

Trouble Around the Corner:

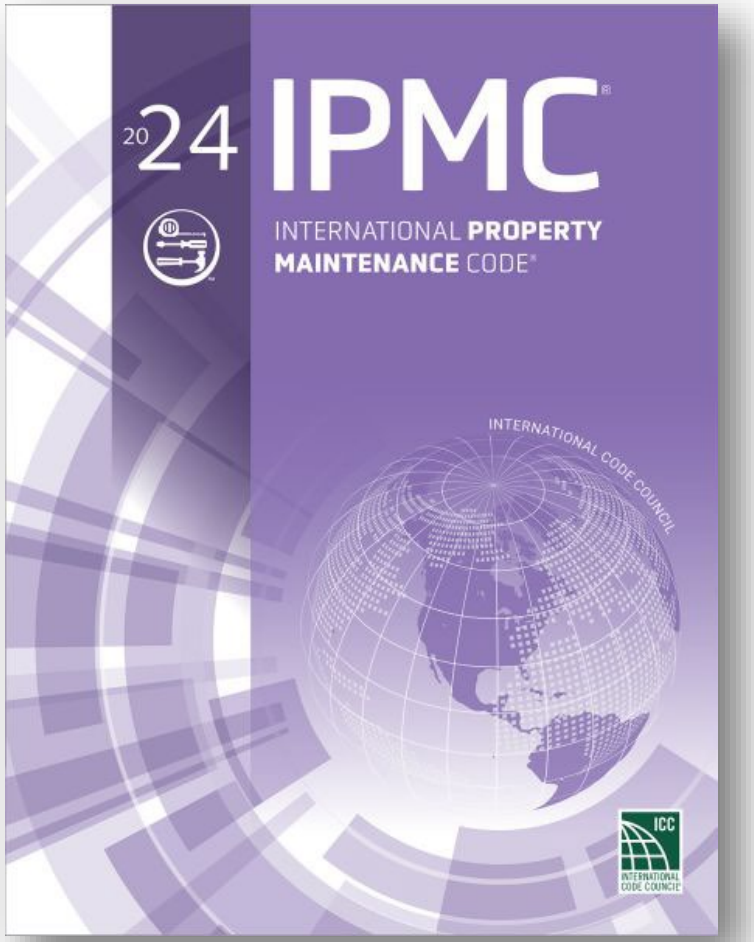
The International Property Maintenance Code and the Authority of Code Officials

By Hannah Hungate, *Assistant City Attorney*,
Fayetteville, AR

What Is the International Property Maintenance Code?

It is:

- ✓ A model code that establishes minimum standards for structures and premises
- ✓ A maintenance document that sets baseline requirements for light, ventilation, heating, sanitation, and fire safety
- ✓ A template for jurisdictions to create principled property maintenance standards within their territories



The International Code Council

- The IPMC is created by the International Code Council (ICC)
- The IPMC is part of a family of model codes created by the ICC with which it is designed to be compatible:
  - International Building Code
  - International Fire Code
  - International Residential Code
  - International Plumbing Code
  - International Mechanical Code
  - International Existing Building Code
  - International Zoning Code
  - International Green Construction Code
  - International Private Sewage Disposal Code
  - International Swimming Pool and Spa Code
  - International Energy Conservation Code
  - International Fuel Gas Code
  - International Wildland-Urban Interface Code
  - International Code Council Performance Code

Updating the IPMC

- The ICC updates the IPMC every 3 years.
- Process:
  - Proposed changes are submitted by code officials, industry representatives, design professionals, and other interested parties.
  - Code development committees make recommendations on the proposed changes.
  - The public comments on the proposed changes.
  - ICC governmental members cast the final votes on proposed changes.

Recent Changes to the IPMC

- The ICC has recently changed its standards for how jurisdictions can adopt the IPMC.
    - 2021 – the ICC "welcomes **adoption** of its codes by jurisdictions" that respect its copyright.
    - 2024 – the ICC "welcomes **incorporations by reference** of its codes and standards by jurisdictions" that respect its copyright.
- Difference means that ICC never waives its copyright under the new version.

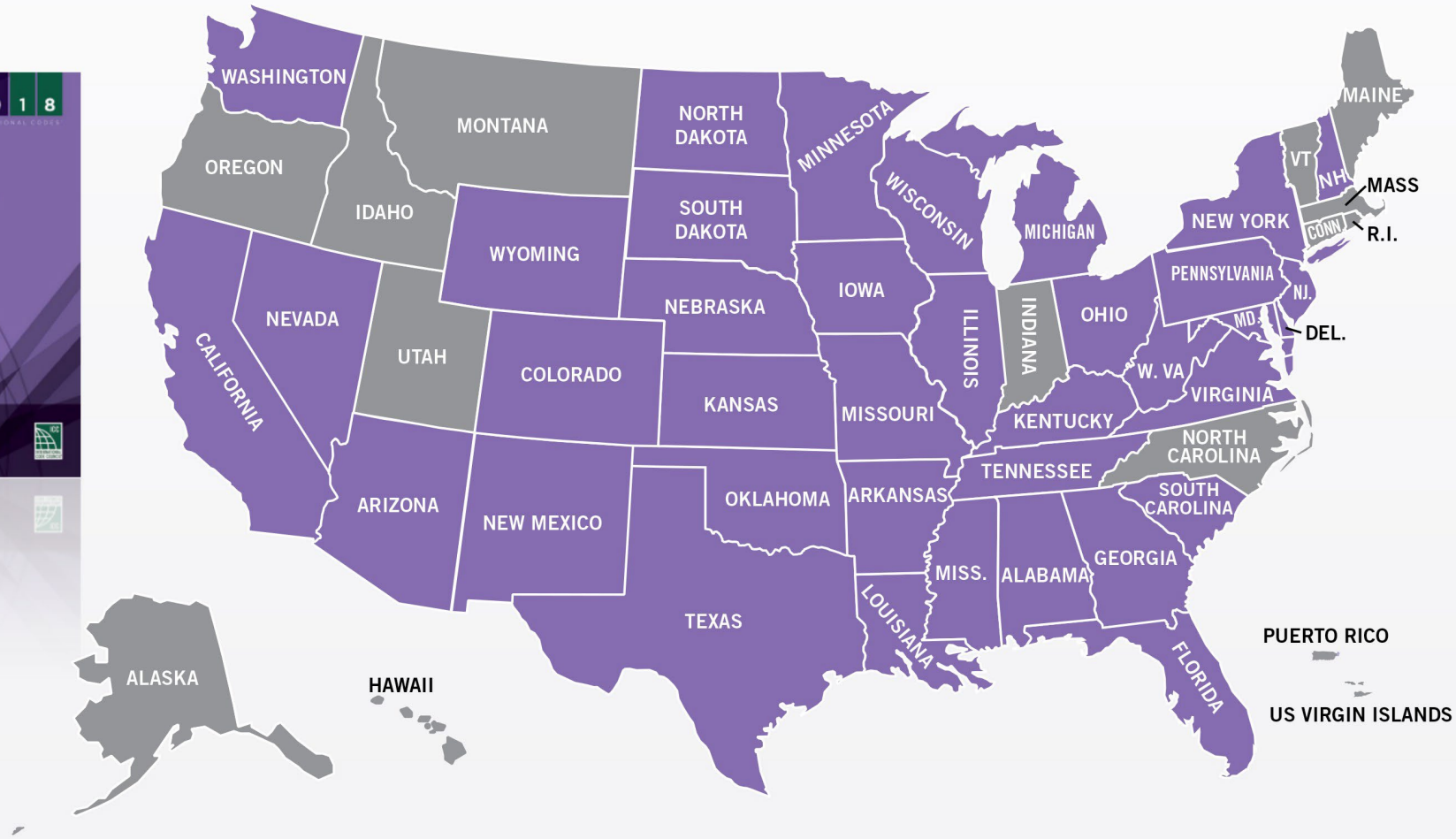
Recent Changes to the IPMC

- 2024 version creates additional requirements for jurisdictions to incorporate the IPMC:
  - Can only be adopted by incorporation by reference in an ordinance passed by the jurisdiction's governing body
  - Ordinance can only include the title, edition, relevant sections, and publishing information of the model code
  - Actual text of the model code cannot be included in the ordinance

INTERNATIONAL PROPERTY MAINTENANCE CODE
ADOPTION MAP

The IPMC is in use or adopted in 40 states, and the District of Columbia.





IPMC administered at the state and/or local level

Adopting the IPMC

Fayetteville City Code § 173.10(A)

(A) Adoption by Reference. There is hereby adopted by the City Council, by reference thereto, the provisions set forth in the International Property Maintenance Code, with state adopted appendices, as may from time to time hereafter be amended and adopted by the State of Arkansas, save and except such portions of said code as may be deleted, modified, or amended herein.

Three Tips for Incorporating the IPMC:

(1) Ensure that the Code and Application Are Constitutional

(2) Evaluate the Extent of Authority to Give Your Code Officials

(3) Amend to Suit Your City's Needs

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Ensure that the Code and Application are Constitutional

IPMC § 110.1 – **Imminent danger**

When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith.

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Ensure that the Code and Application are Constitutional

IPMC § 202 – **General Definitions**

Imminent Danger. A condition that could cause serious or life-threatening injury or death at any time.

IPMC § 110.1 = vacate if structure is about to explode, implode, or go toxic
+ people are going to die



City of Little Rock v. Alexander Apts., LLC, 2020 Ark. 12, 592 S.W.3d 224

- In Dec. 2015, City of Little Rock conducted a fire and safety inspection at Alexander Apartments.
- What the City found:
  - Exposed wiring
  - Raw sewage
  - Inoperable smoke alarms
  - Mold
  - Plumbing/mechanical issues
  - Cat carcass
- Relying on the IPMC and Fire Prevention Code, officials placed notices on each tenant's door that they had a week to vacate.

City of Little Rock v. Alexander Apts., LLC, 2020 Ark. 12, 592 S.W.3d 224

- The complex and residents immediately got a temporary restraining order and later a permanent injunction.
- The Circuit Court found that the City violated the apartment owner's and tenants' due process rights by failing to provide adequate notice and the opportunity for a pre-deprivation or post-deprivation hearing.
- On August 29, 2018, the Circuit Court awarded Alexander Apartments $432,744.33 in damages.
    - The Arkansas Supreme Court affirmed.

Ensuring Adequate Due Process

Notice – The District Court of Colorado reversed the decision by the Town of Delores to order vacation of property where the notice did not adequately detail the code violations. *Sieber v. Town of Dolores Bd. of Appeals*, 2016 Colo. Dist. LEXIS 996.

Hearing – The Supreme Court of New York affirmed the award of costs and attorney's fees to lessee who was ordered to vacate by the City of Schenectady without a post-deprivation hearing. *Matter of Brown v. City of Schenectady*, 209 A.D.3d 128, 175 N.Y.S.3d 591 (2022).

Clear Enough to Give Notice

IPMC § 302.1 – **Sanitation**

Exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property that such occupant occupies or controls in a clean and sanitary condition.

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New Jersey "The requirements of subsection 302.1 of the International Property Maintenance Code, which is incorporated in Ordinance No. 2382, is also sufficiently clear in most of its applications for a property owner to understand his obligations thereunder." *State. v. Gilbert*, 2008 N.J. Super. Unpub. LEXIS 36, *3.

Ohio* "These terms are vague and people of common intelligence are probably left to guess as to what precisely will be considered a criminal act." *State v. ACV Realty*, 2016-Ohio-3247, P23 (Ohio App. 2016).

Pennsylvania "Having determined that section 302.1 of the Ordinance, as applied to the facts of this case, is not unconstitutionally vague and that the evidence was sufficient to sustain Brandt's summary offense convictions, we affirm the trial court's judgment of sentence." *Commonwealth (Borough of Palmyra) v. Brandt*, 2017 Pa. Commw. Unpub. LEXIS 628, *28, 174 A.3d 1215.

*See Next Slide

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Ohio (6th District) "Because these provisions of the IPMC convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, Kisil did not demonstrate that the sections at issue are unconstitutionally vague beyond a reasonable doubt." *State v. Kisil*, 2024-Ohio-2441, P24, 2024 Ohio App. LEXIS 2321, *13-14.

Ohio (7th District) "These terms are vague and people of common intelligence are probably left to guess as to what precisely will be considered a criminal act." *State v. ACV Realty*, 2016-Ohio-3247, P23 (Ohio App. 2016).

Ohio Supreme Court "The court determines that a conflict exists. The parties are to brief the issue as stated in 2024-Ohio-2441, ¶ 26: 'Under the International Property Maintenance Code, are the terms "clean," "safe," and "sanitary" relating to property maintenance unconstitutionally void for vagueness in that they fail to apprise an ordinary property owner or occupant as to what is prohibited?'" *State v. Kisil*, 174 Ohio St. 3d 1561 (2024).

Ensure that the Code and Application are Constitutional

BE AWARE OF PRIVATE PROPERTY RIGHTS

Three Tips for Incorporating the IPMC:

(1) Ensure that the Code and Application Are Constitutional

(2) Evaluate the Extent of Authority to Give Your Code Officials

(3) Amend to Suit Your City's Needs

Code Officials' Authority under the IPMC

IPMC § 105.1 – **General**

The code official is hereby authorized and directed to enforce the provisions of this code.

IPMC § 105.2 – **Determination of compliance**

The code official shall have the authority to determine compliance with this code, to render interpretations of this code and to adopt policies and procedures in order to clarify the application of this code's provisions.

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What the Text Says:

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What the Code Official Reads:

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WE GOT SUED

How Much Authority Should the Code Official Have?

Consider whether the Code official should be permitted to:

(1) Request entry into a residence to see if there are code violations?

How Much Authority Should the Code Official Have?

IPMC § 105.3 – **Right of entry**

Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the code official has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the code official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied the code official shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner, owner's authorized agent or other person having charge or control of the structure or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.

2021 version

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2021 version

Perry v. St. Louis Cnty., 2022 U.S. Dist. LEXIS 131411 (E.D. Mo. 2022)

- Complaints were made about unlicensed vehicles and overgrown yard.
  - St. Louis County Officials Responding:
    - Rinck – officer with Police Department's Problem Properties Unit
    - Jones – St. Louis County code official
- Officials demanded entry into the home to search for additional code violations.
  - Threats to Gain Entry:
    - "They could 'do this the easy way or the hard way.'"
    - "If they did not consent to his search of their property, including the interior of the home, Defendant Rinck would 'arrest [Plaintiff] right here in front of [her] kids.'"
    - "[I]f I have to get a warrant, you'll never see your kids again."

Perry v. St. Louis Cnty., 2022 U.S. Dist. LEXIS 131411 (E.D. Mo. 2022)

- Code Violations Discovered by the Search:
  - Absolutely nothing
- Because the Owners Initially Refused, the Officials:
  - Arrested both on "purported outstanding traffic warrant[s]" and allegations of endangering the welfare of a minor
  - Sent the children to DFS
    - Took 40 days for family court to get them returned to their parents
  - Placed an order to vacate on the property
  - Prohibited either from re-entering the home for 3 weeks
- The property owners sued.

Perry v. St. Louis Cnty., 2022 U.S. Dist. LEXIS 131411 (E.D. Mo. 2022)

- St. Louis County moved to dismiss the suit, arguing that the property owners failed to plead facts establishing a § 1983 claim.
- The Court disagreed.
  - It found that "Plaintiff sufficiently pleaded that Defendant County has an 'unconstitutional custom' related to its enforcement of its housing code regulations."
- Case is set for a two-week jury trial on October 28, 2024.

Recent Changes to the IPMC

IPMC § 105.3 – **Right of entry**

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2024 version

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2024 version

How Much Authority Should the Code Official Have?

Consider whether the Code official should be permitted to:

(1) Request entry into a residence to see if there are code violations?

(2) Issue a stop work order?

(3) Placard vacant structures for condemnation and order their closure?

(4) Placard noncompliant premises and defective equipment as "condemned"?

(5) Order the closure of structures, public streets, sidewalks, and other places when the official deems necessary for public safety?

(6) Order property owners to demolish and remove dilapidated structures if the official deems them "unfit for human habitation"?

If the Code Official Errs

IPMC § 105.7.1 – **Legal defense**

Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code or other laws or ordinances implemented through the enforcement this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

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Amending the International Property Maintenance Code

"To facilitate adoption, some I-Code sections contain blanks for fill-in information that needs to be supplied by the adopting jurisdiction as part of the adoption legislation. For example, the IPMC contains:

Section 101.1. Insert: [NAME OF JURISDICTION]

Section 103.1. Insert: [NAME OF DEPARTMENT]

Section 302.4. Insert: [HEIGHT IN INCHES]

Section 304.14. Insert: [DATES IN TWO LOCATIONS]

Section 602.3. Insert: [DATES IN TWO LOCATIONS]

Section 602.4. Insert: [DATES IN TWO LOCATIONS]"

IPMC Preface

Amending the International Property Maintenance Code

IPMC § 302.4 – **Weeds**

Premises and exterior property shall be maintained free from weeds or plant growth in excess of **[JURISDICTION TO INSERT HEIGHT IN INCHES]**. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

IPMC § 602.4 – **Occupiable Work Spaces**

Indoor occupiable work spaces shall be supplied with heat during the period from **[DATE]** to **[DATE]** to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Amending the International Property Maintenance Code

- REMINDER: the 2024 version of the IPMC limits what can be included in the ordinance.
    - This applies to amending the IPMC to suit the needs of a jurisdiction.
- “If the governing body enacts any changes [to the IPMC], only the text of those changes or amendments may be included in the ordinance.”
    - Keep in mind the ICC’s copyright in incorporating changes to the IPMC

Amending the International Property Maintenance Code

(A) Adoption by Reference. There is hereby adopted by the City Council, by reference thereto, the provisions set forth in the International Property Maintenance Code, with state adopted appendices, as may from time to time hereafter be amended and adopted by the State of Arkansas, save and except such portions of said code as may be deleted, modified, or amended herein.

(B) Amendments, additions, and deletions to the International Property Maintenance Code. The International Property Maintenance Code, shall be amended as follows:

(1) The Construction Board of Adjustments and Appeals shall perform those duties of the board of appeals as set forth in Section 111, International Property Maintenance Code.

(2) The Housing Official shall be known as the Building Official.

Fayetteville City Code § 173.10

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Fayetteville City Code § 173.10

LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.

(A) The City Council has determined that certain modifications to the 2015 International Property Maintenance Code are necessary and appropriate to meet the unique needs of the city.

(B) The following sections, paragraphs, and sentences of the 2015 International Property Maintenance Code are hereby amended as follows:

- Standard type is text from the IPMC.
- Underlined type is text added to the IPMC.
- Lined through type is deleted text from IPMC.

Therefore, the following sections of the 2015 International Property Maintenance Code are hereby revised, added, inserted, deleted, and/or amended:

Section 101.1; amend to read as follows:

[A] 101.1 Title. These regulations shall be known as the *International Property Maintenance Code* of City of Cleburne ~~**[NAME OF JURISDICTION]**~~, hereinafter referred to as "this code."

Section 102.6; amend to read as follows:

[A] 102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings pursuant to section 155.81 of the Cleburne Code of Ordinances and where such buildings or structures are judged by the *code official* to be safe and in the public interest of health, safety and welfare.

Section 103.1; amend to read as follows:

[A] 103.1 General. The ~~department of property maintenance inspection is hereby created and the~~ City shall perform property maintenance inspections through its Code Compliance, Building Inspection, Fire Prevention divisions and other resources deemed necessary by the City manager. Employees assigned to perform property maintenance inspections shall be known as designee(s). The executive official in charge of the property maintenance inspection program ~~thereof~~ shall be known as the code official.

Section 108.1; amend to read as follows:

[A] 108.1 General. When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be ~~condemned~~ repaired, removed from service, vacated, demolished and/or abated pursuant to the provisions of this code and Section 150.140, et seq. of the Cleburne Code of Ordinances.

Section 112.4; amend to read as follows:

[A] 112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than **$50** **~~[AMOUNT]~~** dollars or more than **$2,000** **~~[AMOUNT]~~** dollars.

(10) The following sections of the IPMC, or the corresponding section of any updated or amended version of the IPMC, are removed in their entirety and not adopted:

302.2 Grading and drainage.

302.5 Rodent harborage.

302.8 Motor vehicles.

302.9 Defacement of property.

304.2 Protective treatment.

304.13 Window, skylight, and door frames.

304.14 Insect screens.

304.15 Doors.

304.17 Guards for basement windows.

304.18 Building security.

305.3 Interior surfaces.

305.6 Interior doors.

308 Rubbish and garbage.

309 Pest Elimination.

404.4.1 Room area.

404.5 Overcrowding.

(Ord. 03-24 § 2 (Exh. 1); Ord. 19-20 § 2 (Exh. 1); Ord. 11-16 § 1 (Exh. 1))

11-87. LOCAL AMENDMENTS TO INTERNATIONAL PROPERTY MAINTENANCE CODE.

The International Property Maintenance Code, 2015 Edition, shall govern generally property maintenance matters in the city, provided that adoption of the International Property Maintenance Code shall not repeal any other provisions of this Code regulating property maintenance unless expressly repealed by the City Council. To further the goal of protecting the public health, safety, and welfare of the residents and businesses of the city, the following sections of the International Property Maintenance Code, 2015 Edition, and its Appendices, are amended as set forth in the following paragraphs.

The following sections are amended or deleted as follows:

104.3 Right of entry. The Code Official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this Code, subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the Code Official is authorized to seek a warrant if required by law in order to authorize entry into the structure or premises without the consent of the owner or person in charge of the premises. The Code Official shall not enter a dwelling without the permission of the owner, owner's authorized agent, or the occupant, unless a warrant has been secured, or there is imminent danger to life.

Sec. 18-4. International Property Maintenance Code—Adopted and Amended.

(A) A certain document, one copy of which is on file in the City Clerk's Office of the City of Peoria, being marked and designated as "International Property Maintenance Code, 2018 Edition," published by the International Code Council is hereby adopted, as amended herein, as the Code for establishing the minimum regulations governing the conditions and maintenance of property, buildings, and structures within the City of Peoria.

(B) The International Property Maintenance Code, 2018 Edition, is amended as follows:

Note: For sections designated "RESERVED" herein, refer to the Building Code of the City of Peoria Administrative Provisions for these code requirements.

Chapter 1, SCOPE AND ADMINISTRATION", is hereby amended as follows:

Section 101.1 Title. These regulations shall be known as the International Property maintenance Code of The City of Peoria, hereinafter referred to as "this code."

Section 101.2 pertaining to Scope is hereby amended by adding the following:

101.2.1 Appendix. The following appendix of the International Property Maintenance Code is adopted in its entirety: Appendix A - Boarding Standard.

Amend Section 102.3 Application of other codes, by replacing the section in its entirety with the following:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Peoria City Code. Nothing in this code shall be construed to cancel, modify, or set aside any provision of the Peoria City Code.

SECTION 103 to be amended as follows:

SECTION 103 CODE ENFORCEMENT

[A] 103.1 General. Code Enforcement is hereby created and the executive official in charge thereof shall be known as the code official.

Amend Section 103.5 Fees, by deleting it in its entirety.

Section 108 to be amended as follows:

Section 108 UNSAFE STRUCTURES AND EQUIPMENT

108.1 General. When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code and Section 116 of the International Building Code, as amended.

Moving Forward

REMEMBER:

Though one goal of the IPMC is to provide consistent property maintenance guidelines across jurisdictions, it is not a one-size-fits-all.

Talk with your governing body about what amendments make sense for your city and what policies should be implemented for Code Officials.

And be prepared – not everyone will be a proponent of the IPMC.

Julie Bass of Oak Park, MI, decided to grow a small garden. It was her first attempt. She got excited and showed her little emerging sprouts to all who cared to look. Her neighbors approved, but the code enforcement office and local yard nazi, did not.

She got a ticket and faced misdemeanor charges and jail time for her little garden. How could this happen in America?

Many provisions of the IPMC are glaringly unconstitutional, and downright un-American. The fines are $500 per day. Each day out of compliance is another $500 fine. 10 days equals $5000, 30 days is $15,000. How long could it take for you, your child, co-worker, or neighbor to lose a home at that rate? If you had that kind of money, you would probably be able to fix the problem for which you are being fined.

AMMEND/ABOLISH THE INTERNATIONAL PROPERTY MAINTENANCE CODE IN BRIGHTON, TN



Started January 11, 2024

22 Signatures

25 Next Goal

Support now

Sign this petition

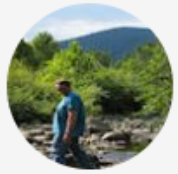
First name

Last name

Email

IMPC Unconstitutional and Unbiblical

Francis Vineyard · Mar 15, 2012



Francis Vineyard
SILVER MEMBER
Joined: Jan 1, 2010
Messages: 3,105
Location: Charlottesville, VA

Mar 15, 2012 #1

More than 100 residents filled the seats and lined the walls at Tuesday's Upper Tyrone supervisors' meeting to voice their concerns about the board adopting the updated 2012 International Property Maintenance Code.

With more than 100 residents attending Tuesday's Upper Tyrone Township meeting to show their disgust for big government -- in particular the International Property Maintenance Code -- supervisors passed a motion to abolish adopting the 2012 edition.

Township resident the Rev. Dennis Kletzing began the meeting telling supervisors the code was not only unconstitutional, but unbiblical.

"This right to private property is so ingrained in the Word of God that two out of 10 commandments deal with private property," Kletzing said, adding that there are three amendments in the Bill of Rights that deal with private property.

"We're here tonight because we feel this ordinance restricts our right to do with our private property as we please," he said. "They are unconstitutional and they violate the law of God."

Many individuals were concerned with not being able to do on or with their property as they please.

That concern came after reading advertisements in the newspaper warning residents that with the IPMC the township could fine a resident if they did not have screens in their windows, if the bedrooms in their home were too small or even if the temperature inside their house was too low.

Several residents said the township does not need to be involved in any way with something that is international. Many felt there should be no ordinance at all dealing with codes or private property.

Supervisor Bill Edwards said the property maintenance codes were in place for safety

Read more: Upper Tyrone residents upset with property maintenance rules - Pittsburgh Tribune-Review http://www.pittsburghlive.com/x/dailycourier/s_786428.html#ixzz1pDhkOhWA

Francis



Questions?

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