

ORDINANCE 17-2025

AN ORDINANCE AMENDING THE OWENSBORO MUNICIPAL CODE AS IT RELATES TO PROPERTY MAINTENANCE CODE ENFORCEMENT; AMENDING CHAPTER 2, ARTICLE III, SECTION 2-102 TO CORRECT AN ORDINANCE REFERENCE; AMENDING CHAPTER 5, ARTICLE IV, SECTION 5-137 TO EXPAND AND CLARIFY STANDARDS AND VIOLATIONS; AMENDING SECTION 5-163 TO UPDATE PENALTIES; AND AMENDING VARIOUS OTHER SECTIONS OF THE PROPERTY MAINTENANCE CODE ORDINANCE TO MAKE CORRECTIONS AND REVISIONS TO REFERENCES.

WHEREAS, the Public Works Department has indicated that there is a need to establish additional property maintenance standards for undeveloped property and for incomplete construction projects; and

WHEREAS, the Board of Commissioners desires to amend the Property Maintenance Code Enforcement Ordinance to ensure that undeveloped property and property containing incomplete construction projects are properly maintained; and

WHEREAS, various other amendments to the Property Maintenance Code Enforcement Ordinance are needed to improve legibility and ensure that references are correct.

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

Section 1. That Chapter 2, Article III, Section 2-102 of the Owensboro Municipal Code be, and the same is hereby amended, to read as follows:

Sec. 2-102. Appointment; powers; procedure; designation.

(a) *Authorized.* Pursuant to KRS 82.082, there are hereby authorized citation officers, subject to the provisions of this section.

- (b) *Manner of Appointment.* Citation officer positions shall be specifically designated by ordinance, which ordinance will set out the title of the citation officer and the Code of Ordinance sections and articles to be enforced by the citation officer. The district court will be notified of all citation officers appointed. The appointment of a citation officer may be withdrawn or suspended for any reason.
- (c) *Powers.* Citation officers shall not have the powers of peace officers to arrest or carry weapons but may issue citations as authorized by ordinance upon observation of violations of city ordinances.
- (d) *Uniform.* Each citation officer appointed pursuant to this section shall be readily identifiable by the public as a citation officer by a uniform or other identifying characteristic as designated by the city manager. Citation officers shall immediately identify themselves as citation officers to any member of the public while enforcing any ordinance of the city.
- (e) *Citation Procedures.* The procedures for citations issued by citation officers shall be as provided in KRS 431.015. The citation shall provide that the defendant shall appear within a designated time in the district court, pursuant to the direction of the district court. Standard citation forms will be utilized by all citation officers appointed pursuant to this section.
- (f) *Issuance of Citations.* The officers, agents and employees holding the position listed below are hereby authorized to issue citations with respect to the ordinances expressly set out for their respective positions.

	Position Title	Ordinances To Be Enforced
(1)	Housing inspector	Nuisance ordinance O.M.C. <u>Chapter 5, Article IV, Divisions 1, 3 and 4, and [sections 18-1 through 18-9; BOCA] ICC IPMC (International Property Maintenance Code).</u>
(2)	Building inspector; zoning administrator; electrical inspector	Building regulations, O.M.C. Chapter 5; the zoning ordinance; the land subdivision regulations; Kentucky Building Code.
(3)	Finance director; occupational tax administrator	O.M.C. Chapter 16; Licenses, taxation, and business regulations.
(4)	Occupational license inspector	O.M.C. Chapter 16, Article II, Section 16-34; Enforcement of citations and "stop work" orders.
(5)	Animal control officer	O.M.C. sections 4-1 through 4-4; sections 4-16 through 4-17.
(6)	Civilian parking enforcement officer	O.M.C. Chapter 25 Owensboro Police Department Traffic Unit. May issue parking citations as authorized by city ordinance.

(7)	Construction inspector	O.M.C. Chapter 24, Article IV; Unlawful encroachments on public property and right-of-way.
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(g) *Enforcement.* Nothing in this section shall be a limitation on the power of a citation officer to make an arrest as a private person as provided in KRS 431.015, that is, when a felony has been committed in fact and the citation officer has reasonable grounds to believe that the person being arrested has committed it. This section shall not be exclusive means for enforcement of city ordinances, and citation officers are not limited to use of a citation but may swear to a complaint in lieu of citation.

In an effort to gain compliance with state statutes and city ordinances, all departments responsible for enforcement shall, in most cases, first attempt to gain compliance through inspection, notification, granting of reasonable time to comply and allowing for exhaustion of administrative remedies. When all reasonable efforts have failed, certain employees designated by ordinance may issue citations.

Section 2. That Chapter 5, Article IV, Section 5-137 of the Owensboro Municipal Code be, and the same is hereby amended, to read as follows:

Sec. 5-137. Standards and violations.

(a) Provisions of 2009 International Property Maintenance Code, and future modifications, are adopted by reference herein. The City of Owensboro, Kentucky, hereby adopts, enacts and incorporates by reference, as if fully set forth herein, in their entirety, sections:

- 108 Unsafe Structures and Equipment
- 201 General
- 202 General Definitions
- 301 General
- 302 Exterior Property Areas (except 308.2.1)
- 303 Swimming Pools, Spas and Hot Tubs
- 304 Exterior Structure
- 305 Interior Structure
- 306 Component Serviceability
- 307 Handrails and Guardrails
- 308 Rubbish and Garbage
- 309 Pest Elimination
- 401 General
- 402 Light
- 403 Ventilation
- 404 Occupancy limitations
- 501 General
- 502 Required Facilities
- 503 Toilet Rooms

- 504 Plumbing Systems and Fixtures
- 505 Water System
- 506 Sanitary Drainage System
- 601 General
- 602 Heating Facilities
- 603 Mechanical Equipment
- 604 Electrical Facilities
- 605 Electrical Equipment
- 606 Elevators, Escalators and Dumbwaiters
- 607 Duct Systems
- 701 General
- 702 Means of Egress
- 703 Fire-Resistance Ratings
- 704 Fire Protection Systems

of the "2009 International Property Maintenance Code" and future modifications, as published by the International Code Council, Inc. 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 provision 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:
 - (1) *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 in ordinary view or exceeding five (5) percent of the privacy fenced-in area (clear space), out of ordinary view, protected from the elements by tarps, except on premises authorized by the city for such purposes;
 - (2) *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, or any other material considered salvage;

- (3) *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;
- (4) *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 a nuisance;
- (5) *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 substance, or nauseous or offensive odor to be emitted or to be discharged out of or flow from the premises;
- (6) *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 to streets or sidewalks, or that causes an obstruction to drainage or poses a danger to life, limb or property;
- (7) *Obstructions of Storm Water and Drainage Facilities.* The permitting, placement, blowing, or allowing of leaves, grass clippings or other objects to be placed in a manner that interferes with the use or maintenance of any stormwater curbs/gutters and drainage facilities; placement of limbs in the street or across sidewalks that interferes with vehicular or pedestrian traffic or blocking of gutters or other stormwater drainage facilities;
- (8) *Visual Obstructions of Streets.* The permitting of any hedge, shrubbery, fence or other visual obstruction on any corner lot to attain a height which prohibits proper sight distance as stated in the sight distance triangle section of the applicable zoning ordinance;
- (9) *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 the safety of the public or which are vacant or abandoned and open or accessible to vagrants or passersby or which are otherwise built, erected or maintained in violation of any ordinance;

- (10) *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;
- (11) *Stagnant Water.* All stagnant water in which mosquitoes, flies or other insects can multiply;
- (12) *Accumulation of Refuse/Trash Containers.* The storing or permitting the accumulation of refuse not kept separately in standard refuse/trash containers or dumpsters meeting sanitation department standards, which are covered by solid, tight fitting lids and which have no uncovered holes, for which removal of refuse and trash is not complying with sanitation department standards and requirements; failure to remove and properly store trash containers within twenty-four (24) hours after service (remove mobile containers from the curb area to behind the front wall plane of the structure being serviced);
- (13) *Scattering Garbage, Etc.* The 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;
- (14) *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;
- (15) *Graffiti.* The allowing of any graffiti or allowing graffiti to remain 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;
- (16) *Hoarding of Pet Animals.* The keeping of more pet animals than can be properly maintained in a healthy condition without presenting a health or safety hazard to the owners or others and without constituting a nuisance to the occupants or neighboring properties, characterized by failure to provide proper food, water, shelter, veterinary care and sanitation to the animals and resulting in squalid living conditions for the animals and the keeper and by complaints from neighbors including, but not limited to, mistreated or neglected animals, stench from the property and rodent and insect infestations; and,

- (17) *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 of the building, neighbors, public safety personnel and the general public, or violate any other city safety code.
- (18) *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 street, sidewalk, or property of another.
- (19) *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.
- (20) *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. Undeveloped property (acreage or platted lots larger than two (2) acres with or without structures) shall be mowed and maintained below ten (10) inches within fifty (50) feet of any surface improvement, roadway, structure or property line. The remainder of the undeveloped property must be mowed at least three (3) times during each calendar year as follows: once from March 1 to May 31, once from June 1 to August 31, and once from September 1 to November 30.
- (21) *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.
- (22) *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, except hobby vehicles that have a maximum of two (2) allowed, out of ordinary view stored and properly tarped for protection from the elements. 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:

- a. 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
 - b. 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
 - c. Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed, or leased by a motor carrier.
- (23) *Parking in Yards.* Parking or storing of any vehicle [~~for more than twenty-four (24) hours~~] upon any surface not intended for use as vehicular parking which shall include, but is not limited to, a yard or any space in which access to such necessarily requires the crossing of an uncut curb or other space clearly not intended to allow such access.
- (24) *Incomplete Projects.* Any renovation or construction to structures or grounds must be completed through consistent, sustained effort and no such building or grounds under construction or renovation may be allowed to be uncompleted for an unreasonable length of time, giving due consideration to the type of project. A period of 120 days for a residential project, or 180 days for a commercial project, without consistent, sustained effort to complete the project shall be an unreasonable length of time, without sufficient, specific, written explanation for said delay.
- (2[4]5) *Generally.* In addition to subsections (b)(1—2[3]4) of this section, a public nuisance shall also include, but is not limited to, the following:
- a. The physical condition or occupancy of any property regarded as a public nuisance at common law;
 - b. Any unsafe structure or property that is unsafe for human habitation;
 - c. 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;
 - d. 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;
 - e. Any property that is unsanitary, littered with rubbish or garbage or has uncontrolled weeds growing on it;

- f. Any residence, building, outbuilding or other structure that is in a state of dilapidation, disrepair, deterioration or decay, faulty construction, 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.

- (c) *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:
 - (1) Remove any notice posted by an enforcement officer under this subsection;
or
 - (2) Enter such structure except for the purpose of securing the structure, making repairs, removing the hazardous condition or of demolishing the same.

- (d) *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 foundation, that shows thirty-three (33) percent or more damage or deterioration to its supporting members or fifty (50) percent 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 bring 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 within 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.
- (e) *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.
 - (f) *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.
 - (g) *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.
 - (h) *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 two (2) years, to demolish and remove such structure.
 - (i) *Liability for Damages to Removed 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 of 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.

(j) *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.

(k) *Article Supplemental to Other Regulations.*

(1) 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.

(2) The provisions of this article shall be deemed cumulative of the provisions and regulations contained in the Owensboro Code of Ordinances, 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.

Section 3. That Chapter 5, Article IV, Section 5-160 of the Owensboro Municipal Code be, and the same is hereby amended, to read as follows:

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

(a) *Permit 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 a permit from the city. Since right-of-way widths vary throughout the city, property owners must contact the city horticulturist when planting trees or shrubs within fifteen (15) feet of the curb or edge of pavement to determine if a permit is necessary. Permits authorized herein shall be issued at no cost to the applicant by the city horticulturist provided the following conditions are met:

(1) The applicant must apply for a permit at least ten (10) working days prior to actual planting.

(2) The city horticulturist shall conduct an on-site visit and approve tree/shrub species and location of proposed planting.

(3) Applicant must locate all underground utilities prior to the on-site visit.

(4) The applicant shall acknowledge his or her 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.

- (5) 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.
 - (6) 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.).
 - (7) No tree shall be planted closer than ten (10) feet to the nearest fireplug or utility pole.
 - (8) No tree shall be planted within thirty (30) feet of the nearest end of the street curb radius where traffic control devices are present.
 - (9) Only small trees shall be planted under or within fifteen (15) lateral feet of overhead utility wires.
 - (10) 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:*
- (1) 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.
 - (2) Any excavation in the public right-of-way, street lawn, or other city owned or controlled property is subject to provisions set forth in section 24-61, of the Owensboro Municipal Code.
 - (3) The city shall assume responsibility for removal of a tree in the right-of-way only if 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.
 - (4) The adjoining property owner(s) may remove a tree and stump at their expense when the tree does not qualify for removal by the city.
 - (5) 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 in section ~~[18-41[5-159]~~ of the Owensboro Municipal Code. No provision herein shall restrict the right of any public utility, with prior approval of the city horticulturist, 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.

(6) 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. Decisions of the city horticulturist may be appealed according to the provisions set forth in subsection (b)(8) of this section.
- b. 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 manager.

(7) 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.

(8) Appeal: Any applicant for a permit required by this section, or any property owner in the downtown core area adversely affected by the decision of the city horticulturist in the application or interpretation of any of the provisions in this section of the [article], may appeal said decision to the city manager. The appeal provided herein shall be perfected by filing written notice thereof with the city clerk, with a copy thereof to be filed with the public works department of the city, 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 manager 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 manager 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 manager's decision, the appellant may appeal same to the city board of commissioners by giving written notice thereof to the city clerk within seven (7) days of the city manager's decision.

The city board of commissioners shall proceed to consider the appeal and render a decision either affirming, rejecting, or modifying the city manager's decision within thirty (30) days after the notice of appeal is filed. In rendering its decision, the city board of commissioners may, in its sole discretion, request additional information, new evidence, or testimony from the parties involved or other witnesses. The city board of commissioners shall mail to the appellant a copy of its final decision within five (5) days after the decision is rendered.

Section 4. That Chapter 5, Article IV, Section 5-162 of the Owensboro Municipal Code be, and the same is hereby amended, to read as follows:

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 section 18-41, et seq., of the Owensboro Municipal Code.

Section 5. That Chapter 5, Article IV, Section 5-163 of the Owensboro Municipal Code be, and the same is hereby amended, to read as follows:

Sec. 5-163. Penalties.

- (a) Any person violating any provision of division 1 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.
 - (1) 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 Nuisances— Structural Violations	\$100.00	\$200.00	\$400.00
Property Maintenance and Nuisances— 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.
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(2) If the citation is contested and a hearing before the code enforcement board is required, the following maximum civil penalties may be imposed at the discretion of the code enforcement board.

Violation (Contested)	1st Offense	2nd Offense	3rd + Offense
Property Maintenance and Nuisances— Structural Violations	\$200.00	\$400.00	\$800.00
Property Maintenance and Nuisances— Non-Structural Violations	\$150.00	\$300.00	\$600.00
Other Violations	\$200.00	\$400.00	\$800.00
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 civil penalty for any violation.		

(b) Any person violating any provision of division 3 of this article shall be, upon conviction or a plea of guilty, subject to a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

(c) Any person violating Section 5-137(b)(24) for commercial projects shall be subject to the following schedule of civil penalties for each violation:

- First Offense: \$25.00 per 1000 sq. ft. of the proposed building per day
- Second Offense: \$50.00 per 1000 sq. ft. of the proposed building per day
- Third or Greater Offense: \$100.00 per 1000 sq. ft. of the proposed building per day
- The minimum penalty shall be \$100.00 per day.

(d) Any person violating 5-137(b)(24) for residential projects shall be subject to the same schedule of civil penalties contained in Section 5-163(a).

INTRODUCED AND PUBLICLY READ ON FIRST READING, this 2nd day of
September, 2025.

PUBLICLY READ AND APPROVED ON SECOND READING, this the 16th day
of September, 2025.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk