

★ **Roll Call Number**

Agenda Item Number

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Date May 10, 2010

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, and Ordinance No. 14,652 passed May 21, 2007, and Ordinance No. 14,810 passed November 10, 2008, by amending Sections 60-50, 60-54, 60-85, 60-102, 60-104, 60-108, 60-200, 60-300, 60-309 and 60-310, repealing Sections 60-308 and 60-311 and adding and enacting new Sections 60-303.05, 60-303.06 and 60-450, relating to the Housing Code.

which was considered and voted upon under Roll Call No. 10- 631 of April 26, 2010; 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				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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

46

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	April 26, 2010
	Agenda Item No. 49 Roll Call No. <u>10-631</u> Communication No. <u>10-204</u> Submitted by: Larry Hulse Director, Community Development	

AGENDA HEADING:

Amendments to the Housing Code.

SYNOPSIS:

Recommend Council approval of the amendments to the Housing Code which removes the appeal to the Board of Health for unpaid fees and enforcement costs incurred by the City, associated with the abatement of public nuisance structures when these structures are removed by the owner. This change directs the Neighborhood Inspections Division, when deemed appropriate, to file for those costs in small claims court.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

This action will add Sections 60-450 (actions to enjoin and collect costs) and 60-451, (collection of fees and costs). Prior to the amendment of this ordinance when a property owner receives notice from the Neighborhood Inspections Division citing a public nuisance, and the City incurs costs as a result of these actions the only appeal process available to the citizen for those costs was to the Board of Health. This amendment requires that when deemed appropriate, to recover those costs, the Neighborhood Inspections Division must file for those costs in small claims court thereby removing the need for an appeal process.

This action will also amend Sections 60-50, 60-54, 60-85, 60-102, 60-104, 60-108, 60-200, 60-300, 60-309 and 60-310 for the purposes of clarifying the code.

Sections 60-308 and 60-311 would be repealed and new Sections 303.05 and 60-303.06 added to clarify the language dealing with the public nuisance procedure and fire damaged public nuisance structures.

PREVIOUS COUNCIL ACTION(S):

Date: November 10, 2008

Roll Call Number: 08-1980

Action: Amending Chapter 60 of the Municipal Code regarding Neighborhood Inspection Rental Code and collection of fees, fines, penalties, costs and interest to allow collection or assessments against the property. Moved by Mahaffey that this ordinance do now pass, refer to the City Manager to review the City's fines and fees for rental certificates, #14.810. Motion Carried 5-2.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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4946

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, and Ordinance No. 14,652 passed May 21, 2007, and Ordinance No. 14,810 passed November 10, 2008, by amending Sections 60-50, 60-54, 60-85, 60-102, 60-104, 60-108, 60-200, 60-300, 60-309 and 60-310, repealing Sections 60-308 and 60-311 and adding and enacting new Sections 60-303.05, 60-303.06 and 60-450, relating to the 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, and amended by Ordinance No. 14,432 passed April 25, 2005, and Ordinance No. 14,501 passed October 10, 2005, and Ordinance No. 14,652 passed May 21, 2007, and Ordinance No. 14,810 passed November 10, 2008, is hereby amended by amending Sections 60-50, 60-54, 60-85, 60-102, 60-104, 60-108, 60-200, 60-300, 60-309 and 60-310, repealing Sections 60-308 and 60-311 and adding and enacting new Sections 60-303.05, 60-303.06 and 60-450, relating to the Housing Code, as follows:

Sec. 60-50. Powers, duties, and enforcement.

- (a) The neighborhood inspection division shall cause inspections to be made to determine the condition of rental dwellings, dwelling units, rooming houses, rooming units, dormitories, mobile homes, similar dwellings and accessory structures located within the corporate limits, and may issue notices as provide in this article.
- (b) Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have discretionary authority to allow modifications in individual cases, provided that the modification is in accord with the purpose and intent of this code and such modification does not endanger health, safety, or welfare. Any modification will be recorded and entered in the department files.

- 1
L-1000-2
- (c) The neighborhood inspection officer or his designees are authorized to enter at reasonable times to inspect.—~~If entry is refused or not obtained the code official is authorized to pursue recourse as provided by law.~~ If entry onto real estate for the purposes described in this chapter is refused, the department may obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection or otherwise as provided by law.
 - (d) The enforcement of this article is not to be construed for the particular benefit of any individual or group of persons, other than the general public.
 - (e) Neither the city, any city employee nor any agent thereof shall be liable for damages as a result of any act or failure to act in the enforcement of this article. This article is not to be construed to relieve or diminish the legal obligation of any other person.

Sec. 60-54. Fees and rental certificates.

- (a) 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.
- (b) Certificates will be issued for the following periods:
 - (1) 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;
 - (2) 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;
 - (3) Rental certificates will be issued when all requirements of section 60-55 and section 60-56 have been met.
- (c) At the inspector's 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.
- (d) 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.
- (e) Structures referred to the legal department for prosecution will be inspected as necessary to enforce the code and

49
46

associated costs, fees, fines, and penalties will be billed as set out in the schedule of fees adopted by the city council by resolution.

Sec. 60-85. Penalties for failure to correct violations.

- (a) An owner who fails to correct a violation of this article by the date set forth in the notice of violation shall be subject to a cumulative fine in the amount set forth in the Schedule of Administrative Penalties adopted by City Council Resolution under the following circumstances;
- 1) For each day the owner fails to arrange for an inspection within the time set forth in subsection ~~60-56(5)~~ 60-56(4);
 - 2) For each violation not corrected within the time designated in the notice of violation, unless within such time the owner has been granted an extension of time;
 - (a) Failure to arrange for a timely reinspection shall give rise to a presumption that the violation was not corrected and a fine shall be imposed accordingly;
 - (b) Violations not corrected in the allotted time shall be subject to the maximum fine, retroactive to the original date set forth in the violation notice.

Sec. 60-102. Appeals process.

- (a) Appeal of a cited violation.
- (1) Any owner objecting to a violation cited in the inspection notice may file a written appeal with the neighborhood inspection division requesting a hearing before the housing appeals board. An appeal shall be filed within ten days of the date of the inspection notice. An untimely appeal shall not be accepted, unless in the discretion of the neighborhood inspection officer good cause is shown for the untimely filing.
 - (2) An appeal objecting to a violation cited in an inspection notice shall be accompanied by a receipt from the city treasurer showing payment of a filing fee charged in the amount set forth in a schedule of fees adopted by the city council by resolution. The appeal shall state those violations that are being contested. The filing fee shall be refunded if the board finds that the objection is valid.
 - (3) An appeal consisting of an application for a variance shall be accompanied by a receipt from the city treasurer showing payment of a nonrefundable filing fee charged in the amount set forth in a schedule of fees adopted by the city council by resolution.
 - (4) An owner referred to the housing appeals board for failure to comply with an inspection notice shall be

49
46

charged an administrative fee in the amount set forth in a schedule of fees adopted by the city council by resolution, if the board finds in favor of the neighborhood inspection division.

- (5) If an owner referred to the housing appeals board has brought the structure(s) into compliance prior to that board meeting, a fee in the amount set forth in a schedule of fees adopted by the city council by resolution, shall be charged.
- (6) The neighborhood inspection officer shall notify the appellant and all board members of the date, time and location of the hearing.
- (b) Appeal of fees, fines, penalties and costs. An owner objecting to the amount of any fees, fines, ~~or~~ penalties and costs imposed upon the owner pursuant to this article may file a written appeal with the neighborhood inspection division within thirty (30) days of the date notice is given of the City's intent to certify such fees, fees, ~~and~~ penalties and costs for collection in the same manner as a property tax. An untimely appeal shall not be accepted, unless in the discretion of the neighborhood inspection officer good cause is shown for the untimely filing. The notice of appeal must be accompanied by a receipt from the city treasurer showing payment of a filing fee in the amount set forth in the schedule of fees adopted by the city council by resolution. The filing fee shall be credited to the balance due or refunded if the board determines that an error was made in the calculation of the total amount of fees, fines, penalties and costs then due.

Sec. 60-104. Power to impose fines.

- (a) The housing appeals board may impose a fine for any violation of this article 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.
- (b) The neighborhood inspection division shall send a notice of the decision of the housing appeals board to the owner stating the amount of the fine imposed in the manner set forth in section 60-88.
- (c) If a property is brought into compliance within six (6) months from the date of the housing appeals board's meeting in which the fine was imposed, the owner may, within ten days of reinspection, file with the neighborhood inspection division a request to have the imposition of the fine reviewed by the housing appeals board. The board may reduce, rescind or affirm the imposition of the fine, except when a decree that includes a judgment for costs already has been entered by the court.

10-631 49
46

Sec. 60-108. Habitual violators.

- (a) An owner who fails to correct a violation within the time period given by notice and who has been required to appear before the housing appeals board for such failure three times or on three separate properties 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 is a habitual violator, an agent or representative of such owner may also be deemed a habitual violator as to those properties.
- (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 ~~section 60-54~~ the schedule of fees adopted by the city council by resolution. The owner or manager may be placed on an accelerated inspection schedule by the board, thereby reducing certification periods, if the result of the unified inspection justifies such action. The fees as set forth in ~~subsection 60-54~~ the schedule of fees adopted by the city council by resolution shall be charged for such inspections.

Sec. 60-200. Definitions.

For the purpose of this ~~section~~ article, the following definitions shall apply:

City shall mean the City of Des Moines, Iowa.

Contract shall mean a real estate installment purchase agreement for the intended transfer of residential real estate between a buyer and seller. A real estate installment purchase agreement is one which is payable in more than four (4) installments, not including the down payment. This division does not apply to contracts for commercial property, vacant lots or new construction.

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

Contract seller shall mean the person or entity offering or transferring the real property for sale, or anyone acting on behalf of the contract seller. Contract seller shall not mean the following professionals licensed in Iowa acting on behalf of a contract seller: attorneys, real estate brokers or salespersons.

Director shall mean the community development director of the city or his/her designee.

Inspection shall mean a physical examination of the real estate, which shall include, but not be limited to, a review of the structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interior, fireplace and solid fuel burning appliances of the real estate.

Inspection report shall mean a report in a form approved by the neighborhood inspection division of the city and prepared by an

49
46

inspector to describe an inspection.

Inspector shall mean the individual who performs the examination 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, as defined in section 1-2 of this Code.

Transfer shall mean the conveyance by sale, exchange, contract or by any other method by which real property is purchased. For the purpose of this ordinance, transfer shall not mean the conveyance of real estate interests as detailed under Iowa Code Section 558A.1 (4) (a, b, c, d, e, f, g and h).

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, and the collection of fees and costs.

Sec. 60-303.05. Public nuisance notice procedure.

- (a) The owner or 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;
 - (6) The collection of costs if the city abates the nuisance.
- (c) The notice shall be served personally or by certified mail, return receipt requested.

Sec. 60-303.06. 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.

- 49
46
- (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. 60-308. Public nuisance procedure: notice and hearing.
Repealed by Ord. No. 14,---.

- ~~(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, which are not brought into compliance in the time required 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

10.631 49

46

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~~ a notice describing the condition and requiring that specified action be taken. If the owner does not comply with the ~~order~~ notice within the time specified, the officer may authorize the taking of the action specified in the ~~order~~ notice. Any costs incurred may be assessed against the property or collected as a personal judgment pursuant to legal action.
- (c) A copy of the ~~order~~ notice 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, in affidavit form shall be held on file.

Sec. 60-311. ~~Fire Damaged Public Nuisance Structures. Repealed by Ord. No. 14, ---.~~

~~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. 60-450. Actions to enjoin and to collect costs.

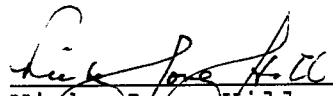
- (a) All fees and costs associated with the abatement and/or the enforcement of a public nuisance imposed upon an owner in the enforcement of this article not previously due, shall be due when notice of the amount of such fees and costs is sent to the owner by first class mail.
- (b) The city may bring suit in the district court to:
 - (1) Restrain, enjoin, correct, or abate any violation or nuisance;
 - (2) Prevent the occupation or use of the dwelling, building or structure;
 - (3) Prevent any other violation of this article;
 - (4) Obtain a judgment for fees, associated costs and expenses

49
46

to be assessed as a personal judgment and assessed against the real estate property.

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