

★ Roll Call Number

Agenda Item Number

64

Date May 8, 2017

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 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",

(Council Communication No. 17-397)

presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Jessica D. Spoden
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MOORE, WESTERGAARD, and TOTAL.

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.

MOTION CARRIED APPROVED

Mayor

City Clerk

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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, 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 ~~this~~ 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 ~~this~~ 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 ~~this~~ 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. ~~this article.~~

**ARTICLE IV**

**REAL ESTATE CONTRACT SALES INSPECTIONS**

**~~Sec. 60-220 General.~~**

~~— This Article provides regulations relating to sales of real property for the purpose of protecting the contract buyer(s) and to ensure the buyer(s) is aware of any defects in real estate which the buyer(s) is purchasing.~~

~~(C00, § 60-220; O.15,562)~~

**~~Sec. 60-221. Definitions.~~**

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

~~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 Article 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.~~

~~Inspection shall mean a physical examination of the real estate and structure(s) to determine if the house would meet the code requirements set out in this Chapter, 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 Administrator and prepared by an 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.~~

~~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)(a, b, c, d, e, f, g, and h).~~

**Sec. 60-222. Inspector certification.**

- ~~(a) — All inspectors who perform the inspections of real estate pursuant to a contract shall be a full or regular member in good standing of an eligible 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 Chapter shall first obtain approval under the above standards. The Administrator shall have sole discretion to approve or deny the application~~
- ~~(d) — The Administrator shall maintain a current list of contract sales inspectors in good standing.~~

**Sec. 60-223. Disqualification.**

- ~~(a) — The Administrator shall have sole discretion to suspend or revoke a contract sales inspector's certification 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 this 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 inspector by certified mail, return receipt requested.~~
  - (3) ~~The contract sales inspector may file an appeal to of the determination as set out in Chapter 3 of the Municipal Code.~~

**Sec. 60-224. 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 inspector shall prepare an inspection report of the physical examination of the real estate setting out violations of Article I of this Chapter and remedial action.~~
- (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) ~~Subsequent inspection reports and updates for the same property may be filed by the same contract seller without an additional filing fee within one (1) year of the original inspection report.~~
- (g) ~~Within seven (7) days following execution of the contract, the contract seller shall file with the Administrator recorded copies of instruments transferring the real estate.~~
- (h) ~~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 ownership or authorized management interests in the property shall allow inspection or re-inspection upon reasonable notice by the city.~~

**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 violations of this Chapter and any defects in the real estate which the buyer(s) is purchasing.

**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 Chapter, 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.

**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 thirty (30) days prior to the execution of the contract.

- (1) At least thirty (30) days prior the execution of a contract the owner shall apply to the Division for inspection of the structure(s).
- (2) The owner(s) of the property shall be required to sign and return the application.
- (3) It is the responsibility of the owner(s) or authorized management agent to contact the Division to set the date and time of all inspections.
- (b) 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.
- (c) Within seven (7) days following execution of the contract, the contract seller shall provide recorded copies of instruments transferring the real estate to the Administrator.

**Sec. 60-223. Inspection, Notice of Violation and Method of Service**

- (a) The Administrator shall inspect the primary dwelling unit(s), mobile home, accessory structure(s) and premise.
- (b) If the Administrator determines that the structure(s) and/or premises are being maintained in violation of this Chapter, 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 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. 60-224. Compliance Required.**

An owner shall abate all violations of this Chapter 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.

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**Sec. 60-225. Renovation Agreement.**

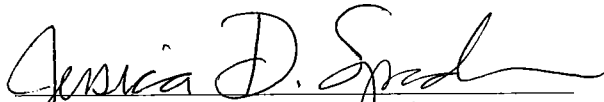
- (a) An owner(s), authorized management agent or contract buyer may make a written request accompanied by the fee set forth in the schedule of fees for an extension of time to complete repairs that is specific to the structure, mobile home or premise and must show that:
  - (1) Strict compliance with this Chapter 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) 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. 60-226. Appeals.**

Appeals shall be handled as set forth in this Chapter.

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

FORM APPROVED:

  
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 Jessica D. Spoden, Assistant City Attorney