Title: Housing Violations

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 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 Code Division 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.

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)

H. Gender - “Words import 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. **K.S.A.** - “The abbreviation “K.S.A.” shall mean the Kansas Statutes Annotated, as amended.” (TMC 1.10.020)

L. **Number** - “Words used in the singular include the plural, and words used in the plural include the singular.” (TMC 1.10.020)

M. **Occupant** - “Any individual living or sleeping in a building, or having possession of a space within a building.” (IPMC 202)

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 deed, dedicated or otherwise permanently appropriated to the public for public use.” (IPMC 202)

S. **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)

T. **Structure** - “That which is built or constructed or a portion thereof.” (IPMC 202)

U. **Toilet Room** - “A room containing a water closet or urinal but not a bathtub or shower.” (IPMC 202)

V. **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 Code Division within his area.

B. **Documentation of Violations**
   2. Photographs shall be taken, notes from personal observations shall be made and other relevant evidence shall be collected from a place the Code Official has the legal right to be located.
      a. This can be from areas where the public has a legal right to be without consent.
      b. This can be from a public way or private property, if consent is established.
      c. The Code Official shall seek to obtain written approval from the owner or occupant of a premises having a violation prior to entering any part of that premises where he does not have a legal right to be without consent.
      d. If consent cannot be established, the Code Official shall determine if an Administrative Search Warrant is required to legally enter the property.
         i. An Administrative Search Warrant is not required if the property is vacant and unsecure, unless it has “No Trespassing” signs or locked gates.
         ii. An Administrative Search Warrant is not required if the property is abandoned, unless it has “No Trespassing” signs.
   3. The Code Official shall document his personal observations, as appropriate.
C. Opening a New Case
   1. The Code Official shall open a new housing violation case in the database.
      a. 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.
      b. 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.
   2. 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
   2. If a door hanger is utilized, the Code Official shall take one up-close photograph of the
      door hanger and a second photograph of the door hanger and the background of the
      posting for identification purposes.
   3. If a door hanger was utilized or the property is being monitored, the Code Official shall
      re-inspect the property following the date specified.
      a. If the violation has been abated or no longer exists, the Code Official shall take
         photographs of the current condition of the property and close the case. The
         photographs shall be submitted as evidence to justify closing the case.
      b. If the violation still exists, the Code Official shall take photographs of the current
         condition of the property and attach them to the case. The photographs shall be
         used as evidence when generating a written notice of violation.

E. Courtesy Notice
   1. Due to winter weather, starting on November 1st of each year, Administrative Staff
      shall generate a courtesy notice in lieu of a notice of violation for 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 abate the violation in the time
         period specified in the courtesy notice.
         i. Courtesy notices generated during the month of November will give the
            property owner 120 days to abate the violation.
ii. Courtesy notices generated during the month of December will give the property owner 110 days to abate the violation.

iii. Courtesy notices generated during the month of January will give the property owner 100 days to abate the violation.

iv. Courtesy notices generated during the month of February will give the property owner 90 days to abate the violation.

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, taxpayer, purchaser under contract (PUC), loan company and resident (occupant).

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 may request an appeal hearing before an Administrative Hearing Officer.

i. The request shall be submitted to the Code Official on or before the date designated in the notice.

ii. The scope of the appeal shall be limited to the following: (1) whether the provisions of the Code apply; (2) whether the Code Official has correctly interpreted the Code; and/or (3) whether the requirements of the Code can be adequately satisfied by other means.

e. A statement that if the violation is not corrected or a hearing requested, the City may impose administrative penalties, abate the violation and assess the costs against the owner.

f. A statement advising that failure to timely comply with the notice may result in prosecution in municipal court regardless whether an administrative hearing is pending.
2. The Code Official shall determine the amount of time to be given the owner of the property to abate the housing violation, but not to exceed sixty (60) days.
   a. The date designated in the notice shall allow the amount of time given the owner of the property to abate the housing violation plus three (3) days for mailing the notice.
   b. The owner of the property shall abate the violation by the date designated in the notice.
3. Administrative Staff shall send the notice to the property owner by certified mail and first class mail.
   a. Personal service may be substituted for certified mail.
   b. A copy of the notice shall be sent by first class mail to the taxpayer, purchaser under contract (PUC), loan company and resident (occupant).
   c. If the certified mail or the first class mail that was sent to the property owner is returned and the envelope has a forwarding address, the Administrative Staff shall revise the abatement due date and resend the notice.
4. In addition to the methods identified in this procedure, but not in lieu of, the Code Official may provide notice by other means, including, but not limited to, door hangers, conspicuously posting the notice on the property, personal notification, telephone and/or various means of electronic communication.

G. Administrative Appeal Hearing
   1. 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.
   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 current condition of the property and close the case. The photographs shall be submitted as evidence to justify closing the case.
      b. If the violation has not been abated and the notice was personally served, or if the first class mail that was sent to the owner was not returned, the Code Official shall take photographs of the current condition of the property and attach them to the case. The photographs shall be used as evidence when filing 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.
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 current condition of the property and close the case. The photographs shall be submitted as evidence to justify closing the case.
   b. If the violation has not been abated, the Code Official shall take photographs of the current condition of the property and attach them to the case. The photographs shall be used as evidence when filing a Criminal Affidavit.

I. Administrative Search Warrant
   1. 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.
   2. If approved, the warrant will be signed by the assigned prosecutor and sent to the Code Official.
   3. The Code Official shall sign the warrant and send it to the assigned District Court Judge for review.
   4. 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.
   5. The Code Official may utilize the services of the Topeka Police Department and/or the Division of Animal Control to avoid conflict and disturbing the peace.
   6. The Code Official shall photograph the violation. These photographs, and any corresponding notes taken, shall be attached to the case file.
   7. At the conclusion of the warrant execution, the Code Official shall populate and sign the “return receipt” page attached to the warrant.
      a. The Code Official shall leave one copy of the warrant and the “return receipt” with the owner or occupant of the property while on scene.
      b. If the owner or occupant of the property is not available, the Code Official shall post the copy of the warrant and “return receipt” in a conspicuous place on the premises and take one up-close photograph of the warrant and a second photograph of the front of the structure with the property address and the warrant visible.
      c. The Code Official shall send the other copy of the warrant and “return receipt” to the District Court Judge.

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.

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 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.

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 Director, or his designee.

April 30, 2019

Mike Haugen
Director Property Maintenance Code Division

Date Approved