

ORDINANCE NO. 15,596

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Section 60-41, and by repealing Article IV, Real Estate Contract Sales Inspections of Chapter 60. Housing Code, and by adding and enacting a new Article IV, Real Estate Contract Sales Inspections of Chapter 60. Housing Code, relating to real estate contract sales inspections.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Section 60-41, and by repealing Article IV, Real Estate Contract Sales Inspections of Chapter 60. Housing Code, and by adding and enacting a new Article IV, Real Estate Contract Sales Inspections of Chapter 60. Housing Code, relating to real estate contract sales inspections, as follows:

Sec. 60-41. Powers and duties.

The Housing Appeals Board shall:

- (1) Hold monthly hearings of appeals filed with the Administrator under Article II and Article IV and concerning properties referred to the board by the Administrator.
- (2) Decide whether to grant variances and modifications.
- (3) Rule on requests for additional time, provided that the granting of such additional time does not endanger the life, health, or safety of the occupants or the integrity of the structure.
- (4) Impose fines for any violation of Article II and Article IV in the amount set forth in the schedule of administrative penalties adopted by the City Council by resolution. The Board shall have the authority to impose the maximum fine, a lesser fine, or to waive the fine upon good cause shown.
- (5) Direct that legal action be brought to enforce Article II and Article IV when such action is deemed necessary.
- (6) Hear appeals of the amount of a penalty fine or assessment of a penalty fine.
- (7) Find that an owner(s) or authorized management agent is a habitual violator. A habitual violator is:
 - a. An owner(s) or authorized management agent who fails to correct a violation within the time period given by the notice and who has been required to appear before the Housing Appeals Board for such failure three times or more on three separate occasions during a 12-month period

shall be deemed a habitual violator if found by the board to have failed to correct the violations without good cause. Upon finding that the owner(s) is a habitual violator, an authorized management agent may also be deemed a habitual.

- b. The Housing Appeals Board is authorized to order the unified inspection of all properties owned or managed by a habitual violator. The fee for this unified inspection will be charged at regular inspection rates as set forth in the schedule of fees adopted by the City council by resolution. The owner(s) or authorized management agent will be placed on an accelerated inspection schedule by the Board, a category III certificate will be issued for each property. The fees as set forth in the schedule of fees adopted by the City Council by resolution shall be charged for such inspections.
- (8) Make specific recommendations to the City Council regarding matters pertaining to Article II and Article IV.

ARTICLE IV

REAL ESTATE CONTRACT SALES INSPECTIONS

Sec. 60-220. General.

This Article provides regulations relating to sales of real property and mobile homes for the purpose of protecting the contract buyer(s) and to ensure correction of any health and safety violations of this Article.

Sec. 60-221. Definitions.

For the purpose of this Article, the following definitions shall apply; otherwise, definitions in Section 60-19 shall apply:

Authorized management agent means any person appointed by the owner(s) who has charge, care, or control of a structure or premises which is being sold on contract. Such person shall be authorized to accept service of communications from the City of Des Moines.

Contract shall mean a real estate installment purchase agreement for the intended transfer of residential real property and mobile homes between a buyer and seller.

Contract buyer shall mean the person or entity purchasing or acquiring the residential real property or mobile home.

Contract seller shall mean the person or entity offering or transferring the residential real property for sale, or anyone acting on behalf of the contract seller.

Inspection shall mean a physical examination of the real estate, structure(s), and mobile homes to determine if the real estate, structures, and mobile homes meet the code requirements set out in this Article, which shall include, but not be limited to, a review of the accessory structures, structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interior, fireplace, and solid fuel burning appliances of the real estate.

Person shall mean an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or an association, or any other legal entity.

Transfer shall mean the conveyance by sale, exchange, contract, or by any other method by which an interest in real property is conveyed. For the purpose of this Chapter, transfer shall not mean the conveyance of real estate interests as detailed under Iowa Code Section 558A.1 (4).

Real estate installment purchase agreement means an agreement which is payable in installments, not including the down payment. This Article does not apply to contracts for commercial property, vacant lots, or new construction within one year of the issuance of a Certificate of Occupancy.

Workmanlike means repairs, maintenance work, alterations or installations that are a request, directly or indirectly, by the enforcement of this Article which shall be executed and installed in accordance with the manufacturer's instructions and executed in a skilled manner, generally plumb, level, square, in line, undamaged, without marring adjacent work, using compatible materials approved for the use, like in nature and look to remaining material if there is a partial replacement or repair to maintain the structure and premise in good condition.

Sec. 60-222. Procedures; Fees.

- (a) A person seeking to transfer real property by contract, or a broker, salesperson or agent acting on behalf of such person, shall obtain or update an inspection of the subject real estate not more than sixty (60) days prior to the execution of the contract.
- (b) The contract sales inspector shall prepare an inspection report of the physical examination of the real estate setting out concerns or need for repairs as required by the standards of the professional origination they are certified by.
- (c) The inspection report shall also include written certification that the inspector is a member of good standing in an eligible professional association.
- (d) The inspection report shall be delivered to and received by the contract buyer at least fourteen (14) days prior to the execution of the contract. The inspection report shall be delivered to the contract buyer by personal service, notarized acceptance of service, certified mail or by registered mail with return receipt.
- (e) Proof of delivery of the inspection report to the contract buyer, the contract inspection report, and a filing fee in the amount set in the schedule of fees adopted by the City Council by resolution shall be filed with the Administrator at least fourteen (14) days prior to the execution of the contract.
- (f) Within thirty (30) days following execution of the contract, the contract seller shall file with the Administrator recorded copies of instruments transferring the real estate or the book and page provided by the Polk County Recorder.
- (g) The city shall have the right to inspect and re-inspect any property for which an inspection is required under this Article. All persons with an ownership or an authorized management interest in the property shall allow inspection or re-inspection upon request by the city.

Sec. 60-223. Inspector certification.

- (a) All inspectors who perform the inspections of real estate pursuant to this Article shall be a full or regular member in good standing of InterNachi, ASHI, or a similar recognized professional association for home inspectors. An eligible professional association must have the following attributes:
 - (1) Not-for-profit status;
 - (2) Standards for Practice for its members;
 - (3) Code of Ethics for its members;
 - (4) Requires examinations for membership;
 - (5) Requires annual continuing education.
- (b) No real estate inspector shall be employed by an entity that is owned by a contract seller or its affiliate. The term affiliate means a parent, brother, or sister entity (meaning its parent entity has an ownership interest in each entity or shares a common manager), or a subsidiary entity or any other entity in which the contract seller, its parent, brother, sister or subsidiary entity owns five percent or more of such entity.
- (c) Members of professional associations who are eligible to perform inspections under this Article shall certify with the inspection report a statement that they are certified by a professional association for home inspectors, the inspector's certification number, and assurance that the certification is in good standing.

Sec. 60-224. Disqualification.

- (a) The Administrator shall have sole discretion to refuse to accept a contract sales inspection from an inspector based upon any of the following:
 - (1) Malfeasance;
 - (2) Neglect of duty;
 - (3) Incapacity;
 - (4) Disqualification, suspension, or debarment from any activity related to the construction or real estate industry by an agency of any government;
 - (5) Offering or giving gifts or gratuities to employees of the city in violation of state law; or
 - (6) Failure to comply with the requirements of the division.
- (b) If the Administrator determines that cause exists to disqualify a contract sales inspector from performing inspections pursuant to this Article for any of the reasons set forth in the previous subsection, then:
 - (1) The Administrator shall notify the affected contract sales inspector of:
 - a. The reasons supporting disqualification; and
 - b. The proposed period for disqualification.
 - (2) Notice shall be sent to the inspector by regular mail to the address provided on the inspection report.
 - (3) The contract sales inspector may file an appeal of the determination as set out in Chapter 3 of the Municipal Code.

Sec. 60-225. Inspection, Notice of Violation and Method of Service

- (a) The Administrator shall review the contract inspection report and inspect the primary dwelling unit(s), mobile home, accessory structure(s), and premise to determine if the report indicates any violations of this Article.
- (b) If the Administrator determines that the structure(s) and/or premises are being maintained in violation of this ~~Chapter~~ Article, the Administrator shall give notice of the violation(s) to the owner(s) or authorized management agent of the premises. Such notice shall:
 - (1) Be in writing;
 - (2) Include a description of the real estate sufficient for identification;
 - (3) State that any health, safety, and maintenance violation(s) must be corrected within thirty (30) days from receipt of ~~this~~ the notice;
 - (4) Advise that if a violation(s) still exists upon re-inspection, the Administrator will refer the owner(s) or authorized management agent to the Housing Appeals Board;
 - (5) Advise that upon failure of the owner(s) or authorized management agent to arrange for a re-inspection within thirty (30) days from receipt of the notice, it will be presumed the violation(s) has not been abated and the Administrator will refer the owner(s) or authorized management agent to the Housing Appeals Board;
 - (6) Be mailed to the owner(s) of the premises or the authorized management agent designated by the application filed with the Division;
 - (7) Advise of the right to file an appeal of a violation set out in the notice of violation and the amount of the appeal fee; and
 - (8) Include a statement of the right of the Division to collect unpaid costs by personal judgment, collection, or assessment to be collected as a property tax.

Sec. 60-226. Contract Sales Maintenance Requirements.

- (a) All repairs shall be done in a workmanlike manner and the site shall be maintained in a safe and sanitary condition. All work must be done in accordance with the 2015 International Property Maintenance Code, and any standard, national, and international codes as adopted by the Municipal Code of the City of Des Moines.
- (b) All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water. All properties shall have positive drainage away from foundation.
Exception: Approved retention areas and reservoirs.
- (c) All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.
- (d) All accessory structures, including detached garages, sheds, fences, and walls, shall be structurally sound and in good condition.
- (e) All exterior surfaces shall be maintained in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall

be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

- (f) All structural members shall be maintained free from deterioration and shall be capable of safely supporting the imposed dead or live loads.
- (g) All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.
- (h) All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface-coated where required to prevent deterioration.
- (i) The shingles and flashing shall be in good condition and weather tight. No more than one layer of shingles are allowed. Soffit, fascia, and trim must be in good repair and impervious to weather. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters, and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.
- (j) Every exterior stairway, deck, porch, and balcony and all appurtenances attached thereto, shall be maintained structurally sound in good repair with proper anchorage and capable of supporting the imposed load.
- (k) All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating material, such as paint or similar surface treatment.
- (l) Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
 - (1) Handrails shall have minimum and maximum heights of 34 inches and 38 inches respectively, measured vertically from the nosing of the treads and shall be provided on at least one side of the stairway. All required handrails shall be continued the full length of the stairs for four or more risers from a point directly above the top riser of the flight to a point directly above the lowest riser of the flight. Continuous handrails shall be permitted to be interrupted by newel posts at turns and at one location in a straight stairs when the rail terminates into a wall or ledge and is offset and immediately continues. Ends shall be returned and shall terminate in newel posts or safety terminals. Handrails adjacent to a wall shall have space of not less than one and one-half inches between the wall and the handrail.
 - (2) Handrail grasp ability. Handrails with circular cross section shall have an outside diameter of at least one and one-quarter inches and not greater than two inches or shall provide equivalent grasp ability.
 - (3) Guard required. One- and two- family dwellings with porches, balconies or raised floor surfaces located more than 30 inches above the floor or below grade shall have guards not less than 36 inches in height. Open guards shall have balusters or ornamental patterns such that a four-inch diameter sphere cannot pass through.

- (m) Every window or skylight shall be fully supplied with window glass or an approved material which is glazed and without cracks or holes, door and frame shall be kept in sound condition, good repair and weather tight.
- (n) Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.
- (o) All openable windows in habitable rooms, inclusive of all bathrooms shall be supplied with approved tight fitting screens of not less than 16 mesh per inch. All screen doors required for ventilation shall be supplied with 16 mesh per inch. Every swinging door shall have a self-closing device in good working order.
- (p) All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units shall tightly secure the door.
- (q) Every basement hatchway shall be maintained to prevent the entrance of rodents, rain, and surface drainage water.
- (r) All interior structural members shall be maintained structurally sound and capable of supporting the imposed loads.
- (s) Plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. Plumbing fixtures shall be maintained in a safe, sanitary and functional condition. All plumbing repairs and or replacement of plumbing components must be installed in accordance with the Uniform Plumbing Code as adopted by the Municipal Code.
- (t) Every sink, lavatory, bathtub, shower, water closet, or other plumbing fixture shall be properly connected to either a public water system or a private water system tested in accordance with state law. All kitchen sinks, lavatories, laundry facilities, bathtubs, and showers shall be supplied with hot and cold running water in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.
- (u) Where it is found that the plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate venting, cross connection, backsiphonage, improper installation, deterioration or damage, or for similar reason to constitute a hazard, it must be corrected prior to occupancy to eliminate the hazard.
- (v) Water heating facilities shall be properly installed, maintained, and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower, and laundry facility at a minimum temperature of 110 degrees Fahrenheit or 43 degrees Celsius. A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom, or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.
- (w) Electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.
- (x) All electrical services with breaker panels containing six or more breakers must be protected with a main disconnect.
- (y) Every kitchen shall contain at least two separate and remote receptacle outlets, which shall be supplied by a separate 20 ampere branch circuit. Outlets whose receptacles are

- rendered inaccessible by stationary outlet appliances will not be considered as required outlets.
- (z) Every habitable space in a dwelling shall contain not less than two separate and remote receptacle outlets. Every laundry area shall contain not less than one grounding-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain not less than one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection. All electrical outlets shall have the appropriate faceplate over of the location.
 - (aa) Where it is found that the electrical service in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, there shall be no occupancy until repairs are made to the defects to be corrected eliminate the hazards.
 - (bb) Systems, devices and equipment to detect a fire, alarm, suppress or control a fire or any combination of shall be installed and be in good working order.
 - (1) Every dwelling unit shall have an approved smoke detector on the ceiling or wall outside of each separate sleeping area in the immediate vicinity of the bedroom.
 - (2) Every room used for sleeping shall have an approved smoke detector.
 - (3) Every story within a dwelling unit, including basements and cellars, but not including crawlspaces and uninhabitable attics, shall have an approved smoke detector. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level, provided that the lower level is less than one full story below the upper level.
 - (cc) Lead-based paint on the following surfaces shall be removed in accordance with Federal and State requirements:
 - (1) Interior window sills.
 - (2) Handrails.
 - (3) Stair treads not completely covered by carpeting or other suitable material.
 - (4) Friction surfaces, which means any interior or exterior surface that is subject to abrasion or friction, including but not limited to certain window, door, and floor surfaces.
 - (5) Any other area where there is demonstrable evidence of chewing activity or evidence that paint has been damaged or deteriorated.
 - (dd) Mechanical appliances, fireplaces, solid fuel-burning appliances, air conditioning units and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.
 - (ee) Smoke detectors:
 - (1) Every dwelling unit shall have an approved smoke detector on the ceiling or wall outside of each separate sleeping area in the immediate vicinity of the bedroom.
 - (2) Every room used for sleeping shall have an approved smoke detector.
 - (3) Every story within a dwelling unit, including basements and cellars, but not including crawlspaces and uninhabitable attics, shall have an approved smoke detector. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the

upper level shall suffice for the adjacent lower level, provided that the lower level is less than one full story below the upper level.

Exception: The foregoing provisions related to the interior of the structure shall not be required to be in compliance, if at the time of execution of the contract, the occupant of the structure is the owner of the property.

Sec. 60-227. Compliance Required.

An owner shall abate all violations of this Article and bring the property into compliance prior to transferring property on contract, unless the owner or authorized management agent and contract buyer enters into a renovation agreement. If the owner(s) does not abate the violations or enter into a renovation agreement, then the property will be referred to the Housing Appeals Board as set out in this Chapter.

Sec. 60-228. Renovation Agreement.

- (a) An owner(s), authorized management agent or contract buyer may make a written request accompanied by the fee set forth in the schedule of fees for an extension of time to complete repairs that is specific to the structure, mobile home or premise and must show that:
 - (1) Strict compliance with this Article is impractical;
 - (2) The extension does not violate the intent and purpose of the Municipal Code; and
 - (3) Such modification does not endanger the life, health, or safety of the occupants or the integrity of the structure.
- (b) At the Administrator's discretion, proof of financial ability to complete the repair(s) or proof of a renovation escrow account may be requested and must be provided by the owner(s), authorized management agent or contract buyer prior to approval.
- (c) Extensions of time will be entered into by the owner(s), authorized management agent, the contract buyer(s) and the Administrator through an executed renovation agreement.
- (d) An owner(s), authorized management agent or contract buyer(s) may appeal a denial of an extension to the Housing Appeals Board.
- (e) Upon failure to comply with a renovation agreement the owner(s) or authorized management agent and contract buyer will be referred to the Housing Appeals Board.

Sec. 60-229. Appeals.

Appeals shall be handled as set forth in this Chapter. The Housing Appeals Board shall have the authority to enter fines for failure to comply with this Article as set out in the schedule of fees adopted by the city council by resolution.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Jessica D. Spoden, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 17- 1182), passed by the City Council of said City at a meeting held July 10, 2017 signed by the Mayor on July 10, 2017 and published and provided by law in the Business Record on July 28, 2017. Authorized by Publication Order No. 10071.

Diane Rauh, City Clerk