

PROPERTY MAINTENANCE UNIT

Standard Operating Procedure PMU 11

Title: Administrative Hearings

I. Purpose

- A. The purpose of this procedure is to provide direction and a process in regards to scheduling and conducting administrative hearings as defined by the 2012 International Property Maintenance Code (IPMC) as codified in Chapter 2.145, 8.60 & 8.75 of the latest version of the code of the city of Topeka, Kansas, hereafter referred to as the “Code”.
- B. Per the Code, Administrative Hearings are scheduled for all Unsafe Structure cases. For all other cases a property owner or occupant to whom a notice or the imposition of a fee, charge or penalty has been issued may also request an Administrative Hearing in order to appeal all or part of the notice, fee, charge or penalty.

II. Definitions

- A. Administrative Hearing Officer - The official appointed by the City charged with the responsibility for conducting administrative hearings. (TMC 2.145.030)
- B. Code Official - “The official who is charged with the administration and enforcement of this code, or any duly authorized representative.” (IPMC 202).
- C. Gender - “Words importing the masculine gender include the feminine and neuter.” (TMC 1.10.020)
- D. K.S.A. - “The abbreviation “K.S.A.” shall mean the Kansas Statutes Annotated, as amended.” (TMC 1.10.020)
- E. Number - “Words used in the singular include the plural, and words used in the plural include the singular.” (TMC 1.10.020)
- F. Occupant - “Any individual living or sleeping in a building, or having possession of a space within a building.” (IPMC 202)
- G. 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).
- H. Person - “An individual, corporation, partnership or any other group acting as a unit.” (IPMC 202)
- I. Premises - “A lot, plot or parcel of land, easement or public way, including any structures thereon.” (IPMC 202)

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- J. 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.
- K. 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)
- L. Structure - “That which is built or constructed or a portion thereof.” (IPMC 202)
- M. 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.
- N. Total Costs Bill - All administrative penalties, fees and costs associated with a case that are imposed by the city to abate a violation or to repair, vacate, close or demolish a structure.
- O. 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)

III. Applicable Codes

- A. Administrative Appeal Hearing - The Administrative Appeal Hearing is described in TMC 2.146 and in IPMC 111, as amended by TMC 8.60.110 & 8.75.040.
- B. Appeals - “Appeals of a violation of the city code or the imposition of a fee, charge or penalty shall be governed by this chapter unless a different appeal procedure is specified under this code or by state or federal law.” (TMC 2.145.010).
- C. Appellant - “An owner 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.” (TMC 8.60.110).
- D. Method of Service - Methods of service are described in IPMC 107.3, as amended by TMC 8.60.080 & 8.75.030.
- E. Notices - Notices are described in IPMC 107, as amended by TMC 8.60.080 & 8.75.020.
- F. Violations, Abatements, Fees - Violation prosecution, penalties, abatement and fees are described in IPMC 106, as amended by TMC 8.60.070.

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IV. Procedure

A. Administrative Appeals

1. Unsafe structure violations and unsafe structure total costs bills are excluded from appeals to an Administrative Hearing Officer because the property owner has already been heard by an Administrative Hearing Officer.
2. For all other cases, including emergency unsafe structure cases, the property owner or occupant (see definitions) shall have the right to appeal a notice of violation or a total costs bill to an Administrative Hearing Officer provided that a written application is submitted to the Code Official:
 - a. On or before the date designated in the notice of violation, or
 - b. Within ten (10) business days of the date on the total costs bill.
3. Appeals shall be based on a claim that:
 - a. The provisions of the Code do not apply;
 - b. The Code Official has incorrectly interpreted the Code; and/or
 - c. The requirements of the Code can be adequately satisfied by other means.
4. The property owner or occupant may not appeal a requirement imposed by the Code.
 - a. The intent of the appeal process is not to waive or set aside a requirement.
 - b. The intent of the appeal process is to provide:
 - i. A means of reviewing a Code Official's decision on an interpretation or application of the Code, or
 - ii. Reviewing a Code Official's decision to approve or reject the equivalency of compliance with a Code requirement.
5. Pursuant to K.S.A. 60-2101(d) and amendment thereto, an aggrieved party may appeal an administrative hearing order to the Third Judicial District, 200 SE 7th, Topeka, Kansas, within 30 days of its entry.

B. Notice of Hearing

1. For unsafe structure cases, written notice of the hearing date and time shall be provided in the Complaint and Notice of Hearing that is sent to anyone having legal interest in the property. The hearing date shall be not less than ten (10) days nor more than thirty (30) days of the date on the Complaint and Notice of Hearing.
2. For all other cases, written notice of the hearing date and time shall be provided to the property owner or occupant requesting the hearing within ten (10) calendar days of the hearing request.

C. Administrative Hearings

1. The City of Topeka may appoint one or more Administrative Hearing Officers to conduct the hearings. The Administrative Hearing Officer hearing the case shall exercise all powers necessary to conduct the hearings.
2. No transcript of the hearings shall be made unless requested by the property owner or occupant prior to the hearing. The property owner or occupant shall arrange for and pay all fees associated with the reporting of the hearing prior to the hearing.

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D. Guidelines for Administrative Hearing Exhibits

1. For an Unsafe Structures initial hearing, the Code Official shall provide to the Administrative Hearing Officer and the property owner or occupant a copy of an "Unsafe Structure Report".
 - a. The "Unsafe Structure Report" shall consist 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 Shawnee County Appraiser Owner Page; the Aerial Map; the Property Record Card (PRC); the Repair Costs Excel Worksheet(s) and photographs of the exterior and interior of the structure.
 - b. For subsequent hearings, the Code Official shall provide to the Administrative Hearing Officer a copy of the previous hearing order and photos showing the current condition of the structure in addition to the items listed in D.1.a.
2. For all other cases, administrative staff shall provide a copy of the violation notice, hearing request and notice, photos and any previous hearing orders to the Administrative Hearing Officer.

E. Administrative Hearing Procedure

1. The hearing shall be conducted by the Administrative Hearing Officer.
2. The Administrative Hearing Officer may administer oaths and affirmations, examine witnesses and receive evidence.
3. The Administrative Hearing Officer shall afford the Code Official and property owner or occupant an opportunity for a hearing and shall consider all relevant evidence presented.
4. The Code Official and property owner or occupant that intend to present evidence shall be sworn in prior to hearing the evidence.
5. The Code Official shall present evidence of the violation to the Administrative Hearing Officer first.
6. Thereafter, the property owner or occupant shall present evidence to the Administrative Hearing Officer.
7. During the presentation of evidence, any dialog between the Code Official and the property owner or occupant shall be closely moderated by the Administrative Hearing Officer.
8. The Code Official and the property owner or occupant shall have these rights, among others:
 - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce documentary and physical evidence;
 - c. To cross-examine witnesses on any matter relevant to the issues of the hearing;
 - d. To rebut the evidence;
 - e. To be represented by an attorney licensed to practice law in the State of Kansas.
9. The hearing shall be limited to the issues set forth in the request for appeal or the Complaint & Notice of Hearing in Unsafe Structures cases.

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10. Hearings need not be conducted according to the technical rules relating to evidence. Irrelevant and unduly repetitious evidence shall be excluded.
11. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
12. Relevant evidence shall be admitted if it is the type of evidence which responsible persons are accustomed to relying on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
13. The Administrative Hearing Officer shall require the Code Official and the property owner or occupant to conduct themselves in an orderly manner.
14. Failure to comply with the directives of the Administrative Hearing Officer to obtain order may result in exclusion from the proceedings.
15. The Administrative Hearing Officer may inspect any building or premises involved in the hearing prior to and/or during the course of the hearing, provided that:
 - a. Notice of such inspection shall be given to the Code Official and the property owner or occupant before the inspection is made,
 - b. The Code Official and the property owner or occupant are given an opportunity to be present during the inspection, and
 - c. The Administrative Hearing Officer indicates to the Code Official and the property owner or occupant upon completion of the inspection the conditions observed and the conclusions drawn there from.
 - d. The Code Official and the property owner or occupant shall have the right to rebut or explain the matters so stated by the Administrative Hearing Officer.

F. Method and Form of Decision

1. The Administrative Hearing Officer shall affirm, modify or reverse the decision of the Code Official upon a determination that:
 - a. The notice of violation was served in accordance with the Code;
 - b. The provisions of the Code apply;
 - c. The Code Official has correctly interpreted the Code; and/or
 - d. The requirements of the Code cannot be adequately satisfied by other means.
2. No violation, other administrative action or imposition of a fee, charge or penalty may be sustained by the Administrative Hearing Officer except upon proof by a preponderance of the evidence.
3. The Administrative Hearing Officer may grant continuances where the Administrative Hearing Officer finds that there is practical difficulty or undue hardship and that such extension is consonant with the general purpose to secure compliance with the Code.

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4. Upon conclusion of the hearing, the Administrative Hearing Officer shall issue a determination of:
 - a. Whether or not the administrative action was taken in accordance with city ordinances, whether or not a violation occurred and the amount of the administrative monetary penalty, if applicable, for the relevant violation. Upon issuance, such decision shall constitute a final determination.
 - b. Upholding the administrative action and/or imposition of an administrative fee, charge or penalty, including the amount thereof. Upon issuance, such decision shall constitute a final determination.
5. The Administrative Hearing Officer may order abatement of the violation, impose an administrative penalty, and assess the abatement costs against the property owner.
6. For an Unsafe Structures hearing, if the Administrative Hearing Officer determines that the complaint was served in accordance with the Code; and the structure is so deteriorated or dilapidated or has become 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, the Administrative Hearing Officer shall provide findings to that effect, in writing, and shall issue an order which requires the property owner to:
 - a. Demolish and remove the structure within a prescribed period of time;
 - b. Repair and/or make safe and sanitary the structure within a prescribed period of time if the structure is capable of being made safe by repairs;
 - c. Board up the structure for future repair, subject to conditions; or
 - d. Demolish or board up for future repair a structure under construction where construction has ceased for more than two years. Boarding the structure for future repair shall not extend beyond one year, unless approved by the Administrative Hearing Officer.
7. The Administrative Hearing Officer shall prepare the hearing order at the time of the hearing.
 - a. If the property owner or the owner's legal representative appears at the hearing, the hearing order shall be personally served.
 - b. If there are no appearances, the hearing order shall be mailed by both certified mail and first class mail for Unsafe Structure cases and by 1st class mail for all other cases.
 - c. A copy of the order shall be attached to the case.

V. Case Management

- A. The Code Official shall take photos of the violation on the property in question prior to the hearing.
- B. The Code Official shall be prepared to discuss the violation and any and all documentation on the case regarding the violation.

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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 or her designee.

 _____ John Schardine, Manager Code Services Property Maintenance Unit	 _____ 3/1/2023 Date Approved
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