

October 26, 2015

Regular meeting of the Ludington City Council held in the Council Chambers of the Municipal Building on Monday, October 26, 2015, at 6:30 o'clock p.m.

Present: His Honor Mayor Ryan Cox and Councilors Kaye Holman, Dick Rathsack, Kathy Winczewski, Les Johnson, Mike Krauch, Nick Tykoski, and Gary Castonia.

Absent: None.

Also present were City Manager John Shay, City Attorney Richard Wilson, Police Chief Mark Barnett, Fire Chief Jerry Funk, City Treasurer Linda Rogers, and City Clerk Deborah Luskin.

Invocation was pronounced by Police Chief Barnett.

Pledge to the Flag was given.

Moved by Councilor Castonia, seconded by Councilor Tykoski, to approve the agenda as presented. Motion Carried.

The meeting was opened for public comments.

Doug Shoup, City of Ludington, commented on the rental inspection ordinance and explained that he has been in the real estate business for 45 years. During this time he has seen some substandard housing in rentals and owner occupied homes but does not believe that this is an epidemic. He informed City Council that since 2008, there have been a lot of houses in foreclosure where a lot of investors stepped in and made improvements on these properties and turned them into rental units. These rental units are now on the tax rolls with the owners paying the entire property tax millage including the 18 mills. He commented that with the now proposed rental registration and inspection fees he feels that this is an additional tax. He stated that many of these owners believe this rental inspection program is an infringement on the property owners' right of peaceful possession of the property that they own. Another problem Doug Shoup commented on was that all rental properties should be included in this inspection program including the condos that are rented on a seasonal basis, everyone should be taxed the same. He then referred to the agreement between the City of Ludington and Longfellow Towers which allows Longfellow Towers to pay a fee in lieu of taxes of approximately \$20,000 and no property taxes on an \$8 million property value. He is asking the City to listen to the people in the community and commented that it is wrong to tax the investors in the community again. He is asking Council to vote no on this ordinance.

Edgar Struble, City of Ludington, commented on the rental inspection ordinance and explained that this ordinance is a tax increase for government with a teaser rate which will never get smaller. He stated that there are means in place in the City which should allow a tenant who has a safety issue with their property to call someone at the City and make this issue known. He stated that if this is not the case, it should be. The issue should not be burden for all landlords but simply those who are slum landlords. He suggested that a website like Yelp where the tenants might voice their concerns over their improperly cared for properties rather than taxing the landlords should be in place along with rewarding the good landlords who take care of their properties. His final comment was to urge City Council to vote no on this ordinance.

Stephen VonPhal, City of Ludington, commented that he is a landlord in the City. He stated that the City Manager and the City Council Chair for the Building & Licensing Committee think that listening to let people talk and then ignore them completely without responding should be posted on the door so a person would know whether they were being listened to when they approach these individuals. He informed the City Council that the Federal District Court has ruled that this type of inspection has been ruled as illegal search under the Constitution of the United States as a Fourth Amendment violation. He stated that the people of Ludington will have to pay for Council's arrogance in supporting their position in enforcing the proposed rental inspection ordinance. He commented that he is not against the desire to assure that everyone is safe in housing but does not like being discriminated against and does not like having to pay for legal bills for the arrogance of the City Council. He is asking Council to fix their process and get other stakeholders on the committee and get something that works without breaking the law.

Melissa Reed, landlord in the City of Ludington, asked that City Council refer the proposed rental inspection ordinance back to committee as it has serious flaws which have been made known by many to the Council and that remain unaddressed. She stated that there is no emergency to have this ordinance passed at this time and noted that City Council is making a big mistake in pushing through this ordinance with so many problems that could be addressed with tenants and stakeholder involvement. She is asking Council to vote no and send it back to committee and then form a committee of tenants, landlords, community members and other stakeholders to revise this proposed ordinance.

Chuck Sobanski, City of Ludington, commented that he has been a resident of the 4<sup>th</sup> Ward for 77 years. He stated that the Council has been so focused on the rental inspection ordinance and the charter amendments that they appear to have lost track of what they should be doing on City Council. He referred to Article V of the Property Maintenance Code and noted that by the old railroad tracks there is an old fish tug that has been abandoned for many years. Nothing has been done with the tug or the property where there is no water and when this is brought up to the City he has been told that the City's hands are tied. He then referred to property in the 200-400 block of First Street where there is a pile of tires holding plastic down on a roof. In the 100 block of Second Street by Jefferson Street there is plywood on a building but the plywood is falling off as it has been up there too long and this is hazard. He is concerned someone will get hurt. Another example provided was in the 200 block of Second Street there are two houses that have too much brush and trees and you are not able to view the houses. He asked Council to enforce the ordinances that are currently out there and not add new ordinances. He mentioned a comment from the last council meeting about all of the complaints the City receives. If the City does a good job maybe they will not get as many complaints. Finally, he stated that if this ordinance comes up for a vote he would like Council to put the vote for the good of all those concerned. He then thanked the Council for letting him speak at this meeting.

Frank Sagan, City of Ludington, introduced himself as a licensed contractor who is retired and has quit building in the City of Ludington because the City enforces its rules in a wishy washy manner. He referenced the City's Code as it relates to public walks. He stated that he bid on 3 jobs and lost all 3 of these jobs because the City did not enforce public walks. The competition who received the bid on these jobs did not put the public walks in and the City did not enforce the Code. In Forest Hills there is a HUD subdivision and in this area there is a 45 foot setback. The previous Mayor built his house with only a 25 foot setback. Public walks were installed in this same section of the City but you cannot use them when it rains or snows as they are under water. In those areas where there are no public walks the rain runs down the street and pools at the corner of Tinkham and Monona. He commented that the building inspector has a one and two family building code but he does not have a three family or three story building code. His Honor Mayor Cox informed him that his 5 minutes of public speaking was up. His final comment was that the City's rental inspection proposal does not make a safe place for the tenants and it is just harassment.

Tom Rotta, City of Ludington, commented on the proposed rental inspection ordinance and compared it with the Halloween "Trick or Treat" as well as compared with the program in Manistee. He stated that he learned via FOIA requests that there were no specific complaints that had been made reviewed by the City Committee in preparing this ordinance and there has been no public charge of impropriety against any landlord in the last 5 months. He stated that the treat for the City is increased property values, increased eligibility for grant money, and increased development in the City. He commented that the public has reviewed the ordinance and feel that this is a trick and is a poorly timed and poorly drafted ordinance. His Honor Mayor Cox informed him that his 5 minutes of public speaking was up.

Heather Catron, Ludington, commented that she moved to Ludington 2012 and prior to this, was a landlord in Adrian and this ordinance was what they had in Adrian. She stated that she never felt this was a burden but rather the ordinance kept the tenants safe. It was necessary and was never a burden, simply a responsibility on the part of the landlord.

Aton Schrader, City of Ludington, commented that he is speaking as a tenant and is hesitant about accepting this policy as he does not want to have the burden of having the inspector having to arrange time to come and inspect his property as well as to arrange for time off of his job to be present when this inspection is scheduled. He also stated that he is concerned about the increase in rent that will result from the additional costs that the landlord will have to cover as a result of this ordinance. He commented that there are a lot of families who will not be able to pay for the additional increase in their rent and will be left without a home. He is encouraging City Council to vote no on the ordinance or send it back to committee to come up with a better way of ensuring the safety of everyone involved.

Mary Lynn Leavitt, Broker/Property Manager of Sherman Oaks, expressed concern that a lot of people who live at Sherman Oaks have family throughout Ludington who will also be impacted. This ordinance does apply to Sherman Oaks as Sherman Oaks is the only nonsubsidized living facility in the city limits. Mary Lynn Leavitt commented that she sent a petition to the Mayor and Council members with over 100 people signing it asking that the City Council vote no on the proposed ordinance and send back to Committee as it does not address the issue at hand. She stated that this ordinance does not stop at the city limits, it is county wide. She is asking that more people be brought together to fix these concerns. She is asking for support systems in place with access to loans to help fix up these properties. She is asking that this ordinance go back to committee to come up with a bigger plan that will help all sides not just in the City but in all of Mason County.

Marcia Bonnville, City of Ludington, referred to a decision made by the U. S. District Court on September 30, 2015 that held that the rental inspection was ruled unconstitutional because it mandated the warrantless inspection of all

rental housing in violation of the Fourth Amendment of the United States Constitution and stated that the City of Portsmouth, Ohio would be liable for the repayment of all rental inspection fees.

Pat Patterson, owner of rental properties in the City of Ludington, commented that there are a lot of unanswered questions to this rental ordinance. He stated that this summer he has seen a lot of improvements to houses in the City. He was one of the investors that bought property to fix up and make Ludington a better place. He commented that the landlords are not rich. He is lucky to see a profit of \$150 cash flow per month. He is asking that Council send this ordinance back to committee for further review.

Tom Tryon, City of Ludington, stated that he is against the proposed rental inspection ordinance.

Linda Obrien, City of Ludington, commented that she owns a property management company with approximately 40 units within the City and she is urging City Council to send this ordinance back to the committee for input and refining of the ordinance. She commented that with what recently happened with the City of Manistee turning the program over to a private corporation, the fees have almost doubled.

Nickie Heimann, City of Ludington, just purchased a house on Fifth Street last year and commented that she understands the landlords' opposition to the rental inspection ordinance as no one wants to pay more money. She stated that being a landlord is a business. She is trying to fix up a house and there are a lot of rental houses in Ludington that need to be fixed up and are eyesores and some of these are right across the street from her property. She understands that the City Council is trying to make the City look beautiful and to allow for growth. This ordinance may not be perfect, but something has to be done.

Bill Stechshulte, Ludington, asked that the City Council just work on the ordinances that we currently have. If the property is not in the right shape there are ordinances on the books to address the property. With this rental inspection ordinance there are now reasons to go ahead and raise the rent and he has not raised rent in over 10 years. He is asking City Council to vote down this ordinance as he is against the ordinance.

Lila McClelland, City of Ludington, commented that she is supportive of the City and everything that is done in the City. She stated that she is not a landlord but she has been in some of the rental properties in the past and explained that she was appalled at the terrible conditions that some of these apartments are in. She is asking the City to enforce the ordinances that are currently in place. She stated the City does have issues with enforcement of the current code. She stated that there are some things that could be done more efficiently than they currently being done.

After no further comments were received, the regular order of business was resumed.

Moved by Councilor Johnson, seconded by Councilor Holman, to approve the minutes of the regular meeting 10/12/15. Motion Carried.

The meeting was opened for the scheduled public hearing to hear comments on the request to establish an OPRA District at 102 Second Street for Nolan Investments, LLC (Edgar Struble). City Manager Shay explained that this property has been determined to be obsolete by the City Assessor and Edgar Struble intends to renovate the building in order to create new commercial space on the first floor and two residential rental units on the second floor.

Tom Rotta, City of Ludington, commented that in the past he has come before City Council on other companies that have sought tax abatements and corporate welfare and urged the Council to vote no to those who have the release of tax burden which was not released across the board. He stated that the issue is whether the Nolan Family Investments LLC should get a tax break. This property is in great disrepair. He stated that there is nothing in the council packet that shows why the City Code Enforcement has neglected to enforce the Code. He explained that he wishes to support the OPRA tax abatement as the City has overly taxed this property for the past 12 years providing a deterrent to improvement. He provided examples of properties that were owned by Edgar Struble and the tax increases to these properties.

Edgar Struble, City of Ludington, explained that he is the managing member of Nolan Family Investments, and bought this property in 2003 for his wife's family. They fixed up the property and it was sold to the developer across the street. He then got the property back. He stated that they have not made a lot of money and the taxes on this property have been ridiculous. He is happy that the City suggest that he take advantage of the OPRA tax abatement. Councilor Winczewski explained that she grew up just down the street from this building and asked Edgar Struble about the beautiful façade. Edgar Struble stated that he put this on and he plans on keeping it. She applauds Edgar Struble for putting improvements into this property as it has a lot of history in the 4<sup>th</sup> Ward. Councilor Krauch explained that he applauds Edgar Struble for putting the renovations into place and asked him to explain the improvements. Edgar Struble explained that he will put 2 bathrooms in the upstairs and then whitebox the bottom level. He stated that he has

someone interested in putting in a fishing lodge or an artisan shop in this building with lodging upstairs. He stated that he did get a notice about the disrepair of this building and the City is doing its job.

Chuck Sobanski, City of Ludington, commented that 4<sup>th</sup> Ward is not undesirable as this was the first Ludington, fish town. He is not informed of the tax abatements but he explained that he would like to see the outside of the building improved first. This building needs a lot of work and if Edgard Struble wants to renovate he stated the City should give the owner some help.

After no further comments were received, the regular order of business was resumed.

RESOLUTION FOR THE ESTABLISHMENT OF AN  
OBSOLETE PROPERTY REHABILITATION DISTRICT FOR  
NOLAN FAMILY INVESTMENTS LLC 102 SECOND STREET

WHEREAS, by an Application for Obsolete Property Rehabilitation Exemption Certificate dated September 10, 2015, Edgar Struble of Nolan Family Investments, LLC, owners of a property located at 102 Second Street, Ludington, have requested the Ludington City Council to establish an Obsolete Property Rehabilitation District under the provisions of Act No. 146 of the Michigan Public Acts of 2000, as amended; and

WHEREAS, PURSUANT TO Act No. 146, a notice of a hearing of said request was published in the Ludington Daily News on October 16, 2015; and

WHEREAS, notice of said hearing was sent by certified mail, return receipt requested, to owners of all real estate in the proposed district and to all taxing jurisdictions affected by the establishment of said district, hereinafter legally described; and

WHEREAS, the Assessor of the City of Ludington has written an opinion finding that the property is a commercial property, according to the Act, and that the property is a functionally obsolete property, thereby meeting the requirements of the Act, and that the property is not a blighted property, nor is it a facility; and

WHEREAS, before acting on said application, the Ludington City Council held a hearing on October 26, 2015, at 6:30 p.m., at the Ludington Municipal Building, City Council Chambers, 400 S. Harrison St., Ludington, Michigan, at which hearing the applicant, the assessor, the owners of all real estate in the proposed district, hereinafter legally described, and a representative of the affected taxing units, who were given previous written notice, were afforded an opportunity to be heard on said application; and

WHEREAS, the City of Ludington is a Qualified Local Governmental Unit, as defined by the Act; and

WHEREAS, the property being applied for as a district is a commercially classed, obsolete property, as defined by the Act; and

WHEREAS, said Act 146 of the Public Acts of Michigan for 2000, as amended, provides that the local governmental unit, by resolution of its legislative body, may establish and Obsolete Property Rehabilitation District.

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

1. That in accordance with the provisions of Act 146 of the Michigan Public Acts of 2000, as amended (Obsolete Property Rehabilitation Act), an Obsolete Property Rehabilitation District for 102 Second Street is hereby established and is legally described as follows:

ADDITION NO. 2 W 50 FT OF LOT 4 BLOCK 94, commonly known as 102 Second Street, all situated in the City of Ludington, Mason County, Michigan.

2. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

Moved by Councilor Castonia, seconded by Councilor Tykoski, to adopt the Resolution for the Establishment of an Obsolete Property Rehabilitation District for Nolan Family Investments LLC 102 Second Street. Motion Carried.

Community Development Director Heather Tykoski presented housing initiatives for the City. She stated that there are several initiatives being looked at with none ready for action yet. A year ago the City did a Target Market Analysis to look at the housing market and the retail market. Out of this analysis came the idea of a housing task force including the Growth Alliance, Pennies from Heaven, West Shore Bank, and Habitat for Humanity. They have looked at the Dwelling Place in Grand Rapids which has several hundred housing units that they manage. The task force is looking at the best practices that are out there and they are looking for creative resolutions. Part of these discussions revolves around code enforcement. A Housing Coalition was formed to help homeowners. This is not a formal board but those that want to come are welcome. She stated there is a huge blight problem in the City. There is no correlation between homeowners and rental properties in terms of blights, but there are zones in the City where homes are in total disrepair. The 4<sup>th</sup> Ward is in real good shape. The problems are encountered on Washington Avenue to Madison Street, and First and Second Streets, Danaher Street, Melendy Street, Dowland Street and North Rath Avenue between Ludington Avenue and Tinkham Avenue. She talked about Neighborhood Enterprise Zones which would be accessible if the City were to pass a rental inspection program and complete a target market analysis. The City would qualify then for tax abatements. There is a grant opportunity through MSHDA which would allow for a home purchase

rehabilitation program where a potential home buyer, which has gone through several classes and would have assistance in purchasing a home. Councilors Winczewski and Krauch expressed appreciation to Heather and the other entities for looking into these housing initiatives and solutions for all parts of the city.

A public hearing was set for November 9, 2015 at 6:30 p.m. in the City Council Chambers to hear comments on the Application for a MSHDA Grant.

Moved by Councilor Holman, seconded by Councilor Rathsack, to approve Spectrum Health Ludington Hospital's request to hold a Turkey Trot 5k on Thanksgiving morning, November 26, 2015 at 8 a.m. at Cartier Park in Ludington. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Castonia, that the Finance Report with total expenditures in the amount of \$362,892.58 for this period be approved and orders drawn according to the City Charter. Motion Carried.

**RESOLUTION APPROVING THE APPLICATION FOR A CLASS C LIQUOR LICENSE  
FOR TRAVON, INC.**

WHEREAS, Travon, Inc. has made application for a new Class C License issued under MCL 436.1521a(1)(b), located at 130 West Ludington Avenue, City of Ludington, Mason County, Michigan.

WHEREAS, the State of Michigan Liquor Control Commission requires that the City of Ludington support the application by Travon, Inc. above all others in obtaining this new Redevelopment Liquor License under MCL 436.1251a(1)(b).

WHEREAS, the City of Ludington certifies that the Travon, Inc., located at 130 West Ludington Avenue is located within the Ludington Downtown Development Authority Downtown District.

NOW, THEREFORE BE IT RESOLVED, that the City of Ludington supports the Redevelopment Liquor License Application for Travon, Inc. above all others and certifies that said establishment is within the Ludington Downtown Development Authority District.

Moved by Councilor Castonia, seconded by Councilor Tykoski, that the Resolution Approving the Application for a Class C Liquor License for Travon Inc. the site of the former LeServing Spoon Restaurant be adopted. Councilor Rathsack asked what a Class C Liquor License was and City Attorney Wilson stated that this is a tavern license that allows the serving of beer, wine and spirits on the premise. Motion Carried.

**RESOLUTION APPROVING THE APPLICATION FOR A CLASS C LIQUOR LICENSE FOR  
CREEDKBED BEVERAGE, LLC dba BEST CHOICE MARKET**

WHEREAS, Creekbed Beverage, LLC, dba as Best Choice Market, has made application for a new Class C License issued under MCL 436.1521a(1)(b), located at 222 West Ludington Avenue City of Ludington, Mason County, Michigan.

WHEREAS, the State of Michigan Liquor Control Commission requires that the City of Ludington support the application by Creekbed Beverage LLC above all others in obtaining this new Redevelopment Liquor License under MCL 436.1251a(1)(b).

WHEREAS, the City of Ludington certifies that Creekbed Beverage LLC located at 222 West Ludington Avenue is located within the Ludington Downtown Development Authority Downtown District.

NOW, THEREFORE BE IT RESOLVED, that the City of Ludington supports the Redevelopment Liquor License Application for Creekbed Beverage LLC above all others and certifies that said establishment is within the Ludington Downtown Development Authority District.

Moved by Councilor Castonia, seconded by Councilor Tykoski, that the Resolution Approving the Application for a Class C Liquor License for Creekbed Beverage LLC be adopted. Councilor Holman asked once a bottle of wine was re-corked in the establishment would the purchased be able to leave the establishment with the re-corked bottle of wine. Police Chief Barnett explained that the recorking of a bottle means that it is resealing the bottle so that it can be transported legally. City Attorney Wilson asked if they are going to retain their SDM license and it was assured that it would be retained. Councilor Rathsack asked if there was a limit to the number of liquor licenses that can be issued. Chief Barnett stated that the State of Michigan has changed the way they handle liquor licenses and have come up with redevelopment license which allows businesses to encourage places to redevelop their property and serve the people spirits as a way to encourage business growth.. City Attorney Wilson stated that the number of regular liquor license is limited to the population. The State has come up with other options to get liquor licenses. In regard to the redevelopment liquor licenses in the DDA, there are a lot more available than the traditional liquor licenses. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Tykoski, to approve the request by Ludrock, Inc. to hold Ludrock 2016 at the City Park on July 9 and 10, 2016, with the stipulation that the event goes to 9 p.m. on Saturday, July 9. Councilor Holman commented that the City had questions when they reviewed this application and she stated that Ludrock, Inc. raised over \$37,000 in 2015 and has paid out \$20,000 to various organizations of which she provided these names to Council. Police Chief Barnet explained that the money donated to the police reserves was in exchange for the police reserves donating their time at this event for security. Motion Carried.

Councilor Castonia presented the September Monthly Police Activity Report.

#### ORDINANCE NO. 317-15

Short Title: An ordinance to amend the City of Ludington Zoning Ordinance No. 23-00, as amended.

THE CITY OF LUDINGTON ORDAINS:

Section 1.

ARTICLE 800.5, Section 800.5:1 shall be amended to read as follows:

ARTICLE 800.5 PROHIBITED SIGNS

SECTION 800.5:1 The signs and devices listed in this Section shall not be permitted, erected, or maintained in any district.

- (1) Signs which incorporate in any manner any flashing or moving lights.
- (2) String lights used in connection with commercial premises for commercial purposes, except in outdoor cafes' with approved electrical permit as required in the Ludington Outdoor Regulations and Guidelines.
- (3) Any sign or sign structure which is structurally unsafe; or constitutes a hazard to safety or health by reason of location, inadequate maintenance, dilapidation or abandonment, or is not kept in good repair; or is capable of causing electrical shocks to persons likely to come in contact with it.
- (4) Any sign which by reason of its size, location, content, colorings, or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers or by obstructing or detracting from the visibility of any traffic sign or control device on public streets or roads.
- (5) There shall be no red or blue or green illumination on any sign located in the same line of vision as a traffic control system. All light sources used for the illumination of signs or buildings or areas surrounding them, or for the illumination of display merchandise or products shall be completely shielded from view of vehicular traffic using roads abutting such properties.

Section 800.7:4 Revised 11/15/04

- (6) Signs which make use of words such as "STOP", "LOOK," "DANGER," or any other words, phrases, symbols, or characters, in such a manner as to interfere with, mislead, or confuse traffic.
- (7) Any sign which obstructs free ingress to or egress from a required door, window, fire escape, or other required exit.
- (8) Any sign unlawfully installed, erected, or maintained.
- (9) Any sign now or hereafter existing which no longer advertises a bona fide business conducted or product sold upon the premises.
- (10) Portable signs except as listed in SECTION 800.4:2.
- (11) Signs or posters attached to trees, telephone poles, public benches, street lights, or placed on any public property or public right-of-way.
- (12) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign. This does not apply to allowed portable signs or to signs or lettering on buses, taxis, or vehicles operating during the normal course of business.
- (13) Roof signs, or any sign extending above the height of the roof of a building located on the same lot.

Section 2. Severability: It is the legislative intent of the City Council that all provisions of this Ordinance be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the City. Should any provision of this Ordinance or part thereof be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions, and the remainder of this Ordinance shall stand, notwithstanding the invalidity of any such provision thereof.

Section 3. Repeal: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. **Effective Date:** This ordinance shall take effect twenty (20) days after publication.

Councilor Winczewski explained that the Blu Moon came to the Planning Commission as they had applied for a bump-out with MDOT and placed table and chairs on the sidewalk. People were not sitting outside and so they put lights out there and many people sat out there to eat. The Code Enforcement Officer then told Blu Moon that the lights went against the City's code so they had to take these lights down. People stopped sitting outside to eat as it was too dark and unfriendly. Blu Moon brought this request to have the string lights back to the Planning Commission who is recommending this change to be made to the Code. Moved by Councilor Winczewski, seconded by Councilor Krauch, to adopt Ordinance No. 317-15. Councilor Rathsack asked what the hours were for outdoor dining. It was explained that the outdoor dining was allowed while the restaurant was open.

Roll Call: Ayes: Councilors Holman, Rathsack, Winczewski, Krauch, Johnson, Tykoski, and Castonia.

Nays: None. Motion Carried.

CITY OF LUDINGTON ORDINANCE NO. 318-15

An ordinance to add Article VII to Chapter 6 of the City Code, being Section 6-210 through Section 6-218, to establish a residential rental properties inspections program.

THE CITY OF LUDINGTON ORDAINS:

Section I:

Section 6-210 through Section 6-218 shall be added to the City Code for the City of Ludington and shall read as follows:

Sec. 6-210. Purpose.

(a) The purposes of this chapter are to establish minimum standards for dwellings offered for rent or lease, to authorize inspections of such dwellings, to establish certain responsibilities and duties of landlords and occupants essential to make such dwellings safe, sanitary and fit for human habitation, provide for registration with the Building Inspector, to require a certificate of compliance issued by the Building Inspector and to designate penalties for violations of this chapter.

Sec. 6-211. Definitions.

(a) "Boarding House/Rooming House" shall be as defined in the City of Ludington Zoning Ordinance.

(b) "Certificate of Compliance" means a document issued by the Inspector stating the dwelling has passed inspection and complies with local codes and requirements.

(c) "Dwelling" means any house, room, boarding house/rooming house or apartment, which is wholly or partly used or intended to be used for living, sleeping, cooking and eating. Hotels, motels, bed & breakfasts and resorts shall not be defined as a dwelling for purpose of this chapter.

(d) "Fee" means a fee determined from time to time by Council resolution. Such fee shall be charged each time the inspector makes an on-site inspection of any dwelling that comes within the meaning of this chapter.

(e) "Landlord" means any person, firm, partnership, association, corporation, company or organization of any kind owning or offering for rent or lease any dwelling or dwelling unit within the City.

(f) "Ludington Property Maintenance Code" shall be the Ludington Property Maintenance Code as adopted by the City of Ludington as Ordinance 24-00 as amended.

(g) "Parcel" means a tract of land identified by a single parcel identification number on the ad valorem property tax rolls of the City.

(h) "Rental Dwelling" means any dwelling which is rented, leased or offered for rent or lease within the City.

(i) "Rental Dwelling Unit" a portion of a rental dwelling for an individual, couple, a single family, or other living unit.

(j) "Smoke Detector Ordinance" is section 6-86 through 6-91 of the City Code.

(k) "Transfer of Ownership" shall have the meaning ascribed to it as set forth in MCL 211.27a, or any subsequent sections or statutes of the same import.

Sec. 6-212. Minimum Standards for Rental Dwellings

The minimum standards for any rental dwelling maintenance shall be those contained in the Ludington Property Maintenance Code as adopted by the City of Ludington.

Sec. 6-213. Registration of Rental Dwellings

(a) All rental dwellings shall be registered with the City by the owner.

(b) All rental dwellings existing as of the effective date of this Ordinance shall be registered no later than March 15, 2016.

(c) The landlord of a new rental dwelling or of any dwelling newly converted to a rental dwelling shall register the rental dwelling prior to allowing occupancy of any new units.

(d) Upon a transfer of ownership of a rental dwelling, the new owner of rental dwellings already registered with the City shall re-register within sixty (60) days of assuming ownership.

(e) A landlord shall re-register the dwelling every three (3) years or if the landlord adds any additional dwelling units in or to the rental dwelling.

(f) Failure of the landlord to register his or her rented or leased dwelling is a violation of this chapter, and the landlord shall be subject to a non-registration fee of \$500 for each unit not timely registered.

(g) It shall be unlawful for any landlord to rent any dwelling or dwelling unit that is not registered.

Sec. 6-214. Certificate of Compliance

Every rental dwelling within the City of Ludington, other than exempt rental dwellings as described in subsection 6-215(f), must receive a certificate of compliance. Such certificate shall be issued upon passing an inspection or, in the case of newly constructed rental dwelling units meeting current building code requirements, upon issuance of a certificate of occupancy by the Building Inspector and registration of the newly constructed rental dwelling units under this Article. A certificate of compliance issued in connection with new construction shall be valid for three years. Such certificate of compliance must be displayed in the rental dwelling unit or made available to any tenant upon request. Such certificate of compliance must be renewed in accordance with the schedule for inspections as provided in section 6-215. Displaying a certificate of compliance in a non-inspected or non-compliant rental unit shall be a violation of this ordinance.

Sec. 6-215. Inspections by building inspector prior to permit issuance

(a) The Building Inspector or his or her agent shall make the necessary inspections required for the purpose of enforcing this chapter. He/She shall determine if the dwelling meets the minimum standards set forth in the Ludington Property Maintenance Code. In recognition of the fact that many rental dwellings within the City of Ludington predate the Ludington Property Maintenance Code, the Building Inspector may, in the exercise of his or her professional judgment, waive any requirement of the Property Maintenance Code which, in the opinion of the Building Inspector (i) does not jeopardize the health, safety or welfare of the occupants of the rental dwelling, (ii) would be unreasonably costly to the Landlord to repair or replace in light of the benefits that would be achieved, and (iii) is not contrary to the purposes and intents of this Article.

(b) Inspections will be conducted on a three-year cycle.

(c) The Building Inspector shall establish an inspection schedule. Notice shall be mailed to each landlord at least 30 calendar days prior to the scheduled inspection. It shall be the responsibility of the landlord to notify and make arrangements with the tenant for access to the dwelling or rental unit for purposes of conducting the inspection. If the inspection as scheduled creates undo hardship, the inspection can be rescheduled by notifying the building inspector at least 24 hours prior to scheduled inspection.

(d) After the first year of inspections, all rental dwelling units that have been inspected must have certificates of compliance prior to occupancy of a rental dwelling unit. After the second year, all rental dwelling units that have been inspected in the first two years must have certificates of compliance prior to occupancy of a rental dwelling. Effective three years after ordinance adoption, all rental dwellings units within the City shall have certificates of compliance prior to occupancy of a rental dwelling unit.

(e) Nothing in this Ordinance shall prevent the Building Inspector from making additional inspections either based upon complaints, referrals from other governmental agencies, or otherwise, to enforce the Ludington Property Maintenance Code or other applicable laws, ordinances or regulations. Upon receiving a complaint, the Building Inspector shall notify the landlord of the nature of the complaint and shall provide the landlord a reasonable opportunity to resolve the complaint before scheduling an inspection. All complaints from tenants shall be in writing. If a tenant submits a written complaint regarding the condition of the tenant's rental dwelling unit, the tenant shall pay the City the appropriate inspection fee prior to the Building Inspector inspecting the rental dwelling unit.

(f) In the event that the Building Inspector finds violations of the Ludington Property Maintenance Code or Smoke Detector Ordinance, the Building Inspector shall make re-inspections to ensure compliance with the Ludington Property Maintenance Code and the Smoke Detector Ordinance.

(g) A rental unit shall be exempt from inspection under this Ordinance if and so long as the U.S. Department of Housing and Urban Development (HUD) and/or the Michigan State Housing Development Authority (MSHDA) inspect such rental unit and such rental unit has passed such inspection.

(h) If a landlord owns 6 or more rental dwelling units located on a single parcel, the City shall randomly select one-half of the rental dwelling units for inspection. For each rental dwelling unit that does not pass inspection, an additional rental dwelling unit shall be inspected.

(i) Any person directly affected by a decision or determination of the Building Inspector or any notice or order issued by the Building Inspector may appeal to the Construction Board of Appeals in accordance with Section 111 of the Ludington Property Maintenance Code.

#### Sec. 6-216. Fees

There shall be imposed, pursuant to these sections, various fees as established from time to time by the City Council by resolution. City Council shall review the schedule of fees not less frequently than every three years.

#### Sec. 6-217. Additional inspections

If the Building Inspector, based upon his/her inspection finds that there is reasonable cause to believe that additional inspections are necessary, for which the Building Inspector is not qualified to inspect, such as mechanical, plumbing or electrical inspections, the Building Inspector may require the landlord to have such additional inspections at the landlord's expense and to provide the Inspector with proof that such identified items are not in violation of any applicable codes, or with proof that such items have been repaired so that they comply with such codes.

#### Sec. 6-218. Penalty

Any person (as defined in Section 1-2 of the City Code) who violates any provision of this chapter, including failure of a landlord to register a rental dwelling, failure or refusal to allow an inspection or re-inspection, failure to pay any fee required or failure to obtain an additional inspection and provide proof of compliance with applicable codes, shall be guilty of a municipal civil infraction as provided in Section 1-7 of the City Code. The Building Inspector or any other City employee or official designated by the City Manager, in writing, is authorized to issue citations for violations of this chapter.

#### Sec. 6-219 – 6-240. – Reserved.

Section 2: Severability: Should any provisions of this Ordinance or any part thereof be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions hereof or of any other provisions of the Code of Ordinances of the City of Ludington.

Section 3: Effective Date: This Ordinance shall be effective 20 days after publication.

Councilor Winczewski commented on the concerns brought up during public comment and then asked that City Attorney Wilson explain the U. S. District Court Ohio case regarding the Fourth Amendment violation which was

brought up in public comment. City Attorney Wilson explained that this was a district court opinion in the southern district of Ohio (a trial court opinion) issued in a summary case disposition. The lawsuit was against the City of Portsmouth, Ohio and the court found that the rental inspection ordinance was a violation of the Fourth Amendment. There were some factors such as the City of Portsmouth ordinance required that you would have to get a permit before you could offer a unit for rent and if you did not get the permit this would be considered a crime. If you failed to allow an inspection your permit would be revoked or condemnation procedures would begin. The biggest factor was that if the property owner/landlord did not consent to the inspection, this would be a crime. The judge then ruled these factors as unconstitutional. City Attorney Wilson then noted that the 6<sup>th</sup> Circuit Court of Appeals in 2001 upheld the constitutionality of an rental inspection ordinance in the City of Akron and found that rental inspection ordinances served a legitimate governmental objective in maintaining safe rental housing and that a rental inspection ordinance was a reasonable means of advancing legitimate government interests in discovering housing code violations. The ordinance referred to in the 6<sup>th</sup> Circuit Court of Appeals is similar to the one that the City of Ludington is looking at currently as the City of Ludington has no criminal penalties in the rental inspection ordinance. The Portsmouth rental inspection ordinance did not allow any appellate rights with no appeal processes. The City of Ludington has two appeal processes. City Attorney Wilson stated that we are in compliance with the constitution of the United States and the rental inspection ordinance is legal according to the 6<sup>th</sup> Circuit Court of Appeals.

Councilor Winczewski continued her comments on those provided during public comment. The City does work on housing problems and enforcement issues with the City getting a list of enforcement issues each month. She then referred to the rental inspection program in Manistee. She commented that Planning Commission members have the right to make public comments on their own accord. The City did not ask them to speak, they spoke on their own. City Attorney Wilson commented that the City does have a valid City Code. In 1999 the BOCA Code was replaced by the Property Maintenance Code. In 2000, former City Attorney Anderson drafted a Ludington Property Maintenance Code by taking parts of the International Property Maintenance Code and placing them into the Ludington Property Maintenance Code. The International Property Maintenance Code is a copy-righted document and the City could not violate the copyright agreement so the City obtained a license from BOCA International to obtain 15 licenses and a summary was published in the newspaper. The license has expired and Attorney Wilson has been in touch with BOCA International and they are in the process of renewing the license for the City and allow the City to publish this on their website. In 2004, the City revoked the International Property Maintenance Code not the Ludington Property Maintenance Code.

Moved by Councilor Winczewski, seconded by Councilor Krauch, to adopt Ordinance No. 318-15 and request a review of this ordinance one year from now. Councilor Krauch asked if the City were looking for a progress report. Councilor Winczewski thought that a progress report would be good but the City has all of the notes from past meetings which should be addressed one year from now.

Roll Call: Ayes: Councilors Castonia, Winczewski, Tykoski, Rathsack, and Krauch.

Nays: Councilors Holman and Johnson. Motion Carried.

City Manager Shay explained that Tom Rotta has submitted his 295<sup>th</sup> FOIA request dated October 9, 2015 where he is requesting some employee timesheets from the Police Department and this request was granted in part and denied in part. The part denied was for timesheets for the undercover officer on the SSCENT drug team. Tom Rotta has appealed the denial. Moved by Councilor Holman, seconded by Councilor Tykoski, to affirm the FOIA Coordinator's response dated October 16, 2015 to Tom Rotta's FOIA request dated October 9, 2015. Motion Carried.

His Honor Mayor Cox asked that City Council go into closed session in the conference room to review the attorney letter on a grievance filed by FOP. Moved by Councilor Castonia, seconded by Councilor Holman, to go into closed session at 8:39 o'clock p.m.

Roll Call: Ayes: Councilors Krauch, Castonia, Johnson, Rathsack, Holman, Tykoski, and Winczewski.

Nays: None. Motion Carried.

Moved by the Councilor Holman, second by Councilor Tykoski, to invite the City Attorney Wilson, City Manager Shay, City Clerk and City Treasurer to attend the closed session. Motion Carried.

City Council came back into regular session at 9:13 o'clock p.m.

Moved by Councilor Johnson, seconded by Councilor Rathsack, to come out of closed session. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Holman, that the meeting be adjourned. So carried at 9:15 o'clock p.m.

---

Deborah L. Luskin, City Clerk