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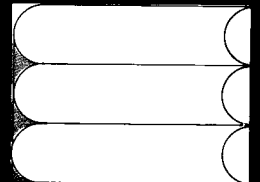
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Rehabilitation Guidelines 1980

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3 Statutory Guideline for Building Rehabilitation



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DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

OCT 31 1980



Prepared by the

National Institute of
BUILDING SCIENCES
Washington, D.C.

for the U. S. Department of Housing and Urban Development
Office of Policy Development and Research
under Cooperative Agreement H-5033

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National Institute of Building
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Statutory guideline for build-
ing rehabilitation.

ISSUED TO

The Institute is grateful to the following organizations whose
representatives participated in the development of these guidelines:

- U. S. Conference of Mayors
- National League of Cities
- National Association of Housing and Redevelopment Officials
- AFL-CIO Building and Construction Trades Council
- Association of Major City Building Officials
- National Association of Home Builders
- National Trust for Historic Preservation
- U.S. League of Savings Associations
- National Housing Rehabilitation Association
- National Home Improvement Council
- Building Code Action
- Council of American Building Officials
- National Conference of States on Building Codes and Standards
- National Fire Protection Association
- American Institute of Architects

variance or modification shall be consistent with the purpose of this code which is to achieve acceptable levels of safety and to promote the conservation, rehabilitation, and reuse of the existing building stock."

5.2 Evaluate Other Conditions Affecting Appeals

Successful rehabilitation project appeals also depend on the following conditions external to the appeals section of the code:

- The legislative purpose of the code clearly recognizes rehabilitation as a public policy goal (see Recommendation 1.1);
- Persons with expertise in rehabilitation are members of the appellate body (see Recommendation 1.3);
- The code clearly states that the rehabilitation of existing buildings be treated differently from new construction (see Recommendation 1.1);
- Appellate procedures are not unduly costly or time consuming, or otherwise provide disincentives, especially to small rehabilitation projects;
- Appellate decisions are made in writing for use as precedent in later cases; and
- Any person aggrieved by a decision of the code enforcement body should be entitled to an appeal.



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

No one doubts that the building code development process is varied and complicated. Thus, the process to modify building codes so that they can more suitably regulate rehabilitation projects should also be complicated.

But this guideline clarifies. It recommends seven ways to modify the process. It should be of inestimable value to local policy-makers, code officials, and citizens' groups that want to promote rehabilitation in their communities.

The quality of this guideline and the seven others in the series is the result of the invaluable efforts of Robert Kapsch, program manager for HUD's Office of Policy Development and Research; William Brenner, project manager for the National Institute of Building Sciences; and David Hattis, consultant from Building Technology, Inc.

A handwritten signature in cursive script that reads "Moon Landrieu".

Moon Landrieu
Secretary

The Rehabilitation Guideline Series

The *Rehabilitation Guidelines* were prepared by the National Institute of Building Sciences for the Department of Housing and Urban Development in response to the requirements of Section 903 of the Housing and Community Development Amendments of 1978.

As Congress intended, the *Rehabilitation Guidelines* are not a code, nor are they written in code language. Rather, they are designed for voluntary adoption and use by States and communities as a means to upgrade and preserve the nation's building stock, while maintaining reasonable standards for health and safety. The term "rehabilitation", as used in the guidelines, includes any set of activities related to the general view of existing buildings as a resource to be conserved, rehabilitated, or reused.

This initial edition of the *Rehabilitation Guidelines* is published in eight separate volumes. The first four guidelines are designed for use by building officials, members of the executive and legislative branches of government, and related commissions and organizations involved in developing or implementing building regulations. These guidelines cover the following topics:

- 1 The *Guideline for Setting and Adopting Standards for Building Rehabilitation* provides an introduction and background to the building regulations that affect rehabilitation. It describes methods for identifying regulatory problems in a community, and recommends ways to amend, modify, or supplement existing regulations to encourage rehabilitation.
- 2 The *Guideline for Municipal Approval of Building Rehabilitation* examines the inherent differences between regulating new construction and regulating rehabilitation, and presents specific recommendations for dealing with rehabilitation within municipal building departments.
- 3 The *Statutory Guideline for Building Rehabilitation* contains enabling legislation that can be directly adopted by communities to provide the legal basis for promoting rehabilitation through more effective regulation.
- 4 The *Guideline for Managing Official Liability Associated with Building Rehabilitation* addresses the liability of code officials

Other discretionary powers may be given to the enforcement body by the legislature, with the general limitation that use of such powers be consistent with the health and safety purposes of the codes involved.

These special applications are discussed in depth in the *Guideline for Setting and Adopting Standards for Building Rehabilitation*.

Official liability involved in the use of the discretionary powers allowed by these special applications is the subject of the *Guideline for Managing Official Liability Associated with Building Rehabilitation*.

5 Appellate Review

Appellate review is the process whereby an aggrieved party may appeal a decision by the code enforcement body. Building and other related codes normally provide for an appellate board of some kind; for those that don't, appeals may be made to a judicial body. While appellate review is meant to be a second-level dispute resolution by an impartial party, it may also be used to grant variances where the code enforcement body is not empowered to do so. When appellate decisions are written and publicly available, they can serve as a source of guidance for subsequent decisions and as an indicator of possible code revision needs. The following appellate recommendations should be adopted to promote building rehabilitation.

5.1 Provide for Rehabilitation Variances by the Appellate Body

The appeals section of the code should contain an unequivocal statement allowing the appellate body to vary or modify code requirements that are impractical or that create financial hardship in rehabilitation projects. A sample statement might read as follows:

"For the rehabilitation of existing buildings, the (appellate body) may vary or modify, in whole or in part, the application of any provision of this code where compliance with such provision creates practical difficulty or undue financial hardship. Such

codes) to the rehabilitation of existing buildings and to the administration of such codes;

- "Initiate a special rehabilitation office to answer rehabilitation inquiries, provide information on Federal and other assistance programs, and perform related duties;
- "Initiate an outreach program to encourage building rehabilitation;*
- "Appoint a Chief of Building Rehabilitation and/or rehabilitation specialists to coordinate and/or perform rehabilitation inspections and grant permit approvals."

4 Special Applications

For certain topics, codes leave the application and approval of acceptable design criteria to the judgment of the code enforcement agency, rather than set out highly specific or prescriptive requirements. Rehabilitation benefits because the code enforcement agency has the flexibility to tailor code requirements to the unique conditions of a given rehabilitation project. The following types of code provisions may be of value in increasing the discretionary powers of code enforcement bodies:

- Modifications to structural, mechanical, or other provisions when practical difficulties dictate;
- Alternate materials, equipment, and methods of construction not described in specific code provisions;
- Change in building occupancy or use;
- Additions, alterations, and repairs with a value below a specified percentage of building replacement or other cost; and
- Buildings of special historical or architectural significance.

* See *Guideline for the Approval of Building Rehabilitation*.

involved with the administration and enforcement of rehabilitation, and provides recommendations for minimizing liability problems.

The remaining four guidelines are technical in nature, and are intended for use by code officials, inspectors, designers, and builders. They cover the following topics:

- 5 The *Egress Guideline for Residential Rehabilitation* lists design alternatives for the components of egress that are regulated by current codes such as number and arrangement of exits, corridors, and stairs, travel distance, dead-end travel, and exit capacity and width.
- 6 The *Electrical Guideline for Residential Rehabilitation* outlines procedures for conducting inspections of electrical systems in existing buildings, and presents solutions to common problems associated with electrical rehabilitation such as eliminating hazardous conditions, grounding, undersized service, number of receptacle outlets, and incompatible materials.
- 7 The *Plumbing DWV Guideline for Residential Rehabilitation* presents criteria and methods for inspecting and testing existing drain, waste, and vent (DWV) systems, relocating fixtures, adding new fixtures to existing DWV systems, extending existing DWV systems, and installing new DWV systems in existing buildings.
- 8 The *Guideline on Fire Ratings of Archaic Materials and Assemblies* contains the fire ratings of building materials and assemblies that are no longer listed in current building codes or related reference standards. Introductory material discusses flame spread, the effects of penetrations, and methods for determining the ratings of assemblies not listed in the guideline.

Single editions of the *Rehabilitation Guidelines*—or copies of specific guidelines—are available at no charge, as long as supplies last, from HUD USER, P.O. Box 280, Germantown, Maryland 20767. Phone (301) 251-5154

The *Rehabilitation Guidelines* are also available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402.

Acknowledgments

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The overall management and production of the *Rehabilitation Guidelines* was directed by William Brenner of the Institute, with David Hattis of Building Technology, Inc. the principal technical consultant. Guideline cover graphics and layouts were designed by the Design Communication Collaborative.

more departments within a jurisdiction. Administration and enforcement also implies the following activities:

- Management, supervision, and training of personnel;
- Record keeping and documentation;
- Development of inspection manuals and related publications;
- Initiation of studies, evaluations, and assessments; and
- Coordination of work with other departments or agencies.

The following administration and enforcement recommendations should be adopted to promote building rehabilitation.

3.1 Mandate Administrative Innovation for Rehabilitation

Successful approaches to rehabilitation may be heavily dependent on the day-to-day details of processing, inspection, and personnel management. Administrative streamlining can reduce rehabilitation processing time; special training programs can familiarize personnel with the unique problems of rehabilitation; and field inspection manuals can describe procedures for efficiently addressing local rehabilitation problems. These administrative devices may significantly lower rehabilitation entry barriers and costs, provided that the time, budget, and human resources are made available to develop and implement them.

Using one or more of the following clauses, a legislative body can require a code enforcement agency to do one or more of the following:

- *"Initiate a separate submittal/approval process for rehabilitation projects;**
- *"Coordinate, with (appropriate agencies or departments), the development of specialized permit, inspection, and related administrative programs that encourage rehabilitation;*
- *"Establish special training programs in rehabilitation for building inspectors, permit review personnel, and other staff specialists;*
- *"Create and publish field inspection manuals, guidelines, and other publications to describe the applicability of (code or*

* See *Guideline for the Approval of Building Rehabilitation.*

2 Code Revision

Code revision involves the ongoing review and amendment of building-related requirements and standards. In statewide building codes, revisions are most commonly made by an independent rulemaking body—such as a state building code commission—through powers conferred by the legislature. In municipalities, a similar procedure may be followed, or the municipal legislature may itself enact code revisions.

The following code revision recommendation should be adopted to promote building rehabilitation.

2.1 Establish Procedures for Determining the Impact of Code Revisions on Building Rehabilitation

It is particularly important that new and existing code requirements and standards be assessed to determine their impact on the rehabilitation process. Language requiring this of a rulemaking, enforcement, or advisory body should stress the reporting of its findings:

"The (rulemaking, enforcement, or advisory body) shall monitor and evaluate, on an ongoing basis, the effectiveness and application of the provisions of (code or codes) and any rules, regulations, or procedures promulgated thereunder to determine their impact on the rehabilitation of existing buildings. Pursuant to this responsibility, the (rulemaking, enforcement, or advisory body) shall gather information, conduct studies, and make (in consultation with the Rehabilitation Advisory Board) appropriate reports and recommendations related to the application of these provisions, the decisions of the (appellate body), and the experience of other jurisdictions."

3 Administration and Enforcement

Code administration and enforcement consists primarily of plan or work reviews, permit issuance, and field inspections. These functions are largely carried out at the local level by one or

Introduction

The authority to administer and enforce building-related codes is derived from statutes enacted by state and local legislative bodies. Normally, these statutes define the policies and goals which are to be accomplished and establish administrative agencies and offices to see that these goals are met. Code decisionmaking incorporates five essential functions: 1) basic policymaking, 2) code revision, 3) administration and enforcement, 4) special applications, and 5) appellate review. There are numerous ways to achieve statutory goals through code decisionmaking. This guideline provides recommendations for modifying existing codes, regulations, and other related regulatory practices with the express purpose of promoting rehabilitation.

1 Basic Policy Making

Basic policymaking for building-related codes is primarily the domain of state and local legislative bodies. Legislatures set basic policy goals. They authorize the adoption, revision, and integration of general codes related to building, housing, maintenance, health, and hazard abatement, as well as specialized codes for electrical, plumbing, mechanical, fire and life safety, architectural barriers, and energy, among others. Legislatures also create the rulemaking, enforcement, appeals, and advisory bodies needed to carry out the code regulatory process. These bodies may be assigned policymaking functions of their own, including:

- Promulgating rules, regulations, and procedures;
- Monitoring and evaluating code effectiveness and application;
- Making legislative recommendations; and
- Providing technical advice or judgmental determinations.

The following basic policymaking recommendations should be adopted to promote building rehabilitation.

1.1 Provide a Statement of Purpose that Includes Rehabilitation

- Legislative bodies articulate their fundamental policy goals in either the statement of purpose of a code or code enabling

legislation. Although statements of purpose may be considered unimportant to the substance of the legislation, they provide the basic policy expression to which other decisionmaking bodies-- rulemaking, enforcement, appellate and advisory--must frequently turn to resolve difficult questions. The following language gives a broad expression of support to rehabilitation:

"The (legislative body) finds that the public health, safety, and welfare is in part dependent on the conservation, rehabilitation, and reuse of the existing building stock, including both residential and other buildings; that the application of new construction requirements and standards to the rehabilitation of existing buildings may unnecessarily increase the cost thereof; that adequate enforcement of minimum housing and other standards for safe and decent human habitation requires expeditious and cost-effective procedures for encouraging the rehabilitation of existing buildings; that rehabilitation is a major mechanism for increasing the health and safety in existing buildings; and that adequate resources in the form of public and private initiatives exist to increase and expand the incidence of rehabilitation when such rehabilitation is free of unreasonable regulatory restraint.

"It is therefore the purpose of this Code, to the maximum extent consistent with basic standards of human health and safety,

(1) to promote the rehabilitation of existing sound buildings by allowing for differences between rehabilitation and new construction in the application of the requirements and standards of this code;

(2) to encourage in rehabilitation the utilization of innovative and economical materials and methods of construction; and,

(3) to encourage the agencies charged with enforcement of this code, and the officers thereof,

(i) to apply the provisions of this code to rehabilitated buildings in a manner consistent with the purposes stated herein; and

(ii) to exercise discretion and employ resourcefulness in the evaluation of code compliance of rehabilitated structures, in a manner consistent with the purposes stated herein."

1.2 Create a Rehabilitation Advisory Board

A specialized technical advisory board with experience and expertise in the problems of rehabilitation can provide significant help to the decisionmaking burdens of the legislative, rulemaking, appellate and enforcement bodies. Such an advisory board can supply key advice on policies and activities that affect all phases of building rehabilitation. The following language could be used to create such an advisory board:

"The (legislative, rulemaking, or enforcement body) shall establish and periodically consult with a Rehabilitation Advisory Board (and other such advisory groups as may be deemed desirable) in the execution of its responsibilities under this (code). The Rehabilitation Advisory Board shall consist of no fewer than five (5) members, appointed by (appropriate person) for a term of two (2) years, each of whom shall have experience and/or expertise in the rehabilitation of existing buildings and structures. The Rehabilitation Advisory Board shall provide advice and consultation to (legislative, rulemaking, enforcement and appellate bodies) on all substantive decisions and actions that influence or otherwise affect rehabilitation within (name of jurisdiction)."

1.3 Emphasize Rehabilitation Expertise in Code Rulemaking and Appellate Bodies

Background qualifications and professional expertise are common requirements for members of code rulemaking, enforcement, appellate, and advisory bodies. Their obvious purpose is to assure that the necessary expertise is brought to bear by key advisory and decisionmaking personnel. In addition to the usual requirements for professional engineers, registered architects, skilled tradesmen and the like, persons with rehabilitation experience and expertise should be included in rulemaking and appellate bodies. This may be statutorily required, as follows:

"For (rulemaking and appellate bodies), appoint one (1) or more members that shall be persons of recognized ability and experience in the problems of, and practice incidental to, the rehabilitation of existing buildings."