

# PROPERTY MAINTENANCE UNIT

## Standard Operating Procedure PMU 09

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<b>Title: Unsafe Structure 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 unsafe structure violations as defined by the 2012 International Property Maintenance Code (IPMC) as codified in Chapter 8.60 & 8.75 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 unsafe structure 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) NOTE: The duly authorized representatives for the administration and enforcement of this Unsafe Structure Violations Standard Operating Procedure are the Property Maintenance Inspectors that are assigned to the Special Structures Unit of the Property Maintenance Unit.
- 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. Condemn - “To adjudge unfit for occupancy.” (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)
- H. Gender - “Words importing the masculine gender include the feminine and neuter.” (TMC 1.10.020)
- I. K.S.A. - “The abbreviation “K.S.A.” shall mean the Kansas Statutes Annotated, as amended.” (TMC 1.10.020)

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- 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. Non-registered Historic Properties (“B” List) - The demolition waiting period list, or “B” list, is composed of non-registered historic properties that have been identified in one of two ways:
1. The property is approved as an endangered property by the Topeka Landmarks Commission, or
  2. The property has been historically surveyed (e.g. historic resources survey or a Preliminary Site Information Questionnaire – PSIQ) and identified as being part of a potential historic district or is individually significant. (City of Topeka Planning and Development Department Policy).
- N. 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)
- O. Person - “An individual, corporation, partnership or any other group acting as a unit.” (IPMC 202)
- P. Premises - “A lot, plot or parcel of land, easement or public way, including any structures thereon.” (IPMC 202)
- Q. 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.
- R. 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)
- S. Structure - “That which is built or constructed or a portion thereof.” (IPMC 202)
- T. 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.
- U. 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)

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- V. Unreasonable to Repair – “‘Unreasonable to repair’ means that the repair costs exceed 30% of the replacement value of the structure as established by the Shawnee County Appraiser.” (TMC 8.60.100)
- W. 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)

### III. Applicable Codes

- A. Demolition - Demolition is described in IPMC 110, as amended by TMC 8.60.100.
- B. General - “The Code Official is hereby authorized and directed to enforce the provisions of this code. The Code Official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.” (IPMC 104.1)
- C. Identification - “The Code Official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.” (IPMC 104.4)
- D. Inspections - “The Code Official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Code Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.” (IPMC 104.2)
- E. Method of Service - Methods of service are described in IPMC 107.3, as amended by TMC 8.75.030.
- F. Notices - Notices are described in IPMC 107, as amended by TMC 8.75.020.
- G. Notices and Orders - “The Code Official shall issue all necessary notices or orders to ensure compliance with this code.” (IPMC 104.5)
- H. Records - “The Code Official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.” (IPMC 104.6)

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- I. Right of Entry - "Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the Code Official has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the Code Official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied the Code Official shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the Code Official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the Code Official shall have recourse to the remedies provided by law to secure entry." (IPMC 104.3)
- J. Unsafe Structures - "The governing body has determined that structures exist within the city that are so deteriorated, dilapidated, or so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy such that it is unreasonable to repair the structure." (TMC 8.75).
- K. Unsafe Structures and Equipment - "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)
- L. Violations, Abatements, Fees - Violation prosecution, penalties, abatement and fees are described in IPMC 106, as amended by TMC 8.60.070 and TMC 8.75.060.

### IV. Procedure

- A. Surveys and Complaints
  - 1. The Code Official shall regularly survey his area for unsafe structure violations and, within forty-eight (48) hours, review all unsafe structure complaints that are received by the Property Maintenance Unit within his area.
  - 2. The Code Official shall prioritize unsafe structure complaints by their severity.
  - 3. The Code Official shall give fire-damaged structures a higher priority in order to determine if emergency securement or emergency demolition is required.
  - 4. The Code Official shall inspect and take photographs of fire-damaged structures within three (3) days of the fire. If the fire was severe, the inspection needs to be done as soon as the situation allows.
    - a. If emergency securement or emergency demolition is required, the Code Official shall implement the appropriate procedure.
    - b. If emergency securement or emergency demolition is not required, and there was less than ten thousand dollars (\$10,000.00) in structural damage, the Code Official shall refer the case to the Code Official that is responsible for enforcing a housing violation on the property.

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- c. If emergency securement or emergency demolition is not required, and there was ten thousand dollars (\$10,000.00) or more in structural damage, the Code Official shall monitor the property for thirty (30) days to allow time for the Topeka Fire Department (TFD) and the insurance company to complete their investigations.
- B. Opening a New Case
1. The Code Official shall open a new unsafe structure case in the database.
  2. The Code Official shall identify the location of the 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 structure 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 violation, including photographs, notes, etc., which will be used as evidence to substantiate the violation.
- C. Property and Owner Information
1. The Code Official shall check the Shawnee County (SNCO) tax sale listing for the address having the unsafe structure and obtain the supervisor's approval to proceed with the case if the address is listed.
  2. The Code Official shall collect property and owner Information, which includes:
    - a. Property owner – from the SNCO Appraiser's database.
    - b. Property record card (PRC) - from the SNCO Appraiser's database.
    - c. Property tax status – from the SNCO Appraiser's database.
    - d. Deed – from the SNCO Register of Deeds database.
    - e. Structure Sketch – from the SNCO Appraiser's database.
    - f. Water service status – from the City of Topeka's (COT's) Customer Information System.
    - g. Property map – from the COT's Map database.
    - h. Obituary (if applicable) – from the Topeka Capital Journal or the internet.
    - i. Purchaser under contract (PUC), Taxpayer & Mortgage Company – from the case Location Record.
    - j. Property owner contact Information (current address and phone number) - from the real estate records, the COT's Customer Information System, the PRC, the deed, the POLK directory, the telephone directory and the Internet.
      - i. Company owner, registered office and/or resident agent contact information from the State of Kansas Business Entity website.
      - ii. Deceased owner probate filing information from the SNCO District Court Public Access database.

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### D. Documentation of Violations

1. The Code Official shall appropriately document violations.
2. Photographs shall be taken of the exterior of the structure, 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 usually includes the private sidewalk to the front door of a structure that a mail carrier or delivery person would utilize to make a delivery.
  - c. This can be from a public way or an adjoining private property, if consent is established with the occupant of that property.
  - d. The Code Official shall obtain written approval from the owner or occupant of the premises having a violation prior to entering any part of that premises where he does not have a legal right to be without consent.
  - e. The Code Official shall leave the private property immediately if told to do so by the legal occupant of the premises, even if consent was originally given, unless an Administrative Search Warrant was obtained.
  - f. If consent was given, but then retracted, the Code Official shall obtain an Administrative Search Warrant before entering the property or structure.
  - g. 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 take notes of his/her personal observation of the condition of the exterior of the structure and document them on a 'Repair Cost Estimate' form.

### E. 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.

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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. 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 "Documents".
  - h. The Code Official shall attach the warrant "Return" photo and the warrant posting photos to the case file "Corrections List".

### F. Initial Inspection

1. The Code Official shall perform an Initial Inspection, which includes:
  - a. Taking photographs of all sides of the structure exterior showing full view of windows and doors, all rooms inside the structure showing full view of each room, kitchens and bathrooms showing fixtures and cabinets, the electrical panel, furnace, water heater and other major appliances and up-close photographs showing violations such as cracked walls, ceilings and floors, and electrical and plumbing issues.
  - b. Completing a 'Repair Cost Estimate Worksheet' for each structure (house, garage, shed, etc.) that is on a foundation.
2. The Code Official shall add the following information to the sketch for each structure:
  - a. The property address, type of structure, case number, the perimeter dimensions of each floor and the length and width dimensions of each section.
  - b. If a sketch is not available on the SNCO Appraiser's database, the structure size information listed on the PRC shall be utilized when completing the worksheet.
3. The Code Official shall estimate the repair cost for each structure by entering information from the sketch, photographs and 'Repair Cost Estimate Worksheet' into the "Repair Cost Excel Worksheet" spreadsheet.
  - a. If the estimated repair cost for any structure exceeds thirty percent (30%) of the RCN, the structure is considered to be unreasonable to repair and the Code Official shall begin the Complaint & Notice of Hearing process.

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- b. If the estimated repair cost does not exceed thirty percent (30%) of the Replacement Cost New (RCN) listed on the PRC, the Code Official shall open a Housing case for that structure and it shall be removed from the unsafe structure case. The case shall be closed if the estimated repair cost of none of the structures exceeds thirty percent (30%) of the RCN.

### G. Complaint & Notice of Hearing

1. The Code Official shall process the Complaint & Notice of Hearing that includes:
  - a. Names and addresses of all parties having a legal interest in the property. This includes the property owner(s), heirs of deceased property owner(s), occupants of the property, purchasers under contract, (PUC), taxpayers, resident agents, registered offices, mortgage companies and anyone having Durable Power of Attorney.
  - b. The case number, property address, SNCO Appraiser Parcel ID #, legal description, the hearing date and time and a list the violations referencing the appropriate IPMC section.
  - c. The Complaint & Notice of Hearing shall be dated more than ten (10) days, but less than thirty (30) days before the hearing date.
2. The Code Official shall have the Complaint & Notice of Hearing approved by the Division Director or his designee. The signature must be notarized.
3. The Code Official shall send the Complaint & Notice of Hearing to the property owner(s) by both certified mail and first class mail. Personal service may be substituted for certified mail.
4. The Code Official shall send a copy of the Complaint & Notice of Hearing by first class mail to the other parties having a legal interest in the property.
5. If the Complaint & Notice of Hearing is for a non-registered historic property ("B" List):
  - a. The Code Official shall send a copy of the Complaint & Notice of Hearing to the City of Topeka Planning and Development Department.
  - b. The City of Topeka Planning and Development Department will publically notify interested individuals and property neighbors of the hearing.
6. If the certified mail is returned and the envelope has a forwarding address, the Code Official shall send the Complaint & Notice of Hearing to the new address along with a cover letter that contains the new certified mail number.
7. If the first class mail is returned and the envelope has a forwarding address, the Code Official shall send the Complaint & Notice of Hearing to the new address.
8. The Code Official shall publish the Complaint & Notice of Hearing once in the official city newspaper (Metro News).
9. The Code Official shall post the Complaint & Notice of Hearing in a conspicuous place on the premises and take one up-close photograph of the Complaint & Notice of Hearing and a second photograph of the front of the structure with the property address and the Complaint & Notice of Hearing visible.



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10. The Code Official shall file the Complaint & Notice of Hearing with the SNCO District Court and the SNCO Register of Deeds.

### H. Pre-Hearing Inspection

1. The Code Official shall inspect the property and take a photograph verifying that either the structure is still standing or that it has been demolished. The hearing will be held, even if the structure has been demolished.
2. The Code Official shall review the case file and prepare for the hearing to ensure that all requirements have been met.
3. The Code Official shall generate an "Unsafe Structure Report" consisting of a cover page with case number, property address, structure type and a photograph of the structure; the Complaint & Notice of Hearing; the Certificate of Service form; the property owner information; the property map; the PRC; the Repair Cost Excel Worksheet(s) and photographs of the exterior and interior of the structure.
4. The Code Official shall contact the property owner and remind them of the hearing, if contact information is available.

### I. Administrative Appeal Hearing

1. The Complaint & Notice of Hearing provides the opportunity for an owner or any other parties having a legal interest in the property to appeal the unsafe structure violation to an Administrative Hearing Officer.
2. The Administrative Hearing Officer shall conduct the hearing as specified in the Administrative Hearings Standard Operating Procedure.

### J. Demolition Order

1. The Administrative Hearing Officer may order a structure to be demolished by issuing an Administrative Hearing Order, also known as a Demolition Order.
2. The Administrative Staff shall send the Demolition Order to all parties having a legal interest in the property by both certified mail and first class mail. Personal service may be substituted for certified mail.
3. The Code Official shall post the Demolition Order in a conspicuous place on the premises and take one up-close photograph of the Demolition Order and a second photograph of the front of the structure with the property address and Demolition Order visible.
4. The Code Official shall file the Demolition Order with the SNCO District Court and the SNCO Register of Deeds.
5. If the Demolition Order is for an historic parcel:
  - a. The Code Official shall request approval of the demolition from the Topeka Landmark's Commission.
  - b. If Topeka Landmark's Commission denies the request, the Topeka City Council must approve the demolition before the demolition of a structure can take place.

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### K. Demolition Process

1. When the Demolition Order appeal timeframe has expired the Code Official shall inspect the property and take a photograph verifying that the structure is still standing or that it has been demolished.
2. If the structure has been demolished, the demolition process shall be halted and the Code Official shall close the case.
3. The Code Official shall check the SNCO Appraiser's database for any changes in ownership.
4. The Code Official shall review the case file on the database to ensure that all timelines have been met and all procedures have been followed before proceeding with the Demolition Order.
5. The Code Official shall notify utility companies to disconnect utilities.
6. The Code Official shall schedule an asbestos inspection.
7. The Code Official shall prepare the Demolition Specifications and the Asbestos Specifications (if asbestos abatement is required).
8. The Code Official shall send the Demolition Specifications and the Asbestos Specifications (if asbestos abatement is required) to Contracts and Procurement for the bidding process.
9. Contracts and Procurement will notify the Code Official who was selected for the Demolition Contract and the Asbestos Contract (if asbestos abatement is required).
10. The Code Official shall process the KDHE 10 Day Notice Form.
11. Asbestos Abatement (if asbestos abatement is required).
  - a. When the Asbestos Abatement Contract has been executed, Contracts and Procurement will send a copy to the Code Official.
  - b. The Code Official shall notify the Asbestos Abatement Contractor that the executed Asbestos Abatement Contract has been received.
  - c. The Code Official shall issue the Asbestos Notice to Proceed for the asbestos abatement to the Asbestos Abatement Contractor.
  - d. The Asbestos Contractor shall abate the asbestos.
  - e. The Code Official shall verify abatement of exterior asbestos and ensure that the structure has been secured.
  - f. The Code Official shall receive and process the asbestos invoice and manifest tickets.
12. Demolition.
  - a. When the Demolition Contract has been executed, Contracts and Procurement will send a copy to the Code Official.
  - b. The Code Official shall notify the Demolition Contractor that the executed Demolition Contract has been received.
  - c. The Demolition Contractor shall provide a copy of the Demolition Permit to the Code Official.

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- d. The Code Official shall issue the Notice to Proceed to the Demolition Contractor after the KDHE ten (10) working days waiting period has expired and, if there is asbestos, the asbestos manifest ticket has been received.
  - e. The Demolition Contractor shall demolish the structure.
  - f. The Code Official shall inspect the site to ensure that all debris was removed before the Demolition Contractor is permitted to backfill a basement excavation.
  - g. Engineering shall verify that the sewer was properly capped before the Demolition Contractor is permitted to backfill a sewer line excavation.
  - h. The Code Official shall conduct a final inspection of the property to ensure that the demolition was completed according to the Demolition Specifications.
- L. Process Fees - Billing
- 1. Administrative Staff shall generate a "Total Cost Bill" which shall include all costs associated with the case.
  - 2. Administrative Staff shall send the bill to the property owner by certified mail.
  - 3. Administrative Staff shall be responsible for coordinating a payment plan, if requested by the property owner.
  - 4. 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,
  - 5. 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.
- M. 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 ten (10) years from the date of the bill.
- N. 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.
- 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. 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

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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 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 along 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. If approved, the Criminal Prosecution Division will prosecute the case in Municipal Court.
  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 on a biennial basis 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 Director, or his designee.

 _____ John Schardine, Director Code Services Property Maintenance Unit	<p>April 24, 2023</p> _____ Date Approved
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