

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 04

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<b>Title: Graffiti Violations</b>
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### I. Purpose

- A. The purpose of this procedure is to provide direction and a process to properly identify, document, report, effectually serve notice of, and abate graffiti violations as defined by the 2012 International Property Maintenance Code (IPMC) as codified in Chapter 8.60 of the latest version of the code of the city of Topeka, Kansas, hereafter referred to as the "Code".
- B. It is the policy of the Property Maintenance Unit to identify, document, report, notify and abate graffiti violations through a documented process that includes the collection of evidence, case management, data entry, and the service of legal notification as stipulated by the Code and Kansas State Statutes.

### II. Definitions

- A. Abandoned Property - "Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days or commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties." (KSA 12-1750)
- B. Approved - "Approved by the code official." (IPMC 202)
- C. Code Official - "The official who is charged with the administration and enforcement of this code, or any duly authorized representative." (IPMC 202)
- D. Commercial Real Estate - "Any real estate for which the present use is other than one to four residential units or for agricultural purposes." (KSA 12-1750)
- E. Easement - "That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots." (IPMC 202)
- F. Gender - "Words importing the masculine gender include the feminine and neuter." (TMC 1.10.020)
- G. K.S.A. - "The abbreviation "K.S.A." shall mean the Kansas Statutes Annotated, as amended." (TMC 1.10.020)
- H. Number - "Words used in the singular include the plural, and words used in the plural include the singular." (TMC 1.10.020)
- I. Occupant - "Any individual living or sleeping in a building, or having possession of a space within a building." (IPMC 202)

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- J. Owner - “Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.” (IPMC 202)
- K. Person - “An individual, corporation, partnership or any other group acting as a unit.” (IPMC 202)
- L. Premises - “A lot, plot or parcel of land, easement or public way, including any structures thereon.” (IPMC 202)
- M. Property - A lot, plot or parcel of land, easement or public way, including any structures thereon. This term is intended to be synonymous with the term “Premises”, as used in the Code.
- N. Public Way - “Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.” (IPMC 202)
- O. Structure - “That which is built or constructed or a portion thereof.” (IPMC 202)
- P. TMC - The abbreviation “TMC” shall mean the Topeka Municipal Code as used in references to sections of the code of the city of Topeka, Kansas.

### III. Applicable Codes

- A. Defacement of Property - “No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.” (IPMC 302.9)
- B. Method of Service - Methods of service are described in IPMC 107, as amended by TMC 8.60.080.
- C. Notices - Notices are described in IPMC 107, as amended by TMC 8.60.080.
- D. Violations, Abatements, Fees - Violation prosecution, penalties, abatement and fees are described in IPMC 106, as amended by TMC 8.60.070.

### IV. Procedure

- A. Surveys and Complaints - The Code Official shall regularly survey his area for graffiti violations and, within forty-eight (48) hours, review all graffiti complaints that are received by the Property Maintenance Unit within his area.

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### B. Documentation of Violations

1. The Code Official shall appropriately document graffiti violations.
2. Photographs shall be taken, notes from personal observations shall be made and other relevant evidence shall be collected from a place the Code Official has the legal right to be located.
  - a. This can be from areas where the public has a legal right to be without consent.
  - b. This can be from a public way or private property, if consent is established.
  - c. The Code Official shall seek to obtain written approval from the owner or occupant of a premises having a violation prior to entering any part of that premises where he does not have a legal right to be without consent.
  - d. If consent cannot be established, the Code Official shall determine if an Administrative Search Warrant is required to legally enter the property.
    - i. An Administrative Search Warrant is not required if the property is vacant and unsecure, unless it has "No Trespassing" signs or locked gates.
    - ii. An Administrative Search Warrant is not required if the property is abandoned, unless it has "No Trespassing" signs.
3. The Code Official shall document his personal observations, as appropriate.
4. The Abatement Crew shall photograph the violation before and after the abatement process.

### C. Opening a New Case

1. The Code Official shall open a new graffiti violation case in the database.
  - a. The Code Official shall identify the location of the graffiti violation by the correct parcel and assigned address number (if an address number has been assigned). This will apply to common addresses, as well as legal addresses.
  - b. The Code Official shall determine if there is an existing open graffiti violation case for the particular property to ensure there is no duplication of effort.
2. If the graffiti is on a street, overpass or public sidewalk, the Code Official shall forward the case to the Field Supervisor who will review and forward the case to the Abatement Crew.
3. The Code Official shall determine if there is a signed "Consent and Release to Remove or Cover Graffiti" form on file.
  - a. If there is a signed "Consent and Release to Remove or Cover Graffiti" form on file, the Code Official shall forward the case to the Abatement Crew.
  - b. If there is not a "Consent and Release to Remove or Cover Graffiti" on file, the Code Official shall send a graffiti violation notice with a blank "Consent and Release to Remove or Cover Graffiti" form to the property owner so the property owner has the choice to remove the graffiti or have the Abatement Crew remove the graffiti.
4. The Code Official shall attach all documentation associated with the particular graffiti violation, including photographs, notes, etc., which will be used as evidence to substantiate the violation.

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### D. Inspection

1. The Code Official has the discretion to:
  - a. Place the property on monitor for a period not to exceed seven (7) days.
  - b. Cause a notice to be sent to the property owner.
  - c. Deploy a door hanger with relevant information to inform the occupant of the violation and remedies
2. If a door hanger is utilized, the Code Official shall take one up-close photograph of the door hanger and a second photograph of the door hanger and the background of the posting for identification purposes.
3. If a door hanger was utilized or the property is being monitored, the Code Official shall re-inspect the property following the date specified.
  - a. If the violation has been abated or no longer exists, the Code Official shall take photographs of the current condition of the property and close the case. The photographs shall be submitted as evidence to justify closing the case.
  - b. If the violation still exists, the Code Official shall take photographs of the current condition of the property and attach them to the case. The photographs shall be used as evidence when generating a written notice of violation.

### E. Notice of Violation

1. Administrative Staff shall generate a written notice of violation that contains all of the following relevant information as designated by the Code:
  - a. Description of the property sufficient for identification.
  - b. A statement that includes a description of the conditions and identifies the violation.
  - c. A statement that the property owner must abate the violation by the date designated in the notice.
  - d. A statement advising that any owner may request an appeal hearing before an Administrative Hearing Officer.
    - i. The request shall be submitted to the Code Official on or before the date designated in the notice.
    - ii. The scope of the appeal shall be limited to the following: (1) whether the provisions of the Code apply; (2) whether the Code Official has correctly interpreted the Code; and/or (3) whether the requirements of the Code can be adequately satisfied by other means.
  - e. A statement that if the violation is not corrected or a hearing requested, the City may impose administrative penalties, abate the violation and assess the costs against the owner.
  - f. A statement advising that failure to timely comply with the notice may result in prosecution in municipal court regardless whether an administrative hearing is pending.

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2. The owner of the property shall abate the violation by the date designated in the notice. The date designated in the notice shall allow ten (10) days for abatement plus three (3) days for mailing for a total of thirteen (13) days from the date the notice was issued.
3. Administrative Staff shall send the notice to the property owner by certified mail and first class mail.
  - a. Personal service may be substituted for certified mail.
  - b. A copy of the notice shall be sent by first class mail to the taxpayer, purchaser under contract (PUC), loan company and resident (occupant).
  - c. If the certified mail or the first class mail that was sent to the property owner is returned and the envelope has a forwarding address, the Administrative Staff shall revise the abatement due date and resend the notice.
4. In addition to the methods identified in this procedure, but not in lieu of, the Code Official may provide notice by other means, including, but not limited to, door hangers, conspicuously posting the notice on the property, personal notification, telephone and/or various means of electronic communication.

### F. Administrative Appeal Hearing

1. An owner or occupant (see definitions) shall have the right to appeal the notice of violation to an Administrative Hearing Officer provided that a written application is submitted to the Code Official on or before the date designated in the notice.
2. The Administrative Hearing Officer shall conduct the hearing as specified in the Administrative Hearings Standard Operating Procedure.

### G. Re-inspection

1. The Code Official shall re-inspect the property after the date designated in the notice of violation to determine if the violation still exists.
  - a. If the violation has been abated or no longer exists, the Code Official shall take photographs of the current condition of the property and close the case. The photographs shall be submitted as evidence to justify closing the case.
  - b. If the violation has not been abated and the notice was personally served, or if the first class mail that was sent to the owner was not returned, the Code Official shall take photographs of the current condition of the property and attach them to the case. The photographs shall be used as evidence when filing an administrative search warrant or proceeding with the abatement.
  - c. If the violation has not been abated, the notice was not personally served and the first class mail that was sent to the owner was returned without a forwarding address, the Code Official shall post a notice having a revised abatement due date in a conspicuous place on the property and take one up-close photograph of the notice and a second photograph of the front of the structure with the property address and the notice visible.
2. If the notice was posted, the Code Official shall re-inspect the property upon the expiration of the compliance period stated in the notice to determine if the violation still exists.

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- a. If the violation has been abated or no longer exists, the Code Official shall take photographs of the current condition of the property and close the case. The photographs shall be submitted as evidence to justify closing the case.
- b. If the violation has not been abated, the Code Official shall take photographs of the current condition of the property and attach them to the case. The photographs shall be used as evidence when filing an administrative search warrant or proceeding with the abatement.
3. If the violation has not been abated and a warrant is not required to abate the violation, Administrative staff shall forward the case to the Abatement Crew.

### H. Administrative Search Warrant

1. All methods of making contact with the property owner and getting voluntary compliance should be exhausted before starting the warrant process.
2. If it is determined that a warrant is required to legally enter a property, Administrative Staff shall generate the warrant and send it to the City's Criminal Prosecution Division for review.
3. If approved, the warrant will be signed by the assigned prosecutor and sent to the Code Official.
4. The Code Official shall sign the warrant and send it to the assigned District Court Judge for review.
5. If approved, the warrant will be signed by the District Court Judge and sent to the Code Official to be served within ninety-six (96) hours.
6. The Code Official shall coordinate with the Abatement Crew to determine a reasonable date and time to abate the violation.
7. If the warrant is not executed within the allotted 96 hours, the District Court Judge shall be notified that the warrant was not executed and a new warrant must be requested.
8. Warrant execution:
  - a. The Code Official shall populate and sign the warrant "Return" page attached to the warrant.
  - b. If the owner or occupant of the property is available, the Code Official shall have them sign the warrant "Return".
  - c. The Code Official shall take a photo of the warrant "Return".
  - d. The Code Official shall leave the warrant (including the warrant "Return") with the owner or occupant of the property while on scene.
  - e. If the owner or occupant of the property is not available, the Code Official shall post the warrant (including the warrant "Return") in a conspicuous place on the premises and take a photograph of the front of the structure with the property address and the warrant visible.
  - f. The Code Official shall convert the warrant "Return" photo to a PDF document and upload it to the District Court Judge.
  - g. The Code Official shall attach the warrant "Return" PDF document to the case file under "Comments".

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- h. The Code Official shall attach the warrant “Return” photo and the warrant posting photos to the case file “Corrections List”.
- I. Abatement
  - 1. The Code Official and/or Abatement Crew may utilize the services of the Topeka Police Department and/or the Animal Control Unit to avoid conflict and disturbing the peace.
  - 2. The Code Official and/or Abatement Crew shall photograph the violations and the abatement results. These photographs, any contact information received and any applicable notes shall be attached to the case file.
- J. Process Fees - Billing
  - 1. Administrative Staff shall generate a “Total Cost Bill,” including all costs associated with the case. This may consist of reimbursement for contractor fees, labor, equipment, landfill fees, administrative penalties, administrative fees, and mailings.
  - 2. Administrative Staff shall send the bill to the property owner by certified mail.
  - 3. The property owner may appeal all or part of the bill in accordance with the Administrative Hearings Standard Operating Procedure.
  - 4. The request for appeal must be submitted in writing within ten (10) business days of the bill's date.
  - 5. Administrative Staff shall coordinate a payment plan if the property owner requests.
  - 6. If the bill is not paid within thirty (30) days of the date on the bill and a payment plan was not established, Administrative Staff shall send a “Final Bill” by first class mail to the property owner as a reminder.
  - 7. The property owner may not appeal all or part of the “Final Bill” because the request for appeal must be submitted in writing within ten (10) business days of the date on the “Total Cost Bill”.
  - 8. If the bill is not paid within ten (10) days of the date on the “Final Bill” and a payment plan was not established, Administrative Staff shall send the unpaid bill to collections and proceed with filing an assessment to the property owner’s property tax bill.
- K. Payment Plan – If a payment plan has been established the payment must be made monthly. If a payment is skipped the bill will be sent to collections and/or assessed to property taxes. Bills on payment plans must be paid within three (3) years from the date of the bill.
- L. Closing the Case - Administrative Staff shall close the case when the bill is paid or when the unpaid bill has been sent to collections and an assessment to the owner’s property tax bill has been filed.

### V. Case Management

- A. During the process of identifying, reporting and managing a case, the Code Official shall pursue voluntary compliance above all other means to remedy the case.

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- B. The Code Official shall be available for correspondence concerning current and past cases during assigned working hours via cell phone, personal contact, email or other means of electronic communication.
- C. The Code Official shall provide the property owner or occupant with a list of assistance resources upon request.
- D. The Code Official may allow one extension for a case if requested by the violator when there is a plan of action to address the issue, the requester exhibits good-faith, the responsible party can establish reputable means and resources to remedy the underlying violation, and/or case in a timely manner or the Code Official observes that significant progress is being made.
  - 1. the Code Official shall provide detailed reasoning in his case notes if an initial extension is granted.
  - 2. Any subsequent extensions must be approved by the Division Director or his designee and the reason for the additional requested extension shall be in writing.
- E. The Division Director has the discretion to file a Criminal Affidavit in addition to, or rather than conducting, an abatement of a violation.
  - 1. Administrative Staff shall process the affidavit form and provide it to the Code Official for signature.
  - 2. The Code Official shall sign the affidavit form and return it to the Administrative Staff with new photographs of the violation.
  - 3. Administrative Staff will send the affidavit, the notice of violation, photographs, and other appropriate case documentation to the Criminal Prosecution Division for review.
  - 4. The Criminal Prosecution Division will prosecute the case in Municipal Court if it is approved.
  - 5. A Code Official shall attend the Court proceedings to assist the Criminal Prosecution Division.
  - 6. The Code Official shall conduct re-inspections as ordered by the Court.

### VI. Procedure Modifications

- A. This procedure shall be reviewed biennially on or before March 1<sup>st</sup> or as necessary based on revisions to the policy and/or the Code.
- B. The division Director or his designee may only amend, change, or modify this procedure.

 _____ John Schardine, Director Code Services Property Maintenance Unit	May 02, 2024 _____ Date Approved
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