



**STRATEGIC, EQUITABLE CITY  
ENFORCEMENT OF PROPERTY  
MAINTENANCE STANDARDS –  
AN ASSESSMENT  
(SEPTEMBER 2022)**

**MAY 8 CONSULTING**

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# EXECUTIVE SUMMARY

## WHAT:

Topeka has launched an ambitious initiative to create a culture of property maintenance throughout all of its neighborhoods. The goal for this initiative is an improved and thriving city where all neighborhoods are safe and healthy, and all residents live in decent and safe homes. The focus for this report, released in the first year of this initiative, is to better understand how city government can support better property maintenance and lift up the quality of property condition through equitable and effective code enforcement.

## WHY:

Code enforcement is a critical tool to address the harms that problem properties impose on residents and their neighborhoods. Code enforcement inspectors are first responders who seek to identify unsafe and deteriorating conditions before they result in harm to people or loss of a property. Topeka seeks to enforce their laws requiring that owners keep their properties in safe and sanitary condition inside and out in a way that uses fewer government resources, is more equitable, does not burden good owners and works in partnership with community. This is particularly important as larger investors buy up the city's rental housing at an unprecedented rate and a small number of landlords are not providing a safe, sanitary place to live.

## WHO:

Creating a culture of property maintenance requires a robust partnership with non-profits, business, and community to jointly encourage, require and assist residents to improve their property condition. Extensive studies show that repairing homes improves health, protects property values, and reduces crime. In fact, one recent study found that when one home gets a structural repair such as a new roof, total crime dropped by 21.9% on the block. Home repairs can improve the health of families living in a home and reduce health care costs and reactivating long term abandoned properties restores property values to neighboring properties on the block.

## HOW:

The report details how Topeka is currently implementing code enforcement and offers 11 recommendations to make code enforcement more equitable and effective.

## FINDINGS:

Key findings of a data analysis of code enforcement efforts for the time period from 2015-2021 include:

- Property Maintenance opened approximately 50,000 code enforcement cases on 22,000 properties. 28% of the properties with cases are owned by Limited Liability Corporations (LLCs). Nine out of ten of the owners with the most cases are LLCs.
- Almost 80% of the cases are inspector initiated and focus on exterior conditions that the inspectors can see from the public right of way. A little over 20% of complaints come from tenants, neighbors, other city departments and City Council members.
- Property Maintenance conducts an average of 18,000 inspections annually – each case requires an average of three inspections. Over 60% are for weed and sanitation violations.
- Property Maintenance performed about 8000 abatements to mow high weeds or remove trash or junk from a yard. 17% of properties received more than one abatement. The city recovered 64% of abatement costs from owners.

# EXECUTIVE SUMMARY

Topeka can create a more effective, equitable code enforcement system by implementing the eleven recommendations listed below:

- 1. Create Two Alternative Enforcement Paths for Low-Income Homeowners and Chronic Violators and Strengthen Standard Enforcement.** Low-income homeowners are often the focus for code violations because many lack the resources to maintain the exterior of their homes. These owners need help to fix up their property. On the other hand, large professional landlords who are chronic violators need to know that they will be held responsible for unsafe or unsanitary conditions on their rental properties. Creating alternative enforcement paths for low-income homeowners and large rental property investment companies will help Topeka government to target limited enforcement resources to the worst offenders and assist compliance among owners who do not have the money to improve their property.
- 2. Prioritize Unsafe and Unsanitary Conditions Within Rental Properties. The city has entered and inspected less than 1% of rentals.** Yet there is a strong consensus by housing providers, landlords and community leaders that some landlords are renting illegal non-code compliant units to vulnerable tenants who may not know their rights to habitable and safe housing. Code enforcement relies upon tenant complaints to identify rental properties that are unsafe or unsanitary, because under Kansas law it is the tenant who must consent to have Property Maintenance inspectors enter the interior of the property. By removing bureaucratic requirements, strengthening protections against retaliatory eviction, partnering with nonprofits, and creating new policies to avoid tenant displacement, the city can better ensure tenants can enforce their legal right to a rental unit with adequate heat, light, and ventilation; working plumbing; secure windows and doors; and proper sanitation.
- 3. Educate Owners and Tenants About their Rights and Responsibilities and Work with the Community.** The best way to achieve compliance is to inform owners and tenants what the city's laws require so they can avoid ever receiving a violation notice. Topeka needs to ramp up the education component of its code compliance to prevent violations before they happen. All educational materials, forms, and notices should be available in Spanish and English.
- 4. Use City Abatement Resources Strategically.** The city performed 8000 abatements with public tax dollars from 2015-2021. The city can use limited abatement resources more strategically if it can respond swiftly where violations on a property with a prior abatement begin to appear, pilot owner incentives to encourage owners to abate conditions themselves and amend fee waiver policies.
- 5. Identify, Register and Take Action to Reactivate Long-Term Vacant Problem Properties.** Topeka is unsure how many long-term vacant properties there are in the city. The city does know that vacant houses attract crime, vandalism, blighting impacts and costs the city over \$30,000 more in fire, police, property maintenance and other services per city block compared to those without an abandoned house. While lack of occupancy, even for an extended period, does not by itself mean that the property is not code compliant, long-term vacancy predictably leads to neglect and decay. The city needs to identify and register its vacant properties, provide clear minimum standards for securing and protecting them and inspect abandoned properties for hazards. The city should also continue to explore whether the creation of a land bank is needed to reactivate vacant and abandoned properties.

# EXECUTIVE SUMMARY

- 6. Welcome Investment by Providing Clear Rules for Repairs an Owner Can Perform.** Investor owners are required to pay licensed contractors such as electricians and plumbers to complete the rehabilitation of a house and this increases the cost. The city should clarify rules for repairs owner can perform and those that must be completed by a licensed contractor to help small developers control costs when rehabilitating and repairing single family homes for rental.
- 7. Strengthen Data Collection and Analysis.** Having the right data can help the city to strategically direct resources to the most effective use, show a pattern of violations to the court, and measure outcomes. It also allows the city to identify the types of violations that take up the bulk of limited staff resources, to understand the timeframe for complaint inspection and enforcement and to identify who the owners are of noncompliant parcels. The city should improve their data collection to track cases by property type, owner type, enforcement approach, compliance, and other outcomes.
- 8. Update Job Descriptions for Inspectors to Lower Turnover and Improve Customer Service Skills, Hire A Housing Navigator, and Consider an Additional Support Staff Member.** Like many cities, Topeka has a shortage of code enforcement inspectors due to a tight job market, high turnover, and the lack of a comprehensive strategy for recruiting and retaining staff. In addition, it needs staff dedicated to working with owners with a financial hardship to connect them to resources and build trust with the community. The city will benefit by updating its inspector job description and adding a housing navigator position to work with owners with a financial or medical hardship.
- 9. Expand Multi-Family Common Area Fire Safety Inspections.** The Fire Department has performed voluntary inspections of the common areas of 953 multifamily buildings since 2017 to ensure that they are fire safe. This program should be institutionalized and expanded to ensure that tenants do not die unnecessarily in fires in Topeka where 82% of fires since 2002 were in residential buildings.
- 10. Transfer Tax Delinquent Vacant Properties to Responsible New Owners at Tax Sale.** Shawnee County has discretion as to whether to bring some tax-delinquent vacant Topeka properties to tax sale. It has brought 158 Topeka tax parcels to tax sale in the five tax sales held since 2016. This recommendation includes two actions that will encourage the county to bring more properties to tax sale and ensure they are bought by qualified, responsible new owners without a history of code violations.
- 11. Record Contract for Deeds as First Step to Increasing Transparency of Process that Often Harms or Defrauds Buyer.** Topeka leaders report that contracts for deed or rent-to-own contracts make up a growing segment of homebuying contracts in the city. Under a contract for deed, the owner/landlord is the seller and the tenant is the buyer. The buyer makes regular payments to the seller, but the deed does not transfer until the final payment. The challenge is that many contract for deed arrangements are set up so the buyer will never actually become owner of the property and some “sellers” are not the legal owner resulting in fraud. By requiring contract for deeds to be recorded with the County Register of Deeds, the county could take a first step to stop these abuses.

# INTRODUCTION

**Topeka has launched an ambitious initiative to create a culture of property maintenance throughout all of its neighborhoods.** This is an important five-year initiative for Topeka that requires a robust partnership with non-profits, business, and community to jointly encourage, require and assist residents to improve their property condition. The goal for this initiative is an improved and thriving city where all neighborhoods are safe and healthy, and all residents live in decent and safe homes. **The focus for this report, released in the first year of this initiative, is to better understand how city government can support better property maintenance and lift up the quality of property condition through equitable and effective code enforcement.** Code enforcement is a critical tool to address the harms that problem properties impose on residents and their neighborhoods. Code enforcement officers or inspectors are first responders who seek to identify unsafe and deteriorating conditions before they result in harm to people or loss of a property. Topeka seeks to enforce their laws requiring that owners keep their properties in safe and sanitary condition inside and out in a way that uses fewer government resources, is more equitable, does not burden good owners and works in partnership with community.

**The time for a change to the culture of property maintenance is now.** Topeka leaders view this as an urgent priority and for good reason.

- **Larger investors are buying up the city's residential properties at an unprecedented rate.** National Wall Street investors and local companies are buying up hundreds of single-family homes for rental attracted by the city's low purchase prices.<sup>1</sup> A single out of town investor purchased more than thirty multifamily properties in recent years.<sup>2</sup> In Kansas investors bought a quarter of all single-family homes that sold last year and drove up rents while often letting conditions deteriorate.<sup>3</sup> When a small set of large-scale private landlords buy up much of the city's existing low-income rental housing and keep them in disrepair, the city suffers.
- **Topeka has more houses than households.**<sup>4</sup> The city has approximately 60,000 total housing units and 54,000 households.<sup>5</sup> 72% of housing units are single-family houses and only 22% are multifamily buildings with three or more units. Multifamily buildings with more than five units offer 13,200 rental units or 28% of total rental units in the city.<sup>6</sup> The housing stock is aging with a median age of 56 years old and needs repair.<sup>7</sup>

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<sup>1</sup>Kriston Capps and Sarah Holder, Wolf of Main Street, Bloomberg US Edition (March 3, 2022). <https://www.bloomberg.com/graphics/2022-evictions-monarch-investment-rental-properties/>

<sup>2</sup>For example, Lew McGinnis and his LLC Eucalyptus Real Estate owns 10% of the city's rental stock and is known for problem-plagued apartment buildings. Oklahoma City-based real estate developer Lew McGinnis needs to answer for condition of his Topeka apartments, Editorial Advisory Board, Topeka Capital Journal (September 3, 2021) <https://www.cjonline.com/story/opinion/2021/09/03/developer-lew-mcginnis-must-answer-condition-topeka-apartments/5692637001/>.

<sup>3</sup>Tim Henderson, Investors Bought a Quarter of Homes Sold Last Year, Driving Up Rents, Stateline (July 22, 2022) (25% of homes in Kansas were bought by investors) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/22/investors-bought-a-quarter-of-homes-sold-last-year-driving-up-rents>; Geoff Rose, Differences in Urban Residential Property Maintenance by Tenure Type, March 2019; Travis, A. 2019. The Organization of Neglect: Limited Liability Companies and Housing Disinvestment. American Sociological Review, 84(1) (transition of rental property ownership from an individual owner to an LLC owner is associated with an increase in disrepair); and Fay Walker, Housing & Landlords: Using Open Data to Find Substandard Conditions, Azavea (September 26, 2019) <https://www.azavea.com/blog/2019/09/26/housing-landlords-using-open-data-to-find-substandard-conditions/> (study shows corporate owners – largely LLCs - are more likely to rent housing with unsafe or hazardous conditions, more likely to be renting without a license. For every additional LLC-owned property in a block group, there was a .86 increase in hazardous violations.)

<sup>4</sup>U.S. Census Bureau 2020 data.

<sup>5</sup>U.S. Census Bureau 2021 data. <https://www.census.gov/quickfacts/fact/table/topekacitykansas/HSG010221#HSG010221>

<sup>6</sup>U.S. Census Bureau (2016-2020). Units in Structure American Community Survey 5-year estimates. [https://censusreporter.org/data/table/?table=B25024&primary\\_geo\\_id=16000US2071000&geo\\_ids=16000US2071000,05000US20177,31000US45820,04000US20,01000US](https://censusreporter.org/data/table/?table=B25024&primary_geo_id=16000US2071000&geo_ids=16000US2071000,05000US20177,31000US45820,04000US20,01000US); Total Population in Occupied Housing Units by Tenure by Units in Structure, ACS 2020 5-year [https://censusreporter.org/data/table/?table=B25033&geo\\_ids=16000US2071000&primary\\_geo\\_id=16000US2071000#valueType|percentage](https://censusreporter.org/data/table/?table=B25033&geo_ids=16000US2071000&primary_geo_id=16000US2071000#valueType|percentage)

<sup>7</sup>2019 analysis by the Federal Reserve Bank of Philadelphia and PolicyMap found maintenance needs were highest for older properties occupied by lower-income households.

# INTRODUCTION

- **Preserving housing is critical as little new affordable housing is being built.** Repairing existing homes is a key part of Topeka's housing strategy because few "starter homes" are being built and it can cost ten times more to build a new unit than it takes to rehabilitate an existing unit. Topeka has a median household income of just \$50,000.
- **Sustaining homeownership is important to neighborhood stability and city prosperity.** Many owners will not be able to pass down their houses to the next generation without immediate repairs. 59% of housing units are owner occupied with a median value of just \$105,700. Supporting these homeowners is critical to the health of neighborhoods and the city.
- **Investment in houses is contagious.** Once investors and homeowners are comfortable rehabilitating houses knowing they will see a good return on their investment, more investment will follow.

**The challenge is clear.** A drive through many neighborhoods shows too many homes with gutters hanging or porches falling. Yards have become makeshift scrapyards in residential neighborhoods. Vacant houses and buildings dot virtually every neighborhood. These deteriorating and vacant properties increase crime, lower property values, and foster a lack of maintenance and investment.<sup>8</sup>

**By agreeing to work together to improve houses and neighborhoods, Topeka will benefit all who live, work and visit.** Extensive studies show that repairing homes reduces crime. In fact, one recent study found that when one home gets a structural repair such as a new roof, total crime dropped by 21.9% on the block.<sup>9</sup> Home repairs can improve the health of families living in a home and reduce health care costs.<sup>10</sup> They have also been found to improve children's developmental growth and kindergarten readiness.<sup>11</sup> And restoring long term abandoned properties restores property values to neighboring properties on the block.<sup>12</sup>

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Eileen Divringi, Eliza Wallace, Keith Wardrip and Elizabeth Nash, Measuring and Understanding Home Repair Costs (2019) <https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/measuring-and-understanding-home-repair-costs>; Natalia Siniavskaia, Operating Costs of Owning a Home, National Association of Home Builders (January 2021) (Maintenance costs increase with age of housing.) <https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2021/special-study-operating-costs-of-owning-a-home-january-2021.pdf>

<sup>8</sup>Financial Impact of Blight on the Tri-COG Communities, Delta Development Group (September 2013) <https://tcvcog.com/wp-content/uploads/2020/04/TCLB-Blight-Impact-Full-Report.pdf> downloaded July 26, 2022;

Vacant Land Management in Philadelphia, Greater Philadelphia Redevelopment Authority (November 2010) <https://www.may8consulting.com/vacant-land-management-in-philadelphia/> downloaded July 26, 2022.

<sup>9</sup>South EC, MacDonald J, Reina V. Association Between Structural Housing Repairs for Low-Income Homeowners and Neighborhood Crime. JAMA Netw Open. 2021;4(7):e2117067. doi:10.1001/jamanetworkopen.2021.17067

<sup>10</sup>Hayes, Elizabeth, Stable housing is a great Rx for better health, Portland study finds (Feb 29, 2016)

Pairing access to affordable housing with health care services leads to a significant reduction in Medicaid expenditures, a comprehensive new Portland study found. <https://www.bizjournals.com/portland/blog/health-care-inc/2016/02/stable-housing-is-a-great-rx-for-better-health.html> downloaded on July 26, 2022.

Turcotte DA, Alker H, Chaves E, Gore R, Woskie S., Healthy homes: in-home environmental asthma intervention in a diverse urban community, Am J Public Health. 2014 Apr;104(4):665-71. doi: 10.2105/AJPH.2013.301695. Epub 2014 Feb 13..

<sup>11</sup>Alexia Fernández Campbell, How a House Can Shape a Child's Future (June 29, 2016) <https://www.theatlantic.com/business/archive/2016/06/how-a-house-can-shape-a-childs-future/489242/> downloaded July 26, 2022.

<sup>12</sup>The Economic Case for Fixing Blight, Econsult Solutions (March 25, 2016); Strategic Property Code Enforcement and its Impacts on Surrounding Markets, Strategic Property Code Enforcement and its Impacts on Surrounding Markets, Reinvestment Fund (2014) [https://www.reinvestment.com/wp-content/uploads/2022/02/Strategic\\_Property\\_Code\\_Enforcement-Report\\_2014.pdf](https://www.reinvestment.com/wp-content/uploads/2022/02/Strategic_Property_Code_Enforcement-Report_2014.pdf) downloaded July 26, 2022.

# INTRODUCTION

**May 8 interviewed over 50 local leaders and stakeholders in defining this action plan.** There is a broad consensus that improving the good repair and maintenance of homes in Topeka is critical. Topeka leaders and residents have been extremely generous in sharing their experience with property maintenance as property owners, renters, advocates, residents, city staff and elected officials. This report is grounded in their insights, stories, and suggestions.

**May 8 also analyzed city administrative and court data for the six-year period from 2015 to 2021.** This locally provided data revealed a city that is working hard to work with owners and to cite owners who fail to fix up the exterior of their houses. From 2015-2021, there were approximately 50,000 (49,118) cases opened by Property Maintenance. Almost 80% of the cases are inspector initiated and focus on exterior conditions that the inspectors can see from the public right of way.<sup>13</sup> A little over 20% of complaints come from tenants, neighbors, other city departments and City Council members. This is notable because the number and percent of public complaints is much lower than many cities experience. For example, in Chicago from 2006-2015, 73% of complaints were initiated by neighbors or residents and tenants were far more likely to file a complaint when their rental housing had no heat, no water, holes in the walls or other living conditions that impact their health.<sup>14</sup> In Topeka, the most cited property maintenance issues are exterior sanitation and weeds violations.<sup>15</sup>

**Learning from other cities who have put in place new laws, processes, and programs to improve property maintenance will help Topeka to address problem properties effectively, equitably, and efficiently.** Throughout the country, cities are adopting and implementing new legal tools and code enforcement approaches. Topeka is currently using many of these. Several of the high impact interventions that Topeka is not using are prohibited by state law such as requiring rental licensing or proactive inspections of rental units. This assessment shares best practices from other cities that are relevant to Topeka's decision-making process. Where possible, programs from smaller peer cities guide the recommendations in this report, but often researchers who evaluate the effectiveness of code enforcement innovations look exclusively at larger cities such as Baltimore, Philadelphia, or Minneapolis. In order to take advantage of these objective evaluations of impact and feasibility, programs in these larger cities are shared. This action plan ends with a series of metrics or data points that the city can use to track the impact of changes it puts in place.

**Significantly Topeka is doing many things right to equitably and effectively enforce the Property Maintenance Code.** The city:

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<sup>13</sup>The prevalence of inspector initiated complaints found in the data may also be due to inspectors not adding the source of complaints but instead entering the data as if the inspector identified the violation. Property Maintenance is going to request that inspectors note all contacts including the source of the complaint from this point on and the city should circle back and recalculate these percentages in six months to see if that action made a difference.

<sup>14</sup>[Going Easy and Going After: Building Inspections and the Selective Allocation of Code Violations](https://journals.sagepub.com/doi/abs/10.1111/cico.12392) R Bartram City & Community 18 (2), 594-617 (2019). <https://journals.sagepub.com/doi/abs/10.1111/cico.12392>; The most frequent code violations in Chicago, for example, are insufficient heat, lack of smoke and carbon monoxide detectors, failure to keep interior walls and ceilings free from cracks and holes, insects, and issues with porch systems, windows, roofs, gutters and downspouts, and exterior walls. (Chicago Department of Buildings. 2016. "Top Ten Building Code Violations" <https://twitter.com/AMesseSupply/status/747451967782289413> Accessed June 24, 2022).

<sup>15</sup>Topeka is innovating to more effectively address tall grass, weeds, and other overgrown vegetation as a separate part of this initiative. This assessment does not provide detailed findings or recommendations on these issues.

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Has the foundational codes and laws in place that are necessary to affirmatively require owners to maintain and care for their properties including the ICC 2012 International Property Maintenance Code.

Conducts a mix of complaint driven and proactive inspections where inspectors find violations rather than relying solely on complaints..

Focuses code enforcement activity on achieving owner compliance, not punishment.

Codified their process in a series of Standard Operating Procedure memos and flow charts.

Provides legal notice to property owners of violations.

Tracks and monitors status of violations with reinspections.

Abates graffiti, sanitation, and vehicle cases routinely rather than allowing blighting conditions to remain indefinitely.

Maintains data on cases in MyGov to allow for tracking, performance assessment and understanding how limited resources are being used.

Established SeeClickFix as an easy-to-use online complaint system.

Has both a criminal court and civil Administrative Hearing process with Judges knowledgeable about code enforcement.

Offers home repair grants to some low-income homeowners with code violations they cannot afford to fix.

Has critical nonprofit partners who work with homeowners and tenants to improve their living conditions.

## CURRENT CODE ENFORCEMENT PROCESS – A BRIEF SUMMARY<sup>16</sup>

Code enforcement in Topeka depends upon the work of the city Property Maintenance and Law Departments. The Property Maintenance Department has nine inspectors, an Administrative Supervisor, a Field Supervisor, two abatement staff and three support staff when all positions are filled. (There has been significant staff turnover and difficulty replacing inspectors during the time period analyzed.) Inspectors are assigned a specific geographic district where they are responsible for proactively identifying exterior violations, responding to complaints from the

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<sup>16</sup>The City of Topeka has detailed its standard operating procedures at <https://www.topeka.org/tpd/property-maintenance-division/standard-operating-procedures/> and flowcharts at <https://www.topeka.org/tpd/flowchart/>, documenting adopted process and procedures. While these very detailed descriptions of procedures informed this assessment, this section presents a short summary of the process to provide important context for the reader.

# CURRENT CODE ENFORCEMENT PROCESS

public about interior and exterior violations, requesting and serving administrative warrants for abatement, and working with owners to understand and comply with the code. There is one exception, an inspector assigned to Special Structures Unit who deals with unsafe structures and demolitions citywide. Most cases where the owner fails to bring the property into compliance go to the City Law Department to coordinate prosecution in Municipal Court if it is a housing code violation or to file for an administrative warrant in District Court to enter private property and abate conditions where it is a sanitation or vehicles case. Where the inspector identifies a potentially unsafe structure, the owner of that property is called before an Administrative Hearing Judge to determine whether the property should be demolished under a legal guideline that repair costs to make it safe are more than 30% of the property's value as established by the county.<sup>17</sup>

Topeka's code enforcement process is well-documented. The city has many of the fundamentals in place to effectively enforce the code including a code enforcement process that can (1) properly and systematically identify code violations, (2) notify the owner of these violations, (3) track properties for compliance, and (4) act where there is not compliance.

## STEP ONE: IDENTIFYING CODE VIOLATIONS

Topeka places its violations in six different categories: Sanitation<sup>18</sup>, Weeds<sup>19</sup>, Inoperable Vehicles<sup>20</sup>, Graffiti, Housing<sup>21</sup> and Unsafe Structures<sup>22</sup>. The city identifies most code violations proactively. Almost 80% of code violations are identified by inspectors driving through the city who see exterior conditions that violate the code from the public right of way. Twenty two percent of complaints are lodged by tenants, neighbors, City Councilmembers, and other city departments. Public complaints may be received by phone, over social media (e.g., Facebook or Next Door) or through SeeClickFix, a digital complaint app that allows Topeka residents to file attributed or anonymous complaints. City staff assert that public complaints are prioritized, and they endeavor to respond to a complaint by the public within 48 hours. Data shows that there is an average of three days between complaint and inspection.<sup>23</sup> The data does not permit a distinction between complaints initiated by the inspector or the public, although most cases initiated by inspectors are inspected on the day the case is opened.

When inspectors respond to a complaint, the inspector will view what they can from the public right of way (road or sidewalk) and then if there is an identified complainant, an inspector may request access to view the potential violation from privately owned land. An inspection of the interior of a property living space must be performed with the consent of the tenant living there under Kansas law. Currently an inspector requires the tenant to provide written consent to enter and for the tenant to explicitly waive their right to "insist on an Administrative Search Warrant". Where a neighbor complains about an exterior

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<sup>17</sup>TMC 8.60.110.

<sup>18</sup>Sanitation violations include fires, trash and debris, scrap metal and stagnant water.

<sup>19</sup>Weeds violations include grass and weeds that exceed 12 inches in height. New legislation in 2022 included trees and shrubs within this violation category.

<sup>20</sup>Inoperable vehicles include vehicles parked in the yard or on unimproved surfaces on private property that are unlicensed and have missing or broken parts (flat tires, broken windshields) that make them undrivable. (Topeka Municipal Code Section 10.60.120)

<sup>21</sup>Housing violations include conditions that may cause the house to be structurally unsound or no longer weather tight against the elements. Common violations include broken roofs, gutters, and windows on the exterior or leaking ceilings or no water or electricity on the housing interior.

<sup>22</sup>Unsafe structures are unfit for human occupancy and result in a condemnation order.

<sup>23</sup>Given that for the majority of cases, the complaint is opened, and the property is inspected on the same day, it is unclear the average timeframe between a complaint from a tenant and a city response.

# CURRENT CODE ENFORCEMENT PROCESS

violation such as a backyard filled with tires, this may mean asking permission to go onto the neighbor's property to view the conditions. The inspector takes photos of all conditions that violate the code and fills out a short report at the scene. The inspector may or may not speak to the owner or tenant or leave a door hanger notifying the owner that they were at the property and found a violation. Similarly, the owner may or may not inspect the surrounding properties for violations depending upon whether the inspector has the time that day to do so. The inspector is responsible for inputting information about the cases into MyGov, the city's code enforcement database.

## STEP TWO: NOTIFYING OWNERS OF VIOLATIONS - DUE PROCESS

- **Informal or Courtesy Notice:** The inspectors may provide some owners with an informal notice of the violation through an in-person conversation, a phone call, or a door hanger – this is an advisory notice letting the owner know that a violation exists and asking them to remedy the violation. In addition, the city issues courtesy notices for peeling paint during the winter months where they give owners until the Spring to address identified violations and do not open the case for 120 days. Finally, the inspector has the discretion to “monitor” a violation without citing it. For example, where there is a couch in the front yard, the inspector may take a picture and return seven days later to see if it is still there and if so, issue a formal notice of violation. Data will not allow an analysis of how commonly informal notice is provided, because these initial contacts with owner are rarely recorded.
- **Formal Notice:** Support staff send a formal notice of violation, a legal notice that begins the enforcement period and is required under law, typically on the day after the inspection. All owners of record, and some tenants, receive a violation notice sent both by first-class and certified mail at the property address and the owner's last known address. These letters include a list of the violations, photos of the violations, the timeframe in which the violator must comply, and the consequences should they not comply. When an inspector cites multiple violations on a property, one or more violation notices are mailed to the owner for each violation. Property Maintenance may send separate violation notices because different types of violations have different compliance periods and enforcement paths. For example, a housing violation will be prosecuted in Municipal Court where the owner will face criminal misdemeanor charges. In contrast a vehicle violation will result in the city having the inoperable vehicle towed. All timeframes for the owner to act begin on the date the letter is sent rather than the date it is received. The notice of violation letter also includes the inspector's name and phone number. Many persons interviewed stated that the violation notice language is threatening and hostile in tone and does not identify the specific act that will remedy the violation. In contrast to most violations that require a separate formal notification for each case opened, weeds violations require just one postcard notice per season to alert the owner.<sup>24</sup> The City also has a separate procedure where property owners can authorize the city to immediately paint over graffiti without formal notice to the owner.

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<sup>24</sup>The one-time yearly written notice is described in IPMC 107.3 as amended by TMC 8.60.080, Section 107.3[a]7 as follows: “As authorized by K.S.A. 12-1617f, the Code Official may provide a one-time yearly written notice by mail or personal service to the owner or occupant which will permit subsequent abatement mowings without any additional notice. The notice shall also include a statement that no further notice shall be given prior to cutting or removing weeds.”

# CURRENT CODE ENFORCEMENT PROCESS

- **Where Owner Doesn't Receive Legal Notice:** Where letters are returned marked undeliverable, inspectors or support staff will attempt to find a better address using county or water utility records and resend the notice. Inspectors have limited time to research heirs should the owner have died or find an existing owner where there has been a change of address. As a result, in some cases, violation notices are sent for years to an invalid address or to an individual who is deceased.

## STEP THREE: TRACK PROPERTIES FOR COMPLIANCE

Property Maintenance performs approximately 18,000 inspections per year. Approximately half are reinspections to determine whether the owner took action to remedy the violations. The average case requires three inspections. Typically, a reinspection is performed when the time period listed in the formal notice of violation has expired, after each continuance granted by inspectors (up to one), their supervisor (as many as needed), prior to a hearing with a court, and then each time the Administrative Hearing Judge or Municipal Court provides a continuance (up to six). The inspector is available to answer questions from the owner to assist in bringing the property into compliance.

## STEP FOUR: ENFORCEMENT ACTION

Where the owner has failed to remedy the violation, the city takes one of the following three actions.

1. **Abatement:** The city has a robust abatement program. In large part this is because state law states that the city "shall" abate grass, sanitation, and vehicle violations.<sup>25</sup> Unlike housing violations, these violations are typically addressed by using the civil statutory process. To abate these exterior violations Property Maintenance staff must send a request for an administrative warrant to enter the property and abate the conditions to the prosecutor at the Law Department. The Law Department then applies for administrative warrants with the District Court each week. Property Maintenance inspectors currently serve the warrants provided by the District Court. The next step is for an abatement team that may include staff or contractors to abate the condition and charge the cost to the owner by adding these costs to the owner's property taxes. The city does not abate conditions within the home such as making emergency heating repairs. Graffiti cases are always abated, and the owner is not charged. Weeds and vegetation are addressed with a single notification each summer season and are placed on the mowing list and charged approximately \$275 per mowing that is added to the owner's tax bill. Where there is a vehicle violation, vehicles are towed at city expense and the owner of the vehicle is only asked to pay the towing and impound lot fee if they want the vehicle returned. Property Maintenance also has a Special Structures Unit for substandard structures that are unsafe and potentially need to be demolished at city expense. In 2021 there were 33 properties that were the subject of potential demolition.<sup>26</sup>

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<sup>25</sup>K.S.A. 12-1617e Abatement of Nuisances ("If the owner or agent fails to comply with the requirement of the order for a period longer than that named in the order, the city shall proceed to have the things described in the order removed and abated from the lot or parcel of ground." [http://www.kslegislature.org/li/b2021\\_22/statute/012\\_000\\_0000\\_chapter/012\\_016\\_0000\\_article/012\\_016\\_0017e\\_section/012\\_016\\_0017e\\_k/](http://www.kslegislature.org/li/b2021_22/statute/012_000_0000_chapter/012_016_0000_article/012_016_0017e_section/012_016_0017e_k/); League of Kansas City Municipalities Memorandum by Amanda Stanley to Richard Smith dated August 11, 2020 explores this issue in significant detail.

<sup>26</sup>Memorandum to Public Health and Safety Committee from Brent Trout, City Manager titled Topeka Property and Premises Enforcement and Improvement 2021 (July 23, 2021).

# CURRENT CODE ENFORCEMENT PROCESS

The current practice for collecting abatement costs is to bill the property owner for labor and time. If the property owner does not pay or set up a payment plan within 30 days, the penalty fees are sent to collections and the actual cost of the abatement is sent to taxes. The city is not permitted to send any penalties or administrative fines to taxes, only the actual costs incurred for the abatement and the cost to provide notice. After a year, the fees are also sent to collections. The lien remains on the property until the money is collected. Once sent to collections, interest may be collected.<sup>27</sup> The city spent approximately \$2.2 million on abatement actions from 2015-2021. Abatement costs were recovered from the owner 64% percent of the time.

- 2. Administrative Hearing:** Topeka has established a civil administrative hearing process to review code enforcement claims where an owner disputes the existence of the violation or that due process was provided and to decide whether an unsafe structure should be demolished.<sup>28</sup> The property owner must request the hearing within ten days of notice. The hearing officer can affirm, modify, or reverse the decision of the inspector. The Administrative Hearing Judge heard 632 cases from 2015-2021, holds approximately 178 hearings annually and 57% of these are for unsafe structures. The Administrative Hearing Judge has the power to order demolition of an unsafe structure. Where the judge orders demolition, 63% of homes are demolished by the city, 27% are demolished by the owner and 9% are rehabilitated.
- 3. Municipal Court:** Property Maintenance refers housing code violations that impact the structural integrity or health and safety of the house to a prosecutor who files the cases in Municipal Court. Where the court accepts the case, the court will provide notice to the owner/property manager to appear before the court for an arraignment and notifies the owner that they may be found guilty of a criminal misdemeanor.<sup>29</sup> A Property Maintenance staff member attends the hearings rather than an inspector. Most cases have multiple arraignments. In almost half of cases, the Judge discusses the owner's plan for repairing the violations and gives them a 60-day continuance to act. The Judge may grant up to six 60-day continuances. At the end of the six continuances, where the owner has failed to take action, the Judge can schedule a trial for 45-60 days from the last arraignment. 141 owners have gone to trial and been found guilty from 2015-2021. The Municipal Court typically will waive fines and dismiss smaller misdemeanor charges in the interest of resolving the case. Owners are responsible for paying \$200 per violation in court costs. Where a property owner fails to appear in court, the court may issue a bench warrant. Bench warrants are issued in 4% of cases (based upon MyGov data) with 312 issued between 2015-2021. Topeka does not actively serve Municipal Court bench warrants, but if an owner is stopped by police for another reason, they could be held.

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<sup>27</sup>K.S.A. 12-1,115.

<sup>28</sup>TMC 2.45. <https://topeka.municipal.codes/TMC/2.45>

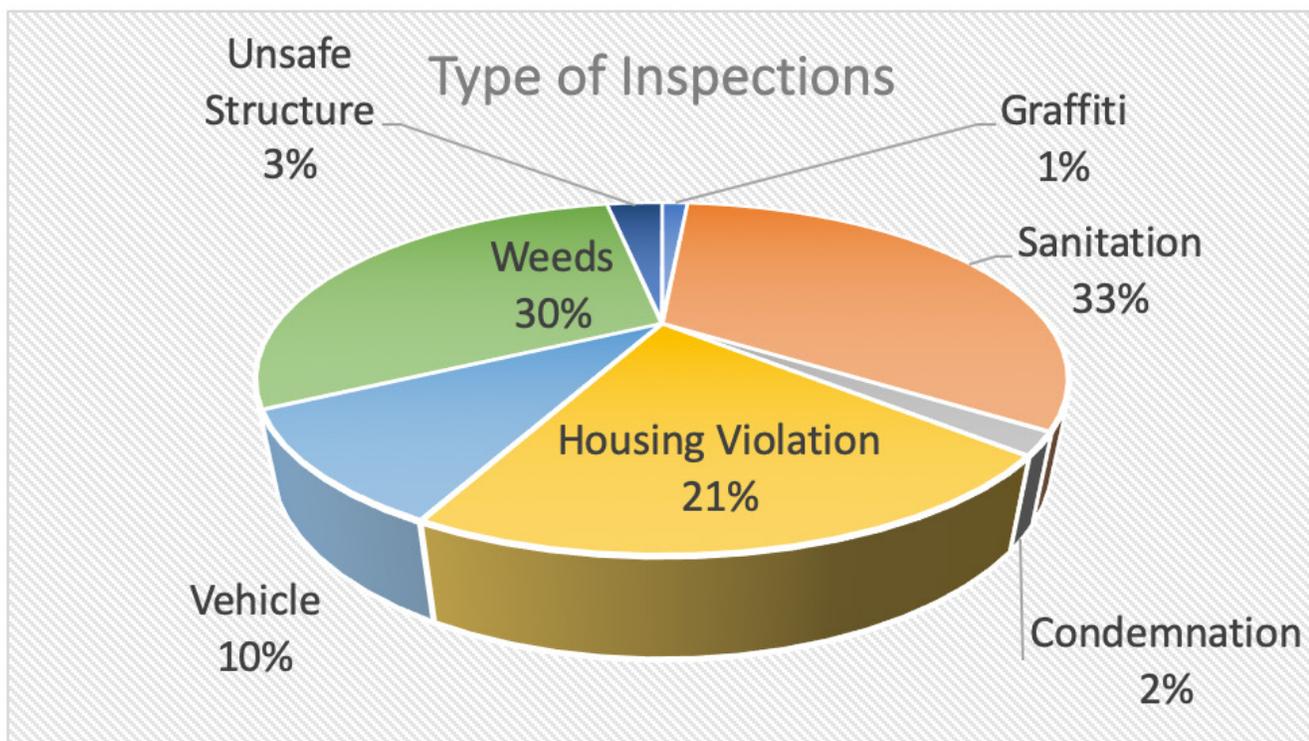
<sup>29</sup>A violation in Municipal Court is an Unclassified Misdemeanor punishable by up to 179 days in jail and \$499. TMC 1.10.070.

# CODE ENFORCEMENT BY THE NUMBERS - WHAT THE DATA TELLS US

Topeka Conducts an Average of 18,000 Inspections Annually – Half Are Inspections and Half Are Reinspections to Determine if the Owner Addressed the Violation (2015-2021)

Year	Total Inspections	Initial Inspections	Reinspections
2015	20076	10204	9872
2016	21445	10631	10814
2017	21214	11017	10197
2018	10963	7858	3105
2019	20022	10466	9556
2020	18078	9167	8911
2021	14360	7469	6891
<b>Average</b>	<b>18023</b>	<b>9545</b>	<b>8478</b>

Over 60% of Inspections Find Weed and Sanitation Violations (2015-2021)



# CODE ENFORCEMENT BY THE NUMBERS – WHAT THE DATA TELLS US

78% of Code Enforcement Cases are Department Initiated (2015-2021)

Complaint Origin	Number	Percent
Complaint by Public (Includes complaints by Councilmembers or other city departments)	14,451	22%
Dept Initiated	52,291	78%
Total	66,742	

77% of Code Enforcement Cases are Exterior Only (2015-2021)

Type Of Violation	Number	Percent
Interior	1816	2.72%
Exterior	51458	77.10%
Interior and Exterior	14376	21.54%
Total	66742	

22,000 Properties Had a Total of 49,000 Code Enforcement Cases (2015-2021)

49,000: Code Enforcement Cases

22,000: Properties with Code Enforcement Cases

# CODE ENFORCEMENT BY THE NUMBERS - WHAT THE DATA TELLS US

## A Small Percentage of LLC and Larger Owners Use a Significant Percent of Code Enforcement Resources (2015-2021)

28%:	6000 of the Properties with Cases are Owned by LLCs
100:	Properties Have >15 Code Enforcement Cases (.45% of cases with code violations)
15%:	75 Owners with Most Cases are Responsible for 15% of Cases
90%:	Top Ten Owners with Most Cases are LLCs

## Property Maintenance Performs an Average of Three Inspections Per Case to Identify Violation and Track Compliance (2015-2021)

Case Type	Average # of Inspections Per Case
Unsafe Structure	10.5
Housing Condemnation	8
Vehicle	3.4
Housing Violation	3.3
Sanitation	3.2
Graffiti	2.8
Weeds	2.1
Vacant Registry	1
Total	3.1

# CODE ENFORCEMENT BY THE NUMBERS - WHAT THE DATA TELLS US

**Average Time Between Complaint and Voluntary Compliance (Voluntary Compliance includes where Municipal Court Case Closed, Consent on File by Owner for Abatement) is 43 Days (2015-2021)**

Type	Average Time (Days)
Housing Violation	133.58
Housing Condemnation	94.44
Vehicle	33.12
Sanitation	30.59
Weeds	19.71
Graffiti	14.08
Total	43.42

**83% of Cases Achieve Voluntary Compliance by Owner (2015-2021)** (Voluntary compliance, however, does not necessarily mean an owner promptly addressed the code violation. The current definition of compliance includes cases where a municipal court closed the case or where the city abated graffiti with consent of owner.)

Type	Number Voluntary Compliance	Percent Voluntary Compliance
Graffiti	325	92%
Sanitation	15827	85%
Housing Condemn	497	100%
Housing Violation	8022	99.9%
Unsafe Structure	188	98%
Vehicle	5036	89%

# CODE ENFORCEMENT BY THE NUMBERS - WHAT THE DATA TELLS US

Weeds	11341	70%
Total	41236	83%

City Performed @8000 Abatements with 17% of Parcels Receiving More Than One. 64% of Abatement Costs (\$1.4 million out of \$2.2 million) Were Repaid (2015-2021)

Type	Total Parcels Abated by Type
Sanitation	2649
Weeds	5299
Graffiti	23
Total	7971

Abatement Type	Parcels Abated More than Once	Total Parcels Abated	Percent Parcels of Each Type Abated More Than Once
Sanitation	468	2649	18%
Weeds	889	5299	17%
Graffiti	0	23	0%
Total	1357	7971	17%

Abatement Type	Payment Received	% Paid	Collections Waived	% Collection Waived	City Waived	% City Waived	Total Fees
Graffiti	2,300.50	48%	300.86	6%	2,200.75	46%	4,802.11

# CODE ENFORCEMENT BY THE NUMBERS – WHAT THE DATA TELLS US

Sanitation	582,813.54	79%	96,072.69	13%	56,836.51	8%	735,722.74
Unsafe Structure	171,687.32	35%	220,928.44	45%	100,363.93	20%	492,979.69
Vacant Registry	20,000.00	42%	0.00	0%	27,625.00	58%	47,625.00
Weeds	631,862.66	68%	223,100.92	24%	80,407.33	9%	935,370.91
<b>Total</b>	<b>1,408,664.02</b>	<b>64%</b>	<b>540,402.91</b>	<b>24%</b>	<b>267,433.52</b>	<b>12%</b>	<b>2,216,500.45</b>

The Municipal Court found 141 owners guilty of property maintenance code violations (2015-2021).

Year	Number of Property Owners Found Guilty of Property Maintenance Code Violation
2015	10
2016	28
2017	40
2018	20
2019	27
2020	12
2021	4
<b>Total</b>	<b>141</b>

# KEY FINDINGS & RECOMMENDATIONS

This assessment identifies 11 high impact, feasible changes to law, policy and process that will make code enforcement more effective and equitable. Each of these changes is designed to place the smallest burden possible on good owners who care for their property while holding negligent, bad actors accountable.

Recommendations	Change to Law or Policy Required	Level of Impact (Low/Medium/High)	Priority for Implementation (High/Medium/Low)
1. Create Two Alternative Enforcement Paths for Low-Income Homeowners and Chronic Violators and Strengthen Standard Enforcement	Property Maintenance Dept Policy Change/Municipal Code Change/Municipal Court Policy Change	High	High
2. Prioritize Unsafe and Unsanitary Conditions Within Rental Properties	Property Maintenance Dept Policy Change/Municipal Code Change	High	High
3. Educate Owners and Tenants About their Rights and Responsibilities and Work with the Community	Collaboration	High	High
4. Use City Abatement Resources Strategically	Property Maintenance, Public Works and Community Engagement Depts Policy Changes	Medium	Medium
5. Identify, Register and Take Action to Reactivate Long-Term Vacant Problem Properties	Property Maintenance Dept Policy Change/Collaboration btw Departments	High	High
6. Welcome Investment by Providing Clear Rules for Repairs an Owner Can Perform	Development Services Policy Change/Code Clarification	Medium	Medium
7. Strengthen Data Collection and Analysis	Property Maintenance and Planning Dept Policy Changes	Medium	Medium
8. Update Job Descriptions for Inspectors to Lower Turnover and Improve Customer Service Skills, Hire A Housing Navigator, and Consider an Additional Support Staff Member	Change to City Hiring Policy/Updated Job Descriptions	High	High
9. Expand Multi-Family Common Area Fire Safety Inspections	Fire Dept Policy Change	High	High
10. Transfer Tax Delinquent Vacant Properties to Responsible New Owners at Tax Sale	Interlocal Agreement/ County legal change to "highest qualified bidder" definition	High	High

# KEY FINDINGS & RECOMMENDATIONS

11. Record Contract for Deeds as First Step to Increasing Transparency of Process that Often Harms or Defrauds Buyer	County law change	Medium	Medium
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## Recommendation One: Create Two Alternative Enforcement Paths for Low-Income Homeowners and Chronic Violators and Strengthen Standard Enforcement.

**Creating an alternative enforcement path for owners with a financial or medical hardship will help the city to achieve compliance more effectively and equitably.** The goal of Topeka code enforcement is to achieve voluntary compliance by the owner. Currently the city enforces code violations in the same way regardless of whether an owner is a low-income homeowner or a large national company with hundreds of rented properties. City staff responsible for enforcing property maintenance standards, nonprofit leaders who work with homeowners and tenants and the Judges who hear code enforcement cases in Municipal Court and at Administrative Hearing agree that there are a significant number of owners in Topeka who do not have the physical or financial capacity to maintain their properties regardless of how much they may want to do so. Judge Thadani estimates that 85% of the owners who come before the court “are indigent or too elderly to make the repairs.” Where a significant portion of property maintenance violations are due to pervasive poverty and an aging housing stock, charging owners fees or bringing them into municipal court to face criminal misdemeanor charges often achieves little.

**Properties owned by Limited Liability Corporations (LLCs) have high code enforcement case levels.** From 2015-2021 LLCs made up 28% of the owners with code enforcement cases and 9 out of 10 of the owners with the most code enforcement cases were LLCs. These large professional investors are often more difficult to hold liable for code violations at their properties, particularly when they fail to appear in court. Several studies have confirmed that absentee owners, and in particular LLCs, consistently take the worst care of their properties.<sup>30</sup> Creating alternative enforcement paths for low-income homeowners and large rental property investment companies will help Topeka government to target limited enforcement resources to the worst offenders and assist compliance among owners who do not have the money to improve their property.

## Recommendations

### 1. Alternative Path for Homeowners with a Medical or Financial Hardship

<sup>30</sup>Geoff Rose, Differences in Urban Residential Property Maintenance by Tenure Type, March 2019; Travis, A. 2019. The Organization of Neglect: Limited Liability Companies and Housing Disinvestment. American Sociological Review, 84(1) (transition of rental property ownership from an individual owner to an LLC owner is associated with an increase in disrepair).

# KEY FINDINGS & RECOMMENDATIONS

**Create an alternative enforcement path that allows homeowners with a housing violation to file a financial and medical hardship form to join a diversion program.** Low-income homeowners are often the focus for code violations because many lack the resources to maintain the exterior of their homes. Studies have shown that code violations are most likely to burden and punish poor homeowners who cannot afford the required repairs, and this is not the goal of Topeka's Property Maintenance program.<sup>31</sup> Dragging poor owners into court every sixty days for two years as happened to the Senior in the case study below harms the medically fragile owner and takes up important court resources.

- a. **City gives homeowners with a housing violation the option to file a declaration of financial and medical hardship.** Every homeowner contacted by Property Maintenance should be informed of their right to file a short financial or medical hardship form that will make them eligible for assistance and waive standard fines and penalties for housing violations. Information about the diversion program should be included with all educational materials and communications with the owner including notices of violation. A good model for this form is the Poverty Affidavit form used by the District Court in Kansas.<sup>32</sup> The city should ask owners to opt into the program because inspectors do not have the time or experience to determine who qualifies for additional help and it is important that the selection process be based on objective evidence rather than inspectors' discretion. The city should establish a clear set of eligibility criteria for hardship.
- b. **Housing Navigator works with the owner to cure housing violations under a written compliance agreement.** The city should hire a new staff member to work with owners as a Housing Navigator. This new staff person should have a background working with low-income residents and exceptional customer service skills. The Housing Navigator will work with owners who have a hardship to understand and eliminate housing violations. Where possible the Housing Navigator will work with the owner to try to identify assistance from the owner's own family, friends, or community. Where that is not available the Housing Navigator will connect the owner with existing city and nonprofit programs including the City Property Maintenance Repair Program. Where possible the Housing Navigator should also help to refer the owner to other federal or state programs for which they qualify that will offer dignity and a better quality of life. The Housing Navigator can be housed at Property Maintenance or in the Housing Services Division of the City. The advantage of the Housing Navigator being a part of Property Maintenance is better communication with inspectors and an opportunity to let owners know that Property Maintenance are not "the bad guys". The positive of the Housing Navigator working from the Housing Services is the enhanced knowledge about all existing programs including eligibility requirements.

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<sup>31</sup>Robin Bartram (2019) The Cost of Code Violations: How Building Codes Shape Residential Sales Prices and Rents, Housing Policy Debate, 29:6, 931-946, DOI: 10.1080/10511482.2019.1627567

<sup>32</sup>Poverty Affidavit, Kansas Judicial Council Website Documents <https://www.kansasjudicialcouncil.org/legal-forms/civil-actions/chapter-60/poverty-affidavit/poverty-affidavit> downloaded on July 11, 2022.

# KEY FINDINGS & RECOMMENDATIONS

- c. Non-Compliant owner will be returned to the standard enforcement process.** The Medical and Financial Hardship program is a diversion program for owners who work with the city to bring their property up to compliance. Since the owner must opt in, there is a good chance that the majority will then work with the city to do so. Where the owner does not make progress on their housing violation in up to 90 days, they will be automatically routed back into the standard enforcement track.
- d. Track success of diversion program regularly and recruit new partners.** The goal for this diversion program is compliance. It is therefore important to regularly track whether the program is achieving compliance as well as how many contacts with the housing navigator are needed, what resources are most used and what tools or interventions are most effective at moving owners towards compliance. The program should work with non-profit partners and volunteers such as Topeka Habitat who has funding to help seniors and persons with disabilities to make home repairs. At the end of a year, the city should perform an analysis of how effective this program has been and how it can be improved.
- e. Expand investment in home repair.** The City of Topeka's Property Maintenance Rehabilitation Program obtained its second \$750,000 grant from Federal Home Loan Bank of Topeka for its Property Maintenance Rehabilitation Program. This is an extraordinary opportunity to help approximately 50 households who received a notice of violation bring their property up to code within the next three years. The City's Housing Services Division administers the Property Maintenance Rehabilitation Program that provides grants from \$2,500 to \$20,000 to a homeowner who has been cited by the city with repair assistance. The grant is a lien upon the property for five years and then it is forgiven and removed. The need for this program, however, far exceeds 50 households. There is a possibility that Topeka could apply for and receive more than one such grant from the Federal Home Loan Bank every three years. Expanding the program will require more employees to develop the work scope for each house and perform quality control inspections.<sup>33</sup> The possibility of more frequent Federal Home Loan Bank grants should be further explored if it does not threaten the Federal Home Loan Bank grant for home repairs that a Topeka nonprofit receives.<sup>34</sup> In addition the city should work on increasing other available resources for home repair programs managed by the city and its nonprofit partners. Other cities have found new funding partners that include hospitals and health care systems, universities, and smaller family foundations.

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<sup>33</sup>The Federal Home Loan Bank requires that a different inspector from the one who wrote the scope of work must inspect the repairs made at the house.

<sup>34</sup>Topeka Habitat received \$630,000 from the Federal Home Loan Bank to help low-income owners over age 55 with repairs.

# KEY FINDINGS & RECOMMENDATIONS

## Case Study of a Homeowner with a Financial and Medical Hardship

An 80-year-old gentleman bought a home in 1994 for \$34,750. This 100-year-old house in the North Topeka East neighborhood is currently valued at \$29,000.

In 2018, the city sent the owner two Notices of Violation. The first cited the property for storing three inoperable vehicles in the yard. The owner was a mechanic before he retired in 2004 and continues to store cars and motorcycles in his yard in hopes of repairing them one day. He stated that he tried to keep these vehicles from being messy, but he has several “ongoing projects”. The second violation cited the property for a housing violation as the paint was peeling and the gutters on his garage were rotted. The homeowner says he was cited for other conditions as well because every time the inspector would come out, he would find a new violation.

The owner didn't repair the violations. He stated it was because he didn't have the money and was in poor health. He had retired at age 62 and in 2022 was living on approximately \$900 a month.

The city prosecuted the housing violation case in Municipal Court and for two years this gentleman was required to appear in court approximately every two months. He attended 13 arraignments from December 2019 to January 2022 with 60-day continuances granted each time. When the owner failed to appear at an arraignment in July 2020 the Judge issued a bench warrant for the owner's arrest. While the city did not go out and arrest the homeowner, the bench warrant was recorded so that if he was stopped for any reason such as a speeding ticket, he would be arrested and detained.

In 2021 an acquaintance told the homeowner that Habitat might be able to help him make necessary improvements to his house. Habitat helped him to paint his house and repair the gutters and also to lower his water bill, obtain health insurance and food stamps. Habitat also determined that he was delinquent on his property taxes and the owner is working to avoid tax foreclosure and pay the \$5000 in taxes owed.

## 2. Alternative Path for Chronic Violators

**The goal for this enforcement path is to hold chronic violators accountable for failing to comply with the city's health, safety, and anti-bligh standards.** From 2015-2021, the top 75 owners with chronic violations are responsible for 15% of cases. And most of these owners (60% of the top 50 owners with cases) are professional businesses organized under an LLC – limited liability company. These frequent offenders are currently taking up substantial inspector and court resources.

# KEY FINDINGS & RECOMMENDATIONS

**Kansas law allows the city to aggressively prosecute companies who choose not to maintain their properties and find them criminally liable.**<sup>35</sup> Companies can be found guilty of a criminal misdemeanor in Kansas. In addition, Municipal Court has the power to find owners in contempt or to order injunctive relief as a condition of probation or a plea agreement.

- a. Pass drafted ordinance to strengthen enforcement powers over LLCs.** Currently the Municipal Court does not have the power to issue a bench warrant for an LLC or collect a default judgement should the owner or property manager for the LLC not respond to a court summons. This must change. The City Attorney has drafted a well-written ordinance that allows the summons and default judgement in court for LLCs. The ordinance is modeled after state law that provides this authority to the District Court. It is a simple fix for Council to pass this ordinance and give the court the means to hold these companies responsible. Owners form LLCs to protect their personal assets so if the owner cannot pay their debts or harms a tenant due to dangerous conditions in a rental unit, the owner's homes, wages, and savings cannot be touched. As LLCs shield property owners from personal liability, they also may make it harder for courts to hold them accountable. The new ordinance will strengthen the city's ability to obtain compliance from professional landlords.
- b. Consolidate cases of chronic violators.** Consolidating the cases of chronic violators will allow the Municipal Court and Property Maintenance Department to better hold chronic violators responsible for maintaining their rental units. Owners will still receive notice for each violation as they do today. Internally, however, the Property Maintenance Department and City Law Department can stop treating each violation in isolation and routinely determine whether this owner has other pending violations at the same or other properties. The reality is that an owner with serious code violations at one building often have the same violations at their other properties yet requiring the owner to fix up one property doesn't make the other properties safer. By holding an owner liable for the entire portfolio of properties, it is possible to have a greater impact. For example, where the owner tells the court that they cannot make repairs for months due to financial capacity, but they own 50 properties that are bringing in thousands of dollars each month in rents, the Judge can see the entire pattern of violations and order quick action.

The Municipal Court and City Law Department can determine the best method to determine what the owner's entire portfolio of properties with code violations are. Property Maintenance or the Law Department can do some detective work to define the portfolio of properties as owners may hold properties under different LLCs with different registered agents and addresses. Another option is for the court to require

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<sup>35</sup>State of Kansas, v. Spencer Gifts, LLC No. 111,398. Decided: April 24, 2015. <https://caselaw.findlaw.com/ks-court-of-appeals/1698823.html>

# KEY FINDINGS & RECOMMENDATIONS

owners to submit an affidavit listing all properties that they have an ownership interest in that have a code violation during a specific timeframe. By investigating an owner's entire portfolio of properties with violations, other cities have been able to cost effectively improve the condition of hundreds of units. The key is to create a notification process that allows the city to combine violations while providing legal notice for each separate violation.

- c. Municipal Court should use injunctive relief powers to obtain compliance.** The Municipal Court that hears housing violation cases can use their injunctive relief powers to motivate chronic violators to remedy violations. In egregious cases, the most effective lever a court has is to remove the landlord's ability to collect rents on an illegal housing unit serious health and safety violations have been fixed. The courts do this by ordering all or partial rents to be placed in escrow until the serious health and safety violations are remediated. In Kansas, placing rents in escrow is used in quiet title suits where the property is rented to temporarily keep rental income until ownership is decided. When landlords are not collecting rents, it provides strong incentive to resolve code enforcement issues swiftly. The Court could establish the escrow account or could work with a nonprofit who will take responsibility for holding rental income until the serious health and safety violations are remedied. The court can also use its injunctive relief powers as part of a plea or a condition of probation to stop a landlord from leasing a unit to a new tenant until the violations are remedied to stop perpetuating a system that puts people in dangerous housing. This not only motivates the owner to make the repairs but also prevents some retaliatory evictions as the owner cannot just cycle a new tenant through the non-compliant property.
- d. Impose fines, penalties, and court costs.** Investor owners are renting Topeka properties to make a profit. Today fines for repeat offenders stop at \$250, an amount far less than it will cost to make repairs. To gain their attention, often a city must charge sufficient dollars to alter the owner's business model and make the best business decision to maintain their properties. Currently a chronic violator is fined just \$100 for the first violation and a \$100 increase for subsequent violations. Under law these fines can be accrued each day a violation is in place and the city should use that power against worst offenders.
- e. In egregious cases where owners refuse to maintain large numbers of rental properties, the city can bring a civil lawsuit.** Data analysis identified ten owners who have cost the city tens of thousands of dollars in code enforcement and abatement costs. The owners have made a business decision to only repair their properties once the city has used staff time and resources to cite them and bring them to court. Getting just the top 75 owners with the most violations to obey the law will eliminate 15% of violations. In egregious cases the city can bring a lawsuit in District Court to compel compliance and recover all costs, fines, and penalties.

# KEY FINDINGS & RECOMMENDATIONS

## Case Study of an LLC Chronic Violator

In Topeka, over 1 in 4 rental properties are owned by an LLC, a limited liability company that owners form to hold real estate and protect their assets from tenant litigation or code enforcement fines. This case study explores one LLC referred to below as LLC X.

LLC X was started by a married couple who has been purchasing and renting houses in Topeka since the 1980's and has over 100 single family homes. The couple have several LLCs that they use to buy and hold properties. The couple refused to share the names of the LLCs as "it would violate their privacy rights". Their rental homes are scattered across Topeka but are clustered in neighborhoods with low sales prices. Real estate agents routinely call the husband and wife when single family homes come onto the market to see if they are interested in purchasing more houses for rental. As large owners they can buy multiple properties at one time and can make a cash purchase allowing them to compete successfully against homeowners seeking to purchase their first house.

LLC X had 22 housing violations cases in Municipal Court between 2016 and 2021. Most of the violations were initiated by Property Maintenance inspectors and were visible from the public right of way such as a leaky roof or collapsing porch. The property manager claimed progress was being made on these violations and the Municipal Court granted six 60-day continuances. In fact, the property manager "played the system" and took no action to remedy the violations. The owners did not pay attention to what was happening because the court did not impose any fines or penalties. In time the owner fired the property manager and remedied each violation. The owner noted that there were significant health and safety issues at some properties, but the tenants did not complain due to fear of losing an affordable place to live.

### **3. Strengthen Standard Enforcement Path**

The city can take several actions to improve the effectiveness of its standard enforcement path as well. The city should create a uniform, objective standard for granting continuances, update the Notice of Violation letter and collect fines and costs from all owners who have not filed a Financial or Medical Hardship form.

- a. Define objective response times for violations that are time sensitive and involve high-risk hazards.** There are code complaints that impact the health and safety of tenants. These top priority complaints require a swift inspection from government and a rapid response by the owner. The compliance period for these types of violations should be 24 to 48 hours. Examples include structural failures, open/accessible abandoned buildings and occupied rental housing with substandard conditions such as no heat or hot water.
- b. Create a clear objective standard for granting continuances.** Currently inspectors, supervisors, the Administrative Hearing Judge, and the Municipal Court Judge can all grant continuances based upon their subjective judgment of whether it is

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warranted. Inspectors may provide one continuance, the Inspector Supervisor can currently provide as many continuances as they decide are warranted based upon their discussions with the owner, and the Municipal Court can provide up to six 60-day continuances giving an owner a full year before they must fix the violation. Right now, almost half of the time an owner appears in court they receive a continuance for an additional 60 days. Creating firm objective standards for when an owner with a housing violation is granted a continuance is easier once owners with a financial or medical hardship are placed in a diversion program. Facts warranting a continuance will be reasons such as inability to find a contractor or weather conditions. This process will add consistency, predictability and accountability to the process and significantly speed up the time it takes to resolve a code enforcement case.

- c. Update notice of violation letter.** Topekans interviewed repeatedly spoke of how the notice of violation letter left property owners feeling threatened and intimidated. Strategic code enforcement starts with the way the city informs owners that they have one or more outstanding code violations. Currently the city issues formal notices of violation that resemble law enforcement citations with legal terminology and threats of severe punishment and fines. Inspectors list the sections of the code that were violated, but the format does not explain why the violation is important, translate the specific code terms or clearly state what action the owner must take. Rewriting the violation letter so that it provides the owner with the information required under law for legal notice (and makes it easy to generate administrative warrant application if abatement is needed) but also respectfully speaks to the owner is a better approach. Topeka should revise the notice to provide a friendlier, clearer explanation of each violation, including why the violations are important to address and the actions an owner must take to resolve each violation. Community Progress conducted a survey of landlords in Gary, Indiana and found that owners' failure to fix cited violations was frequently due to confusion as to what actions were needed.<sup>36</sup> Translating terms into plain English, clearly setting out the specific actions needed to resolve the violation and setting a tone of more collaborative compliance will encourage owner action. The letter should be available in Spanish as well.
- d. Routinely assess fines, penalties, and court costs.** Once owners who have a financial or medical hardship are diverted to another enforcement path, it becomes more reasonable for remaining owners to routinely pay fines and court costs. By amending city code (TMC 2.40.010), the city can strengthen fee and fine assessment and collection policies, including the routine collection of court costs where court intervention is required before an owner agrees to comply with the law.

## Best Practices

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<sup>36</sup>Building a Strategic, Data-Driven Code Enforcement Program for Gary Indiana, Center for Community Progress Report (August 2015) [https://www.communityprogress.net/filebin/150928\\_TASP\\_Gary\\_Report\\_FINAL.pdf](https://www.communityprogress.net/filebin/150928_TASP_Gary_Report_FINAL.pdf) (Center for Community Progress found that 50% of owners taken to court for code violations in Gary Indiana just needed clarification on how to address the violation and they were able to remedy it.)

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## Homeowners with Medical or Financial Hardship

- Minneapolis has three tenant navigators on staff to work with residents living in the worst housing where code enforcement places them at risk of displacement. They help tenants understand their rights and options to obtain safer housing.<sup>37</sup>
- In Cleveland, city departments collaborate to support seniors living in housing with significant code violations and help them obtain home repair assistance or new housing to ensure that they can age in place.<sup>38</sup> In addition the Housing Court employs a Housing Court Specialist to assist a criminal defendant in locating sources of financing or grants to complete needed home repairs. Specialists assist the court by monitoring progress of work and reporting that progress to the court. They are available on a first come-first served basis, from 8:30 a.m. until 3:30 p.m., Monday through Friday. Owners interested in having a Housing Court Specialist assigned to their case, ask the Judge at the time of their first court hearing.
- Newburgh, New York, has a code enforcement officer with a social service background who is automatically assigned to cases where the violation may result in temporary or permanent displacement for tenants. The goal is to connect residents to existing resources that can mitigate the hardship caused by code violations.<sup>39</sup>
- Rochester, New York, hires former teachers, community organizers, and veterans as code enforcement officers placing the emphasis on customer service and helping owners to make the right decision and keep their property up to code. According to Gary Kirkmire, the city's commissioner of neighborhood and business development, Rochester's new emphasis on working with owners to achieve compliance means inspectors are less commonly seen as an adversarial ticket-writer and more as a diplomatic ambassador of city standards.<sup>40</sup>
- In Peoria, Illinois, each owner with a violation signs an agreement that the city posts on its website pledging that repairs will be made within 180 days. If that does not happen, the city issues a \$500 fine and goes to court.<sup>41</sup> If the violations are corrected, Peoria inspectors place a "good job" door hanger on the property. The city won an award from the International Code Council for this practice.<sup>42</sup>
- Recent research involving behavioral analysis of the code enforcement processes in New Orleans, Louisville, and Chattanooga indicated that contacting property owners earlier in advance of inspections, simplifying and providing direct calls to action in notices of violations, and proactively communicating and providing resources to previous violators, improved compliance by 14.7 percent, 3.3 percent, and 9.2 percent respectively, and provided an estimated cost savings of between 6% and 15% of each code enforcement department's budget.<sup>43</sup>

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<sup>37</sup>Presentation by Dee Dee Walker, Minneapolis Tenant Navigator, Safe and Healthy Rental Housing, Reclaiming Vacant Properties National Conference (October 3, 2019).

<sup>38</sup>Interview with Ayonna Blue Donald, Director of Cleveland Department of Building and Housing by Karen Black on December 13, 2019. (This is a cooperative effort between the City's Departments of Aging, Building and Housing, Community Development, Consumer Affairs, Public Health and Law.)

<sup>39</sup>The Power & Proximity of Code Enforcement: A Tool for Equitable Neighborhoods, Cities Rise, Ford Foundation and Hester Street (June 2019) [https://hesterstreet.org/wp-content/uploads/2019/07/CR\\_Phase-I\\_Equitable-Code-Enforcement-report\\_FINAL-JUNE-2019.pdf](https://hesterstreet.org/wp-content/uploads/2019/07/CR_Phase-I_Equitable-Code-Enforcement-report_FINAL-JUNE-2019.pdf)

<sup>40</sup>Interview with Gary Kirkmire, Commissioner of Neighborhood and Business Development by Karen Black on December 12, 2019.

<sup>41</sup>Joe Dulin, Assistant Director of Community Development, Community Progress Reinventing Vacant Properties Conference presentation titled "Code Encouragement to Support Rental Property Compliance (October 4, 2019).

<sup>42</sup>Jason Howell, 100 blocks in 100 days aims to inform homeowners, build relationships, HOIABC, (September 4, 2019) <https://hoiabc.com/2019/09/04/100-blocks-in-100-days-aims-to-inform-homeowners-build-relationships/>

<sup>43</sup>Linos, Elizabeth & Quan, Lisa & Kirkman, Elspeth. (2019). Nudging Early Reduces Administrative Burden: Three Field Experiments to Improve Code Enforcement. Journal of Policy Analysis and Management. 39. 10.1002/pam.22178.

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- In Philadelphia, hospitals and health care systems have become important home repair partners. For example, the Children Hospital of Philadelphia created the Community Asthma Prevention Program to improve the health of children with asthma. The program pays for contractors to go into the homes of patients to make fixes that decrease or eliminate asthma triggers (e.g., to repair roof or plumbing leaks, replace carpets with wood flooring, seal gaps to keep out pests). The program recently finished work on its 125th dwelling. It spends an average of \$14,000 on each house. The health care system identifies the patients to receive assistance and pays for the work to lower their health care costs and improve the health of their patients.<sup>44</sup>

## Chronic Violator Investors with Multiple Properties

- Los Angeles' Systematic Code Enforcement Program uses escrow as its primary code enforcement motivator and it works.<sup>45</sup> If a building does not come into compliance with the code, the city places the property in the Rent Escrow Account Program (REAP). REAP tenants receive a reduction in rent of up to 50% and are given the option of paying their rent into an escrow account or to the landlord.<sup>46</sup> The city records REAP as a lien on the property which is cleared only when the property owner comes into compliance with the code.<sup>47</sup>
- Rochester NY provides for a rent abatement where there are health and safety violations or dangerous and hazardous conditions that an owner failed to cure after receiving a notice of violation. There is an exception for tenant-caused damage or where the tenant denies access to their unit.<sup>48</sup>
- Philadelphia's Fair Housing Commission uses rent withholding as the primary driver to achieve landlord cooperation when the tenant alleges substandard housing conditions.<sup>49</sup>
- Portland Oregon's "enhanced enforcement" program inspects other units in the same building or the exterior of an owner's other properties after finding a unit that is "chronically out of compliance with City Code and where repairs are not made in a timely manner."<sup>50</sup> A study of this program found rental owners making 70% more improvements overall to their properties to correct violations than with inspections of individual units in response to tenant complaints.<sup>51</sup>

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<sup>44</sup>Natalie Pompilio, "Health Starts at Home", Philadelphia Citizen (July 12, 2022) downloaded [https://thephiladelphiacitizen.org/chop-asthma-program/?mc\\_cid=04f3f58605&mc\\_eid=2ccbc34c1f](https://thephiladelphiacitizen.org/chop-asthma-program/?mc_cid=04f3f58605&mc_eid=2ccbc34c1f) July 17, 2022.

<sup>45</sup>Interview with Los Angeles Chief Inspector Robert Galardi by Karen Black on November 26, 2019.

<sup>46</sup>Rent reductions for each violation are cumulative so for example highest severity is lack of hot water (20%) and lack of fire alarms (20%). Add these reductions to each other and the tenant may withhold 40% of rent. Interview with Los Angeles Chief Inspector Robert Galardi by Karen Black on November 26, 2019.

<sup>47</sup>Model Healthy Home Policies, Loyola University Chicago, <http://www.luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/Model%20Healthy%20Homes%20Policies%20HJP%20FINAL.pdf>

<sup>48</sup><https://www.cityofrochester.gov/article.aspx?id=21474850162>

<sup>49</sup>Interview with Rue Landau, Executive Director of the Philadelphia Commission on Human Relations (PCHR) and the Fair Housing Commission (FHC), by Karen Black on December 20, 2019.

<sup>50</sup>FY 2018-19 Budget Equity Assessment Tool, City of Portland Bureau of Development Services <https://www.portlandoregon.gov/BDS/article/671058>

<sup>51</sup>Rental Housing and Health Equity in Portland, Oregon: A Health Impact Assessment of the City's Rental Housing Inspections Program, Oregon Public Health Institute (September 2012) [https://ophi.org/download/PDF/RHIP%20HIA\\_Final%20Report\\_web\(2\).pdf](https://ophi.org/download/PDF/RHIP%20HIA_Final%20Report_web(2).pdf)

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- Chicago may inspect all of an owner's rental properties and schedule the cases for a single court date to show the scope of the violations. The city uses this approach when an inspection reveals serious violations at a single rental property approximately six times per year. The code enforcement agency has found this has helped motivate owners to make repairs or sell the properties.<sup>52</sup>
- Minneapolis is ramping up its portfolio-based inspections for owners who have multiple properties and multiple violations. An official there called it a "great way to manage limited resources for higher impact".<sup>53</sup>
- Cleveland Housing Court fines absentee owners of vacant and dilapidated housing \$1,000 for every day they fail to appear in court. Buffalo Housing Court enters default judgments against those who ignore summons for code violations, imposing fines of up to \$15,000, and placing a lien on the property for the amount of the fine.

## Recommendation Two: Prioritize Unsafe and Unsanitary Conditions Within Rental Properties

**The city needs tenants to file complaints to improve worse condition rental housing.** The city has entered and inspected less than 1% of rentals. Yet there is a strong consensus by housing providers, landlords and community leaders that some landlords are renting illegal non-code compliant units to vulnerable tenants with few other options who may not know their rights to habitable and safe housing, especially those with language barriers or physical disabilities. Code enforcement relies upon tenant complaints to identify rental properties that are unsafe or unsanitary, because under Kansas law it is the tenant who must consent to have Property Maintenance inspectors enter the interior of the property. In Topeka, however, tenants rarely complain.

**Over 50 leaders interviewed for this plan agreed that tenants do not complain because they fear retaliation.** This is confirmed by several studies that have found that vulnerable tenants in unsafe and unhealthy housing do not complain despite the existence of codes intended to protect people from cold, damp, and dilapidated housing.<sup>54</sup> In Topeka, quality affordable housing is scarce so for many tenants the choice is not between a house without running water and a better rental, the alternative is being homeless. Tenants' ability to move to a better unit is also limited by the need to save up first month's rent, last month's rent and a security deposit. Even where a tenant leaves due to bad conditions, it is rare that a landlord will dramatically improve conditions for the next tenant. As a result, community leaders assert that housing with significant hazards have revolving doors where one tenant leaves due to poor conditions and a new unsuspecting tenant arrives and pays their security deposit, first and last month's rent based upon repeated promises that repairs will be made.

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<sup>52</sup>Interview with Judy Frydland, Commissioner of Chicago Department of Buildings by Karen Black on December 23, 2019.

<sup>53</sup>Interview with Kellie Jones, the director of Housing Inspection Services for the City of Minneapolis on October 3, 2019.

<sup>54</sup>Elinor Chisholm, Philipa Howden-Chapman & Geoff Fougere (2020) Tenants' Responses to Substandard Housing: Hidden and Invisible Power and the Failure of Rental Housing Regulation, *Housing, Theory and Society*, 37:2, 139-161, DOI: 10.1080/14036096.2018.1538019

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## Recommendations

- 1. Remove bureaucratic requirements that deter tenants from filing code violation complaints.** The city seeks to protect tenant's rights to a safe and sanitary dwelling without risking liability for an illegal search. Currently the code inspector requires that tenant provide written consent to enter a home by officially waiving their rights and, in some circumstances, giving verbal consent to enter each room. The city should prepare a kinder consent form that explains a tenant's right to complain and tenant protections against retaliation by the landlord. Property Maintenance should also keep reports by tenants confidential where possible during the early stages of a case. There have been some reports of landlords being informed of the name of a tenant filing a complaint.
- 2. Amend retaliatory eviction law to encourage tenants to inform government when housing violates the law.** Retaliatory eviction protections serve a critical code-enforcement function. Without protection from retaliation tenants will not contact Property Maintenance as landlords can evict or raise the rents for complaining tenants. Topeka Municipal Code Chapter 9.25 recognizes that tenants hesitate to defend their right to a clean, safe and sanitary dwelling due to fear of eviction. Yet the existing law at TMC 9.25.020 has not proved effective in stopping retaliatory evictions due to practical problems with administration and the difficulty of proving landlord intent. The city should explore amendments to the law that will increase its effectiveness.

**First, the city should stop requiring a tenant to file their complaint with the police to bring criminal charges against their landlord.** The police are not the appropriate investigative body, their involvement is not required by either the state<sup>55</sup> or city law and requiring tenants to file with the police has a substantial deterrent effect. A tenant should be able to file a complaint for retaliatory eviction with Property Maintenance and allege that an eviction was threatened in whole or in part as a penalty for tenant's good faith attempt to exercise their rights and file a report to government or to the landlord whether or not they have a written lease.<sup>56</sup> Property Maintenance can then forward these cases to the prosecutor who can determine whether to prosecute the cases before the Municipal Court.

**Second, the city ordinance should be amended to shift the burden of proof to the landlord once the tenant establishes that they filed a complaint with Property Maintenance or the landlord for substandard housing conditions within a short timeframe from the threatened eviction.** Once the tenant shows this, it is up to the landlord to provide a nonretaliatory justification for the eviction.<sup>57</sup>

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<sup>55</sup>K.S.A. 58-2572 Certain Retaliatory Actions [http://www.kslegislature.org/li\\_2012/b2011\\_12/statute/058\\_000\\_0000\\_chapter/058\\_025\\_0000\\_article/058\\_025\\_0072\\_section/058\\_025\\_0072\\_k/](http://www.kslegislature.org/li_2012/b2011_12/statute/058_000_0000_chapter/058_025_0000_article/058_025_0072_section/058_025_0072_k/)

<sup>56</sup>The Uniform Residential Landlord Tenant Act of 1972 provides retaliation complaints to all tenants whether or not they have a lease and protects tenants based upon complaints to the landlord as well as governmental agencies. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101 (UNIF. L. COMM'N 1972); REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT ART. 9 (UNIF. L. COMM'N 2015) [hereinafter REV. URLTA]. The revised URLTA may also be more palatable for landlords, as it introduces punishments for tenants who make bad faith complaints and shortens the presumptive period in the original URLTA to six months.

<sup>57</sup>180 ARIZ. REV. STAT. ANN. § 33-1381 (2019) (evidence of a complaint within six months prior . . . creates a presumption that the landlord's conduct was in retaliation) <https://www.azleg.gov/ars/33/01381.htm>; MICH. COMP. LAWS, § 600.5720 (2019) (If a defendant who alleges a retaliatory termination of the tenancy shows that within 90 days before the commencement of summary proceedings the defendant attempted to secure or enforce rights against the plaintiff or to complain against the plaintiff, as provided in subsection (1)(a), (b), (c), or (e), by means of official action to or through a court or other governmental agency and the official action has not resulted in dismissal or denial of the attempt or complaint, a presumption in favor of the defense of retaliatory termination arises, unless the plaintiff establishes by a preponderance of the evidence that the termination of tenancy was not in retaliation for the acts.) [http://www.legislature.mi.gov/\(S\(qdwwvb5xofkmd40pmkhlgay\)\)/mleg.aspx?page=getObject&objectName=mcl-600-5720](http://www.legislature.mi.gov/(S(qdwwvb5xofkmd40pmkhlgay))/mleg.aspx?page=getObject&objectName=mcl-600-5720)

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The Supreme Court has upheld this approach<sup>58</sup> as have courts around the country having found that without this rebuttable presumption, the tenant's task to prove landlord intent is effectively insurmountable.<sup>59</sup> If the landlord does not introduce evidence sufficient to rebut the presumption, the court will judge in favor of the tenant. If the landlord introduced evidence of other motives for eviction (e.g., the tenant failed to pay rent), the presumption will disappear, and the tenant then has the opportunity to introduce evidence disproving the landlord's evidence.

**Third, the city and its partners will need to educate tenants of their legal right to contest a landlords' retaliatory actions.** The city should consider requiring owners to include information about the prohibition against retaliatory eviction in the lease and for Property Maintenance to again inform each tenant at the time they file a complaint.

**Fourth, the city should partner with nonprofits and community to develop a "bench" of at least three private attorneys who are ready and willing to represent tenants in asserting their claim of retaliatory eviction in court.** Retaliatory eviction cases are difficult for a tenant to prove without the assistance of a lawyer.

**3. Do not close the case when the tenant changes and rapidly refile when the property is transferred to a new owner.** Once a violation is verified, the city should reinspect and cite the property until the violation is eliminated. For tenants, the point when they have secured a safer rental and are getting ready to move out is often the moment they are willing to report serious violations that their current landlord has refused to fix to prevent future tenants from having to live in such conditions. Currently a code enforcement case is often closed when the tenant moves out. This approach stops the city from ensuring that the owner made the required repairs. Instead, the city should reinspect every valid complaint to ensure the owner acted and the property is in compliance. The new tenant can consent to letting an inspector into their unit or the city can obtain an administrative search warrant since the earlier inspection report that documented the violation with photos provides sufficient probable cause for such a warrant.

Topeka law currently requires an owner to inform any buyer of pending notice of violations or compliance orders.<sup>60</sup> Municipal Court Judges noted that some owners transfer ownership to a member of the family to avoid liability for code violations. Where the owner transfers the property to an LLC or other legal entity but continues to hold a percent ownership interest, the pending

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<sup>58</sup>McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) that says the owner would have to overcome a presumption of guilt once tenant makes a prima facie case. Analysis at [https://content.next.westlaw.com/3-517-3961?transitionType=Default&contextData=\(sc.Default\)&lrTS=20191230054147249](https://content.next.westlaw.com/3-517-3961?transitionType=Default&contextData=(sc.Default)&lrTS=20191230054147249)

<sup>59</sup>See, e.g., CONN. GEN. STAT. ANN. § 47a-20 (West 2006), as construed in Murphy v. Baez, 515 A.2d 383, 385 (Conn. Super. Ct. 1986) (citing Alteri v. Layton, 408 A.2d 18 Conn. Super. Ct. 1979)); N.J. STAT. ANN. § 2A:42-10.10, 10.12 (West 2010); Hillview Assocs. v. Bloomquist, 440 N.W.2d 867, 871 (Iowa 1989) (citing IOWA CODE §§ 562A.36, 562B.32).of a complaint within six months prior to the 95. See, e.g., Hillview, 440 N.W.2d at 871 ("In an action by or against the tenant, evidence alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation.").

<sup>60</sup>PMC 107.6 states "It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation."

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enforcement action should continue to be enforced against the owner.<sup>61</sup> Where the owner no longer has an ownership interest, the new owner should be promptly provided legal notice and a case should be automatically opened in the new owner's name and linked with the earlier case so the court can see an accurate timeframe since the initial notice of violation was issued.

- 4. Create checklist and train inspectors on procedure for inspecting interior units.** The city should adopt a clear checklist for interior inspections that all inspectors will follow to ensure for consistent standards. To encourage tenants to complain, the city may wish to limit the checklist to key health and safety issues rather than including every potential violation. For example, Baltimore created 12 health and safety items in cooperation with landlords that every unit should have and only includes these items on its interior inspection checklist.<sup>62</sup>
- 5. Develop a policy to avoid displacing tenants living in dangerous conditions.** The city needs to put a procedure in place to ensure the city does not needlessly displace tenants. The last thing anyone wants to do is force a family into homelessness. There are three alternative approaches that Topeka should consider. The first is to acknowledge that some tenants have been living in substandard conditions a long time and therefore remove a tenant very rarely and only if the property is an "imminent hazard" and instead enforce a requirement that a landlord fix the condition immediately. Defining an imminent hazard may rest with the inspector, city attorney, Administrative Hearing Judge or court. Another option is to rely upon the city's housing department to find another apartment for displaced tenants or to have the tenants work with a housing navigator to find a safe rental. Finally, the city can explore whether it wants to adopt a change in policy and obtain an administrative warrant to enter the house, abate the condition, and bill the owner.<sup>63</sup>
- 6. Require landlords to inform tenants about pending code violations.** Topeka should require an owner/landlord to inform new tenants before they sign their lease that there are existing code violations, and that Property Maintenance may need to inspect their unit to verify that the code violations have been eliminated. Just as owners must inform buyers of pending violations, so should the landlord inform the tenant who will be living there. This should make it easier for Property Maintenance when requesting consent to reinspect the unit to ensure the violation has been resolved. It also has the potential to stop the revolving door of tenants who live in substandard conditions awaiting promised repairs.
- 7. Launch a Mayor's Landlord Committee to lift up rental housing condition.** Peer pressure is a driver in some industries for all professionals to do better. This committee will call upon the expertise of landlords to shape policies and educational materials that will resonate with landlords and to use a little targeted "peer pressure" on their colleagues who for too long have rented problem plagued housing. In several interviews and focus groups landlords stressed that slumlords who rent properties unfit to live in to poor tenants give the entire industry a bad name and hurt all landlords in Topeka.

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<sup>61</sup>Code of Virginia, Title 36, Chapter 6, Article 1 Section 36-105 (C)(4). Holds owner accountable where transfers property to another entity but retains greater than 50% ownership interest.

<sup>62</sup>Baltimore City Rental License Inspection Form <https://dhcd.baltimorecity.gov/sites/default/files/dhcd/attachments/Inspection%20Checklist%20-%20Inspector%20Guidance%20Document.pdf> downloaded July 24, 2022.

<sup>63</sup>For a detailed discussion of displacement policies, see Rental Code Enforcement in Philadelphia, Pew Charitable Trusts (Nov 2021). <https://www.pewtrusts.org/-/media/assets/2021/11/rental-enforcement-in-philly.pdf>

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- 8. Coordinate with Topeka Housing Authority (THA), Police and Fire Departments to share problem property information.** Collaborate with THA, Police and Fire to share information about problem properties. This allows for information and feedback that elevates issues and stops treating each incident as a one-off violation. In interviews and focus groups the same names of bad landlords came up repeatedly often with horror stories about how a landlord cycled several families through a dangerous housing unit where wiring was hanging from the ceiling or sewage filled the basement. Where the Housing Authority discovers such an owner and no longer allows housing vouchers to be used at the owner's properties, this information is critical for the city to know. By sharing information among agencies, the city can identify problem-plagued properties sooner.
- 9. Leave flyers and educational information at multi-family buildings where violations are found to educate tenants living in similar conditions.** Education materials informing tenants of their rights should be regularly shared with tenants particularly where violations found in some units probably exist in others as well.
- 10. Partner with nonprofits and community to serve vulnerable tenants.** Working with non-profits and community leaders is a critical tool to ensure vulnerable tenants live in safe, decent conditions. Community and non-profit groups can identify and help vulnerable tenants that may be too afraid to involve the city because of their status as a recent immigrant or ex-offender. These trusted partners can help by informing tenants of their right to complain, explaining the process, and even filing the complaint so the tenant does not risk the wrath of their landlord.

## Best Practices

- Syracuse has created an internal checklist to ensure consistent inspection protocols for the interiors of housing. <http://www.innovatesyracuse.com/blog/toppilot>
- Many cities and states require a landlord to disclose code violations to tenants prior to their signing a lease. Chicago requires all landlords upon lease signing or renewal to notify tenants of any code violations for which the rental unit has been cited within the prior 12 months.<sup>64</sup> Wisconsin requires a landlord to disclose to prospective tenants violations of local building and housing codes that present a “significant threat to the prospective tenant's health or safety before entering into a new rental agreement.”<sup>65</sup> Owners who then retaliate have the burden of proof to show that this tenant did something illegal or in breach of contract. Minnesota requires a landlord to disclose any outstanding inspection orders, condemnation orders or declarations that a property is unfit prior to a tenant signing a lease or paying a security deposit.<sup>66</sup> Rhode Island requires landlords to disclose housing code violations they have been notified of but have not corrected.<sup>67</sup>

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<sup>64</sup>CHI., ILL., MUN. CODE § 5-12-100 (1990).

<sup>65</sup>91 WIS. STAT. § 704.07(2)(b); Wis. Admin. Stat. §134.04

<sup>66</sup>Minn. Stat. Ann. §504B.195

<sup>67</sup>R.I. Gen. Laws §34-18-22.1.

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- Los Angeles partnered with a community organization that agreed to visit tenants prior to an inspection and explain the law and the tenant's rights. Where the non-profit visited the tenant prior to an inspection, the inspectors gained access to 80% of homes compared to 20% of homes without this pre-visit.<sup>68</sup>
- Syracuse provides guided tours for service providers who have better access to Syracuse's refugee populations to provide "an extra pair of eyes" for dangerous and unhealthy housing conditions and help to grow trust in the code enforcement process in return for commitments that tenants will not be displaced.<sup>69</sup>
- In San Francisco, inspectors meet monthly with neighborhood groups and community leaders who have the authority to file complaints for substandard rental housing conditions and remove some of the burden from vulnerable tenants.<sup>70</sup>

## Recommendation Three: Educate Owners and Tenants about their Rights and Responsibilities and Work with the Community.

**Educating owners and tenants about common conditions that violate the code and available assistance is a critical ingredient of code compliance.** Currently Topeka does not directly offer owners or tenants any written educational materials that make clear why property maintenance is important, what conditions violate the code, what the consequences will be for failure to meet the code, what the steps are and what the timeline will be. Owners do not always fail to comply with basic property maintenance standards due to defiance or carelessness or even an inability to afford the repairs. For some, their actions may be based on a lack of knowledge that the condition is prohibited or how to remedy the violation. The best way to achieve compliance is to inform owners and tenants what the city's laws require so they can avoid ever receiving a violation notice. Topeka needs to ramp up the education component of its code compliance to prevent violations before they happen. All educational materials, forms, and notices should be available in Spanish and English.

Education and community involvement should also be the new emphasis of the Property Maintenance Department's role in Team Up to Clean Up – a program to bring resources to neighborhoods but should not leave them with hundreds of violations when the program ends. Instead, it should be used as an opportunity to point out potential violations so owners can fix them before receiving a notice of violation, remediating code violations with volunteers and generally working to ensure that owners and tenants understand their obligations to care for their properties.

Finally, education must also flow from the community to the city. When the city is defining its code enforcement priorities, it needs to speak to community members and find out which properties are inflicting the greatest harm on the neighborhood. Targeting properties that are the priority of the community both on Team Up to Clean Up days and every day puts resources where they are needed most to improve neighborhood quality of life.

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<sup>68</sup>Healthy Homes Collaborative. (2017) LA City Lead Poisoning Prevention Pilot Program.

<sup>69</sup>City to offer first guided tour to educate on home safety, mysouthsidestand.com (June 6, 2018) <https://mysouthsidestand.com/more-news/how-to-spot-a-code-violation/>

<sup>70</sup>Interview with San Francisco Deputy Director Dan Lowrey by Karen Black on January 7, 2020.

# KEY FINDINGS & RECOMMENDATIONS

## Recommendations

- 1. Draft educational materials and widely distribute.** The city should create, directly or through its partners, a series of user-friendly easy to read flyers and brochures that it can routinely share with owners, tenants and community leaders alerting them of their rights and responsibilities. Topeka doesn't have to reinvent the wheel to create these. Peer cities have great examples from which Topeka can learn. Through a mix of information in utility bills, postcards, social media, and guides on Topeka's website, Topeka can inform owners of maintenance expectations, advise them about the code enforcement process and make certain that anyone who wants to take care of their property but lacks the financial resources to do so has information about assistance programs.
- 2. Improve Team Up to Clean Up by putting community front and center.** Team Up to Clean Up is an innovative program that brings a set of standardized resources to a targeted neighborhood including code enforcement resources. Community and nonprofit leaders acknowledged its potential but noted that if Team Up to Clean Up comes to your neighborhood it means that code inspectors will perform a full proactive neighborhood sweep of exterior violations and then leave the neighborhood with hundreds of citations that owners do not have the capacity to fix. In addition, Team Up to Clean Up comes to the neighborhood with an established menu of services that will be provided rather than asking the community what their needs are. Finally, neighbors are unclear what the goals and outcomes are for this program. Team Up to Clean Up can be improved greatly by partnering with neighborhood leaders to achieve community goals, issuing warnings rather than citations and providing education and incentives to owners to maintain their properties. Like Topeka's targeted SORT<sup>71</sup> grant program or DREAMS program, the goal for this program is to provide a level of city investment to a specific neighborhood. Under the program, the focus should be on how the city can help the neighborhood make visible improvements that will have a positive impact. The city should provide neighborhood associations, property owners, and residents with information and education about violations inspectors will be looking for and when inspectors will be coming to their neighborhood in advance of a coordinated inspection. Neighbors should then be provided with a door hanger notifying them of violations rather than violation notices and give owners ample time to make repairs before an inspector returns. The city could also provide positive thank you door hangers to residents who care for their property to thank them for their contribution. The city could also consider providing incentives for owners from a coupon to the local hardware store to agreeing to bring in volunteers who will help Senior owners clean up their yard. Each neighborhood should be asked what it wants from the city and from code enforcement. If it names its top three eyesore properties, then the city can plan to abate one of those during Team Up to Clean Up to show visible and tangible signs of improvement directed by the community's needs.

## Best Practices

- Several cities have user-friendly photo-filled easy to read flyers specifying why code enforcement is important and what violations inspectors are looking for. Examples of

# KEY FINDINGS & RECOMMENDATIONS

educational materials that might serve as a model include the “Housing Code Enforcement Handbook” developed by the Montgomery County (MD) Department of Housing and Community Affairs.<sup>72</sup> Other brochures or flyers that provide information about code violations in a clear and helpful manner include a flyer from Augusta KS<sup>73</sup>, Tallahassee Florida<sup>74</sup>, Mesquite Texas in Spanish and English<sup>75</sup> and Palestine Texas brochure.<sup>76</sup>

- Minneapolis All Together Now Program is a program similar to Team Up to Clean Up but with a greater focus on community involvement. Minneapolis hired a community engagement specialist to work with the neighborhoods and residents. They also have a budget to provide education and communication to residents. Finally, they meet several times with neighborhood leaders to ask what the neighborhood needs. For example, some neighborhoods want data on property condition while others want a trash truck for a day to handle dumped trash.<sup>77</sup>

## Recommendation Four: Use City Abatement Resources Strategically

**The city performed 8000 abatements with public tax dollars from 2015-2021 and has the opportunity to abate conditions more strategically.** Property Maintenance did this using staff, two inmate crews (although only one more recently) and the Public Works Department on occasions where their equipment was needed. 5300 abatements involved mowing tall grass. Most of the remaining abatements (2649) were for sanitation – removing trash and junk from yards. To abate a sanitation violation on private property, the staff must first inspect, notify owners, give owners an opportunity for a hearing, reinspect, apply to District Court for an administrative warrant and serve the warrant. One owner of 21 parcels benefited from 105 sanitation abatements over the six years from 2015-2021. The owner died in 2019 at the age of 94 leaving those properties vacant. Owners are charged up to \$8500 for a sanitation abatement. The average balance due or unpaid amount is \$421. The District Court issued 2290 administrative warrants to enter the exterior of a property to abate one or more code violations from 2015 to 2021. 66% of these warrants were to abate sanitation violations and 32% were to remove inoperable vehicles. No warrants were requested to enter the inside of a property and abate a health and safety violation such as a broken furnace in a home that lacks heat. Topeka can improve their abatement targeting or processing to use public dollars more strategically.

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<sup>71</sup>Stages of Resource Targeting grant first awarded in 2004.

<sup>72</sup><https://www.montgomerysquare.org/file/document-page/342243645/17RbFxfHS34fOvmp.pdf>

<sup>73</sup>City of Augusta KS, Code Enforcement Explained Brochure <https://cms2files.revize.com/augustaks/Code%20Enforcement/City%20of%20Augusta%20Code%20Enforcement%20Brochure%20Version%202.pdf> downloaded July 11, 2022.

<sup>74</sup>Common Violations and Tips, Tallahassee Florida government website <https://www.talgov.com/Uploads/Public/Documents/code/commonviolations.pdf> downloaded July 11, 2022.

<sup>75</sup>City of Mesquite Texas “Is your residence up to code” Gatefold Brochure <https://www.cityofmesquite.com/DocumentCenter/View/8231/Mesquite-Code-Gatefold-3-38-final?bidId=> downloaded July 11, 2022.

<sup>76</sup>Palestine Texas “What is a Code Violation” <https://www.cityofpalestinetx.com/257/Code-Enforcement> downloaded July 11, 2022.

<sup>77</sup>Evidence-Based Policy Making: An Analysis of Six Strategies to Stabilize Neighborhoods, May 8 Consulting and Reinvestment Fund for Fannie Mae (2021) <https://www.may8consulting.com/evidence-based-policy-making-an-analysis-of-six-strategies-to-stabilize-neighborhoods/>

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## Recommendations

- 1. Respond swiftly where violations on a property with a prior abatement begin to appear.** When it is determined that the same or similar violation exists on a property within 24 months of a prior abatement, the property owner should immediately be sent a notice of violation, assessed a fee, and allowed 10 days to correct the violations. Citing the owner early encourages compliance before abatement becomes costly. The goal is to cite the owner quickly when the first tire is stacked in the front yard and not to wait until there are 80 tires that have built up once again and require costly abatement.
- 2. Pilot owner incentives program.** The city can create a series of inexpensive incentives for owners to address sanitation or vehicle violations. The goal is to give the owner capacity to abatement violations by offering free access to equipment or reduced landfill fees. There is still a cost to the city, but that cost is much lower. Some options are discussed in the best practices section.
- 3. Explore the meaning of “shall” in K.S.A. 12-1617e and determine whether a change to state law is needed to provide the city with greater discretion as to when to abate violations.** State law K.S.A. 12-1617e states that the city “shall proceed to have the things described in the order removed and abated from the lot or parcel of ground.” The city Law Department should explore whether “shall” requires the city to abate, and if so, whether there is interest in amending this law and replacing the word “shall” with “may”. Having this added flexibility will allow the city to more strategically use limited abatement resources.
- 4. Review and amend fee waiver policies.** The city should establish objective criteria that Collections, Property Maintenance, Administrative Hearing and Municipal Judges should all apply to determine whether a waiver is appropriate. Topeka spent \$2.2 million on abatements and \$1.4 million (64%) were repaid by owners from 2015-2021. Sanitation abatement costs are paid back by the owner 79% of the time, and Weeds are paid back 68% of the time. It is Unsafe Structures that has the lowest percent of owner reimbursement because the abatements typically involve demolition and the property has little value to the owner or they would not have allowed it to enter that advanced state of deterioration. Compared to other cities, this is a robust collection rate. For example, New York City tracks collections and found that it collects only about 8% of total code enforcement fines and fees imposed.<sup>78</sup> Toledo Ohio has a collection rate of less than 20%.<sup>79</sup> High Point NC has a 15% collection rate.<sup>80</sup> Much of Topeka’s success can be attributed to its ability to add abatement costs to property taxes, an effective collection method available in a minority of states such as New York and Kansas. Even with a relatively successful collection program, the diversion of owners with financial or medical hardship outside the typical enforcement route gives the city an important moment to strengthen its collection policies and limit waivers. Collections waived 24% of fees or \$540,000 from 2015-2021. The city waived 12% or \$267,000.

<sup>78</sup>Grace Ashford, Leaks, Mold and Rats: Why New York City Goes Easy on Its Worst Landlords, New York Times (Dec 26, 2018) <https://www.nytimes.com/2018/12/26/nyregion/nyc-housing-violations-landlords-tenants.html>

<sup>79</sup>Matt Kreis and Karen Black, A More Strategic, Equitable Approach to Housing and Building Code Enforcement In Toledo, Ohio (January 2021) [https://cdn.toledo.oh.gov/uploads/Toledo-Code-Enforcement-Assessment\\_Final.pdf](https://cdn.toledo.oh.gov/uploads/Toledo-Code-Enforcement-Assessment_Final.pdf)

<sup>80</sup>Chris McLaughlin, Fighting Blight with Property Tax Bills (May 16, 2017) <https://ced.sog.unc.edu/2017/05/fighting-blight-with-property-tax-bills/> downloaded July 19, 2022.

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## Best Practices

- City of Oakland CA immediately assesses fees and allows a shorter timeframe to fix violations where the same or similar violation was already abated within the last 2 years.<sup>81</sup>
- A number of municipalities offer help to give owners the capacity to abate conditions on their own. For example, Newton Kansas offers coupons to dump trash at the landfill during a specific period of time to encourage action.<sup>82</sup> Newtown also offers low-cost rental of a roll-off dumpster to encourage owners to remove bulk materials themselves like Newtown Kansas.<sup>83</sup> Cities like San Jose have established a junk pickup program where owners can make an appointment and have scrap metal and other items (other than construction debris) picked up for free.<sup>84</sup>
- Jackson County Florida has assembled a group of volunteers willing to help low-income Senior homeowners who are physically unable to perform the work needed to remove derelict cars and junk from their yard. Owners must promise to maintain the property and not fill it with junk after it has been cleared out.<sup>85</sup>

## Recommendation Five: Identify, Register and Take Action to Reactivate Long-Term Vacant Problem Properties

**Topeka is unsure how many long-term vacant properties there are in the city.** The city does know that vacant houses attract crime, vandalism, blighting impacts and costs the city over \$30,000 more in fire, police, property maintenance and other services per city block compared to those without an abandoned house.<sup>86</sup> While lack of occupancy, even for an extended period, does not by itself mean that the property is not code compliant, long-term vacancy predictably leads to neglect and decay. Signs of vacancy also invite crime and vandalism as thieves take the copper piping and wiring right out of the walls for resale as scrap. As a result, police, fire, and emergency medical personnel often must enter potentially dangerous spaces with little guidance as to structural defects or occupants.

**Most long-term vacant properties are privately owned with the city owning only 278 parcels.** On February 11, 2022, Bryson Risley, Planning Analyst with City of Topeka, visually confirmed what was on each of these 278 parcels and found that only five of these parcels are residential and have a house structure located on them. 114 are vacant without a structure but only 29 of these are potentially buildable. 98 of the total parcels are in a floodplain.

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<sup>81</sup>Private Property Complaints and Code Enforcement Services, City of Oakland Official Website <https://www.oaklandca.gov/topics/private-property-complaints--code-enforcement> downloaded July 19, 2022.

<sup>82</sup>Free Landfill Coupons, Newtown Kansas Website <https://www.newtonkansas.com/departments/public-works/trash-recycling/free-landfill-coupons> downloaded July 13, 2022; Bulky Waste Coupons are Back, Sedwick

County Press Release (July 18, 2014) <https://www.sedgwickcounty.org/communications/news-releases/bulky-waste-coupons-are-back/>.

<sup>83</sup>Roll-Off Dumpster Rental, Newtown Kansas website <https://www.newtonkansas.com/departments/public-works/trash-recycling/roll-off-dumpster-rental> downloaded July 13, 2022.

<sup>84</sup>Junk Pickup, City of San Jose Website Page under Recycling and Garbage <https://www.sanjoseca.gov/your-government/environment/recycling-garbage/junk-pickup> downloaded July 13, 2022.

<sup>85</sup>Deborah Buckhalter, Help offered for struggling Jackson County code violators JCFloidian May 28, 2020. [https://www.dothaneagle.com/jcfloridan/news/local/help-offered-for-struggling-jackson-county-code-violators/article\\_8f2e7db9-4414-5056-aa8a-27177d3fa5af.html](https://www.dothaneagle.com/jcfloridan/news/local/help-offered-for-struggling-jackson-county-code-violators/article_8f2e7db9-4414-5056-aa8a-27177d3fa5af.html)

<sup>86</sup>Corinne Bannon and Erica Wilt, Effects of Abandoned Housing on Communities Research Report for the City of Topeka (June 2016).

# KEY FINDINGS & RECOMMENDATIONS

The city attempted to obtain a good list of vacant properties to allow for better monitoring for squatters, fires, criminal activity, and other harmful activities through the passage of a vacant property registry law and the hiring of a for-profit, out of town company to identify vacant properties. The vendor, Pro Champs, failed to identify these properties well citing many owners of seasonal properties in good condition or with temporary vacancies. Pro Champs did allow the city for the first time to identify properties in mortgage foreclosure and insist that lenders care for their properties. This is extremely important because where lenders foreclose on a property there is typically a period of disinvestment before the property passes to a new owner, where it is important to ensure the lender will take responsibility for maintaining and securing the property. Significantly, a 2019 study found that having a vacant property registration ordinance in place halved the negative impact of a foreclosure on surrounding properties by requiring owners to maintain those properties.<sup>87</sup> The city has also discussed the possibility of establishing a land bank under Kansas state law to hold, manage and sell publicly owned vacant properties but has not taken action to date. Currently the only method to obtain a property that is long-term vacant and a nuisance is through purchase or county tax sale where a property is also tax delinquent. The county does not take many vacant delinquent properties to tax sale each year. The county sold 103 Topeka residential properties between 2016-2021 for an average sale price of \$8,465. This represented 13% of all tax delinquent residential properties.<sup>88</sup>

## Recommendations

This assessment recommends a two-part action plan for identifying and taking action to reactivate vacant properties. Topeka has relatively few vacant and abandoned properties in city ownership. Currently the city has only five parcels with structures and 29 potentially buildable lots. Before establishing a land bank, the city may be better served by trying the more limited interventions detailed below to test their effectiveness.

- 1. Initially, identify vacant properties and enforce vacant property registry law.** The city needs to continue its efforts to create a good list of vacant properties using its vacant property registry law<sup>89</sup> and collaborating between community groups, city departments and residents. Nationally, hundreds of cities, counties, and towns have adopted vacant-property registration ordinances (VPROs) that require owners of vacant properties to register them with their municipalities and maintain the properties in accordance with local codes.<sup>90</sup> VPROs help local government identify owners, track property condition to ensure the safety of surrounding properties and first responders, and finance proactive efforts to ensure the properties remain up to code through an annual fee to cover costs of regular inspections and complaint response. Topeka's initial effort to outsource this function failed but the city should work to register vacant properties and create an accurate list.

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<sup>87</sup>Arnab Biswas, Chris Cunningham, Kristopher Gerardi, and Daniel Sexton, Foreclosure Externalities and Vacant Property Registration Ordinances, Federal Reserve Bank of Atlanta Working Paper 2019-20 (November 2019).

<sup>88</sup>Topeka Land Bank Ordinance/Pilot Discussion (pt.1) PowerPoint dated 03-15-2022 Updated, City of Topeka, sent on July 12, 2022 by Bill Flander, City of Topeka Planning and Development Department.

<sup>89</sup>Topeka Municipal Code 8.65 Registration of Vacant Properties <https://topeka.municipal.codes/TMC/8.65>

<sup>90</sup>Lee, Terranova and Immergluck, New Data on Local Vacant Property Registration Ordinances, Cityscape Volume 15, Number 2 (2013) <https://www.huduser.gov/portal/periodicals/cityscpe/vol15num2/ch22.pdf> (lists 19 Missouri municipalities with vacant property registration ordinances); Mortgage Contracting Services, Search Criteria by Ordinance Name for State of Missouri <https://www.huduser.gov/portal/periodicals/cityscpe/vol15num2/ch22.pdf> (National mortgage services company tracks standards for mortgage foreclosed properties in localities across the country.)

# KEY FINDINGS & RECOMMENDATIONS

- a. Share information on problem vacant properties among city departments.** Not only will this help to create an accurate list of vacant properties, but it will protect first responders. Vacant properties with criminal activity, squatters or fires should be prioritized for action by the city due to the dangers they present.
- b. Prioritize worst vacant properties identified by residents and community groups.** Invite residents and community leaders, the experts on their neighborhood, to identify the vacant properties that have the greatest harmful impact. The city needs to prioritize the properties that are doing the most harm to abate the nuisance, hold the owner responsible or use tax foreclosure sales to transfer the property to a new owner.
- c. Waive fee where owner agrees to bring property into compliance within six months** or the owner enters into a restoration agreement to reactivate the property within a set period of time. While the registration fee provides a needed incentive for some owners to pay attention to their property and keep it in decent condition, once an owner is actively working on the property, it may make sense to waive the fee.
- d. Methodically obtain updated, accurate ownership information.** Topeka has a property system where you are supposed to be able to look up who owns a property. Yet when an owner dies, the ownership information may not be updated. Where LLCs are the owners, they are required to register with the state and list registered agents to contact, but the registered agents change frequently, and records may reflect an agent long since gone from the company. In addition, some LLCs in Topeka have effectively gone out of business without selling the properties, leaving property ownership in limbo. The city should hire college interns to perform ownership searches like Philadelphia and Memphis have done. Research on a vacant property detailed as a case study in this report found that the city repeatedly sent notifications to a deceased owner for years without connecting with his heirs or receiving a response. That reflects more than a waste of postage, it is a waste of staff time and achieves nothing. Updated accurate ownership information is a critical tool to achieving better property maintenance.
- e. Provide clear minimum standards for securing and protecting vacant buildings.** Long term vacant properties can be code compliant so long as the properties are safely cleaned and sealed and maintained in compliance with the Property Maintenance Code and Nuisance Codes. It is important for an owner of a vacant structure to protect it from the weather and to secure it from crime and vandalism as well as rodents and other pests. A vacant building cannot survive indefinitely in a boarded-up condition, but it can be secured for a period of years. Real windows and doors on all openings are preferable but weatherproofed plywood does satisfy the law. The city should clearly set out the minimum procedures for mothballing a property and share them widely. Harlem Georgia's Vacant Property Registration and Renewal [Form](#) offers a good example and Topeka stakeholders suggested state and local forms could be quickly amended for this purpose.

# KEY FINDINGS & RECOMMENDATIONS

The city should also provide information about low cost recommendations that will improve the aesthetics of the house such as using a paint on the plywood that matches the color of the house and will deter squatters such as using bolts rather than nails to secure the boards in place. Property Maintenance reports that there are a relatively small percentage of vacant properties that are repeatedly broken into and vandalized and that become the site of crimes and fires. Through better sharing of information and collaboration between Property Maintenance and the Housing Authority and Fire and Police departments as discussed in Recommendation 2, the city should quantify these chronic nuisance properties and potentially create new more rigorous requirements to secure and maintain these properties to protect the safety of neighboring properties from continuing vandalism and trespass.

- f. Inspect long-term abandoned properties for hazards.** The city should explore the creation of a separate inspection protocol for long-term abandoned properties. Currently Property Maintenance uses the same standard to define their right to enter to inspect a long-term abandoned property as an occupied property. Yet, courts have held that there is a lower expectation of privacy in long-term abandoned properties<sup>91</sup> and the Fire Code also specifically authorizes fire safety inspectors to enter an abandoned building to safeguard life and property, imposes specific requirements as to how vacant buildings must be secured and placarded, and prohibits the accumulation of flammable materials such as waste or rubbish.<sup>92</sup> The city should work with the City Attorney to explore when and how city inspectors may enter an abandoned property to ensure that the property is secured, safe and does not pose a threat to neighboring properties.
- g. Work with County to increase transfer of vacant properties at tax sale.** Work with the county on Recommendation 11 to bring more vacant properties with delinquent taxes to tax sale where neighboring owners or qualified investors are interested in buying the property.

**2. Determine Whether a Land Bank is Needed to Reactivate Vacant Properties.** Where the actions in Step One fail to reduce the number and negative impact of vacant properties, the city should explore the creation of a land bank.<sup>93</sup> A land bank is an independent agency with authority to acquire, hold, manage, and convey abandoned, tax-foreclosed, or otherwise underutilized or distressed property in order to convert such properties to productive use. Kansas law allows the land bank to hold, maintain and manage publicly owned properties. It is up to Topeka whether the land bank will acquire properties with houses or only take vacant land. The huge benefit of a land bank is that it can acquire properties inexpensively by wiping all past due taxes without the need to go through tax sale and can transfer properties to qualified buyers for specific purposes.<sup>94</sup> Land banks are not self-financing so it will require a budget and staff.

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<sup>91</sup>The courts have held that voluntarily abandoned property cannot support a reasonable claim of privacy or possessory interests, and so there can be no “search” or “seizure” of such property in the Fourth Amendment sense. See, e.g., *Hester v. United States*, 265 U.S. 57, 58, 44 S.Ct. 445, 68 L.Ed. 898 (1924) (contraband liquor discarded in a field); *Abel v. United States*, 362 U.S. 217, 241, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960) (contents of wastebasket in vacated hotel room); and *California v. Greenwood*, 486 U.S. at 35, (trash left for collection at the curb); *State v. Brunson*, 13 Kan. App.2d 384, 394-95, 771 P.2d 938, rev. denied 245 Kan. 786 (1989) (car abandoned on golf course).

<sup>92</sup>2015 International Fire Code Section 311 Vacant Premises.

<sup>93</sup>City authorized to establish a land bank authorized in 2009 K.S.A. 12-5901 et seq.

<sup>94</sup>When a land bank acquires a property the county treasurer will remove all taxes from the tax role including assessments, charges, penalties, and interest that are due on the land. The only exception is the special assessment that is up to the city to decide whether to waive.

# KEY FINDINGS & RECOMMENDATIONS

To define whether Step One has been effective and whether a land bank is needed, the city should use the key metrics like the following:

- How many properties are publicly owned?
- Does the city seek to ramp up the pace of public acquisition of properties? Does the city seek to accept donated parcels again?
- How many of the city's vacant properties are tax delinquent? Is the county bringing a significantly higher number of vacant properties to tax sale?
- Are the tax sale properties being purchased or is the cost of ad valorem taxes prohibitive?
- Are the tax sale properties being purchased by responsible owners who reactivate the property and achieve code compliance? Does the assessed value of the properties increase in the first three years of ownership?
- How many vacant properties have substantial code enforcement liens but are tax compliant?
- How many vacant properties have interested buyers? How many properties require an entity to temporarily hold and maintain the property until demand increases?
- Is there a specific development need that the city has identified as critical that the private market is not meeting due to high land acquisition costs?

## Case Study of a Long-Term Vacant Property

A 776 square foot single-family house in North Topeka East is long-term vacant. The one-story house built in 1907 has 2-bedrooms, 1 bath and a 2,775 sq ft lot. The current owner of record bought the property in 2003 for \$14,000. Its appraised value in 2021 was \$17,760. Water service was terminated to this property in June 2003. It appears to have been vacant for almost twenty years.

The property was cited 23 times from 2015 to the present. The city mows the yard each summer, reseals doors that are left wide open when people illegally enter the house, and spent more than \$1000 for three separate abatements to remove junk and trash from the yard. The city unsuccessfully prosecuted the owner in Municipal Court when the siding began to fall off the house and windows became cracked.

On June 10, 2021, the city filed a housing case in Municipal Court. When the owner failed to appear in court, the judge issued a bench warrant. The owner, however, had passed away in February 2020. The owner left a wife and five children. The house is on the vacant registry list and the city has forwarded the property address to the Shawnee County Property Appraiser's office asking for it to be placed on the next tax sale list.

The city put substantial staff time into inspecting the property, mowing the lawn, clearing out the trash and holding arraignments for housing violations. Certified mail notice was sent to the owner at his last known Missouri address and the violation notice was posted on the property, but the letter was returned to sender and marked undeliverable. The last attempt to communicate with the owner was in April 2022 where he was sent an annual fee and penalty notice for failing to register his vacant property for \$375.

# KEY FINDINGS & RECOMMENDATIONS

## Best Practices

- Cities like Memphis Tennessee and Philadelphia Pennsylvania have used college interns to research the ownership of vacant properties where the city's information is dated and inaccurate.
- The City of Lansing Michigan's Neighborhood Enhancement Action Team (NEAT) tags and tracks vacant properties that are unsafe for habitation based on internal or external conditions. A tagged property is transferred to the NEAT program after 90 days of noncompliance. For every month that the violations are not addressed, the landlord incurs a \$150 fee. Property owners are not charged the fee if they can demonstrate progress toward habitability. This incentive has had a dramatic effect on the number of tagged properties in the city, which has steadily decreased from 740 in 2007 to 362 in 2013 (224 of which were NEAT properties).<sup>95</sup>
- Minneapolis Minnesota enters into a restoration agreement with owners of vacant or condemned properties and waives its Vacant Building Registration fee if the property is brought into code compliance within six months.<sup>96</sup>

## Recommendation Six: Welcome Investment by Providing Clear Rules for What Repairs an Owner Can Perform

**Investors in rental housing are arriving in Topeka.** The city is seeing national real estate investment companies come to build apartment complexes<sup>97</sup> and developers buying up hundreds of single-family homes for rental within the last year. These new investors tend not to “flip” houses to new homeowners since the value of these homes and buildings are too low to support a quick profit, but instead are becoming long-term investor landlords and are buying, repairing, and leasing the units out. As one developer landlord interviewed for this assessment stated, “there is a lot of money in renting to poor people.”

**Small developers identified the largest cost barrier to acquiring and leasing single family houses as the price and availability of licensed contractors to perform roofing, electrical and plumbing work. Investor owners are required to obtain building permits and to use licensed contractors such as electricians and plumbers to complete the rehabilitation of the unit and to bring it up to code.**<sup>98</sup> Several owners stated that the rehabilitation cost climbs considerably because of high licensed contractor bids in part due to their disinterest in working on small jobs in low-income neighborhoods. They argue that the licensed contractor requirement makes it impossible to reclaim older units in poor repair and make them available to tenants.

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<sup>95</sup>A Guide to Proactive Rental Inspection Programs, ChangeLab Solutions (2014) [https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs\\_Guide\\_FINAL\\_20140204.pdf](https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs_Guide_FINAL_20140204.pdf) downloaded July 26, 2022.

<sup>96</sup>When Investors Buy Up the Neighborhood, PolicyLink (2010) [http://estatedocbox.com/Buying\\_and\\_Selling\\_Homes/88020143-Assessment-tool-analyzing-existing-and-potential-strategies-to-prevent-irresponsible-investor-ownership-from-causing-neighborhood-decline.html](http://estatedocbox.com/Buying_and_Selling_Homes/88020143-Assessment-tool-analyzing-existing-and-potential-strategies-to-prevent-irresponsible-investor-ownership-from-causing-neighborhood-decline.html) downloaded July 26, 2022.

<sup>97</sup>For example, Denver-based Flywheel Capital, LLC, to demolish the former Holiday Inn Holidome at 605 S.W. Fairlawn and create an apartment complex on the site. Tim Hrenchir, Calling it a positive 'first step,' Topeka mayor and council OK recommended police reform moves, Topeka Capital-Journal (July 13, 2022) [https://www.cjonline.com/story/news/2022/07/13/topeka-mayor-city-council-approve-eight-police-reform-recommendations/10026724002/?utm\\_source=cjonline-DailyBriefing&utm\\_medium=email&utm\\_campaign=daily\\_briefing&utm\\_term=list\\_article\\_thumb&utm\\_content=NTCJ-KANSAS-TOPEKA-NLETTER65](https://www.cjonline.com/story/news/2022/07/13/topeka-mayor-city-council-approve-eight-police-reform-recommendations/10026724002/?utm_source=cjonline-DailyBriefing&utm_medium=email&utm_campaign=daily_briefing&utm_term=list_article_thumb&utm_content=NTCJ-KANSAS-TOPEKA-NLETTER65) downloaded July 13, 2022.

<sup>98</sup>Chapter 14, section 10.020

# KEY FINDINGS & RECOMMENDATIONS

As a result, one developer said they do not obtain permits from the city because they cannot pay high wages to contractors and make a profit. Further all work must be inspected by the city, so they argue that there is a check in place to ensure the work is done right.

**The city requirement to use licensed contractors is common across the country.** The goal is clear: to ensure houses for rental are safe and do not pose a safety risk to tenants. Certainly, the requirement raises costs, but it also ensures that the electrical wiring does not pose a fire hazard or adding a new door doesn't cause the upper floor to collapse.<sup>99</sup> In addition the requirement is not sufficient to dissuade developers from investing in Topeka residential properties as many new investors have come to Topeka within the last two years. They are buying up and renting properties because the houses and apartment buildings are inexpensive to purchase and they can make a profit even though Topeka rents are relatively low. Finally, because state law doesn't allow Topeka to systematically enter and inspect each rental unit on a periodic basis, this requirement is important to ensure the safety of tenants. For these reasons, this assessment recommends that the city clarify what work an owner can perform but do not eliminate the licensed contractor requirement.

## Recommendation

- 1. Clarify rules for repairs owner can perform and those repairs that must be completed by a licensed contractor.**

**The city can make the cost of repair more predictable and consistent by being clearer as to exactly what tasks an owner can perform themselves and which they must hire a licensed contractor to complete.** New Jersey did so recently with the express purpose of keeping costs down for the reactivation of vacant houses into affordable housing.

Another option suggested by several developers is to allow owners to perform the work but to ensure quality control with rigorous inspection protocols. The city could make this policy change, but it will increase the need for the city to perform multiple inspections for relatively small projects when it is important to inspect when the work is visible and expands the city role in eliminating dangers from unsatisfactory work.

## Best Practice

New Jersey clarified and expanded the list of items an owner can perform as "minor work or ordinary maintenance" without a permit and without using licensed contractors in order to lower the cost of the construction of affordable housing.<sup>100</sup> Owners can make most changes that do

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<sup>99</sup>San Antonio found many dangerous conditions where owners tried to do work themselves with no permits. Shari Biediger, City Targets Home Flippers and Contractors Who Sidestep Permitting, San Antonio Report (January 24, 2020) <https://sanantonioreport.org/city-targets-home-flippers-and-contractors-who-sidestep-permitting/>

<sup>100</sup>"Significant Changes to Minor Work and Ordinary Maintenance, Adopted in the March 5, 2018 New Jersey Register [https://www.nj.gov/dca/divisions/codes/alerts/pdfs/OM\\_MW\\_03052018.pdf](https://www.nj.gov/dca/divisions/codes/alerts/pdfs/OM_MW_03052018.pdf) downloaded July 17, 2022.

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not involve structural modifications, will not increase the electrical load of the home, and where there is no rearrangement of piping systems. It allows owners to perform roofing, siding, replacement of appliances and range hoods and plumbing fixtures, water heater installation, and rewiring if new wiring is the same capacity as the existing wiring. New Jersey “reassessed its requirements because it believed that the process for these smaller projects was unduly burdensome on building owners, particularly homeowners, as well as on the workload of municipal building departments without a commensurate benefit to the safety of the public.”<sup>101</sup>

## Recommendation Seven: Strengthen Data Collection and Analysis

**The city has a robust data platform called MyGov for keeping code compliance information but tracking additional data and keeping it in separate structured fields will improve the city’s ability to be strategic.** Topeka uses the database to record each complaint, inspection, violation, communication, and action intended to resolve a violation. Having the right data can help the city to strategically direct resources to the most effective use, show a pattern of violations to the court, and measure results. It also allows the city to identify the types of violations that take up the bulk of limited staff resources, to understand the timeframe for complaint inspection and enforcement and to understand who the owners are of noncompliant parcels. Currently the city does not track cases by property type, owner type, enforcement approach, compliance or other outcomes in a manner that allows for changes to improve effectiveness.

## Recommendations

- 1. Collect data on property type.** Property Maintenance currently does not classify individual properties by property type. Doing so will allow the city to identify, categorize, map, and analyze the different types of problem properties and develop a shared understanding of the scope, scale and nature of the challenge. Property types should include, at a minimum: vacant residential building; vacant commercial building; vacant lot; owner-occupied, single-family home; 1- to 4-unit rental building; 5+ unit rental building; condominium; and mixed use.
- 2. Collect data on owner type and record ownership information in structured data fields.** Topeka will also benefit from keeping information on types of owners for each property where that information is available. Property owner types should include, at a minimum: individual; partnership; corporation or LLC; bank or financial institution; and public entity. This will allow the city to track the types of owners that are responsible for code enforcement cases and the effectiveness of its efforts at achieving compliance. In addition, the city should keep information as to the specific name of the owner, property manager and their contact information in distinct structured data fields. Currently they are kept within a text field that makes a search or data analysis of this information time consuming and probably inaccurate. In addition, inspectors record ownership information with many different spellings and iterations for the same name and address all in a single field. Having ownership contact information that is easily searchable will also be important for the city to identify chronic violators and consolidate their cases for the court quickly and accurately.

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<sup>101</sup>David Matthau, So You Want to Fix It Yourself? NJ Considers Easing Permitting Rules, New Jersey 101.5 (November 28, 2017).

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- 3. Record all contacts with owners or complainants.** The data the city maintains does not tell a comprehensive story about a code enforcement case. First the source of the complaint and the method by which they file a complaint (e.g., phone call to 311) is not recorded. (Although it is important to allow for anonymous complaints.) Informal notifications to owners are not typically recorded either. City records track the last hearing date but do not record how many continuances were granted. By standardizing the recording of all contacts within MyGov, the city will obtain a truer picture of how residents are filing complaints, what actions are being taken and the timeline for doing so.
- 4. Define and record outcomes of cases clearly.** During the analysis of code enforcement data files for this report, it became clear that data regarding status and outcomes are categorized too generally. For example, cases can be counted as closed for multiple reasons, some which mean that the violation is remediated and some which do not.

Currently voluntary compliance is too broad a category making the 83% voluntary compliance figure far less meaningful. By breaking down vague categories, the city will better track the case outcomes and the approaches that are achieving compliance with the least number of staff hours, time, and expense.

## Recommendation Eight: Update Job Descriptions for Inspectors to Lower Turnover and Improve Customer Service Skills, Hire A Housing Navigator, and Consider an Additional Support Staff Member

Staffing is an issue for the Property Maintenance Department. Like many cities, Topeka has a shortage of code enforcement officers due to a tight job market, high turnover, and the lack of a comprehensive strategy for recruiting and retaining staff. In addition, it needs staff dedicated to working with owners with a financial hardship to connect them to resources and build trust with the community.

### Recommendations

- 1. Update inspector job description.** Job descriptions for code enforcement inspectors have changed over the years in many cities. In the past the goal was to find a professional who had significant expertise in building codes and construction. Little emphasis was placed on their customer service skills. As the construction industry saw extraordinary demand and local governments had difficulty competing with the private market for individuals with construction experience, many cities began to recruit individuals with good customer service skills and training them on-the-job to understand codes. While these individuals may not have the expertise to inspect new wiring installation within a house, they certainly can identify exterior conditions such as vehicles, weeds and sanitation violations that make up 80% of the inspector's current work and interior conditions such as running water, or heating. Where significant technical knowledge is needed to identify a violation, the inspector can call an inspector at the city's Development Services for a professional opinion. Topeka will benefit greatly from updating its job description to recruit and train a new generation of enforcement personnel that are both people-oriented and demographically representative of the communities they serve.

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- 2. Add housing navigator position.** Finding the right person to work with owners with a medical or financial hardship who has great customer service skills and is multi-lingual will allow many more owners to be served with dignity and assisted to bring their property up to code.
- 3. Consider adding one additional support staff position.** Other cities have found that support staff—with the proper training—can play several vital roles freeing up inspector time. Staff members can proactively reach out to the owner after the property has been inspected to gain compliance and answer questions. In Rochester, New York, tasking support staff to conduct calls to owners who receive formal or informal notice of a violation has helped to resolve up to 50% of complaints.<sup>102</sup> Interestingly, Rochester New York found that owners were more forthcoming with staff who did not have the authority to cite violations and they were therefore more successful in negotiating a resolution.

## Best Practices

The city of Rochester code enforcement officer job description prioritizes customer service skills over technical knowledge and welcomes trainees.<sup>103</sup> The city has dramatically increased its potential inspector applicant pool by recruiting former schoolteachers, veterans and community organizers. The city also prioritizes multi-lingual applicants and values diversity in an important effort to ensure that inspectors can speak with and look like the communities that they serve. The city offers a two-year, cross-training and mentorship program that pairs veteran inspectors with new trainees to receive on-the-job training and so senior inspectors can share long-term relationships to ensure continuity and consistency.<sup>104</sup>

Minneapolis has three tenant navigators on staff to work with residents living in the worst housing where code enforcement places them at risk of displacement. They help tenants understand their rights and options to obtain safer housing.

## Recommendation Nine: Expand Multi-Family Common Area Fire Safety Inspections

**The Fire Department obtained permission by owners or property managers to inspect the common areas of 953 multifamily buildings for fire safety since 2017– 693 were inspected in 2021.** In return, Fire promised to provide advisory opinions and not to issue citations. The Fire Department launched this effort because 82% of Topeka fires since 2002 are in residential buildings. While 70% are in private houses, the 26% of fires in apartments endanger dozens of tenants live in a single building. The expectation of privacy is much less in the common areas of a multi-family building than in living spaces. The Fire Department has received a good response from owners. The primary difficulty is that so many properties have been sold to new owners that the Fire Department must physically go to the property and approach the owner or manager to determine who they are and obtain permission to enter. This is a particular concern because

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<sup>102</sup>December 2019 interview with Gary Kirkmire, Commissioner of the Department of Neighborhood and Business Development in Rochester, NY.

<sup>103</sup>Code Enforcement Officer Trainee Job Description, Job\Searcher <https://jobsearcher.com/j/code-enforcement-officer-trainee-at-city-of-rochester-ny-in-rochester-ny-bOgY9xv> downloaded July 17, 2022.

<sup>104</sup>Presentation by Dee Dee Walker, Minneapolis Tenant Navigator, Safe and Healthy Rental Housing, Reclaiming Vacant Properties National Conference (October 3, 2019).

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the Fire Department would like to be able to quickly identify the owner should they arrive on the scene for a fire. In 2021, the most common violations that impact fire safety were fire doors that were blocked open on 318 occasions and fire extinguishers that were not located where they are required to be in 259 occasions.

## Recommendation

- 1. Institutionalize program and reinspect where find fire safety violations.** The Fire Department should continue and institutionalize this program and inspect the exterior and common areas of all multi-family buildings for fire safety. The first inspection should continue to be educational and informative and not result in any citations, fines, or fees. Where serious violations are found, however, the Fire Department should reinspect to ensure the violations are eliminated. While the primary goal of the inspections is public education, where dangerous conditions exist that could endanger tenants in case of fire, a reinspection is essential to ensure that fire alarms and extinguishers have been placed in appropriate positions, exit doors are clear, and fire doors will prevent the spread of fire and other commonly found violations. During the routine inspection, Fire should make a reasonable effort to obtain the owner's and/or manager's contact information (email, hard copy or phone). This data will allow the city to establish direct contact with the responsible party of the property in case of a fire.

## Best Practice

Overland Park<sup>105</sup>, Manhattan, Shawnee<sup>106</sup>, Great Bend<sup>107</sup> and many other Kansas cities routinely inspect all multi-family building exteriors and common areas to ensure they meet fire safety codes. A sample checklist for fire safety includes exits and egress, fire alarms and extinguishers and addresses displayed for first responders.<sup>108</sup>

## Recommendations Requiring a City/County Partnership

### Recommendation Ten: Transfer Tax Delinquent Vacant Properties to Responsible New Owners at Tax Sale

**Kansas law gives Shawnee County the discretion to bring a tax foreclosure action against any property where the amount of delinquent taxes is less than \$10,000 and the county brings about 150 properties to tax sale each year.**<sup>109</sup> The cost to the county to provide legal notice to owners and take all requisite steps to bring a property to foreclosure is \$242.50 per parcel. The

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<sup>105</sup><https://www.opkansas.org/city-services/police-fire-safety/police-fire-safety-licenses-permits-and-inspections/fire-inspections/>

<sup>106</sup> [https://www.cityofshawnee.org/departments/fire/i\\_want\\_to\\_request\\_an\\_inspection](https://www.cityofshawnee.org/departments/fire/i_want_to_request_an_inspection)

<sup>107</sup> <https://www.greatbendks.net/360/Fire-Inspections>

<sup>108</sup> Manhattan KS Department of Fire Services Property Maintenance Inspection Checklist <https://cityofmhk.com/DocumentCenter/View/41079/Interior-Checklist?bidId=> downloaded July 20, 2022.

<sup>109</sup>K.S.A. 79-2901. Action to Enforce Lien. Note also that this law gives the city the power to initiate a judicial tax foreclosure sale on properties that have remained delinquent for at least three years if the county fails to initiate proceedings.

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county must ensure the property is vacant or abandoned for the period of time required under law prior to foreclosure. Properties eligible for the Tax Sale have delinquent taxes of at least (3) years for homestead properties, (2) years for commercial properties and (1) year for vacant and abandoned properties.<sup>110</sup> The county also looks to maximize returns from sales and to put up properties for sale that will achieve interest from buyers and a good price. As a result, the county does not often put vacant lots up for sale. If a property does not sell, it reverts to the county.

**The City of Topeka may request that a property be offered at tax sale.** These properties must have no pending code enforcement violations. The county sold 158 tax parcels within Topeka at tax sale during the prior five tax sales beginning in 2016.<sup>111</sup> The number of Topeka parcels included within each tax sale ranged from 63 in 2016 to 12 in 2021. The law requires that properties that are offered at tax sale auction be provided to the “highest qualified bidder”.<sup>112</sup> All bidders must register with the city prior to sale. High bidders bought Topeka properties at tax sale for an average cost of \$9,850. There were 84 buyers from 2016-2021. Unfortunately, the majority of bidders who purchased multiple Topeka properties had code violations on their existing properties. Of the buyers who bought more than five properties at tax sale during this timeframe, 60% had code violation cases on other properties.<sup>113</sup> When owners with a history of failing to take care of their properties purchase additional properties at county tax sale, it perpetuates the cycle of blight.

## Recommendations

- 1. Sign City/County interlocal agreement to jointly maintain properties that fail to sell at tax sale.** Shawnee County restricts the number and type of tax delinquent properties brought to tax sale each year. A key reason is that, if there is not buyer, the county does not want to be holding and managing the properties and be responsible for code violations. Unfortunately, this means that many tax delinquent, vacant properties with blighting conditions remain in neighborhoods for years. By signing an agreement that would ensure that the city and county jointly care for any properties that fail to sell so the county does not have to worry about receiving code violation citations and taking on significant expense for maintenance, the city can encourage the county to offer more properties within the city borders.
- 2. Request that county require the “highest qualified bidder” to be code compliant on all existing properties.** The county and city’s shared goal is to ensure tax sale properties end up in the hands of “qualified” buyers with the capacity and intent to bring them up to code and pay their taxes. Shawnee County already requires all bidders to be tax compliant.<sup>114</sup> By adding a requirement that the owner not have unresolved code

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<sup>110</sup>KAN. STAT. ANN. § 79-2401a(a)(1).

<sup>111</sup>County Tax Sales were held in April 2016, April 2017, July 2018, Sept 2019, and Oct 2021.

<sup>112</sup>[https://www.snco.us/counselor/tax\\_sale.asp](https://www.snco.us/counselor/tax_sale.asp)

<sup>113</sup>There were six buyers who bought more than 5 properties. Four of these buyers have or had code violations at other residential properties. The six buyers are Aaron Yelenick (Detroit), Collins Park Investments LLC, Cory Harter/Blue Key LLC, Dennis Stafford, Ebert Roofing and Kronos Construction LLC. Underlined buyers were cited for code violations at existing properties from 2015-2021.

<sup>114</sup>Shawnee County, Kansas Tax Foreclosure Sale – Bidder Instructions [https://www.snco.us/counselor/document/Tax\\_Sale\\_Bidder\\_Instructions\\_2021.pdf](https://www.snco.us/counselor/document/Tax_Sale_Bidder_Instructions_2021.pdf) downloaded July 20, 2022.

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violations, the county will disqualify chronic violators and encourage owners to quickly bring their properties up to code compliance. The county can require the high bidder at tax sale for a Topeka property to sign an affidavit listing all properties in which they have an ownership interest and stating that they are code compliant and up to date on taxes. This affidavit can be shared with City and County staff who can verify the information within 7 days of sale. By doing so the county can curb predatory investment by making it more difficult for bad actor owners to secure additional properties to negligently manage.

## Best Practice

Roanoke VA requires bidders at tax sales to complete a Tax Sale Bidder Qualification Form prior to tax sale asserting that they have paid all outstanding taxes and fees in full, and they have remedied all code violations for any properties they own in full or in part. Prospective bidders with outstanding weed or demolition liens; inoperable vehicle, vacant, derelict or house board-up violations; court violations; and any other code violations or delinquent city taxes, will not be allowed to purchase property at tax sales.<sup>115</sup>

## Recommendation Eleven: Record Contract for Deeds as First Step to Increasing Transparency of Process that Often Harms or Defrauds Buyer

**Topeka leaders report that contracts for deed or rent-to-own contracts make up a growing segment of homebuying contracts in the city.**<sup>116</sup> Under a contract for deed, the owner/landlord is the seller and the tenant is the buyer. The buyer makes regular payments to the seller, but the deed does not transfer until the final payment. The challenge is that many contract for deed arrangements are set up so the buyer will never actually become owner of the property but instead lose their downpayment, monthly payments and money spent on home repairs if they miss a single payment.<sup>117</sup> For example, when the Pennsylvania Attorney General sued a company called Vision Property Management for its contract for deed practices, it found only 2% of the hundreds of buyers actually obtained a deed for the property. The remainder made payments for years and then lost every dollar that they put into the house.<sup>118</sup>

**Contract for deed houses are important for effective code enforcement because they are sold “as is” and are typically in poor condition and owners attempt to make buyers responsible for all code violations and repairs, but the owner remains responsible under law until the sale is complete.** The sellers also often charge predatory interest rates which Habitat staff say may be as high as 57%. Habitat is working with some owners who have been paying

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<sup>115</sup>Roanoke Virginia Bidder Qualification Program <https://www.roanokeva.gov/1386/Bidder-Qualification-Program> downloaded July 20, 2022.

<sup>116</sup>Steve Vockrodt and Laura Ziegler, Contract for Deed: The promise of homeownership that often leaves Midwest buyers out in the cold, Kansas Reflector (March 5, 2022). <https://kansasreflector.com/2022/03/05/contract-for-deed-the-promise-of-homeownership-that-often-leaves-midwest-buyers-out-in-the-cold/>

<sup>117</sup>Report of the Judicial Council Advisory Committee on 2020 H.B. 2600 – Contracts for Deed (December 11, 2020). <https://www.kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/2020%20Reports/HB%202600%20CFD%20Report.pdf> downloaded on July 6, 2022.

<sup>118</sup>Case Update: Major Victory For Pennsylvanians' Ripped Off By Vision Property Management's "Rent To Own" Scheme, PA Office of Attorney General (November 8, 2021) <https://www.attorneygeneral.gov/taking-action/case-update-major-victory-for-pennsylvanians-ripped-off-by-vision-property-managements-rent-to-own-scheme/> downloaded July 22, 2022

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for the house for over ten years or a total price that is three times the value of the house. Further Topeka leaders report that landlord/sellers often initiate contract for deed agreements with multiple tenants always ensuring that the property reverts back to them. Habitat has also witnessed four cases where the seller/owner under the contract is not a legal owner and fraud is being committed. Unlike other home sales, those sold under Contract for Deed are not typically recorded and these invisible transactions put the buyer at risk of a later transfer or lien or a fraudulent seller while also placing the reliability of public land records and the ability to provide good title in question.

## Recommendation

- 1. Require Contract for Deeds to be recorded with the County Register of Deeds for public view.** Contract for deed agreements are recognized as formal mortgages under most state jurisdictions and therefore need to be recorded to become legally binding. If the documents are not formally filed, then the buyers risk not having any legal recourse if they are treated unfairly or defrauded by individuals who are not the legal owners. This requirement will allow the city to quantify how many contracts for deeds exist and will allow inspectors and the court to hold the seller/owner is responsible for code violations until the transfer of the property is complete.

## Best Practices

States across the country require the seller to record the contract with the county recorder's office. For a detailed list see a summary of contract for deed statutes compiled by the National Consumer Law Center in 2021.<sup>119</sup>

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<sup>119</sup>Summary of State Land Contract Statutes National Consumer Law Center (April 30, 2021). <https://www.pewtrusts.org/-/media/assets/2022/02/summary-of-state-land-contract-statutes.pdf> downloaded July 22, 2022.

# METRICS FOR MONITORING SUCCESS

Topeka will benefit by adopting a series of data analysis guideposts to evaluate progress towards its goal of transparent and predictable code enforcement contributing to a culture of property maintenance in every neighborhood. Some metrics the city should routinely track to define the impact of changes to their process and law include:

<b>Metrics for Monitoring Success</b>
<b>Achieving Owner Compliance</b>
Number and percent violations resolved voluntarily by type
Number of violations resolved via abatement
Percent violations remedied without court involvement
Percent violations that require court proceedings
Number of owners who file hardship form
Number of owners with hardship who resolve voluntarily
Number of owners with hardship who receive assistance
Number of vacant properties registered
Number of residential properties with permits for renovation
Number of owners with more than 5 cases in 5 years
Number of properties with more than 3 cases in 5 years
<b>Prioritizing Health and Safety Complaints</b>
Number of fire safety inspections of multifamily property common areas
Number of complaints received from public
Number of complaints received from tenants
Number of interior inspections completed
Number of administrative warrants obtained for inspections of interior of units
<b>Timeliness</b>
Time from complaint to inspection
Time from case opened to voluntary compliance

# METRICS FOR MONITORING SUCCESS

Time from case opened to abatement
Time from court filing to court case resolved
<b>Reliable Ownership Information</b>
Number and percent of notices returned as undeliverable
Number and percent of multifamily properties with accurate owner contact info in case of fire
Percent of LLCs with up-to-date registered agent information
<b>Community and Owner Education, Engagement and Satisfaction</b>
Number of user-friendly educational materials created
Number of forms/resources that are available in Spanish
Number of community organizations that have provided information about worst properties
Number of organizations helping to improve property maintenance
<b>Financial Sustainability</b>
Percent fines collected
Percent fines waived

## CONCLUSION

Topeka has launched a critical initiative to create a Culture of Property Maintenance in the city. Code enforcement must play an integral role if it is to be a success. This assessment offers eleven recommendations to make code enforcement more effective and equitable. The goal for most of these reforms is for government, community, nonprofits, property owners and tenants to work together to lift the condition of Topeka's housing by setting clear expectations, inspecting to reasonable standards, and ensuring equitable outcomes. By doing so Topeka will become a healthier, safer city that encourages new investment and positive growth.

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