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*ADMITTED IN KANSAS AND MISSOURI

March 25, 2014

VIA E-MAIL ONLY

Mayor Michael Dever
City of Lawrence, Kansas
7 East 7th Street
Lawrence, KS 66044

Re: *Draft 5 of Ordinance 8840 (the "Ordinance")*

Dear Mayor Dever:

I am writing on behalf of property owners that collectively own approximately 3,050 rental units in the City of Lawrence. These entities own medium to large, professionally managed, and professionally maintained apartment complexes. A number of the units have been recently constructed. All of them were zoned, designed, built and approved exclusively for multi-family rental housing. As a consequence, these units are very different than the rental units presently being licensed and inspected under Chapter VI, Article 13 of the City Code (i.e., rentals in single-family neighborhoods). The owners have authorized me to express their opposition to an expanded licensing ordinance.

As a result of open records requests over the last several months, the City has finally compiled and released detailed information about the previous eleven (11) years of rental licensing and inspections. Much of that data was, for the first time, published on the City's website as of March 14. All of the data, as well as the recent case studies performed by the City Staff under its "pilot" inspections (as made public on March 20), pertain to older units, the vast majority of which were not constructed for the purpose of being rental housing. Notwithstanding the fact that the data and case studies describe a very different industry than that of the owners described above, and even though it has some irregularities, this new data is informative, and supports several conclusions:

1. The rental housing inspected is generally good. On average, including year 2002 when the current program commenced, only 41% of units inspected had a violation – meaning that 59% of units *on average* had zero violations. The mean "zero violation" percentage improves materially – to 64% – by ignoring year 2002 as an outlier. Among all units, including those with zero violations, the average is 1.2 violations per unit (including year 2002 data), and the majority of violations relate to deadbolts, smoke detectors, and receptacles. According to the City, no licensee has ever lost a rental license. Considering the age and original construction of some of the units in the current program, these statistics indicate that the overall quality of housing in that market segment is good. Examples of "deplorable" housing appear to be rare exceptions to the norm.

2. The current rental licensing and registration program had inconsistencies. On average, the City's list of annual licensees contains approximately 108 duplicate licensee entries per year, meaning that the number of total licensees under the current program may have been overstated. For example, in year 2013 there were approximately 331 duplicate entries, or 12.3% of all licenses that year. City Staff suggests that some of the duplicates represent ownership changes, re-licensing, or other explainable causes, but also acknowledges that some of the duplicates may simply be in error. In addition, the number of annual licenses varies greatly from year-to-year. For example, in year 2003 the City's unadjusted data indicates approximately 2,500 licensees, approximately 1,500 in year 2008, approximately 1,800 in year 2012, and nearly 2,700 in year 2013, one year later. Re-inspection percentages also vary greatly, with a trend downward into the sub-40% re-inspection rate since year 2011. These types of issues should be addressed before deciding to expand the program – especially if the new program is intended to be almost ten (10) times the size of the current program.

3. The “pilot” inspections illustrate the difference between converted rentals and those originally built as rentals. Referring to the Memorandum from Planning & Development Services dated March 19, 2014, Inspections 1, 4 and 5 were of early twentieth century properties originally constructed as single-family homes. Inspections 2 and 3 were of a one story duplex built in 1977. The converted single-family homes took over 30 minutes each to inspect and only one (1) would qualify for the incentive under the Ordinance. They averaged over six (6) violations under the Ordinance and over two (2) “other” code violations. By contrast, the duplexes took five (5) minutes each to inspect and found only one (1) violation: a GFCI that allegedly did not trip.

Until specific descriptions of each violation were made available, it was very difficult to draw meaningful conclusions about the City's current inspection program. Yet by the time all historic data from the current licensing program and a summary of the “pilot” inspections were published on the City's website, the City had already gone through four (4) drafts of the Ordinance. The information should have come first, because if the data was known to the Commission and available prior to Draft 1 of the Ordinance, the entire scope and direction of the Ordinance may have been quite different.

Everyone agrees that the life, health, and safety of tenants is of critical importance, and is not subject to debate. The *method* of achieving that objective, however, most certainly is. The public finally has data available to help identify where violations are more likely to exist. The Ordinance, however, makes no effort to accelerate the inspection of those units, but instead compartmentalizes licensees alphabetically. For those tenants residing in sub-standard units whose landlord's first initial is “E” through “L,” no inspection is scheduled to occur until some time in year 2017, and it will take decades to inspect all units. If the tenant is unwilling or unable to file a complaint, the Ordinance will do little to remedy that tenant's immediate concerns.

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As the "pilot" suggests, the City's efforts would yield greater returns by *targeted, vigorous* enforcement of the existing codes among the properties that are known or reasonably certain to have violations. By contrast, the Ordinance's over-inclusiveness dilutes its ability to quickly and efficiently identify and correct the most dangerous code violations. The City Commission should not adopt the Ordinance, because it is unnecessarily inefficient, expensive, and over broad.

Detailed new data from the current program and pilot inspections have shed new light on the issue, and presents the Commission with an opportunity to formulate a better, faster, more efficient way to enforce the City's existing codes. Licensing is not necessary to identify and prosecute exterior code violations (e.g., the property maintenance code). If licensing is necessary in order to perform interior inspections, the scope of the licensing program should be tailored to include those units most likely to have health, safety, and welfare violations. As for the remaining units, the City may more efficiently enforce code compliance through tenant education initiatives, better enforcement of exterior code requirements, and complaint-based inspections.

Very truly yours,

BARBER EMERSON, L.C.



Matthew S. Gough

cc: Lawrence City Commission
David Corliss
Scott McCullough

Bobbie Walthall

To: Jo Barnes
Subject: RE: Unanswered rental registration questions

-----Original Message-----

From: Jo Barnes [mailto:JoBarnes@reeceandnichols.com]
Sent: Monday, March 24, 2014 12:09 PM
To: City Hall email; David L. Corliss; Bobbie Walthall
Cc: Jonathan Douglass; Cynthia Wagner; Scott McCullough
Subject: Unanswered rental registration questions

Sir;

These questions, relating to the proposed rental registration/licensing/inspection program and previously submitted to each of the commissioners, remain unanswered. We really would have appreciated a response before the commission meeting tomorrow night. Failing that, we respectfully request that this email, and our questions, be included in the public comment section of the commission meeting agenda for Tuesday, March 25.

1. What are the real reasons licensing of all rentals is necessary, other than to provide a source of funds to allow the city to gain control of local housing and further erode our free enterprise economic system?
2. What are actual statistics/facts supporting a need for such licensing and inspections? How many complaints of life threatening conditions have been recorded? How many ongoing reported and unresolved hazardous conditions have occurred?
3. Which of the top 10 violations found in 2013 could not be addressed by a tenant reporting the problem to their landlord?
4. Which of these top 10 violations, if not corrected by the landlord, could not be pursued through existing legal channels at City Hall, existing city ordinances, and the Kansas Landlord Tenant Act?
5. Why have the records for results collected under the existing single family program for the last 10 years been either nonexistent or not available when requested??
6. What assurances can the City give owners that this program will not shift the cost of correcting tenant-caused maintenance problems to the owner?
7. With 50% of our housing structures occupied by owners, why are inspections not required for them? Shouldn't the city be responsible for the health and safety of homeowners, too?
8. Has City Hall decided that renters are less responsible (desirable) citizens than owners and need more supervision and regulations than homeowners? That tenants are not capable of caring for their own welfare?
9. How many complaints were filed on owner occupied properties in 2013? How many complaints were filed on rental properties in 2013?
10. It seems like everything in Ord. 8840, Draft 6, Art. 13a14(a) (pp.1-3), Inspection Form & Checklist came from the existing Property Maintenance Code. Some of the wording may be slightly different but the meanings appear the same. This being the case, why is this duplication necessary?

11. How can a newly hired inspector, who won't be required to be trained/certified for two years even be competent to conduct a fair inspection during his first 2 years?
12. What businesses besides rentals are required to have City licenses?
13. Which licensed businesses are required to submit to property Code inspections? How often?
14. Can the City guarantee that costs of the program will not increase like the projected cost has already been raised to \$500,000?
15. Why is it necessary for this program to pay for itself at the expense of landlords? Cost of other inspections (blight, environmental, weeds, old cars, etc) are paid by the city at large.
16. Does the City really believe that the costs of this program to landlords won't be passed on to tenants, further reducing availability of affordable housing in Lawrence?
17. Why not just require landlords to include correction of the top 10 violations in their move-out inventory/inspection form, thus eliminating the majority of violations up front? City could require that a copy of each State-required move-in inventory form signed by new tenants be sent to them.

In addition, we believe that the majority of local, private, independent landlords agree with the following statements:

As responsible landlords, we are not opposing the proposed rental licensing because we don't care about health & safety of our tenants. We do care ~ and believe that a survey of our properties would reveal that they are well maintained and safe for our tenants.

~ We know there are irresponsible landlords whose properties are in poor condition and we would like to see such problems corrected.

~ We acknowledge that some tenants either don't understand their right to file complaints with the city and state or are unwilling to do so.

~ We are opposed to the proposed regulations because they duplicate existing state laws and city ordinances and burden responsible landlords with unnecessary administrative red tape and expense that will result in higher rents.

~ We contend that the city should focus their efforts on the enforcement of existing laws and ordinances; and on reinforcing the awareness of our tenant population as to their rights under those laws and ordinances.

~ We believe that it is the city's responsibility to insure that the public complaint process is simple, non-threatening and effective; and to provide prompt and satisfactory resolution of each complaint filed.

~ We believe that the city currently has all the laws, ordinances and regulations available to enable them to identify substandard rental properties and their irresponsible landlords/owners; and to require them to correct all conditions that put the health and safety of their tenants at risk.

~ We therefore do not believe there is a need for the city to impose a \$500,000 rental licensing program upon the entire rental housing industry in order to correct the problems caused by the irresponsible members of that industry.

~ We suggest that the city continue working to correct the problems, oversights and inefficiencies of the single family program that have been discovered during the preparation of this proposal, before giving final consideration to any expanded rental licensing program.

~ We request that, as a fair and comprehensive means of determining whether additional regulations are needed and for guidance in providing safe rental housing in Lawrence, the City Commission establish a Rental Housing Advisory Board; direct its members to survey and research the true and essential needs of both tenants and landlords, as well as owner occupied neighbors of rentals in our community; and to advise and recommend to the City Commission citizen driven solutions to the needs they discover.

~ We respectfully request that the City Commission delay any decision regarding additional rental registration, licensing and inspection proposals until the Rental Housing Advisory Board recommends such action.

Thank you,
Bill & Jo Barnes

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I sell real estate ~
but my business is people!