

**MINUTES OF THE HOUSING COMMITTEE**  
**September 10, 2018**  
**East Conference Room**

**Present:** Councilmembers Anderson and O'Malley

**Also Present:** Councilmember George, City Architect Mike Molinski, Chief Assistant Law Director Swallow

**Call to Order:** 7:01 p.m.

**ORDINANCE 39-18** - amending various sections of Chapter 1306, Property Maintenance and Safety Code, of the Codified Ordinances of the City of Lakewood in order to update the code so as to eliminate the threat of warrantless searches from the Code.

Ms. Swallow described recent Court cases where municipalities have been challenged on the legality of point-of-sale inspections and lost. Courts have ruled that such inspections violate the Constitution's 4<sup>th</sup> amendment against unreasonable government search and seizure. The City can still enter a home with a warrant if it has probable cause but selling a home is not considered probable cause. Ms. Swallow commented that most private property transactions within the City are "buyer beware." Requiring a point-of-sale inspection for rentals forces inspection on the homeowner.

The City performs approximately 400 point of sale inspections per year.

Ms. Swallow pointed to the tools the City will preserve such as property maintenance and safety inspections. She reiterated that the City can always enter a private residential home if it has a warrant and probable cause. Ms. Swallow voiced her position that it is important for the City to remove these inspections in order to protect itself from litigation.

Councilmember Anderson remarked that historically communities have used point-of-sale inspections as a way to maintain the quality of the housing stock.

In response to questions from the Committee, Ms. Swallow described the process of obtaining a warrant. If the Building Department had probable cause to inspect the interior of a home and the owner denied access the Building Department would seek a warrant from the Law Department. The power to issue the warrant comes from the Judge but the Law Department has discretion over what gets taken to the Judge. The Judge issues an administrative warrant to enforce the Code, not a criminal warrant. There are no additional Court costs associated with a warrant.

Section 1306.50 of Ordinance 39-18 contains a proposed list of considerations the Judge will take into account when deciding whether or not to issue a warrant. This list can be edited at the Committee's discretion.

Ms. Swallow explained that the administration has the authority to stop point-of-sale inspections without Council approval and that it will stop these inspections shortly. However, it is preferable for the Code to be updated to match the administrative practice.

Mr. Molinski reported that each point-of-sale inspection took about 4 hours. Eliminating these inspections will save time that can be used to make the regular inspection program more robust.

In response to councilmember questions, Ms. Swallow discussed the legal outcomes of the cities that went to court over point-of-sale inspections. Ms. Swallow stated that the City could be required to return all fees collected for inspections. Also, if the plaintiff can prove that the City performed the inspections while knowing of the possible violation that a Judge may subject the City to punitive damages.

Councilmembers expressed interest in further deliberation on this matter in a follow up committee meeting. Councilmember Anderson agreed to schedule a follow up hearing on Ord. 39-18.

The Committee discussed how the two Ordinances – Ord. 39-18 and Ord. 18-18 balance out the workflow in the Building Department. Ord. 39-18 takes away about 400 labor intensive point-of-sale inspections and Ord. 18-18 adds about 800 easy to moderate condo rental inspections. Mr. Molinski expressed confidence that the workload will balance out.

**ORDINANCE NO. 18-18** – Amending Section 1306.43, Housing and Vacant Property License, and Section 1306.44, License Application Form and Fee, of the Codified Ordinances of the City of Lakewood in order to update the code with respect to the regulation of condominium associations and unit owners in the City.

Councilmember Anderson briefly summarized Ord. 18-18. The Ordinance requires condo owners who are renting their condos to obtain a housing license from the City rather than requiring the condo board to do so. The objective is for each rented unit to have a separate license.

Ms. Swallow stated that Law would like to further amend the version under consideration to remove the strike-out in Sec. 1306.45 Issuance of License. Doing this would retain the requirement that paper copies of housing licenses be posted. The Fire Department would like to see paper housing licenses retained.

The Committee agreed that posting all of a condo's housing licenses in the front lobby would be burdensome and agreed that a folder or file of them would suffice.

Councilmember Anderson brought up a previous Ordinance before Housing Committee that proposed owner occupied doubles seek a housing license. He asked if it would make sense to incorporate that proposal here.

Mr. Molinski responded that in January the Department is moving to a new system with more accurate records that are better integrated with County property records. He suggested researching the issue in the new system and checking back in after that.

Councilmember Anderson emphasized that his intent is not to collect additional revenue but to ensure that every landlord is paying his or her fair share.

Councilmember O'Malley asked for Ord. 18-18 to be referred out of Committee this evening. He summarized the feedback he has received in the community about the ordinance. He has heard much support.

A motion was made and seconded to recommend adoption of the substitute version of Ordinance 18-18 – the version which removes the strike-through on page 7, Section 1306.45.

All members voted in favor. Motion passed.

The Committee continued to discuss various aspects of Ord 18-18, particularly the change in deadline for housing licenses and how it will impact workflow in the Building Department. The change will go into effect Jan. 1, 2019 and won't become relevant until fall of 2019 when renewal forms will be sent out.

Housing Committee adjourned at 7:46 p.m.