

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Doug Hewett, Assistant City Manager
DATE: January 9, 2012
RE: **Consideration of the Rental Action Management Program, RAMP, Ordinance**

THE QUESTION:

Should the City Council adopt an ordinance to better regulate problem residential rental properties consist with the Rental Action Management Program (RAMP)?

RELATIONSHIP TO STRATEGIC PLAN:

Supports city goal #2: Growing City, Livable Neighborhoods – A Great Place to Live, and this issue was a Target for Action on last fiscal year's City strategic plan.

BACKGROUND:

On April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program. This program was designed to allow the City to more closely monitor and regulate rental properties that are the site of repeated or severe code violations or that are the site of certain criminal acts.

The program would have required those rental property owners whose property is the site of such violations or crimes to be placed into PROP and as a condition for renting the offending property again, the owner would be required to obtain a permit from the City. This would have allowed the City greater oversight of problem rental properties. The program was to be implemented July 1, 2011.

On June 18, 2011, Senate Bill 683 was ratified by the Legislature. The purpose of this Bill was to limit the level of local regulation of rental properties as well as limit the use of periodic inspections. Specifically, it prohibits cities from enforcing an ordinance that requires permitting of rental properties unless the property is the site of more than three violations in a 12-month period or is identified as being in the top 10 percent of properties with crime or disorder problems as set forth in a local ordinance. The language regarding the top 10 percent of properties with crime or disorder problems is based on a program currently utilized in Charlotte.

This Bill had a direct impact on the functionality and substance of the PROP program. On August 1, 2011, staff provided an update to City Council that stated with the adoption of Senate Bill 684, the PROP ordinance was no longer enforceable as drafted. Only one of the ten PROP eligible conditions could possibly be enforced as intended and it would still have to be revised. Furthermore, the ability of the City to charge a permit fee for PROP eligible properties under that the PROP ordinance was doubtful.

Given the substantial changes needed to make the City's PROP ordinance compliant with NC Law, staff recommended, and City Council approved rescission/repeal of the PROP ordinance on August 8, 2011. City Council directed staff to revise the PROP program, consistent with state law, and bring back program alternatives as soon as possible. Staff provided the attached schedule at that time.

Staff provided an update on October 3 with a draft ordinance for PROP II, now titled RAMP (Rental Action Management Program). In developing the draft ordinance and program overview, staff has met several times with counterparts in Charlotte regarding their program to determine how we might be able to replicate it in Fayetteville. Additionally, staff has conducted 5 stakeholder meetings to explain RAMP and solicit feedback.

Staff provided another update to City Council on November 7 with a recommendation that a public

hearing be held on Monday, December 12 to allow interested stakeholders an opportunity to address Council directly. On November 28 the City Council approved the following guidelines for this public hearing : Allow each speaker to address the City Council for a maximum of three (3) minutes, with up to sixty (60) minutes allocated for the RAMP public hearing.

City Council conducted a public hearing on December 12, 2011 to receive feedback directly from interested stakeholders. A total of 19 speakers addressed City Council on the ordinance and program design.

Since the public hearing, staff provided the attached responses to City Council's questions.

ISSUES:

As discussed at the November 7 briefing to City Council, there are two avenues by which properties can gain entry into RAMP:

1. Code Violations - 3+ in a 12-month period; and/or
2. Crime in the top 10% in a 6-month period by category.

Tracking of code violations is a relatively straightforward process. From October 2010 through October 2011, there were more than 500 residential properties with 3+ code violations. Of that number, staff estimates that approximately 137 of those properties that were offered for rent could be subject to RAMP, if enacted. Once a property is in RAMP for code violations, the goal is to ensure there are no additional code violations within a 12-month period. If there are no additional violations, then the property can be removed from RAMP.

As it relates to tracking the top 10% of crime for rental properties, tracking will be more complicated as reflected in the staffing/resource needs. To determine the percentiles for crime we must first identify violations for which we believe the property owner can help influence (Appendix A in the ordinance) and assign each a weighted value.

If enacted, incidents of crime at residential rental properties will be applied uniformly against reported incidents that happen in a 6-month period for similar rental properties in the City by the housing categories established in the ordinance. The number of housing categories has been expanded from 4 to 9 to allow for more uniform comparisons of like housing. Staff may recommend further definition of housing categories once the program is enacted after all of the residential rental property in the city is identified.

Once in RAMP for crime, the goal is to ensure that there are no additional crime occurrences within 6-months, or at a minimum that the crime rating for the property falls below the top 10% for similar properties in the city. If there are no additional violations, then the property can be removed from RAMP at the 6-month mark.

To achieve the reduction in the crime rating for the property, the property owner would enter into a remedial action plan agreement with the City that would specify actions the owner will complete during the evaluation period. The ordinance provides avenues for the owner to demonstrate good faith efforts and continue renting the property, even if the crime rating doesn't appreciably reduce.

Despite the latitude the ordinance provides to owners, many of the rental property owners and property managers that have reviewed the ordinance have reservations about RAMP. While many were opposed to the program their main reservations are centered on the crime rating rather than on the code violations components.

From an operational standpoint, RAMP will require more resources to operate than PROP, but will likely have greater revenue too.

Program	PROP	RAMP
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Based on	RaleighModel	Charlotte Model
Applicability	All residential rental properties individually	All residential rental properties by category
When eligible for entry	Differing code violations within a 24-month period 3 criminal convictions or civil penalties within a 24-month period	3+ code violations in a 12-month period Crime in top 10% in a 6-month period, by housing category
Fee	\$1,000	\$1,000 proposed
Time properties remain in program	2-years	1 year for code violations, or 6-months/1-year for crime
Staffing Needs	1 housing inspector .05 office assistant 1 paralegal/crime analyst	1 housing inspector .05 office assistant 2 crime analyst 1 police sergeant 1 police officer
Estimated properties in program	15-30 properties	200-237 properties
Budget*	\$132,500 Expenditures \$ 30,000 Revenues \$102,500 GF Support Needed	\$350,665 Expenditures \$184,000 Revenues \$166,665 GF Support Needed

*Based on assumptions of fee paying properties in program: 100% for PROP/80% for RAMP.

Frequently Asked Questions:

Q1: What is the intent of the Rental Action Management Program (RAMP) Ordinance?

A1: The RAMP ordinance is intended to address “problem rental properties” in established neighborhoods, and is targeted toward properties where violations occur, not all rental properties. The goal is that no RAMP will ever be issued, because if this is the case it means that rental property owners throughout the city are ensuring that their properties are well kept, up to City code, are well-monitored and their tenants are respectful of their neighbors.

Q2: Does the RAMP ordinance require that all rental properties get a permit/registration?

A2: No. A permit/registration is only required for properties that meet the following criteria: 3+ Code Violations in a 12-month period; and/or Crime in the top 10% in a 6-month period by housing category

Q3: Does the RAMP ordinance apply to owner-occupied dwellings as well?

A3: No. The RAMP ordinance only applies residential housing units offered for rent.

Q4: Does the RAMP ordinance apply to all rental properties?

A4: No. The RAMP ordinance pertains ONLY to residential rental properties?

Q5: When is a RAMP required?

A5: There are two paths for entry into RAMP: 1.) Code Violations: 3 or more code violations as described in the ordinance within a 12-month period, or 2.) Crime: properties in the top 10% of crime, by housing category, in a 6-month period as described in the ordinance.

Q6: What happens when a RAMP is required?

A6: A letter is issued to the property owner requiring them to attend a meeting where the violations can be discussed and reviewed. During that meeting, staff will review the violations and if they are valid, then the property will be entered into RAMP and the owner will be required to pay the RAMP entry fee, \$1,000 per property.

For properties that enter RAMP through crime conditions, the owner is also required to develop a management plan that describes the steps they will take to reduce crime conditions at their property. Properties that are successful in reducing crime conditions at their property below the 10% crime threshold can leave RAMP in 6-months.

Q7: What happens if there are more violations at the same address during the permit period?

A7: The property remains in RAMP and staff will evaluate whether the owners have acted in 'good faith' to address the conditions that led to the property entering RAMP. If the owners have been unresponsive or found to have not acted in 'good faith,' then the ordinance provides for the City to restrict the owners' ability to receive rental income on the property for 1-year.

Q8: Why aren't tenants held responsible?

A8: Tenants are responsible if a criminal citation is issued, but ultimately the condition of the property and the activities of the tenants must be closely monitored by the property owner. Property owners are expected to write clear expectations of tenant behavior relative to neighbors into leases, and take action to encourage tenants to comply with these expectations or seek evictions of problem tenants. The RAMP ordinance allows staff to apply the ordinance reasonably and to grant extra time to comply or waivers of ordinance requirements to those property owners who are taking every possible measure to deal with problem tenants.

BUDGET IMPACT:

City Council approved approximately \$132,500 in the FY 2012 budget to fund our earlier version of the Probationary Rental Occupancy Program (PROP). Given the uncertainty of the program and the rescission/repeal of the Probationary Rental Occupancy Program ordinance, staff has delayed expensing those funds or hiring the budgeted two full-time and one part-time staff positions (one full-time housing inspector, one paralegal/crime analyst, and one part-time office assistant.)

We've reviewed the staffing and resource needs and believe RAMP will require five full-time and one part-time staff positions (one full-time housing inspector, two crime analysts, one sergeant, one sworn police officer, and one part-time office assistant II) with a total first year start up costs of \$429,540. Once established, staff anticipates the ongoing operating budget would be \$350,665 in expenses, minus \$184,000 in revenue generated from fees. As a result, the program will require support from the General Fund in the amount of \$166,665. By contrast, PROP required General Fund support of \$102,000.

OPTIONS:

1. Take no action, but provide direction to staff;
2. Adopt the ordinance as presented, with an effective date of July 1, 2012 and direct staff to report back to City Council on the implementation schedule/plan;
3. Reject the ordinance as presented and provide direction to staff.

RECOMMENDED ACTION:

Adopt the ordinance as presented, with an effective date of July 1, 2012 and direct staff to report back to City Council on the implementation schedule/plan.

ATTACHMENTS:

RAMP Ordinance

RAMP Q&A - Group I

Please note the following is not the entire chapter. A new article V is being created as follows.

Chapter 14

HOUSING, DWELLINGS AND BUILDINGS

ORDINANCE NUMBER: _____

AMENDING CHAPTER 14

WHEREAS, the City of Fayetteville has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order; and

WHEREAS, G.S. 160A-174 allows a city by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city; and

WHEREAS, there are residential rental properties in the City of Fayetteville that have become a haven for various criminal or disruptive activities that cause disorder in our community; and

WHEREAS, the City Council desires to minimize and control the adverse effects caused by illegal activities occurring on and in these properties and thereby protect the health, safety, and welfare of the citizens, preserve the quality of life and property values and the character of neighborhoods and businesses, and deter the spread of urban blight; and

WHEREAS, the City Council recognizes that it is necessary for the City to apply its limited police and other municipal resources in accordance with the needs of the community at large, and to adjust the application of those resources as necessary to address activity that is injurious to the health, safety and welfare of the public; and

WHEREAS, the City Council recognizes that deterring crime in residential rental properties is a dynamic partnership between police, property owners, property managers, residents, and neighbors, each with responsibilities in cooperation with the other; and

WHEREAS, the City Council desires to implement a registration requirement for those residential rental property owners whose rental property has an unacceptable level of disorder activity occurring on or in the property; and

WHEREAS, there is a significant and demonstrative need to implement a program designed to assist residential rental property owners and managers who have experienced excessive levels of criminal activity and disorder; and

WHEREAS, the City Council desires to enact a residential rental action management program for residential rental property owners in order to implement recommended measures to curb excessive levels of criminal activity and disorder at rental properties; and

WHEREAS, the City Council, finds that a residential rental property owner's failure or refusal to successfully complete the remedial action program is injurious to the public's health, safety and welfare.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Chapter 14 "Housing, Buildings and Dwellings" of the Fayetteville City Code is amended by creating Article V entitled "Residential Rental Action Management Program", to read as follows:

"ARTICLE XII. Residential Rental Action Management Program.

Section 14-63. Purpose.

The purpose of this article is to establish a requirement that Owners of Residential Rental Property whose property is within the Disorder Risk Threshold as established by this ordinance or in repeated violation of the Fayetteville City Code as defined and established by this ordinance must register with the City sufficient identification information so that the City may expeditiously identify and contact the Owner when excessive levels of disorder activity or code violations have occurred on or in the property. In addition, the City desires to establish a method to hold Owners of Residential Rental Property accountable for failing to use effective methods to reduce Disorder Activity and code violations on their property. It is not the intent of this article to determine the rights and liabilities of persons under agreements to which the City is not a party. This article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to property that is the subject of this Article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.

Section 14-64. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

Development Services Official: A person designated by the Development Services Director of the City of Fayetteville who is primarily responsible for the administration of this Article.

Disorder Activity: Incidents of criminal activity occurring on or in a Residential Rental Property as categorized in this Ordinance entitled "Appendix A."

Disorder Activity Count: A number assigned to a Residential Rental Property that represents the amount of Disorder Activity occurring within a specified time period in or on the Property. For purposes of determining a Disorder Activity Count, the number of incidents is multiplied by an assigned number as designated in Appendix A of this Ordinance.

Disorder Risk Threshold: For each Residential Rental Property Category, the Disorder Activity Count for the Residential Rental Property that is at the 90th percentile of Residential Rental Properties within the Residential Rental Property Category.

In Need of Remedial Action: (INRA): A designation by the Police Official that a Residential Rental Property has been identified for enforcement action under this ordinance.

Incident: The occurrence of a criminal activity on or in a Residential Rental Property as categorized in this Ordinance for which a police report is generated.

Manager: The person, persons or legal entity appointed or hired by the Owner to be responsible for the daily operation of the Residential Rental Property.

Owner: The person, persons or legal entity that holds legal title to a Residential Rental Property.

Police Official: A person designated by the Chief of Police who is primarily responsible for the administration of this Article.

Registered Agent: The person identified by the Owner of the Residential Rental Property in the registration filed pursuant to this Article who is authorized to receive legal process and/or notice required or provided for in this Article.

Remedial Action Plan: A written plan agreed upon and signed by both the Police Official and Owner whereby the Owner agrees to implement remedial measures on a Residential Rental Property whose Disorder Activity Count exceeds the Disorder Risk Threshold for its Residential Rental Property Category.

Remedial Measures: Mandatory and voluntary measures as stated within the Remedial Action Plan Manual, a copy of which is on file at the City Clerk's Office.

Residential Rental Property: Property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, townhomes, and condominium unit(s). A single-family rental dwelling unit or multi-family rental dwelling unit is hereby defined to include those units available for rent that are currently vacant.

Residential Rental Property Category: Residential Rental Properties will be categorized by the number of residential units contained in the property as follows:

- Category 1 – One unit or single family home
- Category 2 – 2 to 9 units
- Category 3 – 10 to 49 units
- Category 4 – 50 to 99 units
- Category 5 – 100 to 149 units
- Category 6 – 150 to 199 units
- Category 7 – 200 to 249 units
- Category 8 – 250 to 299 units
- Category 9 – 300 or more units

Residential Rental Property Review Board: The Board created pursuant to this Article.

Verified Violation. A violation of any ordinance of the Fayetteville City Code of Ordinances as designated in "Appendix B" of this ordinance and determined by the Development Services Official.

Section 14-65. Registration of Residential Rental Property Due to Verified Violations.

(a) Each Owner of Residential Rental Property that has been found with three (3) or more verified violations in the previous twelve (12) month period, whether those violations have been resolved by corrective action or not, shall

register that property by providing the following information to the Development Services Official:

- (1) The address(es) for the Residential Rental Property which shall include the street name(s), number(s) and zip code;
- (2) The name(s), business or personal address, telephone number, and email address of the Owner;
 - a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other Owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a Registered Agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing partner and one alternate who have legal authority to act on behalf of the partnership.
 - d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.
- (3) The number of units located on the residential property.

(b) The address(s) required in subsection (a) (2) shall not be a public or private post office box or other similar address.

(c) An Owner that is required to register under this ordinance who sells the property shall notify the Development Services Official of all purchaser information within thirty (30) days from the date of change of ownership. Purchaser information shall include the name, address, phone number and e-mail address for the purchaser.

(d) An Owner that is required to register under this ordinance shall post proof of registration as provided by the City in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(e) Each residential rental property parcel shall be registered separately.

(f) The Owner of Residential Rental Property that is the site of three (3) verified violations in the previous twelve (12) month period shall be sent a notice by certified mail to the name and address listed with the Cumberland County's Office of Tax Assessor.

(g) The notice shall include the following information:

- (1) A description of the verified violations of the Fayetteville City Code that have occurred at the property in the past twelve (12) months as well as the dates of said violations; and
- (2) The amount of the registration fee.
- (3) The deadline for completing the registration process.

Section 14-66. Grounds for Revocation of Rental Registration as Required by Section 14-65.

- (a) Each Owner of Residential Rental Property that has been found with four (4) or more verified violations in the previous twelve (12) month period, whether those violations have been resolved by corrective action or not, shall have the rental registration for that property revoked by the Development Services Official.
- (b) Each Owner of Residential Rental Property that is required by this ordinance to register his or her property and either fails to do so or fails to pay the required registration fee shall have the rental registration revoked by the Development Services Official.

Section 14-67. Notice of Revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

Section 14-68. Period of Revocation.

Revocation of an Owner's rental registration shall remain in place for a period of one (1) year. If an Owner fails to register his or her property as required by this ordinance then that property shall be ineligible for registration for a period of one (1) year.

Section 14-69. Registration of Residential Rental Property Due to Disorder Activity.

(a) Each Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold for its Residential Rental Property Category shall register by providing the following information at the initial mandatory meeting:

- (1) The address(s) for the Residential Rental Property which shall include the street name(s), number(s) and zip code;
- (2) The name(s), business or personal address, telephone number, and email address of the Owner;
 - a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other Owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a Registered Agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing partner and one alternate who have legal authority to act on behalf of the partnership.
 - d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.
- (3) The number of units located on the residential property.

(b) The address(s) required in subsection (a) (2) shall not be a public or private post office box or other similar address.

(c) An Owner that is required to register under this ordinance who sells the property shall notify the Police Official of all purchaser information within thirty (30) days from the date of change of ownership. Purchaser information shall include the name, address, phone number and e-mail address for the purchaser.

(d) An Owner that is required to register under this ordinance shall post proof of registration as provided by the City in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(e) Each residential rental property parcel shall be registered separately.

Section 14-70 Disorder Risk Threshold and Disorder Activity Count.

The Police Official shall determine the Disorder Activity Count for each Residential Rental Property and the Disorder Risk Threshold for each Residential Rental Property Category on a semi-annual basis, by January 1 of each calendar year and by July 1 of each calendar year. These determinations shall be made using Disorder Activity during the previous six month period.

Section 14-71. Notification of Mandatory Meeting.

(a) The Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold shall be sent a notice by certified mail to the name and address listed with the Cumberland County's Office of Tax Assessor.

(b) The notice shall include the following information:

- (1) The date, time and location for the mandatory initial meeting between the Police Official and the Owner; and
- (4) The Disorder Activity Count for the Residential Rental Property; and
- (3) A statement that the Owner may provide additional evidence at the initial mandatory meeting to be considered by the Police Official; and
- (4) A detailed summary of the Disorder Activity that has occurred on or in the property.
- (5) The amount of the registration fee.

Section 14-72. Mandatory Initial Meeting.

(a) Unless otherwise agreed to by the Owner and Police Official, within thirty (30) days after notice has been provided to the Owner that a property falls at or above the Disorder Risk Threshold, a mandatory initial meeting shall be

held between the owner and the Police Official. The initial meeting may be held in person or by telephone. In the event there are multiple property Owners, the Owner attending the initial meeting must have power of attorney to execute the remedial action plan on behalf of the other Owners.

(b) At the mandatory initial meeting, the Police Official and the Owner shall, at a minimum, review the following:

- (1) The data that established the Disorder Activity Count for that property; and
- (2) Any relevant evidence provided by the Owner that may establish that the property does not fall at or above the Disorder Risk Threshold.

(c) After reviewing all the evidence, any previously identified Disorder Activity that is found to either not have occurred on or in the property or does not clearly meet the definition of a Disorder Activity shall be discounted and an adjusted Disorder Activity Count shall be determined. In the event that the adjusted Disorder Activity Count for the property falls at or above the Disorder Risk Threshold, then the Owner and Police Official shall develop and sign a Remedial Action Plan and the property will be set for a six (6) month review date pursuant to section 14-73. In the event the adjusted Disorder Activity Count is below the Disorder Risk Threshold, then no further action shall be taken by the Police Official.

(d) In the event the Owner fails to attend the initial meeting without just cause, the Police Official shall review all the evidence concerning the property pursuant to Subsections (b) and (c) of this Section. Upon a finding that the adjusted Disorder Activity Count for the property is at or above the Disorder Risk Threshold, the Police Official shall refer the property to the City Attorney's Office for determination of whether a public nuisance action or any other legal or equitable remedy is warranted.

(e) The Owner of Residential Rental Property that is required to register under this ordinance shall pay a registration fee on or before the Mandatory Meeting in the amount established pursuant to the fee schedule adopted by City Council.

Section 14-73. Remedial Action Plan and Review.

(a) At the first six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the Remedial Action Plan and determine the Disorder Activity Count for the property during that

time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken and the Owner of the property will not be required to continue to pay for registration the following year unless at that time the property is again at or above the Disorder Risk Threshold. If the Disorder Activity count continues to fall at or above the Disorder Risk Threshold, then the property will be designated In Need of Remedial Action (INRA) and the Police Official and the Owner shall amend and sign the Remedial Action Plan and a second six (6) month review date will be set.

(b) At the second six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the amended Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken. If the Disorder Activity Count continues to fall at or above the Disorder Risk Threshold, then the Police Official shall revoke the rental registration for the property unless it is determined that the Owner has complied in good faith with the remedial action plans.

- (1) In determining whether the Owner has acted in good faith, the Police Official shall weigh the following factors:
 - a. Whether the Owner has regularly met with the Police Official; and
 - b. Whether the Owner has exhausted all resources reasonably available to the Owner in order to comply with the terms of the Remedial Action Plans; and
 - c. Whether the Owner has intentionally ignored a term of a Remedial Action Plan; and
 - d. Whether the Disorder Activity on the property constitutes a public nuisance.
- (2) If the Owner has been found to have acted in good faith, then the Police Official may remove the designation of INRA and continue to work with the Owner. A property that continues to fall at or above the Disorder Risk Threshold for a second year will be referred to the City Attorney's Office for determination as to whether a public nuisance action or any other legal or equitable remedy is warranted.

(d) All Remedial Action Plans will be based on the procedures and practices set forth in the Fayetteville Police Department *Remedial Action Plan Manual; A Guide to Managing Rental Properties to Prevent Crime*.

Section 14-74. Additional Grounds for Revocation of Rental Registration.

In addition to the grounds stated in Section 14-73(b), the Police Official may revoke the Owner's rental registration based on a determination that:

- (a) The Owner provided materially false or misleading information during the registration process; or
- (b) The Owner refused to meet with the Police Official and/or develop a Remedial Action Plan as required under Section 14-73 without just cause; or
- (c) The Owner failed to pay the required registration fee on or before the date of the Mandatory Initial Meeting as required under Section 14-72(e).

Section 14-75. Notice of Revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

Section 14-76. Period of Revocation.

Revocation of an Owner's rental registration shall remain in place for a period of one (1) year. If an Owner fails to register his or her property as required by this ordinance then that property shall be ineligible for registration for a period of one (1) year.

Section 14-77. Transition Plan and Notification of Tenants.

Upon revoking a rental registration, the Police Official or Development Services Official shall develop a transition plan for the Owner's lawful disengagement from the operation and management of the rental property. The transition plan may include a referral to the City Attorney for the evaluation of the property as a public nuisance or for any other legal or equitable remedy available under law necessary to fairly assist in the disengagement process. Upon revocation and issuance of a transition plan, the Police Official or Development Services Official shall take reasonable steps to notify the residents of the property.

Section 14-78. Residential Rental Property Review Board.

(a) A Residential Rental Property Review Board (hereinafter "Board") is hereby established, to be composed of seven members: four members to be appointed by the City Council, two members to be appointed by the mayor and one to be appointed by the City Manager. The appointing authorities shall ensure that the members of the Board are representative of the residential rental, tenant and homeowner community.

(b) One member from the Fayetteville Police Department as designated by the Police Official and one employee of the City's Development Services Department who has the authority to investigate code violations will sit on the Board as advisors only.

(c) Individuals with a felony conviction within the last ten (10) years shall not be eligible to serve on the Board. Further, conviction of or a plea of *nolo contendere* to a felony during the term of office shall automatically terminate membership on the Board, irrespective of any appeals. Board members charged with a felony during a term of office shall be automatically suspended until disposition of the charge, and a quorum shall be established from the remaining membership.

(d) Board members shall keep all information about criminal investigations confidential.

(e) The Board shall elect a chairperson and vice-chairperson from its membership.

(f) All members of the Board serve without compensation.

(g) The terms of office shall be for two (2) years with no member serving more than two consecutive full terms. The terms of one-third of the Board shall expire each year. If a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.

(h) Five voting members shall constitute a quorum. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section.

(i) Members shall be subject to removal from the Board with or without cause by the appointing authority.

Section 14-79. Duties and Responsibilities of the Residential Rental Property Review Board.

The Board shall hear appeals from an Owner of Residential Rental Property whose registration has been revoked.

Section 14-80. Notice of Appeal of Revocation.

A Residential Rental Property owner may appeal a notice of revocation of rental registration to the Board. All revocation appeals to the Board must be filed in writing with the City Clerk's office within ten (10) calendar days of the date the notice of revocation is served on the Owner. The Owner shall provide a valid current address for the purpose of all notifications required to be made pursuant to this ordinance. The request must state the reason for the appeal.

Section 14-81. Hearing Procedure and Appeal of Board's Findings.

(a) The City Clerk shall forward an appeal of revocation of rental registration to the Police Official, Development Services Official and to the Chair of the Board. The Police Official or Development Services Official shall prepare a summary of the case, including all relevant data. The summary shall be provided to the Board and the Owner at least five working days before the hearing.

(b) Unless a quorum cannot be obtained or as otherwise agreed to by the Owner and Police Official or Development Services Official, the Board shall hold a hearing within thirty (30) calendar days of the date the appeal is received by the City Clerk. Should the Owner or the Police Official or Development Services Official desire a hearing date other than that set by the Board, the Owner or the Police Official or Development Services Official shall submit a written request for a change of the hearing date, stating the reason for the request. The Chair shall approve or disapprove such request, provided that such request is received by the Board at least seven (7) calendar days prior to the date of the hearing. For good cause, the Chair may continue the hearing from time to time. The hearing shall be conducted with at least five (5) voting members of the Board present.

(c) The Owner shall appear at the hearing in person and shall have the right to representation by a person of his or her choice. The North Carolina Rules of Evidence, G.S. Chapter 8C, shall not strictly apply to the hearing, but all parties shall have an opportunity to offer evidence, cross-examine witnesses, and inspect documents. Only sworn testimony shall be accepted. The Chair of the Board, as well as any Board member designated by the Chair, shall have the authority to administer the oath as set forth for witnesses in a civil matter by G.S. § 11-11. All hearings before the Board shall be *de novo* and recorded. The

Board has the authority to develop rules and regulations consistent with this ordinance to facilitate the hearing process.

(d) The City shall have the burden of proof and must establish by the preponderance of the evidence that the Owner's property is In Need of Remedial Action and the owner has failed to act in good faith to comply with the Remedial Action Plan. After reviewing the evidence and hearing testimony from the witnesses, the Board shall issue findings of fact and conclusions of law and issue an order either affirming or reversing the decision of the Police Official or Development Services Official.

(e) An Owner has the right to appeal the Board's decision to the City Council by filing a notice of appeal with the City Clerk within (10) ten days after the Board issues its written decision. When feasible, the matter will be set for review by the City Council at the next regularly scheduled business meeting. The City Council shall make its decision based on the record below, and no additional evidence will be considered. A majority vote by the City Council in favor of the Board's decision is required to uphold the Board's decision to revoke the Owner's registration. An appeal to City Council will stay the proceedings until it completes its review.

(f) If the City Council upholds the Board's decision, the Owner shall have the right to seek judicial review of the Board's decision in a proceeding in the nature of certiorari instituted in the Superior Court of the county within 30 days after the City Council votes to uphold the Board's decision. Judicial review shall not automatically stay the revocation.

Section 14-82. INRA Designation Binding on Subsequent Owner.

The designation of a property as INRA and the application of the procedures set forth in this article shall be binding upon all subsequent Owners or other transferees of an ownership interest in the Rental Residential Property. However, the revocation may be stayed during the implementation of a transition plan.

Section 14-83. Enforcement, Remedies and Penalties.

(a) The remedies provided herein are not exclusive and may be exercised singly, simultaneously, or cumulatively. In addition, the remedies provided herein may be combined with any other remedies authorized by law and exercised in any order. This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(b) It shall be a civil violation of this ordinance for any Owner of Residential Rental Property or person or entity on behalf of that Owner to commit any of the following acts:

- (1) Lease or rent Residential Rental Property to another person or entity when the rental registration for that property has either been revoked or never obtained as required by this ordinance, except pursuant to a transition plan as set forth in Section 14-77 of this ordinance.
- (2) Lease or rent Residential Rental Property to another person or entity after the Owner has been served with notice of the mandatory meeting and fails to attend the meeting without just cause as set forth in Section 14-72 of this ordinance.
- (3) Lease or rent Residential Rental Property to another person or entity after the Owner has been served with notice of the mandatory meeting and fails to pay the required registration fee prior to or on the date of the mandatory meeting as set forth in Section 14-72(e) of this section.

(c) Notwithstanding that the Owner's property registration has been revoked or the Owner has failed to attend the mandatory meeting as set forth in Section 14-72 of this ordinance, the owner shall not commit the following acts:

- (1) Refuse or fail to comply with any order of the City to repair a dwelling pursuant to Chapter 14 of the Fayetteville City Code, or
- (2) Terminate the utility services of any occupants or otherwise violate the rights of residential tenants under Article 2A, Article 5, or Article 6 Chapter 42 of the General Statutes.

(d) Notwithstanding that the Owner's property registration has been revoked, the Owner's compliance with its obligations in subsection (c)(1) and (2) hereinabove shall not be deemed as offenses under subsection (e) below.

(e) Failure to comply with the provisions of this section shall subject the offender to a civil penalty of fifty dollars (\$50.00) a day for the first 30 days, one hundred dollars (\$100.00) a day for the next thirty days, and five hundred dollars (\$500.00) a day for each subsequent day.

(f) A civil penalty that is assessed under this ordinance may be recovered by the City in a civil action in the nature of a debt if the owner does not pay the penalty fee within thirty (30) days after a notice of the penalty is issued by the Police Official or the Development Services Official.

APPENDIX A

UCR Code	Offense Description	Point Value
O110	Homicide	4
O120	Homicide Negligence	4
O300	Robbery	3
O410	Aggravated Assault	3
O410	Aggravated Assault-Officer	3
O410	All Other	3
O510	Burglary - Forcible Entry- Residence	2
O520	Burglary - Non Forcible Entry- Residence	2
O640	Larceny from Motor Vehicle	2
O710	Motor Vehicle Theft-Automobile	2
O720	Motor Vehicle Theft-Truck	2
O730	Motor Vehicle Theft-Bus	2
O740	Motor Vehicle Theft-Recreational Vehicle	2
O790	Motor Vehicle Theft-All Other	2
O810	Assault-Simple Physical	2
O820	All Other- Communicating Threats	1
O830	Psychical Aslt - Sexual Motive	2
O840	Non-Psychical Aslt - Sexual Motive	2
O890	Assault- Physical Officer	2
O890	Simple Assault-All Other	2
1310	Buying / Receiving Stolen Property	2
1330	Possessing / Concealing Stolen Property	2
1530	Possessing / Concealing Weapons	2
1550	Using Weapons (Illegal Discharge)	3
1610	Prostitution	1
1810	Drug/Narcotic Violations	3
1834	Equipment / Paraphernalia - Possessing	1
1990	All Other Gambling	1
2211	Selling / Distributing Tax Paid Liquor	1
2212	Possessing / Concealing Tax Paid Liquor	1
2214	Using / Consuming Tax Paid Liquor	1
2410	Disorderly Conduct	2
2420	Disturbing the Peace	2
2430	Fighting (Affray)	2
2440	Unlawful Assembly	2
2450	Drunk and Disruptive	2
2660	Parole & Probation Violations	3

2680	City Ordinance Violations	1
2690	City Ordinance Violations	1

APPENDIX B

Chapter 6 - Animals and Fowl

Article III - Animals and Fowl within the City Limits

Divison 2. - Dogs

Sec. 6-241. - Sanitary conditions.

Chapter 14 - Housing, Dwellings and Buildings

Article II - Standards of Fitness and Responsibilities of Owners and Occupants

Sec. 14-31. - Space and use standards.

Sec. 14-32. - Light and ventilation standards.

Sec. 14-33. - Exit standards.

Sec. 14-34. - Structural standards.

Sec. 14-35. - Property maintenance.

Sec. 14-36. - Electrical standards.

Sec. 14-37. - Plumbing standards.

Sec. 14-38. - Heating standards.

Sec. 14-39. - Responsibilities of owners and occupants.

Chapter 16 - Motor Vehicles and Traffic

Article XII - Abandoned, Junked and Nuisance Vehicles

Sec. 16-354. - Abandoned vehicles unlawful; removal authorized.

Sec. 16-355. - Public nuisance vehicles unlawful; removal authorized.

Sec. 16-356. - Junked motor vehicles unlawful; removal authorized.

Chapter 22 - Solid Waste

Article I - In General

Sec. 22-16. - Illegal dumping; owners and occupants required to keep premises free from public health and safety nuisances.

RAMP Questions & Answers Group I

December 15, 2011

As there is significant interest in RAMP, Rental Action Management Program, staff will provide responses to questions concerning the draft program design/ordinance in the following format and post this information online at www.ci.fayetteville.nc.us/rppp.

1. Should the CoF convene a stakeholders group to refine RAMP?

Staff is happy to meet with interested stakeholders. RAMP is based on State law and a working program in Charlotte. Throughout the process of modifying Charlotte's program for Council's consideration, we've engaged the stakeholders to solicit ideas and smooth rough spots. Additional work around Council's desired program would likely be helpful - particularly if we are able to ascertain interest around the following issues:

- a. Will this program or a variant apply citywide?
- b. Will this program include crime and code violations (Charlotte's focuses only on crime)?

Based on answers to those questions, the scale of RAMP will likely change and would also then inform Council/staff which stakeholders need to be engaged.

2. Do the "points" apply to a rental property owner if a B&E were to happen on a public street?
No. RAMP only addresses incidents which occur at/on the property.
3. Can we require all rental properties to have a professional property management firm handle their rentals?

The City can't mandate private contracts between individuals and as one speaker indicated during the City Council's December 12 RAMP public hearing, there are instances in which some of the rental management companies have provided poor oversight of properties.

4. Could the RAMP be modified to only apply to single family dwellings?

Staff has reservations about applying this only to single family homes, for two reasons. Under Senate Bill 683 regarding periodic inspections it states "The municipality shall not discriminate in its selection of areas or housing types to be targeted." This section of the bill is separate from the section that controls RAMP since it is just referring to periodic inspections, but the fact that it is in the same Bill/ordinance is strong evidence of how such a distinction will be viewed.

Secondly, there are constitutional concerns anytime like-business are treated differently and in this case we would be going beyond treating like-businesses differently and actually treating like-owners differently.

5. Could the RAMP be modified to only apply to single family dwellings in "high crime neighborhoods" with the definition to be defined by PD calls and actions?

SB 683 bill doesn't actually provide for this. It allows specific areas to be designated by council for periodic inspections, but not necessarily for the conditions contained in RAMP. Not to say that it's absolutely impossible and staff will look into it more, but on its face the bill/statute doesn't say it.

By periodic inspections, it is just providing cities with the ability to have regularly scheduled inspections in certain designated areas when there is no reasonable cause identified. Currently cities can't do periodic inspections without reasonable cause, this section of the bill just creates an exception but we don't necessarily see it extending to the provisions of RAMP.

6. Do all of the same requirements apply to:

a. Fayetteville Metropolitan Housing Authority?

Yes. As written, there are no exceptions for FMHA communities.

b. Picerne Housing?

No. We don't Police (crime or code) where Picerne Housing is located – federally owned land.

c. Section 8 Housing?

Yes. As written, there are no exceptions for Section 8 Housing.

7. How is a property owner notified of criminal activity or code violations? What if the address is not correct?

RAMP would build in a system whereby the owners could be notified once we identified the property was a rental. The letters sent out for code violations would be modified with references to RAMP, if adopted, to let the owners know about the program.

8. If a landlord has 3 code issues and makes a good faith effort and does address, why are they charged \$1,000? Does the Charlotte model work exactly the same way?

Charlotte's program doesn't include code violations, only crime. Good faith should be demonstrated after the first 2 violations, repeated violations in a year equaling 3 or more are one of the main reasons RAMP was recommended to Council. Simply put, we are continually chasing the same properties and RAMP is built on the belief that the owners are responsible for insuring their properties are code violation free or that they are holding the tenants responsible. However, this is Council's call as to what level of enforcement is desired.

One aspect of apartment living that appeals to tenants is not having to worry about the neighbor with a junk car in their front yard or with trash on the lawn - all such issues are handled by the professional property managers who operate the apartment complex (usually). As such, it would likely be very difficult for most apartment communities to get three code violations in a year for entry into RAMP. One such apartment complex that was ripe for RAMP is the King George Apartments off Carol Street (Bragg Blvd) near Sycamore Dairy. That property racked up several code violations over the last 14 months and is currently going through a major renovation of the entire complex.

9. Consider having the "review board" also be charged with evaluating the effectiveness of the program.

The evaluation data will come from staff. Staff will prepare regular reports to provide to Council to gauge the effectiveness. Council as the authorizing body is likely in the best position to determine whether the program is delivering the desired results. The review board is designed to hear appeals in an impartial way.

10. Has the possibility of “unintended consequences” been considered and citizens/property managers/etc. actually call in less code violations and criminal activity?

Yes, staff mentioned some of those consequences in the November presentation to City Council. While a concern, the types of crime that we are tracking aren't easily ignored by residents/tenants - assault, prostitution, drug-dealing, murder. RAMP was also modified to not be based on 'CALLS FOR SERVICE', but on 'INCIDENTS' and reports generated by FPD. As such, a call to 911 won't necessarily generate an 'incident' or RAMP eligible point. This change was discussed with Council at the Wednesday, December 7 Agenda Zoning Review. Even still, this is a concern for staff, too.

11. Describe the authority the Council might have to strengthen existing code and other ordinances that would allow us to effect the same penalties on a case-by-case basis.

RAMP provides for a higher level of scrutiny once certain conditions are present on the property. As such, it has a more uniform and equitable approach for all properties that are offered as residential rentals. May need additional clarity on the question to provide a more complete response, as Council can certainly amend ordinances but the constitutionality and legality of any proposal would have to be evaluated. As always, we can only go as far as existing state law allows.