

PUBLIC SAFETY

Tuesday, October 3, 2017 – 6:15 p.m.

Police Training Room – Olean Municipal Building

Present: Members: Chairman Gonzalez, Vice Chairman Andreano, Alderman Witte, Alderman Dougherty, Alderman Crawford, Alderman Smith, and Alderman George. Others: Mayor William Aiello; Nicholas DiCerbo, Jr., City Attorney; Bob Ring, Director of Public Works; Ed Jennings, Code Enforcement Supervisor, and Tiffany Taylor, Managerial Confidential Administrative Secretary.

1. Roll Call

Alderman Gonzalez called the meeting to order at approximately 6:15 p.m. and asked that the record show that all committee members were present.

2. Approval of Minutes of the Previous Committee Meeting (Tuesday, September 5, 2017)

A motion to approve the minutes of the September 5, 2017 meeting was made by Alderman Gonzalez, seconded by Alderman Smith. Voice vote, ayes all. Motion carried.

3. Unfinished Business

- a. PL #25-17: (Dougherty) To amend and replace the City of Olean Code of Ordinances Chapter 12 in its entirety with the following: Chapter 12, Property Maintenance and Residential Occupancy Code: Article I, Property Maintenance Code; Article II, Residential Occupancy Certificates; and Article III, Rental Dwelling Registration, Inspection and Occupancy permits.

Alderman Dougherty stated that the last time we left off, we were waiting for numbers on the proposed new position, as it was one of the keys missing for the Council to move forward. We have since received them. Doing the math, it seems that we would need to charge \$80 per inspection to break even. Alderman Crawford questioned if we also need to factor in additional vehicles, and Alderman Witte responded that Code Enforcement already has their own vehicles.

Mr. DiCerbo stated that the Council had never come to an agreement regarding the frequency of inspections. He presented an amendment to the Council that he worked on with the Mayor, Mr. Jennings and some of Olean's landlords in an attempt to find a fair compromise. It allows the City to reward good behavior.

Alderman Andreano stated that she likes this compromise. She does not feel, however, that we should not inspect Section 8 properties. Alderman Witte added that the amendment alters the

number of properties that need to be inspected, so she questions if we need to reconsider staffing and costs for this program.

Mr. DiCerbo stated that the amendment does not force liability, but it does provide incentive to get it.

Alderman Dougherty stated that he has had insurance company inspections, and they are not safety inspections. He also questioned why we don't require owners of HUD and Section 8 homes to carry insurance. Mr. DiCerbo replied that it is because they are inspected with each new tenant by the government agency that aids in placing tenants and paying for rents.

Alderman Gonzalez questioned if HUD rental units are bad now, and Mr. DiCerbo responded that the Council will find that the problem is not with Section 8, but rather with units that are rented with the aid of cash grant assistance from the Department of Social Services.

Mr. DiCerbo continued in stating that this deals with some of the invasion of privacy issues that were previously brought up to the Council. Alderman Gonzalez stated that it also is an incentive for a tenant to maintain property, as their failure to take care of the lawn or dispose of garbage properly could cause a need for inspection on a home that was previously exempt.

Mayor Aiello stated that the idea behind the changes was to look at what the Council was leaning towards versus landlord's concerns and recommendations. He would like to see the Council create a working document. Although he understands that there needs to be tweaks made after the legislation is adopted and implemented, he does not want to put forth a document now that will fail completely.

Alderman Dougherty questioned if this still gets Code Enforcement's foot in the door for code violations. Mr. Jennings stated that it does.

Alderman Crawford stated that he estimates that only 30% of rental properties will be problematic. He questions if this amendment is fair and legal. He questions if there are any grounds which a property owner could use to say that we are targeting. Mr. DiCerbo replied that the underlying law is written to require inspection each time someone vacates a property. The only change is the method of inspection, and the addition of incentives for voluntarily complying. The inspection requirements apply to everyone, and everyone has the opportunity for the incentives.

Alderman Gonzalez stated that he did not like the previously proposed rubric system because it added the human element into the equation, which could create issues. He questions if this does the same with the aspect of Code violations. Mr. DiCerbo questioned when a Code violation occurs, and Mr. Jennings replied that he considers a situation to be a "violation" as soon as he sends out his Order to Remedy. Mr. DiCerbo replied that the lawyer in him tells him

that it is when a plea of guilty or a conviction at a trial. Alderman Gonzalez questioned if we really want to get into picking apart Code violations.

Mr. DiCerbo stated that he does not feel that they can go three years between inspections, and achieve what the Council is trying to achieve. He feels that inspections should occur with each change in occupants.

Alderman Crawford questioned if we have the same inspection checklist as HUD and insurance agencies. Mr. DiCerbo replied that the City's checklist would be based on New York State Unified Code Standards, while each county agency and insurance company is different.

Alderman Dougherty questioned if we could require landlords to have insurance as vendors of the City. He stated that this is a more difficult approach, but it applies to everybody. Mr. DiCerbo replied that we can require the landlord to carry liability, but that will only cover issues that the landlord is negligent for. It will only cover the removal of a home after a fire if the landlord's negligence caused the fire. Alderman Crawford stated that he doesn't understand the argument that one could make that they aren't running a business.

Alderman Smith questioned if Code Enforcement can get into a home without a search warrant, if a complaint is filed. Mr. DiCerbo responded that if the landlord and tenant won't let Codes in, then there has to be a witness who can put into writing and sign that there is an issue. Alderman Smith stated that it seems that there is a problem with the current system in that we can't get into a home without the landlord or tenant's permission.

Mr. DiCerbo responded that, with the current system, if you have someone willing to testify and put into an affidavit that there are unsafe conditions, you can get a search warrant. With the new system, the probable cause to get a warrant is the failure to get a Certificate of Occupancy.

Alderman Smith stated that three years is a long time to be a bad landlord. He doesn't feel that this will solve the problem of blight.

Mr. DiCerbo stated that they were just trying to come up with a way to balance the need of frequencies of inspections with the cost of doing it right. The cost of doing it right is to inspect with each new tenant.

Alderman Witte questioned if we can fine a landlord when they have a change of tenant and don't notify us. Mr. DiCerbo replied that we would have to prove it, but yes, we can.

Alderman Dougherty questioned at what time we can stop inspecting a home after a violation. Do we wait a year, or five? Mr. DiCerbo responded that first, the Council needs to decide what

kind of violation will disqualify the landlord from incentives, then they can determine how long until the violation “falls off” and they can attempt to gain the incentives again

Alderman Andreano stated that it could become quite expensive for a landlord who has multiple units to have these inspections done. Alderman Witte stated that the landlord could recoup this cost with application fees. She can't think of any other businesses that we don't inspect or regulate in the area.

Alderman Gonzalez stated that he still feels that we should still inspect at each vacancy. Alderman Crawford added that if someone lives in a rental for five or ten years, then that is probably a property that we should be worrying about.

Alderman Smith stated that inspecting at each change of occupancy resolved the privacy issue.

Mayor Aiello stated that he has received an offer for an outside firm to complete the inspections, and he stated that this can be discussed down the road.

Alderman Andreano stated that she feels that the amendment is a nice compromise.

Alderman Crawford stated that he feels he needs to sleep on this before he makes a decision.

Alderman Gonzalez stated that years ago, the idea of a landlord registration brought a lot of scrutiny. The Council compromised, and he questioned where that got the City. Alderman Witte stated that the Council did not want to charge a fee, and she does regret that decision. The biggest complaint was that landlords were told by members of the public that they would be required to have and provide their insurance, which was not true whatsoever. Alderman Gonzalez questioned if the point of the registration was to fight blight, and Alderman Witte stated that it was to make people responsible. Alderman Gonzalez questioned if things are any better today. It seems we are still fighting this.

Mayor Aiello stated that this document was put together to take into consideration things that the Council, landlords, and the public have talked about since the proposed legislation was first introduced. We tried to find a way to compromise.

Alderman Witte thanked Mayor Aiello, and stated that she found it hard to justify inspecting a property that had already been inspected by another government agency.

Alderman Andreano stated that she likes that this is a voluntary incentive, and that it gives tenants some responsibility. If they don't want someone coming in to inspect their residence, then they will ensure that they aren't causing Code violations such as having unmowed lawns or excessive garbage.

Mr. DiCerbo recommended adding the option for a licensed home inspector to look at the property, at the owner's expense, rather than the City inspector or an insurance inspector. Alderman Smith stated that he is not opposed to that. Mr. DiCerbo stated that if a landlord has 20 units, it could be more cost effective to hire a home inspector to do the inspections, rather than having to pay \$50 for a City inspection with each change of tenant.

Mr. DiCerbo stated that this all goes back to nailing down the frequency of inspections. The Council needs to make a decision.

Alderman Crawford stated that he supports inspections upon vacancy. He feels that the document presented tonight requires more conversation.

Mr. DiCerbo stated that we need to consider current rentals "grandfathered", and not do inspections until they are vacant unless a complaint is received.

A motion to postpone PL #25-17 to the next Public Safety meeting was made by Alderman Gonzalez, seconded by Alderman Smith. Voice vote, ayes all. Motion carried.

4. New Referrals for Consideration

a. Discussion – No Parking / No Standing sign, York Street

Alderman Gonzalez stated that there is an issue on York Street right after you go over the South Union Street bridge, with cars in the roadway and certain times during the day stopped and waiting for children. It creates a safety issue, as it is difficult to see around the corner, and cars on both sides of the road greatly narrow the roadway. He had previously spoken with the business owner regarding the property, and although she was very nice and cooperative, there is only so much that she can do.

Alderman Smith questioned if the business owner feels that this is a fair compromise, and Alderman Gonzalez replied that he has not spoken to her about it. He is concerned with safety.

Alderman Crawford questioned if there were any incidents, and Mr. Gonzalez stated that luckily, there have not been. He has fielded a lot of complaints regarding this, however.

Alderman Gonzalez stated that he will be submitting a PL in the near future for this.

5. Approval of Committee Reports

None

6. Executive Session

A motion to enter into executive session to discuss collective negotiations pursuant to Article 14 of the Civil Service Law was made by Alderman Gonzalez, seconded by Alderman Dougherty. Voice vote, ayes all. Motion carried. Executive Session began at approximately 7:30 p.m.

A motion to adjourn from executive session was made by Alderman Gonzalez, seconded by Alderman Dougherty. Voice vote, ayes all. Motion carried. Executive session adjourned at approximately 7:45 p.m.

7. Adjournment

A motion to adjourn was made by Alderman Gonzalez, seconded by Alderman Dougherty. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 7:45 p.m.