

From: Bohl, James
Sent: Monday, November 17, 2014 8:13 AM
To: Lee, Chris
Subject: FW: File #: 140909 on Tuesday's ZND and Wednesday's Finance

For file on the RRI legislation. jb

From: Dahlberg, Art
Sent: Friday, November 14, 2014 12:34 PM
To: tim ballering (tim@apartmentsmilwaukee.com)
Cc: Murphy, Michael (Alderman); Huertas, Edwin; Zarate, Sarah; Pfaff, Richard; Bohl, James; Perez, Jose; Zielinski, Tony
Subject: FW: File #: 140909 on Tuesday's ZND and Wednesday's Finance

Mr. Ballering:

Please see my answers in [Red](#)

From: tim ballering [<mailto:tim@apartmentsmilwaukee.com>]
Sent: Thursday, November 13, 2014 1:45 PM
To: Dahlberg, Art
Cc: Murphy, Michael (Alderman); Huertas, Edwin; Zarate, Sarah; Pfaff, Richard; Bohl, James; Perez, Jose; T. Anthony Zielinski; AASEW Advisors; RCE Michael Ruzicka; Affairs/Legal Public VP - Mike Theo; Joe Director of Political and Governmental Affairs Murray
Subject: Re: File #: 140909 on Tuesday's ZND and Wednesday's Finance

Inline responses below Mr. Dahlberg's comments.

Tim Ballering
Tim@ApartmentsMilwaukee.com

On Nov 13, 2014, at 11:59 AM, Dahlberg, Art <Art.Dahlberg@milwaukee.gov> wrote:

To answer the questions posed at yesterday's hearing and the attached email it is necessary to look at several sections in 200-53 to understand how application triggers work in relationship to the sale or transfer of a property. Below is a list of scenarios and how each one would be resolved under current law and/or the proposed changes:

1. Property is tenant-occupied at time of sale and has a certificate
MCO s. 200-53-3-b requires the new owner to apply for a certificate within 30 days after acquiring the property. If the prior owner obtained a new certificate no more than 3 months prior to the transfer date, s. 200-53-6-e allows the new owner to take over the old owner's certificate without an inspection, but that old certificate expires 1 year after it's issuance date regardless of whether it was originally a 1- or 4-year certificate. If the old owner's certificate was issued more than 3 months before to the transfer date, it is a new application and the inspection requirements under s. 200-53-5 are applicable. There is no violation of s. 200-53 during the new application process as long as a valid certificate was issued before the transfer, so any tenants would stay put.

This scenario was not in question

2. Property is in a RRI district and is tenant-occupied at the time of sale and does not have a certificate. The new owner is buying an illegally-occupied property and is taking on the risk of violating s. 200-53. The city has the discretion to seek removal of the tenants or allow the tenants to remain during the application process. That will have to be determined on a case-by-case basis. The best thing a new owner can do in this case is require the former owner to obtain a certificate prior to transfer and then transfer within 3 months.

Two problems with this:

In the case of an owner occupied duplex, neither unit requires a certificate. At time of sale to an investor this immediately changes, making the tenant occupied unit an illegal occupancy. How will you deal with this? Are you fining the owner and putting the tenant that may have lived there for years on the street? **Using your scenario, the owner should file an application within 30 days after acquiring the property. New owners of rental property have a 30-day grace period to apply for a new certificate. Then, the department would schedule the RRI inspection. Based on the results of that inspection, a decision would be made on whether a certificate could be issued and for what the length of time. If violations were found, then orders would be issued with a defined compliance period. If an application had not been received in 30 days, then an order would be issued for the owner to make application for a RRI certificate. Once an application was received then the rest of the process would follow the description above. An owner who does not apply within 30 days could be subject to a forfeiture under 200-53-13-a.**

As to your question on putting tenants on the street, tenants would only be displaced if DNS discovered unsafe or unfit for human habitation conditions or upon obtaining an order from a court of law.

2) In the case of a non owner occupied property where the seller failed or refused to obtain a certificate it is unlikely that the seller would do so based on an offer. The certificate of code compliance ordinance was changed as this was a problem. Have you discussed this issue with the Realtors? **If that were the case then the buyer should approach the transaction understanding they are buying an illegally occupied property. My recommendation is to either have the seller obtain the RRI certificate or not buy the property. This is good legislation because there are clear standards for habitability violations, disqualifying violations, and building maintenance and zoning code violations. Property owners will be able to determine if they are in violation of the ordinance. The case-by-case analysis I referenced relates to executive discretion; if there are good public policy reasons for not enforcing the ordinance strictly in a unique situation, I would look at those on a case-by-case basis and decide if enforcement of the clearly worded ordinance is appropriate.**

Good legislation allows all parties to clearly understand the expectations, without the arbitrary and potentially capricious "case by case" basis.

3. Property is in a RRI district and is not tenant-occupied at the time of sale, but new owner wants to convert it to a rental property

There is no timeline for application in the current ordinance, so the current answer is simply that the new owner cannot put tenants in until obtaining a certificate. The proposed ordinance would require the new owner to apply for a certificate at least 30 days prior to letting tenants occupy the property under this and any other situation when converting a non-rental into a rental unit. If anything, the proposed provision benefits landlords because there would be a 30-day deadline for inspection when converting a property to a rental, whereas, it is currently a 60-day deadline.

The proposed code reads that the owner must apply "Not less than 30 days prior to allowing a tenant to occupy a dwelling..." The draft does not impose a limit that I can see that requires an inspection to be performed in less than 60 days. Nor does the language allow a tenant to occupy the property on day 31 if DNS fails to inspect and issue a cert. Nor does the ordinance state a time frame for issuance of the cert after passing the inspection. **See section 5-a, which does talk to a 60-day window (or another date mutually agreed to) for the inspection to be done upon receipt of an RRI application. The proposed amendment reduces that timeline to 30 days. Issuance occurs as soon as practicable based on 200-53-6-a not permitting any delay in issuance and requiring issuance upon meeting certain conditions**

If passed as written owners who are doing rehabs will have to wait at least 30 days and up to 60 days after completion. **No delay would be necessary if the application was received at the start of the rehab and a scope for the rehab was shared with the department.** Likewise properties that are purchased in move in condition will have to sit vacant for 30 to 60 days, plus the undefined time for issuance of the cert after the inspection. **This is not how the program currently works or would work under the proposed ordinance. If the owner is communicating with the department on their schedule we will make every effort to accommodate the owners schedule and inspect as soon as practicable.**

Please let me know if you have any other questions.

Finally 4-a-3 is not worded consistent with its stated intent. **I read the provision to require property owners to apply for a certificate at least 30 days before putting tenants into a building so the department can inspect the property before it is converted to a rental property from another use. It is applicable only when the owner did not have tenants in the property and then made a choice to allow tenants to occupy the property.**

Thanks.

Art Dahlberg

From: tim ballering [<mailto:tim@apartmentsmilwaukee.com>]
Sent: Wednesday, November 12, 2014 5:38 PM
To: Murphy, Michael (Alderman); Huertas, Edwin
Cc: Zarate, Sarah; Dahlberg, Art; Pfaff, Richard; Bohl, James; Perez, Jose; T. Anthony Zielinski; AASEWAdvisors
Subject: Re: File #: 140909 on Tuesday's ZND and Wednesday's Finance

Thanks for reaching out today. I asked that the Council President look at this as Mr. Dahlberg is steadfast on a minor section that could create problems in real world implementation.

The section that appears problematic is Part 6 referencing Section 200-53-4-a-3, which reads:

4. APPLICATION.

a. An application for a certificate shall state the owner's legal name, phone number and date of birth, state the street address of the dwelling to be inspected, be signed by the owner, and be filed with the department on forms provided by the department in accordance with the following deadlines:

a-1. Not more than 30 days after January 1, 2015, if the dwelling is located in inspection district 3 or the dwelling is a nuisance property or chronic nuisance premises.

a-2. Not less than 30 days prior to the expiration of an issued certificate.

a-3. Not less than 30 days prior to allowing a tenant to occupy a dwelling, if neither subd. 1 or 2 applies.

a-4. Not more than 30 days after the dwelling is determined to be a nuisance property or qualifies as a chronic

nuisance premises.

It is poorly worded from a technical standpoint. Mr. Dahlberg states it is meant to address the purchase of a property that does not have a current certificate, but will be required to because it is in one of the three zones. It does not read that way.

More importantly this creates a situation that a property must remain vacant for a minimum of 30 days after purchase if it does not have an existing certificate. In this day of rampant theft of plumbing and other mechanicals in vacant homes this is not a good situation even absent the lost rent. In fact it was Mr. Dahlberg who promoted the vacant building ordinance when he first came into office as he was aware of the problems associated with vacant properties.

This wording also creates an odd situation for the purchase of an occupied property subject to the ordinance as you would be in immediate violation when you sign the docs. Even if you accept Mr. Dahlberg's position that this is only in effect when purchasing an owner occupied property, what if that OO property is an occupied duplex? I read this wording as also affecting occupied properties where the former owner failed to obtain a required cert.

Another Alderman had responded to me that DNS had told him smart owners would apply before buying. The code as drafted requires the owner to apply and requires a new cert at change of ownership. If the deal fell apart the seller would be straddled with orders.

A reasonable solution would be to require the application within X days after purchase. The ordinance already has a mechanism to deal with those who fail to apply as required.

Tim Ballering
Tim@ApartmentsMilwaukee.com

On Nov 12, 2014, at 4:24 PM, Huertas, Edwin <Edwin.Huertas@milwaukee.gov> wrote:

Hello Tim,

Thank you for your email. As you know, there have been some substantial changes to #140909 from when it was originally formed. If you have any specific questions on Section 6483, please contact Art Dahlberg, Department of Neighborhood Services Commissioner, at 414-286-6344. I have CC'd him on this email.

I will also inform Alderman Murphy that you called about this.

Should you need anything else, please let us know.

Thank you again, and enjoy the rest of your Wednesday.

-Edwin

Edwin Huertas
Legislative Assistant
City of Milwaukee Common Council President
Alderman Michael Murphy, 10th District

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Edwin.Huertas@milwaukee.gov Email

<image001.jpg>

From: tim ballering [<mailto:Tim@ApartmentsMilwaukee.com>]
Sent: Saturday, October 25, 2014 10:12 AM
To: Murphy, Michael (Alderman)
Cc: AASEW Advisors
Subject: File #: 140909 on Tuesday's ZND and Wednesday's Finance

President Murphy

Are you supporting File #: 140909, the expansion of the Rental Inspection Program?

If yes, what problem do you see this legislation solving and have you considered the disparate impact aspect of both the neighborhood selection and the exclusion of owner occupied properties, which have a far lower percent of racial minority occupants?

Thank in advance for your response.

Tim Ballering
Tim@ApartmentsMilwaukee.com

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