

Meeting Agendas/Info

CITY COUNCIL
COMMUNICATION:

ITEM _____

**OFFICE OF THE CITY MANAGER
CITY OF DES MOINES, IOWA**

01-582

SYNOPSIS -

AGENDA:

Summary of the action to date concerning the Neighborhood Revitalization Board's recommendation to Council on contract sales.

NOVEMBER 19, 2001

FISCAL IMPACT -

SUBJECT:

N/A.

CONTRACT SALE
OF SINGLE-FAMILY
HOMES

RECOMMENDATION -

TYPE:

Develop an ordinance that requires an inspection of all single-family homes sold on a real estate contract. The ordinance will require a point of sale inspection of homes sold on contract to be performed by a private inspection company that is registered with the City and meets a certification requirement. Enforcement of the ordinance will be through the filing of municipal infractions.

RESOLUTION

ORDINANCE
RECEIVE AND FILE

SUBMITTED BY:

BACKGROUND -

ERIC ANDERSON
CITY MANAGER

The Neighborhood Revitalization Board (NRB) recommended to the City Council at its July 9 meeting that the City take steps to educate the public about the dangers of contract sales and begin a process to inspect homes sold on contract. Specifically, the NRB recommended that the City adopt an ordinance to require point of sale inspections for single-family homes that were sold by real estate contract. The NRB recommended that two new City inspectors be hired to inspect and identify deficiencies in homes sold on contract. The seller would be charged the fee for the inspection, and a property could not be occupied until deficiencies were corrected. The sale could not be recorded with the Polk County Recorder until such time as a certificate of inspection was presented. Council referred the recommendation to the City Manager.

Since receiving the NRB recommendation, staff and I have met with the legislative subcommittee of Council, the League of Cities, and various Polk County legislators. Bruce Bergman and I have attended two meetings of the NRB to discuss the issue and discuss provisions that could lawfully be put in an ordinance to require inspection of contract sales.

I favor the concept of inspections for contract sales to protect the housing stock, our neighborhood revitalization efforts, and persons buying homes by contract. I do, however, have concerns about how to enforce the inspection process and concerns about adding full-time City employees.

The City does not currently have the authority under state law to enforce the inspection provision in the manner requested by the NRB. State Law requires that real estate contracts be recorded within 180 days. Any "road block" or obstacle the City proposes to hinder the recording of a contract is not allowed under state law. Moreover, the City of Des Moines does not have the legal authority to prohibit a state created office - the County Recorder - from performing duties, such as recording a real estate contract, that are required by state law.

The only enforcement provision currently available is a municipal infraction. The municipal infraction results in a maximum of a \$500 fine for a first offense. The fine must be enforced through the Courts. I do not believe that the municipal infraction is severe enough to immediately stop unscrupulous contract sellers from preying on persons anxious to own their own home; however, the municipal infraction will get such a contract seller's attention. It sends a message that this is a requirement of the City of Des Moines. Over time, it will prove to be an effective tool and one not likely to be successfully challenged in the Courts.

I also recommend that private home inspection companies perform inspections, rather than hiring new City employees to perform the function. The City would require all certificates of inspection to be filed with the City and provided to each buyer. In order to avoid fraud, a City employee would review the certificate of inspection, and the City would reserve the right to re-inspect the property. In practice, I would recommend that a City employee perform an "audit inspection of approximately one in 20 of the private inspections performed.

The private home inspection company would have to be registered with the City and meet a certification requirement. City staff is currently exploring the use of the American Society of Home

Inspector (ASHI) certification. There are five local firms in the Des Moines phone book that advertises ASHI affiliation. Those firms could perform inspections in a more timely manner than could two additional City inspectors.

Under this system, the seller of a home would be responsible for contacting a firm to inspect the home and providing a copy of the inspection report to the potential homebuyer and to the City. A house could be occupied without correcting all the deficiencies; however, if major deficiencies are identified, the City inspectors should re-inspect the home. The City inspector could declare the house a public nuisance that is not fit for occupancy until deficiencies are corrected.

The legal department is currently drafting an ordinance with the provisions that are discussed here. After the ordinance is developed, it will be presented to the NRB and its subcommittee for comments. Citizens for Community Improvement and other advocacy groups will be advised of the ordinance. I hope that the ordinance can be presented to City Council at its first meeting in December. If there is a need for additional public dialogue on the proposed ordinance, there may be a delay in bringing it before City Council.

I will also be working with the legislative subcommittee on an approach for partnering with other housing organizations to urge shortening the time period for recording contract sales.
