

MODEL ORDINANCE

That the Code of Ordinances of the City of Anytown (City) be and hereby is amended by amending **Chapter 18 to add Article VII** thereto to read as follows:

ARTICLE VII

MINIMUM ENERGY EFFICIENCY STANDARDS FOR RENTAL PROPERTY ORDINANCE

Sec. 18-500. Title.

This article shall be known as the Minimum Energy Efficiency Standards for Rental Property Ordinance.

Sec. 18-501. Statement of findings and purpose.

A. The purpose of this ordinance is to promote the wise and efficient use of energy through cost effective minimum energy efficiency standards for rental dwellings where physically possible.

B. Significant cost-effective opportunities exist to reduce energy consumption which will result in the lowering of housing costs, stimulation of the local economy and creation of local jobs. However, the incentive to reduce energy consumption in owner-occupied dwellings is not present to the same degree in rental property, where the renter is typically responsible for payment of utility bill.

C. Buildings which require improvements to meet these minimum rental energy efficiency standards may require investments by property owners. The City's intent is that any increase in rent that may result from such investment is expected to be offset over time by reductions in energy bills.

Sec. 18-502. Certificate of Compliance - Minimum Energy Efficiency Standards for Rental Property

A. Certificate of Compliance. Within sixty (60) days of original notice, but not more than three (3) years from the effective date of this order and **every five (5) years** thereafter, a rental property owner shall submit to an inspection by the City, in which a City authorized inspector will check the energy efficiency features of the rental property. The inspection report shall include evidence of compliance with this section. If the rental property is not found to be in compliance, a re-inspection shall be scheduled within **sixty (60)** days to verify that the property has been brought into compliance.

B. Renter Complaint. An energy inspection may be conducted at the request of a tenant for a rental unit where the tenant is responsible for directly paying the heating and cooling costs. If the property has not been inspected and found in compliance during the two (2) year period prior to receipt by the city of tenant's request, the owner of record will be notified that an inspection will be scheduled not less than five (5) days nor more than thirty (30) days from the date of notice. Inspection fees associated with renter complaints are the responsibility of the owner of record. If the building owner (or owner's agent) shows a good faith effort to correct the problem within sixty **(60) days** after the initial inspection, but is unable to complete the retrofit, the City may grant a time extension.

C. Cost Effectiveness Limitation. Notwithstanding the above, no property owner shall be required to make any specific energy efficiency improvement where the cost of making the improvement is greater than seven times the calculated first year savings in energy costs attributable to the improvement. All such calculations must be verified by an energy auditor deemed by the City to be qualified to perform such function. This cost effectiveness limitation does not apply to refrigerators.

D. Notwithstanding the above, no property owners shall be required to make any specific energy improvement when the specific energy improvement would compromise building integrity or otherwise adversely affect the health or safety of the building occupants. Such a determination shall be made by the City.

E. Waiver.

1. The City shall grant a waiver for rental properties to be demolished or converted to a non-residential use within one year of the date of inspection. Application for a demolition permit shall allow the postponement of the requirements of this ordinance for up to one year. Failure to demolish after one year will require immediate compliance with the ordinance.
2. The City shall grant a waiver to the owner of a rental property who cannot obtain financing for energy improvements required under this Article. In order to secure such a waiver, the owner must document and prove that good faith efforts to obtain financing have been unsuccessful, including but not limited to efforts to obtain assistance from electric and gas providers and the City.

F. All forms necessary for administration of the program shall be provided by the City.

Sec. 18-503. Applicability.

A. This article shall apply to all rental properties including single and multi-family dwellings and residential hotels. In mixed commercial/residential buildings, this article shall apply only to the residential portion of the building. This article shall not apply to owner-occupied portions of a multi-unit building.

B. The following properties shall be exempt from the requirements of this article:

1. Rental properties not rented between November 1 and March 31 of each year;
2. Newly constructed rental properties during the first three years following the initial occupancy;
3. Buildings, including single-family houses, hotels, motels, tourist rooming houses, dormitories, non-profit cooperatives, hospitals, hospices and nursing homes, if the cost of the heating fuel, electricity, and water are paid by the owner of the rental properties and included as an undifferentiated part of the periodic rent.
4. An apartment where a bona-fide tenant sublets his or her residence;

Sec. 18-504. Inspection

1. Energy inspections required pursuant to this ordinance must be conducted by an Energy Inspector who is one of the following:
 - a) An Iowa licensed mechanical engineer
 - b) A private inspector listed by the City as qualified to perform such inspection
 - c) An authorized employee or contractor of the City.
2. Fees for inspections by Energy Inspector may be regulated by the City.

3. The City shall promulgate rules and standards for certification and decertification of Energy Inspectors.

Sec. 18-505. Administration of ordinance.

The City shall designate a city employee to be the Program Administrator for the Minimum Energy Efficiency of Rental Property Ordinance. The Program Administrator may take such measures as are necessary for the proper administration of this ordinance. The Program Administrator may delegate his/her powers and duties under this ordinance. The Program Administrator shall charge an **administrative fee** payable at the time of the scheduled inspection of property. The fee for the certificate shall be scheduled, with a fee of **twenty dollars (\$20)** for each building with four or fewer rental units and a higher fee, **thirty-five dollars (\$35)** for each building with more than four rental units. The fee shall be exclusive of the cost of inspection.

Sec. 18-506. Appeal.

- a) A person may appeal the results of an energy inspection if there is a disagreement regarding the requirements as determined by the Energy Inspector.
- b) Appeals must be made to the City within **fifteen (15) working days** from the date the notice of violation was sent by the City. A party aggrieved by an action of the City may request, in writing, a hearing before the City. The request shall specify the grounds for the appeal and the relief which is requested.
- c) The determination of the City shall be final.

Sec. 18-507. Enforcement and penalties.

- a) The City shall issue a municipal complaint for a violation of this article.
- b) Prior to filing a municipal complaint, the City shall send a notice of violation to the property owner.
- c) A person violating any provision of this section shall be subject to the following penalties:
 1. **\$100** fine for each building with four or fewer rental units
 2. **\$500** fine for each building with more than four rental units
- d) An additional fine of **\$100** shall be imposed for each additional period of sixty (60) days until the minimum energy efficiency standards are met. An unpaid fine may be filed as a lien on the property.

Sec. 18-508. Minimum Energy Efficiency Standards for Rental Properties.

Building envelope

- Windows (includes basement windows)
 - Windows shall be intact with no missing panes
 - Window cracks must be taped with long lasting window tape
 - Windows must fit well, close and seal properly
 - Locks and latches, if attached or integral to the windows, must be operable
- Exterior Doors (includes door from dwelling to attached garage)
 - Doors must be insulated or have a storm door
 - Doors must fit frame with no visible cracks between door and jam
 - Doors must be properly sealed
 - No more than 1/16 inch gap between the door or bottom seal and the sill
 - Doors must be able to be closed and latched

- Exterior walls, ceiling and floor over crawl space (walls to attached garage are considered exterior)
 - No holes or cracks in exterior walls, ceilings or floors
 - All pipe and wire opening must be caulked and sealed
 - All openings to crawl space and attic must be insulated and closed with a tight fit
- Attic Insulation (in dwellings with attics)
 - Attic floors, walls, or rafter spaces, as appropriate, shall be insulated
- Room Air Conditioner
 - No visible light between air conditioner and opening

Heating and cooling

- Heating equipment and cooling equipment, if attached to the premises, must be operable
- Thermostats must be operable
- Furnace
 - Evidence of an annual inspection and maintenance of the furnace by a qualified HVAC professional shall be provided
- Heating duct system
 - Duct work in unconditioned space must be sealed and insulated
- Water heater
 - Must be in conditioned space

Plumbing

- Faucets
 - Must not leak
 - Must have aerators in kitchen faucet
- Showers
 - All must have low flow shower heads (less than 3.0 gpm)
- Toilets
 - Must not leak

Appliances and lighting

- Refrigerators shall be no more than twenty (20) years old.
- Lighting
 - At least 3 compact fluorescent or LED bulbs must be placed in sockets that are used most often

Sec. 18-509. Implementation.

The effective date of the requirements under this article shall be **thirty (30) days** after final passage of the ordinance.

Sec. 18-511. The provisions of this ordinance are hereby declared severable, and if any of the provisions shall be unconstitutional or invalid, the remainder shall continue in full force and effect, it being the Council's intent now hereby declared that this ordinance should have been adopted even if such unconstitutional or invalid matter had not been included therein.

ORDINANCE INSTRUCTION MANUAL

Recommendations for Designing and Implementing Minimum Rental Energy Efficiency Ordinances and Weatherization Standards

According to the American Council for an Energy-Efficient Economy (ACEEE), Minimum Rental Energy Efficiency Ordinances target easy to implement improvements that reach a large portion of the households in a given community.¹

A. Steps to creating an effective program:

- 1) “Engage interested parties, such as homeowners, energy auditors, and Realtors, in all phases of [ordinance] development and implementation.” *Id.* at 52. Simple, easy to implement, and less aggressive energy requirements may make it easier to win the support of more stakeholders and to get the standards approved. The standards provided in the model ordinance above were selected by IAMU with this objective in mind.
- 2) Identify the parties and entities responsible for administering, implementing, and enforcing the ordinance. If a utility board is the appropriate administering entity, rather than the City, modify the model ordinance to suit the needs of the community.
- 3) Develop effective compliance tracking and enforcement mechanisms.
 - a. One example of a system for enforcing compliance includes “sending warning letters and imposing property liens and fines to discourage non-compliance.” *Id.*
 - b. One city with a similar ordinance, Berkeley, California, uses a simple strategy for tracking. “Berkeley uses index card files to track compliant residential units and relies heavily on Realtors and title companies, which do not want to be responsible for selling properties encumbered by [ordinance] liens or fines, to pursue [ordinance] compliance.” (Berkeley’s ordinance requires inspection and certification to occur when the property is transferred from seller to buyer).
- 4) “Once the ordinance is passed,... regular communications with Realtors and property owners aimed at creating awareness and generating support for the program can bolster compliance monitoring, enforcement, and homeowner/buyer education efforts.” According to the ACEEE, “communities... that emphasize stakeholder education and training on the requirements of the [ordinance] find that they win stakeholder support and foster an environment in which verifying compliance with the [ordinance] becomes a routine part of doing business. At the same time, inspectors and Realtors become a valuable source of information on the ordinance for [property] owners.”

B. This is a model ordinance and may be modified at the City’s discretion. Special attention should be directed to policy choices with highlighted language:

- 1) You will need to determine the time period in which property owners are required to submit to an inspection and obtain a certificate of energy compliance. The model ordinance states “Within **sixty (60) days** of original notice, but not more than **three (3)**

¹ *Policy Options for Improving Existing Housing Efficiency*, Margaret Suozzo, Katherine Wang, and Jennifer Thorne, American Council for an Energy-Efficient Economy, pp. 51-53 December 1997, <http://aceee.org>.

years from the effective date of this order and every five (5) years thereafter, a rental property owner shall submit to an inspection by the City.”

- 2) You will need to determine the amount of time you are willing to allow a property owner to make improvements so the property can be considered compliant. The model ordinance states “The inspection report shall include evidence of compliance with this section. If the rental property is not found to be in compliance, a re-inspection shall be scheduled within sixty (60) days to verify that the property has been brought into compliance.”
 - a. Inspection fees associated with renter complaints are the responsibility of the owner of record. If the owner (or owner’s agent) shows a good faith effort to correct the problem within 60 days after the initial inspection but is unable to complete the retrofit, the City may grant a time extension.
 - a. If the minimum rental energy efficiency standards are not all met, the inspection report shall list the standards not met and inform the property owner that the required energy improvements must be made within 60 days of inspection of the property.
- 3) The City should consider regulating the fee charged by an Energy Inspector for inspection if the City does not provide an Energy Inspector.
- 4) You will need to determine appropriate penalties for a property owner who does not comply with the ordinance. IAMU suggests relinquishing rental privileges or imposing a fine, but you should determine what the appropriate remedy is. The model ordinance reads, “A person violating any provision of this section shall be subject to the following penalties:
 1. \$100 fine for each building with four or fewer rental units
 2. \$500 fine for each building with more than four rental units

An additional fine of \$100 shall be imposed for each additional period of sixty (60) days until the minimum energy efficiency standards are met. An unpaid fine may be filed as a lien on the property.
- 5) You will need to decide who is responsible for administering this program. The model ordinance is very general in this regard, “The City shall designate a city employee to be the Program Administrator for the Minimum Energy Efficiency of Rental Property Ordinance.”
- 6) You will need to determine how to pay for the administrative cost of operating and enforcing this program. Other communities charge an administrative filing fee as is reflected in the language of the model ordinance, “The program administrator shall charge an administrative fee payable at the time of the scheduled safety inspection of property except in situations where no inspection report is required. The fee for the certificate shall be scheduled, with a fee of twenty dollars (\$20) for each building with four or fewer rental units and a higher fee, thirty-five dollars (\$35) for each building with more than four rental units. The fee shall be exclusive of the cost of inspection.”
- 7) You need to determine how much time you are willing to allow aggrieved parties to file an appeal if they have a disagreement with a requirement or they find the ordinance measures not cost-effective. The model allows “fifteen (15) working days from the date the notice of violation was sent by the City.”

- 8) You will want to set a date in which the ordinance becomes effective. The model's language is arbitrary, "The effective date of the requirements under this article shall be **thirty (30) days** after final passage of the ordinance."
- 9) The City will need to create a list of Energy Inspectors for property owners to select from. The list should include each inspector's contact information. You should determine the best way to provide this information to property owners, ie. a copy of the list might be available at the City hall. The City should include this information in any instruction manual it creates in connection with this ordinance.

C. Phase-In.

The City may choose to phase-in the implementation of the ordinance to allow Energy Inspectors sufficient time to inspect a set number of buildings. You will need to determine if a phase-in is needed in your community, how best to implement a phase-in of the ordinance and on what timeline to do the phase-in

The City may roll out the program over a three year period, for example, completing one section of the city at a time. One way to accomplish this phase-in might be listing properties by date of construction, if known, and sending notices to the older properties first until all properties have been inspected.

The model ordinance could easily allow for phase-in language such as, "If a phase-in is needed, the requirements of this article shall be phased-in with the requirements initially applicable only to residential rental units built before 1990 and buildings of this character will meet the minimum rental energy efficiency compliance **by a date certain**. All residential rental units built after 1990 must meet compliance **by date certain**."

A phase-in approach will provide an opportunity to study the impact of the ordinance. The initial applicability will be in the community's older housing stock which has the greatest need for improvements due to the large concentration of low-income tenants and burdensome heating costs. You may want to consider restraining the City Council's authority regarding this ordinance during the period between the multi-phase implementation, such that the City Council may do nothing to repeal, halt or postpone expansion or consider amendment of this ordinance.