

★ Roll Call Number

Agenda Item Number

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Date May 7, 2007

An Ordinance entitled, "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, and amended by Ordinance No. 14,432 passed April 25, 2005 and Ordinance No. 14,501 passed October 10, 2005 by amending Sections 60-2, 60-5, 60-6, 60-54, 60-56, 60-103, 60-123, 60-300, 60-301, 60-304, 60-306, 60-307, 60-308, 60-309, 60-310 60-311, 60-375 and adding and enacting a new 60-311 thereof, updating Chapter 60, Housing Code",

which was considered and voted upon under Roll Call No. 07-779 of April 23, 2007; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



Council Communication

Office of the City Manager

Date

April 23, 2007

Agenda Item No. 49

Roll Call No. 07-779

Communication No. 07-245

Submitted by: Larry Hulse, Community
Development Director

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AGENDA HEADING:

Amending Chapter 60 of the Municipal Code regarding Housing Code.

SYNOPSIS:

Recommend approval for change to Chapter 60, Housing Code, Article I, Neighborhood Inspections Rental Code and Article II, Residential Public Nuisance Code. The purpose of these changes is to clarify language that has come into issue since the code was last amended. The recommended action will replace the 2000 International Property Maintenance Code with the 2006 International Property Maintenance Code and includes language requested by the Council pertaining to administrative extensions of time for structures that have become public nuisances as a result of a fire.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

A detailed presentation of the recommended changes has been attached to the roll call. The following offers a brief overview of these changes and why staff deems them necessary.

Article I:

Sec. 60-2 changes from the 2000 International Property Maintenance Code to the 2006 International Property Maintenance Code.

Sec. 60-5, 60-6, 60-300, 60-301, 60-304, 60-308, 60-309, and 60-310 are changes to reflect residential and/or accessory structures to insure that all structures on a residential lot are covered by this code. Before this addition, it was possible to read the code and assume that garages sheds or structures other than the residence were not covered by the ordinance.

Sec. 60-54 adds language (Paragraph 5) to insure that all legal inspections are billed based on the schedule of fees. The code did not give the authority to bill for inspections done for legal purposes. Paragraph (5) adds "structures referred to the legal department for prosecution will be inspected as necessary to enforce the code and will be billed as set out in the schedule of fees adopted by the city council by resolution."

Sec. 60-56 clarifies the exception for notice of violations when a municipal infraction is filed. An issue arose when the City filed a municipal infraction for an illegal rental; by strict interpretation of the code, prior notice of the violation had to be mailed to the violator before the infraction could be filed. This was

not the intention of the code. The intention of the code was only that notice of violations would be given to the owner pursuant to an inspection, not when illegal rentals were discovered.

Sec. 60-103 clarifies language in regards to when the owner or agent fails to appear before the Housing Appeals Board; the change requires the Board to send the matter to the Legal Department with the penalty fine by adding the language: "if an owner or agent fails to appear before the board the property will be referred to the Legal Department for enforcement action with the full penalty fine."

Sec. 60-123 (c) and (d) clarifies who is responsible for extermination in single family and multi unit structures. In a single family home, the tenant is responsible while in all multi-unit structures, the landlord is responsible.

Article II

Sec. 60-306 adds the word "used" to this section further defining "occupied" in the Approval for Occupancy Section. "Occupied" has been interpreted by the court to mean "lived in," thus creating an increased burden of proof for staff. Adding the word "used" therefore adds any use of the property to the definition of prohibited activities and reduces the burden of proof.

Sec 60-307 requires the filling of the excavation and leveling of the lot after a public nuisance structure is demolished. The word "leveling" had been left out of the code when it was rewritten. To date, excavations have been filled, but not leveled; this leaves an unsightly appearance on the lot.

Sec. 60-311, added at Council request, extends the amount of time before a public nuisance process is initiated on a fire damaged public nuisance structure when the following apply: the owner has shown that the insurance is sufficient to repair the structure; a contractor has been hired; permits will be pulled; and repairs will completed within 180 days. This time extension should reduce charges to owners of public nuisances caused by fire if the legal process is not initiated.

PREVIOUS COUNCIL ACTION(S):

Date: February 10, 2003

Roll Call Number: 03-316, 03-317, 03-318

Action:

03-316 60. Approving Building Code fees for filings, appeals, inspections, exams and licenses to be included in the Schedule of Fees. Moved by Vlassis to adopt. Motion Carried 6-1.

03-317 (A) First consideration of ordinance amending Chapter 26 of the Municipal Code regarding Building and Building Regulations. Moved by Vlassis that this ordinance be considered and given first vote for passage. Motion Carried 6-1.

03-318 (B) Final consideration of ordinance above, (waiver requested by Community Development Department), requires 6 votes. Moved by Vlassis that the rule requiring that ordinances must be considered, and voted on for passage at two council meetings prior to the meeting at which it is to be

finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,206. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Date: April 11, 2007

Roll Call Number: N/A

Action: The Housing Appeals Board approved these changes regarding Chapter 60 of the Municipal Code - Housing Code.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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ORDINANCE NO. _____

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, and amended by Ordinance No. 14,432 passed April 25, 2005 and Ordinance No. 14,501 passed October 10, 2005 by amending Sections 60-2, 60-5, 60-6, 60-54, 60-56, 60-103, 60-123, 60-300, 60-301, 60-304, 60-306, 60-307, 60-308, 60-309, 60-310 60-311, 60-375 and adding and enacting a new 60-311 thereof, updating Chapter 60, Housing Code.

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, amended by Ordinance No. 14,432 passed April 25, 2005 and Ordinance No. 14,501 passed October 10, 2005 is hereby amended by amending Sections 60-2, 60-5, 60-6, 60-54, 60-56, 60-103, 60-123, 60-300, 60-301, 60-304, 60-306, 60-307, 60-308, 60-309, 60-310 60-311, 60-375 and adding and enacting a new 60-311 thereof, updating Chapter 60, Housing Code, as follows:

Sec. 60-2. Adoption of International Property Maintenance Code.

- (a) This article shall adopt the International Property Maintenance Code, ~~2000~~2006 edition, published by the International Code Council, which volume is incorporated in this section by this reference with full force and effect as if set forth in its entirety, except for those portions as are stated in this article to be deleted therefrom and added thereto.
- (b) This article and all provisions incorporated in this article, by reference or otherwise, shall be known as the Neighborhood Inspection Rental Code, shall be cited as such and will be referred to in this article as such and as "this code" or as "this article." References made in this article to chapters will be to chapters of the International Property Maintenance

Code. References to section numbers not preceded by "60-" will be to sections in the International Property Maintenance Code. Where the city municipal code is the subject of reference in this article, it will be referred to as "the Municipal Code."

- (c) An official copy of this code and a certified copy of this article are on file in the office of the city clerk.

Sec. 60-5. Scope, applicability and exceptions

The provisions of Division I through IV of this article shall apply to the maintenance, repair, equipment, use and occupancy of all residential rental buildings, and residential structures and accessory structures now in existence or hereafter constructed, rehabilitated, renovated or converted to residential use within the corporate limits, except those buildings and structures specifically excluded from the provisions of this article and public nuisance structures as defined in Article III. Any structure that was in compliance on the day previous to the adoption of this code will be allowed to remain.

EXCEPTIONS:

The provisions of this article do not apply to:

- (1) Buildings, structures and uses owned, licensed and operated by any governmental unit or governmental agency;
- (2) Single-family dwellings occupied by the owner, as defined in this chapter, or members of that owner's immediate family. Such members are defined as parents, grandparents, children and grandchildren. Owners must register the names of the immediate family members who reside in the dwelling on an annual basis and whenever there is a change in occupancy;
- (3) Transient shelters and group homes subject to state inspection;
- (4) Residential structures in which ownership passes to a governmental unit;
- (5) Where a nonresidential business or activity or a state-licensed or state-approved use occupies a portion of the building and the building contains premises which would otherwise be subject to this article, this article shall be and remain applicable to the residential and common or public areas of such building and premises;
- (6) A duplex, at least one of the units of which is occupied by the owner, as defined in this chapter, and the other unit is occupied by a member of that owner's immediate family, as defined in subsection (2) of this section.

Sec. 60-6. Definitions.

Unless otherwise expressly stated or the context clearly

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indicates a different intention, the following terms have the following meanings and shall be so construed wherever they appear in this article:

Accessory building: A structure on the same lot, separate from, and of a nature customarily incidental and subordinate to the principal residential structure and may be used for, but not limited to, the storage of equipment, materials, vehicles, and other miscellaneous items. Trailers, semi-trailers, tents, motor vehicles and component parts thereof are not accessory buildings. A structure which might otherwise be consider an accessory building, but which is connected to the principal residential structure by a breezeway or other extension of the principal residential structure containing a functional roof and floor shall, for the purposes of this ordinance lose its status as an accessory building, becomes part of the principal residential structure and shall be subject to all restrictions applicable to a principal residential structure.

Sec. 60-54. Fees and rental certificates.

1. Rental inspection fees and reinspection fees will be charged in the amount set forth in the Schedule of Fees adopted by the City Council by resolution.
2. Certificates will be issued for the following periods:
 - a) Thirty six (36) months for single family and duplex structures. Properties that comply upon renewal inspection may request to pay a 33% additional fee and receive a 48 month rental certificate;
 - b) Twenty four (24) months for multiple family dwellings, condominiums, and rooming houses. Properties that comply upon renewal inspection may request to pay a 50% additional fee and receive a 36 month rental certificate;
 - c) Rental certificates will be issued when all requirements of section 60-55 and section 60-56 have been met.
3. At the inspectors discretion, owners may certify in writing to the Neighborhood Inspection Division that violations have been corrected when a property does not have more than two violations per unit, cumulative per structure, upon a renewal inspection and the property has not had more than two violations per unit, cumulative per structure, upon the past two renewal inspections. No reinspection fee will be charged for this self inspection.
4. Newly constructed or renovated rental structures will be required to pay a registration fee in the amount set forth in the Schedule of Fees adopted by the City Council by resolution

when the Certificate of occupancy is issued. Multiple structures will not be inspected for 24 months and 36 months for SFD and duplex structures unless a complaint has been made. Thereafter applications and reinspections will occur in accordance with this article.

5. Structures referred to the legal department for prosecution will be inspected as necessary to enforce the code and will be billed as set out in the schedule of fees adopted by the city council by resolution.

Sec. 60-56. Notice of violation and method of service.

If the Neighborhood Inspection Officer determines that there are reasonable grounds to believe that premises are being maintained in violation of this article, that officer shall give notice of the alleged violation to the owner of the premises, except those violations cited as municipal infractions filed pursuant to 1-15(c).

Such notice shall:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification;
- (3) Describe the violation and remedial action required;
- (4) All health, safety and maintenance violations must be corrected within 30 days from receipt of this notice. Any maintenance items which cannot be completed within this time because of weather constraints or extraordinary circumstances may be granted a time extension. Time extensions to be negotiated with the owner/agent of the property and the inspector.
- (5) State that if upon reinspection a violation still exists the Neighborhood Inspection Officer shall order that the rental certificate be suspended and the structure vacated.
- (6) Be mailed to the owner of the premises or agent designated for receipt of service.
- (7) State the time to file an appeal, the amount of the appeal fee, the right to call witnesses and the right to be represented by counsel.

Sec. 60-103. Hearing.

At the hearing the appellant shall have the opportunity to be heard, the right to call witnesses and to be represented by counsel. If represented by counsel, the name, address and telephone number of such counsel shall be submitted to the Neighborhood Inspection Division seven (7) days prior to that

meeting. The Housing Appeals Board shall issue a ruling which must be based upon evidence in the record. The department shall keep an accurate record of the proceedings. A copy of the minutes shall be issued to all members of the board prior to the next Housing Appeals Board meeting. If an owner or agent fails to appear before the board the property will be referred to the legal department for enforcement action and for failure to timely correct the violations the full penalty fine shall be imposed.

Sec. 60-123. Extermination.

- (a) Infestation. All structures shall be kept free from insect and rodent infestation. Where insects or rodents are found they shall promptly be exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.
- (b) Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.
- (c) Single occupant. The occupant of a one family dwelling shall be responsible for extermination on the premise.
- (d) Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, or a rooming house shall be responsible for extermination ~~in the public or shared areas of the structure and exterior property.~~
- ~~(e) Occupant. The occupant of any dwelling unit shall be responsible for the continued rodent and pest free condition of the structure. Exception: where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.~~

Sec. 60-300. Designation of unfit residential structures and/or accessory structures as public nuisances.

This article governs the designation of unfit residential structures and/or accessory structures and the procedure for abating nuisances.

Sec. 60-301. Defects.

A residential structure and/or accessory structure found to have any of the defects listed in this section shall be declared unfit for human habitation, or use and a public nuisance. If so designated it shall be placarded by the Neighborhood Inspection Division. A structure which is a public nuisance and unfit for

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human habitation or use is one which:

- (1) Is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a hazard to the health, safety or welfare of the occupants or to the public;
- (2) Lacks illumination, ventilation or sanitary facilities adequate to protect the health, safety and welfare of the occupants or the general public; or
- (3) Because of its general condition or location is unsanitary or otherwise dangerous to the health, safety or welfare of the occupants or to the public.

Sec. 60-304. Vacation and abatement.

Any residential structure and/or accessory structure declared to be a public nuisance and unfit for human habitation or use, and so designated by the Neighborhood Inspection Division Officer, shall immediately be vacated and the nuisance shall be abated by the owner at the owner's expense or by the city. If the city abates the nuisance the abatement costs shall be collected as a personal judgment against the current owner and may be collected against any other person or entity who owned the property while declared a public nuisance. The city may also assess the abatement costs against the property to be collected as a property tax.

Sec. 60-306. Approval for occupancy.

The owner of a residential structure and/or accessory structure declared to be a public nuisance shall not allow it to be occupied or used until approval is secured from the Neighborhood Inspection Division.

Sec. 60-307. Filling excavations.

All demolition pursuant to this division, whether carried out by the owner or by the city, shall include filling the excavation and leveling the lot in such manner as to eliminate all potential danger to the public health, safety or welfare.

Sec. 60-308. Public nuisance procedure: notice and hearing.

- (a) The owner of record, occupant, contract vendee of record, and mortgagee of record of a residential and/or accessory structure which has been declared to be a nuisance shall be notified in writing.
- (b) The notice shall contain:
 - (1) The name and last known address of those receiving

- notice;
- (2) The legal description of the subject real estate and its street address;
 - (3) The name of the occupant, if known;
 - (4) A description of the conditions that constitute the nuisance and the remedial action required to abate the nuisance;
 - (5) The deadline for abatement of the nuisance.
- (c) The notice shall be served personally or by certified mail, return receipt requested.

Sec. 60-309. Referral to board of health.

Residential structures and/or accessory structures determined to be public nuisances under this article and against which no emergency procedure for removal has been undertaken pursuant to section 60-310 shall be referred to the city council acting as the Board of Health.

- (1) If the Board of Health finds that a public nuisance exists and confirms the action of the Neighborhood Inspection Division Officer, it shall direct the legal department to file an action for nuisance abatement in district court.
- (2) If the Board of Health finds that the residential structure is not a public nuisance it shall revoke the determination of the Neighborhood Inspection Division Officer and direct such other action as it finds appropriate.

Sec. 60-310. Emergency actions.

- (a) Whenever a Neighborhood Inspection Division Officer finds that a condition exists in or around a residential structure and/or accessory structure which constitutes an immediate and severe threat to the health, safety or welfare of the occupants or to the public, the officer may take any necessary action without notice to eliminate the immediate threat.
- (b) Whenever a Neighborhood Inspection Division Officer finds that a condition exists in or around a residential and/or accessory structure which threatens the health, safety or welfare of the occupants or the public, the officer may issue an order describing the condition and requiring that specified action be taken. If the owner does not comply with the order within the time specified, the officer may authorize the taking of the action specified in the order. Any costs incurred may be assessed against the property or collected as a personal judgment pursuant to legal action.

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(c) A copy of the order shall be sent to all owners and occupants at their last known addresses. The method by which such notice shall be given shall be that method which provides notice within the shortest practicable period of time. If an owner cannot be found information collected by the person attempting to locate such person shall be held on file.

Sec. 60-311. Fire Damaged Public Nuisance Structures.

When a residential structure and/or accessory structure suffers fire damage, the home has insurance but the damage is not sufficient to have the insurance company withhold an escrow account an administrative extension of time can be granted if the owner presents to staff the following within thirty (30) days of the date of service of the notice:

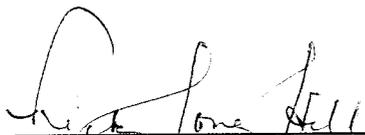
- (a) Proof of insurance sufficient to complete repairs to the structure.
- (b) A statement from the insurance company that they will hire a contractor to complete the required repairs with the understanding that permits will be pulled.
- (c) An agreement that the repairs will be completed within one-hundred eighty (180) days.

Sec. 60-375. Administrative removal of dangerous residential structures.

When a residential structure and/or accessory structure constituting a public nuisance threatening to the health and safety or welfare of the public cannot reasonably be abated except by demolition and removal, the structure may be removed pursuant to the administrative procedure set forth in this division.

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

FORM APPROVED:



Vicky Long Hill
Assistant City Attorney