

~~BASIA ADAMCZAK~~
APPROVED AS TO FORM

ANITA DAVIS
MAYOR JAMAE TITO BROWN

JULIUS T. OLIVER

MOVED TO 2nd RD. _____
MOVED TO 3rd RD. _____
COMMITTEE CPED 1-2-19 _____
SUSPEND or Amend ☒


DEPARTMENT OF LAW

ORD-19-07

AN ORDINANCE

AMENDING THE CODIFIED ORDINANCES OF THE CITY OF YOUNGSTOWN

ENACTING CHAPTER 550, LAND INSTALLMENT CONTRACTS,
OF THE CODIFIED ORDINANCES OF THE CITY OF
YOUNGSTOWN, WHICH IS MORE FULLY DEFINED HEREIN; AND

PROVIDING THAT THIS ORDINANCE SHALL BE AN EMERGENCY
MEASURE IF IT RECEIVES THE AFFIRMATIVE VOTE OF SIX OF
THE MEMBERS OF COUNCIL; OTHERWISE, IT SHALL TAKE
EFFECT AND BE IN FORCE FROM AND AFTER THE EARLIEST
PERIOD ALLOWED BY LAW.

* * *

WHEREAS, while land installment contracts are appropriate in
some cases, the City recognizes that due to their tendency to be abused
and the absence of local legislation protecting residents from these
abuses, there is a need to enact legislation to ensure City residents'
rights are protected and that properties subject to land installment
contracts are brought into minimum code compliance and do not further
contribute level of blight in the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF YOUNGSTOWN, STATE OF OHIO:**

SECTION 1

That **Chapter 550, Land Installment Contracts**, of the Codified
Ordinances of the City of Youngstown, be and the same which is hereby
enacted to read as follows:

550.01 DEFINITIONS

For the purpose of this Chapter, Land Installment Contract
definitions as used in Chapter 550.01 of the Youngstown are defined and
shall have the meaning ascribed to them as hereafter set forth:

(A) "Land Installment Contract" means an executory agreement which
by its terms is not required to be fully performed by one or more of the
parties to the agreement within one year of the date of the agreement and
under which the vendor agrees to convey title in real property located in
this state to the vendee and the vendee agrees to pay the purchase price
in installment payments, while the vendor retains title to the property as

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security for the vendee's obligation. Option contracts for the purchase of real property are not land installment contracts.

(B) "Property" means real property located in this state improved by virtue of a dwelling having been erected on the real property.

(C) "Vendor" means any individual, partnership, corporation, association, trust, or any other group of individuals however organized making a sale of property by means of land installment contract.

(D) "Vendee" means the person who acquires an interest in property pursuant to a land installment contract, or any legal successor in interest to that person.

(E) "Legal description" means a description of the property by metes and bounds or lot numbers of a recorded plat including a description of any portion of the property subject to an easement or reservation, if any.

(F) "Certificate of Property Code Compliance" (CPCC) is a certificate issued by the Superintendent of Housing Demolition and Code Enforcement upon proof that an inspection, pursuant to this Chapter, has been made of the residential property to be conveyed through land installment contract by a Registered Inspector and certifying that the property meets basic minimum standards of habitability at the time of inspection.

(G) "Code Compliance" means any construction or installation, inclusive of electrical, plumbing, heating and structural, that is in a safe, sanitary and habitable condition and meets the international Property Maintenance Code adopted by the City of Youngstown.

(H) "Dwelling" means any enclosed space which is wholly or partly used or intended to be used for living, sleeping, cooking and eating by human occupants, except for mobile homes located in a designated mobile home park.

(I) "Dwelling Unit" means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking or eating.

(J) "Land Installment Contract" means an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the vendor agrees to convey title in real property located within the City of Youngstown to the vendee and the vendee agrees to

pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation.

(K) "Owner" means any person who, alone or jointly or severally with others:

- (1) Has title of a residential property to be conveyed by land installment contract with or without accompanying actual possession except for mortgages who have not acquired through a foreclosure action or are not in actual possession of the property; or
- (2) Has charge, care or control of any residential property to be conveyed by land installment contract as owner or agent of the owner including, but not limited to trustee, guardian of the estate of the owner, or executor or administrator who with the approval of the probate court has assumed the responsibility of management. Any such person thus representing the actual owner shall be bound to comply with the provisions of this requirement, to the same extent as if he or she was the owner; or
- (3) Any person defined as an owner in Section 1726.03 of the Youngstown Codified Ordinances.

(L) "Person" means any individual, firm, corporation, association or partnership, or governmental agency.

(M) "Registered Inspector" means City of Youngstown Superintendent of Housing, Demolition and Code Enforcement, or his/her designee, or any private sector person certified or licensed through I.C.C. (International Code Council) or other similar certifying or licensing entity, deemed equivalent by the Superintendent of Housing, Demolition and Code Enforcement to conduct the type of inspection required by this regulation and is registered with the City of Youngstown.

(N) "Violation of Youngstown Municipal Health/Housing Code" means the failure to comply with any order issued by the Code Official, Zoning Official, Superintendent of Housing, Demolition and Code Enforcement or the Chief Building Official, the Director of Youngstown City Health District or any of their designated representatives.

550.02 REQUIRED PROVISIONS OF LAND INSTALLMENT CONTRACTS

(A) Every land installment contract shall be executed in duplicate, and a copy of the contract shall be provided to the vendor and the vendee. The contract shall contain at least the following provisions:

- (1) The full names and then current mailing addresses of all the parties to the contract;
- (2) The date when the contract was signed by each party;
- (3) A legal description of the property conveyed;
- (4) The contract price of the property conveyed;
- (5) Any charges or fees for services that are includable in the contract separate from the contract price;
- (6) The amount of the vendee's down payment;
- (7) The principal balance owed, which is the sum of the items specified in divisions (A)(4) and (5) of this section less the item specified in division (A)(6) of this section;
- (8) The amount and due date of each installment payment;
- (9) The interest rate on the unpaid balance and the method of computing the rate;
- (10) A statement of any encumbrances against the property conveyed;
- (11) A statement requiring the vendor to deliver a general warranty deed on completion of the contract, or another deed that is available when the vendor is legally unable to deliver a general warranty deed;
- (12) A provision that the vendor provide evidence of title in accordance with the prevailing custom in the area in which the property is located.
- (13) A provision that the vendor provide evidence of appraisal value of the real property. Evidence of appraisal value is satisfied if the Mahoning County Auditors Tax Statement is provided.**

- (14) A provision that, if the vendor defaults on any mortgage on the property, the vendee can pay on that mortgage and receive credit on the land installment contract;
- (15) A provision that the vendor shall cause a copy of the contract to be recorded;
- (16) A requirement that the vendee be responsible for the payment of taxes, assessments, and other charges against the property from the date of the contract, unless agreed to the contrary;
- (17) A statement of any pending order of any public agency against the property.

(B) No vendor shall hold a mortgage on property sold by a land installment contract in an amount greater than the balance due under the contract, except a mortgage that covers real property in addition to the property that is the subject of the contract where the vendor has made written disclosure to the vendee of the amount of the mortgage and the release price, if any, attributable to the property in question.

No vendor shall place a mortgage on the property in an amount greater than the balance due on the contract without the consent of vendee.

(C) Within twenty days after a land installment contract has been signed by both the vendor and the vendee, the vendor shall cause a copy of the contract to be recorded as provided in section 5301.25 of the Ohio Revised Code and a copy of the contract to be delivered to the county auditor.

(D) Every land installment contract shall conform to the formalities required by law for the execution of deeds and mortgages. The vendor of any land installment contract that contains a metes and bounds legal description shall have that description reviewed by the county engineer. The county engineer shall indicate his approval of the description on the contract.

550.03 BIENNIAL STATEMENTS FURNISHED TO VENDEE

Every vendor under a land installment contract shall, at least once a year, or on demand of the vendee, but no more than twice a year, furnish a statement to the vendee showing the following;

- (A) The amount credited to principal and interest;
- (B) The balance due. A land contract passbook issued by the vendor or a financial institution shall be sufficient compliance with this section.

550.04 VENDEE TO ENFORCE CHAPTER PROVISIONS

Upon the failure of any vendor to comply with this section or Chapter 5313 of the Ohio Revised Code, the vendee may enforce such provisions in a municipal court, county court, or court of common pleas, and has a cause of action and is entitled to relief as follows:

(1) Private causes of action:

- (a) Where the violation was an act prohibited by this ordinance, the vendee may, in an individual action, rescind the transaction or recover the vendee's actual economic damages plus an amount not to exceed five thousand dollars in noneconomic damages.
- (b) Where the violation was an act or practice determined to be unconscionable by the court of this state, the vendee may rescind the transaction or recover three times the amount of the vendee's actual economic damages or two hundred dollars, whichever is greater, plus an amount not to exceed five thousand dollars in noneconomic damages.

(2) Civil Action for Loss:

- (a) Any vendee may bring a civil action in a court of common pleas or other court of competent jurisdiction against any vendor if the vendor fails to comply with this ordinance and, in addition to the relief to which the vendee is entitled under that section, shall be entitled to recover reasonable attorney's fees and all court costs.

550.05 DEFAULT OF VENDEE

When the vendee of a land installment contract defaults in payment, forfeiture of the interest of the vendee under the contract may be enforced only after the expiration of thirty days from the date of the default. A vendee in default may, prior to the expiration of the thirty-day period, avoid the forfeiture of his interest under the contract by making all payments currently due under the contract and by paying any fees or charges for which he is liable under the contract. If such payments are made within the thirty-day period, forfeiture of the interest of the vendee shall not be enforced.

550.06 NOTICE OF FORFEITURE

Following expiration of the period of time provided in Section 550.05 of the Youngstown Codified Ordinances or 5313.05 of the Ohio Revised Code, forfeiture of the interest of a vendee in default under a land installment contract shall be initiated by the vendor or by his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, a written notice which:

- (A) Reasonably identifies the contract and describes the property covered by it;
- (B) Specifies the terms and conditions of the contract which have not been complied with;
- (C) Notifies the vendee that the contract will stand forfeited unless the vendee performs the terms and conditions of the contract within ten days of the completed service of notice and notifies the vendee to leave the premises.

Such notice shall be served by the vendor or his successor in interest by handing a written copy of the notice to the vendee or his successor in interest in person, or by leaving it at his usual place of abode or at the property which is the subject of the contract or by registered or certified mail by mailing to the last known address of the vendee or his successor in interest.

550.07 PROCEEDING FOR FORECLOSURE AND JUDICIAL SALE

If the vendee of a land installment contract has paid in accordance with the terms of the contract for a period of five years or more from the date of the first payment or has paid toward the purchase price a total sum equal to or in excess of twenty percent thereof, the vendor may recover

possession of his property only by use of a proceeding for foreclosure and judicial sale of the foreclosed property as provided in Section 2323.07 of the Ohio Revised Code. Such action may be commenced after expiration of the period of time prescribed by sections 550.06 of the Youngstown Codified Ordinances or 5313.05 and 5313.06 of the Ohio Revised Code. In such an action, as between the vendor and vendee, the vendor shall be entitled to proceeds of the sale up to and including the unpaid balance due on the land installment contract.

Chapter 5313 of the Ohio Revised Code does not prevent the vendor or vendee of a land installment contract from commencing a quiet title action to establish the validity of his claim to the property conveyed under a land installment contract nor from bringing an action for unpaid installments.

Chapter 5313 of the Ohio Revised Code does not prevent the vendor and vendee from cancelling their interest in a land installment contract under section 5301.331 of the Ohio Revised Code

550.08 ACTION FOR FORFEITURE AND RESTITUTION

If the contract has been in effect for less than five years, in addition to any other remedies provided by law and after the expiration of the periods prescribed by this section 550.08 of Youngstown Codified Ordinances or sections 5313.05 and 5313.06 of the Ohio Revised Code, if the vendee is still in default of any payment the vendor may bring an action for forfeiture of the vendee's rights in the land installment contract and for restitution of his property under Chapter 1923 of the Ohio Revised Code. When bringing the action under Chapter 1923 of the Ohio Revised Code, the vendor complies with the notice requirement of division (A) of section 1923.04 of the Ohio Revised Code by serving notice pursuant to this Chapter or 5313.06 of the Ohio Revised Code. The court may also grant any other claim arising out of the contract.

550.09 INSTRUMENT OF CANCELLATION OF LAND CONTRACT

A judgment for the vendor shall operate to cancel the land installment contract as of a date to be specified by the court. The clerk of the county or municipal court in which such judgment is rendered shall transmit an authenticated copy of such dated judgment to the county recorder of the county in which the property is located.

The county recorder of such county shall record such authenticated judgment as an instrument of cancellation under Section 5301.331 of the Ohio Revised code.

Terminating land installment is exclusive remedy.

The election of the vendor to terminate the land installment contract by an action under this Chapter or section 5313.07 or 5313.08 of the Ohio Revised Code is an exclusive remedy which bars further action on the contract unless the vendee has paid an amount less than the fair rental value plus deterioration or destruction of the property occasioned by the vendee's use. In such case the vendor may recover the difference between the amount paid by the vendee on the contract and the fair rental value of the property plus an amount for the deterioration or destruction of the property occasioned by the vendee's use.

550.10 CERTIFICATION OF PROPERTY CODE COMPLIANCE REQUIRED

Prior to the conveying an interest in residential property within the City of Youngstown by land installment contract, the vendor shall apply for and obtain a Certificate of Property Code Compliance (CPCC), pursuant to this section.

550.11 APPLICATION FOR CERTIFICATE OF PROPERTY CODE COMPLIANCE, APPLICATION FOR TEMPORARY CERTIFICATE OF PROPERTY CODE COMPLIANCE, ISSUANCE

(a) The vendor of the residential property to be conveyed through land installment contract shall apply to the Superintendent of Housing, Demolition and Code Enforcement for the Certificate of Property code Compliance (CPCC). The application shall contain the name, business address and telephone number of the inspector who inspected the residence for the owner. The inspector must be registered with the Superintendent of Housing, Demolition and Code Enforcement as provided by this Chapter.

A Certificate of Property Code Compliance Inspection shall include an inspection of the electrical, heating, and plumbing systems and building structure (e.g., roof, gutters, siding, etc.) to ensure that the residential property is in a safe, sanitary and habitable condition and meets the Property Maintenance Code (PMC) of the State of Ohio. Any Certificate of Property Code Compliance Inspection Report shall be on the form provided by the City of Youngstown. Minimally, the certificate of Property Code Compliance Inspection Report shall list individual violations and a rough estimate of the cost to cure each violation or deficiency, signed by a Registered Inspector. The Superintendent of Housing, Demolition and Code Enforcement may, at his or her discretion, accept alternative inspection report forms. The Certificate of Property Code Compliance Inspection Report shall be completed and filed with the Superintendent

of Housing, Demolition and Code Enforcement within thirty (30) days of the date of application.

(b) A Temporary Certificate of Property Code compliance shall provide for a ninety (90) day period to complete the repairs for any code violation or deficiency identified in the Certificate of Property Code Compliance Inspection Report. The application of the Temporary Certificate of Property Code Compliance shall be on a form provided by the City of Youngstown and identify the individual violations and a rough estimate of the cost to cure each violation or deficiency, and the responsible party to the land installment contract who is responsible to cure each violation or deficiency. Following review and acceptance by the Superintendent of Housing, Demolition and Code Enforcement, the Superintendent of Housing, Demolition and Code Enforcement will issue a Temporary Certificate of Property Code Compliance. The vendor will file another Certificate of Property Code Compliance Inspection Report with the Superintendent of Housing, Demolition and Code Enforcement within ninety (90) days of the date of issuance of the Temporary Certificate of Property Code Compliance. The ninety (90) day period may be expanded by one additional ninety (90) day period by the Superintendent of Housing, Demolition and Code Enforcement with the filing of another application for a Temporary Certificate of Property Code Compliance.

(c) The Certificate of Property Code Compliance shall be issued by the Superintendent of Housing, Demolition and Code Enforcement to the owner of the real estate interest for the subject real estate, notwithstanding the number of units in the real estate, but only upon one (1) proof of Property Code Compliance Inspection, as provided herein (e.g. filing of inspection report) for each unit, and either two (2) proof of property code compliance or three (3) proof of property code correction of any code deficiency identified in the inspection report.

(d) The Certificate of Property Code Compliance shall expire three (3) years after the date of issuance. However, the Certificate of Property Code Compliance may be voided by the Commissioner of building Inspection after an investigation and upon proof that the residential property has been fire damaged, vandalized, or house-stripped, or becomes structurally unsound or uninhabitable or in some other way no longer meets the Property Maintenance Code of the State of Ohio or City of Youngstown.

(e) Denial or voiding of the Certificate of Property Code Compliance may be appealed to the Property Maintenance Appeals Board pursuant to provisions in Youngstown Codified Ordinances sections 1305.32 through 1305.39.

(f) Accepted Certificate of Property Code Compliance Inspection Reports – in addition to the Certificate of Property Code Compliance Inspection Reports authorized by this section, any inspection conducted by a “Registered Inspector” as defined herein may be accepted as complying with this Section, pursuant to determination by the Superintendent of Housing, Demolition and Code Enforcement.

(g) Code Deficiencies Due to Vendee Conduct – in those cases where the code deficiencies identified in the Certificate of Property Code Compliance Inspection are demonstrated, to the satisfaction of the Superintendent of Housing, Demolition and Code Enforcement inspection in his or her investigation of the matter, including providing information to assist in the identification of the vendee.

550.12 REGISTRATION OF INSPECTOR; FEES

(a) Any person certified under the Standards and Practices of the National Association of Home Inspectors (NAHI), the American Society of Home Inspectors (ASHI), or who shall have successfully passed the International Code Council (ICC) Property Maintenance and Housing Inspector Exam shall register with the commissioner of building inspection, on the form provided, for a fee of one hundred dollars (\$100.00) annually.

(b) The Superintendent of Housing, Demolition and Code Enforcement shall determine minimum qualifications required for an inspector to be registered pursuant to this chapter. Superintendent of Housing, Demolition and Code Enforcement is authorized to register any person, deemed qualified, to conduct the Certificate of Property Code Compliance Inspection.

550.13 RECORDING OF LAND INSTALLMENT CONTRACTS

(a) Before the execution of a land installment contract, the vendor shall deliver to the vendee a copy of the current Certificate of Property Code Compliance Inspection Report and current Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance.

(b) Within twenty days of the execution of a land installment contract, the vendor shall record, as provided in Ohio Revised Code 5301.25, the land installment contract installment with the county recorder and deliver a copy to the county auditor.

550.14 PROHIBITION; NOTICE OF LIABILITY

(a) No vendor shall convey any interest in a residential property through land installment contract unless a Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance has been issued, pursuant to this section.

(b) No vendor shall fail to deliver to the vendee a copy of the current Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance prior to the execution of the land installment contract.

(c) No vendor shall fail to record, as provided in Ohio Revised Code 5301.25, the land installment with the county recorder and deliver a copy to the county auditor within twenty days of the execution of a land installment contract.

(d) In a conveyance of any interest of a residential property through land installment contract sale, no vendor shall knowingly require a vendee, as a condition of the sale, to sign a "quit claim" deed, deeding the property in question to the vendor in the event of a default by the vendee.

(e) No inspector registered pursuant to this Chapter to conduct a Certificate of Property Code Compliance Inspection shall fail or refuse to file an inspection report within the time required pursuant to an application for a Registered Inspector or pursuant to an order issued by the Superintendent of Housing, Demolition and Code Enforcement.

(f) In addition to any other penalty and/or notice of violation under the Codified Ordinance of the City of Youngstown, the Superintendent of Housing, Demolition and Code Enforcement, Zoning Inspector, Health Inspector or his/her designee may issue a violation to the vendor of the residential property who conveys any interest in a residential property through land installment contract, found to be in violation of the Youngstown Health or Property Maintenance Code of the City of Youngstown without the dwelling unit (s) having been issued a Certificate of Property Code Compliance, Temporary Certificate of Property Code Compliance said notice shall describe the location and nature of the violation, the time and date it was observed and the fine assessed to the owner. No notice of violation may be issued to an owner more than once during any seventy-two (72) hour period for the same violation at the same premises.

(1) The Notice of Violation provided for by this section shall be served upon the owner by certified United States mail return receipt requested or by personal service. In the event of failure

of certified mail service on the basis that the return receipt is endorsed "unclaimed" or "refused", service shall be perfected by sending the notice to the address where certified mail was attempted by United States First Class Postage.

- (2) The following rebuttable presumption shall apply to violations of this section.

- (A) The owner of the premises whose name is listed in the records of the Mahoning County Auditor is presumed, for purposes of this section, to be the owner of said premises.

- (3) Any owner charged with a Notice of Violation may appeal said notice as provided by sections 1305.32 through 1305.39. The failure to file an appeal shall constitute a waiver of the right to contest the Notice and shall constitute an admission of the Notice of Violation.

(g) Any vendor of the residential property who conveys any interest in a residential property through land installment contract and is found to be in violation of the Youngstown Health and/or Property Maintenance Code and located in the City of Youngstown without the dwelling unit(s) having been issued a Certificate of Property Code Compliance, Temporary Certificate of Property Code Compliance or fails to comply with this Chapter, shall be fined two hundred fifty dollars (\$250.00). A second violation within two years by an owner shall result in a fine of five hundred dollars (\$500.00). A third and any subsequent violation by an owner within two years shall result in a fine of one thousand dollars (\$1,000.00).

(h) Payment of any fine authorized under this code section may be enforced by means of a civil action or any other method provided for by the Ohio Revised Code or the Youngstown Municipal Code.

550.15 SYSTEMATIC INSPECTIONS

- (a) Nothing in this Chapter shall be construed as preventing the Superintendent of Housing, Demolition and Code Enforcement from conducting a program of systematic inspections of dwelling unit(s) as authorized by Youngstown Municipal Code. Any code deficiencies found during such systematic inspections shall be remedied in accordance with the provisions of this Chapter and all procedures contained in this Chapter, including the payment of fees, shall apply to such systematic inspections.

- (b) When a complaint or a systematic inspection is performed on a building with multiple dwelling units, the Superintendent of Housing, Demolition and Code Enforcement shall use his or her discretion as to whether additional dwelling unit(s) in the building are to be inspected pursuant to this Regulation.

550.16 VENDEE'S REMEDIES FOR NON-COMPLIANCE

If a vendor fails to comply with this Chapter, the vendee may rescind the land installment contract and may recover his/her actual damages and attorney's fees and costs.


550.99 PENALTY

- (a) Whoever fails to comply with this Chapter, pursuant to this section, shall be guilty of a misdemeanor of the third degree on the first offense, a misdemeanor of the second degree for a second subsequent offense or a misdemeanor of the first degree for a third subsequent offense.
- (b) All fines for citations and non-compliance fees issued in accordance with this Chapter shall be deposited in the Environmental Sanitation, which fines and fees shall be used by the Code Enforcement Department for purposes not inconsistent with this chapter, with the exception of court costs which will be deposited as required by law.

SECTION 2

That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare and safety, the emergency being the necessity to **enact Chapter 550, Land Installment, of the Codified Ordinances of the City of Youngstown**, as above described; and provided it receives the affirmative vote of six of the members elected to the legislative authority, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS 6th DAY OF February 2019.



PRESIDENT OF COUNCIL

ATTEST:

Valencia Morrow
CITY CLERK

APPROVED: THIS 7th DAY OF February, 2019.



MAYOR