# CITY OF NEWARK DELAWARE CITY COUNCIL PUBLIC HEARING NOTICE

December 10, 2012 - 7:00 P.M.

Pursuant to Section 402.2 of the City Charter of the Code of the City of Newark, Delaware, notice is hereby given of a public hearing at a regular meeting of the Council in the Council Chamber at the Municipal Building, 220 Elkton Road, Newark, Delaware, on December 10, 2012 at 7:00 p.m., at which time the Council will consider for Second Reading and Final Passage the following proposed Ordinances:

Bill 12-40	An Ordinance Amending Chapter 1, General Provisions, Code of the City of Newark, Delaware, to Reference New Position Titles and New Department Titles				
Bill 12-41	An Ordinance Amending Chapter 1, General Provisions, Code of the City of Newark, Delaware, to Include a Reference Name Change of Elkton Road between West Main Street and West Park Place to South Main Street				
Bill 12-32	An Ordinance Amending Chapter 17, Housing and Property				

An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, by Adopting the 2012 Edition of the International Property Maintenance Code with Amendments

Patricia M. Fogg, CMC City Secretary

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Advertised: Newark Post - November 30, 2012

BILL NO. 12-32 1<sup>st</sup> Reading 11/26/12 2<sup>nd</sup> Reading

# CITY OF NEWARK DELAWARE

ORDINANCE NO. 12-

An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, By Adopting the 2012 Edition of the International Property Maintenance Code with Amendments

#### THE COUNCIL OF THE CITY OF NEWARK HEREBY ORDAINS:

That Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, be hereby amended in the following respect:

**AMENDMENT 1.** Delete Sections 17-1 through 17-4 in its entirety and insert in lieu thereof the following new language.

## "Sec. 17-1. Adoption of Property Maintenance Code.

There is hereby adopted by the City of Newark for the purpose of protection of public health, safety and welfare, by establishing minimum maintenance standards for all structures and premises for basic equipment, facilities for light, ventilation, space heating and sanitation, safety from fire, for space, use and occupancy; and for safe and sanitary maintenance of all structures and premises now in existence, the International Property Maintenance Code, hereafter referred to as the International PM Code, of which not less than three copies have been and are now on file in the office of the code enforcement division being in particular of the 2012 International Property Maintenance Code, and all the nationally recognized standards referred to [and] incorporated therein, together with any and all supplements thereto, except such articles and sections as are hereinafter deleted, modified or amended.

## Sec. 17-2. Definition: Building/Code official.

As used herein, the Planning and Development Department Director or his/her designee of the City of Newark and/or any of the authorized officers or inspectors of the Code Enforcement Division.

## Sec. 17-3. Saving clause.

Nothing in this chapter or in the code hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred, nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby.

#### Sec.17-4. Amendments made to the 2012 International PM Code with Supplements.

- (a) 101.1 Insert "the City of Newark, Delaware" within parenthesis of this section.
- (b) 103.1 *General:* Delete Section 103.1 in its entirety and insert in lieu thereof a new Section 103.1 to read as follows:
  - "103.1 General: The department charged with enforcement of this chapter shall be the code enforcement division, and the executive official in charge shall be known hereafter as the building/code official."
- (c) 104.3 Right of entry. Delete the last sentence and insert in lieu thereof the following:
  - "If entry is refused or not obtained, the building/code official, subject to constitutional protections against unreasonable search and seizure, is authorized to apply to the Court having jurisdiction for issuance of an administrative search warrant to verify compliance with Chapters 7, 14, 17 and 32 of the City of Newark Municipal Code."
- (d) 106.4 *Violation penalties*. Delete Section 106.4 in its entirety and insert in lieu thereof a new Section 106.4 to read as follows:
  - "106.4 Violation penalties: Any person, firm, corporation, partnership, or representatives thereof, who fails to comply with Chapter 17, Code of the City of Newark shall be guilty of a violation and upon conviction in Alderman's Court, shall be punished by a fine of not less than \$250.00 nor more than \$750.00, or imprisonment for not more than thirty (30) days, or both, and the further sum of \$250.00 for each and every day that such violation is permitted to continue. For the purpose of this section the violation of any section of Chapter 17 shall constitute a separate offense. Invocation of the above penalties shall not preclude the building/code official of the City of Newark from instituting appropriate action or proceedings to prevent an illegal act, conduct, business, or use in or about the premises."
- (d.1) 106.4.1 Citations. Add a new Subsection 106.4.1 to read as follows:
  - "106.4.1 Citations: In lieu of this section the building/code official may serve a citation for any violation of this chapter or of Chapters 7, 14 or 32 which shall constitute a civil violation and shall impose a fine of \$100.00 for each such violation, subject to appeal by a required appearance in the Alderman's Court within 15 days of the violation date or payment of the fine in lieu of a court appearance within 15 days of the violation date either in person or by mailing the citation and the amount of the fine to the Alderman's Court pursuant to Section 2-22.2(b)(2). Upon appeal, should the Court uphold the issuance of the citation and find that a violation has occurred Court cost of \$35.00, in addition to the \$100.00 fine, shall be imposed. Failure to appeal the citation by appearing in the Alderman's Court or to pay such fine within 30 days shall cause the fine to be

doubled to \$200.00. Failure to pay such fine for 60 days shall result in a lien against the property in accordance with Section 17-5.

- (e) 107.2 Form: Such notice prescribed in Section 107.1 shall be in accordance with all of the following:
  - 1. Be in writing.
  - 2. Include a description of the real estate sufficient for identification.
  - 3. Include a statement of the violation or violations and why the notice is being issued.
  - 4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
  - 5. Inform the property owner of the right to appeal.
  - 6. Include a statement of the right of the city to file a lien in accordance with Section 106.3.
  - 7. Include a description of any actions taken by the building/code official in response to an emergency, including any additional corrective measures ordered by the building/code official, and notification that all costs, including any related municipal costs made necessary by the emergency will be borne by the owner.
- (f) 107.3 *Method of Service*: Such notice shall be deemed to be properly served if a copy thereof is:
  - 1. Delivered personally.
  - 2. Sent by certified or first-class mail addressed to the last known address.
  - 3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.
  - 4. In the event of an emergency, the building/code official shall make a reasonable attempt to contact the owner. A notice shall be prepared and provided to the owner on the next regular business day. Failure to serve notice shall not prevent any action taken pursuant to Section 109 of this code.
- (g) 108.8 Vacant or abandoned and unsightly structures: Add a new Section 108.8 Vacant or abandoned and unsightly structures to read as follows:
  - "108.8 Vacant or abandoned and unsightly structures: When in the opinion of the building/code official, the physical condition of an abandoned or vacant building is such that it is creating blight that may have a substantial impact on the property values of other adjacent buildings or structures or those in the vicinity of such abandoned or vacant building, the building/code official shall cause the provisions of this section to be enforced."
- (g.1) 108.8.1 Notice and order. Add a new Subsection 108.8.1 to read as follows:

"108.8.1 Notice and order: Upon making the determination of substantial adverse impact as set forth in Section 108.8 above, the building/code official shall cause to be sent to the record owner of such property a notice and order as provided in Section 107 demanding that said owner provide the city, in writing and within ten (10) days of receipt of such notice, a plan or proposal which such owner will cause to be undertaken to change the physical appearance of said building or structure so as to eliminate the aforementioned adverse impact on surrounding property values."

(g.2) 108.8.2 Denial. Add a new Subsection 108.8.2 Denial to read as follows:

"108.8.2. Denial: If the building/code official determines that the plan or proposal submitted by the property owner of such abandoned or vacant building or structure is not likely to substantially reduce or eliminate the aforementioned adverse impact on surrounding property values, the building/code official shall, within ten (10) days of receipt of such plan or proposal, request appropriate changes in such plan or proposal."

(g.3) 108.8.3 Enforcement. Add a new Subsection 108.8.3 Enforcement to read as follows:

"108.8.3 *Enforcement:* The building/code official shall have certain enforcement powers under this section. Such powers may be exercised upon any of the following events:

- 1. The owner of such unsightly abandoned or vacant building receives the notice described in Section 108.8.1, but fails to respond thereto;
- 2. The owner of an unsightly abandoned or vacant building presents an unacceptable plan or proposal to remedy the problems with the building and refuses, upon request, to amend the proposal so as to satisfy the building/code official; or
- 3. The owner of an unsightly abandoned or vacant building fails to comply with the terms and conditions of an accepted plan or proposal."
- (g.4) 108.2.5 *Abatement*. Delete Section 108.2.5 in its entirety and insert in lieu thereof a new Subsection 108.8.4, *Abatement*, to read as follows:

"108.8.4 Abatement: Upon the occurrence of any event set forth in Section 108.8.3 herein above, the building/code official may secure estimates from three (3) reputable licensed contractors skilled in performing such work. The building/code official shall select one contractor to perform such work. Upon making such selection, the building/code official shall send notice by certified and first class mail to the offending property owner, that the city intends to enter into an agreement with such contractor for the performance of the remedial work, and that the cost of such work, and any related municipal costs shall be filed as a lawful lien against the offending property. The notice

described in this section shall inform the property owner that he, she, or it shall have ten (10) days in which to cause the remedial work to be commenced or the city shall enter into such contract."

- (g.5) 108.2.6 Commencement of work. Delete Section 108.2.6 in its entirety and insert in lieu thereof a new Subsection 108.8.4.1, Commencement of work, to read as follows:
  - "108.8.4.1 Commencement of work: If after service of such notice, and the passage of ten (10) days, the property owner fails to remedy the offending condition(s), the city shall enter into the aforementioned contract and shall instruct the relevant contractor to commence the appropriate work forthwith."
- (g.6) 108.2.7 Recovery of associated costs. Delete Section 108.2.7 in its entirety and insert in lieu thereof a new Subsection 108.8.4.2, Recovery of associated costs, to read as follows:

"108.8.4.2 Recovery of associated costs: Upon completion of the work described in Sections 108.8.4 and 108.8.4.1 hereinabove, the city shall cause the incurred cost of such work and all related municipal expenditures, to be filed as a lien against said property in accordance with Section 17-5."

- (h) 110.1 General. Amend Section 110.1 as follows:
  - In line nine delete the words "board up" and insert the word "secure."
  - In line twelve delete the words "two years and insert the words "one year."
  - In line thirteen delete the words "board up" and insert the word "secure."
  - In line fourteen delete the words "Boarding the building up" and insert the words "Securing the building."
- (i) 111.9 Citation Appeals. Add a new Section 111.9 Citation Appeals to read as follows:

"You may appeal this citation by requesting a hearing in the Alderman's Court #40 at the above address within fifteen (15) days of the violation date. Upon appeal, should the court uphold the issuance and find that a violation has occurred, court cost of \$35.00, in addition to the \$100.00 fine, shall be imposed. Failure to appeal the citation within fifteen (15) day's by appearing in Alderman's Court or or to pay such fine within thirty (30) days shall cause the fine to be doubled to \$200.00. Failure to pay such fine within sixty (60) days shall result in a lien against the property in accordance with Section 17-5.

#### **Section 202** – *General Definitions*:

After the definition for Pest Elimination add the following:

1. "Grease Interceptors: A plumbing appurtenance that is installed in a sanitary drainage system to intercept oily and greasy wastes from a wastewater discharge. Such device has the ability to intercept free-floating fats and oils."

- 2. "Portable Storage Unit: A temporary structure designed and used primarily for the temporary storage or shipping of building materials (before they are utilized for building purposes), household goods, and other such materials, which are a maximum 200 square feet in size, such as PODS, Pack-rats, Go Minis, Smartboxes, Cargo shipping containers and similar structures."
- (j) 301.2.1 Caretaker. Add a new Subsection 301.2.1 Caretaker to read as follows:
  - "301.2.1 Caretaker: In every multi-family dwelling residential subdivision with fifteen (15) or more separate dwelling units, there shall be a responsible person designated by the owner, residing on the premises, whose duties include maintaining the commonly used areas and equipment of the premises; the owner shall also provide the code official with names, addresses, and telephone numbers of alternative responsible persons if the caretaker is not available to perform such maintenance. In every multi-family dwelling subdivision with less than fifteen (15) units, there shall be a responsible person designated by the owner, whose duties include maintaining the commonly used areas and equipment, whose name, address and telephone number shall be provided to the building/code official and the tenants."
- (k) 301.4 Vacant land or lots. Add a new Section 301.4, Vacant land or lots, to read as follows:
  - "301.4 Vacant land or lots: Front lot line maintenance shall be performed by the owner or owner's representative of vacant land or lots to a minimum of twenty feet (20') from any abutting public right-of-way. Side and rear lot line maintenance shall be required to be performed by the owner or owner's representative to vacant land or lots to a minimum of ten feet (10') from the adjacent lot line when such land/lots are adjacent to an existing developed and improved lot. Where it is impractical to maintain the height of grass, weeds and/or other ground cover due to the density of trees, bushes and other vegetation, such vegetation shall either be trimmed or removed to the extent necessary to prevent encroachment by such vegetation upon the public right-of-way, sidewalks, and side and rear lot lines."
- (1) 301.5 Other areas. Add a new Section 301.5, Other areas, to read as follows:
  - "301.5 Other areas: Property owners, landlords, tenants and their representatives shall be responsible for maintenance of the areas between the curb or the middle of an alley and their front, rear and side yards in compliance with this code."
- (m) 302.3 Sidewalks, driveways and parking areas: Delete Section 302.3 in its entirety and insert in lieu thereof a new Section 302.3 to read as follows:
  - "302.3 Sidewalks, driveways and parking areas: All sidewalks, driveways, service roads, access ways, and parking areas shall be paved and maintained free from deterioration,

potholes and other hazards. Parking areas assigned to more than one residential dwelling unit or commercial parking areas shall be maintained with striping in accordance with Chapter 32."

- (n)302.4 Weeds. Delete Section 302.4 in its entirety and insert in lieu thereof a new Section 302.4 Vegetation to read as follows:
  - "302.4 *Vegetation*: All property, grounds and premises shall be maintained in a condition that is reasonably cultivated. The following shall be prohibited:
  - 1. Grasses, ground cover and weeds in excess of ten inches (10") in height.
  - 2. All noxious, toxic or poisonous growths.
  - 3. Trees that, in the opinion of the building/code official or a certified arborist, are: rotten, decaying, diseased, hazardous or dead.
  - 4. Any growth of grass, weeds, shrubbery, trees or other vegetation that creates a hazard on an adjoining property.
  - 5. Any plant growth overhanging a sidewalk less than eight feet (8') above the ground.
  - 6. Any plant growth encroaching upon the public walkway and reducing the width below the minimum sidewalk width required by law shall be cut back and maintained."
  - 7. The owner or person in control, or agent of the owner or person, of any lot, place or area having in any calendar year received notice pursuant to Section 302.4, shall be deemed to have notice for the remainder of the mowing season (April November) following notice that the city may, without further notice, cut, destroy and remove all weeds growing, lying or located on such owner's property, and that the cost of such removal shall be charged and collected in accordance with the provision of this chapter.
- (o) 302.7.1 Fencing. Add a new Subsection 302.7.1, Fencing, to read as follows:
  - "302.7.1 Fencing: All fencing visible from public areas shall be kept in a condition consistent with the originally approved construction method design and materials, or shall meet the following minimum requirements:
  - 1. A fence shall be considered to be in disrepair when its vertical members (posts and intermediate boards) list, lean, or buckle to such an extent that a plumb line or level set at the top outside edge of the member would show more than a four inch deflection from true vertical measured at the base of the member.
  - 2. Broken, missing, decayed, damaged, deteriorated, or unsightly fencing components/parts or boards must be repaired or replaced with similar materials and methods of construction. Patching or repairs to fences with incompatible materials or design are allowed on a temporary basis for no more than thirty (30) days, at which time, such fences shall be correctly fixed, or repaired or removed according to this section.

- 3. Fences with graffiti or spot painting of multiple colors not part of a particular design scheme will be considered blight unless removed or painted one color for the entire area of the fence. Monotone colors are permissible for painted fencing.
- 4. Fencing in residential areas consisting of barbed wire or similar materials shall not be permitted and shall be considered blight."
- (p) 302.7.2 Portable Storage Units. Add a new subsection 302.7.2 Portable Storage Units to read as follows:
  - "302.7.2 *Portable Storage Units*: Portable storage units may be placed on any residential, commercial or industrial zoned site as follows:
  - a. A portable storage unit may be placed for fourteen (14) days or less without issuance of a temporary structure permit. One (1) fourteen (14) day extension is permitted where approved by the building/code official.
  - b. Portable storage units may be placed for a period of greater than fourteen (14) days where a renovation permit is issued for the primary structure located on the property without the issuance of a temporary structure permit. The portable storage unit shall be removed within fourteen (14) days of the completion of the work listed on the permit. In residential zoning districts, this period shall not exceed sixty (60) days.

Exception: Where approved by the building/code official based on the scope of work and construction progress.

c. Portable storage units shall be placed on the driveway, parking area or other paved or compacted aggregate pad which is a minimum one (1') foot larger than the storage unit in each direction.

Exception: Where approved by the building/code official.

- d. Portable storage units shall not be placed within thirty (30) feet of the intersection of two (2) public streets unless the placement meets all required setback distances of the zoning district in which it is located.
- e. Portable storage units shall not be used for storage of explosives, fuels or other hazardous materials.
- f. Portable storage units intended for occupancy as construction offices on construction sites containing any installed electrical or plumbing fixtures shall be considered temporary structures and shall require a permit in accordance with Chapter 7.
- g. Portable storage units shall be maintained in good condition at all times and shall be free from evidence of deterioration, graffiti, rust, ripping, tearing, holes or other defective surface conditions.

- h. Portable storage units shall not be placed on public streets except as permitted in Section 26-1 of the City of Newark Municipal Code."
- (q) 302.8 *Motor Vehicles*. Delete Section 302.8 in its entirety and insert in lieu thereof a new Section 302.8 *Parking of vehicles*, to read as follows:
  - "302.8 *Parking of vehicles*: Vehicles, including motor vehicles, trailers, carts, boats, campers, motor homes, and the like, shall be parked or stored in accordance with the following requirements:
  - 1. Vehicle(s) shall be parked on a durable hard surface. Parking on lawn or grass areas shall be prohibited. For the purposes of this section a durable hard surface shall mean stone, paving, concrete, paver blocks or other approved surface of a size greater than or equal to the size of the vehicle.
  - 2. Vehicle(s) shall be registered as required by the State of Delaware Department of Motor Vehicles. Parking of unregistered vehicles or vehicles with registration that has expired for more than thirty (30) days shall be prohibited.
  - 3. Vehicle(s) shall be maintained in good repair and in operating order. No vehicle shall be in a state of major disassembly, disrepair or in the process of being stripped or dismantled.
  - 4. Vehicle(s) shall be located as permitted in Chapter 32, Zoning.
  - 5. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

# Exceptions:

- 1. Vehicles parked or stored inside a building.
- 2. Vehicles or trailers approved and permitted as construction/temporary structures in accordance with Chapter 7, Building."
- (r) 302.9 Defacement of Property. Amend Section 302.9, Defacement of Property, by deleting it in its entirety and substituting in lieu thereof of a new Section 302.9 Defacement of Property to read as follows:
  - "302.9 Defacement of property.
  - (a) Definitions. The following words, terms, and phrases, when used in this section shall the meanings ascribed to them in this subsection except where the context clearly indicates a different meaning:
    - 1. Aerosol paint container means any aerosol container that is adapted or made for the purpose of applying paint or other substances capable of defacing property.
    - 2. Broad-tipped marker means any felt-tip, indelible marker, or similar implement with a flat or angles writing surface that, at its broadest width, is

- greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.
- 3. *Graffiti* means any unauthorized inscription, word, figure, painting, or other marking that is written, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement and which marking was not authorized in advance by the owners of the property.
- 4. *Graffiti implement* means an aerosol paint container, broad tipped marker, gum label, paint stick, or graffiti stick, etching equipment, or any other device capable of visible scarring or leaving a visible mark on any natural or man-made surface.
- 5. Minor means any person under the age of eighteen (18) years of age.
- 6. Paint stick or graffiti stick means any devices containing a solid form of paint, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth of an inch in width.
- (b) Display and storage.
  - 1. Every person who owns, conducts, operates, or manages a retail commercial establishment selling any type of graffiti implements shall store such implements in an area continuously observable through direct visual observation or surveillance equipment by employees of the retail establishment during the regular course of business.
  - 2. In the event that a commercial retail establishment is unable to store the graffiti implements it sells in an area as provided above, the establishment shall store such implements in an area not accessible to the public in the regular course of business without employee assistance.
  - 3. A minor who is an employee of a person who, or an entity which is a vendor of graffiti implements may, in the course of his or her duties, possess such implements for purposes of lawful sale or transfer, but shall not purchase or obtain possession of the same for any other purpose.
  - 4. No minor shall, at the time of purchase as specified in this section, knowingly furnish fraudulent evidence of majority.
- (c) Required Sign. Every person who operates a retail commercial establishment selling any type of graffiti implement shall place a sign with a minimum height of fourteen (14") inches and a width of twelve (12") inches, with lettering of at least one-half of one inch in height which is in clear public view at or near the display of such products and which states:

"WARNING: IT IS ILLEGAL TO SELL OR DISTRIBUTE AEROSOL PAINT, PAINT STICKS, OR BROAD-TIPPED MARKERS TO ANY PERSON UNDER THE AGE OF 18 YEARS OF AGE OR FOR ANY PERSON UNDER THE AGE OF 18 YEARS OF AGE TO POSSESS OR ATTEMPT TO

- PURCHASE THE SAME. IF YOU ARE OVER 18 YEARS OF AGE IT IS ILLEGAL FOR YOU TO PURCHASE AEROSOL PAINT, PAINT STICKS, OR BROAD TIPPED MARKERS FOR A PERSON UNDER 18 YEARS OF AGE IF YOU ARE NOT SUCH PERSON'S PARENT, GUARIAN, SCHOOL TEACHER, OR ART OR CRAFT INSTRUCTOR."
- (d) Prohibited Acts. A person is guilty of the act of causing graffiti when the person damages public or private real or personal property without the permission of the owner by knowingly, purposely, or recklessly drawing, painting, or making any significant mark or inscription thereon.
- (r-1) 302.9.1 Distribution. Add a new Subsection 302.9.1 Distribution to read as follows:
  - "302.9.1 Distribution. It shall be unlawful for any person, other than a parent, legal guardian, school teacher, art or craft instructor, or employer to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any minor.
- (r-2) 302.9.2 Property Owner Responsibility. Add a new Subsection 302.9.2 Property Owner Responsibility to read as follows:
  - "302.9.2 Property Owner Responsibility: It shall be the responsibility of the owner of the property damaged by graffiti to restore said surface to an approved state of maintenance and repair, including the removal of graffiti."
- (r-3) 302.9.3 Notice. Add a new Subsection 302.9.3 Notice to read as follows:
  - "302.9.3 *Notice:* Notice shall be as specified in this chapter. Notice to remove graffiti shall specify that is it unlawful for the owner or anyone who has primary responsibility for control of the property, or for maintenance or repair of the property, to permit property that is defaced with graffiti to remain defaced beyond a period of 10 days after service of notice as specified in this chapter."
- (r-4) 302.9.4 Exceptions to Property Owner Responsibility. Add new Subsection 302.9.4 Exceptions to Property Owner Responsibility.
  - "302.9.4 Exceptions to Property Owner Responsibility: The removal requirements specified herein shall not apply if the property owner, or responsible party, can demonstrate that he or she has an active program for the removal of graffiti and such removal has been scheduled as part of such program, in which case it shall be unlawful to permit such property to remain defaced with graffiti beyond a period of 20 days after service of notice as specified in this chapter."
- (r-5) 302.9.5 Graffiti Removal Funding Assistance. Add a new Subsection 302.9.5 Graffiti Removal Funding Assistance to read as follows:
  - "302.9.5 Graffiti Removal Funding Assistance. Following removal of graffiti, a property owner may apply to the finance director for the reimbursement of some, or all, of the cost

of graffiti removal from fines placed in a fund established by the finance director resulting from penalties assessed under the provisions of Chapter 22, Police Offenses, Section 22-41.1, *Graffiti*. Distribution of funding allocations to private property owners shall be based solely on funds available and on a first come, first served basis at the discretion of the finance director. Receipts for the required work to remove the graffiti shall be submitted to the finance director for graffiti removal reimbursement. Requests for city funding assistance shall be submitted to the finance director within thirty (30) days of the completion of the removal; such removal shall be certified by the Planning and Development Department/Code Enforcement Division to have been completed prior to such reimbursement."

- (r-6) 302.9.6 Failure to Remove. Add a new Subsection 302.9.6 Failure to Remove to read as follows:
  - "302.9.6 Failure to Remove. A property owner who fails to remove the graffiti as specified herein shall be subject to the penalties set forth in this chapter."
- (r-7) 302.9.7 City Removal. Add a new Subsection 302.9.7 City Removal to read as follows:
  - "302.9.7 City Removal: In the event graffiti is not removed or otherwise eliminated or abated by the date specified in the notice, the city, or a contractor hired by the city, shall enter upon the parcel and remove or abate such graffiti. If the city has conducted the removal or abatement of graffiti in accordance with this subsection, the actual cost of the removal, plus 50 percent in city overhead, plus accrued interest at the Delaware legal rate of interest per annum from the date of completion of the removal, if not paid by the owner, or not paid as a result of an order of the city alderman, shall be charged to the owner, or his or her agent, as a special tax bill by the city, and such charge shall be due and payable by the owner within six months of such tax bill. If the full amount due is not paid by the owner within the time required, the building official shall cause the special tax bill to be recorded in the municipal lien docket. The recordation of such special tax bill shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made."
- (r-8) 302.9.8 Penalties. Add a new Subsection 302.9.8 Penalties to read as follows:

"302.9.8 Penalties.

- (a) The penalty for a first offense of this chapter shall be a mandatory fine of not less than \$200.00 or more than \$500.00. For the second and subsequent offenses the fine shall be \$500.00.
- (b) Portions of fines may be used to pay for the cost of public and private property graffiti removal. Distributions of fines for private property graffiti removal, if available, shall be administered by the finance director as specified in Chapter 17, Housing and Property Maintenance of this Code.

- (c) Community service. In lieu of, or as part of, the penalties specified in this section, an adult may be required to perform community service as prescribed by the court based on the following minimum requirements:
  - 1. The individual shall perform a minimum of 30 hours of community service.
  - 2. The entire period of community service shall be assigned by and performed under the supervision of a representative of the police department designated by the Chief of Police of the City of Newark.
  - 3. Reasonable effort shall be made to assign the individual to a type of community service that is reasonably expected to have the most rehabilitative effect on such person, including community service that involves graffiti removal."
- (s) 302.10 Storage areas. Add a new Section 302.10, Storage areas, to read as follows:
  - "302.10 Storage areas: All approved open salvage yards and open storage areas shall be completely obscured from all surrounding property by a solid screen not less than six feet (6') in height and in accordance with all applicable sections of Chapter 32. Storage of debris, junk, or construction material which are not associated with an approved use or permitted construction at that site shall be prohibited."
- (t) 302.11 *Prohibited furniture*. Add a new Section 302.11, *Prohibited furniture*, and subsection 302.11.1, *Removal of abandoned or prohibited furniture*, to read as follows:
  - "302.11 *Prohibited furniture*: Interior type furniture that would be adversely affected by the elements and/or susceptible to infestation by insects, rodents, or other vermin is prohibited from being placed or stored outside a structure. Such prohibited furniture shall include, but shall not be limited to, upholstered couches and chairs, other fabric covered articles and articles not designed or intended for outdoor use."
- (t-1) 302.11.1 Removal of abandoned or prohibited furniture. Add a new Subsection 301.11.1 Removal of abandoned or prohibited furniture to read as follows:
  - "302.11.1 Removal of abandoned or prohibited furniture: When the building/code official determines that prohibited or abandoned furniture is located in an exterior property area, the building/code official shall notify the property owner or other responsible person in accordance with Sections 106.4.1 or 107 of this code. If the furniture is not removed within the time set forth by such notice, the city may cause such furniture to be removed, and the owner shall be billed for the cost of such removal in accordance with Section 17-5 of this code."
  - (u) 303.1 Swimming pools: Add the following new language after the period:

"For the purposes of this section sanitary shall mean maintained to prevent the growth of insect larvae (including but not limited to mosquito larva) and algae or other similar plant life in addition to cleanliness."

- (v) 304. 20 *Boarding up prohibited*. Add a new Section 304. 20, Boarding *up prohibited*, to read as follows:
  - "304. 20 Boarding up prohibited: All windows, doors, or other openings required for light, ventilation, display, ingress or egress shall be maintained and not be boarded up by the installation of plywood, particleboard, tin or other like materials. Exceptions may be made for significant weather events, repair, and replacement, where a building permit has been issued for the property, or where the building/code official has approved or ordered such action in writing. Boarding materials shall be removed within ten (10) days of notice from the building/code official."
- (w) 404.4.6 Bedroom area. Add a new Subsection 404.4.6, Bedroom area, to read as follows:
  - "404.4.6 Bedroom area: Every bedroom shall contain at least seventy square feet (70 sq. ft.) for the first occupant and at least fifty square feet (50 sq. ft.) for each additional occupant."
- (x) 404.5 Overcrowding. Delete Section 404.5 in its entirety and insert in lieu thereof a new Section 404.5, Overcrowding to read as follows:
  - "404.5 Overcrowding: Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of table 404.5 or by the requirements and restrictions of Chapter 32, Zoning."

## **TABLE 404.5**

	Minimum area in square feet					
Space	1 – 2 occupants	3 – 5 occupants	6 or more occupants			
Living room	No requirements	120	150			
Dining room	No requirements	uirements 80	100			
Kitchen	50	50	60			
Bedrooms	Shall comply with section 404.4.6					

- (y) 404.8 Rental licenses required. Add a new Section 404.8 Rental license required to read as follows:
  - "404.8 *Rental license required*: An annual rental license is required prior to letting, leasing, sub-leasing, renting, or otherwise allowing the occupancy of the following structures:
    - 1. Every non-owner occupied single family and/or two-family dwelling.
    - 2. Every owner-occupied dwelling taking in more than two boarders or roomers unrelated to the owner by blood, marriage, or legal adoption.
    - 3. Every multi-family dwelling (defined as a structure containing three or more dwelling units) including condominiums.

- 4. Every rooming house.
- 5. Every boarding house.
- 6. Any structure housing a mixture of occupancies that includes residential.
- 7. All fraternities and sororities as defined in Chapter 32, Zoning."

## (y-1) 404.8.1 Rental license requirements. Add a new Subsection 404.8.1 to read as follows:

"404.8.1 Rental license requirements: The following shall be required as part of the rental license:

- 1. Application --applications shall be submitted in writing, on a form provided by the city and signed by the owner or their authorized agent. A rental license renewal invoice shall be permitted to substitute for the application, if signed.
- 2. Fee --payment of the fee as required by Section 404.8.2.
- 3. Inspection—the exterior of the premises shall be inspected annually by the building/code official, and, provided that permission is granted by the tenant or person in possession of the property, the interior of the premises will also be inspected by the building/code official on an annual basis, prior to the approval or renewal of the rental license.

# (y-2) 404.8.2 License fees. Add a new Subsection 404.8.2 License fees to read as follows:

"404.8.2 License fees: The annual license fee shall be as follows:

- 1. Two-hundred dollars (\$200.00) per dwelling unit for single-family or two-family dwellings.
- 2. Fifty-five dollars (\$55.00) per dwelling or rooming units in any other residential occupancy with 14 or fewer dwelling or rooming units including mixed use occupancies except fraternities or sororities.
- 3. Forty Five dollars (\$45.00) per dwelling or rooming unit in any other residential occupancy with 15 or more dwelling or rooming units including mixed-use occupancies except fraternities or sororities.
- 4. Fraternities and sororities based on the following table:

Number of occupants							
	1 – 8	9 – 18	19 – 30	31 – 44	45 - 60	61 – 78	79 – 98
Fee	\$300.00	\$600.00	\$900.00	\$1200.00	\$1500.00	\$1800.00	\$2100.00

These fees are based on the maximum occupancy of the building as established by the building/code official. These fees shall be reduced by one third (1/3) if the written lease or recorded deed for the property prohibits the use of alcohol by the tenants or occupants of the fraternity or sorority. Where a fraternity or

sorority occupies more than one building, each building shall have a separate rental license.

- 5. A late fee of thirty dollars (\$30.00) shall be due for each unit for single-family or two-family dwellings if paid after the due date."
- 6. A late fee of eight dollars (\$8.00) shall be due for each unit for dwelling or rooming units in any other residential occupancy with 14 or fewer dwelling or rooming units including mixed use occupancies, except fraternities or sororities if paid after the due date.
- 7. A late fee of seven dollars (\$7.00) shall be due for each unit for dwelling or rooming unit in any other residential occupancy with 15 or more dwelling or rooming units including mixed-use occupancies except fraternities or sororities if paid after the due date.
- (y-3) 404.8.3 Unlawful leases. Add a new Subsection 404.8.3 to read as follows:
  - (a) "No owner or landlord shall enter into any agreement, contract, lease, or sublease which provides for, permits, allows, contemplates, or facilitates occupancy of any structure which would require a rental license in accordance with Subsection 404.8 of this code, contrary to the use requirements of Section 32-9, RH, RT, and RS districts, Section 32-10, RD districts, Section 32-11, RM districts, and Sections 32-13, RR districts, Code of the City of Newark. Any agreement, contract, lease or sublease which provides for, permits, allows, contemplates, or facilitates such occupancy by more persons than permitted in aforementioned code sections is unlawful and hereby declared to be contrary to public policy.
- (b) Agreements, contracts, leases, or subleases for the occupancy of dwelling units requiring a rental license shall:
  - 1) Prominently stipulate that the conviction of any renter, boarder, or roomer who violates Chapter 20A, Noise; the occupancy limitations of this chapter and Chapter 32, Zoning, Code of the City of Newark; any property maintenance requirements of this chapter attributable to a renter, boarder, or roomer; any on-site violations of chapter 22, Police Offenses, attributable to a renter, boarder, or roomer, and, on-site violations of Chapter 19, Minors, Section 19-5, prohibiting minors from possessing or consuming alcoholic beverages, more than one time within a one year period, shall result in the giving of notice to all renters, boarders, or roomers residing in the relevant leased premises of the commencement of eviction proceedings pursuant to the provisions of the Delaware Landlord-Tenant Code (hereinafter the DLTC). Thereafter the landlord of the leased premises, or an agent thereof, shall proceed to conclude such eviction proceedings pursuant to the relevant provisions of the DLTC. Offenses at any single leased premises shall be cumulative. Convictions under this section of two (2) different renters, boarders, or roomers of the leased premises for violations as listed herein shall result in commencement of eviction proceedings as set forth in this

section. This section shall not prohibit the execution of a new lease between the owner of the relevant premises and any person named as a renter, boarder, or roomer on a prior lease who was not subject to either of the two convictions which resulted in the termination of the prior lease and the commencement of lawful eviction proceedings. It shall be a further violation of this section for an owner to enter into a new lease of the same premises with a person who has been convicted of an offense listed in this section and lawfully evicted for a period of one year following the date of the eviction of such person.

- 2) Prominently stipulate the number and names of who may occupy the premises, under appropriate city and state laws or regulations, and that any violation of the allowable number of occupants of the premises, and providing that the said renter(s) shall have not more than seven days to vacate the dwelling unit.

  If it is necessary to evict the tenant, the landlord shall immediately initiate and pursue in good faith summary proceedings for possession as specified in 25 Del. C., Part III, Landlord -Tenant Code. If the landlord or owner fails to initiate and pursue in good faith summary proceedings as stipulated herein, the building code official shall revoke for one (1) year the rental license of the affected dwelling unit.
- (c) Landlords or owners shall be required to stipulate in writing, as part of their application for rental licenses, that the tenants of the dwelling unit(s) for which application is made have been notified of the requirements stated in 404.8.3(b) of this chapter.
- (d) The city shall notify the landlord, owner, or owner's agent if a renter in a unit for which a rental license is required as stipulated in this section, is convicted of violating Chapter 20A, Noise, and/or Section 22-74.1, Disorderly Premises, Code of the City of Newark, Notice shall be deemed to be properly served upon the owner or owner's agent if a copy thereof is delivered to the owner or owner's agent; or leaving a notice at the usual place of abode, in the presence of someone in the family of suitable age and discretion, who shall be informed of the contents thereof, or by certified mail addressed to the owner or owner's agent at the last known address with return receipt requested; or by posting a copy thereof in a conspicuous place in or about the structure affected by such notice."
- (y-4) 404.8.4 Posting of maximum occupancies in rental dwellings. Add a new Subsection 404.8.4 to read as follows:

"404.8.4 Posting of maximum occupancies in rental dwellings: Each owner of a one-family and/or a two-family dwelling type structure which requires a rental license as specified in this chapter shall post the maximum occupancy permitted within said dwelling, as set forth in Chapter 32 of this code, and the number of available on-site off street parking spaces associated with said dwelling, so that the posting is readily visible to all tenants residing on the property. The occupancy statement shall include the maximum number of unrelated persons who may lawfully inhabit the dwelling pursuant to a valid lease, statement of penalties, as established herein for failure to comply with the requirements of this chapter, the name and telephone number of the

owner or the owner's agent, and the telephone number of the City of Newark code enforcement division."

(y-5) 404.8.5 Enforcement. Add a new Subsection 404.8.5 Enforcement to read as follows:

"404.8.5 Enforcement: Pursuant to the procedures herein, the Building/Code Official is hereby empowered to deny issuance of or revoke any rental license applied for or issued as described herein if its discovered either that the applicant, owner or holder has misrepresented himself or the state of his property, or any time subsequent to the issuance of said license, becomes violative of this section."

(y-6) 404.8.6 Penalty. Add a new Subsection 404.8.6 Penalty to read as follows:

"404.8.6 *Penalty*: "Any person, firm, corporation, partnership, or other commercial entity, or representative thereof, who fails to comply with Section 404.8 of this chapter shall be guilty of a violation, and upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00), or imprisonment for not more than sixty (60) days, or both; any person, firm, corporation, partnership, or other commercial entity, or representative thereof, who fails to comply with Sections 404.8.1 - 404.8.4 of this chapter shall be guilty of a violation, and upon conviction, shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), or imprisonment for not more than thirty (30) days, or both."

(y-7) 404.8.7 Delinquent taxes and fees. Add a new Subsection 404.8.7 Delinquent taxes and fees to read as follows:

"404.8.7 Delinquent taxes and fees: No rental license shall be issued for any property with delinquent taxes and fees as defined in Chapter 7, Section 7-1(f) of the Newark Municipal Code.

Exception: Licenses may be issued with an approved payment plan authorized by the finance department."

(aa) 506.3 *Grease Interceptors*. Amend Section 506.3 *Grease Interceptors* in the following manner:

"Grease Interceptors: Grease interceptors and automatic grease removal devices shall be maintained in accordance with this code and the manufacturer's installation instructions. Grease interceptors and automatic grease removal devices shall be regularly serviced and cleaned to prevent the discharge of oil, grease, and other substances harmful or hazardous to the building drainage system, the public sewer, the private sewage disposal system or the sewage treatment plan or processes. All records of maintenance, cleaning and repairs shall be available for inspection by the building/code official."

- (aa-1) 506.3.1 Penalty. Add a new Subsection 506.3.1, Penalty, to read as follows:
  - "506.3.1 Penalty: Any person, firm, corporation, partnership, or other commercial entity, or representative thereof, who fails to comply with Section 506.3 of this chapter, and is issued a notice of violation more than one time in any calendar year, shall be guilty of a violation, and upon conviction, shall be punished by a fine of not less than five-hundred dollars (\$500.00) nor more than one-thousand dollars (\$1000.00), or imprisonment for not more than thirty (30) days, or both."
- (bb) 601.3 Carbon Monoxide (CO) alarms. Add a new Section 601.3, Carbon Monoxide (CO) alarms, to read as follows:
  - "601.3 Carbon monoxide (CO) alarms: A carbon monoxide alarm shall be installed in the immediate vicinity of all sleeping rooms of each dwelling unit with fuel burning appliances or equipment or with attached garages or with attached storage/utility rooms which store fuel burning equipment."
- (bb-1) 601.3.1 Alarm requirements. Add new Subsection 601.3.1 Alarm requirements to read as follows:
  - "601.3.1 Alarm requirements: Single station carbon monoxide alarms which comply with UL 2304 shall be installed in accordance with the requirements of this code and in accordance with the manufacturers' installation instructions."
- (cc) 602.3 Heat Supply. Add a new Subsection 602.3 Heat Supply to read as follows:
  - 602.3 *Heat supply:* Delete Section 602.3, *Heat supply,* in its entirety and add Section 602.3, *Heat supply,* to read as follows:
  - "602.3 *Heat supply*: Insert the dates "September 15 and May 15" respectively within the parenthesis of this section."
- (dd) "602.4 *Occupiable work spaces*: Insert the dates "September 15 and May 15" respectively within the parenthesis of this section."
- (ee) 702.5 Number of exits. Add a Section 702.5, Number of exits, to read as follows:
  - "702.5 Number of exits: In nonresidential buildings, every story more than six stories above grade shall be provided with two independent exits. In residential buildings, every story exceeding two stories above grade shall be provided with two independent exits. In stories where more than one exit is required, all occupants shall have access to not less than two (2) independent exits. Every occupied story which is both totally below grade and greater than two thousand (2,000) square feet, shall be provided with two independent exits.

Exception: A single exit is permitted if any of the following apply:

- 1. Where the building is equipped throughout with an automatic sprinkler system and an automatic fire detection system with smoke detectors located in all corridors, lobbies, and common areas.
- 2. Where the building is equipped throughout with an automatic fire detection system and the exit is an approved smoke proof enclosure or pressurized stairway.
- 3. Where an existing fire escape conforming to the building code is provided in addition to the single exit.
- 4. Owner occupied buildings of Use Group R-3.
- 5. Owner occupied single family dwellings that do not have sleeping rooms on the third floor or below grade."

City Solicitor

# CITY OF NEWARK DELAWARE

# PLANNING AND DEVELOPMENT DEPARTMENT

November 16, 2012

TO:

Mayor and Council

VIA:

Carol S. Houck, City Manager

FROM:

Maureen Feeney Roser, Planning and Development Director

Steve Wilson, Code Enforcement Supervisor

RE:

Adoption of the 2012 International Property Maintenance and Housing Codes

We have attached the required ordinance for the adoption of the latest version of the 2012 International Property Maintenance Code to replace the 2009 Edition currently used by the City. In addition, the City's standard amendments to this Code are included in the attached set of Code revisions to meet local conditions and requirements. Finally, several new amendments are also proposed for Council's consideration. This ordinance was previously considered for first reading on September 10, 2012, and tabled at staff's request on September 24, 2012 in order to allow additional conversations with the Newark Landlord Association to take place regarding it. The result of these conversations is a revised ordinance, which has been altered significantly enough to require that the ordinance return for first reading.

The proposed new amendments and significant changes from the 2009 edition of Chapter 17 are highlighted below.

# Chapter 17 - Housing and Property Maintenance

2012 International Property Maintenance Code

Section 17-4 Amendments to the 2012 International Property Maintenance Code

• Section 17-4(c) 104.3 Right of Entry — We added the words "subject to constitutional protections against unreasonable search and seizure," to this section. The verbiage had been included in Chapter 17 until the 2009 Code revisions. In addition, in this section we deleted reference to Alderman's Court as the appropriate legal entity to which the building official should apply for an administrative warrant, and replaced it with "the court having jurisdiction."

- <u>Section 17-4(d) 106.4 Violation Penalties</u> In this section, we recommend increasing the range of penalties which may be imposed by the Alderman for violations of Chapter 17 from not less than \$100 nor more than \$500 to new fine levels of not less than \$250 nor more than \$750. This change is consistent with recent Council action for violation penalties in Chapters 7 and 14.
- Section 17-4(d.1) 106.4.1 Citations and Section 17-4(i) 111.9 Citations Appeals

   We added sections establishing the 15 day appeal deadline for "instant" tickets, now referred to as "Civil Citations," as per City Solicitor direction regarding the issue and recent Council action.
- <u>Section 202 General Definitions</u> We added definitions for grease interceptors and portable storage units. Both were previously undefined.
- Section 17-4(n) 302.4(1) Vegetation In this section, we added a provision that, once a property is cited for weed violations the owner shall be noticed for the remainder of the mowing season the City may cut, destroy and/or remove all weeds growing on the property and the homeowner charged for same. This provision of notice is consistent with the authority granted the City in Code Section 16-22 Notice to remove weeds; cost of removal, and will save time in addressing property maintenance concerns without the 5-day notice waiting period. The new provision will also eliminate homeowners getting two separate violation notices (one for Chapter 17 and one for Chapter 16) for one infraction, and is intended to reduce the significant number of complaints the division receives on chronically unkempt and abandoned properties.
- Section 17-4(p) 302.7.2 Portable Storage Units We added restrictions on portable storage units regarding the length of stay and placement, and restricted the use of them in order to avoid the increasingly popular trend of using portable storage units from becoming a problem for the community.
- Section 17-4 (Y-1) 404.8.1 Rental License Requirements Based on conversations with landlords and our review of the Landlord Tenant Code, it has become clear that, while our Code mandates an annual interior inspection of rental premises, we cannot access the property without the permission of the tenant or person in possession of the property. Therefore, we suggest changes to how the inspection section reads indicating exterior inspections will be conducted annually, and interior inspections also will be conducted annually, if permission for inspection is granted.

We have also deleted the rental license requirement that there be a written lease for occupancy of a structure in excess of 30 days. The <u>Landlord – Tenant Code</u> requires written leases for occupancies in excess of one year only. The change makes our <u>Code</u> consistent with the <u>Landlord Tenant Code</u>. In this regard, please note that we have retained the language in this section on required verbiage for written leases, should they exist (Section 404.8.3 and 404.8.4).

We may suggest additional changes at a later date as our conversations with landlords evolve, and research on how other communities operate rental programs concludes, but at this point, we strive simply to correct the inspection verbiage and eliminate the written lease requirement.

- Section 17-4(y-2) 404.8.2 License Fees We have reduced the license fees stipulated in the Code to coincide with the July 9, 2012 Council action relating to rental license fees for single family dwellings and multi-family dwellings. However, we suggest that Council may also wish to reduce the late fee since the current late fee of \$50 may seem excessive especially when compared to the license fee for multi-family dwellings (\$55/\$45). Therefore, we suggest a one-time late fee of 15% of the total applicable license fee.
- Section 17-4(y-7) 404.8.7 Delinquent Taxes and Fees As with the previous Building and Fire Codes amendments, we suggest a "Good Standing Ordinance" for the Property Maintenance Code. We understand the Council will soon be considering amendments to the current Good Standing Ordinance by adding a "Clean Hands" clause. This change will be considered for Chapters 7, 14 and 17, as well as other appropriate chapters of the Code, but at this point, we strive to make Chapter 17 consistent with Chapters 7 and 14.
- Section 17-4(aa) 506.3 Grease Interceptors We have added requirements for grease interceptors in response to some recent issues with discharges harmful to the sewer system being released, due to lack of proper maintenance.

Beyond the above noted changes, the <u>Housing and Property Maintenance Code</u> is essentially the same, but updated as per the requirements of the <u>International Code</u> Council.

Should you have any questions or need further information, please let me know.

MFR/ed Attachments

cc: Mike Fortner, Development Supervisor