



MEMORANDUM

DATE: January 7, 2016
TO: Members of the Planning Commission, & Administrator Kreft
FROM: Cynthia Smith Strack, Community Development Director
RE: Item 5.1 Rental Ordinance Update

REQUEST: Discussion of Rental Ordinance Update.

GENERAL INFORMATION

In a 2008 Mn. Supreme Court decision (*City of Morris v. Sax Investments*) the court ruled city rental ordinances may not supersede building code requirements as provided under Mn. Stat. 326B.121, Subd. 2.

The city's official rental code includes language relating to: minimum room dimensions, kitchens, windows, ventilation, mechanical/electrical/plumbing standards, means of egress, life safety requirements, general building requirements, and exterior building requirements. Those standards are not currently enforced as they are in conflict with Mn. Stat. 326B.121.

To remedy the conflict City of Belle Plaine Building Official Scott McCarty has redlined the existing rental code. The redlined version has been forwarded to the City Attorney for review and comment. City Administrator Kreft has indicated review by the Planning Commission prior to the City Council is appropriate.

REQUEST

Discussion regarding approach to the update is kindly requested (e.g. detailed section by section review at PC workshop session, general review of draft a regular meeting, cursory review by the PC followed by a joint workshop with Council).

**CITY OF BELLE PLAINE
ORDINANCE 16-01**

**AN ORDINANCE REPEALING AND REPLACING SECTION 1107.23 OF THE CITY CODE
REGARDING RENTAL HOUSING INSPECTION**

WHEREAS, the Belle Plaine Planning and Zoning Commission routinely studies sections of the land use Code and recommends updates (a) to meet current and emerging needs, (b) to be consistent with statutory changes and case law, and (c) to be ensure consistency with the Comprehensive Plan; and,

WHEREAS, the City has determined Section 1107.23 of the City Code relating to rental housing inspection is in need of updating to reflect recent case law; and,

WHEREAS, after proper published and posted notice, the Planning Commission held a public hearing on the proposed ordinance repealing and replacing Section 1107.23 of the Code; and,

WHEREAS, after conducting the public hearing the Planning Commission held discussion regarding proposed Ordinance 16-01 and recommended the City Council approve Ordinance 16.01; and,

WHEREAS, after proper published and posted notice, the City Council held a public hearing on proposed ordinance 16-01 repealing and replacing Section 1107.23 of the City Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLE PLAINE DOES ORDAIN: Existing City Code Section 1107.23 is hereby repealed and replaced with a new Section 1107.23, the text of which is found in Exhibit A of this Ordinance and attached hereto.

The adoption of the foregoing Ordinance was duly moved by Council Member _____ and seconded by Council Member, and after full discussion thereof and upon a vote being taken thereon, the following Council Members voted in favor thereof: _____.

and the following voted against the same: _____.

Passed and duly adopted by the City Council of the City of Belle Plaine this 19th day of January, 2016.

Mike Pingalore, Mayor

ATTEST:

Holly J. Kreft, City Administrator

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SECTION 1107.23 HOUSING ORDINANCE FOR RENTAL PROPERTY

1107.23 SUBD. 1. PURPOSE.

1. To provide minimum standards to safeguard life or limb, health and public welfare by regulating and controlling the use and occupancy, maintenance and repair of all buildings and structures within the City of Belle Plaine used for the purpose of rental housing.
2. To not create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Section.

1107.23 SUBD. 2. SCOPE.

1. Shall apply to all buildings or portions thereof used, or designed or intended to be rented, leased or let for human habitation.
2. Shall apply to dwellings in existence at the time of adoption of this Section.
3. Shall not apply to nursing homes, motels, hotels, or bed and breakfast inns.

1107.23 SUBD. 3. APPLICABILITY TO EXISTING BUILDINGS.

1. Additions, alterations, or repairs shall be done in compliance with the Building, Fire, Plumbing, Mechanical and Electrical Codes. Applicable permits shall apply as required by these Codes.
2. Properties not existing as Rental Property at the time of adoption of this Section and afterward becoming Rental Property shall, before being certified, comply with all the provisions of this Section. Properties pre-existing at the adoption of this Section shall be allowed a reasonable time to comply. Reasonable time being defined on a case-by-case basis subject to the discretion of the Building Official.

1107.23 SUBD. 4. DEFINITIONS.

1. "Building Official" means any person designated by the City to perform inspections and determine compliance with the applicable rules, standards, statutes, and ordinances.
2. "Licensed Owner" means any person, firm or corporation who alone, jointly, or severally with others, shall be in actual possession of, or have charge, care, or control of any dwelling, dwelling unit, or residential rental property within the City as an owner, employee, or agent of the owner or a trustee or guardian of the estate or person of the title holder.
3. "Residential Rental Property" means any dwelling unit not occupied by the homestead owner of record. Such a unit may be a single-family dwelling, a separate and independent housekeeping unit within a single-family dwelling, a group home, one unit of a two-family dwelling, or a portion of a multiple-family dwelling, any of which are available by lease, by use, by rent, or for any other good and valuable consideration whether occupied or vacant at the present time.
4. "Unsafe conditions" mean conditions which in the opinion of the Building Official reasonable constitute an imminent threat to health, life, safety, or property.

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1107.23 SUBD. 5. RENTAL HOUSING LICENSE REQUIRED

1. License Required. It is unlawful for any person to hereafter occupy, allow to be occupied, advertise for occupancy, solicit occupants of, or let to another person for occupancy any residential rental property within the City for which there is not an effective license.
2. Application. The owner or manager of a structure, in which one (1) or more dwelling units or rooming units are let or intended to be let, shall make application for a rental housing license prior to letting the unit, unless such unit is currently licensed. Initial application and renewal shall be made upon an application form furnished by the City. The application shall be subject to a fee as may be established by the City under ordinance or resolution. The Building Official may issue a temporary rental housing license not exceeding three (3) months in duration in order to bring the unit into compliance with this Section.
3. Information Requirement. The Application shall contain, at a minimum, the following information:
 - a. Name, address, email address, and phone number of the property owner and, if owner is not a natural person, the name, address, email address, and phone number of a designated agent for the owner.
 - b. The name, phone number, and address of any authorized property manager or property management representative.
 - c. The street address of the rental property.
 - d. The number and types of units within the rental property (dwelling units or sleeping rooms).
4. The Licensed Owner is responsible for notifying the City of changes in ownership of the rental property within thirty (30) calendar days of sale of the property.
5. Issuance. The Building Official shall issue a rental housing license for each dwelling, dwelling unit or rooming unit, when upon inspection finds such unit meets or exceeds the minimum requirements set forth by this Section; also a rental housing license shall be issued for each dwelling, dwelling unit or rooming unit, when a variance has been granted by the Board of Appeals; provided, however, it is found that no condition exists, in a shared or public area of the building or in any other part of the unit, which could endanger the health or safety of the occupants of such unit or of the public.
6. License availability. Licenses shall be made available upon request.
7. Posting. Every owner of residential rental property shall conspicuously post a copy of the current license (in a frame with transparent cover) in a public corridor, hallway, or lobby of the rental property for which it is issued. For properties with one or two units, the owner must post the license certificate in a frame with a transparent cover in such a manner so as to be easily viewed and readable in the building for which it was issued.
8. Renewals. A rental housing license shall expire two (2) years after the date of issuance. Re-inspection of all dwellings, dwelling units or rooming units shall be required prior to issuance of a new license. Applications for licenses shall be made in writing on forms provided by the City and accompanied by the fee amounts as established by the City Council. Such application shall be submitted at least sixty (60) days prior to the expiration date of the license.
9. Transfer of Ownership. No later than thirty (30) days after licensed residential rental property is sold, the purchaser must provide written notice to the City of the

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purchase, provide the City with the information required under Section 1107.23, Subd 12(3) and pay a fee for transferring a license, if required. Failure to make application within the specified time limit shall result in automatic forfeiture of the license. Relicensing of any property for which the license has been forfeited shall require application for a new license.

10. License Suspension or Revocation. A Rental Housing License may be suspended or revoked as prescribed in this Section:
 - a. Every license or permit issued under this Section is subject to the City's right, which is hereby expressly reserved, to suspend or revoke the same should the license holder or their agents, employees, representatives, or lessees directly or indirectly operate or maintain rental dwellings contrary to the provisions of this Section or any other City Code provision, or any use permit issued by the City or the laws of the State of Minnesota.
 - b. Any license may be suspended or revoked at any time during the life of said license for good cause, including but not limited to, the following:
 - i. False or misleading information given or provided in connection with the initial license application or renewal;
 - ii. Failure to pay any fee herein provided for;
 - iii. Failure to allow access for the rental inspection;
 - iv. Failure to correct violations in the time period prescribed;
 - v. Violations committed or permitted by the licensed owner and/or the owner's designated agent, of any rules, codes, statutes and ordinances relating to, pertaining to, or governing the license and the premises.
 - c. No license shall be suspended or revoked until the licensed owner has been afforded an opportunity for a hearing. The hearing shall be before the City Council and shall be evidentiary in nature. The City Council shall determine whether or not a violation has occurred warranting revocation of the rental license. The decision of the City Council shall be final and subject only to any rights of review or appeal to the state courts as provided by Statute. The licensed owner must request a hearing in writing within 30 days of receiving a notice of intent to revoke the rental license. If a written request for a hearing is not received from the licensed owner the right to an evidentiary hearing is deemed waived and the City may presume the truth and accuracy of the violations alleged. The City Council may order restoration of the rental license if the licensed owner establishes by clear and convincing evidence that one of the following two circumstances then exist:
 - i. The property has been sold since the occurrence of the original violation to a party unrelated to the original owner. The sale must be for a fair consideration, negotiated at arm's length, and by Deed duly recorded.
 - ii. The licensed owner demonstrates to the City Council that any condition leading to suspension or revocation has been properly responded to, that measures have been taken to successfully correct the violation which originally resulted in the revocation, and that additional steps have been taken to assure that similar violations do not occur in the future.

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1107.23 SUBD. 6. INSPECTIONS.

1. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this Section, or when the Building Official has reasonable cause to believe that there exists in a building or upon a premises a condition that is contrary to or in violation of this Section, the Building Official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Section, provided that property owner is notified and either property owner or tenant or other person having charge or control of the building or premises permits entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.
2. Property owners and their agents shall permit the Building Official to inspect all premises governed by this Section to determine if the building is operated as a rental property and/or to determine compliance with the provisions of this section, and shall fully cooperate with such inspections at any time, on reasonable notice. The property owners or their agents shall make reasonable efforts to notify tenants of planned inspections of their rental units to the extent required by state law.
3. Failure of a property owner to obey any of the requirements of this subdivision shall subject the property owner to suspension or revocation of license, in addition to other remedies and/or penalties provided by law. Any such suspension or revocation shall continue until the inspection sought has been completed, any violations satisfactorily remedied and any outstanding fees or penalties have been paid.
4. Complaint Inspections. The Building Official shall inspect a unit upon receiving a legitimate complaint. Complainant's name shall be kept confidential pursuant to the Minnesota Data Privacy Act. Upon inspection and finding a violation the inspector shall notify the owner, manager or tenant in writing to correct the violation. The owner or manager may request an advisory inspection of a unit. Prior to contacting the City, tenants shall first notify the building owner of a complaint in writing, requesting action to correct the issue. Issues relating to immediate life safety are exempt from the notification provision of this Subsection.

1107.23 SUBD. 7. COMPLIANCE ORDER.

1. Whenever the Building Official determines that any residential rental property or the premises surrounding a residential rental property, fails to meet the provisions of this Section, the Building Official may issue a compliance order setting forth the violations of the code and ordering the owner, occupant, operator, or agent to correct such violations. The compliance order must:
 - a. Be in writing and be personally delivered or mailed to the owner of the subject property at the last known address of record;
 - b. Describe the location and nature of the violations of this Section or any other applicable City Code Section;
 - c. Establish a reasonable time, not to exceed 90 days, for the correction of such violations;
 - d. Include information regarding the owner's right to appeal the order and the procedure to be followed in filing such an appeal;
 - e. State that in the event the violations are not corrected within the time set in the compliance order, the license may be suspended or that the necessary

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work may be performed by the City at the expense of the owner and that if the owner does not pay for the expense, the cost of the work will be assessed against the property.

2. Failure to correct violations within the time period stated in the correction order may result in an administrative penalty to be set by Council resolution, as well as other sanctions provided by law or this ordinance. If the correction order relates to actions or omissions of the occupant, and the occupant fails to make the necessary correction, the owner may be required to remedy the condition by whatever means necessary. No adverse action shall be taken against an owner for failure to remedy a condition during the pendency of a bona fide eviction proceeding being pursued diligently by the owner.
3. Extensions may be granted by the Building Official. The request shall be made in writing with justifiable cause demonstrated for the requested extension. All requests shall be made and delivered to the Building Official prior to the expiration date of the violation or violations.
4. Compliance Order – Unsafe Conditions.
 - a. Buildings or portions thereof determined to have unsafe conditions as defined in Section 1107.23, Subd. 4, as may be amended, are hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal as provided for under Chapter 4 of the City Code as may be amended.
 - b. No occupancy shall be permitted for any dwelling or rental unit when, in the opinion of the Building Official, there exists an unsafe condition as defined in Section.
 - c. Notice to Vacate. The Building Official shall have the authority to issue a Notice to Vacate Order on any building that is, in the opinion of the Building Official and as defined in this Section, deemed unsafe. The notice to vacate shall be served on the property owner and posted on each entrance to the building. The notice to vacate shall recite the emergency or conditions that necessitate vacation and shall require that no person be allowed to remain in or enter the building, except that entry may be made to repair, demolish, or remove such building if allowed by any required permit. The posted notice to vacate will include the following: *“Do not Enter. This premise is unsafe or illegal to occupy. It is a misdemeanor to occupy this building or to remove or deface this notice”*. In addition, the notice to vacate shall be signed by the Building Official and include contact information for the Building Official. The notice to vacate shall remain posted until corrective action has been taken and verified by the Building Official.
 - d. As determined by the Building Official, situations in which unsafe conditions exist are exempt from the 90 day ‘reasonable time’ correction period as defined in Section 1107.23, Subd. 7(1)(c).

1107.23 SUBD. 8. APPEAL PROCESS.

1. When it is alleged by any person to whom a correction order is directed that such order is based upon erroneous interpretation of the applicable rules, standards, statutes, or ordinance or a mistake in fact finding, such person may appeal the correction order to the Board of Zoning Appeals and Adjustments as established under the City Code Chapter 206.

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2. The appeal shall be in writing and must specify the grounds for the appeal. The appeal must be filed within thirty (30) calendar days after receiving the correction order. Upon receipt of the written appeal the City shall set a date for a hearing and give the appellant at least fourteen (14) days prior written notice of the date, time, and place of the hearing. By mutual agreement between the appellant and the City the fourteen (14) day notice may be waived.
3. The appellant shall have the right to appear and be represented by counsel. The Board of Zoning Appeals and Adjustments shall hear and consider the matter within thirty-days (30) of the filing of an appeal. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Official determines that such a stay would cause imminent peril to life, health, or property.
4. The Board of Zoning Appeals and Adjustment shall issue its recommendation to the Council and the appellant in writing within thirty-days (30) after the hearing. The Council shall thereafter affirm, modify or reverse the correction order upon such terms as the Council deems necessary to accomplish the purposes of this ordinance. A copy of the decision shall be mailed to the appellant.

1107.23 SUBD. 9. GENERAL REQUIREMENTS.

No dwelling or dwelling unit shall be let for occupancy to another, which does not comply with the following requirements:

1. Condition. Owner shall furnish and maintain approved devices, equipment or facilities for the prevention of insect and rodent infestation, and when infestation has taken place, shall be responsible for any insects, rodents or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.
2. Smoke Detectors. No smoke detector installed in a rental dwelling shall be allowed to remain disabled or nonfunctional. The tenant of a rental dwelling shall notify the owner or manager within 24 hours of discovering that a detector is disabled or not functioning. The owner or manager shall take immediate action to render the smoke detector operational or replace it. .
3. Carbon Monoxide Alarms. Each rental dwelling, dwelling unit or rooming unit shall have an approved and operational carbon monoxide alarm installed within ten (10) feet of all sleeping rooms as required by Minnesota Statutes §§ 299F.50 and 51, as amended, unless an exception listed in Section 299F.51, Subd. 5, applies.
4. Fire Extinguishers. All rental units shall be equipped with a fire extinguisher with a minimum rating of 2A 10BC. The extinguisher shall be located within the individual dwelling unit or in a common hallway or corridor within fifty (50) feet of the dwelling unit door.
5. Fire Suppression/Alarm Systems. All fire suppression/alarm systems shall be maintained in accordance with the current Minnesota State Fire Code.
6. Structural. All existing structural components are deemed acceptable provided that, in the opinion of the Building Official , such components have been properly maintained and do not make the building or property hazardous as defined by Mn. Stat. § 463.15 – 463.261 as may be amended.
7. Plumbing. All plumbing shall be maintained in a safe and sanitary condition.
8. Mechanical. All mechanical equipment, venting and ducting shall be maintained in a safe manner.

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9. Electrical. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe manner.
10. Storage of Items. Combustible items shall not be stored within one (1) foot of any fuel burning appliance. Storage of items shall be orderly and shall not block or obstruct exits or access to equipment.
11. Means of Egress.
 - a. Within the unit(s). A minimum three (3) foot wide path shall be maintained to all points of egress (i.e. front/main door and egress windows in sleeping rooms).
 - b. Common area outside the units. Hallways, stairs and other common paths of travel shall be clear of storage items for the full width of the means of egress system.
12. Refuse. The property owner or property manager shall provide an adequate number of refuse containers to contain the amount of refuse produced on the property or as required by City Code Section 401.00 Refuse and Litter. Tenants shall properly dispose of their recyclables, rubbish, garbage and other organic waste.
13. Unused or Discarded Items. Discarded, unused and junk appliances, furniture, mattresses and other items shall be promptly removed from the premises, but in all cases such removal shall occur within seven (7) days.
14. Fuel Storage. LP tanks, gasoline containers and fueled equipment shall not be stored or repaired in an apartment building or individual rental unit.
15. Barbecues and Open Flames. No person shall kindle, maintain, or cause any fire or open flame on any balcony above ground level, on any roof, or on any ground floor patio within fifteen (15) feet of any structure. Further, no person shall store or use any fuel, barbecue, torch or similar heating or lighting chemicals or device in such locations.
16. Sidewalks and Driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
17. Defacement of Property. If a rental dwelling is defaced by graffiti, the graffiti shall promptly be removed.
18. Weather Protection. The exterior of the structure shall be maintained in a manner that provides protection of the structural elements of the building from the outside weather.

1107.23 SUBD. 10. PROHIBITED ACTS.

Anyone involved in any of the following shall be guilty of a misdemeanor and may be subject to rental license revocation:

1. No License. Allowing the occupancy of a dwelling unit or rooming unit prior to the issuance of a rental housing license and payment of the license inspection fee.
2. Improper Occupancy. All buildings or portions thereof occupied for living, sleeping, cooking or dining purposes that were not designed or intended to be used for such occupancies shall be considered improper for occupancy.
3. Occupying Vacated Unit. Occupies or allows occupancy of a unit that was posted and ordered vacated.

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1107.23 SUBD. 11. PROHIBITED CONDUCT ON LICENSED PREMESIS.

1. Disorderly Conduct on Licensed Premises. It shall be the responsibility of the Licensed Owner to take appropriate action to prevent conduct by occupants and their guests on the licensed premises which is hereby deemed disorderly and which is in violation of any of the following:
 - a. City Code Chapter 4.
 - b. Minnesota Statutes §§ 609.75 through 609.76, which prohibit gambling, as may be amended.
 - c. Minnesota Statutes §§ 609.321 through 609.324, which prohibit prostitution and acts relating thereto, as may be amended.
 - d. Minnesota Statutes §§ 152.01 through 152.025, and 152.027, Subd. 1 and 2, which prohibit the unlawful sale or possession of controlled substances, as may be amended.
 - e. Minnesota Statutes § 340A.401, which prohibits the unlawful sale of alcoholic beverages, as may be amended.
 - f. Minnesota Statutes §§ 97B.021, 97B.045, 609.66 through 609.67 and 624.712 through 624.716, which prohibit the unlawful possession, transportation, sale or use of a weapon, as may be amended.
 - g. Minnesota Statutes § 609.72, which prohibits disorderly conduct, when the violation disturbs the peace and quiet of the occupants of at least one unit on the licensed premises or other premises, other than the unit occupied by the person(s) committing the violation, as may be amended.
2. Enforcement of disorderly use violations. A violation of any of the foregoing ordinances or statutes is established by a finding of guilt by a court of competent jurisdiction, even if there is a stay of adjudication or other post-conviction orders or proceedings. The Building Official shall notify the property owner and the City Administrator when any such charges are brought against a tenant or guest unless prohibited from doing so by law

1107.23 SUBD. 12. TENANT IDENTIFICATION.

Owners are required to provide names of tenants occupying rental property to the Building Official. The names of tenants shall be kept up to date with the Licensed Owner providing updated information to the Building Official when tenants change.

1107.23 SUBD. 13. RESPONSIBILITIES DEFINED.

Owners remain liable for violations of duties imposed by this Section even though an obligation is also imposed on the occupants of the building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this Section.

1. Buildings and structures and parts thereof shall be maintained in a safe and sanitary condition. The owner or the owner's designated agent shall be responsible for such maintenance. To determine compliance with this subsection, the building may be re-inspected.

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2. Owners, in addition to being responsible for maintaining buildings in a sound structural condition, shall be responsible for keeping the premises which the owner occupies or controls in a clean, sanitary and safe condition.,
3. Occupants of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary and safe condition that part of the dwelling or dwelling unit or premises which they occupy and control, shall properly dispose of their recyclables, rubbish, garbage and other organic waste.

1107.23 SUBD. 14. VIOLATIONS, CRIMINAL.

A violation of any provision of this Section is a misdemeanor. Each day the property is in violation is a separate violation.

1107.23 SUBD. 15. ENFORCEMENT.

The Building Official is hereby authorized and directed to enforce or cause the enforcement of all of the provisions of this Section. For such purposes, the Building Official or his/her designated representative shall have the powers of a Building Official. The Building Official shall have the power to render interpretations of this Section. Such interpretations shall be in conformity with the intent and purpose of this Section.