# LEGISLATIVE, FINANCE AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee meeting was held on February 11, 2013, at 6:00 p.m. with Chairman Lynn presiding. Members present were Mr. Anderson, Mr. Hare, Mr. Rushe, and Mr. Shevock. Members of Council present were Council President Leary, Mr. Dixon, Mr. Perza, Mr. Bonar, Mrs. Williams (arrived at 6:12 p.m.), and Mr. Hutchison. Mayor Carey was also present.

**AGENDA ADDITIONS/DELETIONS**

**Mr. Shevock moved for approval of the agenda as presented, seconded by Mr. Anderson and unanimously carried.**

**Purchase of In-Car Computers that Integrate with the Ten Video Systems Purchased Previously with Office of Highway Safety (OHS) Funds**

During their Regular Meeting of January 14, 2013, City Council approved the purchase of ten in-car video systems with funds granted from the Office of Highway Safety. Police Chief Hosfelt reminded members that these systems are not stand alone systems in the vehicles and require that an integrated computer component be installed in the vehicle to function as intended. The computer component is proprietary and must be purchased from the same sole source vendor, HubData911.

Police Chief Hosfelt explained that there are five (5) mobile computer replacements and associated vehicle mounts funded in the Police Department's FY13 computer replacement and vehicle equipment funding lines. In addition, grant funds are being secured to fund the additional five (5) mobile computers and associated vehicle mounts, for a total of ten in-car computer and video systems for the City's patrol fleet. These ten systems would upgrade and replace ten older systems in the fleet, which would replace the last of the VHS technology in-car camera systems and update a few of the older digital camera systems.

Police Chief Hosfelt stated that this matter had previously been considered; however, since some of the grant funding had been redirected, it was felt that this matter should be reconsidered for approval. He noted that half of the funding ($32,245) was included in the City's Budget and the remaining half would be obtained from State grant funding, for a total amount of $64,490 for the purchase of the in-car computers.

**Mr. Anderson moved to recommend approval of staff's recommendation to purchase ten (10) in-car computers and associated vehicle mounts necessary for the operation of the in-car video systems. The motion was seconded by Mr. Shevock and unanimously carried.**

**Proposed Ordinance - Staff Substitute #1 for Ordinance #2013-03 - Amending Chapter 22 - Buildings and Building Regulations, Article XII - Vacant Buildings**

During their meeting of January 14, 2013, members considered proposed Ordinance #2013-03 amending Chapter 22 - Buildings and Building Regulations, Article XII - Vacant Buildings. After much discussion, members referred the matter back to staff to allow them to hold a workshop to develop amendments for consideration and staff was instructed to include residential properties.

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that staff met with Mr. Phil McGinnis, Policy Director for the Kent County Association of Realtors,

and, as a result, Staff Substitute #1 for Ordinance #2013-03 was developed. She explained that the two (2) main differences were reflected in Lines 21-26, which is a change in the definition of a vacant building, and Line 116, which would extend the exemption to those buildings that are actively being offered for sale or lease from three (3) to five (5) years.

Staff recommended adoption of Staff Substitute #1 for Ordinance #2013-03.

Responding to Mr. Perza, Mrs. Townshend stated that the definition of an unoccupied building/property, for the purpose of this section of the Code, would include those properties that are not occupied in accordance with their intended use. She noted that, should a building have a change in its use which did not require a zoning amendment, there would still be a requirement for the City to review its current use.

Mr. Perza suggested that the proposed ordinance include a specific definition for an unoccupied building.

Mr. Phil McGinnis, 555 E. Loockerman Street, reviewed comments regarding the proposed amendment ***(Attachment #1)***.

Responding to Mr. Hare, Mrs. Townshend indicated that the additional amendments presented by Mr. McGinnis had not been incorporated into the proposed Ordinance; however, she indicated no objections.

**Mr. Hare moved to recommend approval of Staff Substitute #1 for Ordinance #2013-03, stipulating that it include those changes presented by Mr. McGinnis *(Attachment #2)*, seconded by Mr. Anderson and unanimously carried.**

**Staff Substitute #1 for Ordinance #2013-04 - Amending Chapter 22 - Buildings and Building Regulations, Article X - Rental Dwellings**

During their Regular Meeting of January 28, 2013, City Council considered proposed Ordinance #2013-04 amending Chapter 22 - Buildings and Building Regulations, Article X - Rental Dwellings, without a recommendation by the Committee. Mrs. Ann Marie Townshend, Director of Planning and Community Development, had advised members that several concerns were relayed during the Committee meeting and in a letter from local Realtors. As a result, she met with Deputy City Solicitor William Pepper, Police Chief James Hosfelt, MCpl. Paul Bernat, and Councilman Lynn to develop two (2) staff amendments. These amendments were presented to City Council for their review and consideration, which resulted in additional recommendations by City Council. After much discussion, it was suggested that all of the amendments proposed during the discussion be consolidated and presented as a whole. Therefore, City Council referred the matter back to the Committee for their review and recommendation.

Mrs. Townshend reviewed the proposed amendments, indicating that they would address previously relayed concerns and incorporate the suggestions made by the Committee as well as City Council.

She explained the dire need for the proposed ordinance, not just for a few bad landlords and/or neighborhoods, but for the entire City.

In support of the proposed amendments, Police Chief Hosfelt stated that they would provide the Police Department and City another tool to help evict those individuals who are "bringing down" the City and noted that each Council District would benefit from such an ordinance. He advised members that such programs have had great success, citing the Dover Housing Authority and several other apartment managers, throughout the City. As an example, he stated that there was one (1) major incident in a Dover Housing Authority residence last year and within 24 hours, there was a U-Haul outside of the residence. Since then, there have been no major problems, explaining that this approach sends a clear message to the neighborhood and goes hand in hand with the Downtown Safety Task Force and the Wells Fargo Grant initiative and would support all issues the City has been attempting to address and eradicate. Although landlords may not initially like the new regulations, Chief Hosfelt felt confident that they would realize that the regulations serve as a tool to help them with problem tenants.

Mr. Lynn advised members that since the Justice of the Peace Court in Delaware has exclusive jurisdiction over all landlord/tenant actions, Chief Magistrate Alan G. Davis was requested to review the proposed ordinance amendments and noted that his comments were provided to members ***(Attachment #3).*** On behalf of the Committee, he relayed great appreciation to Chief Magistrate Davis for taking his time to review and comment on this matter. In addition, Mr. Lynn noted the receipt of correspondence received from Mr. William Hickcox ***(Attachment #4).***

Mr. Anderson reiterated his concerns and noted that they were also mentioned by Chief Magistrate Davis; therefore, he suggested the following amendments: 1) change SA#1 (a)(1) from "Any arrest for a Felony" to "Any conviction for a Felony"; and 2) change SA#1 (a)(2) from "Three or more arrests for Class A Misdemeanors within a 12-month period" to "Three or more arrests for Class A Misdemeanors or above within a 12-month period." Otherwise, he stated that the City would be in court fighting the American Civil Liberties Union (ACLU) and everyone else, which he would not object to as long as the City had a "strong hand." Mr. Anderson stated that the heart of this ordinance was absolutely necessary and was not punishing landlords, but rather protecting them (property values, enhanced ability to safeguard their property and property rights), as well as the surrounding residents. Rather than viewing the amendments as a punishment to landlords, he stated that it should be viewed as something that empowers landlords to be a part of keeping the community safe.

Mr. Hare again relayed his objections with creating requirements for excellent landlords who have never caused problems in order to address issues created by other landlords. He suggested that only those landlords who have had violations or issues be made to take the required landlord class. Those landlords that opt out of taking the class and then have a problem would be required to pay a severe penalty ($200) and be mandated to then take the class. He stated his understanding of the need for the requirements but felt that they should specifically be for problematic landlords rather than penalizing all landlords by requiring them to take the class.

Mr. Rushe explained his concern with the City infringing upon the property rights of both landlord and tenants. Referring to the letter received from Chief Magistrate Davis, he noted that there were such laws already in the Delaware Code, although it refers to convictions rather than arrests.

Mr. Bonar advised members that other than the naming of Martin Luther King Jr. Boulevard, this issue had resulted in the receipt of more phone calls than any other issue in his time serving as a member of City Council. He referred to an email received from a local property owner who operates a bed and breakfast and also serves as a Realtor, and read a portion of the email, as follows:: *"We have made a very large investment in this City and want to promote Dover in both of the businesses but I have to tell my guests where it is safe to walk. Our current tenant is in an apartment and she tells me she is afraid to go out at night because of the gangs of young men who hang out in the alley and obvious drug activity that goes on in the neighborhood."* Mr. Bonar stated that this property owner asked if the City could do something about these concerns. He felt it was Council's responsibility to take action and that the proposed ordinance was a step in the right direction.

In response to Mr. Bonar, Mr. Pepper stated that he had worked with staff (Mrs. Townshend and Police Chief Hosfelt) as well as Mr. Lynn in the development of the proposed ordinance and amendments. He noted that the concept was to apply the Department of Housing and Urban Development (HUD) regulations that apply to public housing to all rental housing throughout the City. He assured members that HUD regulations had been upheld in Delaware and if there is criminal activity in public housing, the individuals involved can be evicted, noting that there was no requirement of a conviction. Mr. Pepper felt that the City may be "pushing it" by instituting the regulations on just an arrest, particularly for those crimes that are less than Class A misdemeanors. Noting that the purpose was to maintain a quality of life, he suggested the inclusion of a list of crimes.

Mr. Bonar stated his desire for the City to err more on the side of caution and make sure that citizenry is not subjected to undue legal expenses when it can be avoided. Responding, Mr. Pepper noted that the noise ordinance, which requires eviction after a certain threshold, would not be covered under the Delaware Code referred to by the Chief Magistrate; therefore, he stated that the City had already gone into "uncharted waters." However, he stated that he was not aware of how many cases of eviction there had been under the noise ordinance since the City Solicitor's Office is not typically involved. Mr. Bonar questioned if the Police Department or Planning and Community Development Department would have such records.

Responding to Mr. Hutchison, Mrs. Townshend stated that the proposed ordinance was compatible with all federally funded housing.

Mr. Bonar also expressed concern with the City applying guidelines that are relevant to a federally funded jurisdiction to those of a privately owned rental unit whose occupants do not receive any subsidy.

Mr. Perza indicated his concurrence with several comments that had been made by Mr. Rushe regarding future impacts; with Mr. Bonar regarding the state of our neighborhoods and the concerns of the growth of Dover and desires of our neighborhoods in the future; and with Mr. Pepper, particularly regarding the notice requirement as it pertains to what is required of a tenant. He expressed his reservations regarding leaving a vague decision up to the Chief of Police or any City official, suggesting that offenses and requirements be very specific and include a defined list.

Mr. Joseph E. Bauer, Sr., 135 Old Forge Drive (Hamlet), advised members that he had observed members discussing their concerns about how the proposed ordinance would affect problem tenants and landlords. He advised members that these situations affect him and his wife as residents. Upon retirement in 1995, they moved into their residence and, for the love of the area, they purchased the property in 1998. He stated that the first couple of years were nice; however, he stated that now, when the weather is nice, it is necessary for him to observe who is outside in order to avoid a confrontation. Mr. Bauer stated that it is a regular occurrence for police officers to pay visits to other residents. He indicated that his property was recently appraised at the same level as when it was purchased in 1998, and though he acknowledged that the economy had been down, he thought there would have been some growth since 1998. Having observed other properties in the neighborhood, he stated that he could plainly see that it was not the same type of neighborhood as it was in 1995. Although there was concern for those that the proposed ordinance would directly affect, Mr. Bauer requested that members also consider and understand the deleterious affects these problems have caused to other residents who live in the City and pay taxes. He relayed his support for the proposed ordinance and felt that it would help keep his neighborhood at its current level and allow for it to grow into the type of neighborhood it was when he first moved into the area.

Mr. Steve Wilson, 51 Greenwood Drive, stated his observation that there are no longer middle-class developments in the City and there is an abundance of apartments being bought by investors who do not live in Delaware. These investors immediately apply for Section 8 Housing so that they will not have to fix these buildings up. He noted that there are other agencies that house mental patients, sex offenders, or legitimate criminals that would otherwise be in mental institutions, halfway houses, or prisons. He advised members that these landlords are aware of what is occurring with their tenants but they have no interest in anything but money. Mr. Wilson suggested that the housing authorities make sure that only those that are entitled to live at a residence are actually living there, explaining that on several occasions individuals from another area are arrested. He felt that if the City would take the time to contact the jurisdiction from which the arrested individuals come, their benefits would be terminated due to non-residency. He felt that more effort should be made to cross reference so that many of the problems could be eliminated.

Ms. Mary Jane Starkey, 139 Old Forge Drive, advised members that the property next door to her is a problem for the City. The landlord lives in New Jersey and does nothing for the property unless the City becomes involved. She indicated that the fence in the back and front of the property is currently in bad shape. The landlord has had to install three (3) new storm doors recently because the tenants destroy them. She stated that, as adjacent property owners, they have done everything possible to have something done with the landlord as well as the tenants. She stated that two (2)

boys who were tenants have both been arrested and convicted for serious crimes involving guns. Ms. Starkey advised members that one of the boys was responsible for assaulting an individual in the area and is due to be released soon, and that this is very frightening. She indicated that these boys have been observed carrying a dog by its ears, using a kitten as a basketball, etc. She stated that police are constantly being observed swarming the neighborhood. Although she understands the concerns some members have regarding good landlords, she explained that it was unfair for good residents to pay for bad residents.

Ms. Ami Sebastian-Hauer, Executive Director of the Dover Housing Authority, advised members of the Dover Housing Authority's experience with the "one strike you're out" policy. In 1996, HUD authorized all housing authorities to adopt a policy that would allow them to evict tenants/participants in Section 8 for criminal activity. She stated that the policy addresses criminal activity, explaining that individuals do not need to be arrested, nor must there be a conviction in order to evict a tenant. All tenants in public housing and Section 8 are required to follow the policies. If DHA becomes aware of any violation, they allow for due process, providing seven (7) days for repair. Management talks to the individual, and if it is discovered that the violation has not been corrected to their satisfaction, then the tenant is convicted. Ms. Sebastian-Hauer reminded members of a major shooting that occurred at Manchester Square in 2010. It was discovered that two (2) of the Dover Housing Authority's tenants housed two (2) of the shooters and allowed guns to be brought into the public housing units. These tenants were given 24 hour evictions and left within that time frame. She reiterated that the Dover Housing Authority is permitted to terminate Section 8 assistance based on an individual's participation in criminal and drug related activity and no arrest or conviction is necessary.

At the request of Mrs. Williams, Ms. Sebastian-Hauer advised members that since the policy went into effect, the Dover Housing Authority has been proactive and has reviewed the issues as a whole. Noting that they provide program and services for families, she explained that they began to address "soft" skills, assure children have after school activities, and improve developments by increasing lighting and installing security cameras. As a result of these actions, she stated that the housing stock has improved and that they have been able to decrease their maintenance staff from 15 to eight (8).

Mr. Phil McGinnis, 555 E. Loockerman Street, stated that he represents the Kent County Association of Realtors (KCAR) and reviewed comments regarding the proposed amendment ***(Attachment #5)***.

Mrs. Townshend stated no objections to incorporating the suggestions provided by the KCAR and felt that they would provide clarification.

**Mr. Hare moved to recommend referring Staff Substitute #1 for Ordinance #2013-04 back to staff, to allow for the inclusion of the changes presented by Mr. McGinnis and to ensure that the concerns relayed by Chief Magistrate Davis are addressed. The motion was seconded by Mr. Shevock and carried by a roll call vote of three (3) yes and two (2) no (Mr. Anderson and Mr. Lynn).**

**Proposed Charter Amendments**

Due to time constraints, Chairman Lynn stated that the Proposed Charter Amendments (Agenda Items #3A, 3B, and 3C) would be deferred until the next meeting.

**By unanimous consent, the meeting adjourned at 7:01 P.M.**

Sean M. Lynn
Chairman

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*Attachments*

*Attachment #1 - Comments - Kent County Association of Realtors® - Vacant Building Ordinance*
*Attachment #2 Staff Substitute #1 for Ordinance #2013-03 with Amendments*
*Attachment #3 - Letter Dated February 11, 2013 - Chief Magistrate Alan G. Davis Regarding Staff Substitute #1 for Ordinance #2013-04*
*Attachment #4 - Letter Dated February 8, 2013 - Mr. William Hickcox Regarding Staff Substitute #1 for Ordinance #2013-04*
*Attachment #5 - Comments - Kent County Association of Realtors® - Crime Free Housing Program Ordinance*

**COMMENTS FOR CITY OF DOVER LEG & FIN CMTE**

**MEETING OF FEBRUARY 11, 2013 * 6:00 PM**

**KENT COUNTY ASSOCIATION OF REALTORS®**

**(1) VACANT BUILDING ORDINANCE**

THE KENT COUNTY ASSOCIATION OF REALTORS® SUPPORTS THE CITY'S EFFORTS IN ATTEMPTING TO FIND A SOLUTION TO THE VACANT BUILDING PROBLEM THAT PERSISTS THROUGHOUT OUR CURRENT ECONOMIC STRUGGLES, AND WE EXPRESS OUR SINCERE APPRECIATION FOR THE OPPORTUNITY TO WORK WITH MS TOWNSHEND IN MODIFYING THE ORIGINAL PROPOSAL TO SATISFY OUR CONCERNS ABOUT THE ISSUES RAISED AT THE MEETING OF JANUARY 22ND.

WE HAVE THREE CONCERNS REMAINING IN TWO SECTIONS OF THE ORDINANCE, AND WE PROPOSE THE FOLLOWING MODIFICATIONS :

IN SECTION 22-400. Purpose; applicability; definitions, SUBSECTION (C) (2)

WE PROPOSE THE PARAGRAPH BE AMENDED AS FOLLOWS :

(2) "Actively for sale or lease means the building is being actively marketed through a licensed real estate broker, ~~or the owner~~ or the owner who is regularly advertising the property in newspapers circulated in and around Dover, it is being offered for sale or lease at a cost of no more than 25 percent over market rate as determined by the city assessor, and the building is in reasonable condition for sale or lease, including but not limited to: no trash has collected inside or outside of the building, the utilities are functional, and it is not being used as storage that is unrelated to the former use."

THE ORIGINAL PROPOSAL IS TO ELIMINATE THE OWNER FROM AN EXEMPTION FOR ACTIVELY MARKETING A VACANT PROPERTY, AND WE BELIEVE OWNERS SHOULD BE ABLE TO SELL THEIR OWN PROPERTIES. WE NOTE THAT THE ISSUE

CONCERNING NEWSPAPER ADVERTISING IS LINKED TO THE OWNERS SELLING THEIR OWN PROPERTIES, BECAUSE NEWSPAPER ADVERTISING IS NOT A REGULAR COMPONENT OF A PROFESSIONAL REAL ESTATE BROKER'S MARKETING PLAN.

WE POINT OUT THAT THE REVISED DEFINITION OF "VACANT BUILDING" IMPROVES THIS ORDINANCE GREATLY, AND WE SUPPORT THE CHANGE IN THE DEFINITION OF VACANT BUILDING.

SECONDLY

IN SECTION 22-405. Exemptions—Types of buildings eligible for exemption status from the registration fee.

WE PROPOSE THE SECTION BE AMENDED AS FOLLOWS :

(a) The following are exempt from the registration: The building has fire damage. The owner has 90 days to file for a permit to start construction or demolition or it will be determined a vacant property.

(b) The following properties shall be registered as vacant, but they are exempt from the registration fee:

(1) The building is actively being offered for sale or lease ***by a licensed real estate agent or broker*** for a maximum period of ~~three~~ ***five*** years~~.~~, a~~A~~fter such time this article will be in effect ~~***with fourth year fee due***~~. Proof of activity shall fall on the owner to provide. See definition.

(2) THE BUILDING IS ACTIVELY AND OPENLY BEING OFFERED FOR SALE OR LEASE BY THE PROPERTY OWNER.

(3) The owner has obtained a building permit and is progressing in an expedient manner to prepare the premises for occupancy.

(4) The property is in probate or where the owner has entered a long term care facility within six months of the building being vacant.

(5) The property is undergoing currently environmental cleanup or assessment.

~~***(c) Failure to register. If the property is registered by City of Dover staff after the property owner has been notified that the building(s) is vacant per definition then the property owner/agent will not be entitled to exemption from fees.***~~

***(c) FAILURE TO REGISTER. IF THE OWNER OF THE PROPERTY FAILS TO REGISTER THE PROPERTY WITH THE CITY OF DOVER WITHIN THIRTY (30) DAYS OF NOTIFICATION TO DO SO BY THE CITY OF DOVER STAFF, THEN THE PROPERTY OWNER/AGENT MAY NOT BE ENTITLED TO EXEMPTION FROM FEES.***

THE WORDING OF THE ORDINANCE SHOULD BE MADE SIMPLE. THE FEES ARE NOT BEING ASSESSED FOR A PERIOD OF FIVE YEARS, AT WHICH TIME THE FEES WOULD NO LONGER BE WAIVED. AT THAT TIME, THE FEE SCHEDULE WOULD GOVERN THE FEES TO BE COLLECTED.

FURTHER, AS WE STATED EARLIER, PROPERTY OWNERS SHOULD BE ENTITLED TO MARKET THEIR OWN PROPERTIES, SO LONG AS THEY ARE ACTIVE AND OPEN ABOUT IT, SO THEY SHOULD HAVE THE EXEMPTION OPPORTUNITY IN THIS SECTION. FINALLY, WE ARE NOT PLAYING GOLF, SO CALLING A FOUL ON YOURSELF IS UNREASONABLE TO EXPECT. FURTHER, BECAUSE THERE IS A DEMONSTRATED CONFUSION ON WHAT IS VACANT AND WHAT IS NOT, WE BELIEVE THE CITY SHOULD CONTACT THE PROPERTY OWNER OR AGENT, CLAIM "VACANT BUILDING," AND EXPECT THE PROPERTY OWNER OR AGENT TO THEN REGISTER THE BUILDING ACCORDINGLY. FAILURE TO DO SO WOULD RESULT IN LOSS OF EXEMPTION. THIS PROCESS AFFORDS AN APPEAL OF DECISION AND A PRESUMPTION OF INNOCENCE BEFORE PENALTIES ARE ASSESSED.

OTHERWISE WE SUPPORT THE LANGUAGE IN THE AMENDMENTS AS SUBMITTED.

THANK YOU LADIES AND GENTLEMEN.

CITY OF DOVER
STAFF SUBSTITUTE #1 FOR
ORDINANCE #2013-03
(as amended by the Legislative, Finance and Administration Committee)

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Chapter 22 – Buildings and Building Regulations, Article XII – Vacant Buildings be amended by deleting the text shown in red bold strikethrough and inserting the text in blue bold italics as follows:

ARTICLE XII. - VACANT BUILDINGS

Sec. 22-400. - Purpose; applicability; definitions.

(a) Purpose. The purpose and intent of this article is to establish a registration and identification program of vacant buildings within the city. Vacant buildings are detrimental to the surrounding buildings and neighborhoods in which they exist. The article is also to ensure the public health, safety and welfare insofar as they are affected by vacant buildings within the city. The health, safety and welfare of the neighborhoods in which vacant buildings are located are of the utmost importance to the city, as is the general community character in which these vacant buildings are located.

(b) Applicability. The provisions of this article shall apply to all matters affecting or relating to vacant buildings. Where, in this article, different sections of this Code may specify different requirements, the most restrictive shall govern.

(c) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribe to them in this subsection, except where the context clearly indicates a different meaning.

(1) Vacant building means a building, structure, ***or dwelling that has been unoccupied for more than three consecutive months; or a commercial tenant space greater than 10,000 square feet in an otherwise occupied building, that has been left unoccupied for more than three consecutivemonths.*** ~~**residential structure or a dwelling unit or commercial unit within a building that has been left unoccupied or unattended for three months or more.**~~

(2) Actively for sale or lease means the building is being actively marketed through a licensed real estate broker or the owner who is regularly advertising the property in newspapers circulated in and around Dover, it is being offered for sale or lease at a cost of no more than 25 percent over market rate as determined by the city assessor,

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and the building is in reasonable condition for sale or lease, including but not limited to: no trash has collected inside or outside of the building, the utilities are functional, and it is not being used as storage that is unrelated to the former use.

Sec. 22-401. - Monitoring, inspection and condition standards.

(a) The building inspector shall inspect any premises in the city for the purpose of enforcing and assuring compliance with the provisions of this article. Upon request of the building inspector, an owner shall provide access to all interior portions of a vacant building in order to permit a complete inspection.

Once a building/structure/unit or residence (hereon after referred to as building) is registered as a vacant building, the vacant building shall be inspected annually for as long as it is considered vacant.

**(b)** The vacant building shall be secured; ~~**however the windows and other entrances shall not be boarded or made opaque.**~~ ***the exterior building and premises shall be maintained in accordance with all City of Dover Code requirements.***

(c) The vacant building shall be in reasonable condition (all utilities shall be functional, there shall be no trash or debris inside or outside the building and it shall not to be used as storage that is unrelated to the former use).

Sec. 22-402. - Agent—Responsible person required.

(a) Property manager. Any owner of a vacant building, residing outside of the county, shall be required to have a licensed property manager residing or having an office located in the county, or a family member or other designated individual who does not manage any other real estate for a fee and who resides in the county acting as a property manager. The property manager, including family members and designated individuals, shall have charge, care and control of the vacant building, and shall provide access to the vacant building for inspection upon request by the building inspector, within ~~**90**~~ ***30*** days.

(b) Corporate or partnership owners. Any corporation or partnership owning a vacant building shall have a designated member, partner, or employee having charge, care and control of the vacant building. The designated member, partner or employee shall reside in or have an office located in the county, or shall be required to have a licensed property manager residing or having an office located in the county, or other designated individual who does not manage any other real estate for a fee, and who resides in the county, acting as a property manager. The property manager, or other designated individuals shall have charge, care and control of the vacant building, and shall provide access to the vacant building for inspection, upon request by the building inspector, within ~~**90**~~ ***30*** days.

Sec. 22-403. - Registration and registration fee.

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(a) Registration of building. There are two ways to register the building as vacant.

(1) The owner shall register with the city not later than 30 days after any building in the city becomes vacant, as defined.

The registration of the vacant building shall include the site address, the name of the current owner or owners, current address of the owner and of all applicable owners, tax parcel number, proof of insurance on the building, description of the condition of the building, plans for the building (to eliminate the vacancy), the responsible person or agent and their contact information and any other applicable information. If any information changes the owner is responsible for informing the city of those changes in a timely manner.

(2) The building inspector or his designee, shall investigate any property that may be subject to registration. Based upon his findings, the building inspector may register the property as a vacant building subject to this chapter.

a. Notice of registration. Within five business days of such registration, the licensing and permitting office shall notify the owners of the registered property by certified mail at their last known address according to the records of the city and Kent County.

b. Registration fee.

(i) The annual registration fee shall be paid at the time of registration. If the building inspector registers the building as vacant the fee shall be due not later than 30 days after the building is registered as vacant. The annual registration fee will then be due ~~by the 31st of March~~ ***on the registration anniversary date*** every year after that as long as it remains vacant. The starting point for counting a building as being vacant will begin on the date of the enactment of this article [June 26, 2006].

~~(ii) The registration fee will be prorated for a building when it is first registered as vacant from the date it is registered until the March 31 annual fee is due.~~

(iii) The annual fee is as provided for in Appendix F—Fees and Fines.

Sec. 22-404. - Violation and penalties.

(a) If the registration fee is not paid within 30 days of being due, the owner shall be in violation of this article.

(1) A lien can be assessed against the property. Such fees shall be entered in the municipal lien docket as a lien owing the city, and the same may be turned over to the city solicitor for collection.

(2) The fee will be assessed to the parcel's tax bill.

(3) The fee shall be paid in full prior to the transfer of title.

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(4) The fee shall be paid in full prior to the issuance of any building permits for the subject building and for any other building that is owned by the owner within the city.

~~a. If the building is taken off of the list during the year the owner is entitled to receive a prorated portion of that year's registration fee.~~

Sec. 22-405. - Exemptions—Types of buildings eligible for exemption status from the registration fee.

(a) The following are exempt from the registration: The building has fire damage. The owner has 90 days to file for a permit to start construction or demolition or it will be determined a vacant property.

(b) The following properties shall be registered as vacant, but they are exempt from the registration fee:

(1) The building is actively being offered for sale or lease for a maximum period of ~~three~~ *five* years. After such time this article will be in effect. Proof of activity shall fall on the owner to provide. See definition.

(2) The owner has obtained a building permit and is progressing in an expedient manner to prepare the premises for occupancy.

(3) The property is in probate or where the owner has entered a long term care facility within six months of the building being vacant.

(4) The property is undergoing currently environmental cleanup or assessment.

***(c) Failure to register. If the owner of the property fails to register the property with the City of Dover within thirty (30) days of notification to do so by the City of Dover staff, then the property owner/agent may not be entitled to exemption from the fees.***

Sec. 22-406. - Appeals.

(a) ~~An~~ *Any* appeal of the building inspector's decision must be made in writing within 30 days of the decision. The appeal would be heard by the property maintenance code board of appeals.

(b) An appeal of the 25 percent over market rate (from the actively for sale or lease definition) can be considered through an appraisal using accepted appraisal standards to determine market rate. The owner has the option of asking the city tax assessor to perform the appraisal or having one performed (using accepted appraisal standards) at their own expense.

BE IT FURTHER ORDAINED:

That Appendix F – Fees and Fines, Chapter 22 – Buildings and Building Regulations, Article XII – Vacant Buildings, be amended

| *Chapter 22—Buildings and Building Regulations, Article XII—Vacant Buildings* |
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| *Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued,* |

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| *shall be automatically doubled in amount.* | | | |
| Sec. 22-403 | Registration and Registration Fees | | |
| | Subsec. (a)(2)b.(iii) | Registration fee | |
| | ***Residential buildings and non-residential buildings <10,000 SF*** | Buildings vacant one year or less; ..... | $250.00 |
| | ***Residential buildings and non-residential buildings <10,000 SF*** | Buildings vacant for more than one year but less than two years ..... | $500.00 |
| | ***Residential buildings and non-residential buildings <10,000 SF*** | >Buildings vacant for more than two years but less than five years; ..... | $1,000.00 |
| | ***Residential buildings and non-residential buildings <10,000 SF*** | Buildings vacant for five years or longer ..... | $2,000.00 |
| | ***Non-residential buildings ≥ 10,000 SF*** | ***Buildings vacant one year or less; .....*** | ***$500.00*** |
| | ***Non-residential buildings ≥ 10,000 SF*** | ***Buildings vacant for more than one year but less than two years .....*** | ***$1,000.00*** |
| | ***Non-residential buildings ≥ 10,000 SF*** | ***>Buildings vacant for more than two years but less than five years; .....*** | ***$2,000.00*** |
| | ***Non-residential buildings ≥ 10,000 SF*** | ***Buildings vacant for five years or longer .....*** | ***$4,000.00*** |

## SYNOPSIS

The proposed ordinance is primarily housekeeping and would improve the administration of the Vacant Building Ordinance. In addition, it would set separate, increased fees for vacant commercial properties greater than or equal to 10,000 square feet in floor area.

DRAFT

STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

5 E. PINE STREET
GEORGETOWN, DELAWARE 19947
TELEPHONE: (302) 856-5871
FAX: (302) 856-5919

ALAN G. DAVIS
CHIEF MAGISTRATE

2 PENNS WAY
SUITE 100 B
NEW CASTLE, DELAWARE 19720
TELEPHONE: (302) 323-4530

February 11, 2013

Councilman Sean Lynn
City of Dover
P.O. Box 475
Dover, DE 19903

Dear Councilman Lynn,

At your request, I have had an opportunity to review the proposed ordinance 2013-04 regarding the implementation of a crime-free housing strategy. Please note that, because this Court could potentially be required to rule on specific issues presented by the ordinance, as a matter of judicial ethics I cannot provide you with a legal analysis or suggest that the Court will rule on a particular issue in one fashion or another. My comments are expressly mine and limited to the extent possible to administrative concerns, though I will raise possible general legal considerations that this ordinance may present if passed in its current form.

The proposed ordinance sets up a structure whereby licensed landlords within the City of Dover shall be required to attend a crime-free housing training on a regular basis and insert in their leases specific provisions regarding limitations on criminal activity by the tenant. In the instance that a tenant breaches these provisions, upon notice by a City of Dover official, the ordinance requires the landlord to initiate an action for summary possession.

While I applaud your interest in addressing crime in the city, and have no particular sentiment as to the approach of focusing on leased housing, I feel the need to raise a few issues that you and the Council might want to consider in examining the matter:

- Strict enforcement of this ordinance could potentially tax the resources of this Court. All civil actions in Kent County are heard at Justice of the Peace Court #16. We have a single judge assigned solely to civil matters. We already adjudicate over 7,000 cases a year in this manner, a number that approaches our limitations of effectively handling cases without adjusting judicial and physical plant resources. A significant influx of new cases associated with this ordinance could put the court in the position of having to seek the necessary resources to modify our current conditions. I would ask if any analysis of the number of cases that might be generated has been performed that the results be shared with me and also, if one has not been done, it should be, so that I can better consider our options.

- The ordinance requires that a landlord "prosecute to effect" an action for possession. It would be helpful to define this language. It could be read to mean that the landlord must prevail in the possession action in order not to run afoul of the penalties contained in the ordinance.

- The ordinance makes no provision for anything other than a written lease. Oral leases are not proscribed by the State Code. Unless the City has previously mandated written leases, a written addendum would prove problematic for those currently operating under something other than a written lease.

- The provisions of the required addendum and the actions upon which the ordinance will be invoked are divergent. The form of the addendum does not define the criminal activity prohibited. The ordinance later states that an arrest or multiple arrests for certain actions will invoke necessary action on the part of the landlord. Both the landlord and the tenant should be on notice of what is prohibited.

- The provision providing the Chief of Police discretion to state a pattern of police activity such that will invoke necessary action on the part of the landlord runs the risk of being unenforceable as a result of lack of specificity for either the landlord or the tenant.

- Prior to implementation of this ordinance, you may wish to inquire with DELJIS whether the dissemination of criminal history data required in this ordinance constitutes a violation of State law and DELJIS policy, or if there is some manner of dissemination that would meet their criteria.

- Though Title 25, Chapter 57 of the Delaware Code provides that a violation of the covenants of the lease are grounds for the initiation of eviction proceedings, the grounds upon which the City would require landlords to bring an action for summary possession may contradict a provision of the Code that states that such proceedings may be brought where a "tenant is convicted of a class A misdemeanor or any felony … which caused or threatened to cause irreparable harm to any person or property." Obviously the State policy with regard to the allowance of such proceedings, as set forth in the statute, requires conviction rather than arrest.

Again, thank you for the opportunity to review this proposed ordinance. I hope that the issues I have raised will assist you in make this a better product as you move forward. If I can be of additional assistance, please feel free to contact me.

Sincerely,

Alan G. Davis
Chief Magistrate

AGD/jlh
cc: Hon. Ernst Arndt
Jill Vaughn
Jody Huber

February 8, 2013

Dover City Council Members
Dover City Clerk
Mayor Carey

Dear City of Dover officials:

I am writing to express my disappointment in the newly proposed rental ordinance which puts yet another burden on the law abiding landlords in the City of Dover. I have owned rental properties in the City of Dover for the past 12 years. During that time I've never received a single complaint from a tenant, a neighbor of a tenant, or any other person regarding their activities. I have received a couple of notes from the City regarding grass needing mowing when the tenant was on vacation and those were rectified immediately. However, because of the actions of a minority of the property owners, I am now going to be required to accommodate another requirement.

This new ordinance if passed will certainly be followed by all the good, conscientious, law abiding landlords. However, it is very clear that those people are not the problem. The problem is and will continue to be the renegade landlords that aren't interested in following the rules, but making a quick buck on run down properties. This ordinance will not change bad behavior into good behavior. Rather than continue to punish all of the landlords regardless of their record, why not consider a focused effort on the violators. If the focus of council and the city administration would be on those few individuals that are the majority of the problem, you will not be over legislating on those of us who are not.

While I agree with the concept that all property owners must commence eviction proceedings once they are made aware of illegal activity in or on their property, I strongly oppose the concept of having to sit through a class on the subject. It is an insult to my intelligence to suggest that I need to have a class (even an online class) to teach me the difference between right and wrong or what activity is appropriate or not. I have a masters degree in business administration and certainly believe that I am capable of understanding Council's intentions without sitting through a class. I consider my time to be extremely valuable and am extremely upset that Council believes they have the right to legislate my free time activities.

I respectfully request that this ordinance be voted down, or at the very least amended to remove the requirement for law abiding property owners to sit through a class (even if it is online).
Thank you for your time and consideration.

Respectfully,

William B. Hickox
44 Shinnecock Road
Dover, DE 19904
Whickox44@gmail.com

**COMMENTS FOR CITY OF DOVER LEG & FIN CMTE**

**MEETING OF FEBRUARY 11, 2013 * 6:00 PM**

**KENT COUNTY ASSOCIATION OF REALTORS®**

**(2) CRIME FREE HOUSING PROGRAM ORDINANCE**

THE KENT COUNTY ASSOCIATION OF REALTORS® SUPPORTS THE CITY'S EFFORTS IN ATTEMPTING TO FIND A SOLUTION TO THE CRIMINAL ACTIVITY OCCURRING IN RENTAL HOUSING, AND WE EXPRESS OUR SINCERE APPRECIATION FOR THE OPPORTUNITY TO WORK WITH MS TOWNSHEND IN MODIFYING THE ORIGINAL PROPOSAL TO SATISFY OUR CONCERNS ABOUT THE ISSUES RAISED AT THE MEETING OF JANUARY 22ND.

WE HAVE A COUPLE OF CONCERNS REMAINING IN ONLY ONE SECTION OF THE ORDINANCE, AND WE PROPOSE THE FOLLOWING MODIFICATIONS :

WE BELIEVE THAT SECTION 22-373 IS MIS-NAMED, AND SUGGEST ELIMINATING SUSPENSION OF RENTAL PERMIT AND CALLING IT "EVICTION REQUIRED."

IN *SECTION 22-373.* ~~*Suspension of Rental Permit.*~~ *EVICTION REQUIRED.*

***(a) The following crime free lease addendum violations shall require that the property owner or manager initiate immediate eviction:***

***1) Any arrest for a Felony;***

***2) Three or more arrests for Class A Misdemeanors within a 12-month period; or***

***3) Other arrests, where the Chief of Police recommends eviction due to the frequency or nature of the arrests.***

***(b) Upon notification by the Chief of Police that eviction is required in accordance with subsection (a), the Department of Planning and Inspections shall notify the property owner and property manager that he has 30 days to initiate the eviction OR OTHERWISE TERMINATE THE TENANCY. Such notice shall be sent by certified mail to the property owner and property manager if a property manager is on record with the***

***Department of Planning and Inspections.*** ~~***, prior to suspension of the rental permits.***~~

*(c)FAILURE TO BEGIN PROCEEDINGS TO TERMINATE THE TENANCY IN ACCORDANCE WITH SUBSECTION (b) MAY RESULT IN SUSPENSION OF THE RENTAL PERMIT.*

WE BELIEVE THAT THE PROPERTY OWNER OR THE MANAGER SHOULD BE ADEQUATELY NOTIFIED AS TO THE CRIMINAL ACTIVITY SINCE MANY ARRESTS ARE NOT COMMONLY KNOWN, AND WE SHOULD NOT ALLOW MIS- OR UN-INFORMED OWNERS AND MANAGERS TO BE HELD ACCOUNTABLE FOR A TENANT'S TRANSGRESSIONS WHEN THE PROPERTY OWNER OR MANAGER WOULD OTHERWISE BE WILLING TO COOPERATE AND CONFORM TO THE INTENTIONS OF THIS ORDINANCE.

SO IF AN AUTHORITY SUCH AS THE POLICE OR PLANNING DEPARTMENT NOTIFIES THE OWNER OR MANAGER ABOUT ARRESTS, THEN THE OWNER OR MANAGER CAN THEN MAKE ARRANGEMENTS TO TERMINATE THE TENANCY, EITHER BY EVICTION, OR LEASE DEFAULT, OR EVEN MUTUAL AGREEMENT IN SOME CASES.

WE UNDERSTAND PERFECTLY IF THE OWNER OR MANAGER IGNORES THE NOTICE THAT DISCIPLINARY ACTION MAY BE REQUIRED, BUT WE DO NOT BELIEVE THAT REQUIRING AN EVICTION, OR ANY SPECIFIC REMEDY, SUPERCEDES THE ULTIMATE GOAL OF TERMINATING THE TENANCY. SO WE BELIEVE OUR SUGGESTED CHANGES WILL ALLOW FOR ALTERNATIVES TO EVICTION THAT ULTIMATELY RESULTS IN THE REMOVAL OF THE TENANT, YET ALLOWS FOR REASONABLE EXPLANATIONS IN THE EVENT THE PROCESS GOES SIDEWAYS.

OTHERWISE WE SUPPORT THE LANGUAGE IN THE AMENDMENTS AS SUBMITTED.

THANK YOU LADIES AND GENTLEMEN, FOR THE OPPORTUNITY TO ADDRESS THESE IMPORTANT ISSUES WITH YOU THIS EVENING.