

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

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

- A. The purpose of this procedure is to provide direction and a process to identify, document, report correctly, effectually serve notice of, and abate housing 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 housing 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.
- C. The Code Official shall be provided copies of the Code, the current version of the International Residential Code, the Legal Aspects of Code Administration, and an exterior and interior resource guide to assist them with identifying housing violations.

### 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. Bathroom - "A room containing plumbing fixtures including a bathtub or shower." (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. Dwelling Unit - "A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation." (IPMC 202)
- F. 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)
- G. Exterior Property - "The open space on the premises and on adjoining property under the control of owners or operators of such premises." (IPMC 202)

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- H. Gender - “Words importing the masculine gender include the feminine and neuter.” (TMC 1.10.020)
- I. Habitable Space - “Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.” (IPMC 202)
- J. Housekeeping Unit - “A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.” (IPMC 202)
- K. Housing Navigator – an allocated staff member responsible for identifying alternative paths for homeowners with medical or financial hardships who need resources to bring their property into compliance with existing codes. The Housing Navigator will be responsible for reviewing submissions, conducting comprehensive interviews, and defining what resources or grants fit the homeowner's needs. The Housing navigator shall work in conjunction with the Code Official, Court Services, the DEI Office, and Housing Services, among other partners, to provide our community with quality customer service and necessary resources in a responsible, equitable manner to adequately address the needs of our property owners.
- L. K.S.A. - “The abbreviation “K.S.A.” shall mean the Kansas Statutes Annotated, as amended.” (TMC 1.10.020)
- M. Number - “Words used in the singular include the plural, and words used in the plural include the singular.” (TMC 1.10.020)
- N. Occupant - “Any individual living or sleeping in a building, or having possession of a space within a building.” (IPMC 202)
- O. 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)
- P. Person - “An individual, corporation, partnership or any other group acting as a unit.” (IPMC 202)
- Q. Premises - “A lot, plot or parcel of land, easement or public way, including any structures thereon.” (IPMC 202)
- R. 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.

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- S. 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)
- T. Rooming House - "A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling." (IPMC 202)
- U. Structure - "That which is built or constructed or a portion thereof." (IPMC 202)
- V. Toilet Room - "A room containing a water closet or urinal but not a bathtub or shower." (IPMC 202)
- W. 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. Exterior Structure - "The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare." (IPMC 304.1)
- B. Interior Structure - "The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property." (IPMC 305.1)
- C. Method of Service - Methods of service are described in IPMC 107.3, as amended by TMC 8.60.080.
- D. Notices - Notices are described in IPMC 107, as amended by TMC 8.60.080.
- E. 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 housing violations and, within forty-eight (48) hours, review all housing complaints that are received by the Property Maintenance Unit within his area.
- B. Documentation of Violations
  - 1. The Code Official shall appropriately document housing 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.

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- b. This can be from a public way or private property if consent is established.
  - c. The Code Official shall seek written approval from the owner or occupant of premises having a violation before entering any part of that premises where he does not have a legal right to be without consent. If the occupant refuses to give written consent, verbal consent may be accepted, if documented in the case note section.
  - d. If consent cannot be established, the Code Official shall determine if an Administrative Search Warrant is required to enter the property legally.
    - i. An Administrative Search Warrant is not required if the property is vacant and unsecured 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 their observations as appropriate.
- C. Opening a New Case
1. The Code Official shall open a new housing violation case in the database.
  2. The Code Official shall identify the location of the housing 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.
  3. The Code Official shall determine if there is an existing open housing violation case for the particular property to ensure there is no duplication of effort.
  4. The Code Official shall attach all documentation associated with the particular housing violation, including photographs, notes, etc., which will be used as evidence to substantiate the violation.
- D. Inspection
1. The Code Official has the discretion to:
    - a. Place the property on monitor for a period not to exceed thirty (30) 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.
    - d. The Code Official may use their discretion in advising the owner what violations need to be corrected to bring the property into compliance in lieu of issuing a Notice of Violation.
  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.

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- 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. Courtesy Notice
1. Due to winter weather, starting on November 1<sup>st</sup> of each year, Administrative Staff shall generate a courtesy notice instead of a notice of violation for exterior painting violations.
  2. The Code Official has the discretion to include minor housing violations in the courtesy notice rather than simultaneously issuing a courtesy notice and a notice of violation on the same property.
  3. The courtesy notice shall contain all the following relevant information.
    - a. Description of the real estate sufficient for identification.
    - b. A statement that includes a description of the conditions and identifies the violation.
    - c. A statement requesting that the property owner communicate with the Code Official, on or before May 1, with a plan to address the violations.
    - d. A statement that the Code Official is monitoring the case and will be re-inspecting the property at the expiration of the time specified in the courtesy notice.
    - e. Administrative Staff shall send the courtesy notice and a packet of community resources by first-class mail to the property owner.
  4. The Code Official shall re-inspect the property at the expiration of the time specified in the courtesy notice 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 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.
- F. 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 or occupant 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.

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- 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 is not requested, the City may impose administrative penalties, abate the violation, and assess the costs against the owner.
      - f. A statement advising that failure to comply with the notice timely may result in prosecution in municipal court regardless of whether an administrative hearing is pending.
2. The Code Official shall take into consideration health and safety issues when determining the time to be given to the property owner to abate the housing violations.
  - a. The number of days given for abatement may be three (3) to ten (10), fifteen (15), thirty (30) or sixty (60), but shall not exceed sixty (60) days.
  - b. Three (3) days of mailing time shall be added to the number of days given unless:
    - i. Contact has been made with the owner or manager, or
    - ii. The number of days given exceeds ten (10).
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 place 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 various means of electronic communication.

### G. 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.

### H. 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 property's current condition and close the case. The photographs shall be submitted as evidence to justify closing the case.

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

---

- b. If the violation has not been abated and the notice was personally served, or if the first-class mail sent to the owner was not returned, the Code Official shall take photographs of the property's current condition and attach them to the case. The photographs shall be used as evidence when filing a Criminal Affidavit.
  - 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.
  - d. Inspections requiring written or verbal consent should not be closed because the past tenant no longer resides on the property. The Code Official shall seek consent from the new tenant or property manager to verify that the violation was corrected. The Code Official shall apply for a search warrant if those parties do not grant consent.
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.
    - a. If the violation has been abated or no longer exists, the Code Official shall take photographs of the property's current condition 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 property's current condition and attach them to the case. The photographs shall be used as evidence when filing a Criminal Affidavit.
- I. Administrative Search Warrant
1. All methods of contacting the property owner and getting voluntary compliance should be attempted before starting the warrant process.
  2. If it is determined that a warrant is required to enter a property legally, 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. 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.
  7. The Code Official may utilize the services of the Topeka Police Department and the Animal Control Unit to avoid conflict and maintain the peace.



# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 06

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8. The Code Official shall photograph the violation(s). These photographs, contact information received, and applicable notes shall be attached to the case file.
9. 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 "Misc. Docs (consents, affidavits, warrants, etc)".
  - h. The Code Official shall attach the warrant "Return" photo and the warrant posting photos to the case file "Corrections List".

J. Criminal Affidavit filing.

1. If the violation still exists, Administrative Staff shall process the affidavit form along with the case documents and photos.
2. Administrative Staff will send the affidavit, the notice of violation, photographs and other appropriate case documentation to the Criminal Prosecution Division for review.
3. If approved, the Criminal Prosecution Division will prosecute the case in Municipal Court.
4. A Code Official shall attend the Court proceedings to assist the Criminal Prosecution Division.
5. The Code Official shall conduct re-inspections as ordered by the Court.

- K. Closing the Case - The Code Official shall close the case when the violation has been abated or when directed to do so by the City Prosecutor.

### 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.
- 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.



# PROPERTY MAINTENANCE UNIT


## Standard Operating Procedure PMU 06

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- C. The Code Official shall, upon request, provide the property owner or occupant with a copy of a list of resources for assistance.
- D. If the subject property appears to be a rental property, the Code Official will provide the occupant with an information packet containing a copy of the Kansas Residential Landlord & Tenant Act and instructions for filing a complaint for retaliatory evictions.
- E. If the property owner appears to lack the means and resources to make the required repairs, the Code Official shall provide contact information to the City of Topeka PMU Housing Navigator.
- F. A record of all contact with property owners, occupants, and any party with interest to the case or the property will be maintained under case notes. This will include but is not limited to, the date, reason, and means of contact.
- G. The Code Official has the discretion to allow one extension if requested by the property owner when there is a plan of action to address the violation, the requester exhibits good faith in addressing the violation, the responsible party can establish reputable means and resources to remedy the underlying violation promptly, or the Code Official observes that significant progress is being made. The first extension should be no longer than the original time frame to make the repairs on the original notice.
  - 1. The Code Official shall provide detailed reasoning in the case notes if an initial extension is granted.
  - 2. Only the Division Manager or designee has the authority to grant any subsequent extensions, and the reason for the additional requested extension shall be in writing. The length of the subsequent extensions shall be at the discretion of the Division Manager or the designee. All details regarding the extension shall be added to the case notes.

### 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. This procedure may only be amended, changed, or modified by the Division Manager or his designee.

 _____ John Schardine, Manager Code Services Property Maintenance Unit	_____ January 2, 2024 Date Approved
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