

ORDINANCE NO. 2378

AN ORDINANCE to amend The Code of the City of Alexandria, Virginia, 1963, as amended, by adding thereto a new chapter numbered 17B entitled HOME IMPROVEMENT; which new chapter numbered 17B adopts a HOME IMPROVEMENT CODE PROVIDING FOR DEFINITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR THE ISSUANCE OF HOME IMPROVEMENT LICENSES; PROVIDING FOR INSURANCE AND BONDING REQUIREMENTS; PROVIDING FOR IDENTIFICATION CARDS; PROVIDING FOR CONTRACT REQUIREMENTS; PROVIDING PROHIBITED ACTS; PROVIDING GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF A LICENSE; PROVIDING FOR INVESTIGATION OF COMPLAINTS AND HEARINGS ON COMPLAINTS AND FOR PENALTIES FOR VIOLATIONS.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new chapter numbered 17B to read as follows:

CHAPTER 17B.

HOME IMPROVEMENT.

Sec. 17B-1. Short title.

This chapter shall be known and may be cited as the "Home Improvement Code" of the City of Alexandria, Virginia.

Sec. 17B-2. Definitions.

Contract buyer. Any person who offers payment in return for a promise to perform or the performance of home improvement work, unless such person is himself a home improvement contractor or is otherwise exempt under section 17B-3.

Department. The department of building and mechanical inspections of the City of Alexandria, Virginia.

Home improvement. The repair, restoration, alteration, enlargement, replacement or remodeling of any residential property for compensation. It shall also include, but is not limited to, the construction and repair of residential property such as windows, driveways, sidewalks, swimming pools, patios, porches, terraces and garages. Without regard to the extent of affixation, home improvement includes the installation of central heating or air conditioning systems, storm windows, insulation, awnings or fire and burglar alarm systems. Home improvement shall not include:

(a) The construction of a new home building or work done by a contractor in compliance with a guarantee of completion of a new building project, or

(b) The sale of goods or materials by a seller who neither arranges to perform nor performs directly any work or labor in connection with the installation of or application of the goods or materials.

Home improvement contract. An agreement for the performance of home improvement work in which the contractor is to provide labor, render services or furnish materials for home improvements

and the buyer is to pay a consideration in excess of three hundred dollars (\$300.00).

Home improvement contractor. Any person who engages in the business of home improvements, whether full-time or part-time, whether such person is a principal contractor or a subcontractor. A subcontractor is a home improvement contractor only when he contracts directly with the contract buyer.

Payment. The transfer, directly or indirectly, of any valuable consideration. It shall include, but is not limited to, the delivery of cash, a promissory note, an installment contract, a chattel mortgage or a deed of trust; but "payment" shall not include the promise to pay as set forth in the contract itself.

Residential property. Any property containing one or more dwelling units and associated structures, including nonresidential property being converted into one or more dwelling units.

Sec. 17B-3. Exemptions.

The provisions of this chapter shall not apply to the following:

(a) Any person or any member of the immediate family of such person performing home improvement work on a building of which he is the bona fide owner or leasee;

(b) Any contractor registered with the Commonwealth of Virginia in accordance with chapter 7, title 54, section 129 of the Code of Virginia (1950), as amended;

(c) Any plumbing contractor, electrical contractor or gas fitter registered with the city or state who is acting exclusively within the scope of his trade; or

(d) Any public service company, its agents, employees and subcontractors.

Sec. 17B-4. Application for home improvement license; issuance.

(a) A home improvement contractor shall apply for a license by completing and submitting an application form supplied by the department. The applicant's signature shall be notarized. Applicants for said license shall pay a fee of thirty dollars (\$30.00). No license shall be issued until the applicant submits the following documents in support of the application:

(1) A form supplied by the department on which the applicant must disclose his current financial resources and obligations.

(2) A copy of the applicant's proposed contract forms, which shall include, but not be limited to, the provisions required by section 17B-5.

(3) If the applicant is a nonresident of Virginia, a written statement designating a resident of Virginia as agent for service of process and notices of cancellation. Such designated resident agent must be at least eighteen (18) years of age and, if the home improvement contractor is incorporated, such corporation must be licensed to do business in Virginia by the State Corporation Commission and must comply with the registered agent requirements of section 13.1-8, et seq., of the Code of Virginia.

(4) Written evidence that the applicant has minimum liability and property damage insurance in the following amounts: one hundred thousand dollars (\$100,000.00) in the aggregate for the death of any one person in any one occurrence, three hundred thousand dollars (\$300,000.00) in the aggregate for the death of more than one person in any one occurrence and fifty thousand dollars (\$50,000.00) property damage in any one occurrence.

(5) Evidence satisfactory to the department that the applicant has secured a bond in the amount of five thousand dollars (\$5,000.00) made payable to the City of Alexandria, Virginia, from a bonding or surety company licensed to do business in the Commonwealth of Virginia. The bond shall be conditioned upon the observance by the licensee and his employees of all statutes, ordinances and regulations in force which relate to the conduct of the licensee's home improvement business. The bond shall indemnify and save harmless any contract buyer or other person injured by the licensee's violation of any statute, ordinance or regulation in force and/or the licensee's default or other material breach of a home improvement contract. Any person aggrieved by a violation of a condition of the bond may proceed in a court of competent jurisdiction against the licensee or surety, or both. Nothing in this section shall be construed to impose upon the surety of any such bond a greater liability than the total amount of the bond or the remaining amount after prior recovery or recoveries by the contract buyer or injured party.

(b) The department shall issue a license once the provisions of section 17B-4(a) have been complied with by the applicant, subject only to the grounds for denial of a license set forth in section 17B-8 of this chapter. The license shall clearly identify the licensee, the authority conferred by the license and the expiration date of the license. The license shall bear a disclaimer of any implied warranty by the city of any work performed by the licensee.

(c) No license shall be issued pursuant to this section to any person under eighteen (18) years of age.

Sec. 17B-5. Home improvement contract requirements.

(a) All home improvement contracts shall be in writing and shall set forth the entire agreement between the parties and shall clearly identify and describe any other document which is incorporated as a part of that agreement.

(b) A home improvement contract shall be signed by the contractor, the salesperson, if any, and the contract buyer. No contractor or salesperson shall cause or permit any home improvement contract or other related document to be signed by the contract buyer until all the blank spaces have been filled in or marked as inapplicable and the contract buyer has been given a reasonable opportunity to examine the completed contract and all related documents.

(c) The contractor shall furnish the contract buyer a legible, fully executed copy of the contract and all related documents at the time the contract is signed. A copy of the contract shall accompany the building permit application whenever a permit is required for the home improvement work pursuant to chapter 7 of this code. Except for permits issued to those

exempt under section 17B-3 of this chapter, each permit shall list the contractor's home improvement license number.

(d) The contract buyer shall have the right to cancel a contract without penalty until midnight of the third business day from the day on which the contract buyer signs the contract. For purposes of this chapter, Monday through Saturday shall be considered business days. The contract buyer shall cancel by hand delivery, by telegram or a written notice of cancellation to the contractor or his designated agent under section 17B-4(a)(3) of this chapter at the address given by the contractor in the contract. Notice of cancellation shall be effective when the telegram is sent, when delivered by hand or when mailed by certified mail as evidenced by postmark. The contract buyer may modify or waive the right to cancel provided:

(1) The home improvement work is necessary to meet a bona fide, immediate emergency of the contract buyer;

(2) The contract buyer has determined that a delay of three (3) business days in performance of the contract work will jeopardize the welfare, health or safety of natural persons or endanger property which the contract buyer owns or for which the buyer is responsible; and

(3) The contract buyer provides to the contractor a separate, dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving the right to cancel. The use of printed forms for this purpose is prohibited.

(4) If the right to cancel is waived or modified, performance of the contract shall begin before 9:00 a.m. of the final day of the waiver period or the waiver shall be void. It shall be a violation of this section to solicit a waiver of the right to cancel when immediate performance of the contract is not contemplated by the parties or when performance is not to begin by the final day of the waiver period.

(5) When the right to cancel is exercised, the contract buyer is not liable for any finance or other charge, and any security interest becomes void upon such a cancellation. Within ten (10) days after receipt of a notice to cancel, the contractor shall return to the contract buyer any money or property given as down payment or otherwise and shall take any action necessary to reflect the termination of any security interest created under the transaction. When the contractor's obligations under this section have been performed, the contract buyer shall offer to return any property previously delivered to the buyer by the contractor. If the contractor does not take possession of the property within ten (10) days after the offer to return by the contract buyer, ownership of the property vests in the contract buyer without obligation on the buyer's part to pay for it.

(e) No home improvement contract shall contain a waiver of warranties, express or implied, except as provided for in section 17B-5(f)(3)(b). All express warranties shall be stated in clear and unambiguous language. The contractor shall furnish the contract buyer with all manufacturers' and suppliers' written warranties covering materials used and equipment furnished under this contract.

(f) Every home improvement contract shall contain express written warranties that:

(1) The home improvement work contracted for shall be of a workmanlike quality.

(2) All materials and equipment supplied under the contract shall be of merchantable quality.

(3) (a) The home improvements contracted for and the materials and equipment supplied shall be fit for at least one (1) year for the general and particular purposes for which they are intended.

(b) This requirement may be waived by the contract buyer in a signed, dated writing only where the work to be performed is a temporary repair and is not a replacement, remodeling, alteration or addition. The waiver must be a personal, written statement by the contract buyer; the use of a printed form for this purpose is prohibited.

(4) The home improvement work contracted for shall be in accordance with all applicable building codes, city ordinances and state and federal laws.

(a) If a home improvement contract provides for liquidated damages, said damages shall be limited to the provable expenses involved.

(h) No contract buyer shall be required to pay more than one-third (1/3) of the contract price as an initial deposit at the time of execution of the contract. The contract may contain a schedule of payments related to the work performed; however, the contract buyer shall at no time be required to pay more than ninety percent (90%) of the cost of goods and services prior to total completion.

(i) All home improvement contracts shall include the following information:

(1) The name, address, telephone number and license number of the home improvement contractor;

(2) The name, address, telephone number and license number of the home improvement salesperson, if any;

(3) The name, address, telephone number of the contract buyer and address of the property where the work is to be performed by the contractor;

(4) A reasonably precise description of or the specifications of the work to be performed under the contract, including brand names, colors, grades, styles, quality, quantity, model numbers and other relevant information identifying any appliances, equipment or material to be used or installed;

(5) The specific dates by which time work is to be started and completed although the contract may provide for unforeseeable delays. If dates cannot be met, new deadline dates shall be set specifically related to such delay;

(6) The total price or other consideration to be paid by the buyer, the finance charge, the total scheduled payments and

the number, amount and due dates or periods of payments. If payment is to be made in more than three (3) installments, the contractor shall make the disclosures required by federal, state or other laws and regulations. Disclosure shall also be made of any collateral security taken or to be taken for the contract buyer's obligation under the contract. If the contractor intends to assign the contract to a third party, disclosure of intent to assign and the name of intended assignee shall be made. If the contract is one for time and materials, the contract shall state the hourly rate for labor and other terms and conditions affecting the price; and

(7) The following statements in bold type, no smaller than ten (10) point:

WARNING

DO NOT SIGN THIS CONTRACT OR ANY OTHER DOCUMENT UNTIL ALL BLANKS HAVE BEEN FILLED IN OR MARKED AS INAPPLICABLE. DO NOT SIGN ANYTHING UNTIL YOU HAVE READ IT. YOU ARE ENTITLED TO A SIGNED COPY OF THIS CONTRACT AND ALL OTHER PAPERS. YOU DO NOT HAVE TO PAY MORE THAN ONE-THIRD (1/3) OF THE CONTRACT PRICE AS A DOWN PAYMENT AT THE TIME THE CONTRACT IS SIGNED. THE CONTRACT MAY PROVIDE A SCHEDULE OF PAYMENTS. YOU DO NOT HAVE TO PAY MORE THAN NINETY PERCENT (90%) OF THE CONTRACT PRICE UNTIL ALL THE WORK HAS BEEN COMPLETED.

RIGHT TO CANCEL

YOU MAY CANCEL THIS CONTRACT WITH NO PENALTY ANY TIME BEFORE MIDNIGHT ON _____

(Day of Week) (Date)

19____. TO CANCEL, SEND BY CERTIFIED MAIL, TELEGRAM OR HAND DELIVER A SIGNED, DATED NOTICE TO

(Name)

AT _____

(Address)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

IF YOU WANT THE WORK TO BEGIN IMMEDIATELY, YOU MAY WAIVE YOUR RIGHT TO CANCEL ONLY BY YOUR SIGNED, PERSONALLY WRITTEN STATEMENT EXPLAINING THE EMERGENCY AND YOUR WAIVER OF THE THREE- (3) DAY CANCELLATION PERIOD.

WARRANTIES

ALL WORK WILL BE DONE IN A WORKMANLIKE MANNER IN ACCORDANCE WITH THE BUILDING CODE. ALL MATERIALS AND EQUIPMENT SUPPLIED WILL BE OF MERCHANTABLE QUALITY. THE WORK, MATERIALS AND EQUIPMENT WILL BE FIT FOR THE GENERAL AND PARTICULAR PURPOSES FOR WHICH THEY ARE INTENDED FOR _____

(Not less than one year)

THE ONE YEAR OR LONGER EXPRESS WARRANTY MAY BE WAIVED ONLY WHERE THE WORK IS A TEMPORARY REPAIR AND IS NOT A REPLACEMENT, REMODELING, ALTERATION OR ADDITION. THE IMPLIED WARRANTIES MAY NOT BE WAIVED FOR TEMPORARY REPAIRS. IF YOU WISH TO WAIVE THE EXPRESS WARRANTY ON A TEMPORARY REPAIR,

YOU MAY DO SO ONLY BY A SIGNED, PERSONALLY WRITTEN STATEMENT EXPLAINING THE TEMPORARY NATURE OF THE REPAIR AND YOUR WAIVER OF THE EXPRESS WARRANTY.

(a) The notice of right to cancel must be either in the form stated above or in the form and content of any similar notice requirement for sales under federal or state law; provided that such requirement contains at least the information required for right to cancel in this subsection, and that nothing in such notice is in conflict with the provisions of this chapter.

(b) The statements required by this section must be incorporated into and made an integral part of the contract but may be on a separate form attached to the body of the printed or written contract and initialed by all parties to the contract.

Sec. 17B-6. Identification cards; sales/license identification cards.

(a) Identification cards. The department shall issue to each licensee an identification card which shall certify that the person whose name appears on the card is a licensed home improvement contractor or is an authorized sales representative for the named licensed home improvement contractor. Every licensee and any authorized representative of such licensee shall carry this identification card and display it to any contract buyer. The identification card shall bear a disclaimer of any implied warranty by the city of any work performed by the licensee.

(b) Duplicate cards. Upon receipt of one dollar (\$1.00) for each duplicate, the department shall issue duplicate identification cards to any bona fide licensee.

(c) Sales/license identification cards. Each licensed contractor shall be entitled to sales/license identification cards after payment of a one dollar (\$1.00) fee for each duplicate identification card. A sales/license identification card shall be issued to an individual person only and only as an authorized representative of the identified licensed contractor. No such license identification card shall be issued unless the department has received from a licensed contractor a written notice of appointment or employment signed by both the contractor and the sales representative. A sales representative may represent no more than two (2) contractors at any one time. Before any individual accepts an appointment or employment as a sales representative from any contractor, the individual shall disclose to each contractor the names of every other contractor by whom the individual is currently employed or engaged. No person shall act as sales representative and no contractor shall authorize any person to act as sales representative for such contractor, unless the required notice is received by the department. At the time of termination of the appointment or employment of the sales representative, the contractor shall notify the department in writing of the same.

(d) It shall be unlawful for any person to represent that he is a licensee or an authorized representative of a licensee if such person does not possess a valid home improvement license or is not an employee of a licensee and in possession of a valid identification card.

(e) Upon the request of any person exempt from the provisions of this chapter and upon receipt of one dollar (\$1.00), the

department shall certify such exemption in writing. It shall be unlawful for any person to use such certification for any purpose other than proof that the person is exempt from the provisions of this chapter.

Sec. 17B-7. Prohibited acts.

It shall be unlawful for any home improvement contractor or salesperson:

(a) To undertake any home improvement without having first obtained the license required by this chapter, unless such person is exempted from the provisions of this chapter by section 17B-3.

(b) To undertake any home improvement except pursuant to a home improvement contract, unless no such contract is required by this chapter for such home improvement.

(c) To fail to complete any contract work as provided for in a home improvement contract, including failure to correct or replace faulty or defective work.

(d) To fail to honor warranties in a home improvement contract.

(e) To use any deception, fraud or misrepresentation in the advertising, negotiation for, procurement or performance of a home improvement contract.

(f) To fail to use contract forms which are consistent with the provisions of this chapter.

(g) To fail to pay judgments or other debts which may result in a lien against a contract buyer's property.

(h) To deviate from the contract plans or specifications in any material respect without the consent of the contract buyer.

(i) To provide false information to the department.

(j) To prepare, to arrange, to participate in arranging or to accept any mortgage, promissory note or other evidence of indebtedness on the obligations of a home improvement transaction with knowledge that it recites a greater monetary obligation than the consideration for the home improvement work, which consideration may be a time sale price.

Sec. 17B-8. Denial of license application; suspension or revocation of same.

No person is entitled to hold a home improvement license if such person:

(1) Has knowingly made a material misstatement in an application for a license;

(2) Has failed to make the information required by section 17B-4 available to the department or to an appeals board when such required information has been requested in order to determine whether a license should be issued, denied, revoked or suspended; and

(3) Violates or fails to comply with any mandatory provisions of this chapter or city or state law related to home improvement work.

Sec. 17B-9. Investigation; probable cause; determination.

(a) Any person may file a complaint against a home improvement contractor or salesperson with the department or the office of consumer affairs. The office of consumer affairs shall notify the department when a complaint is received by it against a home improvement contractor or salesperson. When a complaint is filed with the department or the office of consumer affairs, the office of consumer affairs shall investigate the complaint and shall make available to the department any information derived from the investigation. The department shall conduct any additional investigation as needed.

(b) The department shall then determine whether there is probable cause to deny, revoke or suspend the home improvement license. In making a finding as to probable cause, the department may attribute the qualifications of any officer, director or managing employee of an applicant or licensee, or any person exercising direct or indirect control over the applicant or licensee, to the applicant or licensee.

(c) When the department has determined that there is probable cause to deny, suspend or revoke a license, it shall notify the applicant or the licensee of this determination in writing. The notice shall include:

- (1) A statement of the facts which constitute the basis for the proposed action;
- (2) A statement specifying each separate violation of this chapter and/or other state or federal laws;
- (3) A statement of the action the department proposes to take; and
- (4) A concise statement of the procedure which the licensee or applicant shall follow to request a hearing, including the deadline for a hearing request, the consequences of failure to request a hearing and the date the denial, suspension or revocation will become effective if no hearing is requested.

Notice shall be deemed properly served when a copy of the notice is personally served on the applicant or licensee, or when a copy is sent by certified mail, postage prepaid, to the latest address given on the application for a license.

Sec. 17B-10. Hearing procedure.

Any person who has been notified that his license is being denied, revoked or suspended may request a hearing. A request for a hearing must be received no later than fifteen (15) days from the mailing of the notice of the impending action. The hearing shall be held no later than thirty (30) days from receipt of a request for a hearing unless otherwise agreed to by the applicant or licensee. Notice of the date, time and place of the hearing and of the procedures to be followed, shall be given to the applicant or licensee sufficiently in advance of the hearing to allow a reasonable time to prepare for the hearing. The hearing shall be conducted by a panel of three (3) members as follows:

(1) The head of the department or designated representative from the department staff;

(2) The coordinator of consumer affairs or designated representative of the consumer affairs staff; and

(3) A representative of the home improvement contracting business, as appointed to a renewable two- (2) year term by city council.

The hearing shall be informal. The licensee or applicant shall be advised of the evidence which tends to establish the grounds for suspension, revocation or denial of the license. The licensee or applicant shall have a right to question any person giving information and to present relevant information or testimony. It is permissible, but not required, for an applicant or licensee to have an attorney present at the hearing. The department shall keep a written or taped record of the proceedings.

Sec. 17B-11. Final determination.

(a) After an opportunity for a hearing, if the department or the hearing panel in the case where a hearing is held, determines from a preponderance of the available evidence that there are adequate grounds to deny, revoke or suspend a license, the department shall notify the licensee or applicant in writing that his license is denied, revoked or suspended, stating the reasons for the decision. The notice of revocation, denial or suspension shall explain the appeal procedure and the effective date of a license revocation or suspension.

(b) Notice of revocation, suspension or denial of a license shall be personally served on the applicant or licensee or sent by certified mail, postage prepaid, to the latest address given on the application for a license.

Sec. 17B-12. Appeal procedure.

Appeal from suspension, revocation or denial of a license shall be to the Circuit Court for the City of Alexandria, Virginia.

Sec. 17B-13. Files open to the public.

The licensing authority shall retain records of all licenses issued, denied, suspended or revoked for five (5) years. These records shall be open to the public during regular business hours.

Sec. 17B-14. Penalty for doing business without a license.

Any person who knowingly engages in the home improvement business as a salesperson or contractor without obtaining a license as required by this chapter (and who is not otherwise exempted from the licensing requirement) and any person who continues in business as a salesperson or contractor after revocation or during suspension shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days, or both. Every offer to perform work at a different address shall constitute a separate offense.

Sec. 17B-15. Implementation.

It is recognized that home improvement contractors' licensing and regulation cannot be instantly accomplished to conform to the provisions of this chapter becoming effective June 12, 1979. In order to provide for gradual changeover, it shall be lawful for home improvement contractors to undertake home improvements whether or not such contractor acts in compliance with the provisions of this ordinance; provided that in no event shall any contractor lawfully engage in home improvements in the City of Alexandria after September 30, 1979, unless such contractor shall be in compliance with the provisions of this chapter.

Sec. 17B-16. Summary of chapter provisions.

The office of consumer affairs shall prepare and distribute a summary of the provisions of this chapter and the rights and obligations of contract buyers and home improvement contractors thereunder. Such summary shall be reviewed and approved by the city attorney prior to issuance and may be relied upon by such contract buyers or home improvement contractors as complying with the ordinance.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

FRANK E. MANN
Mayor

Introduction: March 27, 1979
First Reading: March 27, 1979
Publication: March 31, 1979

Public Hearing: April 21, 1979
Second Reading: June 12, 1979
Final Passage: June 12, 1979