



Legislation Details (With Text)

File #: 090429 **Version:** 3

Type: Ordinance **Status:** Passed

File created: 7/28/2009 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 12/1/2009

Effective date:

Title: A substitute ordinance establishing a residential rental certificate in a designated residential area.

Sponsors: ALD. KOVAC, ALD. DAVIS, ALD. HINES JR.

Indexes: BUILDING CODE, BUILDING INSPECTION, HOUSING

Attachments: 1. Cover Letter, 2. PowerPoint Presentation at 10-27 Meeting, 3. Letter from the Apartment Association of Southeastern Wisconsin, 4. Proposed Substitute C Fiscal Note, 5. Inspection Checklist, 6. Proposed Substitute B, 7. Proposed Substitute B Fiscal note, 8. Substitute Fiscal note, 9. Fiscal Note, 10. Hearing Notice List, 11. Media Advisory, 12. Emails in Support and in Opposition, 13. Notice Published on 12-17-09

Date	Ver.	Action By	Action	Result	Tally
7/28/2009	0	COMMON COUNCIL	ASSIGNED TO		
10/13/2009	1	CITY CLERK	DRAFT SUBMITTED		
10/13/2009	1	CITY CLERK	Sponsor added		
10/21/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/21/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/21/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/21/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/23/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/23/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/23/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/23/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/23/2009	1	CITY CLERK	Sponsor removed		
10/23/2009	1	CITY CLERK	Sponsor added		
10/27/2009	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	3:2
10/27/2009	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
10/28/2009	2	CITY CLERK	DRAFT SUBMITTED		
11/3/2009	2	COMMON COUNCIL	HELD IN COUNCIL	Pass	9:5

12/1/2009	2	COMMON COUNCIL	AMENDED	Pass	14:0
12/1/2009	3	COMMON COUNCIL	PASSED	Pass	9:5
12/1/2009	3	CITY CLERK	DRAFT SUBMITTED		
12/10/2009	3	MAYOR	SIGNED		
12/17/2009	2	CITY CLERK	PUBLISHED		

090429

SUBSTITUTE 3

ALD. KOVAC, DAVIS AND HINES

A substitute ordinance establishing a residential rental certificate in a designated residential area.

200-19-2 am

200-33-49.5 cr

200-53 cr

This ordinance requires owners of rental properties in designated residential areas to apply for a residential rental certificate from the department of neighborhood services. A certificate is required for each rental unit in order for it to be rented. Following application an inspection is done by the department of neighborhood services to insure that each rental unit complies with the building maintenance and zoning codes.

The cost of inspection is \$85 for each unit. If a multifamily building has 10 or more units, the department shall inspect a sampling of dwelling units, of not less than 2 and not more than 10% of the dwelling units in the multifamily building. In no event will the department charge a fee for more than 10 units in a building. If the department determines upon inspection of the sampling of dwelling units there are code violations that effect the safe, decent and sanitary living conditions for the tenants of the multifamily building, then the department may inspect as many dwelling units as necessary to enforce the provisions of the code. In that case, the fee shall be based upon the charge per unit inspected as provided in this ordinance.

The department shall issue a residential rental certificate only if after inspection it has found that the unit's observable conditions conform to the building maintenance and zoning codes and that there are no outstanding orders issued against the unit. The certificate shall be valid for 4 years from the date of issuance if no disqualifying violations are found at the initial inspection. The certificate shall be valid for one year after the date of issuance if disqualifying violations are found at the initial inspection. An owner failing to apply for a residential rental certificate of compliance shall be subject to a forfeiture of \$100 for the first failure to apply. The owner shall be subject to a forfeiture of \$150 for each subsequent failure to respond to a notice sent by the department to apply.

Within 4 ½ years of the effective date of this ordinance the commissioner of neighborhood services shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance unless reauthorized by the common council. No additional inspection areas shall be added within the period of the pilot program.

Whereas, The residential units in the area consisting of census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43, are on average 82.7 years old while the city average is 71.3 years old; and

Whereas, The residential buildings in this area that are rental are 47.5 % of the total residential

buildings as compared to 26.9% citywide; and

Whereas, The residential units in this area are 56.8% rental compared to 47.8% citywide; and

Whereas, 72.4% of code and nuisance complaints in this area occur at rental properties while the city average is 63%; and

Whereas, The city has invested significant money into public improvements and incentives for private owners in this area, and this investment is negatively effected by conditions of rental housing and fire safety and housing inspection programs are known to stabilize conditions in rental housing; and

Whereas, Also the residential units in the area bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave. in the vicinity of the University of Wisconsin - Milwaukee are on average 94.7 years old while the city average is 71.3 years old; and

Whereas, The residential buildings in this area that are rental are 42.7% of the total residential buildings as compared to 26.9% citywide; and

Whereas, The residential units in this area are 62.9% rental as compared to 47.8% citywide; and

Whereas, 81.4% of code and nuisance complaints in this area occur at rental properties while the city average is 63%; and

Whereas, 83% of campus fire deaths occur in off campus housing and fire safety education and related inspection programs are known to reduce the number and severity of fires in residential occupancies; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-19-2 of the code is amended to read:

200-19. Penalties.

2. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating any provision of ss. 200-11, 200-20-2, 200-21.5, 200-22-5, 200-24, 200-42, >>200-53,<< 200-61, ch. 207, ch. 214, ss. 218-2, 218-6, 218-9-6, 222-11-2, 222-13-1, 222-19-1, ch. 223, ss. 225-2-1, 225-3-4, 225-3-5-a, ch. 236, ch. 240, s. 244-3, ch. 246, s. 252-1, ch. 261, ch. 275, ch. 289, ch. 290, ch. 295 or s. 308-81-9.

Part 2. Section 200-33-49.5 of the code is created to read:

200-33. Fees.

49.5. RESIDENTIAL RENTAL CERTIFICATE. a. The inspection fee associated with a residential rental certificate shall be \$85 for each rental unit in a building, subject to the provisions of 200-53-5-b. The certificate shall be valid for 4 years from the date of issuance if no disqualifying violations are found at the initial inspection. The certificate shall be valid for one year from the date of issuance if disqualifying violations are found at the initial inspection. The certificate may be given temporary status if nonhazardous code violations are found at the initial inspection.

b. There shall be no additional fee imposed when a temporary status is removed and a regular

residential rental certificate is issued.

c. The inspection fee for renewal of a residential rental certificate shall be \$85 for each rental unit in a building. The inspection renewal fee for multifamily buildings of 10 or more units shall be consistent with the provisions of s. 200-53-5-b.

d. A fee of \$50 shall be imposed if the department is unable to gain access to the unit for the inspection pursuant to sub. par. a at the agreed upon time.

e. Delinquent residential rental inspection fees shall be charged against the real estate and shall be assessed and collected as a special charge.

(See s. 200-53.)

Part 3. Section 200-53 of the code is created to read:

200-53. Residential Rental Certificate.

1. PURPOSE. Pursuant to s. 62.11 (5), Wis. Stats., and s. 4-10 of the Milwaukee city charter, the common council is responsible for the management and control of city property, acting for the good order of the city and the health, safety and welfare of the public. The common council has determined that there is a need to enact legislation requiring residential rental certificates to protect the public because residential rental dwelling units in the areas defined by census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43; and those bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave. are in need of inspection to prevent deterioration, taking into account the density of rental units, age of buildings, percentage of complaints occurring at rental units, and condition of the units in the area. Frequent inspection of these units is necessary to maintain safe, decent and sanitary living conditions for residents living in the rental units and to protect the investment made by the city in the area defined by census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116, with the eastern boundary defined by interstate I-43, and due to high tenant turnover in the area bounded by Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave.

2. DEFINITIONS. In this section:

a. "Building maintenance code" means that portion of the building code which establishes the minimum requirements and standards of health, sanitation, safety and occupancy for residential property. These regulations governing the condition and maintenance of residential property, and the responsibility of property owners are set forth in ss. 275-32 to 275-82.

b. "Conditions which effect safe, decent and sanitary living conditions of persons occupying a residential rental unit" include items that violate fire safety; lack of or poor condition of sanitary facilities; absence of adequate heating systems or equipment; items which effect the safe operation of electrical and mechanical systems; items which effect structural integrity of the building or the ability of the building envelope to keep out the weather; or one or more conditions that if not corrected would be reasonably expected to become conditions that effect the safe, decent and sanitary conditions of the occupants.

c. "Disqualifying violation" means conditions which effect safe, decent and sanitary living conditions of persons occupying a residential rental unit, or other conditions that violate the provisions of the building code, building maintenance code or zoning code that indicate in their totality that the rental unit is not being properly maintained.

d. "Designated residential area" means:

1. The area defined as inspection district 1 which consists of census tracts 99-102, 117-120 and the western portion of census tracts 103 and 116 with the eastern boundary defined by interstate I-43.

2. The area defined as inspection district 2 which is the area bounded by the following streets: Edgewood Ave. to Newberry Blvd. and Cambridge Ave. to Hackett Ave.

e. "Dwelling" means a building which includes one or more distinct living units. It does not include a

residential 2-family building in which one of the units is owner-occupied.

f. "Owner" has the meaning as set forth in s. 200-08-66.

g. "Residential rental certificate" means a written and signed statement prepared by the commissioner after an inspection has been made, that the condition of a dwelling is in compliance with the building maintenance and zoning code.

h. "Person" includes an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.

i. "Sale, transfer or conveyance of ownership" means to transfer any ownership interest in a dwelling except by mortgage, gift, devise or bequest. The sale or transfer shall be deemed to occur upon the transfer of an ownership interest, the execution of a land contract or the exercise of an option to purchase property.

j. "Time of sale, transfer or conveyance" means the time when a written purchase agreement is executed by the buyer; in the absence of a purchase agreement, it shall mean the time prior to the execution of any document providing for the transfer or conveyance of a dwelling in the designated residential area.

k. "Unit" means any independently rented living space whose term of lease is 30 days or greater.

l. "Zoning code" means any requirements and standards set forth in ch. 295.

3. RESIDENTIAL RENTAL CERTIFICATE REQUIRED. a. The owner of a dwelling within the designated residential area shall apply for a residential rental certificate for each unit in order to rent the unit. Unless a unit has a valid residential rental certificate or temporary residential rental certificate, no owner of the unit shall permit any person to occupy the unit as a tenant or otherwise. A residential 2-family building that is owner-occupied is exempt from this requirement.

b. Changes in ownership interest as the result of a sale, transfer or conveyance of a dwelling within the designated residential area will require the new owner within 30 days of sale, transfer or conveyance, to apply for a residential rental certificate, subject to the provisions of sub. 6-e.

c. Any person selling, transferring or conveying an ownership interest in a dwelling shall expressly inform any person acquiring or receiving an ownership interest in a property that a residential rental certificate is required by the city.

4. APPLICATION.

a. An application for a certificate shall be filed with the department on forms provided by the department within 30 days of the effective date of this ordinance [city clerk to insert date] and within 30 days of the expiration of a certificate. The application shall be signed by the owner, and shall state the street address of the dwelling to be inspected, the owner's legal name, the owner's phone number and date of birth.

b. Failure to apply for the residential rental certificate as required in sub. 3-b may subject the owner to the penalties specified in sub. 13-a.

5. INSPECTION.

a. Upon application, the department shall inspect the condition of the dwelling for compliance with the building maintenance and zoning code. The department shall make the inspection within 60 days of the date of application unless another date is mutually agreed upon by the department and the owner. Failure to provide access to the property on the agreed inspection date will subject the property owner to the fees specified in s. 200-33-49.5-d. The owner shall inform the tenant of the unit and place a posting on the door of the unit stating the date and time of the inspection at least 2 days prior to the inspection.

b. If a multifamily building has 10 or more units, the department shall inspect a sampling of dwelling units, of not less than 2 and not more than 10% of the dwelling units in the multifamily building. In no event will the department charge a fee for more than 10 units in a building. If the department determines upon inspection of the sampling of dwelling units there are code violations that effect the safe, decent and sanitary living conditions for the tenants of the multifamily building, then the

department shall inspect another sampling of units up to 100% of the dwelling units as deemed necessary to enforce the provisions of the code. The number of the second sampling will be based on the degree of the conditions discovered in the inspected units. In that case, the fee shall be based upon the charge per unit inspected as provided in section 200-33-49.5.

c. An owner is not exempt from complying with all other applicable laws, standards and regulations pertaining to the condition and use of buildings and structures including the authority of the commissioner to perform housing inspections in accordance with applicable law.

6. ISSUANCE OF CERTIFICATES. a. The department shall issue a residential rental certificate only after it has inspected the dwelling or unit and found that its observable conditions conform to the building maintenance and zoning codes and that there are no outstanding orders against it. The certificate shall be valid for 4 years from the date of issuance if the inspection discovered no disqualifying violations.

b. If upon inspection of the dwelling or unit the department finds one or more disqualifying violations, then the department shall issue a one-year residential rental certificate only once all observable conditions conform with the building maintenance and zoning codes.

c. The commissioner may issue a temporary certificate if, in the commissioner's opinion, the outstanding violations do not constitute a hazard to the occupants of the dwelling or unit and if a work plan to correct the violations is submitted and approved by the commissioner. The temporary certificate shall be valid for 30 days and the commissioner may grant an extension if a revised work plan to correct the violations is submitted and approved by the commissioner. Failure to abate violations discovered resulting from inspection associated with the application for the certificate shall invalidate the temporary certificate, and no owner of the dwelling or unit shall permit any person to occupy the dwelling or unit as a tenant or otherwise.

d. If after issuance of a 4-year certificate the department subsequently finds the dwelling or unit has disqualifying violations or a pattern of repeated building or zoning code violations, the department may revoke the 4-year certificate and in lieu thereof issue a one-year certificate after the violations have been corrected. The dwelling or unit shall again be eligible for a 4-year certificate only upon the expiration of the annual certificate, and as of the first subsequent annual inspection, no disqualifying violations are found. The commissioner may also revoke either a 4-year or one-year certificate if he or she determines that violations are of a critical nature that constitute an unsafe or unfit condition that results in orders issued under ss. 200-11-5 or 200-12.5.

e. In the event of a sale, transfer or conveyance of a property within 3 months of the initial issuance of the certificate, the certificate may be transferred to the new owner until the end of a certificate valid for one year, or one year from the date of issuance of the certificate in the case of a 4-year certificate, provided the new owner submits an application as required by sub. 4. No inspection shall be required pursuant to this paragraph.

f. No owner of the dwelling or unit in the designated inspection districts which does not possess a valid rental certificate for that dwelling or unit shall permit any person to occupy the dwelling or unit as a tenant or otherwise. Upon discovery of units occupied without a certificate the department will initiate enforcement action to gain access to the property, including inspection warrants, to determine code compliance.

7. VIOLATIONS IDENTIFIED.

a. Any building maintenance and zoning code violations identified in the initial inspection for a residential rental certificate shall be abated within a reasonable amount of time to be determined by the department.

b. Any violations identified after a residential rental certificate has been issued shall be abated within a reasonable amount of time to be determined by the department and subject to the provisions of the code.

8. ENFORCEMENT. a. Should the department upon inspection determine that there are conditions

which constitute an imminent danger to health and safety pursuant to chs. 275 and 295, it shall order the condition to be remedied and may limit or prohibit occupancy where appropriate.

b. The department shall reinspect the premises as necessary to determine that the recorded code violations have been satisfactorily corrected. A reinspection fee may be charged in accordance with s. 200-33-48.

9. DEPARTMENTAL REVIEW AND APPEALS. a. The owner may request review of decisions regarding violations or regulations imposed by the department. The request shall be made in writing on forms provided by the department and shall specify the grounds for administrative review. The request for administrative review shall be filed within 10 days of the issuance of the order.

b. The administrative review hearing shall occur within 10 days after receipt of the request.

c. The commissioner, or the person appointed as the commissioner's designee, shall conduct the administrative review hearing. At the hearing, owner and staff shall present all relevant information to the case.

d. Within 7 days of completion of the hearing conducted under this subsection, the commissioner shall mail or deliver to the owner his or her written determination stating the reasons therefore.

e. If an owner is not satisfied by the decision reached by the commissioner, he or she may make further appeal to the standards and appeal commission pursuant to s. 200-17.

10. REVOCATION. A certificate of residential rental code compliance may be revoked at the discretion of the commissioner if violations which are considered to be an unfit or unsafe condition pursuant to sub. 7-a are observed during a complaint investigation.

11. RULES AND REGULATIONS. The commissioner shall issue rules and regulations for the administration of this section.

12. REMEDIES; OTHER PROVISIONS. a. The remedies provided in this section are not to be construed to be exclusive of any other remedy under this code, and the department may take further actions to ensure compliance with this section including, but not limited to, seeking injunctive relief and obtaining inspection warrants.

b. Nothing in this section shall be construed to limit the authority of the department to perform housing inspections in accordance with this code.

c. Nothing in this section shall limit the department from enforcing any other provision of the code or any state or federal law under its jurisdiction.

d. Nothing in this section shall be construed to relieve or exempt any person from complying with all applicable laws, this code, and standards and regulations relating to the condition and use of buildings and structures.

e. Nothing in this section shall limit, impair, alter or extend the rights and remedies of persons in the relationship of landlord and tenant that exist under applicable law.

13. PENALTY. a. An owner failing to apply for a residential rental certificate of compliance shall be subject to a forfeiture of \$100 for the first failure to apply. The owner shall be subject to a forfeiture of \$150 for failure to respond to each subsequent notice to apply which shall be sent by the department.

b. An owner failing to comply with any other provisions of this section shall be subject to the penalties provided in s. 200-19.

Part 4. a. Within 30 days of the effective date of this ordinance [city clerk to insert date], notification of all known property owners of impacted residential rental properties shall occur stating the need to apply for a certificate and to schedule the required inspections. The notification will include an inspection date that is at least 60 days past the date of the notification. The notification will include the required fees, and include a rental certificate application form, and a pre-inspection checklist to be utilized by the owner.

b. For purposes of phasing in this ordinance, interim rental certificates shall be issued by the department and remain valid until the department conducts its initial inspection. The interim

certificate shall be revoked if the owner fails to provide access to the dwelling or units on the inspection date specified in s. 200-53-4-a.

Part 5. Within 4 ½ years of the effective date of this ordinance [city clerk to insert date] the commissioner of neighborhood services shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance [city clerk to insert date] unless reauthorized by the common council. No additional inspection areas shall be added within the period of the pilot program.

Part 6. This ordinance shall be effective January 1, 2010.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Department of Neighborhood Services

MET

11/19/09

LRB09315-7