



City of Omaha  
Jean Stothert, Mayor  
Honorable President

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OMAHA, NEBRASKA

**Law Department**  
Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 804  
Omaha, Nebraska 68183-0804  
(402) 444-5115  
FAX: (402) 444-5125  
**Paul D. Kratz**  
City Attorney

and Members of the City Council,

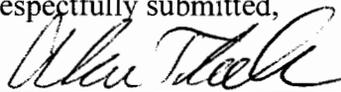
Attached is a Resolution for the approval of a Settlement Agreement and Release with the Metropolitan Omaha Property Owners Association, Inc. ("MOPOA"). This Settlement Agreement and Release will settle and dismiss a pending federal court class action lawsuit by MOPOA against the City and some code enforcement employees.

The Settlement Agreement and Release includes the following features:

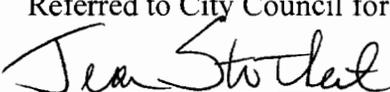
- The Settlement Agreement contemplates the Council's approval of a proposed Ordinance to amend certain code enforcement sections of Omaha Municipal Code Chapters 18, 43, and 48. The proposed Ordinance is attached to the Settlement Agreement as Exhibit A, and is also being presented separately to the City Council for approval.
- The City will adopt a standard operating procedure manual ("SOP Manual") for the City's enforcement of its property maintenance cases. The SOP Manual was developed by a task force consisting of members of the City Law Department, the City Planning Department, and MOPOA. The SOP Manual is attached as Exhibit B to the Settlement Agreement.
- A Consent Decree will be presented to the judge in the pending lawsuit, under which the judge will approve all of the terms of the settlement. The Consent Decree is attached as Exhibit C to the Settlement Agreement.
- The lawsuit will be dismissed, and the City and its employees will be released from liability.
- Plaintiff's attorneys will be paid attorneys fee of \$70,432.88, plus \$1,262.29 in expenses.

Additional information about this case has been submitted in a confidential memorandum to the City Council. The details of this case can also be discussed in executive session called to address this pending litigation. The Law Department recommends in favor of this proposed settlement. The aforesaid payment of \$71,695.17 will come from the Contingent Liability Fund No. 11114, Organization No. 122101.

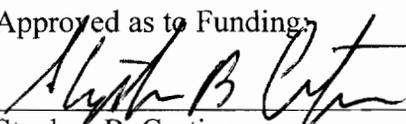
Respectfully submitted,

  
\_\_\_\_\_  
Alan M. Thelen  
Deputy City Attorney  
1-6-15  
Date

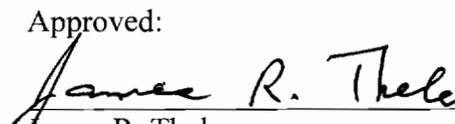
Referred to City Council for Consideration,

  
\_\_\_\_\_  
Jean Stothert  
Mayor's Office  
1/9/2015  
Date

Approved as to Funding,

  
\_\_\_\_\_  
Stephen B. Curtiss  
Finance Director  
1/9/15  
Date

Approved:

  
\_\_\_\_\_  
James R. Thele  
Planning Director  
1/7/15  
Date



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by: Metropolitan Omaha Property Owners Association, Inc. (“Plaintiff”), and the Defendants City of Omaha (“City”), Michael O. Johnson (“Johnson”), Greg Peterson (“Peterson”), and Kevin Denker (“Denker”)(collectively referred to as “Defendants”). All of the above are collectively referred to as “Parties.”

WHEREAS, Plaintiff filed a Complaint in the U.S. District Court for the District of Nebraska in a case captioned *Metropolitan Omaha Property Owners Association, Inc., v. City of Omaha, et al.*, Case No. 8:13-CV-230 (“Lawsuit”); and,

WHEREAS, the Lawsuit alleges violations of federal laws and constitutional provisions by the Defendants regarding their enforcement of property maintenance code provisions and related City laws; and,

WHEREAS, the Defendants have denied and continue to deny liability as alleged in the Lawsuit; and,

WHEREAS, the parties have participated in a mediation session (“Mediation”) and in subsequent task force meetings and negotiations to facilitate possible settlement of the Lawsuit; and,

WHEREAS, the Parties to this Agreement now wish to reach a full and final settlement of the Lawsuit and all claims and causes of action in any way relating to, arising out of, resulting from or associated with the matters alleged in the Lawsuit.

NOW, THEREFORE, in consideration of the recitals, mutual covenants and releases, and other agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby stipulate, confirm and agree as follows:

1. **Code Amendments.** Representatives of the Parties, designated as “Task Force II” in the Mediation, have negotiated and agreed upon a proposed Omaha City Council Ordinance to amend certain sections of Omaha Municipal Code Chapters 18, 43, and 48. This Agreement and the mutual promises and releases exchanged hereunder are contingent upon the Omaha City Council’s adoption of an ordinance conforming in substance to that proposed Ordinance, which is attached as Exhibit A and incorporated by this reference herein (“Proposed Ordinance”).
2. **Standard Operating Procedure.** Representatives of the Parties, designated as “Task Force III” in the Mediation, have negotiated and agreed upon a set of Standard Operating Procedures to be followed in the City’s enforcement of its property maintenance cases. Upon the approval of this Agreement, the Proposed Ordinance, and the attached Consent Decree, the City Planning Department shall adopt the said set of Standard Operating

- Procedures (“SOP”) to follow in its enforcement of property maintenance code cases. The SOP is attached as Exhibit B and incorporated by this reference herein. The current version of the SOP shall be maintained and readily available to the public on the City’s website. The SOP may be modified by the City as necessary to accommodate changes or updates in the Accela or other computer software, code changes, changes in circumstances, or administrative operating efficiencies, provided that the essential protections and safeguards granted to property owners are not impaired.
3. **Case Reviews.** As agreed at the Mediation, the City has provided the Plaintiff with lists of all minor violation cases, demolition cases, and unsafe/unfit cases. The City has rescinded the 233 minor violation cases, by letters sent to the involved owners. The City has conducted a review of demolition cases and unsafe/unfit cases, and has reduced the numbers of those cases by removing some cases from those categories.
  4. **Johnson Retirement.** Johnson, currently employed as a code enforcement inspector for the City, agrees to retire from that employment position with the City effective no later than April 1, 2015.
  5. **Consent Decree.** Upon approval of this Agreement and Council approval of the Proposed Ordinance, the Parties shall jointly submit to the U.S. District Court a proposed consent decree conforming in substance to the proposed Consent Decree which is attached as Exhibit C and incorporated by this reference herein (“Consent Decree”).
  6. **Release.** Effective upon the approval of this Agreement, the Proposed Ordinance, and the Consent Decree, payment of the Attorney Fees and Costs set forth in Paragraph 7 below, and in consideration of the promises stated in this Agreement, the Plaintiff does hereby release and forever discharge the City, Johnson, Peterson, Denker, and their respective successors, employees, assignees, insurers, reinsurers, attorneys, heirs, executors, administrators, and predecessors, from any and all liability, obligations, actions, causes of action, suits, claims, rights, demands, losses, damages, deficiencies, judgments, debts, interest, fees, including attorneys’ fees, costs, profits, expenses and/or compensation for damages of any kind whatsoever claimed in law or in equity, in contract or in tort or otherwise, whether known or unknown, absolute or contingent, liquidated or unliquidated, disputed or undisputed, accrued or unaccrued, past or future, joint or several, that the Plaintiff ever had, now has, or in the future may have, in any way relating to, arising out of, resulting from or associated with the matters alleged in the Lawsuit. This Release is full and final and shall cover and include all known claims relating to the Lawsuit as well as any and all past, present or future claims of any kind not now known to the Parties to this Agreement, but that may later appear, develop or be discovered against a Party and/or its representatives arising out of the matters alleged in the Lawsuit or the effects or consequences thereof and including all causes therefor.
  7. **Attorney Fees and Costs.** The City will pay to counsel for the Plaintiff, Sherrets Bruno & Vogt LLC, on behalf of the Plaintiff, for attorney fees of \$70,432.88 incurred in connection with the Lawsuit and for out-of-pocket costs of \$1,262.29 incurred in connection with the Lawsuit. The City shall not pay the Plaintiff or its attorneys any

other amount for monetary relief, attorney fees, or costs sought in the Lawsuit, except that Plaintiff may petition the Court for additional fees and costs incurred as a result of a breach of this Agreement or to enforce the Consent Decree. If full settlement and dismissal of the Lawsuit are not consummated because of City Council rejection or for any other reason, Plaintiff and its attorneys are not limited by this provision in their recovery of any additional attorney fees or costs.

8. **Disposition of Lawsuit.** In further consideration of this Agreement, within 7 days of being paid the attorney fees and costs set forth in Paragraph 7 above, the Plaintiff shall take all necessary steps to dismiss with prejudice the Lawsuit as against all Defendants, subject to the Court retaining jurisdiction over this case for a period of two years after entry of the Consent Decree, to enforce the Consent Decree if and when required.
9. **No Admission.** All Defendants in this action have denied and continue to deny liability for the subject matter of the Lawsuit or any negligent or wrongful act or omission on their respective parts. This Agreement evidences a compromise of disputed claims regarding the subject matter of the Lawsuit, and nothing contained herein shall be construed as an admission by any Party of any damages or responsibility of any kind for any alleged damages.
10. **Representations and Warranties.** Each of the Parties to this Agreement acknowledges, agrees, represents and warrants as follows:
  - a. The Party has the full right, power, authority and capacity to enter into this Agreement, and each individual signing this Agreement on behalf of an entity represents and warrants that he or she has the full right, power, authority and capacity to sign this Agreement on behalf of the entity for which he or she has signed this Agreement, and no consent, approval, filing or other action is required as a condition to or in connection with the execution, delivery and performance of this Agreement by him or her (that has not been obtained or taken). The Party has no knowledge of any other individual or entity that has not been referred to in this Agreement that has any interest in the claims referred to in this Agreement.
  - b. In particular, City states that this Agreement has received the requisite approval from its City Council and Mayor; and the Plaintiff states that it has received the requisite approval for this Agreement from its governing board or official.
  - c. The Party is executing this Agreement and compromising all claims voluntarily and of the Party's free will without coercion or duress, and this Agreement constitutes a legal, valid and binding agreement, enforceable against each of them in accordance with its terms.
  - d. The Party has neither received nor relied upon any statements, representations or promises made by any individual or entity, or any representatives of any such individual or entity, other than those representations and promises that are expressly set forth in this Agreement.

- e. The Party has had an opportunity to review this Agreement with legal counsel regarding the meaning of this Agreement, the obligations imposed by this Agreement, and the legal implications and effect of this Agreement, as well as the advisability of entering into this Agreement.
  - f. This Agreement, the Proposed Ordinance, and the Consent Decree affect essential public institutions and agencies. Their impact extends beyond the parties named in the Lawsuit, and affects the general public interest and the public's right to the sound and efficient operation of its institutions. In particular, the Proposed Ordinance would be a legislative enactment exercising the City's power to act for the public welfare and interest, and affects the legislative reform and creation of public institutions and agencies. Such considerations shall be weighed by the Court in any proposed legal action to enforce or modify the terms of the Consent Decree or this Agreement.
11. **Entire Agreement; Amendments.** This Agreement and the attached Consent Decree contains the entire agreement and understanding between the Parties pertaining to the subject matter herein and supersedes any and all prior and/or contemporaneous oral or written agreements and understandings, if any, of the Parties in connection therewith. No change, alteration, modification, termination or amendment of this Agreement shall be effective or binding unless set forth in a written instrument signed by all the Parties. Any provisions of consent decree entered in Case No. 8:02CV20 that have not been impacted or superseded by this Agreement and the attached Consent Decree shall remain in full force and effect.
12. **Binding Nature.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors and assigns.
13. **Governing Law; Severability.** This Agreement is made and entered into in the State of Nebraska and shall be governed by the laws of the State of Nebraska without regard to choice of law or conflicts of law principles. If any term of this Agreement is held invalid or unenforceable to any extent, then the remaining terms of this Agreement shall not be affected thereby, but each term of this Agreement shall be valid and enforced to the fullest extent permitted by law.
14. **Counterparts.** This Agreement may be executed in multiple counterparts and each such fully executed counterpart shall constitute an original, all of which together shall constitute one and the same written agreement, and be binding and effective as to all of the Parties. The exchange of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement by the Parties.
15. **Other Actions.** The Parties agree to execute and deliver instruments and take such other actions as may be reasonably requested by the Parties in order to effectuate and implement the terms set forth in this Agreement.



CITY OF OMAHA,

\_\_\_\_\_  
Jean Stothert, Mayor

Date

Attest:

\_\_\_\_\_  
Buster Brown  
City Clerk

Date

MICHAEL O. JOHNSON,

\_\_\_\_\_  
Michael O. Johnson

Date

KEVIN DENKER,

\_\_\_\_\_  
Kevin Denker

Date

GREG PETERSON

\_\_\_\_\_  
Greg Peterson

Date

Approved as to form & content:

  
\_\_\_\_\_  
Alan M. Thelen  
Deputy City Attorney

12-8-12  
Date

  
\_\_\_\_\_  
William J. Acosta-Trejo  
Assistant City Attorney

8 DEC 14  
Date

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE to amend Omaha Municipal Code Sections 18-6, 18-7, 43-5, 43-7, 43-11, 43-62,  
2 48-21, 48-32, 48-33, 48-34, 48-53, 48-54, 48-62, and 48-101; to revise enforcement  
3 procedures under the City's nuisance, building code, and property maintenance chapters; to  
4 enact new sections 48-131 through 48-140 regarding the property maintenance appeals  
5 board; to repeal Sections 18-6, 18-7, 43-5, 43-7, 43-11, 43-62, 48-21, 48-32, 48-33, 48-34,  
6 48-53, 48-54, 48-62, and 48-101 as heretofore existing; and to provide the effective date  
7 thereof.

8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

9 Section 1. That Sec. 18-6 of the Omaha Municipal Code is hereby amended to read as  
10 follows:

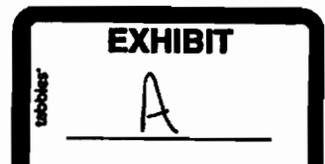
11 **Sec. 18-6. General authority of enforcement officers.**

12 The planning director, chief of police, parks, recreation, and public property director, and/or  
13 other officer duly designated by the mayor and/or health director of the county health department  
14 shall take all measures necessary to abate nuisances of every description on public and private  
15 property, in a manner consistent with applicable law.  
16

17 Section 2. That Sec. 18-7 of the Omaha Municipal Code is hereby amended to read as  
18 follows:

19 **Sec. 18-7. Right of entry.**

20 For the purpose of administering and enforcing the provisions of this chapter, the planning  
21 director, chief of police, parks, recreation and public property director, and/or other officer duly  
22 designated by the mayor and any other officer or employee of the city under his supervision and/or  
23 health officer of the county health department shall have the right to enter ~~any premises~~ the exterior  
24 areas of any property in the city or its extraterritorial jurisdiction at ~~any reasonable time~~ reasonable  
25 times subject to constitutional restrictions on unreasonable searches and seizures. Such official may  
26 enter the interior common area of a multi-unit structure for purposes of knocking on or otherwise  
27 accessing the exterior of the door of a unit contained therein. Such officer may enter the interior of a



1 structure or unit thereof for purposes of inspection or enforcement of this chapter at any reasonable  
2 time, provided, that consent is obtained from the owner or occupant, or there is an emergency  
3 involving imminent risk to life or safety, or a search warrant, inspection warrant, or other authorizing  
4 court order is obtained. If entry is refused or not obtained, the said officer is authorized to pursue  
5 recourse as provided by law.

6  
7 Section 3. That Sec. 43-5 of the Omaha Municipal Code is hereby amended to read as  
8 follows:

9 **Sec. 43-5. Notice of violation.**

10 The planning director or his/her duly authorized representatives shall, upon substantiated  
11 evidence of violation of any provision of this chapter, issue written notice to the owner, contractor,  
12 lessee, firm, corporation or other individual(s) responsible for the violation to correct same within a  
13 specific time period. Notwithstanding this section, a notice of violation alleging a violation of  
14 chapter 48 of this code shall comply with the notice requirements of that chapter.

15  
16 Section 4. That Sec. 43-7 of the Omaha Municipal Code is hereby amended to read as  
17 follows:

18 **Sec. 43-7. Enforcement authority.**

19 ~~The director of the planning department and his/her duly authorized administrators shall be~~  
20 ~~authorized and directed to enforce the provisions of this chapter and the building codes adopted by~~  
21 ~~this chapter. The structural superintendent of permits and inspection as designated by the director of~~  
22 ~~the planning department shall be known as the building official for the purposes of this chapter and~~  
23 ~~the building code adopted by this chapter.~~

24  
25 ~~The building official shall have the power to render interpretations of this chapter and to~~  
26 ~~adopt and enforce rules and supplemental regulations in order to clarify the application of its~~  
27 ~~provisions. Such interpretations, rules and regulations shall be in conformance with the intent and~~  
28 ~~purpose of this chapter and the city's building code.~~

29  
30 The building official is hereby authorized and directed to enforce the provisions of this code.  
31 The building official shall have the authority to render interpretations of this code and to adopt  
32 policies and procedures in order to clarify the application of its provisions. Such interpretations,  
33 policies and procedures shall be in compliance with the intent and purpose of this code. Such  
34 policies and procedures shall not have the effect of waiving requirements specifically provided for in  
35 this code.

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Section 5. That Sec. 43-11 of the Omaha Municipal Code is hereby amended to read as follows:

**Sec. 43-11. Occupancy violations.**

Whenever any building or structure or equipment therein regulated by this chapter is being used contrary to the provisions of this chapter or the provisions of the building code, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the building official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this chapter and the city's building code.

Section 6. That Sec. 43-62 of the Omaha Municipal Code is hereby amended to read as follows:

**Sec. 43-62. Manner of filing appeals.**

Any individual(s) who wishes to appeal to the building board of review based on its general authority as set forth in section 43-60 shall file for a hearing before the building board of review on a form provided by the permits and inspection division that is readily available and posted online. When the request for a hearing is to object to a decision of the building official, such request shall be filed within 15 days of said decision and shall include, in writing, all grounds for objections. The individual(s) filing the objection has the burden of establishing that the decision of the building official should be reversed, changed, or modified. Notwithstanding this section, an appeal under chapter 48 of this code shall be governed by the provisions of that chapter.

Section 7. That Sec. 48-21 of the Omaha Municipal Code is hereby amended to read as follows:

**Sec. 48-21. General.**

The ~~chief housing inspector~~ structural superintendent of the permits and inspections division of the planning department, or his or her authorized designee, shall be known as the code official for the purposes of this code.

Section 8. That Sec. 48-32 of the Omaha Municipal Code is hereby amended to read as

1 follows:

2 **Sec. 48-32. Rule-making Enforcement authority.**

3 ~~The code official shall have authority as necessary in the interest of public health, safety and~~  
4 ~~general welfare, to adopt and promulgate rules and procedures; to interpret and implement the~~  
5 ~~provisions of this code; to secure the intent thereof; and to designate requirements applicable because~~  
6 ~~of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire~~  
7 ~~performance requirements specifically provided for in this code, or of violating accepted engineering~~  
8 ~~methods involving public safety.~~

9  
10 The code official is hereby authorized and directed to enforce the provisions of this code. The  
11 code official shall have the authority to render interpretations of this code and to adopt policies and  
12 procedures in order to clarify the application of its provisions. Such interpretations, policies and  
13 procedures shall be in compliance with the intent and purpose of this code. Such policies and  
14 procedures shall not have the effect of waiving requirements specifically provided for in this code.

15  
16 Section 9. That Sec. 48-33 of the Omaha Municipal Code is hereby amended to read as  
17 follows:

18 **Sec. 48-33. Inspections.**

19 (a) The code official shall make all of the required inspections, or shall accept reports of  
20 inspection by approved agencies or individuals. All reports of such inspections shall be in writing  
21 and be certified by a responsible officer of such approved agency or by the responsible individual.  
22 The code official is authorized to engage such expert opinion as deemed necessary to report upon  
23 unusual technical issues that arise.

24  
25 (b) The code official shall make a good faith effort to communicate with the owner of a  
26 property or his or her authorized agent, in person or by telephone (or by electronic mail, if requested  
27 by the owner), prior to inspecting or reinspecting a building or structure; provided, that this duty  
28 shall take effect only if the owner or agent has first supplied the city housing division with the  
29 following: (1) the owner's name; (2) the owner's current address; (3) the owner's current phone  
30 number or electronic mail address that can be contacted for purposes of this section; and (d) a  
31 statement that the owner owns the property at issue.

32  
33 (c) All inspections under this chapter shall comply with section 48-34.

34  
35 Section 10. That Sec. 48-34 of the Omaha Municipal Code is hereby amended to read as

1 follows:

2 **Sec. 48-34. Right of entry.**

3 (a) The code official is authorized to enter ~~the structure or premises at reasonable times~~  
4 to inspect subject to constitutional restrictions on unreasonable searches and seizures the exterior  
5 areas of any property in the city or its extraterritorial jurisdiction at reasonable times for purposes  
6 of inspection under this chapter, subject to constitutional restrictions on unreasonable searches  
7 and seizures.

8 (b) The code official may enter the interior common area of a multi-unit structure for  
9 purposes of knocking on or otherwise accessing the exterior of the door of a unit contained  
10 therein.

11 (c) The code official may enter the interior of a structure or unit thereof for purposes of  
12 inspection under this chapter at any reasonable time, provided, that consent is obtained from the  
13 owner or occupant, or there is an emergency involving imminent risk to life or safety, or a search  
14 warrant, inspection warrant, or other authorizing court order is obtained. If the owner has  
15 registered pursuant to section 48-33(b), the code official shall comply with that section prior to  
16 inspection. If entry is refused or not obtained, the code official is authorized to pursue recourse  
17 as provided by law.

18

19 Section 11. That Sec. 48-53 of the Omaha Municipal Code is hereby amended to read as  
20 follows:

21 **Sec. 48-53. Prosecution of violation.**

22 Any person who knowingly fails ~~failing~~ to comply with a section of this code or with a notice  
23 of violation or order served in accordance with this code for a period of at least 90 days after such  
24 service shall be deemed guilty of a misdemeanor and be punished as provided in section 1-10 of the  
25 Omaha Municipal Code. The filing or pendency of an appeal under this code shall not stay the  
26 criminal prosecution of any violation. If the notice of violation is not complied with, the code official  
27 may also, in addition to the penalties set out in section 1-10 of this Code, institute the appropriate  
28 proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or  
29 termination of the unlawful occupancy of the structure in violation of the provisions of this code or  
30 of the order or direction made pursuant thereto.

31

32 Section 12. That Sec. 48-54 of the Omaha Municipal Code, reading as follows, is hereby

1 repealed:

2 **Sec. 48-54. Violation penalties.**

3 ~~Any person who shall violate a provision of this code, or fail to comply therewith, or with any~~  
4 ~~of the requirements thereof, may be prosecuted and be subject to the penalties set out in section 1-10~~  
5 ~~of this Code. Each day that a violation continues after due notice has been served shall be deemed a~~  
6 ~~separate offense.~~

7 Section 13. That Sec. 48-62 of the Omaha Municipal Code is hereby amended to read as  
8 follows:

9 **Sec. 48-62. Form.**

10 Such notice prescribed in section 48-61 shall be in accordance with all of the following:

11 (1) Be in writing.

12

13 (2) Include a description of the real estate sufficient for identification.

14

15 (3) Include a specific statement of all violations presently known, including the code  
16 sections violated.

17

18 (4) Include a correction order allowing a reasonable time to make the repairs and  
19 improvements required to bring the dwelling unit or structure into compliance with the  
20 provisions of this code. Ordinarily the said "reasonable time" for a notice of violation  
21 shall be ~~60 days, the periods prescribed in Table 48-62(4) below,~~ but such time can be  
22 increased or decreased if reasonable in light of the health or safety concerns presented  
23 by the violation. The time for repair shall be calculated in the same manner as the time  
24 for appeal under this chapter.

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TABLE 48-62(4)

<u>Level</u>	<u>Description</u>	<u>Days allowed for repair in initial notice</u>	<u>Additional days allowed for extension granted by inspector</u>	<u>Additional days allowed for extension granted by superintendent of permits and inspections division</u>
<u>1</u>	<u>Structural/fire/severe storm damage</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>2</u>	<u>Interior/mold/mechanical, plumbing, or electrical</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>3</u>	<u>Interior.drywall repair/paint</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>4</u>	<u>Exterior/paint/glazing/sidewalks</u>	<u>90</u>	<u>30</u>	<u>120</u>

2

(5) Describe the nature of all permits an owner must obtain to repair the property.

3

4

5

(6) Inform the property owner of the right to, and manner of, appeal.

6

Section 14. That Sec. 48-101 of the Omaha Municipal Code is hereby amended to read as

7 follows:

8 **Sec. 48-101. Application for appeal.**

9

Any person directly affected by a decision of the code official or a notice or order issued

10

under this code shall have the right to appeal to the ~~building board of review~~ property maintenance

11

appeals board established pursuant to division 14 of this chapter, provided that a timely written

12

application for appeal is filed ~~within 20 days after the day the decision, notice or order was served or~~

13

posted, as the case may be. For the purposes of an appeal from a notice of violation, to be timely,

14

such appeal shall be filed before the expiration of 30 days after the final extension as defined in table

1 48-62(4) in section 48-62. For the purposes of an appeal from an order to vacate or close or a  
2 demolition order, to be timely, such appeal shall be filed within 30 days after such order. If the  
3 decision, notice or order was served by first-class mail, then three (3) business days shall be added to  
4 the time for appeal. Appealable issues shall include, but not be limited to, notices of violation, repair  
5 orders, placards, notices to vacate, closure orders, the results of inspections, orders to purchase  
6 permits or pay fees, and the denial of permits. An application for appeal shall be based on a claim  
7 that the true intent of this code or the rules legally adopted thereunder have been incorrectly  
8 interpreted, the provisions of this code do not fully apply, ~~or~~ the requirements of this code are  
9 adequately satisfied by other means, ~~or~~ that the strict application of any requirement of this code  
10 would cause an undue hardship, or the applicant is not in violation of one or more of the code  
11 sections cited. ~~To the extent that there are any differences in the procedures for appeals to the board~~  
12 ~~under this code and under chapter 43, the procedures set forth in this code shall govern appeals~~  
13 ~~occurring under this code.~~

14 Section 15. That the Omaha Municipal Code is hereby amended to add a new division 14 to  
15 chapter 48, article I, to be captioned “Property Maintenance Appeal Board,” and consisting of new  
16 sections 48-131 through 48-140, reading as follows:

17 Division 14. Property Maintenance Appeals Board.

18 **Section 48-131. Created.**

19 A board is hereby created by the city to be known as the property maintenance appeals board,  
20 referred to in this chapter as “the board.”

21 **Section 48-132. Composition.**

1           The board shall be composed of seven members. Members shall be persons residing in the  
2 city or the city's jurisdiction. Members shall be selected so as to provide representation from each of  
3 the following groups:

- 4           a.     Structural engineer
- 5           b.     Mechanical or electrical engineer
- 6           c.     Architect
- 7           d.     Commercial landlord
- 8           e.     Residential landlord
- 9           f.     Attorney
- 10          g.     Citizen-at-large

11           No employee of any governmental entity, including the city, may serve as a voting or non-  
12 voting, ex-officio member of the board.

13           **Section 48-133. Appointment of members.**

14           The mayor shall appoint the members of the board, subject to confirmation by the city  
15 council.

16           **Section 48-134. Term of members.**

17           The initial terms of the initial members of the board shall be staggered so that two members  
18 are appointed to one-year terms, two members are appointed to two-year terms and three members  
19 are appointed to three-year terms. After the initial terms, the members of the board shall be appointed  
20 for a term of three years. Members shall serve until their successors are appointed and qualified.  
21 Members may be appointed to successive terms.

1 **Section 48-135. Removal of members from office.**

2 Continued absences of any member of the board from regular meetings of the board shall, at  
3 the discretion of the mayor, render that member liable to immediate removal by the mayor from the  
4 board.

5 **Section 48-136. Vacancies.**

6 Vacancies occurring in the membership of the board shall be filled for the unexpired term in  
7 the manner in which the original appointments are made, for the unexpired term.

8 **Section 48-137. Compensation.**

9 The members of the board shall serve without compensation.

10 **Section 48-138. Adoption of rules and regulations.**

11 The board may adopt and enforce rules and regulations as proper and necessary for the  
12 performance of its work, provided that the rules and regulations do not conflict with this code.

13 **Section 48-139. Quorum.**

14 Five members of the board shall constitute a quorum for the transaction of business.

15 **Section 48-140. Chairperson.**

16 The attorney member of the board shall serve as the chairperson of the board. The board shall  
17 elect a vice-chairperson to serve in the absence of the chairperson. The chairperson shall have the  
18 authority to conduct the meeting and to rule on objections and other preliminary matters arising  
19 during the case and prior to the board's final decision.

20 Section 16. That Sections 18-6, 18-7, 43-5, 43-7, 43-11, 43-62, 48-21, 48-32, 48-33, 38-34,  
21 48-53, 48-54, 48-62, and 48-101 of the Omaha Municipal Code as heretofore existing are hereby

ORDINANCE NO. \_\_\_\_\_

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1 repealed.

2 Section 17. That this Ordinance shall be in full force and take effect 15 days from and after

3 the date of its passage.

INTRODUCED BY COUNCILMEMBER

\_\_\_\_\_

APPROVED BY:

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA DATE

PASSED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY CITY ATTORNEY DATE

City of Omaha Planning Department Permits and Inspection Division  
Standard Operating Procedures for the Housing Inspection Section

**Section I: Purpose**

The purpose of the Standard Operating Procedure manual is to provide uniform guidelines, processes and procedures as it relates to Chapters 48 and 55 of the Omaha Municipal Code and the currently adopted edition of the International Property Maintenance Code. It will serve also serve as the official policy of the department and as such may be used in defending claims against inspectors or in disciplinary action if claims are found to be true.

**Section II: Definitions**

**Accela.** The computer based Civic Platform employed by the Permits and Inspection Division for the purpose of issuing permits and tracking permit status and work flow.

**Accela Housing Inspection Module.** The customized module that will be the platform for all complaints received as it relates to Chapters 48 and 55 of the Omaha Municipal Code and the International Property Maintenance Code.

**Building Official.** The Assistant Planning Director/Structural Superintendent of the Permits and Inspection Division will be known as the Building Official with the authority to offer opinions and accept or reject alternate methods of construction. Unfavorable determinations by the building official relating to the codes, may be appealed to the Property Maintenance Appeals Board or the District Court for a final ruling.

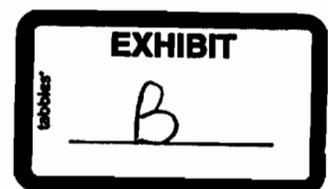
**Building Inspector.** An individual employed by the Permits and Inspection Division who is Certified by the International Code Council as a Building Inspector and is responsible for the enforcement of the International Residential and International Building Codes as well as the Americans With Disabilities Act, Federal Fair Housing Act and Chapter 55 of the Omaha Municipal Code.

**Chief Building Inspector.** An individual employed by the Permits and Inspection Division as a direct supervisor to the building inspectors. Reports directly to the Building official.

**Chief Electrical Inspector.** An individual employed by the Permits and Inspection Division as a direct supervisor to the electrical inspectors. Reports directly to the Building official.

**Chief Housing Inspector.** An individual employed by the Permits and Inspection Division as a direct supervisor to the housing inspectors. Reports directly to the Building official.

**Chief Mechanical Inspector.** An individual employed by the Permits and Inspection Division as a direct supervisor to the mechanical inspectors. Reports directly to the Building official.



**Chief Plumbing Inspector.** An individual employed by the Permits and Inspection Division as a direct supervisor to the building inspectors. Reports directly to the Building official.

**Code Official.** For the purposes of Chapter 48 of the Omaha Municipal Code, the Building Official shall be the same person.

**Demolition List.** A prioritized list of properties subject to a demolition order.

**Electrical Inspector.** An individual employed by the Permits and Inspection Division who is a licensed electrician and certified by a national agency as an inspector and is responsible for the National Electrical Code.

**Emergency Situations.** Situations that are of an emergency such as, car accident, fire, partial or complete catastrophic failure of a structure, flood and wind events. The building official will be notified and will act as the Planning Departments incident commander during such events.

**Heating, Ventilation and Air Conditioning Inspector.** An individual employed by the Permits and Inspection Division who is a licensed HVAC contractor and is responsible for the enforcement of Chapter 40 of the Omaha Municipal Code and the International Mechanical Code.

**Housing Inspector.** An individual employed by the Property Maintenance Section of the Permits and Inspection Division responsible for the enforcement of Chapter 48 of the Omaha Municipal Code and the International Property Maintenance Code.

**International Building Code:** A code written and published by the International Code Council as a minimum standard for the construction and life safety requirements as it relates to new construction and renovations in commercial buildings.

**International Existing Building Code.** A code written and published by the International Code Council outlining alternate methods of meeting the minimum standards of the code in existing buildings.

**International Property Maintenance Code.** A code written and published by the International Code Council outlining the Minimum Property Maintenance Standards for existing commercial and residential properties.

**International Residential Code:** A code written and published by the International Code Council as a minimum standard for the construction and life safety requirements as it relates to new construction and renovations in one and two family dwellings.

**Landlord.** An individual or corporation who owns property for lease or rent, to public, private or government entities for the sole purpose of producing income. The landlord may or may not

reside in the property, however is the ultimate person responsible for the properties maintenance and up keep.

**Mechanical Inspector.** An individual employed by the Permits and Inspection Division who is a licensed Master Steam Fitter or Licensed 3<sup>rd</sup> Grade Engineer who is responsible for the enforcement of Chapter 40 of the Omaha Municipal Code, the International Mechanical Code and the International Fuel Gas Code.

**Notice of Violation.** A notice produced in a specific format within the Accela System that contains specific IPMC violations.

**Permits.** Building, electrical, mechanical and plumbing permits will be issued and inspected by the Permits and Inspection Division. Final inspection and or Certificate of Occupancy will deem the project has met the minimum requirements of the associated code.

**Photographic Evidence.** Photographs will be taken on a camera, I-Pad, I-Phone or laptop provided by the Permits and Inspection Division to the inspector. Each complaint will have its own file.

**Plumbing Inspector.** A person licensed by the City of Omaha as a Journeyman or Master Plumber and is responsible for the enforcement of Chapter 49 of the Omaha Municipal Code.

**Property Maintenance Appeals Board.** This board shall be appointed by the Mayor and made up of the following members: architect, structural engineer, mechanical or electrical engineer, commercial landlord, residential landlord, citizen-at-large and an attorney who shall also be the chairman of the board. The board shall hear appeals on matters such as additional time request or other matters as outlined in Chapter 48 Section 48-101.

**Property Maintenance Section.** The Property Maintenance Section of the Permits and Inspection Division will inspect for violations of the International Property Maintenance Code and Chapter 55 of the Omaha Municipal Code.

**Property Manager.** A person or corporation who is hired by the landlord or property owner to act on their behalf as a leasing agent and/or maintenance to the property in all matters related to the property.

**Property Owner.** A person or corporation that owns property, that they may reside in or is offered for lease or rent.

**Real Estate Agent or Broker.** An individual licensed by the State of Nebraska to engage in the sale of real property.

**Right of Entry.** As allowed in Chapter 48 of the Omaha Municipal Code and as outlined in the procedure manual.

**Structural Engineer.** A person licensed by the State of Nebraska with expertise, training and experience to perform structural analysis.

**Unfit structures.** A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, vermin or rat infested, contains filth and contamination or lacks heating and sanitary facilities.

**Unsafe structures.** A structure that is found to be dangerous to life, health and safety to the occupants or the public. This includes the lack of working smoke detectors, unsafe equipment, damaged, dilapidated or failed structure and lack of fire escapes porches and stairs for required exits.

**Vacant- Open - Vandalized.** Any property that is clearly vacant, open and vandalized must be boarded up as soon as possible. Notification to the owner must be made as soon as violation is noted with a forty-eight hour time limit to complete.

**Weed and Litter Complaints.** All weed and litter complaints will be forwarded to the Parks Department.

**Zoning Violation.** A violation of Chapter 55 of the Omaha Municipal Code.

### **Section III: Standard operating procedures.**

**A. Complaint intake.**

Complaints will be taken on the main telephone number 402-444-5371 during normal business hours. Complaints may also be emailed to the counter staff by way of the Mayor's Hotline. All complaints must contain the name and phone number of the complainant for the file. (This is a result of a 2003 Federal Consent Decree.) All complaints must include the address of the complaint and the nature of the complaint. The identity of the complainant shall be disclosed to the property owner or his designee upon request. Complaint intake must also include the response to the 14/30 day notice requirements for tenant/landlord notification.

**B. Data entry into Accela.**

Complaint information will be entered into the Accela system and a record created for the complaint. Data entry will follow a series of steps programmed into the software by way of fillable forms that require completion of steps in a progressive manner.

**C. Initial inspection.**

After the completion of the form in Accela, the inspection will be automatically assigned to the inspector for the area. Inspectors will then have three business days to make the

first inspection on the property. Inspections will be assigned an initial number of days for the first notice as outlined elsewhere in this document. Once this tab is selected, the inspection will be automatically scheduled for the number of days of the notice plus one day.

D. Information collection in the field; exterior.

Inspector will begin by documenting the address of the property by photographing the property from the street. This photography will always be known in each file as: the address.1. Inspectors will then move around the property in a clock wise manner starting at the front and going to the left. Each violation noted will be added to the record with the corresponding drop down code section checked and the photograph identification number added.

E. Information collection in the field; interior.

Inspector will first document that permission has been granted as outlined in Section 48-34. Right of entry. If right of entry is denied or not obtained to the property, the inspector will note the same and confer with a supervisor to determine if there is sufficient evidence to request a warrant for probable cause. If a structure is vacant, the inspector shall first make a reasonable attempt to obtain permission from the owner or responsible party, IE: a financial institution, and document the same. If contact is not made within five business days, the inspector will note the same and confer with a supervisor to determine if the is sufficient evidence to request a warrant for probable cause. Except for Emergency Situations, in no case shall an inspector enter a property without documented permission being obtained. When permission has been obtained, the documentation process will be the same as outlined in Section D.

F. Assignment of severity numbers.

Upon initial inspection, will confirm and assign a severity number based on the following criteria:

- Level 1: Assigned to any case involving fire, explosion, structural failure, storm damage that could contribute to structural failure, vehicles damaging a building that may cause structural damage.
- Level 2: Assigned to any case that may have limited structural damage but is not in danger of collapse, failed mechanical, plumbing and/or electrical systems, interior mold and lead paint.
- Level 3: Assigned to any case that may have interior drywall repair, interior door repair, cabinet/countertop repair and fixture repair.
- Level 4:Assigned to exterior paint, glazing, doors, sidewalks, siding, roofs, porches and decks.

G. Days allowed for initial repair.

Level 1.	30 days
Level 2.	30 days
Level 3.	60 days

Level 4. 90 days

H. Days allowed for first extension by inspector:

Level 1. 30 days

Level 2. 30 days

Level 3. 30 days

Level 4. 30 days

Extension may be granted by the inspector if work is progressing. If no work is being completed then extension may not be granted. If permits are required and have been obtained, the inspections then revert to the appropriate section of the Permits and Inspection Division for their required inspections and the case is considered closed.

I. Days allowed for second extension by the superintendent of the permits and inspection division:

Level 1. 30 days

Level 2. 30 days

Level 3. 30 days

Level 4. 120 days

Extension may be granted by the Superintendent of the Permits and Inspection Division if work is progressing. If no work is being completed then extension may not be granted. If permits are required and have been obtained, the inspections then revert to the appropriate section of the Permits and Inspection Division for their required inspections and the case is considered closed.

J. Notice of Violation:

Notice of Violation will now be computer generated at the time of the inspection. They will include all of the information required above and will be in an easy to read format with photo identification of the violation. In addition, the violations will be available to the property owner through the Citizen Access portal on our web page. If a property owner registers into the Accela system, they will have access to the entire report and photo documentation immediately after notice is published.

K. Initial re-inspection:

Accela will automatically schedule a re-inspection one day after the allowed number of days on the first inspection. The inspector shall be required to complete this re-inspection within 3 business days of the notification. Disposition of the case will be based on the original notice of violation.

L. Discovery of additional items:

If during the initial re-inspection, additional items are discovered that are a direct result of the work completed, a new file shall be started with the original number of days for compliance. The addition of any items not noted during the initial inspection may not be added to the current record without supervisor approval. A written explanation to the supervisor shall be required as to the reason for the request.

M. Partial compliance of original notice:

If compliance is made on some items on the original notice but not all, those items shall be removed from the notice and the remaining items shall remain on the list. If additional time is required, the automatic extension can be granted by the inspector based on section H above.

N. Filing of notices with the Register of Deeds:

Notices shall be filed after the first required re-inspection. If work from the original notice of violation has been completed, the case will be closed and no notice will be filed.

O. Use of structural engineers:

The request for a structural engineers report may only occur after conferring with a building inspector and receive a signoff from the Chief Building Inspector. Housing inspectors will be required to contact the building inspector in that area to consult either in person or by use of the I-Phone, I-Pad or computer. Any photos taken and used during this consult will become part of the record. In the case of eminent danger, contact will be made with the building inspector to meet on site as soon as possible to access the damage and plan a course of action. In the case of an Emergency Situation, the Superintendent of the Permits and Inspection Division will be immediately notified and will become the incident commander for this department upon arrival at the scene.

P. Issuance of Citations:

No inspector is authorized to call for the issuance of a citation until the expiration of the second or third extension of the original notice and a court order or an order from the Property Maintenance Appeal Board. However, whenever any inspector is threatened or feels threatened by an individual and fears for his or her safety, the immediate notification of 911 is warranted.

Q. Preparation of cases for the Property Maintenance Board or the court system.

With Accela creating the documentation, the week before the housing inspectors case is to be heard, the inspector will prepare a binder with the appropriate documentation in place that will be prepared for the board or the court. In addition, the inspector will contact the prosecutor's office to meet with the attorney assigned to the case. The inspector will provide them a binder as well that the prosecutor will use to determine the course of action or present the case to the courts.

R. Action within other codes:

Inspectors in the Housing Inspection Division are only responsible for the enforcement of the International Property Maintenance Code and Chapters 48 and 55 (Zoning) of the Omaha Municipal Code. As such, their limitations do not allow them to require the replacement of any plumbing, electrical or mechanical systems without first conferring with the appropriate inspector in the Permits and Inspection Division. They shall

document items that they believe are violations and meet with the appropriate inspectors in the office prior to sending the notice.

S. Grandfather Protection:

- (1) Inspectors shall not require the removal, alteration or abandonment of, nor prevent the continued utilization and maintenance of, an existing mechanical and plumbing system or other condition lawfully in existence at the time the applicable code was adopted, provided such continual use is not dangerous to life.
- (2) The legal occupancy of any structure existing on the date of adoption of an applicable code shall be permitted to continue without change, provided such continual use is not dangerous to life.
- (3) Alterations or repairs to an existing building or structure that are not structural and do not adversely affect any structural member or any part of the building or structure having a required fire resistance may be made with the same materials of which the building or structure is constructed.
- (4) Mechanical and plumbing systems, both existing and new, and parts thereof shall be maintained in proper operating condition in accordance with the original design and in a safe and sanitary condition. Devices or safeguards required by an applicable code shall be maintained in compliance with the code edition under which installed.

**Section IV. Inspector conduct:**

T. Contact with the public:

All inspectors are required to maintain a highly professional mannerism at any time they are in contact with the public. The use of intimidation or threatening a person in any manner will be dealt with as allowed by the appropriate union contract and city policy.

U. Hours in the field:

The inspectors are required to leave the office by 9:00 each work day. The only exception is morning court cases. All court cases and board hearings shall be posted on the inspector's calendar through Google so that supervisors have access to the calendar and are aware of such dates.

V. Sign off on permit applications:

Housing Inspectors will no longer be required to sign off on permits. Because the record is created in Accela, that information will be available in real time. Once the permit is issued, the section responsible for inspections will complete the same and the Housing Case will be closed.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

METROPOLITAN OMAHA PROPERTY OWNERS ASSOCIATION, INC.,  
  
Plaintiff,  
  
vs.  
  
CITY OF OMAHA, MICHAEL O. JOHNSON,  
GREG PETERSEN, KEVIN DENKER,  
JANE DOES, and JOHN DOES,  
  
Defendants.

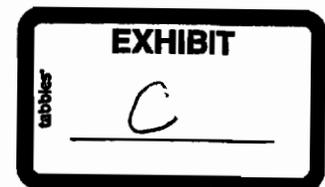
**CASE NO. 8:13CV230**

**CONSENT DECREE**

THIS MATTER came before the Court upon the Parties' joint request that this Consent Decree be entered, incorporating the terms of a settlement reached between the Parties, as indicated by the undersigned approvals of their respective counsel. The Court finds that this Consent Decree should be entered, under the following terms.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

1. This Consent Decree incorporates and orders the Parties to implement the terms and conditions of the Settlement Agreement and Release attached hereto as Exhibit 1.
2. This action is hereby dismissed with prejudice, subject to the Court's continuing jurisdiction as stated below.
3. The Court retains continuing jurisdiction for a period of two years after the entry of this Consent Decree, to enforce or modify the Consent Decree if and when needed. The two year limitation on this Court's continuing jurisdiction shall in no way prohibit either Party from otherwise seeking to enforce or modify the Consent Decree if and when needed after the expiration of two years.



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
U.S. District Judge

Approved as to form and content:

Attorney for the Defendants

Attorney for the Plaintiff

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