

ORDINANCE 2016-05

AN ORDINANCE PERTAINING TO THE ESTABLISHMENT AND ENFORCEMENT OF PROPERTY MAINTENANCE STANDARDS AND CREATING A NEW CODE OF ORDINANCES THAT CLARIFIES AND CREATES MINIMUM STANDARDS FOR MAINTENANCE OF ALL PROPERTY WITHIN THE CITY OF PROVIDENCE THAT WILL BE ADMINISTERED AND ENFORCED THROUGH A DESIGNATED CODE ENFORCEMENT OFFICER AUTHORIZED TO ISSUE NOTICES OF VIOLATIONS AND CITATIONS TO THE OWNER OF PROPERTY IN VIOLATION THEREOF; AND FURTHER MODIFYING THE DUE PROCESS BY WHICH PROPERTY OWNERS ARE GIVEN NOTICE AND AN OPPORTUNITY TO CORRECT VIOLATIONS CONSISTENT WITH THE PROVISIONS OF THE KENTUCKY REVISED STATUTES OR IF CONTESTED, TO APPEAL A CITATION ISSUED TO A FIVE-MEMBER BOARD APPOINTED BY THE PROVIDENCE CITY COUNCIL, EACH MEMBER OF WHICH SHALL SERVE A THREE-YEAR TERM; AND AUTHORIZING AND DIRECTING SAID BOARD TO CONDUCT AN IMPARTIAL HEARING AND RENDER A DECISION WITH REGARD TO ANY APPEALS BROUGHT BEFORE IT; AND FURTHER ESTABLISHING A SCHEDULE OF FINES APPLICABLE TO VIOLATIONS OF THE PROPERTY MAINTENANCE CODE; AND FURTHER INCORPORATING THE CHANGES TO THE ENABLING LEGISLATION AS PER SENATE BILL 135 AND HOUSE BILL 422. THIS ORDINANCE ALSO ADOPTS BY REFERENCE NUMEROUS SECTIONS OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, WHICH PROVISIONS AUTHORIZE CODE ENFORCEMENT OFFICERS TO CITE AND ABATE, IF NECESSARY, UNSAFE STRUCTURES, JUNKED VEHICLES AND APPLIANCES, TALL WEEDS AND GRASS, FIXTURES, RUBBISH AND OTHER CONDITIONS ON PROPERTY DEEMED TO BE PUBLIC NUISANCES.

WHEREAS, it is the intent of KRS. 82.700 TO 82.725, KRS 65.8801 to KRS 65.8839, and KRS 381.770 to protect, promote, and improve the health, safety, and welfare of the citizens residing within the City of Providence by providing clear and manageable standards with enforcement rules that provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the Property Maintenance ordinances enacted and in force within the City; and

WHEREAS, the City Council of the City of Providence desires to effectively promote the revitalization of blighted areas and the elimination of nuisances through aggressive Code enforcement; and

WHEREAS, the City Council of the City of Providence desires to protect the existing housing inventory in the City through the adoption of ordinances, which promote and protect residential neighborhoods and reduce and/or abate nuisance properties that tend to diminish neighboring property values and contribute to an increase in crime and loss of aesthetic value; and

WHEREAS, the City Council of the City of Providence, Kentucky, deemed it reasonable and necessary to exercise the authority granted to it in KRS 82.700 to 82.725 and KRS 381.770, thereby requiring changes to the City's existing Property Maintenance Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROVIDENCE, KENTUCKY, AS FOLLOWS:

Section 1. That the City of Providence, Kentucky, by and through its Code Enforcement Board, hereby enacts a new Article of the Providence Municipal Code as set forth herein below.

#### DIVISION 1. PROPERTY MAINTENANCE CODE ENFORCEMENT

##### Sec. 5-126. Title

This division shall be known and may be cited as the "property maintenance code"

##### Sec. 5-127. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned real property* shall mean real property or any improvements thereon that is vacant, unoccupied, or not in use for a period of one (1) year and which is any of the following; neglected, dilapidated, unsanitary, vermin infested, not serviced by public utilities, dangerous to the safety of persons, unfit for its intended use, by reason of neglect or lack of maintenance had become a place for the accumulation of trash or debris, or has been tax delinquent for a period of at least three (3) years.

*Abatement costs* shall mean a local government's necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve the public health, safety, and welfare in accordance with any local government ordinance.

*Code official* shall mean property maintenance code enforcement officer(s) or their duly authorized representatives, all of whom are charged with the administration and enforcement of this division.

*Creditor* shall mean a federal or state chartered bank, savings bank, savings and loan association, or credit union, and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, services.

*Demolition* shall be defined as the act of demolishing or raising of a building, structure or part thereof to the ground level or as further defined within a permit or written directive issued by a code official.

*Final Order* means any order:

- a. Issued by the code enforcement board following a prescribed hearing.
- b. Created because a violator neither paid nor contested the citation within seven (7) days as provided by ordinance; or
- c. Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided by ordinance.

*Imminent danger* means a condition which is likely to cause serious or life threatening injury or death at any time.

*Junked appliance* shall mean any unit, or part thereof, of machinery, furniture, or equipment, whether functional or ornamental, and whether mechanical or powered by some source of energy or not, including, but not limited to, stoves, refrigerators, television sets, beds, lamps, tools, objects of art, and the like, the condition of which upon inspection, are found to be in one (1) or more of the following conditions:

1. Wrecked;
2. Dismantled;
3. Partially dismantled;
4. Inoperative;
5. Abandoned;
6. Discarded;

*Junked motor vehicles* shall mean any vehicle, device or other contrivance, or parts thereof, propelled by human or mechanical power that if operational, would be used for transportation of persons or property on public streets and highways, which upon inspection, are found to be in one or more of the following conditions:

1. Wrecked;
2. Dismantled;
3. Partially dismantled;
4. Inoperative;
5. Abandoned;
6. Discarded;

*Offenses:*

*1<sup>st</sup> Offense* shall mean a violation of this property maintenance code as per a citation issued on a specific parcel or property on one (1) occasion within twenty-four month period.

*2<sup>nd</sup> Offense* shall mean any combination of violations of this property maintenance code as per citation issued on a specific parcel of property on two (2) occasions within a twenty-four month period.

*3<sup>rd</sup> Offense* shall mean any combination of violations of this property maintenance code as per a citation issued on a specific parcel of property on three (3) or more occasions within a twenty-four month period.

*Ordinary public view* means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property;

*Owner* means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.

*Parts car* means an automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of other automobiles.

*Person* shall mean any individual firm, business, partnership, association, corporation, company or organization of any kind.

*Premises* means a lot, plot, or parcel of land, including any structures upon it.

*Property maintenance code* shall mean the "nuisance code, as that term is defined in KRS 82.700(3). It shall consist of all the provisions set forth herein and any pursuant to KRS 82.700 *et seq* ... and/or KRS 381.770 or other nuisance statutes, as may be amended from time to time.

*Property maintenance code enforcement board* or code enforcement board or board shall mean the administrative body erected and acting under the authority of the KRS 82.700 to 82.725 and KRS 381.770.

*Property maintenance code enforcement officer or code enforcement officer* shall mean and include all city citation officers and other positions authorized to enforce the Providence Municipal Code.

*Remedy* shall mean the action taken to abate any nuisance, in order to bring the property determined to be in violation, into compliance with the requirements of this property maintenance code.

*Residential property* shall mean real property with one (1) to four (4) dwelling units.

*Rental property* shall mean any real property in which a person receives payment by another for use or occupation of the property, however it shall not include the primary residence of the person receiving payment by another for the use or occupation of the property.

*Vacant* shall mean any real property with no legal resident or tenant. Evidence of vacancy includes any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include but are not limited to overgrown or dead vegetation, accumulation of flyers, mail, or trash, disconnected utilities, the absence of window coverings or furniture, and statements by neighbors, delivery persons, or government employees.

#### Sec. 5-128. Jurisdiction.

The code enforcement officer and code enforcement board shall have jurisdiction over and shall enforce this property maintenance code and all other ordinances hereafter adopted which specifically provide for the enforcement by the code enforcement officer(s) or code enforcement board, in the manner set forth herein.

#### Sec. 5-129. Process.

Powers and responsibilities of the code officer(s) include, but are not limited to, conducting investigations, conducting inspections, recording and documenting conditions, obtaining outscored inspection services, issuance of notice of violation or other notice as authorized herein, issuance of citation, appeal process, abatement of nuisance, right of entry, modifications, and all other powers vested under applicable statutes and this property maintenance code.

Enforcement proceedings under the property maintenance code shall be initiated by the issuance of a notice of violation or a citation by a code enforcement officer.

Except as provided herein, if a code enforcement officer believes, based on his or her personal observation or investigation, that a person has violated the property maintenance code, he or she is authorized to issue a citation to the violator. In lieu of a citation, the code enforcement officer may give the violator a notice of violation that a violation has occurred and allow the violator a specified period of time to remedy the violation without fine. The time allowed by the code official shall depend on the nature of the violation and the time necessary to remedy the violation as determined by the code official. If the violator has been issued a notice of violation and fails or refuses to remedy the violation within the time specified, the code official is authorized to issue a citation. Informal settlement of matters under this Chapter is encouraged.

The following provisions shall govern all enforcement powers, responsibilities and procedure administered by the code enforcement officer(s):

- (1) *Notice of Violation:* If a code enforcement officer believes, based on the officer's personal observation or investigation, that a person has violated the property maintenance code, the code enforcement officer may issue a notice of violation to the property owner, resident, tenant, occupant, persons having control or management of the property or other violator,

allowing that person a specified and reasonable number of days to abate the violation. The violator may, upon request, be allowed a reasonable extension of time to abate the violation without imposition of any charges, costs, penalties, and fees, in the sole discretion of the code enforcement officer or code official. If the violator fails to abate the violation within the time prescribed therein, the code enforcement officer may issue a citation for the violation.

- (2) *Notice of Violation Procedure:* A code enforcement officer, may in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. Notice of violation issued by code enforcement officer for violations of the property maintenance code shall contain the following information.
  - (a) The address, location or description of the property found to be in violation of the property maintenance code;
  - (b) The date and time of inspection;
  - (c) The name and address of the person to whom the notice is issued;
  - (d) The date the notice is issued;
  - (e) The facts constituting the violation;
  - (f) The section of the property maintenance code violated;
  - (g) The name of the code enforcement officer;
  - (h) The fines, charges, costs, penalties, and/or administrative fees, which may be imposed for the violation if it is not abated in the manner required by the code the code enforcement officer; and
  - (i) The maximum fine that may be imposed under the property maintenance code for the violation in question.
- (3) *Issuance of Citation:* If a code enforcement officer believes based on the officer's personal observation or investigation, that a person has violated the property maintenance code, the officer will issue a citation to the property owner, resident, tenant, occupant, persons having control or management of the property or other violator. The citation shall represent a determination by the code enforcement officer that a violation has been committed and that determination shall be final unless it is contested by the alleged violator by appealing to the code enforcement board in the manner prescribed herein.
- (4) *Citation Procedure:* Citations issued by a code enforcement officer for violations of the property maintenance code shall contain the following information:
  - (a) The address, location or description of the property found to be in violation of the property maintenance code;

- (b) The date and time of inspection;
- (c) The name and address of the person to whom the citation is issued;
- (d) The date the citation is issued.
- (e) The facts consisting the offense;
  - i. The section of the property maintenance code violated;
  - ii. The name of the property maintenance code enforcement officer;
  - iii. The fines, charges, costs, penalties, and/or administrative fees, imposed for the violation if the citation is not contested in the manner prescribed within this division;
  - iv. The maximum fine that may be imposed under this division for the violation in question if the person elects to contest the citation;
  - v. The procedure for the violator to follow in order to pay the fine or to contest the citation;
  - vi. A statement that if the violator fails to pay the fine set forth in the citation or contest the citation within the time allowed, the violator shall be deemed to have waived his/her right to a hearing before the code enforcement board to contest the citation and the code enforcement officer's determination that the violation occurred shall be final; and

(1) Notice that a lien may be filed against the property on which the violation occurred and that proceedings to enforce the lien may be initiated to collect fines, charges, costs, penalties, and/or fees, including attorney and administrative fees.

(5) *Type and Delivery of a Notice of Violation or Citation:* A notice of violation and a citation shall each be in writing and shall be reasonably calculated to inform the violator of the nature of the violation. A notice of violation and citation must each be issued by either:

- (a) Personal service via hand-delivery to the property owner, resident, tenant, occupant, persons having control or management of the property or other violator, or

- (b) Leaving a copy of the notice of the violation or citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the notice of violation or citation is issued, or
- (c) Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the notice of violation or citation by regular first-class mail of the United States Postal Service to the last known property owner of record as listed in the County Property Valuation office. Owners of Rental property may register their properties with the City Clerk to receive service at any address other than that listed in the County Property Valuation office.
- (6) *Notification of Citation to Code Enforcement Board:* After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering a copy of the citation to the administrative official designated by ordinance or by the code enforcement board.
- (7) *Abatement of Nuisance other than Weeds or Grass:* If the violator does not contest the citation within the time prescribed, the city may, through methods as determined by the city, abate the nuisance and the property owner, resident, tenant, occupant, persons having control or management of the property or other violator at the time the violation occurred shall be liable for all fines, fees, abatement costs, and penalties assessed for the violation.
- (8) *Abatement of Weeds and Grass Nuisance:* Upon the issuance of a citation for weeds and/or grass nuisance, the code enforcement officer will, with the citation, serve the violator with notice that the city shall cause such violation to be abated after the expiration of seven (7) days if the person to whom the citation was issued has not remedied the violation. If the person timely contests the citation, and, after having considered the evidence in the matter, the code enforcement board dismisses the citation or that portion of the citation alleging weeds and/or grass nuisance violations, the city may not recover the abatement costs to remedy the alleged weeds and/or grass violations which were dismissed.
- (9) *Emergency Abatement:* No section of this ordinance above shall prohibit the city from taking immediate action to abate any violation of this property maintenance code without prior notice to the property owner, resident, tenant, persons having control or management of the property, or other occupant when a code official, upon inspection of the property, has reason to believe that a violation presents a serious and imminent threat to any person, the public's health, safety, or welfare, or if in the absence of immediate remedial action, the effects or consequences of a violation will, within reasonable probability, cause irreparable or irreversible harm and/ or property damage.
- (10) *Liability:* The code officials charged with the enforcement of this division, while acting within the course and scope of their duties under this division, shall not thereby be

rendered liable personally and are hereby relieved from any and all personal liability for injuries and damage to persons or property. Any suit instituted against any code enforcement officer, code official or employee because of a lawful act performed by that officer, code official or employee in the discharge of duties imposed under the provisions of this or any other division shall be defended by the city until final adjudication of any proceedings.

- (11) *Discretionary Modifications:* The code official shall have the discretion to modify a notice of violation or citation provided the officer will first find that special circumstances that makes strict compliance with this property maintenance code impractical and the modification is in compliance with the intent and purpose of this property maintenance code and that such modification does not violate health, life and fire safety requirements.
- (12) *Each Day as a Separate Offense:* If the property owner, resident, tenant, occupant, persons having control or management of the property, or other violator does not abate the violation in the time provided, another citation will be issued in accordance with subsection 5-129(c), for each subsequent and separate violation of the property maintenance code and each day that such violation remains may constitute a separate offense under this property maintenance code.

Sec. 5-130. Appeal process; contesting a citation.

The following details the appeal process

- (a) *Appeal of Citation:* When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days following the issuance by either paying the fines, charges, costs, penalties and/or fees, including administrative fees assessed therein, or by filing an appeal in writing with the City Clerk of the City of Providence, Kentucky, at City Hall, Providence, Kentucky, 42450, requesting a hearing before the code enforcement board.
- (b) *Violation Must Be Corrected:* Payment of assessed fines, charges, administrative fees and penalties shall not relieve the property owner, resident, tenant, occupant, persons having control or management of the property, or other violator from his or her obligation to bring the property on which the violation occurred into compliance with the property maintenance code within a reasonable time thereafter, as solely determined by the code enforcement officer.

Sec. 5-131. Property Maintenance Code Enforcement Board; Appointment of members; terms of office; removal of board members from office; liability.

There is hereby created pursuant to KRS 82.700 to KRS 82.725, with jurisdiction to enforce the property maintenance code, a City of Providence Property Maintenance Code Enforcement Board (hereafter the "code enforcement board"), which shall be composed of five (5) members.

- (a) *Qualifications:* Members of the code enforcement board shall have resided within the city for a period of at least one (1) year prior to appointment to the code enforcement board, and shall maintain residency throughout the term of their appointment.
- (b) Members shall be appointed by the mayor of the City of Providence with the approval of the Providence City Council.
- (c) All code enforcement board appointments shall be for a term of three (3) years. This code enforcement board initially appointed will be as a five (5) member code enforcement board reading as follows: One (1) member appointed to a two-year term. Two (2) members shall be appointed to a one-year term. Two (2) members appointed to a three-year term.
- (d) If a vacancy on the code enforcement board occurs, the mayor with approval of the Providence City Council, shall within sixty (60) days of the vacancy, appoint a new member or members. If the vacancy is not filled within the prescribed time period, the Providence City Council shall appoint a member to fill the vacancy.
- (e) Members of the code enforcement board shall only be removed therefrom by the Providence City Council for misconduct, inefficient or willful neglect of duty. Prior to removal, the mayor or member(s) of the Providence City Council requesting same, shall submit the removal decision in writing to the member in question and the reasons for it.
- (f) *Liability:* Members of the code enforcement board charged with the enforcement of this division, while acting on behalf of the city and within their official duties and capacity, shall not thereby be rendered liable personally, and are hereby relieved individually and collectively from all personal liability for any injury and/or damages to persons or property as a result of the discharge of official duties imposed herein. Any suit instituted against any code enforcement board member because of an act performed by that code enforcement board member in the lawful discharge of duties and under the provisions of this division shall be defended by the legal representative of the city until the final determination of the proceedings.
- (g) *Training:* Members of the code enforcement board shall receive training related to the conduct of administrative hearings in accordance with procedures set out in KRS 13B.080.

Sec. 5-132. General powers of the code enforcement board. The code enforcement board shall have the powers to:

- (a) Adopt any and all policies, rules and regulations, reasonably required to implement, administer and conduct its business and hearings brought before it.

- (b) Conduct evidentiary hearings to determine whether there has been a violation of the property maintenance code. Any member of the code enforcement board, including the chairman, may be assigned to conduct hearings on behalf of the code enforcement board.
- (c) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the code enforcement board may be served by any code enforcement officer, code official, or any person authorized under applicable law.
- (d) Take testimony under oath. The chairman of the code enforcement board, or an assigned hearing officer, or counsel to the code enforcement board shall have the authority to administer oaths to witnesses prior to their testimony before the code enforcement board or hearing officers on any matter.
- (e) Make findings and issue orders that are necessary to remedy any violation of the property maintenance code.
- (f) Impose fines, charges, costs, penalties, and/or fees, including administrative fees, on any person to have violated the property maintenance code.
- (g) Authorize the code enforcement officer(s) to file liens against properties found to be in violation of the property maintenance code to secure the collection of fines, penalties, fees, abatement costs, charges and/or administrative cost, including administrative fees, and to authorize the code officials to proceed with demolition of properties which warrant such under the property maintenance code.

Sec. 5-133. Organization of code enforcement board; conduct of meetings and code enforcement board members; quorum.

- (a) The code enforcement board shall annually elect a chairperson from among its members. The chairperson shall be the presiding officer and a full voting member of the code enforcement board.
- (b) The code enforcement board shall hold regular meetings on a date, and during times to be established by the code enforcement board. Regular and special meetings shall be scheduled and held in accordance with requirements of the Kentucky Open Meetings Act. Regular and special meetings may be cancelled if there are no appeals or other business to be considered by the code enforcement board.

A code enforcement board shall be authorized to conduct special or emergency meetings in accordance with KRS 61.805 to 61.850. The local government legislative body shall provide clerical and administrative personnel as reasonably required by its code enforcement board for the proper conduct of the duties of the code enforcement board.

- (c) All meetings and hearings of the code enforcement board shall be held in accordance with the requirements of KRS 82.700 et seq., KRS 381.770 et seq., Roberts Rules of Order, Open Records Act, and the Providence Code of Ethics.
- (d) For the purpose of conducting all business and hearings brought before it, three (3) members of the code enforcement board, shall, if present, constitute a quorum and an affirmative vote of the members constituting a quorum shall be necessary for any official action to be taken. Any member of the code enforcement board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for the purposes of establishing a quorum.
- (e) All hearing on appeal of citations to the code enforcement board shall be recorded. Minutes, records and/or transcripts of all proceedings and action taken shall be kept by the code enforcement board and the vote of each member on any issue decided by them shall be recorded therein.

Sec. 5-134. Code enforcement board hearing; notice; and final order.

- (a) When an appeal has been properly filed and a hearing has been requested, the code enforcement board shall convene for the purposes of conducting a hearing not later than thirty (30) days after the appeal has been filed with the Providence City Clerk. Otherwise the code enforcement board may convene for the purpose of conducting any other business brought before it or a majority of the membership of the code enforcement board.
- (b) Not less than seven (7) days before any requested hearing, the code enforcement board shall notify the appellant of the date, time, and place of the hearing. Notice shall be given by certified mail, return receipt requested at his or her last known address; or by personal delivery, or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) year of age or older and who is informed of the contents of the notice.
- (c) Any person requesting a hearing before the code enforcement board who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing on an appeal of a notice of violation or citation and a determination that a violation was committed shall be entered and become final. The code enforcement board shall enter a final order confirming the violation and impose fines, charges, costs (including abatement costs which have or are to be incurred by the city), penalties, and/or fees, including administrative fees assessed in the citation. The code enforcement board may also direct that property owner, resident, tenant, occupant, persons having control or management of the property, or other violator to abate the nuisance within a reasonable time not to exceed twenty (20) days and provide for a daily fine at a rate of not more than \$100.00 per day for each beyond the time specified to abate the violation that the violation continues to exists. A copy of the final order shall be served upon the violator/appellant.

- (d) When a hearing is held under this section, the code enforcement board shall elicit testimony from witnesses and allow relative demonstrative evidence. All testimony shall be recorded by audio, video, or by stenographic means. The chairperson, any code enforcement board member, or counsel to the code enforcement board shall have authority to administer the following oath: "Do you solemnly swear and affirm to tell the truth, the whole truth and nothing but the truth". Testimony shall be taken from the code enforcement officer, the alleged violator and any witnesses with relevant personal knowledge of the violation or citation on appeal. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (e) In making its determination, the code enforcement board shall, based solely on the evidence adduced during the hearing, determine by a preponderance of the evidence whether or not a violation has been committed. If, at the conclusion of the hearing, the code enforcement board determines that a violation has been committed, an order shall be issued upholding the citation and the code enforcement board shall impose the fines, charges, costs (including abatement costs which have or are to be incurred by the city), penalties, and/or fees, including administrative fees assessed up to the maximum authorized under this property maintenance code. The code enforcement board may also direct the property owner, resident, tenant, occupant, persons having control or management of the property, or other violator to abate the nuisance within a reasonable time not to exceed twenty (20) days and provide for a daily fine at a rate of not more than \$100.00 per day for each day beyond the time specified to abate the violation that the violation continues to exist. If the violator does not abate in the manner required and within the time provided in the final order and a daily fine has not been imposed by the code enforcement board, another citation may be issued for the same violations.
- (f) Every final order of the code enforcement board shall be reduced to writing and shall include the findings and conclusions of the code enforcement board, the date the order was issued, and be signed by the presiding member of the code enforcement board at the time of the hearing. A copy of the final order shall be served upon the violator/appellant.
- (g) The code enforcement officer may abate the violation in order to bring the property into compliance with the property maintenance code if a final order upholding the citation is entered by the code enforcement board or any court of competent jurisdiction upon the expiration of any time given to the violator to abate the violation, if any.

Sec. 5-135. Appeal to district court; final judgment.

- (a) An appeal from the code enforcement board's determination may be made to the County District Court within thirty (30) days of the date of the code enforcement board's determination. The appeal shall be initiated by the filing of a complaint and a

copy of the code enforcement board's final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure. The District Court shall review the final order de novo.

- (b) The action before the district court shall be tried de novo and the burden shall be upon the city to establish that a violation occurred. If the court finds that a violation occurred, the property owner, resident, tenant, occupant, persons having control or management of the property, or other violator shall be ordered to abate the violation and pay to the city all fines, charges, costs, penalties, and/or fees, including administrative fees occurring as of the date of the judgment. If the district court finds a violation did not occur, the city shall be ordered to dismiss the notice of violation or citation and the plaintiff/appellant shall be authorized to recover his cost.
- (c) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Kentucky Rules of Civil Procedure.
- (d) If no appeal from a final judgment, decision or order of the code enforcement board is filed within the time period set in subsection (a) above, the code enforcement board's order shall be deemed final and enforceable for all purposes provided herein.

#### Sec. 5-136. Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit or structure who has received a notice of violation or citation, to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the requirements listed in the notice of violation or the violations listed in the citation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice of violation or citation issued by the code enforcement officer and shall furnish to the enforcement officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of violation or citation and fully accepting the responsibility without condition for making the necessary corrections and repairs required by such notice of violation or citation.

#### Sec. 5-137. Standards and Violations.

- (a) Provisions of the most current International Property Maintenance Code are adopted by reference herein.

Violations of the provisions therein shall be deemed a nuisance enforceable by any and all provisions of this property maintenance code. Where the language contained in the adopted provisions of the International Property Maintenance Code are in conflict with any other provisions herein, the more restrictive language shall govern.

- (b) *Certain Conditions Declared Unlawful.* It shall be unlawful for the owner, resident, tenant, occupant, or persons having control or management of any public or private land within the city to permit such to be in violation of any provision of the International Property Maintenance Code as adopted herein, to permit a public nuisance, health hazard, or source of

filth to develop thereon, or to permit such to contribute to the material devaluation of surrounding real property due to violations of the property maintenance code. A public nuisance shall include, but is not limited to, the following:

i. *Junk; scrap metal.* The storage or accumulation of tires, auto parts, storage tanks, dumpsters, junk machinery, machinery parts, abandoned, discarded or unused appliances, junked appliances, objects or equipment, salvage materials, or scrap metal (whether recyclable or unrecyclable) within the city limits and within the ordinary view except on premises authorized by the city for such purposes;

ii. *Accumulation of construction, demolition or landscaping debris.* All exterior property and premises shall be free from any accumulation of combustible and noncombustible waste materials, including any material resulting from maintenance, demolition, repair, alteration or construction of buildings, structures or grounds, or landscaping or natural damage of grounds, including, but not limited to, fallen trees, tree branches, brush and yard trimmings;

iii. *Exterior use or storage of indoor furniture.* The use or storage of furniture which is upholstered or not designed for outdoor use in an uncovered or exposed area in which it is likely to decay, decompose or retain moisture causing a health hazard.

iv. *Compost piles.* Any compost pile which is of such a nature as to spread or harbor disease, emit unreasonable, unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects, provided that the presence of earthworms in a compost pile shall not constitute nuisance;

v. *Nauseous substances or odors.* The permitting of any offal, manure, rubbish or filth, decaying animal or vegetable matter, excessive animal excrement or any foul or nauseous substances, or nauseous or offensive odor to be emitted or to be discharged out of or flow from the premises;

vi. *Dangerous trees or stacks adjoining streets.* The permitting of any tree, shrubbery, hedge or other object to grow or stand in such a condition that it interferes with the use, construction or maintenance of streets or sidewalks, that could cause injury on streets or sidewalks, or that causes an obstruction to drainage or poses a danger to life, limb or property;

vii. *Obstruction of storm water and drainage facilities.* The permitting of any limbs, leaves, grass clippings or other objects to be placed in a manner that interferes with the use or maintenance of any storm water and drainage facilities;

viii. *Visual obstructions of streets.* The permitting of any hedge, shrubbery, fence or other visual obstruction on any corner of lot to attain a height which prohibits proper sight distance.

ix. *Dilapidated structures.* All buildings, walls and other structures which have been damaged by fire, decay or otherwise and which are in a state of dilapidation, deterioration or decay so as not to provide shelter, sufficient sewer, plumbing, electrical or heating facilities or which are unsound or in danger of collapse or failure and which are a danger to safety of the public or which are vacant or abandoned and open or accessible to vagrants or passerby or which are otherwise built, erected or maintained in violation of any ordinance;

x. *Obstructions over streets.* All hanging signs, awnings, canopies, wires and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety or to be contrary to ordinance, unless approved by the city;

xi. *Stagnant water.* All stagnant water in which mosquitoes, flies or other insects can multiply;

xii. *Accumulation of refuse/trash containers.* The storing or permitting the accumulation of refuse, unless such refuse is kept separately in standard refuse/trash containers or dumpsters which are covered by solid, tight fitting lids and which have no uncovered holes, and the storing or permitting the accumulation of refuse and trash for which removal of refuse and trash is not provided;

xiii. *Scattering garbage, etc.* Throwing, placing, or scattering of any garbage, rubbish, trash, or other refuse over or upon any premises, street or alley, either public or private, or adjacent thereto, and either with or without the intent to later remove in some manner;

xiv. *Attractive nuisances.* The allowing of any physical condition, use or occupancy of any property or premises to be an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, standing pools of water, basements, excavations, retaining walls, unsafe fences and refrigerators, freezers, ice chests, ice boxes or similar airtight box or container which has a locking device inoperable from within, without first unhinging and removing the door or lid and detaching the locking device from the door or lid;

xv. *Graffiti.* The allowing of any graffiti, which is defined as any inscription, drawing or design that is scratched, painted, sprayed or placed on any surface of any structure that has no redeeming artistic, moral or social value.

xvi. *Hoarding of Materials.* The accumulation of combustible materials, trash, food, newspapers, magazines, old clothes and other items that create a serious fire and health hazard that can cause disease, contribute to vermin and/or insect infestations, affect the occupants or the building, neighbors, public safety personnel and the general public, or violate any other City safety code.

xvii. *Rubbish.* An accumulation on any property of filth, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger that it will catch or communicate fire, attract and propagate vermin, rodents, or insects, or blow rubbish into any sidewalk, or property of another.

xviii. *Storage of Explosives.* The storage of explosive material, including, but not limited to fireworks, which creates a safety hazard to other property or persons in the vicinity.

xix. *Weeds and Grass.* The excessive growth of weeds, grass, or other vegetation, except flowers or other ornamental vegetation, which are properly maintained. Unless otherwise provided, "excessive" shall mean growth to a height of ten (10) inches or more.

xx. *Open Wells.* The maintenance of any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private property in any open or unfenced lot or place.

xxi. *Junked Motor Vehicles.* The presence of any junked motor vehicle on public property or on any private lot, tract or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the city and within ordinary view. Further, a junked motor vehicle or parts thereof shall be considered rubbish or refuse, and it shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning or discarding any motor vehicle on any real property within ordinary view, provided that this provision shall not apply with regard to:

- (1) Any motor vehicle on the property of a business enterprise operated in a lawful manner, when necessary to the operation of such business enterprise; or
- (2) Any motor vehicle on property occupied and used for repair, reconditioning and remodeling of motor vehicles or appliances in conformance with the zoning code of the city; or
- (3) Any Motor vehicle as defined in KRS 281.0911 that is owned controlled, operated, managed, or leased by a motor carrier.

xxii. *Generally.* In addition to Sec. 5-139 (b) (1-23) herein, a public nuisance shall also include, but is not limited to, the following.

- (1) The physical condition or occupancy of any property regarded as a public nuisance at common law;
- (2) Any unsafe structure or property that is unsafe for human habitation;

- (3) Any property that is in imminent danger of becoming a fire or other hazard, or is manifestly unsafe or unsecure, so as to pose an imminent threat or danger to life, limb or property;
- (4) Any property from which the plumbing, electrical, heating or other facilities required by this property maintenance code have been removed or from which utilities have been disconnected, destroyed, removed or rendered ineffective and the required precautions against trespassers have not been provided;
- (5) Any property that is unsanitary, littered with rubbish or garbage or has uncontrolled weeds growing on it; and/or
- (6) Any residence, building, outbuilding or other structure that is overcrowded, open, vacant or abandoned, damaged by fire to the extent that it is uninhabitable, in danger of collapse or failure or dangerous to anyone on or near the property.

xxiii. *Unsafe structure; Imminent Danger.* When in the opinion of the code enforcement officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in proximity of any structure because of explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code enforcement officer is hereby authorized and empowered to order and require occupants to vacate the premises forthwith. The enforcement officer shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Property Maintenance Code Enforcement Officer." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making repairs, removing the hazardous condition or of demolishing the same.

xxiv. *Problem Structures:* In that there is a need to establish a period of time a problem structure may remain standing, the appropriate sections of the International Property Maintenance Code dealing with unsafe structures and equipment is amended to add the following:

- (1) A problem structure is defined as a building or other structure that poses a nuisance or danger to the public, police department or fire department and includes, but is not limited to the definition in the International Property Maintenance Code, as well as the following:
  - (a) A building whose interior or exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of the base;
  - (b) A building, exclusive of the foundations, that shows 33% or more damage or deterioration to its supporting members or 50%

or more damage or deterioration to its non-supporting members or to the enclosing or outside walls or coverings;

(c) A building having improperly distributed loads on the floors; or roofs, or in which same are overloaded or have insufficient strength to be reasonably safe to occupants or the public;

(d) A building damaged by fire, wind, seismic or other causes so as to cause the building to become dangerous to life, limb or property of the occupants or to the public;

(e) A building that has become or is so dilapidated, decayed, unsafe, unsanitary or which so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation or is likely to cause sickness or disease or injury to health, safety or general welfare of those living therein;

(f) A building having light, air and sanitation facilities that are inadequate to protect the health, safety or general welfare of human beings who live or may live therein;

(g) A building having inadequate facilities for egress in case of fire or other events; or having insufficient stairways, fire escapes or other means of travel;

(h) A building that has parts or elements that are attached or not attached in such a way that they may fall and cause injury to persons or property;

(i) A building characterized by disconnected utilities, extensive broken glass, excessive peeling or flaking paint on the exterior walls, loose or rotting materials on the roof or the exterior walls; or,

(j) Any vacant building or structure not secured from entry or the elements.

(2) When a problem structure which has been damaged by fire or illegal activity, and which is not in danger of structural collapse, has been closed and secured from entry and the elements and the structure continues to remain closed and secured from entry and the elements by approved methods, it may remain standing in a safe condition for a period not to exceed ninety (90) days from the date of the fire, the date of damage from illegal means or the date of the release of the property from a governmental, criminal, fire or explosives investigation, at which time an application must have been made for a building

permit to repair or for a demolition permit. If a building permit is requested and approved, repair or renovation work to begin the property into compliance must be completed within sixty (60) days of the date of the issuance of the permit unless an extension is granted by a code official or the code enforcement board. If a demolition permit is requested and approved, demolition must be completed with the time established in the permit.

(3) Failure of the property owner to keep the structure closed and secured from entry and the elements or to obtain the required permit in the specified time shall constitute permission to a code official, code enforcement officer, employee, or other authorized agent of the city to enter upon the property to remedy the situation and to abate the nuisance which may include abatement by demolition and removal of the problem structure.

(c) *Temporary Safeguards.* Notwithstanding other provisions of this property maintenance code, whenever, in the opinion of the code enforcement officer, there is imminent danger due to an unsafe condition, the enforcement officer may order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the enforcement officer deems necessary to meet such emergency.

(d) *Closing Streets.* When necessary for public safety, the code enforcement officer shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit same from being utilized.

(e) *Emergency Repairs.* For the purpose of this section, the code enforcement officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible within the limits of the appropriations for the department. Cost incurred in the performance of emergency work shall be the responsibility of the property owner.

(f) *Demolition General.* The code enforcement officer may order the owner of any premises upon which is located any structure, which in the officer's judgment is dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove the structure; or if such structure is reasonably capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than one (1) year, to demolish and remove such structure.

(g) *Liability for Damages to Remove Vehicle or other Items from Property.* No city official, code official, employee, servants, agents, or any department of the city shall be liable for any loss or damage to the junked motor vehicle, junked appliances, rubbish, trash, or other material constituting a violation on the property maintenance code as a

result of such being removed from the property or as a result of any subsequent sale or other disposition.

(h) *Right of Entry.* A code enforcement officer may enter upon public or private property to inspect a suspected violation of the property maintenance code when, in ordinary view, there exists reasonable evidence that a violation exists. If the violator does not request a hearing before the code enforcement board and the property is not brought into compliance, or if the code enforcement board orders the property be brought into compliance and the violator refuses, failure to so comply shall constitute permission to a code official, employee or other authorized agent of the City to enter upon the property to remedy the situation and to abate the violation.

(i) *Article Supplemental to Other Regulations*

i. The provisions of this article are supplemental and in addition to all other regulatory Codes, statutes and ordinances heretofore enacted by the city, state or any other legal entity or agency having jurisdiction.

ii. The provisions of this article shall be deemed cumulative of the provisions and regulations contained in the Code of Ordinances, City of Providence, Kentucky, save and except that where the provisions of this article and the sections hereunder are in conflict with the provisions elsewhere in this Code, then the more restrictive provisions shall prevail.

(i) The provisions of this Ordinance shall not apply to: (a) Junked, wrecked, or inoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a:

- (1) Licensed automotive recycling dealer as described in KRS 190.010(8);
- (2) Used motor vehicle dealer as defined in KRS 190.010(6); or
- (3) Motor vehicle auction dealer as defined in KRS 190.010(11);
- (4) Junked, wrecked, or inoperative motor vehicles, including parts cars, stored on private premises by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, or other means; and
- (5) Any motor vehicle as defined in KRS 281.010 that is owned, controlled, operated, managed, or leased by a motor carrier.

Sec. 5-138. Demolition permit required; demolition permit fees; double fee; demolition or alteration of common or fire wall; liability insurance; time limit; standards or inspections:

- (a) *Demolition Permit Required:* It shall be unlawful to demolish any building, structure or part thereof without filing a written application for a demolition permit with the Providence City Clerk.
- (b) *Demolition Permit Fees:* For the demolition of any building, structure or part thereof, the permit fee shall be established by the City Mayor, but shall not be less than the following:

(i) Ten-dollars (\$10.00) for all residential or any small commercial that is one (1) story and less than three thousand (3,000) square feet.

(ii) Ten dollars (\$10.00) for any private, residential accessory structure (garages and storage sheds over one hundred fifty (150) square feet).

(iii) Twenty-five dollars (\$25.00) for any commercial and industrial structures and all others exceeding three thousand (3,000) square feet.

(c) *Double Fee:* Where work for which a permit is required by this ordinance is started or proceeded with prior to obtaining the required permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this division in the execution of the work nor from any other penalties prescribed herein.

(d) *Demolition or Alteration of Common or Fire Wall:* When demolition of any structure involves alterations to a common, party wall or a fire wall or fire separation wall, the owner or contractor is (1) required to submit detailed plans to the building official or appropriate city official detailing scope of work to correct any defects in the remaining wall(s) and (2) post a bond with the City Clerk in an amount not less than twenty thousand dollars (\$20,000.00) to insure proper completion of the exposed, remaining wall to building code standards.

(e) *Liability Insurance:* Proof of liability insurance is required to be submitted to the Providence City Clerk by the contractor prior to issuance of demolition permit for protection of adjoining properties and public right-of-way improvements.

(f) *Time Limit:* The code enforcement officer or code official may impose a time limit as an additional condition of a permit for completion of demolition work once such work shall have commenced, provided that for cause one (1) or more extensions of time, for periods not exceeding thirty (30) days each, may be allowed in writing by the enforcement officer.

(g) *Standards:* The following standards shall apply to demolition:

i. Demolition work, having commenced, shall be pursued diligently and without unreasonable interruption with due regard to safety. It is the intent of this division to limit the existence of an unsafe condition or nuisance on the premises during the period of demolition operations.

ii. Any surface holes or irregularities, wells, septic tanks, basements, cellars, sidewalk vaults, or coal chutes remaining after demolition of any building or structure shall be filled with material as approved by the enforcement officer, and shall be graded in such manner that will provide effective surface drainage. Any surface irregularities resulting from the demolition process shall be leveled to match surround grade.

- iii. All debris and accumulation of material resulting from demolition of any building or structure shall be removed from all premises.
- iv. All building sewers shall be effectively plugged at the property line as may be required.
- (h) *Inspections:* The code enforcement officer shall make the following inspections upon notification from the permit holder or his agent:
  - i. Initial inspection is to be made after all utilities connections have been disconnected and secured in such manner that no unsafe or unsanitary conditions shall exist during or remain after demolition operations.
  - ii. Final Inspection is to be made after all demolition work is complete.
- (i) *Owner and Contractor Responsible:* The provisions of this section may be enforced against either the owner or any person or contractor performing the work or both.

#### Sec. 5-139. Liens.

The City of Providence shall possess a lien on property owned by the person found by a final, nonappealable final order as defined herein, or by a final judgment of the court, to have committed a violation of a local government ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs. An affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 65.8801 to 65.8839.

The lien shall take precedence over all other subsequent liens, except state, county, school board, and city taxes; and shall continue for ten (10) years following the date of the nonappealable final order, or final judgment of the court, and may be enforced by judicial proceedings, including an action to foreclose.

In addition, to the remedies described hereinabove, the person found to have committed the violation shall be personally responsible for the amount of the lien, including all civil fines assessed for the violation and for all charges, fees, and abatement costs incurred by the City of Providence in connection with the enforcement of the ordinance. The City of Providence may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

#### Sec. 5-140. Lienholder Notification System

The City of Providence shall obtain and maintain priority over previously filed liens in accordance with the following provisions:

- (1) Individuals and entities, including but not limited to lienholders, may register with the city to receive notification of final orders entered pursuant to this ordinance.

(2) In order to receive the notification, the registrant shall submit the following information to the code enforcement officer:

- (a) Name;
- (b) Mailing address;
- (c) Phone number; and
- (d) Electronic mailing address.

(3) It shall be the responsibility of the registrant to maintain and update the required contact information with the city.

(4) Once per month the City of Providence shall send notification of all final orders entered pursuant to this ordinance since the last date of notification to each party registered pursuant to this Section.

(5) The city shall maintain the records created under this Section for ten (10) years following their issuance.

(6) A lienholder of record who has registered pursuant to this section may, within forty-five (45) days from the date of issuance of notification may:

- (a) Correct the violation, if it has not already been abated; or
- (b) Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.

(7) Notwithstanding this Section, nothing shall prohibit the city from taking immediate action if necessary under provisions of the code enforcement ordinances.

(8) The lien provided by Section Five this ordinance shall not take precedence over previously recorded liens if:

- (a) The city failed to comply with the requirements of Section Seven of this ordinance for notification of the final order; or
- (b) A prior lienholder complied with this section.

(9) A lien that does not take precedence over previously recorded liens under this Section shall, if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.

(10) The city may record a lien before the forty-five (45) day period established in subsection (6) of this Section expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period, the city shall release the lien in the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.

(11) Failure of the city to comply with this section of this ordinance, or failure of a lien to take precedence over previously filed liens as provided in this Section, shall not limit or restrict any other remedies the city has against the property of the violator.

**DIVISION 2. RESERVED**  
**Sects 5-141 to 5-157**

### DIVISION 3. TREES AND OTHER LANDSCAPE MATERIALS

#### Sec. 5-158. Title.

This division shall be known and may be cited and the "Tree Ordinance of the City of Providence, Kentucky."

#### Sec. 5-159. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them in this section:

*Large trees:* Trees that may be expected to attain a mature height of forty (40) feet or more.

*Medium trees:* Trees that may be expected to attain a mature height of twenty-five (25) to forty (40) feet.

*Small trees:* Trees that may be expected to attain a mature height of twenty-five (25) feet or less.

*Person:* Any person, corporation, partnership, company, contracting firm, or other association, organization or entity, including vendors or other service providers under contract with the city.

*Public nuisance:* Any dangerous, diseased or dead tree, shrub, or portions thereof, located on public right-of-way or on private property adjoining thereto. Which unreasonably interferes with, obstructs, or renders dangerous for use by pedestrian or vehicular traffic, any public property, street, or sidewalk thereon.

*Reasonable:* Acting in an ordinarily prudent manner with due regard for the health, safety, and well-being of people who use city property, streets, sidewalks, and other public right-of-way areas.

*Right-of-way:* Real property owned by, or dedicated to the city for public use, such as streets, medians, sidewalks, pedestrian/bikeways, utility facilities or driveways constructed thereon.

*Shrub:* A woody plant or bush that is not tree-like in habit and produces multiple branches or shoots from near the base.

*Street lawn:* Where sidewalks are present, this shall be the area between the sidewalk and back of a publically maintained street curb or edge of publically maintained pavement. When sidewalks are not present, the area from the property line to the back edge of a publically maintained street curb or publically maintained pavement.

*Tree:* Any self-supporting woody plant which has a well-defined stem(s) or a seedling or sapling thereof, planted with the intent to allow the plant to grow to maturity.

Sec. 5-160. Tree and shrub planting; restrictions; appeal process.

(a) *Permission required for trees and shrubs planted on public right-of-way:* Any person may plant a tree or shrub within unimproved public right-of-way, a median, or street lawn that is immediately adjacent to his or her property, upon obtaining written permission from the city and provided that the following conditions are met:

- i. The applicant must apply for permission at least ten (10) working days prior to actual planting.
- ii. A representative of the City of Providence shall conduct an on-site visit and approve tree/shrub species and location of proposed planting.
- iii. Applicant must locate all underground utilities prior to the on-site visit.
- iv. The applicant shall acknowledge his other responsibility for the reasonable maintenance of all permitted trees and/or shrubs after they are planted, which shall constitute a binding, real covenant between applicant, applicant's successors in interest, and the city.
- v. Trees planted in the street lawn shall meet the following minimum linear spacing requirements:
  - (a) Forty (40) feet between large trees.
  - (b) Thirty (30) feet between medium trees.
  - (c) Twenty (20) feet between small trees.
- vi. The minimum width of a street lawn planting area shall be five (5) feet for small trees, eight (8) feet for medium trees, and ten (10) feet for large trees. The tree shall be centered in these areas. Due consideration shall be given for future right-of-way improvements (e.g., street widening sidewalks, etc.)
- vii. No tree shall be planted closer than ten (10) feet to the nearest fireplug or utility pole.
- viii. No tree shall be planted within thirty (30) feet of the nearest end of the street curb radius where traffic control devices are present.
- ix. Only small trees shall be planted under or within fifteen (15) lateral feet of overhead utility wires.

x. No shrub shall be planted in such manner as to interfere with necessary access to any public utility or traffic control device or mailbox.

(b) *Tree removal and maintenance; restrictions in downtown core area; appeals:*

i. It shall be unlawful for any person to cut, carve, poison by use of any gaseous liquid, herbicide, or other toxic substance harmful to trees, transplant, temporarily or permanently attach any signs, boards, or other items excluding tree support devices, or damage any trees or shrubs located on city property, any street lawn, or other public right-of-way.

ii. Any excavation in the public right-of-way, street lawn, or other city owned or controlled property is subject to these provisions and other provisions of the Providence Municipal Code.

iii. The city shall assume responsibility for removal of a tree in the right-of-way only in one (1) or more of the following conditions exist:

- (a) A tree is dead or severely damaged;
- (b) A tree is damaging or potentially damaging infrastructure;
- (c) A tree must be removed because of a city-related construction project;
- (d) A tree is causing an unacceptable safety risk.

iv. The adjoining property owners(s) may remove a tree and stump at their expense when the tree does not qualify for removal by the city.

v. The city is authorized to prune trees growing on private property that in the judgment of the city's agent, present an unacceptable safety risk to vehicular or pedestrian traffic in the right-of-way, or may order the pruning or removal of any permitted trees or shrubs from any publicly owned or dedicated right-of-way when same are determined to be a public nuisance as defined herein of the Providence Municipal Code. No provision herein shall restrict the right of any public utility, with prior approval of the city, to prune or remove any tree or shrub on public right-of-way, to allow for the reasonable use and maintenance of their respective facilities.

vi. *Downtown core area:*

(a) No trees or shrubs shall be planted, pruned, or removed by any person other than the city, its licensed agent or contractor, on or from city property or right-of-way within the downtown core area.

(a) *Decorations:* No trees or shrubs located on city owned property or public right-of-way within the downtown core area shall be decorated in any manner by any person other than the city, its licensed agents,

contractors, or other authorized persons, in connection with any festival, holiday, or other community event, without the prior written approval of the City.

vii. The city reserves the right to deny the issuance of any permit authorized herein under circumstances that are harmful to the health, safety, welfare, and/or interest of the public.

viii. *Appeal:* Any applicant for a permit required by this section, or any property owner in the downtown core are adversely affected by the decision of the city in the application or interpretation of any of the provisions in this section of the ordinance, may appeal said decision to the city. The appeal provided herein shall be perfected by filing written notice thereof with the Providence City Clerk within ten (10) days after notification of the decision on an application for a permit. The notice of appeal required herein shall set forth the reasons why the appeal is being taken and what relief is sought. The appeal shall be heard by the City Mayor within twenty (20) days after the filing of the notice of appeal. The appellant shall be notified of the date, time, and location of the hearing, and for good cause only, may be granted a continuation of the hearing to a mutually convenient date and time.

The hearing on the appeal shall be conducted under rules uniformly applicable to both the appellant and the city. Both the appellant and the city shall have the right to make statements, offer and examine witnesses, and present evidence in support of their respective positions; cross-examine witnesses; and submit any other information relevant to the adjudication of an appeal. At the conclusion of the hearing on the appeal, or within ten (10) days thereafter, the City Mayor shall issue a written decision containing findings of fact based upon the evidence produced at the hearing and shall notify the affected parties, in writing, of his decision. If the appellant is dissatisfied with the City Mayor's decision, the appellant may appeal same to the Providence Code Enforcement Board by giving written notice thereof to the City Clerk within seven (7) days of Mayor's decision within thirty (30) days after the notice of appeal is filed. In rendering its decision, the Providence Code Enforcement Board may, in its sole discretion, request additional information, new evidence, or testimony from the parties involved or other witnesses. The Providence Code Enforcement Board shall mail to the appellant a copy of its final decision within five (5) days after the decision is rendered.

Sec. 5-161. Maintenance of trees, shrubs, and street lawns; violation.

(a) *Responsibility of adjoining property owners:* All trees and/or shrubs for which a permission has been granted under section 5-160 of this article shall be reasonably maintained by the person in which permission was so granted or current owner of the property adjoining the street lawn or public right-of-way on which the tree or shrub is located. Adjacent property owners may perform minor routine maintenance on all other non-permitted trees and shrubs.

located within the street lawn or other public right-of-way. Maintenance shall include, but is not limited to, pruning, removal of dead or diseased limbs, and/or insect control. Adjoining property owners shall prune permitted trees and shrubs to improve visibility of traffic control devices, comply with sight visibility requirements, and provide sufficient overhead clearance of vehicular and pedestrian traffic on adjoining streets and sidewalks. Adjoining property owners shall also maintain and repair, if necessary, any abutting public street or sidewalk, or other public right-of-way damaged by the root system, trunk, or limb of a privately owned tree, at the property owner's expense.

(b) It shall be unlawful for a property owner, resident, tenant, occupant, or persons having control or management of any property, house, building, or lot to permit any trees or shrubs, including trees or shrubs located on private property or permitted within street lawns, to grow in a manner which interferes with or damages public streets or sidewalks located on adjacent public right-of-way or interferes with street traffic, visibility of traffic control devices, violates sight visibility requirements at intersections, or which obstructs the passage of adjoining right-of-way, or otherwise creates an imminent risk of injury or damage to vehicular and pedestrian traffic.

(c) It shall be unlawful for a property owner, resident, tenant, occupant, or persons having control or management of any property, rental property, house, building, or lot to permit the street lawn to be in violation of the property maintenance code.

#### Sec. 5-162. Public nuisance abatement.

The commission of any act, or omitting to perform any duty, or suffering or permitting any condition or thing in violation of any provision of this division shall constitute a "public nuisance," which the city may proceed to abate in accordance with the Providence Municipal Code.

### DIVISION 4. PENALTIES, SEVERABILITY, AND LIENS

#### Sec. 5-163. Penalties.

(a) Any Persons violating any provision of this article shall be subject to the following schedule of civil penalties in addition to any fees, charges, costs, or other amounts authorized therein.

- i. Citations issued by the code enforcement officer for any violation of division 1 that are not contested or which are upheld by the code enforcement board or any court of proper jurisdiction, shall be subject to the following schedule of civil penalties for each violation. However, the code enforcement board may waive any or all of the penalty if it determines that such waiver will promote compliance with the property maintenance code.

| Violation (Uncontested)                                     | 1st Offense | 2nd Offense | 3rd + Offense |
|---|-------------|-------------|---------------|
| Property Maintenance and Nuisance-Structural Violations     | \$100.00    | \$200.00    | \$400.00      |
| Property Maintenance and Nuisance-Non-Structural Violations | \$ 75.00    | \$150.00    | \$300.00      |
| Other Violations  | \$100.00    | \$200.00    | \$400.00      |

Daily Civil Penalty

A daily civil penalty not to exceed \$100.00 per day per property may be imposed by the code enforcement board after a hearing and a finding upholding a citation and where the violation has not been corrected. The code enforcement officer is permitted to petition the code enforcement board for a hearing to request the imposition of a daily fine for any violation.

Sec. 5-164. Severability.

If any provision of this ordinance or related ordinances or statute or the application thereof is held invalid and such invalidity shall not affect other provisions of this ordinance.

Sec. 5-165. References.

This ordinance shall be read in conjunction with existing ordinances such as Ordinance Numbers 82-12, 85-\_\_\_\_ (adopted 12-2-85), 89-3, 90-03, 91-8, 01-04, 01-07, 01-08, 02-02, 04-05, 07-01, 07-03, 08-05, 09-01, 09-02 as well as others. However, in any instances in which the previously referenced ordinances are in conflict with this ordinance, this ordinance shall be the controlling authority.