

## MINUTES OF THE SPECIAL MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

SEPTEMBER 29, 2010

The Ames City Council met in special session at 7:00 p.m. on the 29<sup>th</sup> day of September, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue, pursuant to law with Mayor Ann Campbell presiding and the following Council members present: Davis, Goodman, Larson, Orazem, and Wacha. *Ex officio* Member England was also present. Delores Betts, Pat Brown, Jeff Drury, Gary Hunziker, Sean Morrissey, Bert Schroeder, and Al Warren, representing the Property Maintenance Appeals Board, were also present.

Mayor Campbell noted that this meeting was one in a series of public meetings that have been held over the last three years regarding Chapter 13 and the property maintenance code.

**PRESENTATION BY THE AMES RENTAL ASSOCIATION:** Kelli Excell, on behalf of the Ames Rental Association (ARA), gave the Council a presentation regarding the proposed changes to Chapter 13 of the *Municipal Code*. Ms. Excell said that there are unintended and cost-prohibitive consequences due to the new code enactment. She stated that there were multiple meetings of the Property Maintenance Appeals Board (PMAB) regarding this subject, but very little public input or discussion was allowed.

Council Member Mahayni arrived at 7:08 p.m.

Ms. Excell stated that the ARA had two specific requests of the City Council, the first of which was open dialogue. Ms. Excell indicated that there was little dialogue when the ARA presented to the PMAB, and at a subsequent meeting there was none whatsoever. The ARA wants to come to the table with the PMAB, City staff, and the Council to find common ground on these issues.. The ARA's second request is that the new Code not be enforced until common ground can be reached.

Ms. Excell reviewed some of the specific issues that the ARA has with the new code. She explained that landlords are frustrated because repairs are being treated as new work or remodeling under the new Chapter 13; they believe that this is being interpreted incorrectly.

In regards to new requirements for egress windows, the Association would like alternate wording in the Code to allow current windows to remain in place, rather than requiring replacement. Ms. Excell said that it is common lately for many houses on the market to not sell, so they end up turning into rentals. She feels that there is a rich need for rentals, and under the new Code the majority of these houses would be deemed unsafe. It is the Association's opinion that an existing window is not a Code violation. Ms. Excell spoke with surrounding inspectors in Ankeny and Des Moines and found that they are interpreting the Code differently.

Ms. Excell stated that another new requirement is for some buildings to install Knox boxes. She explained that a Knox box sits on the outside of a property, inset into the building, and the keys to the property are inside the box. The Fire Department has a key to this box, and can use it to get into the building in the event of a false fire alarm or similar situation. Ms. Excell stated that these boxes are difficult to install on buildings that do not already have them, and they are costly. The ARA would like Knox box requirements to be limited to only buildings that have secured entrances and auto alarm systems, preferably only in new construction.

Ms. Excell indicated that the City has purged a lot of its records. She stated that a lot of landlords have obtained acceptable variances, but those variances have been lost. The ARA would like some wording

put into Chapter 13 to allow these things to continue if they have already been approved.

In regards to the interior and exterior stair rise requirements, Ms. Excell stated that the ARA would like the wording to be changed from 3/8 inch to 1 inch to meet the need of older buildings that settle. She stated that the new rules are much too stringent, and she showed the Council a photo of public steps which do not comply to these rules. She indicated that if landlords were forced to comply, they would need to tear out interior stairs which would likely lead to a nearly complete remodel.

Ms. Excell stated that Chapter 13 now reads that it is the landlord's responsibility to keep the property clean. She noted that landlords do not have the power to tell tenants how to live; if a tenant is messy, the landlord can't do anything about it. She explained that Letters of Compliance from the City are now based on whether or not the property is "clean". Clean is defined differently by different people; cleanliness is not a permanent condition. Ms. Excell indicated that City inspectors have said that a property is not clean because there are dirty clothes on the floor. The ARA would like the word "clean" removed from the Code entirely.

Ms. Excell indicated that, under the new Code, Letters of Compliance (LOCs) from the City now expire when a property changes hands or is deeded to another person. She stated that there is no reasonable cause for an LOC to expire just because a property changes hands; the purpose of an LOC should be the safety of the tenant, not the protection of the buyer.

According to Ms. Excell, the ARA also feels that the time period specified in the Code for appeals is too short. The current time period is 20 days, and if a decision by the City is not appealed within those 20 days, then the issue is "dead". The ARA asked the PMAB to change the number, but the Board elected not to.

Ms. Excell talked about the new requirements for shared air furnaces. She stated that shared air furnaces should not be treated differently than normal furnaces.

Ms. Excell stated that landlords want to keep their houses updated and fixed to maintain their value. They want to care for their properties and provide a place that's safe and affordable for the tenant and the landlord. She reiterated that the Association wants to find some middle ground on all of these issues.

**PRESENTATION AND RECOMMENDATION BY PROPERTY MAINTENANCE APPEALS BOARD:** Chair Al Warren, representing small and medium sized landlords; Sean Morrissey, representing student tenants; Bert Schroeder, representing owner-occupants; Pat Brown, representing owner-occupants; Jeff Drury, representing small landlords/contractors; Gary Hunziker, representing large landlords; and De Betts, representing longtime tenants, were all present on behalf of the Property Maintenance Appeals Board (PMAB).

Chair Al Warren reviewed the PMAB's responses to the Ames Rental Association's concerns. He explained that the decision to keep the appeal time at 20 days was a legal precedent. Mr. Warren indicated that a landlord would know on the day of inspection what items would need to be appealed. The 20 day appeal period does not start until the inspector sends a letter to the landlord, which is typically about 14 days after the initial inspection.

Mr. Warren addressed the concern about not allowing Letters of Compliance to continue under new ownership. The Board felt that since there are a lot of changes in the Code, if a new person takes over

and is not inspected, they may be in for big surprises down the road. Board Member Brown added that an inspection would also inform a potential buyer of possible deficiencies, so they would know what has to be done before they buy it. Mr. Warren stated that if new owners were not required to be inspected, it would be unfair to the current landlords who are trying to comply; they see it as protecting existing landlords by not allowing LOCs to continue when the property changes hands.

Mr. Warren indicated that there were wide opinions expressed regarding the word “clean”, and the Board had a lot of discussion as to what clean actually meant. The PMAB’s recommendation was to keep the word there and move on, and a landlord could appeal a decision to the Board if he or she felt that the interpretation was incorrect.

The Board reviewed numerous other issues contained in its report to the Council. Mr. Warren indicated that plumbing was a “big ticket” item. The existence of “S-traps” and whether they should be allowed to remain in rental houses was discussed at length.

In regards to shared air furnaces, Mr. Warren stated that the Board felt that most of the requirements are “doable”. The landlord would not be required to put in two new furnaces if the shared air furnace broke down. Board Member Drury indicated that the Code initially required replacement with two separate furnaces; it was a large compromise between the PMAB and the City to get to this point.

Mr. Warren indicated that the PMAB believes that the language regarding below grade egress windows should stay as is, and above grade window issues should be made appealable to the Board. If an above grade window comes very close to compliance, then the Board could grant a variance and allow some flexibility. This issue was discussed at length. It was noted that few homes in Ames would comply to the new standards; however, new construction is built to comply.

In regards to the installation of Knox boxes, Board Member Hunziker stated that it makes sense to require them in larger buildings with system alarms. The Code initially required any building with six units or more to install a Knox box; the PMAB recommended changing that number to nine or more units. It was noted that the cost of a Knox box would be approximately \$300 plus installation, but that cost would be offset if it prevented a door from getting kicked in by a firefighter or other emergency responder.

Mr. Warren stated that the Board also recommended the addition of another City inspector and more clerical staff. He said that it is unrealistic to think of one inspector and an intern being able to handle the inspection of some 12,000 rental properties in Ames. He stated that the Board unanimously voted to support adding one full time rental inspector and one half time clerical position in the Inspections Division.

**PUBLIC INPUT:** Sharon Guber, 2931 Northwestern Avenue, Ames, Iowa, stated that she had been at several of the public meetings, and that there was at least one landlord or representative at each of those meetings. She understands the concern about the costs; she was on the committee to work on the revision of the Code. She does not think that the Council should reduce the requirements in the Code, because the Code protects the safety of renters and the legal safety of the landlords. Ms. Guber thinks that the Council and Inspections could look at alternative Letters of Compliance that would say that a property is in the process of being brought up to Code, and give an allowance of six months to a year. She also thinks that the cost of installing a Knox box is minimal compared to what is gained for the tenants. Ms. Guber stated that the Inspections Division has said that they will look at things that are major safety issues first and then follow down the line. She also does not think that the

problem of turning houses that won't sell into rental units is relevant to this discussion.

Bobby Martens, 2004 Country Club Boulevard, Ames, Iowa, stated that he lives in the south campus area, which has many rentals bordered by owner-occupied houses. Mr. Martens explained that he purchased a rental directly behind his house because he wanted control of it. He stated that the property had never been registered with the City as a rental. The City discovered that it was an unregistered rental house, and he had the property registered and inspected. Mr. Martens indicated that there were compliance issues, and he ended up spending \$5,500 bringing the house up to Code. He described the appeals process as being very frustrating. He thinks that the Code is too black and white, and that reason and judgement need to be used in the enforcement process.

Lyle Groth, 665 Olin Avenue, Ellsworth, Iowa, said that he has rental properties in Ames. He said that a tenant of his called the City to complain about an electrical outlet, and the City came and did a full inspection instead of just checking the outlet. Mr. Groth indicated that he ended up making a plumbing repair of over \$1,000. He doesn't like that tenants have the right to go to the City and that landlords are being held accountable in a short period of time.

Chuck Winkleblack, 105 S 16<sup>th</sup> Street, Ames, Iowa, stated that many of the landlords did not attend the previous public meetings because they had Letters of Compliance that they have had for ten years. He indicated that many of them had no issues, no complaints from the tenants, and thought that they were good landlords. Mr. Winkleblack stated that the landlords didn't know about some of the meetings, and the reason they didn't think that the Code changes pertained to them was because the City had verified year after year that they had good properties. He echoed the ARA's wish to have more dialogue with the Board and with the City. He stated that everyone has the same goal of affordable housing that is well-maintained. Mr. Winkleblack senses that there is a feeling that just rental properties are being "picked on". If people are really at risk, Codes should be changed for everyone, not just rentals.

Doug Brinkman, 404 North Dakota Avenue, Ames, Iowa, stated that he has worked in the health and safety field for 22 years. He urged the Council to consider the cost benefit ratio of these issues. Not all issues can be hedged under the "health and safety" category.

Matt Randall, 420 S 17<sup>th</sup> Street, Ames, Iowa, believes that this law was poorly constructed, and thinks that it is unfair to impose solely on rental properties. He stated that "what is good for the goose is good for the gander". If this truly is a law that is important for the citizenry, then everyone should have their homes inspected. He does not think that any residential homes would pass inspection based on this Code. It is inappropriate to single out rental properties, and the Code should be removed from the books.

Jim Gunning, 119 Hickory Drive, Ames, Iowa, stated that he attended a lot of the work sessions, and there wasn't much dialogue. He indicated that he brought a list of items to the Board in 2008 that he thought could be potential problems, and most of them are what is being discussed now. Mr. Gunning stated that he empathizes with the inspectors, because they are hired to enforce the Code.

Russ McCullough, 119 Stanton Avenue, Ames, Iowa, stated that he has done a lot of projects in Ames. He explained a situation in which a City inspector allowed a compromise on one of his rental properties, but he is worried that his property could some day be considered non-compliant by a new inspector. He thinks that the Code needs to be addressed so that inspectors don't need to worry as much about interpretation, or the Board should have enough discretion to allow a variance that sounds

reasonable. Mr. McCullough does not think that the old properties in Ames should be micro-managed. He thinks that oftentimes the cost of an appeal to the Board is more costly than just making a repair. He feels that the Board is a waste of resources, and not an efficient way of governing the city. Mr. McCullough would like the City to leave the old properties alone - "if it's not broke, don't fix it".

Steve Vogelzang, 230 Abraham Drive, Ames, Iowa, stated that government is best when it is least. He thinks that these rules are taking on a life of their own - they should be minimum standards, and landlords should have some freedom. Any of these rules should apply to everybody.

City Attorney Doug Marek stated that he was asked to compare the City of Ames' Code to that of similar cities. He gave the Council a report, which showed the Ames Rental Code compared to that of Cedar Falls, Iowa City, and the City of Davenport, which has a lot of older houses as rentals. Mr. Marek noted that three differences stand out. First, the Ames Code tended to have more content about procedure and fewer references to codes outside the Municipal Code. Other cities incorporate by reference the International Property Maintenance Code; the City of Ames has adopted portions of it. The second difference is the issue of whether Letters of Compliance transfer when the property changes ownership. Mr. Marek explained that Ames is the only city that starts the process over; however, there is a provision in the Code for prior non-conformities to continue. He noted that all jurisdictions require notification when properties change ownership. The third major difference is that the Ames Code has more procedures for treatment of preexisting conditions that are non-compliant with the Code. The other cities have some provision for variances, but not retroactive conversions. Mr. Marek indicated that Ames has adopted the least restrictive uniform standard and portions of the International Code. He noted that Cedar Falls has adopted the International Rental Code in its entirety.

Mr. Marek also included a general comparison of the Ames Code to other cities with Big 12 universities. He stated that, for the most part, there were more similarities than differences.

Mr. Marek was asked if the City of Ames needs to have a rental housing code. He said that the State Code is very clear that every city with a population of 15,000 or more must adopt a rental housing code; if you do not, the State imposes one of the other model codes on the city. A city may adopt its own housing code provisions, as long as they are more stringent than those contained in the model housing code that it adopts. Mr. Marek stated that a city may also provide for variances to be granted, and the authority of the Board that grants the variances must be set out in the Code.

The Attorney's Office was also asked if the City Council can change the Code in any way it wishes, or if it must follow State guidelines for changes. Mr. Marek stated that the Council may amend the current code, so long as the amendments mean that the Code continues to be more stringent than the uniform codes that the City has adopted.

Council Member Larson said that giving more authority to the PMAB might help resolve some of the issues. Mr. Marek indicated that the Council could codify the authority that it would grant to the Board, along with the standards to apply. He reiterated that the Council cannot authorize something that is more lenient than the model code. Council Member Orazem asked if there was a way to "pre-state" what variances are allowable. Mr. Marek said that there is; however, if the model code states that under no circumstances is something to be allowed, the Council cannot provide a variance to allow it. Mr. Orazem said that the Council ought to try to build flexibility into the system where there are repeated conflicts.

In reference to the Board's recommendation for additional Inspections staff, Council Member Larson

asked how long a typical inspection takes, and whether they take longer now under the new Code. Fire Chief Clint Petersen stated that inspection times vary widely, but the Code has substantially increased the amount of time the inspector and landlord spends on scene. He indicated that inspectors spend additional time documenting preexisting conditions, and some properties are taking significantly more time. Though it requires more inspection time, that should be reduced after all of the rental properties have been inspected under the new code.

Council Member Davis asked what the normal inspection cycle is. Chief Petersen said that it is variable from one to four years; a building with severe problems might be inspected every year, but a new building with few problems might be done every four. Mr. Davis asked about increasing the Inspections staff. Chief Petersen said that he is in a different role in that regard; he has to go through the budget process and find out what can be done. Inspections workload and staff time was discussed at length.

Council Member Goodman asked what the cost of the appeals process is to an applicant/appellant. Chief Petersen indicated that the first appeal on an issue is free annually, and staff encourages applicants to appeal to the Building Official first before appealing to the PMAB. The cost of time spent on the appeal would vary per person.

Mayor Campbell said that the Council will have this as an item on an agenda addressing the issues that have been raised by both parties, and will deal with specifics at that point. City Manager Steve Schainker said that it could go on the first regular Council meeting in October.

Council Member Goodman said that he has heard multiple times that there hasn't been enough discussion. He would rather have a round table meeting before putting these issues on a regular Council agenda. The benefit of the round table forum is that people feel like they can have a dialogue and can come to some conclusions. Mr. Goodman thinks that the Board Members representing resident owner-occupants should be present at the round table discussion; contractors and landlords are well represented in the Ames Rental Association.

Moved by Goodman, seconded by Wacha, to direct staff to set up a round table workshop on October 19 with the Ames Rental Association and Property Maintenance Appeals Board.

Vote on Motion: 6-0. Motion declared carried unanimously.

**COMMENTS:** Mr. Goodman said that the goal of this whole process has been to clarify the Code and help people better understand what is expected of them. Running into issues like these is an anticipated part of the process; he hopes that everyone understands that the initial goal was to help.

Council Member Wacha said that there is a balance to strike: either we have a strict Code and owners can sleep well at night with assurance of what the future can bring, or we have a flexible Code so that there can be compromises and appeals. He challenged those present to ask themselves where that balance should be.

**ADJOURNMENT:** The Special Meeting adjourned at 9:47p.m.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor

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Emily A. Burton, Recording Secretary