

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

Title: Condemnations

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 condemn unsafe, unlawful and/or dangerous structures and equipment 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 condemn unsafe, unlawful and/or dangerous structures and equipment 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. Code Official - "The official who is charged with the administration and enforcement of this code, or any duly authorized representative." (IPMC 202)
- C. 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)
- D. Condemn - "To adjudge unfit for occupancy." (IPMC 202)
- 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. Imminent Danger - "A condition which could cause serious or life-threatening injury or death at any time." (IPMC 202)
- H. K.S.A. - "The abbreviation "K.S.A." shall mean the Kansas Statutes Annotated, as amended." (TMC 1.10.020)
- I. Neglect - "The lack of proper maintenance for a building or structure." (IPMC 202)

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

- J. Number - “Words used in the singular include the plural, and words used in the plural include the singular.” (TMC 1.10.020)
- K. Occupancy - “The purpose for which a building or portion thereof is utilized or occupied.” (IPMC 202)
- L. Occupant - “Any individual living or sleeping in a building, or having possession of a space within a building.” (IPMC 202)
- M. 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)
- N. Person - “An individual, corporation, partnership or any other group acting as a unit.” (IPMC 202)
- O. Premises - “A lot, plot or parcel of land, easement or public way, including any structures thereon.” (IPMC 202)
- P. 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.
- Q. 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)
- R. Structure - “That which is built or constructed or a portion thereof.” (IPMC 202)
- S. 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.
- T. Unlawful Structure - “An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.” (IPMC 108.1.4)
- U. Unsafe Equipment - “Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.” (IPMC 108.1.2)

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

- V. Unsafe Structure - "An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible." (IPMC 108.1.1)
- W. Ventilation - "The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space." (IPMC 202)

III. Applicable Codes

- A. Closing of Vacant Structures - "If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource." (IPMC 108.2)
- B. Condemnation - "When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code." (IPMC 108.1)
- C. Dangerous Structure or Premises - For the purpose of this code, any structure or premises that has any or all of the conditions or defects described in section 108.1.5 of the IPMC shall be considered dangerous. (IPMC 108.1.5)
- D. Imminent Danger - "When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is 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 operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." 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 of demolishing the same." (IPMC 109.1)
- E. Method of Service - Methods of service are described in IPMC 107.3, as amended by TMC 8.60.080.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

- F. Notices - Notices are described in IPMC 107, as amended by TMC 8.60.080.
- G. Structure Unfit for Human Occupancy - “A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.” (IPMC 108.1.3)
- H. Temporary safeguards - “Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.” (IPMC 109.2)
- I. 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 unsafe, unlawful and/or dangerous structures and equipment and, within twenty-four (24) hours, review all unsafe, unlawful and/or dangerous structures and equipment complaints that are received by the Property Maintenance Unit within his area.
- B. Documentation of Violations
 - 1. The Code Official shall appropriately document unsafe, unlawful and/or dangerous structures and equipment 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 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 his personal observations, as appropriate.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

4. The Code Official shall determine whether the violation is a housing violation or if the structure should be condemned.
5. Examples of violations that would be considered for condemning a structure are the lack of utilities, broken or blocked sewer lines, backed up sewage, no active water service if occupied, unsafe equipment, inoperative heating systems, major structural defects and extreme unsanitary conditions that may endanger the health of the occupants.

C. Opening a New Case

1. The Code Official shall open a new Structure Violation / Housing Condemnation case in the database.
2. The Code Official shall identify the location of the structure 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 unsafe, unlawful and/or dangerous structures or equipment 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 Structure Violation / Housing Condemnation case, 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 seven (7) days.
 - b. Take immediate action by attempting to contact the owner, occupant or agent to have the violation corrected.
 - c. Cause a condemnation notice to be sent to the property owner.
2. The Code Official shall document the violation by taking photographs of the current condition of the property, checking water files, contacting the gas and/or electric company, etc. and attaching the evidence to the case to justify a condemnation notice.
3. If the property was being monitored, the Code Official shall re-inspect the property following the date specified.
 - a. The Code Official shall verify that the violation has been abated or no longer exists, by taking photographs of the current condition of the property, checking water files, contacting the gas and/or electric company, etc. and attaching the evidence to the case.
 - b. If the violation has been abated or no longer exists, the Code Official shall close the case. The photographs and other relevant evidence shall be used to justify closing the case.
 - c. If the violation still exists, the Code Official shall process a condemnation notice. The photographs and other relevant evidence shall be used to justify the condemnation notice.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

E. Condemnation Notice

1. Administrative Staff shall generate a written condemnation notice 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 owner must abate the violation by the date and time designated in the condemnation notice.
 - d. A statement advising that any owner or occupant may request an appeal hearing before an Administrative Hearing Officer. 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 condemnation notice may result in prosecution in municipal court regardless whether an administrative hearing is pending.
2. The condemnation notice shall also contain the following relevant information:
 - a. A statement that it is a misdemeanor offense to remove or deface the condemnation notice.
 - b. A statement advising that a request for an appeal hearing before an Administrative Hearing Officer shall be submitted in writing to the Code Official within twenty-four (24) hours of the date of the condemnation notice.
 - c. A statement that, if the violation has not been abated by the date and time designated in the condemnation notice, it is a misdemeanor offense to remain in or enter the structure, except that entry may be made to repair or demolish such structure.
 - d. A statement that, after the property is vacated, the property owner must secure the property within 24 hours to prevent human use or habitation.
3. The Code Official shall have the condemnation notice reviewed and approved by the Division Director or his/her designee.
4. The Code Official shall post the copy of the condemnation notice and a copy of the "Community Resource Information" list on the structure in a conspicuous place and take one up-close photograph of the condemnation notice and a second photograph of the front of the structure with the property address and the condemnation notice visible.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

5. Administrative Staff shall send the condemnation 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 condemnation notice shall be sent by first class mail to the taxpayer, purchaser under contract (PUC) and the loan company.
 - 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 resend the condemnation notice.
6. 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 condemnation 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 condemnation notice to an Administrative Hearing Officer provided that a written application is submitted to the Code Official within 24 hours of the date of the condemnation 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 condemnation notice to determine if the violation still exists.
 - a. The Code Official shall verify that the violation has been abated or no longer exists, by taking photographs of the current condition of the property, checking water files, contacting the gas and/or electric company, etc.
 - b. If the violation has been abated or no longer exists, the Code Official shall close the case. The photographs and other relevant evidence shall be used to justify closing the case.
2. If the violation still exists, the Code Official shall placard the premises with a "CONDEMNED" sign. The photographs and other relevant evidence shall be used to justify placarding the structure.

H. Condemnation and Danger-Keep Out Placards

1. Upon failure of the owner or person responsible to comply with the condemnation notice provisions within the time given, the Code Official shall post on the premises or on defective equipment a placard bearing the word "CONDEMNED" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.
2. The Code Official shall also post at each entrance to a structure a placard bearing the words "DANGER-KEEP OUT" when:
 - a. There is imminent danger of failure or collapse of a building or structure which endangers life.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

- b. The structure or part of a structure has fallen and life is endangered by the occupation of the structure.
 - c. There is 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 operation of defective or dangerous equipment
 3. The Code Official shall take one up-close photograph of the placard and a second photograph of the placard and the background of the posting for identification purposes.
- I. Follow-up Inspection of Condemnation and Danger-Keep Out Placards
 1. The Code Official shall re-inspect the property thirty (30) days from the date the placard was posted.
 2. If the violation has been abated or no longer exists, the Code Official shall process a condemnation release and close the case.
 3. If the property is not vacant the Code Official shall process a criminal affidavit filing against the occupant, if known, or the owner of the property.
 4. If the property is vacant the Code Official has the discretion to extend the case for thirty (30) days or, depending on the type of violation, process a condemnation release and close the case.
 - a. The Code Official may process a condemnation release and close the case if the violation was for no electricity, no gas, or no water.
 - b. If the property was cited for broken or blocked sewer lines, backed up sewage, unsafe equipment, major structural defects, extreme unsanitary conditions that may endanger the health of the occupants, etc., the Code Official shall assure that the structure is fit for occupancy before processing a condemnation release and closing the case.
- J. Condemnation Release
 1. The Code Official may be notified by the current owner or occupant that the violation has been abated or no longer exists, and they are asking that the condemnation be released.
 2. The Code Official shall verify that the violation has been abated or no longer exists, by taking photographs, checking water files, contacting the gas and/or electric company, etc.
 3. If the violation has been abated or no longer exists, the Code Official shall process a condemnation release.
 4. The Code Official shall have the condemnation release reviewed and approved by the Division Director or his/her designee.
 5. Administrative Staff shall send the condemnation release by first class mail to the property owner, taxpayer, purchaser under contract (PUC), Loan Company and occupant.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

K. 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. 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/or the Animal Control Unit to avoid conflict and disturbing the peace.
8. The Code Official shall photograph the violation(s). These photographs, any contact information received and any 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".

L. 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 condemnation notice, photographs and other appropriate case documentation to the Criminal Prosecution Division for review.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

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.
- M. Closing the Case - The Code Official shall close the case when the violation has been abated or no longer exists.

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.
- C. The Code Official shall, upon request, provide the property owner or occupant with a list of resources for assistance.
- D. As a general rule, any meaningful contact made with the occupants or owner of a property under investigation, the Code Official shall add relevant notes to the case to include the date, context of the discussion, who they spoke with and contact information.
- E. If the Code Official is made aware that the property owner lacks the means and resources to successfully make the required repairs to the property as ordered, the Code Official shall provide contact information for the office of the Housing Navigator.
- F. If the Code Official is made aware that the occupants of said structure may need to be relocated or housing assistance if the pending case is not resolved, the Code Official shall supply the occupant's information to Housing Services – EAS Program Coordinator for assistance.
- G. 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. If an initial extension is granted, the Code Official shall provide detailed reasoning for the extension in his case notes.
 2. Any subsequent extension must be approved by the Division Manager or his designee and the reason for the additional requested extension shall be in writing.

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 08

VI. Procedure Modifications

- A. This procedure shall be reviewed on a biennial basis on or before March 1st 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	<p>3/1/2023</p> _____ Date Approved
--	--