

★ **Roll Call Number**

Agenda Item Number

44

Date..... October 27, 2008

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, as heretofore amended, by repealing Section 60-5, Section 60-88, Section 60-102, Section 60-104 and Section 60-145 thereof, and enacting a new Section 60-5, Section 60-88, Section 60-102 and Section 60-104, regarding the Neighborhood Inspection Rental Code and the collection of fees, fines, penalties, costs and interest",

which was considered and voted for the first time upon under Roll Call No. 08-___ of October 13, 2008; again presented.

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

(Second of three required readings)

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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

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, as heretofore amended, by repealing Section 60-5, Section 60-88, Section 60-102, Section 60-104 and Section 60-145 thereof, and enacting a new Section 60-5, Section 60-88, Section 60-102 and Section 60-104, regarding the Neighborhood Inspection Rental Code and the collection of fees, fines, penalties, costs and interest.

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 amended by Ordinance No. 14,432 passed April 25, 2005, by Ordinance No. 14,501 passed October 10, 2005, and by Ordinance No. 14,652 passed May 21, 2007, be and is hereby amended by repealing Section 60-5, Section 60-88, Section 60-102, Section 60-104 and Section 60-145 thereof, and enacting a new Section 60-5, Section 60-88, Section 60-102 and Section 60-104, regarding the Neighborhood Inspection Rental Code and the collection of fees, fines, penalties, costs and interest, as follows:

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, ~~residential structures~~ and accessory structures now in existence or hereafter constructed, rehabilitated, renovated or converted to residential use within the corporate limits, including but not limited to single and two-family dwellings, multiple family dwellings, rooming houses, rooming units, shelters, dormitories and dormitory rooms, ~~except but excluding~~ 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. 60-88. Collection of fees, fines, penalties and costs.

- (a) All inspection fees, reinspection fees, fines, civil penalties, eviction costs, demolition costs, administrative costs and legal costs incurred by the neighborhood inspection division in the enforcement of this article may be collected by an ~~assessment lien~~ placed against the real estate to be collected in the same manner as a property tax and/or by judgment entered against the owner personally and/or against the real estate.
- (b) Prior to filing an ~~assessment lien~~ for the collection of costs billed under this article in the same manner as a property tax, of this chapter the owner shall be given a notice ~~of right to an administrative hearing regarding the validity of the assessment.~~ of the amount of such fees, fines, penalties and costs then due by first class mail containing the information required by Iowa Code §364.17. No late payment penalty or interest shall accrue, and such fees, fines, penalties and costs shall not be certified for collection in the same manner as a property tax unless such notice provides the information required by Iowa Code §364.17.
- (b) The amount of any such fees, fines, penalties and costs may be appealed to the housing appeals board in the manner set forth in section 60-102.
- (c) If notice containing the information required by Iowa Code §364.17 is given and the total amount of such fees, fines, penalties and costs is not paid within thirty days of when due, or in the event of a timely appeal if not paid within ten business days of final action by the board on the appeal, then:
 - (1) The owner shall be charged a late payment penalty in the amount set forth in the schedule of administrative penalties adopted by the city council by resolution;
 - (2) Interest shall thereafter accrue on the unpaid balance at the rate of 1.5% per month; and,
 - (3) The city may certify the unpaid balance, interest and late payment penalty to the county auditor as a lien upon the property for collection in the same manner as a property tax.

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 ~~items~~violations that are being contested. The filing fee shall be refunded if the board ~~rules~~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 charged an administrative fee in the amount set forth in a schedule of ~~fees~~ administrative penalties adopted by the city council by resolution, if the board finds in favor of the neighborhood inspection division.
- (5) If a ~~structure~~an owner referred to the housing appeals board ~~is~~has brought ~~the~~ the ~~structure(s)~~ into compliance prior to ~~the~~ at board meeting, an administrative fee in the amount set forth in a schedule of ~~fees~~ administrative penalties 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 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 fines, fees and penalties 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.

~~(b) Assessment of costs:~~

- ~~(1) The city may charge the owner of real property a late payment fee of \$25.00 and may add interest up to 1 1/2 percent per month if costs imposed under article I are not paid within 30 days of the date due.~~
- ~~(2) The city shall send a notice of the late payment costs to such owner by first class mail to the owner's personal or business mailing address. The late payment fee and interest shall not accrue if such owner files an appeal with the city.~~
- ~~(3) Any owner objecting to the collection of costs by assessment may file a written request for a hearing before the housing appeals board. The appeal shall be filed within ten days from the date of the notice of late payment. An untimely appeal shall not be accepted, unless in the discretion of the neighborhood inspection officer good cause is shown for the untimely filing.~~
- ~~(4) The neighborhood inspection officer shall notify the appellant and all board members of the date, time and location of the hearing.~~
- ~~(5) Any unpaid costs and interest shall constitute a lien on the real property and may be collected in the same manner as a property tax. Before a lien is filed, the city shall send a notice of intent to file a lien to the owner of the real property by first class mail to such owner's personal or business mailing address.~~

Sec. 60-104. Power to impose fines.

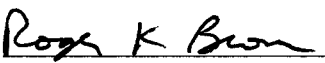
- (a) The housing appeals board may impose a fine for any violation of this article in the amount set forth in the Schedule of Administrative Penalties adopted by the city council by resolution, the amount of which shall be determined upon recommendation of the neighborhood inspection division. The board 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. If the owner neglects to pay the fine, the fine may be collected by a court action against the owner, by an action against the real property or by an assessment in the manner same as property tax against the real estate. A court action against the owner may be joined with an action against the real property.
- (c) If a property is brought into compliance 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.

~~Sec. 60-145. Rooming houses and dormitories.~~

~~The 2000 International Property Maintenance Code, except for sections deleted in section 60-3, shall apply to rooming houses, rooming units, shelters, dormitories and dormitory rooms, as well as to dwellings and dwelling units.~~

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

FORM APPROVED:



Roger K. Brown
Assistant City Attorney
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**Council
Communication**
Office of the City Manager

Date October 13, 2008

Agenda Item No. 55
Roll Call No. 08-1787
Communication No. 08-592
Submitted by: Larry Hulse, Community Development Director

AGENDA HEADING:

First reading of an ordinance allowing delinquent fees, fines, penalties and costs imposed in the enforcement of the Neighborhood Inspection Rental Code, Chapter 60, Article #1, to be collected in the same manner as property tax. Resolution approving amendment to the Schedule of Fees imposed under Chapter 60, Article #1 of the City Code.

SYNOPSIS:

Fees, fines, penalties and costs incurred by the Neighborhood Inspections Division and owed to the City of Des Moines for the monitoring and inspection of rental properties have historically been billed at the conclusion of the inspection process. When those fines, fees, penalties and costs are not paid by the landlord in a timely fashion those amounts are forwarded to a collection agency. There is in excess of \$1,757,000 outstanding. State law has recently been updated to permit collecting these delinquent bills in the same manner as property tax as an assessment. These code changes will implement that process.

FISCAL IMPACT:

Amount: There is an average of \$200,000 in rental fees that are unpaid each year.

Funding Source: There are no costs associated with the implementation of this amendment.

ADDITIONAL INFORMATION:

Once assessments are placed on the delinquent properties they will come due with the property taxes. Staff anticipates collecting more outstanding receivables as an assessment against the property than has been received by a collection agency. Over time as property is assessed, and property with unpaid assessments are sold, it is anticipated that the majority of the outstanding billing (\$1,757,031.35) will be recovered.

Staff has been reluctant to take the only remedial action available to them to collect these delinquent bills, that being the forced eviction of the tenants from a rental that didn't have a certificate or declining to inspect a property because of delinquent bills. Staff believes this would create undue hardship on the tenant for the misconduct of the landlord.

PREVIOUS COUNCIL ACTION(S):

Date: April 23, 2007

Roll Call Number: 07-780

Action: Amending the Schedule of Fees and the Schedule of Administrative Penalties, subject to final approval of the ordinance. (Council Communication No. 07-245) Moved by Vlassis to adopt. Motion Carried 7-0.

Date: April 21, 2003

Roll Call Number: 03-910

Action: Approving amendment to the Schedule of Fees. Moved by Vlassis to adopt. Motion Carried 5-2.

Date: February 10, 2003

Roll Call Number: 03-318

Action: 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: N/A

Roll Call Number: N/A

Action: There is no action required by the Housing Appeals Board, however, they have been informed of the changes to the code and their oversight function. Staff will update them assuming the passage of this amendment to the ordinance.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.