premises:
  1. *Imminent danger of failure or collapse of a building or structure which endangers life;*
  2. *A structure where the entire structure, or part of the structure, has fallen and life is endangered by the occupation of the structure;*
  3. *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*

<sup>1</sup> The “Code Effective Date” for this Technical Bulletin is May 12, 2020, which is the effective date of the 2020 update of the New York State Uniform Fire Prevention and Building Code (the Uniform Code).

<sup>2</sup> The Uniform Code is contained in Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR) Parts 1220 through 1227 and the publications incorporated by reference into those Parts, including, but not limited to the 2020 NYS specific code books which are based on the 2018 International Code Council books.

<sup>3</sup> The term *imminent danger* is defined in the 2020 PMCNYS as “*a condition that could cause serious or life-threatening injury or death at any time.*”

#### 4. Operation of defective or dangerous equipment.

- Section 109.1.1, titled “Notice,” requires that the placard or notice posted on a premise deemed to be in *imminent danger* in accordance with Section 109.1 reads as follows: “*This Structure is Unsafe and its Occupancy Has Been Prohibited by the Fire Code Official.*” The section further provides that “*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 demolishing the structure.*”

Chapter 1 of the 2020 Property Maintenance Code of New York State (2020 PMCNYS) also contains several provisions relating to *unsafe structures* that are substantially similar to those in the 2020 FCNYS discussed above:

- Section 103.1 regarding administration and enforcement in “*due and proper manner;*”
- Section 107.1.1 titled “*Unsafe structures;*”
- Section 108.1 titled “*Imminent danger;*” and
- Section 108.2 titled “*Notice.*”

Section 107.1.3 of the 2020 PMCNYS contains additional criteria for conditions that would render a structure “*unfit for human occupancy*” including, among others, vermin infestation and lack of essential equipment required by the code. Note, however, that a structure that is unfit for human occupancy does not necessarily pose an *imminent danger*.

While the AHJ must take appropriate action to protect owners, occupants, and the public at large from unsafe buildings, it is important to bear in mind that the right of owners or tenants to occupy a building they own or rent is a Constitutionally protected property right that cannot be taken away without “due process” of law. This point is emphasized in the 2020 FCNYS and the 2020 PMCNYS. Section 103.2 of the 2020 FCNYS and the 2020 PMCNYS, provides as follows:

*Nothing in this Chapter 1, or elsewhere in this code, or elsewhere in the Uniform Code, or in any regulation promulgated pursuant to Executive Law Section 381(1), shall be construed as authorizing any authority having jurisdiction to administer and enforce the Uniform Code in a manner that deprives any person or entity of due process of law. In particular, but not by way of limitation, nothing in Chapter 1, or elsewhere in this code or elsewhere in the Uniform Code, or in any regulation promulgated pursuant to Executive Law Section 381(1), relating to posting, placarding and/or condemnation of buildings or structures that are unsafe, unfit for human occupancy or unlawful shall be construed as authorizing any authority having jurisdiction to post, placard or condemn any such building or structure and/or to remove any owner or occupant or cause any owner or occupant to be removed from any such building or structure without providing such notice and opportunity to be heard (and, if applicable, right of appeal) as may be required under the applicable circumstances by applicable Constitutional provisions.*

Essentially, “due process” of law involves giving an owner or other occupant of a building notice and opportunity to be heard **before** the AHJ posts a “do not occupy” notice on a building. The notice should include:

- notice of the AHJ’s intention to post a “do not occupy” notice on the building;
- notice of the AHJ’s reasons for doing so (including citations to the specific Uniform Code sections that the AHJ believes have been violated);
- notice of the right of the owner or occupant to be heard – that is, the right of the owner or occupant to present to some municipal official or body, other than the CEO who proposes to post the “do not occupy” notice on the building, the reasons why the owner or occupant believes that the code enforcement official’s proposed action should not be taken; and
- notice of the time within which the owner or occupant must request a hearing and the manner in which the owner or occupant must make that request.

In general, in a case of *imminent danger* (for example, if the building is on fire), Constitutional due process does not require the AHJ to give owners and occupants notice and opportunity to be heard before placing a “do not occupy” notice on the building and requiring the owners and occupants to vacate the building. However, in accordance with Section 103.2.1 of the 2020 FCNYS and Section 103.2.1 of the 2020 PMCNYS, “*in a case of imminent danger*” that justifies immediate placarding of a building and removing owners and occupants, posting or placarding “*shall be permitted to the extent consistent with applicable Constitutional provisions, provided that the affected persons and entities are afforded the opportunity for a post-action hearing.*” Typically, notice of the right of owners and occupants to such a post-action hearing and notice of when and how to request such a post-action hearing must be given to the affected entities.

Each local government responsible for enforcing the Uniform Code is required to adopt a local law, ordinance, or other appropriate regulation that establishes the local government’s code enforcement program. See 19 NYCRR §1203.2(a). The program must also include certain features, including the procedures to be followed by the AHJ “*to identify and*

*address unsafe structures and equipment and conditions of imminent danger consistent with the requirements of the Uniform Code.*<sup>4</sup> Those procedures should include provisions for notice and opportunity to be heard consistent with Constitutional due process requirements.

CEOs should contact the attorney for the local government that employs them for advice and guidance for advice and guidance on Constitutional due process requirements and the applicable provisions of the local government's code enforcement program relating to notice and opportunity to be heard, including but not limited to whether any given situation involves a matter of *imminent danger* that justifies placing a "do not occupy" notice on the building, and requiring the owners and occupants to vacate the building before giving owners and occupants notice and opportunity to be heard.

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<sup>4</sup> See 19 NYCRR §1203.3(f). The Department of State filed a Notice of Adoption of a rule repealing and replacing Part 1203 of Title 19 of the New York Codes, Rules and Regulations, which appeared in the December 29, 2021 edition of the State Register with an effective date of December 30, 2022. The language included in this publication is based on the new version of 19 NYCRR Part 1203 to be effective on December 30, 2022.