

Chapter 20

HOUSING*

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ARTICLE I. IN GENERAL

Sec. 20-1. Penalty for violations.

Any person violating any provision of this chapter shall be responsible for a civil infraction with a fine up to \$500.00, plus costs.

Sec. 20-2. Service of notice and order; method.

Service of notice and order shall be made upon all persons entitled thereto either personally, by mailing a copy of such notice and order either by regular mail or by certified mail, postage prepaid, return receipt requested, to each person at this address as it appears on the last equalized assessment roll of the county or as known to the inspection department, or by posting of a notice in a conspicuous location on the premises. If no address of any such person so appears or is known to the inspection department, then a copy of notice and order shall be so mailed, addressed to such person at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this chapter. Service by posting in a conspicuous location on the premises, regular mail, certified mail or hand-delivered document in the manner herein provided shall be effective on the date of mailing, posting, or delivery.

*Cross references- Buildings and building regulations, Ch. 11; houseboats § 47-22

Secs. 20-3 – 20-15. Reserved.

ARTICLE II. HOUSING COMMISSION*

Sec. 20-16. Created

Pursuant to Public Act No. 18 of the Extra Session of 1933, as amended by Public Act No. 80 of 1935, Public Act No. 265 of 1937 and Public Act No. 5 of the Extra Session of 1938 [MCL § 125.651 et seq., MSA § 5.3011 et seq.], a commission is hereby created in and for the city, to be known as the “Benton Harbor Housing Commission.”

(Gen. Code 1946, Ch. 5, § 1401.1; Code 1972, § 2.221)

Sec. 20-17. Appointment.

The Commission of the City of Benton Harbor shall appoint the members of said Benton Harbor Housing Commission, as terms expire or vacancies occur. No more than two members of the City Commission shall be appointed or serve on the Housing Commission.

(Gen. code 1946, Ch. 5, § 1401.2; Code 1972, § 2.222; Ord. No. 524-83, § 2.222m 12-19-83)

Sec. 20-18. Powers and duties.

The housing commission shall have all the powers and duties vested or permitted to be vested in housing commissions by the Public Act No. 18 of the Extra Session 1933 [MCL § 125.651 et seq., MSA § 5.3011 et seq.] as heretofore or hereafter amended, and any laws heretofore or hereafter enacted which are supplemental thereto, it being the intention of this article to vest in the housing commission all powers and duties permitted by law.

*Cross reference-Administration, Ch. 2.

(Gen. Code 1946, Ch. 5, § 1401.3; Code 1972, § 2.223)

Sec. 20-19. Employees.

The housing commission shall select and appoint such employees as it shall deem necessary for the proper exercise of its powers, functions and duties and shall pay them such compensation as it shall, with the approval of the city manager and the city commission, fix and determine. (Gen. Code 1946, Ch. 5, § 1401.4; Code 1972, § 2.224)

Secs. 20-20 – 20-51. Reserved

ARTICLE III. HOUSING DISCLOSURE FOR TRANSFERS

Sec. 20-52. Information to be disclosed by owner; waiver prohibited

(a) The owner of a one-family or two-family dwelling shall disclose in writing to a prospective purchaser or transferee of any interest therein, except a lessee, mortgagee, donee or devisee, within ten (10) days prior to the execution of a purchase agreement or land contract or the consummation of the sale or transfer if there is no purchase agreement or land contract, the following information:

- (1) Specific violations, if any, of a state or local code applicable to the dwelling at the time of the disclosure;
- (2) The nature of policy coverage and the yearly premium for home insurance, if any, existing on the dwelling;
- (3) The amount of taxes on the property for the tax year previous to the signing of the purchase agreement;
- (4) The nature, date and cost of any unpaid utility bills or taxes on the property;
- (5) The amount of the total heating bill on the property during the year previous to the signing of the purchase agreement or the period of ownership by the seller, whichever is shorter and whether the dwelling was occupied during such period.

(b) The disclosure of items referred to in subsection (a) may not be waived by the purchaser or transferee. (Ord. of 5-21-73, § 6-20)

Sec. 20-53. Implied warranty to be given by real estate investor; waiver prohibited.

(a) In connection with the sale or transfer of any interest covered by section 20-52 by a real estate investor, in addition to other disclosure required by section 20-52, a warranty shall be implied that the dwelling is suitable for habitation and in compliance with all laws of the state and the city applicable to the dwelling.

(b) A real estate investor means a person who has participated in three (3) or more transactions described in section 20-52 as an owner, in whole or in part, of legal or equitable title.

(c) The warranty referred to in subsection (a) may not be waived. (Ord. of 5-21-73, § 6.21; Ord. of 11-4-74, § 6.21)

Sec. 20-54. Reformation of unconscionable transfers.

A sale or transfer covered by section 20-52 or 20-53, if found by a court to be unconscionable at the time it was made, is unenforceable or subject to reformation by the court to avoid any unconscionable result. (Ord. of 5-21-73, § 6.22, Ord. of 11-4-74, § 6.22)

Sec. 20-55. Manipulative or deceptive devices prohibited.

It is unlawful for a person, directly or indirectly by use of any means or instrumentality, in connection with a purchase or transfer covered by section 20-52 or 20-53, to use or employ any manipulative or deceptive device, including using or employing:

- (1) Any device, scheme or artifice to defraud;
- (2) Any untrue statement of a material fact;
- (3) Any statement which omits a material fact so as to be misleading in light of the circumstances in which the statement was made;
- (4) Any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (5) Any device, scheme, practice or course of business which would operate to avoid the requirements of this article. (Ord. of 5-21-73, § 6.23; Ord. of 11-4-74, § 6.23)

Sec. 20-56. Remedies of transferee after article violations.

If a person violates in whole or in part the provisions of this article, the purchaser or transferee shall be entitled to recover incidental and consequential damages from the owner. If there is a material violation the purchaser or transferee, in addition, may void the purchase or transfer within a reasonable time and receive back any moneys paid. (Ord. of 5-21-73, § 6.24; Ord. of 11-4-74, § 6.24)

Sec. 20-47. Limitations on actions.

Any action brought pursuant to this article shall be initiated within eighteen (18) months of the time of sale or transfer of the property. (Ord. of 5-21-73, § 6.25; Ord. of 11-4-74, § 6.25)

Secs. 20-58 – 20-68. Reserved

ARTICLE IV. HOUSING CODE*

Sec. 20-69. Reserved.

Editor's note-Ord. No. 626-89, § 2, adopted Apr. 24, 1989, in part repealed § 20-69 which pertained to adoption of the Uniform Housing Code and derived from § 1 of an ordinance adopted May 24, 1971; § 6.1 of the city's 1972 Code; § 6.1 of an ordinance adopted Nov. 4, 1974; Ord. No. 517-83, § 6.1, adopted Oct. 3, 1973; and Ord. No. 589-88, adopted Dec. 7, 1987. For current regulations relative to housing, see the existing structures code, § 11-180 et seq.

***Cross reference**-Existing structures code, § 11-180 et seq.

Sec. 20-70. Certificate of occupancy for rental properties, inspection requirement

No owner, agent or person in charge of a dwelling or dwelling unit shall allow any person to occupy the same as a tenant or lessee or for a valuable consideration unless the dwelling or dwelling unit shall have been inspected subsequent to its most recent occupancy and determined to be in compliance with the provisions of this article as evidenced by a certificate of occupancy issued by the housing inspector as provided by this article. (Ord. of 5-24-71, § 2.6; Code 1972, § 6.4; Ord. of 3-5-73, § 6.4; Ord. of 11-4-74, § 6.4)

Sec. 20-71. Certificate of occupancy and reinspection.

(a) Upon request of the owner, agent or other person authorized to rent a dwelling or dwelling unit, hereinafter referred to as applicant, the housing inspector will be scheduled for an inspection at the earliest possible date. A current tenant may also request an inspection which will be scheduled upon completion of a Rental Housing Complaint Form. If such inspection establishes that the dwelling or dwelling unit complies with the requirements of this article, so that the dwelling or dwelling unit is fit for occupancy without endangering human life, safety or welfare, the department shall issue a Rental Certificate of Compliance for the dwelling or dwelling unit, indicating the date of such inspection, and that such dwelling or dwelling unit complies with the requirements of this article. A temporary Rental Certificate of Compliance may be issued if required repairs are of such a nature that they do not impose immediate danger to the occupants of the premises

or the general public. All smoke detector violations shall be corrected within twenty four (24) hours of the inspection. If more than fifty (50%) of the required smoke detectors are missing or inoperable, the inspector shall immediately identify the premises as unsafe and unfit for human occupancy, and shall post the structure as Condemned in compliance with the International Property Maintenance Code.

(b) If the dwelling or dwelling unit does not comply with the requirements of this article, the housing inspector shall furnish the applicant with a written list of the specific violations which would have to be corrected before a certificate of occupancy could be issued for the dwelling or dwelling unit. Upon the representation of the applicant that the listed violations have been corrected the housing inspector shall reinspect the dwelling or dwelling unit and issue a certificate of occupancy or a list of; violations as above provided. (Ord. of 5-24-71, § 2.6; Code 1972, §§ 6.5; 6.6; Ord. of 3-5-73, § 6.5; Ord. of 11-4-74, § 6.5)

Sec. 20-72. Certificate of compliance.

Upon inspection the housing inspector shall furnish the applicant with a written list of specific violations which although not rendering the dwelling or dwelling unit unfit for occupancy by reason of danger to human life, safety or welfare, are of the nature which if not corrected could result in further deterioration and subsequent danger to human life, safety or welfare. Upon the representation that the listed violations have been corrected the housing inspector shall reinspect the dwelling or dwelling unit and if the same complies with all provisions of this article the housing inspector shall issue a Rental Certificate of Compliance for the dwelling or dwelling unit. Upon receipt of a certificate of compliance for a dwelling or dwelling unit, the owner, agent or person in charge of the dwelling or dwelling unit shall not be subject to the provisions of section 20-70 hereof as to the dwelling or dwelling unit for the following fiscal year provided, however, that this provision shall not prohibit inspection by the housing inspector upon receipt of a complaint, request for inspection, or any other reason and if upon such inspection any violations of this article are found to exist all provisions of this article shall immediately become applicable to the dwelling or dwelling unit. Upon request the department will provide to the tenant one (1) copy of the inspection report. Any additional copies will be provided at a fee of \$5.00 each.

Sec. 20-73. Limitation on number of occupants.

No applicant, tenant or occupant shall permit the occupancy of any dwelling or dwelling unit by a greater number of persons than that specified in the certificate of occupancy. (Ord. of 5-24-71, §2.6; Code 1972, § 6.7; Ord. of 3-5-73, § 6.7; Ord. of 11-4-74, § 6.7)

Sec. 20-74. Waivers.

Any applicant who is delayed in correcting violations necessary to entitle him to a certificate of occupancy and who has a valid contract with a qualified person for the performance of work and the furnishing of the materials to correct such violation may petition the housing inspector in writing for a temporary waiver of compliance. No fee shall be required. The petition shall state the reasons for the delay in correcting violations and the date on which the applicant anticipates that the violations will be corrected. If the housing inspector shall determine that (1) the delay in the correction of the violation is reasonable, taking into consideration the availability of qualified persons to do the work and the current work load; and (2) the work can reasonably be undertaken and completed while the premises are occupied or that appropriate provision has been made for housing the tenant elsewhere during the necessary period when the dwelling or dwelling unit will not be habitable because of the work correcting the violation; the housing inspector shall issue a temporary waiver of compliance expiring on the date when the corrective work should be completed. Applicant shall, on or before the date, request a reinspection and pay the reinspection fee. The housing inspector shall reinspect the dwelling or dwelling unit and issue the certificate of occupancy, or list any remaining violations, as provided above.

Sec. 20-75. Appeals.

Appeals and appeal procedure with reference to this article are governed by the board of building trades appeals. (Ord. of 5-24-71, §§ 2.1; Code 1972, §§ 6.2, 6.9; Ord. of 11-4-74, §§ 6.2, 6.9)

Cross reference- Board of building trades appeals, § 11-16 et seq.

Sec. 20-76. Requirement to leave vacated premises in sanitary condition.

Each person vacating or removing from any dwelling, apartment house or other building within forty-eight (48) hours after vacating or removing from the same, shall remove or cause to be removed from the dwelling, apartment house or other building, including the grounds and appurtenances thereto, all ashes, garbage, rubbish, dirt, bottles, glass, paper and refuse of every kind and nature. (Ord. of 5-24-71, § 2.8; Code 1972, 6.11; Ord. of 11-4-74, § 6.11)

Sec. 20-77. Bed and breakfast operations; defined; conditions as special land use.

(a) *Definition. Bed and breakfast operation* shall mean a use which is subordinate to the principal use of a dwelling unit as a single-family dwelling unit and a use in which transient guests are provided a sleeping room. In addition, in return for payment, a continental breakfast, limited to only coffee, juice, tea, milk and commercially prepared sweet rolls, may be provided.

(b) *Conditions for operations as a special land use.* [Conditions for bed and breakfast operations as a special land use are as follows:]

- (1) The rooms utilized shall be part of the primary residential use and not specifically constructed for rental purposes;
- (2) The dwelling unit in which the bed and breakfast operation takes place shall be the principal residence of the owner/operator, and said owner/operator shall live on the premises when the bed and breakfast operation is active;
- (3) Sufficient off-street parking shall be provided, in addition to that required by section 502 of Appendix A to this Code for residential purposes, at the rate of one hard-surface parking space per room to be rented;
- (4) The maximum stay for any occupants of bed and breakfast operations shall be fourteen (14) days;
- (5) Signs are not permitted. (Ord. No. 577-87, 8-3-87)

Secs. 2-78 – 20-87. Reserved.

ARTICLE V. LANDLORD-TENANT CODE

DIVISION 1. GENERALLY

Sec. 20-88. Legislative finding.

It is hereby found that there exist and may in the future exist, within the City of Benton Harbor premises, dwellings, dwelling units, rooming units, or parts thereof, which by reason of their structure, equipment, sanitation, maintenance, use, or occupancy affect or are likely to affect adversely the public health (including the physical, mental and social well-being of persons and families), safety, and general welfare. To correct and prevent the existence of such adverse conditions, and to achieve and maintain such levels of residential environmental quality as will protect and promote public health, safety, and general welfare, it is further found that the establishment and enforcement of minimum housing standards are required. (Ord. of 6-9-77, § 1.01)

Sec. 20-89. Purposes.

- (a) This article shall be liberally construed and applied to promote its underlying purposes and policies as set forth in section 20-88.
- (b) The underlying purposes and policies of this article are:
 - (1) To simplify and clarify the law governing the rental of dwelling units;
 - (2) To encourage landlords and tenants to maintain and improve the quality of housing in the city; and
 - (3) To revise and modernize the law of landlord and tenant to serve more realistically the needs of an urban society. (Ord. of 6-9-77, § 1.02)

Sec. 20-90. Scope

The provisions of this article shall apply uniformly to the construction, maintenance, use and occupancy of all residential buildings and structures, where applicable, and shall apply uniformly to the alteration, repair, equipment, use, occupancy and maintenance of all existing residential buildings and structures, within the jurisdiction of the city irrespective of when or under what code or codes such buildings or structures were originally constructed or rehabilitated. It shall regulate and determine all legal rights, remedies, and obligations of the parties and beneficiaries of any rental agreement of a dwelling unit within this city wherever executed. Any agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this article and is not expressly authorized herein. Such unenforceability shall not affect other provisions of the agreement which can be given effect without such void provision. (Ord. of 6-9-77, § 1.03)

Sec. 20-91. Title.

This article shall be known and may be cited as the Landlord-Tenant Code. (Ord. of 6-9-77, 1.04)

Sec. 20-92. Definitions.

Unless the editorial context specifically indicates an obviously different or modified use of the terminology contained herein, the following definitions shall apply in the interpretation of this article:

Action includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

Apartment building is any structure containing one or more dwelling units except:

- (1) A single-family residence;
- (2) A structure in which all tenants are roomers or boarders.

Appropriate authority shall mean that person with the governmental structure of the corporate unit who is charged with the administration of the appropriate code.

Approved shall mean approved by the local or state authority having such administrative authority.

Bed and breakfast shall mean a use which is subordinate to the principal use of a dwelling unit as a single-family dwelling unit and a use in which transient guests are provided a sleeping room. In addition, in return for payment, a continental breakfast, limited to only coffee, juice, tea, milk and commercially prepared sweet rolls, may be provided.

Common area includes a part or area of the premises not within any dwelling unit.

Dwelling or dwelling unit shall mean any house, building, structure, tent, shelter, trailer, or vehicle, or portion thereof, or a combination of related structures and permanent fixtures, operated as a single entity, which is occupied in whole or part as the home, residence, living or sleeping place of one or more human beings, either permanently or transiently.

Fair rental value means the prevailing value for comparable units in the city.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, serving and non-consumption of food.

Guest shall mean an individual who shares a dwelling unit in a nonpermanent status for not more than thirty (30) days.

Infestation shall mean the presence within or around a dwelling of any insect, rodents or other pests.

Landlord shall mean the owner, the owner's agent lessor or sub lessor of the dwelling unit or the property of which it is a part and, in addition, means any person authorized to exercise any aspect of the management of the premises except those persons engaged solely in custodial and maintenance functions.

Lead-based paint shall mean any paint containing more lead than the level established by the U.S. Consumer Product Safety Commission as being the "safe" level of lead in residential paint and paint products.

Lease or rental agreement shall mean and include any and all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

Multiple dwelling shall mean any dwelling containing more than two (2) dwelling units.

Occupant shall mean any individual, over one year of age, living, sleeping, cooking, or eating in or having possession of a dwelling unit or a rooming unit; except that in dwelling units a guest shall not be considered an occupant.

Owner shall mean any person who, along or jointly or severally with others:

(1) Shall have legal title to any premises, dwelling or dwelling unit, without accompanying actual possession thereof; or

(2) Shall have charge, care, or control of any premises, dwelling or dwelling unit, as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owners.

Permissible occupancy shall mean the maximum number of individuals permitted to reside in a dwelling unit or rooming unit.

Person includes an individual, corporation, government, or government agency, business trust, estate, trust, partnership or association, two or more persons having a joint account interest, or any other legal or commercial undertaking

Rat harborage shall mean any conditions or place where rats can live, nest, or seek shelter.

Refuse shall mean all putrescible and nonputrescible solids (except body waste) including garbage, rubbish, ashes and dead animals.

Roomer/boarder shall mean a tenant occupying a dwelling unit:

(1) Which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or stove;

(2) In a building:

a. Where one or more such major facilities are supplied to be used in common by the occupants of the roomer's or boarder's dwelling unit and one or more other dwelling units; and

b. In which the landlord resides.

Rubbish shall mean nonputrescible solid wastes (excluding ashes) consisting of either:

(1) Combustible wastes such as paper, cardboard, plastic containers, yard clippings, and wood; or

(2) Noncombustible wastes such as tin cans, glass and crockery.

Security deposit means a deposit, in any amount, paid by the tenant to the landlord or his agent to be held for the term of the rental.

Single family residence is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities nor hot water equipment, nor any other essential facility of service, with any other dwelling unit.

Tenant shall mean any person who occupies a dwelling unit for living or dwelling purposes with the landlord's consent.

Undefined works shall mean works not specifically defined in this article and shall have the common definition set forth in a standard dictionary. (Ord. of 6-9-77, §§ 2.01 – 2.27; Ord. No. 578-87, 8-3-87_

Cross reference-Definitions and rules of construction generally, § 1-2.

Sec. 20-93. Construction and modification.

The language in all parts of this article shall be construed simply, according to its fair meaning, and not strictly for or against landlord or tenant. The various rights and obligations contained in this article shall be construed as cumulative. Each obligation shall be binding upon and inure to the benefit of the parties hereto, as well as their respective heirs, executors, administrators, successors and assignees. This article constitutes a legal agreement between the parties and cannot be altered, changed, modified or added to except in a separate agreement signed by both parties and publicly notarized, and where such alterations, changes, modifications or additions are authorized by this article. (Ord. of 6-9-77, § 1.05)

Sec. 20-94. Independent obligations.

Except as specifically provided in this article all obligations of landlords and tenants under this article shall be interpreted as independent obligations and the duty of a tenant or landlord to meet his obligations under this article shall not be conditioned upon the performance by the other party in the rental agreement of his obligations. (Ord. of 6-9-77, § 1.06)

Sec. 20-95. Disclosure.

(a) On each written rental agreement, the lessor shall prominently disclose:

- (1) The names and usual addresses of all persons who are owners of the dwelling unit or the property of which the dwelling unit is a part; and
- (2) The names and usual addresses of all persons who are landlords of the dwelling unit.

(b) In the case of an oral agreement, the lessor shall, on demand, furnish the tenant with a written statement containing the information required by subsection (a).

(c) Any owner or landlord not dealing with the tenant as a lessor shall be responsible for compliance with this section by the lessor, and shall be estopped from any objection to a failure to serve process upon him in any proceeding arising under this article when such failure is due to failure to comply with this section. (Ord. of 6-9-77, § 1.08)

Sec. 20-96. Effect of unsigned rental agreement.

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to him by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a written rental agreement which has been signed and tendered to him by the landlord, acceptance of possession and payment of rent without reservation shall give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Where the rental agreement which is given effect by the operation of this section provides by its terms for a term longer than one year, it shall operate to create only a one-year term. (Ord. of 6-9-77, § 3.01)

Sec. 20-97. Separation rents and obligations to property forbidden.

Any agreement, conveyance or trust instrument which authorizes a person other than the beneficial owner to act as the landlord of a dwelling unit shall operate, regardless of its terms, to authorize and require such person to use rents to conform with this article and any other law, code, ordinance or regulation concerning the maintenance and operation of the premises. (Ord. of 6-9-77, § 4.01)

Sec. 20-98. Unconscionability.

If the court finds that the rental agreement, or a settlement in which a party waives or agrees to forego a claim or right under this article or under a rental agreement, to have been unconscionable when made, the court may grant the following relief:

- (1) Nonenforcement; or
- (2) Nonenforcement of the unconscionable provision only; or
- (3) Limit the application of any provision to avoid an unconscionable result. (Ord. of 6-9-77, § 2.27)

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Secs. 20-99 – 20-104. Reserved

DIVISION 2. LANDLORD OBLIGATIONS AND TENANT REMEDIES

Sec. 20-105. Landlord to supply possession of dwelling unit

The landlord shall supply the dwelling unit bargained for at the beginning of the term and put the tenant into full possession. (Ord. of 6-9-77, § 5.01)

Sec. 20-106. Tenant's remedies for failure to supply possession

If the landlord fails to put the tenant into full possession of the dwelling unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter, and:

- (1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time he is unable to enter into possession; and
- (2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license, the tenant may recover reasonable expenditures necessary to secure adequate substitute housing for up to one month, but no more than the agreed rent for one month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts totaling at least:
 - a. The amount of abated rent; plus
 - b. The amount claimed against the rent. (Ord. of 6-9-77, § 5.02)

Sec. 20-107. Landlord to supply and maintain fit dwelling unit.

- (a) The landlord shall at all times during the tenancy:
 - (1) Comply with all applicable provisions of any state or local statute, code, regulation, or ordinance governing the maintenance, construction, use or appearance of the dwelling unit and the property of which it is a part;
 - (2) Keep all common areas of his building, grounds, facilities and appurtenances in a clean and sanitary condition;
 - (3) Make all repairs and arrangements necessary to put and keep the dwelling unit and the appurtenances thereto in as good condition as they were, or ought by law or agreement to have been, at the commencement of tenancy;
 - (4) Maintain all electrical, plumbing, and other facilities supplied by him in good working order;

(5) Except in the case of a single-family residence, provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage, and arrange for the frequent removal of such waste; and

(6) Except in the case of a single-family residence, or where the building is not equipped for the purpose, supply potable water and hot water as reasonably required by the tenant and provide for adequate heat.

Where the duty imposed by clause (1) is incompatible with, or greater than, the duty imposed by any other clause of this subsection, the landlord's duty shall be determined by reference to clause (1).

(b) The landlord and tenant of a single-family residence may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) The particular work to be performed by the tenant is for the primary benefit of his dwelling unit, and will be substantially consumed during the remaining tenancy ; or

(2) Adequate consideration apart from any provision of the rental agreement is exchanged for the tenant's promise. In no event under this subsection may the landlord treat performance of this agreement as a condition to any provision of the rental agreement.

(c) The landlord and tenant of any other dwelling unit may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) The work is not necessary to bring a noncomplying dwelling unit into compliance with a building or housing code, ordinance, or the like; and

(2) The agreement is supported by adequate consideration apart from the rental agreement. In no event under this subsection may the landlord treat performance of this agreement as a condition to any provision of the rental agreement.

(d) Where a single-family residence which is the owner's usual residence is rented during a temporary absence of the owner, the landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling. (Ord. of 6-9-77, § 5.03)

Sec. 20-108. Tenant may terminate at beginning of term.

If the landlord fails to conform exactly to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, the tenant may, on notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first week of occupancy. The tenant shall retain this right to terminate beyond the first week of occupancy so long as he remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all of any part of the condition or conditions which would justify termination by the tenant under this section. (Ord. of 6-9-77, § 5.04)

Sec. 20-109. Tenant' remedy of termination at any time.

(a) If there exists any condition which deprives the tenant of a substantial part of the benefit and enjoyment of his bargain, the tenant may notify the landlord in writing of the situation and if the landlord does not remedy the situation within two (2) weeks, terminate the rental agreement. Such notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care of the tenant, a member of his family, or other person on the premises with his consent

(b) If the condition referred to in subsection (a) was caused willfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing. (Ord. of 6-9-77, § 5.05)

Sec. 20-110. Tenant's remedy of repair and deduct for minor defects.

(a) Notification of the appropriate authority of any defects in the dwelling unit, and inspection and certification by that authority that the defect does in fact occur, and certification by that authority that the repairs have in fact been done in a workmanlike manner shall constitute a prima facie case of compliance with this division

(b) If the landlord of an apartment building or single-family dwelling fails to repair, maintain, keep in sanitary condition or perform in any other manner required by section 20-107 or as agreed to in a rental agreement, and fails to remedy such failure within a reasonable time period after being notified by the tenant in writing to do so, the tenant may further notify the landlord of his intention to correct the objectionable condition at the landlord's expense and immediately do or have done the necessary work in a workmanlike manner. The tenant may deduct from his rent a reasonable sum, for his expenditures by submitting to the landlord copies of his receipts covering at least the sum deducted. If the tenant submits a written estimate by a qualified workman at least two (2) weeks before having the work done, and substitutes workmen and materials as the landlord may reasonably request in writing, the tenant may deduct from his rent a reasonable sum not exceeding one month's rent by submitting to the landlord copies of his receipts covering at least the sum deducted.

(c) In no event may a tenant repair at the landlord's expense when the condition complained was caused by the want of due care of the tenant, a member of his family, or other person on the premises with his consent.

(d) Before correcting conditions affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans, and shall so arrange the work as to create the least practicable inconvenience to such other tenants. (Ord. of 6-9-77, § 5.06)

Sec. 20-111. Tenant's remedies for failure to supply heat, water or hot water.

(a) If the landlord fails to provide hot water to a roomer, boarder or apartment building tenant, when the building is equipped for the purpose, for one week after the tenant notifies him of the failure, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement; or

(2) Upon notice to the landlord, procure adequate substitute housing for as long as heat or water is no supplied, during which time the rent shall abate and the landlord shall be liable for any additional expense incurred by the tenant, up to one-half the amount of abated rent. This additional expense shall not be chargeable to the landlord if he is able to show impossibility of performance. (Ord. of 6-9-77, § 5.07)

Sec. 20-112. Tenant's remedies for fire or casualty damage.

When the dwelling unit or any of the property or appurtenances necessary to the enjoyment thereof are rendered partially or wholly unusable by fire or other casualty which occurs without fault on the part of the tenant, a member of his family, or other person on the premises with his consent, the tenant may:

(1) Immediately quit the premises and notify the landlord of his election to quit within one week after quitting, in which case the rental agreement shall terminated as of the date of quitting. If the tenant fails to notify the landlord of his election to quit, he shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacation or impossibility of further occupancy; or

(2) If continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or casualty, in which case the tenant's liability for rent shall be no more than the market value of that part of the premises which he continues to use and occupy. (Ord. Of 6-9-77, § 5.08)

Sec. 20-113. Landlord to supply copy of rules and regulations and notice to tenants.

Prior to entry into the rental agreement, within seven (7) days thereafter, with or without request by the tenant, the landlord shall provide to the tenant:

- (1) A copy of all rules and regulations concerning the use, occupancy and maintenance of the rental unit, permanent fixtures thereto, and the property of which the rental unit is a part; and
- (2) A copy of the "Notice to Tenants" as set out below and shall obtain from the tenant a written acknowledgement by the tenant of his receipt of the rules and regulations and the "Notice to Tenants."

"NOTICE TO TENANTS

"If you believe that this building or any portion of it is not in compliance with the Housing & Building Codes of the city of Benton Harbor, notify your landlord or his agent or employee.

NAME	ADDRESS	TELEPHONE
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"Take a witness or notify the landlord or his agent or employee in writing and keep a copy of the notification. You may need evidence of your complaint.

"If you and your landlord cannot resolve the problem, you should notify the Department of Building and Inspection, 200 Wall Street, telephone 925-7061. Your right to do so is protected by law."

Ord. of 6-9-77, § 5.09)

Sec. 20-114. Receipt for deposits and rental payments.

The landlord shall provide the tenant with a signed receipt for the security deposit and all rental payments at the time the security deposit or rental payment is made and cause the same to be posted in a conspicuous place about the premises. (Ord. of 6-9-77, § 5.10)

Sec. 20-115. Abatement of rent when dwelling unfit for human habitation.

(a) *Definition.* For the purpose of this section, the term "unfit for human habitation" shall be defined to include, but not be limited to, fire hazards, the lack of heat or hot and cold water, or where there is an imminent threat to the health or safety of the occupant(s) or failure to meet minimum code requirements.

(b) *Abatement.* If any building or dwelling unit which is occupied by a tenant(s) who pay(s) rent for said building or dwelling unit is in whole or in part unfit for human habitation, during the unlawful occupation, no rent shall be recoverable by the owner or lessor of the building or dwelling unit for the period after which the building or dwelling unit is declared to be unfit for human habitation by the building official authorized to conduct housing inspections by the city. In addition, no action or special proceedings shall be maintained for possession of the building or dwelling unit for nonpayment of rent. The building or dwelling unit may be declared unfit for human habitation, and the building official may cause the building or dwelling unit to be vacated accordingly. (Ord. No. 627-89, § 1, 4-24-89)

Secs. 20-116 – 20-120. Reserved

DIVISION 3. TENANT OBLIGATIONS AND LANDLORD REMEDIES

Sec. 20-121. Tenant to pay rent.

(a) The landlord and tenant may agree to any consideration as rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the dwelling unit.

(b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, while one month's rent shall be payable at the beginning of each month of a longer term.

(c) Except for the purposes of payment, rent shall be uniformly apportionable from day to day. (Ord. of 6-9-77, § 6.01)

Sec. 20-122. Remedy for failure to pay rent.

A landlord may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, not less than seven (7) days after receipt thereof, the rental agreement will be terminated. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession. (Ord. of 6-9-77, § 6.02)

Sec. 20-123. Tenant to maintain dwelling unit.

Each tenant shall comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state codes, regulations, ordinances and statutes, and in particular:

- (1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;
- (2) Dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste in appropriate containers in a clean, sanitary and safe manner;
- (3) Keep all plumbing fixtures as clean and sanitary as their condition permits;
- (4) Properly and reasonably use and operate all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, on the premises;
- (5) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the structure or dwelling unit, or the facilities, equipment or appurtenances thereto or knowingly permit any person to do so;
- (6) Conduct himself and require other persons on the premises with his consent conduct themselves in a manner that will not disturb his neighbor's peaceful enjoyment of the premises; and
- (7) Comply with all covenants, rules, requirements, and the like which are in accordance with section 20-130 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants, or any other person. (Ord. of 6-9-77, §6.03)

Sec. 20-124. Remedy for tenant's waste, failure to maintain, or unlawful use.

(a) If the tenant fails to carry out any responsibility in relation to his tenancy imposed by section 20-123, the landlord upon learning of such failure shall notify the tenant in writing of the lapse and allow a specified time, not less than seven (7) days from the receipt thereof, for the tenant to remedy such failure. Upon the expiration of this period:

(1) If the tenant's failure can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item, or the like, the landlord may so remedy the tenant's failure and bill him for the actual and reasonable cost of such remedy. This bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt; or

(2) If the tenant's failure constitutes a breach of an obligation imposed upon tenants by the provision of a municipal, county, or state code, ordinance, or statute, the landlord may terminate the rental agreement and bring a summary proceeding for possession. No allowance of a period to correct a deficiency shall be required when a failure by the tenant causes or threatens to cause irreparable harm to any person or property.

(b) Failure to remedy a deficiency within the specified time in the case of a roomer or boarder shall entitle the landlord to terminate the rental agreement and bring a summary proceeding for possession.

(c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's willful or negligent failure to comply with his responsibilities under section 20-123. (Ord. of 6-9-77, § 6.04)

Sec. 20-125. Tenant's responsibility to inform landlord.

(a) Any defective condition of the premises which comes to the tenant's attention, which has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable.

(b) The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to carry out the duty imposed by subsection (a). (Ord. of 6-9-77, §§ 6.05, 6.06)

Sec. 20-126. Tenant to use and occupy.

Unless otherwise agreed, the tenant shall occupy the rented premises as his abode and shall continue to occupy until the end of the agreed term. The landlord may also require, in the rental agreement, that the tenant notify him of any anticipated extended absence from the premises no later than the first day of such absence. This section shall have no effect except as between parties. (Ord. of 6-9-77, § 6.07)

Sec. 20-127. Landlord's remedies for absence, misuse and abandonment.

(a) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence, and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for inspection, maintenance and safekeeping.

(c) Unless otherwise agreed, use of the dwelling unit by the tenant for any other purpose than as his abode, or nonuse of the dwelling unit shall constitute landlord to proceed as specified in section 20-131.

(d) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds his intention not to resume tenancy, he shall be liable for the lesser of the following for such abandonment:

(1) The entire rent due for the remainder of the term; or

(2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises. This subsection shall apply, if less than (1), notwithstanding that the landlord did not re-rent the premises. (Ord. Of 6-9-77, § 6.08)

Sec. 20-128. Term of agreement.

The landlord and tenant may agree in writing to any period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month, or in the case of a boarder, week to week. (Ord. of 6-9-77, § 6.09)

Sec. 20-129. Termination of tenancy; holdover remedies.

(a) When the tenancy is month to month, the landlord or the tenant may terminate upon his notifying the other at least one month in advance of the anticipated termination.

(b) When the tenancy is less than month to month, the landlord or the tenant may terminate upon his notifying the other at least the number of days equal to the period of the tenancy before the anticipated termination

(c) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in (a) or (b) above, or by the exercise by the landlord of a right to terminate given him under any section of this article if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed twice the monthly rental under the previous agreement, computed and prorated on a daily basis, for each day he remains in possession for any period up to one month. If the tenant remains in possession for a period greater than one month, he shall be liable to the landlord for a sum equal to the average monthly rental under the previous rental

agreement for each additional month or fraction thereof. The landlord may commence summary proceedings for the recovery of possession at any time during the first sixty (60) days of holdover. Possession thereafter shall create a month-to-month tenancy absent an agreement between the parties to the contrary at the time of such acceptance. (Ord. of 6-9-77, § 6.10)

Sec. 20-130. Tenant to use property.

(a) The tenant shall obey all obligations or restrictions, whether denominated by the landlord as “rules” or otherwise, concerning his use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if:

(1) Such obligations or restrictions are brought to the attention of the tenant at the time of his entry into the agreement to occupy the dwelling unit; or

(2) Such obligations or restrictions, if not so known by the tenant at the commencement of tenancy, are brought to the attention of the tenant and, if they work a substantial modification of his bargain, are consented to in writing by him.

(b) No such restriction or obligation shall be enforceable against the tenant unless:

(1) It is for the purpose of promoting the convenience, safety or welfare of the tenants of the property, or for the preservation of the landlord’s property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally.

(2) It is reasonably related to the purpose for which it is promulgated;

(3) It applies to all tenants of the property in a fair manner;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant’s conduct to fairly inform him of what he must or must not do to comply. (Ord. of 6-9-77, § 6.11)

Sec. 20-131. Remedy for improper use.

(a) If the tenant breaches any rule, covenant, or the like under section 20-130, the landlord may notify the tenant of his breach and must allow seven (7) days after such notice for the remedy or correction of such breach. Such notice shall be in substantially the following form:

“(Name and address of tenant) (date)

“You are hereby notified that you have failed to perform according to the following rule, covenant, restriction, etc.:

“(specify rule allegedly breached)

“Be informed that if you (continue violating) (again violate) this (rule) after (a date not less than seven days after this notice), the landlord may terminate the lease and sue for possession of your dwelling unit.”

(b) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a summary proceeding for possession within thirty (30) days after such continued or renewed breach. (Ord. of 6-9-77, § 6.12)

Sec. 20-132. Waiver of landlord’s right to terminate

Whenever the landlord accepts rent after learning of a breach or has accepted performance by the tenant which is at variance with the terms of the rental agreement or subsequent rules, he has waived his right to terminate the rental agreement on account of such breach or varying performance. (Ord. of 6-9-77, § 6.13)

Sec. 20-133. Limitation of liability.

Unless otherwise agreed, a landlord who sells the premises is relieved of liability under this article for events occurring subsequent to written notice to the tenant of the sale. However, he remains liable to the tenant for any property and money to which the tenant is entitled under section 20-145 and all prepaid rent, unless the tenant receives written notice that such property, money and prepaid rent have been transferred to the buyer, and that the buyer has accepted liability for such property, money and prepaid rent. (Ord. 6-9-77, § 6.14)

Secs. 20-134 – 20-144. Reserved

DIVISION 4. OTHER LIMITATIONS ON LANDLORDS AND TENANTS

Sec. 20-145. Security deposit

(a) Any advance or deposit of money, regardless of its denomination, whose primary function is to secure the performance of a rental agreement or any part thereof, shall be governed by this section. This money shall be held and administered for the benefit of the tenant. The tenant's claim to such money shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy, even if such security funds are comingled.

(b) Within thirty (30) days after the vacation of the rental unit by the tenant, the landlord shall return to the tenant any security deposits posted by the tenant, less any amount due the landlord from the tenant for rent owed or damage to the rental unit caused by the tenant.

(c) If less than the full security deposit is returned to the tenant, the landlord shall provide the tenant with written, itemized list of the disposition of the amount not returned.

(d) If a security deposit of an amount in excess of one month's rent is held by the landlord for a period greater than one year, the landlord shall be required to pay interest at a per annum rate of not less than three (3) percent over the term of occupancy.

(e) The willful retention of a security deposit in violation of this section by a landlord whose interest has expired or terminated shall be a violation of this article. (Ord. of 6-9-77, § 7.02)

State law reference-Security deposits, MCL 554.601 et seq., MSA 26.1138(1) et seq.

Sec. 20-146. Effect of termination by either party.

Except as otherwise provided in this article, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and determine, and the parties shall thereupon discharge any remaining obligations as soon as practicable. (Ord. of 6-9-77, § 7.02)

Sec. 20-147. Sublease and assignments.

(a) Unless otherwise agreed in writing, the tenant may sublet his premises or assign the rental agreement to another without the landlord's consent.

(b) A written rental agreement may restrict the tenant's right to assign the rental agreement in any manner. The tenant's right to sublease the premises may be conditioned on obtaining the landlord's consent, which shall be withheld upon reasonable grounds as specified in subsection (e); no further restriction on sublease shall be effective.

(c) When the rental agreement requires the landlord's consent to sublease, the tenant may secure one or more persons who are willing to sublet the premises. Each such prospective subtenant shall make a formal, written, signed offer to the landlord, containing all of the following, except as the landlord may waive one or more items:

(1) The prospective subtenant's full name and age;

(2) The prospective subtenant's marital status;

- (3) The prospective subtenant's occupation, place of employment, and name and address of employer;
- (4) The names and ages and relationships to the prospective subtenant of all persons who would normally reside in the premises;
- (5) Two (2) credit reference, or responsible persons who will confirm the financial responsibility of the prospective subtenant;
- (6) The names and addresses of all landlords of the prospective subtenant from whom he has leased or rented during the prior three (3) years, (or if more than three (3), any three (3) of them).

(d) Within seven (7) days, not including legal holidays, after such a written offer has been delivered or mailed by certified mail to the landlord, the landlord may reject the prospective subtenant by delivering or mailing by certified mail to the tenant a written reply signed by the landlord which shall contain one or more specific grounds for the rejection.

If the landlord fails to reply within the seven (7) days, or if his written reply fails to give reasonable grounds for rejecting the prospective subtenant, the tenant may, at his option, terminate the rental agreement by giving written notice to the landlord within twenty (20) days following the lapse of the seven (7) day reply period or the receipt of the rejection reply which fails to state any reasonable ground for rejection.

Thirty (30) days after such notice is delivered or mailed by certified mail to the landlord, the rental agreement shall terminate. The tenant shall be subject to no damages, penalty or forfeiture of any part or all of his security deposit or any other payment for such termination.

(e) Reasonable grounds for rejecting a proposed subtenant include any facts which reasonably indicate that the proposed tenancy would be less favorable to the landlord than the existing tenancy, including, but not limited to:

- (1) Insufficient credit standing or financial responsibility;
- (2) Number of persons in the proposed household;
- (3) Number of persons under eighteen (18) in the proposed household;
- (4) Unwillingness of the prospective tenant to assume the same terms as are included in the existing rental agreement;
- (5) Proposed maintenance of pets;
- (6) Proposed commercial activity;
- (7) Written information signed by a previous landlord, which shall accompany the rejection, setting forth abuses of other premises occupied by the prospective subtenant.

No consideration of race, creed, sex, religion, political opinion or affiliation, or national origin may be relied on by the landlord as reasonable grounds for rejection.

(f) In any proceeding in which the reasonableness of the landlord's rejection shall be an issue, the burden of showing reasonableness shall be on the landlord. (Ord. of 6-9-77, § 7.03)

Sec. 20-148. Access.

- (a) The tenant shall not unreasonably withhold his consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed, or exhibit the dwelling unit to prospective purchasers, mortgages or tenants.
- (b) The landlord shall not abuse this right of access nor use it to harass the tenant, insofar as it is practicable to do so, the landlord shall give the tenant at least two (2) days notice of his intent to enter, and shall enter only during normal business hours. (Ord. of 6-9-77, § 7.04)

Sec. 20-149. Landlord and tenant remedies of abuse of access.

- (a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access.
- (b) The landlord shall be liable to the tenant for any theft, casualty, or other harm proximately resulting from an entry into the dwelling unit by him or with his permission or license:
 - (1) When the tenant is absent and has not specifically consented to the entry;
 - (2) Without the tenant's actual consent when he is present and able to consent;
 - (3) In any other case, when the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry, or any entry which is unreasonable and not consented to by the tenant, may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against this manner of harassment on behalf of one or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

Sec. 20-150. Landlord's waiver of liability forbidden.

Every agreement between landlord and tenant in or in connection with a rental agreement of residential property exempting the landlord from liability for damages for injuries to persons or property caused by or resulting from the acts or omissions of the landlord, his agents, servants or employees, in the operation or maintenance of the dwelling unit or the property of which it is a part shall be unenforceable. (Ord. of 6-9-77, § 7.06)

Sec. 20-151. Retaliatory evictions and rent increases prohibited.

- (a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld under division 2 of this article, no:
 - (1) Action or proceeding to recover possession of the dwelling unit may be maintained against the tenant; nor shall the landlord
 - (2) Otherwise cause the tenant to quit the dwelling unit involuntarily; nor
 - (3) Demand an increase in rent from the tenant; nor
 - (4) Decrease the services to which the tenant has been entitled, with ninety (90) days after:
 - a. The tenant has complained in good faith of condition in or affecting his dwelling unit which constitute a violation of a building, housing, sanitary, or other code or ordinance, to a body charged with the enforcement of such code or ordinance; or
 - b. Such a body has filed a notice or complaint of such a violation; or
 - c. The tenant has in good faith requested repairs under sections 20-109 – 20-111.
- (b) of the dwelling unit if:

- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of his rental agreement; or
 - (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode; or
 - (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling or demolishing the premises; or
 - (4) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six (6) months use of the dwelling unit; or
 - (5) The complaint or request of subsection (a) related only to a condition or conditions caused by the lack of ordinary care by the tenant or another person his household or on the premises with his consent; or
 - (6) The dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of such complaint or request in full compliance with all codes, statutes and ordinances; or
 - (7) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (2), (3) or (4) above; or
 - (8) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).
- (c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, shall be entitled to recover three (3) months' rent or threefold the damages sustained by him, whichever is greater, and the cost of suit, including a reasonable attorney's fee.

(d) Notwithstanding subsection (a), the landlord may increase rent if:

- (1) The dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of such complaint or request of subsection (a) in full compliance with all codes, statutes and ordinances; or
- (2) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint or request, not less than four (4) months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs; or
- (3) The landlord has completed a substantial capital improvement of the dwelling unit or the property of which it is a part not less than four (4) months prior to the demand for increased rent, and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefitted by the improvement; or
- (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of his household or on the premises with his consent; or
- (5) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in his building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market value of the dwelling unit.

(Ord. of 6-9-77, § 7.07)

Sec. 20-152. Tenant's remedies for landlord's unlawful ouster or exclusion.

If removed from the premises or excluded therefrom by the landlord or his agent except under color of a valid court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover three (3) months' rent or threefold the damages sustained by him, and the cost of suit, including a reasonable attorney's fee.

(Ord. of 6-9-77, § 7.08)

Sec. 20-153. Confession of judgment.

(a) A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

(b) The inclusion by the landlord in a written rental agreement of such a clause shall be a violation of this article.

(Ord. of 6-9-77, § 7.09)

Secs. 20-154 – 20-164. Reserved.

ARTICLE VI. ANNUAL REGISTRATION OF HABITABLE RENTAL PROPERTIES*

Sec. 20-165. Purpose and intent.

The purpose of this article is to protect the public health, safety, and welfare of people in residential buildings, to be occupied under rent or lease agreements, by the inspection and certification of rental properties as set forth below. The word structure as used herein shall mean any single or multiple dwelling unit which is rented, leased, or used or offered for use as a place for people to reside.

**Editor's note*-An Ord. of July 2, 1990, § 1, amended former Art. VI, §§ 20-165 – 20-177, to read as herein set out. Former Art. VI pertained to similar subject matter and derived from Ord. No. 534, Ch. 64, §§ 5-12, 8-27-84; Ord. of 5-7-90, § 1; Ord. of 6-25-90, § 1.

Sec. 20-166. Registration required.

(a) Every single unit dwelling, multiple unit dwelling, boarding house, and lodging house offered for let or hire shall be registered annually, on or before July 1 of each year, including full payment of all fees and penalties due, with the department of public safety, division of building inspections for the city of Benton Harbor. The annual registration shall be in the name of the owner or his designated responsible party. The registration shall contain the name and address of the registrant, the address of the unit(s) being registered, and the number of units to be offered for let or hire. It is a civil violation for any property owner to rent, let or lease any residential property or premises if the annual rental registration fee is not paid. Said property or premises shall be posted as unfit for occupancy until all registration fees and penalties are paid. A penalty of Two Hundred Fifty (\$250.00) Dollars shall be applied for any violation of this section.

(b) Any individual who acquires partial or complete ownership of a unit(s) subject to this Article shall give written notice of the type of ownership and address(es) within thirty (30) days of acquisition to the Division of Building Inspections. Failure to provide such ownership information shall subject the party to the penalty provisions of Section 20-176.

(c) Close family members limited to father, mother, sister, brother, son, or daughter may occupy a dwelling unit without payment of registration fee by the owner. Such occupancy shall be certified in writing by the owner and the close family member, and the family member shall not compensate the owner in any manner. Such dwelling unit shall still be registered and is subject to the inspection requirements of the City of Benton Harbor.

Sec. 20-167. Annual certificate of occupancy required.

(a) No single dwelling, multiple unit dwelling, boarding house or lodging house offered to let or hire shall be occupied unless the Division of Building Inspections has issued a Certificate of Occupancy for the single unit dwelling, multiple unit dwelling, boarding house or lodging house in the name of the owner or his designated responsible party.

(b) Each Certificate of Occupancy shall be a certification that the rental unit is registered from July 1st of the year of issuance and expires June 30th of the following year.

Sec. 20-168. Application for rental certification of occupancy; inspection; fees.

(a) The application shall be made on a structure by structure basis. All units in the same structure must be registered at the same time. Upon written certification from the owner, delivered to the Inspection department a minimum of fifteen (15) days prior to due date of registration fees, dwelling or dwelling units that are vacant and not available for rent shall not have registration fees due until the unit is available for rent, upon which time

the owner shall obtain an inspection and Certificate of Rental Compliance prior to occupancy of the structure, dwelling unit, or premises. The owner of any unit that is represented as not available for rent that is subsequently found to be rented without payment of all registration and late fees shall be assessed a minimum fine of Two Hundred Fifty (\$250.00) Dollars for each occurrence.

(b) The applicant/owner or his designated responsible party by filing an application, shall be deemed to have given consent to the code enforcement officials of the city to enter each rental unit as well as any other portion of the structure at reasonable times and upon a reasonable notice, to inspect the premises at any time after the application is made or a certificate of occupancy is issued.

(c) No Certificate of Rental Compliance shall be issued unless the fully completed application form is accompanied by payment of an annual registration fee as determined by resolution.

(d) No certificate of occupancy shall be issued to a non-resident applicant unless such applicant designates in writing the name, address, and telephone number of his agent within the State of Michigan for the receipt of service of notice of violation under the provisions of this article. Non-residents shall be interpreted as any owner of rental property residing outside the State of Michigan.

(e) Any fee, fine, or penalty unpaid as of October 15 of any year shall be levied against the property and shall be added to the property taxes of said property.

Sec. 20-169. Initial inspection; orders; power to vacate.

(a) Before issuing a Temporary Certificate of Occupancy, Provisional Certificate of Occupancy or Certificate of Occupancy, personnel of the Inspection Department shall inspect the rental unit.

(b) There will be an administrative fee charged for the initial inspection. Such initial inspection fee shall be in an amount as established by City Commission Resolution and subject to change. If it is determined by the building inspector that an inspection by the electrical, mechanical, and/or plumbing inspector is required, the resultant electrical, mechanical and/or plumbing inspection fee shall be charged in an amount as established by City Commission Resolution and subject to change.

(c) No Temporary Certificate of Occupancy, Provisional Certificate of Occupancy or Certificate of Occupancy shall be valid until all administrative fees are paid.

(d) After completion of the initial inspection of the rental unit(s), if the single unit dwelling, multiple unit dwelling, boarding or lodging house is not in compliance with the rules, regulations, laws, or technical housing codes of the City of Benton Harbor and/or State of Michigan, the code enforcement official shall furnish the applicant with a written list of specific violations which shall be corrected within 30 days before the annual rental Certificate of Occupancy is issued, provided further that the violation does not render the unit(s) unfit for occupancy or is of a nature which if not corrected would result in further deterioration and subsequent danger to human life, safety or welfare. However, if occupancy can continue safely, the Division of Building Inspections shall issue a temporary Certificate of Occupancy allowing occupancy to continue while the violations are corrected. No Certificate of Occupancy shall be granted if occupancy will endanger the health, safety, or welfare of the public. In such cases, an order to vacate shall be issued.

Sec. 20-170. Issuance of certificate of Rental Compliance.

If after the initial inspection conducted pursuant to this ordinance, the single unit dwelling, multiple unit dwelling, boarding or lodging house is found to be in compliance with the rules, regulations, laws and technical housing codes of the City of Benton Harbor and the State of Michigan, the department of Public Safety, Division of Building Inspections shall issue an electronic Certificate of Rental Compliance for the unit(s) in the name of the owner or designated responsible party. One paper copy shall be provided to the owner or designated representative upon request.

Sec. 20-171. Reinspection; revocation.

(a) No later than sixty (60) days after the initial inspection, a re-inspection may be conducted, to verify that all the violations listed pursuant to Section 20-169 of this article have been corrected. If corrected, a Certificate of Rental Compliance shall be issued pursuant to Section 20-170 of this article. If not

corrected, the Temporary Certificate of Rental Compliance shall be revoked and the unit(s) must be vacated.

- (b) There will be an administrative fee charged for the re-inspection in an amount as established by City Commission Resolution and subject to change.
- (c) The City of Benton Harbor will respond to citizen complaints of deficient structures by authorizing complaint-based inspections. Legitimate complaints shall result in an inspection fee in an amount as established by City Commission Resolution and subject to change.

Sec. 20-172. Right of appeal.

Any person who is grieved by a decision of the Code enforcement official or whose Certificate of Occupancy has been revoked or if the unit(s) are found to be unfit for occupancy, shall be entitled to reconsideration by appealing the decision as provided in Sections 11-16 through 11-26 of this Code.

Sec. 20-173. Distribution.

Sec. 20-174. Transferability.

A certificate of Compliance shall not be transferred to any other dwelling or unit.

Sec. 20-175. Tenant responsibility.

In the event a violation exists which prevents the issuance of a Certificate of Compliance due to the actions or failure to act by the tenant, then the tenant may also be cited for the violation and subject to punishment under Section 20-176 of this Article for the violation.

Sec. 20-176. Penalties; separate offense.

Unless stated otherwise in this ordinance, any person, owner or designated responsible party convicted of violating any provision of this article shall be punished by a fine having a maximum of \$500 (five hundred dollars) and having a minimum fine of \$100 (one hundred dollars) for the first conviction and a minimum fine of \$200 (two hundred dollars) for the second conviction and a minimum fine of \$300 (three hundred dollars) for the third and each additional conviction and/or imprisonment for a term of up to ninety (90) days in jail or both. Additionally, the court shall order the immediate correction of all violations of the provisions of this article, which were the basis for the citation and issuance of a ticket and/or warrant. Each violation of the provisions hereof shall be deemed a separate offense.

Sec. 20-177. Severability.

The Sections and portions of this Article are declared to be severable and if any Section or party is declared to be illegal, unenforceable, or void for any reason, such illegality or un-enforceability shall not affect the remaining Sections 3 or parts of this Article.

Sec. 20-178. Unpaid fees

Any unpaid fees, as required by this article, which remain unpaid and delinquent for 30 days or more, shall become a debt to the City from the owner or person otherwise to be assessed on tax day as provided by law. Such unpaid fees shall become a lien on the respective real property, and the lien, interest and penalties shall continue until paid. All such amounts shall be collected in the same manner as real property taxes.

Secs. 20-179 – 20-204. Reserved

ARTICLE VII. ELDERLY HOUSING TAX EXEMPTION*

Sec. 20-205. Preamble.

- (a) It is acknowledged that it is a proper public purpose of the state and its political subdivisions to provide housing for its elderly citizens on fixed income and to encourage the development of such housing by providing

for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966, as amended [MCL 125.1401 et seq., MSA 16-114(1) et seq.]. The city is authorized by the act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under the act at any amount it chooses not to exceed the taxes that would be paid but for the act. It is further acknowledged that such housing for elderly persons on fixed income is a public necessity and, as the city will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemptions therefor is a valid public purpose; further, that the continuance of the provisions of this article for tax exemptions and the service charge in lieu of taxes during the periods hereinafter contemplated are essential to the determination of economic feasibility for the housing developments which are constructed and financed in reliance thereon.

(b) The city acknowledges that Capitol Associates Development Corporation (the “sponsor”) has offered, subject to the receipt of a mortgage loan from the state housing development authority, to erect, own and operate a housing development identified as river Terrace on certain property described as follows:

Parcel 1:

All that part of Assessor’s Plat No. 1, Benton Harbor, and the Plat of Union Addition to Benton Harbor, according to the recorded plats thereof, and of the Southeast one-quarter, Northeast one-quarter of Section 24, Township 4 South, Range 19 West, described as follows: Commencing at the point of intersection of the West line of Lot 161 of said Assessor’s Plat No. 1 with relocated North line of Britain Street being 47 feet distance North from the East and West one-quarter line of said Section 24, thence South $89^{\circ}37'56''$ East 125 feet along said relocated North line of Britain Street to the East line of Lot 162 of Assessor’s Plat No. 1, thence North $0^{\circ}02'21''$ East 151.22 feet to the Northwest corner of Lot 153 of said Assessor’s Plat No. 1, thence South $89^{\circ}35'55''$ East 20 feet along the North line of said Lot 153 to the Southwest corner of Lot 154 of Assessor’s Plat No. 1, thence North $0^{\circ}02'21''$ East 55.05 feet to the Northwest corner of said Lot 154, thence South $89^{\circ}35'15''$ East 125.26 feet to the Northeast corner of said Lot 154 on the West line of Colfax Avenue, thence North $0^{\circ}01'44''$ East 804.99 feet along the West line of Colfax Avenue to the South line of relocated Market Street (80 feet wide) being 90.16 feet North $0^{\circ}01'44''$ East from the Northeast corner of Lot 1, Block D of said Union Addition, thence Southwesterly 283.91 feet along the South line of said relocated Market Street being on a 1173.67 foot Radius Curve to the Right (the Long Chord of which bears 283.22 feet South $72^{\circ}25'30''$ West) to a point on the East line of Eighth Street being 2.13 feet North $0^{\circ}02'58''$ East from the Northwest corner of Lot 2 of said Block D, thence South $0^{\circ}02'58''$ West 923.91 feet along the East line of Eighth Street to the place of beginning.

Excepting therefrom the East one-half of the vacated Alley lying West of and adjacent to the West line of lot 154 of said Assessor’s Plat No. 1.

Parcel 2:

All that part of Assessor’s Plat No. 5, Benton Harbor, and of the Plat of Union Addition to Benton Harbor, and Roscher’s Addition to the Village (now City) of Benton Harbor, and of Assessor’s Plat No. 1, Benton Harbor, according to the recorded plats thereof, and of the Northeast one-quarter of Section 24, Township 4 South, Range 19 West, described as follows: Commencing at the Northwest corner of Lot 38 of said Assessor’s Plat No. 5, thence South $89^{\circ}29'57''$ East 1225.57 feet along the South line of Market Street being on the North line of Lots 38 and 77 of said Assessor’s Plat No. 5, to the centerline of Ninth Street of said Assessor’s Plat No. 5, thence South $89^{\circ}28'08''$ East 148.34 feet along the relocated South line of Market Street (80 feet wide) being 20.12 feet distant South from and parallel with the North line of Lots 78 and 79 of said Assessor’s Plat No. 5, thence Northeasterly 162.09 feet along the relocated South line of Market Street being on a 1173.67 foot Radius Curve to the left (the Long Chord of which bears 161.97 feet North $86^{\circ}34'28''$ East) to the West line of Eighth Street at a point 8.95 feet Southerly from the Northeast corner of Lot 1, Block F of said Union Addition to Benton Harbor, thence South $0^{\circ}02'58''$ West 913.01 feet along the West line of Eighth Street to the relocated

North line of Britain Street being 47 feet distant North from the East and West one-quarter line of said Section 24, thence North 89°37'56" West 1047.15 feet along said relocated North line of Britain Street to the relocated East line of Eleventh Street being 50 feet distant East from the West line of Eleventh Street, thence North 0°29'26" East 644.49 feet along said relocated East line of Eleventh Street to the North line of Bond Street, thence North 89°30'32" West 495.23 feet along the North line of Bond Street to the Southwest corner of said Lot 38 of said Assessor's Plat No. 5 thence North 0°27'19" East 260 feet along the East line of Twelfth Street to the place of beginning;

And located in the city to serve elderly persons on fixed income. (Ord. of 6-19-80, § 2)

Sec. 20-206. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Act means the State Housing Development Authority Act of 1966, 1966 PA 346, as amended [MCL 125.1401 et seq., MSA 16.114(1) et seq.]

Authority means the state housing development authority.

Class of housing development means housing for elderly persons or families on fixed income financed by a mortgage loan from the authority.

Contract rents are as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to the U.S. Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

Housing development means the River Terrace project, as described above, and such elements of such other housing, commercial, recreational, industrial, communal and educational facilities as the authority determines necessary to improve the quality of the housing development as it relates to housing for persons and families on fixed income.

Mortgage loan means a loan to be made by the authority to the sponsor, or its successor in interest, for the construction and permanent financing of the housing development.

Sponsor means Capitol Associates Development Corporation, or its successor in interest.

Utilities mean fuel, water, sanitary sewer services and/or electrical service which are paid by the development. (Ord. of 6-19-80, § 3)

Cross reference-Definitions and rules of construction generally, § 1-2.

Sec. 20-207. Class of housing developments.

It is hereby determined that the class of housing developments to which the tax exemption shall apply shall be the elderly portion or portions of the housing developments for the elderly persons and families on fixed income which are financed or assisted pursuant to the provisions of the act. It is further determined that the elderly portion or portions of River Terrace is of this class. (Ord. of 6-19-80, § 4)

Sec. 20-208. Full tax abatement for elderly portion or portions of River Terrace and establishment of an annual service charge.

The elderly portion or portions of the housing development identified as River Terrace and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction. The city, acknowledging that the sponsor and the authority have established the economic feasibility of the housing development in reliance upon the enactment and continuing effect of this article and the qualification of the elderly portion or portions of the housing development for exemption from all property

taxes and a payment in lieu of taxes as established herein, and in consideration of the sponsor's offer, subject to receipt of a mortgage loan from the authority, to construct, own and operate the housing development, hereby grants full and complete tax abatement for the elderly portion or portions of the housing development known as River Terrace and hereby agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to five (5) percent of the difference between contract rents actually collected and utilities. (Ord. of 6-19-80, § 5)

Sec. 20-209. Contractual effect of article.

Notwithstanding the provisions of Section 15(a)(5) of the Act to the contrary, a contract between the city and the sponsor with the authority, as third party beneficiary thereunder, to provide tax exemptions is effected by enactment of this article. (Ord. of 6-19-80, § 6)

Sec. 20-210. Duration.

This article shall remain in effect and shall not terminate as long as the mortgage loan remains outstanding and unpaid or the authority has any interest in the property.
(Ord. of 6-19-80, § 7)

Sec. 20-211. Payment of service charge.

The service charge in lieu of taxes as determined hereunder shall be payable in the same manner as general property taxes are payable to the city except that the annual payment shall be paid on or before December thirty-first of each year. (Ord. of 6-19-80, § 9)