



TO: Mayor and Council

FROM: Milton Dohoney Jr., City Administrator

CC: Atleen Kaur, City Attorney
Valerie Jackson, Assistant City Attorney
Dr. Melissa Stults, Sustainability and Innovations Director

SUBJECT: Staff Responses to Proposed Amendments to Green Rental Housing Ordinance

DATE: June 5, 2025

This memo responds to the proposed amendments drafted by Councilmember Harrison to the Green Rental Housing Ordinance. At the June 2nd, 2025, City Council meeting, Councilmember Harrison requested that staff respond to proposed amendments in writing and that these responses be made public. This memorandum fulfills that request.

PROPOSED AMENDMENTS BY COUNCILMEMBER HARRISON

Amendment 1: Compliance Period Timing

Section to Amend: Chapter 105, Section 8:534(3) and (4)

Section 8:534(3) shall be amended to read:

“Compliance Period 1 shall begin three (3) years after the effective date of this ordinance and shall end six (6) years after the effective date.”

Section 8:534(4) shall be amended to read:

“Compliance Period 2 shall begin six (6) years after the effective date of this ordinance.”

Rationale:

This amendment aligns the compliance periods with Ann Arbor’s existing three-year rental inspection cycle. It allows landlords and property owners to plan for compliance in tandem with inspections they already undergo, preventing duplication of effort. This approach ensures that city staff are not overwhelmed by a compressed rollout and gives time for the development of necessary infrastructure, such as the availability of qualified energy assessors and administrative systems.

Staff Response: There is a phase-in process in the ordinance based on the 2.5-year/3.5-year inspection cycle. This phase-in and its timing were added after discussion with stakeholders and collaborators. Additionally, staff have seen from other programs and from other communities who have implemented similar ordinances that a longer phase-in did not result in incremental upgrades over time; rather, little to no work took place until the enforcement deadline. Explicitly, OSI had a longer phase-in period with our Energy and Water Benchmarking Ordinance, and it resulted in difficulties in compliance. OSI gave buildings three years to report until fines would be issued. During those three years, we had around 4% compliance rates. Once we got to the three-year period when fines were enforceable, buildings came into compliance (over 70%). Boulder, CO, who had a longer phase-in period for their rental ordinance, saw a similar result. Until there is an enforcement mechanism, little takes place.

Additionally, the program has been ready for Council consideration since 2022. Staff were asked to postpone until other programs were in place, which has been done. Given the three years since that time, any further delay will result in even longer periods of time that renters are living in conditions that are below our minimum standards of health, comfort, and energy efficiency.

Given these conditions, staff believe the original timeline proposed in the ordinance should be maintained.

Amendment 2: Alternatives to HERS Assessments

Section to Amend: Chapter 105, Section 8:537(1)(b)

Section 8:537(1)(b) shall be amended to read:

“In lieu of the Checklist described in subsection (a), a property owner may submit a certified energy assessment conducted by a professional rater certified under an alternative credentialing body recognized by the State of Michigan. A RESNET-certified HERS rater may only be used for a HERS index assessment. No other raters may perform a HERS assessment unless RESNET-certified.”

Rationale:

This amendment corrects a misinterpretation of the ordinance’s structure. It clarifies that only HERS-certified raters may conduct HERS assessments, but property owners should have the option of engaging other state-recognized professionals if they are not pursuing the HERS pathway. Given the limited number of RESNET-certified professionals in Michigan, this provision ensures compliance is feasible and equitable without undermining performance standards.

Staff Response: There is not currently an alternative credentialing body nor is there an assessment that is like HERS capable of meeting the program’s needs. HERS is a national standard used for code compliance and alignment with major federal programs.

There is not something that is comparable that could be used across building types. If someone does not want or is unable to pursue the HERS pathway, they can use the checklist option provided in the Ordinance instead. It may also be helpful to know that the RESNET list is not comprehensive. Given this, staff recommend maintaining the original language as drafted in the Ordinance.

Amendment 3: Definition of Low-Income Owner

Section to Amend: Chapter 105, Section 8:534

Section 8:534 shall be amended to add:

“A ‘low-income qualified owner’ means an owner whose total household income is at or below eighty percent (80%) of the Area Median Income (AMI), as defined annually by the U.S. Department of Housing and Urban Development. Or (1) at least fifty percent (50%) of tenants utilize Housing Choice Vouchers or similar rental assistance programs; (2) the property is subject to an enforceable affordability covenant; or (3) the average unit rent is below sixty percent (60%) of AMI-adjusted Fair Market Rent as defined by HUD”

Rationale:

This option provides a widely accepted and administratively straightforward income threshold. The 80% AMI standard is already used in numerous federal, state, and local programs and ensures consistency and legal defensibility.

Staff Response: Staff is planning on using the 80% AMI threshold for owners and are fine with that clarification as part of the Ordinance. However, staff do not support the content beginning with the second sentence (starting with “Or”). Throughout the process of crafting this program, staff looked closely at the impacts to renters with lower incomes, working with peer cities and local stakeholders to craft a program that ensures all tenants, regardless of income, have access to healthy, efficient, and comfortable housing. And while staff did look at creating exemptions for affordable housing, upon review it was discovered that doing so would almost certainly create a scenario where units that are affordable are not held to the same standard of providing quality housing that is healthy, efficient, and comfortable. Instead of default and blanket exemptions, the program was designed to have numerous pathways to compliance including implementing many no-to-low-cost actions. Therefore, staff do not recommend this portion of the proposed amendment.

Amendment 4: Mandatory Waiver Approval When Criteria Are Met

Section to Amend: Chapter 105, Section 8:538(2)

Section 8:538(2) shall be amended to add the following language:

“The Office of Sustainability and Innovations shall publish and maintain a written waiver eligibility policy within sixty (60) days of the effective date of this ordinance. This policy shall define the criteria under which waivers may be granted and shall be applied uniformly.”

Rationale:

A point-based system provides structure to waiver decisions while allowing nuanced consideration of multiple factors. It reduces discretion by replacing subjective judgments with quantifiable criteria, enhancing procedural fairness. This method supports data-driven administration but may require initial resource investment to create and maintain the evaluation framework.

Staff Response: Staff looked closely at establishing criteria for blanket exemptions, but due to the diversity of buildings and building types, this was not feasible. When staff did find some examples of exemptions likely to be issued, those cases were always related to a specific site and not generalizable. As such, the program was designed to maintain flexibility and offer choice as opposed to having blanket exemptions, and a flexible exemption process was put in place.

Amendment 5: Limit Frequency of Civil Fines

Section to Amend: Chapter 105, Section 8:540(1)

Section 8:540(1) shall be amended to read:

“No civil fine assessed under this ordinance shall accrue more than once per calendar month for any individual Dwelling or Dwelling Unit.”

Rationale:

Daily fines can quickly accumulate to punitive levels, especially for multifamily property owners, potentially creating financial burdens disproportionate to the violation. Weekly accrual provides a meaningful incentive to comply without triggering excessive costs or prompting displacement of tenants due to sudden repair-related rent increases. This amendment also allows time for scheduling work by qualified contractors.

Staff Response: This fine structure is based on the existing fine structure in our other City Ordinances. The structure was also set in a way that incentivizes compliance as opposed to those that choose to disregard the Ordinance. The goal is not to fine; it's compliance. When a building is trying to come into compliance, OSI has always shown flexibility and waived fees. As such, staff do not believe this change is required, and, further, it may inadvertently lead to a lack of compliance.

Amendment 6: Appeals Timeline and Tolling of Fines

Section to Amend: Chapter 105, Section 8:538(4)

Section 8:538(4) shall be amended to include the following provisions:

“The City Administrator *shall* issue a written decision on any waiver appeal within thirty (30) calendar days of receipt. No civil fines *shall* accrue during the pendency of an appeal. If the appeal is denied, fines shall begin accruing as of the date of the written decision and shall not be applied retroactively.”

Rationale:

This amendment establishes a clear timeline for appeal resolution and ensures that no punitive fines are assessed while an appeal is under active review. It preserves the rights of property owners to due process and protects them from retroactive penalties. This structure encourages timely review by the City and reassures applicants that engaging in the appeals process will not result in financial harm.

Staff Response: This amendment passed at the June 2, 2025 City Council meeting.

Amendment 7: Definition of Equitable Relief and Remedies

Section to Amend: Chapter 105, Section 8:540(3)

Section 8:540(3) shall be amended to read:

“In addition to civil fines, the City may seek equitable relief, including but not limited to injunctive relief or specific performance, provided that such relief is proportionate to the nature and extent of the violation. The Office of Sustainability and Innovations shall publish and maintain a set of enforcement guidelines identifying the types of equitable relief the City may pursue under this ordinance.”

Rationale:

This amendment defines “equitable relief” in a way that is legally sound and proportionate. It ensures that remedies are targeted to bring properties into compliance rather than impose punitive or vague enforcement. Clear language benefits both city enforcement efforts and the legal rights of property owners.

This provision emphasizes transparency and predictability in enforcement. By publishing the types of remedies available, the City provides clarity to rental owners and tenants alike. This also allows for public feedback and helps ensure consistency across cases.

Staff Response: This is standard language offered by the City Attorney’s Office. As such, it would need to respond on whether or not this change would be acceptable.

Amend the ordinance by adding a new Section 8:540.1 titled “Equity Implementation Requirements,” to read as follows:

8:540.1 – Equity Implementation Requirements

(1) Prior to enforcement of the requirements in Sections 8:533 through 8:540, the City shall establish a Green Rental Equity Implementation Plan to ensure that compliance with the Green Rental Housing Checklist does not result in housing displacement, increased rent burdens, or disproportionate hardship to small landlords and tenants in naturally occurring affordable housing.

Staff Response: Staff looked at multiple communities who have implemented programs like this, and they did not see an increase in housing displacement, increased rent burdens, or disproportionate hardship to small landlords and tenants in naturally occurring affordable housing. Additionally, staff added items into the designed program to make it more flexible than other existing programs and are providing financial incentives through our existing rebates and through future funding coming from the recently-passed heating franchise agreement with DTE Gas Company to further support implementation and compliance with this Ordinance.

(2) The Green Rental Equity Implementation Plan shall include, but not be limited to:

(a) An Equity Impact Analysis, assessing the likely distribution of costs and compliance barriers by rental type, unit count, building age, and tenant income levels.

Staff Response: During the creation of the program, we worked with our task force, which was comprised of renters, landlords, low-income housing representatives, and City departments, and looked at these criteria. This information informed the development of the program.

(b) A Financial Assistance Program, including at least one of the following:

- Direct grants, rebates, or subsidies to offset capital upgrade costs;
- Low- or no-interest loan options;
- Bulk purchasing or cooperative procurement options for high-impact items such as HVAC upgrades, insulation, or smart thermostats.

Staff Response: Rebates are available through the City’s Home Energy Rebate program, and more funding will be available through the recently-passed heating franchise agreement with DTE Gas Company. Additionally, Michigan Saves offers low-interest loan options in our area. Bulk purchasing has been investigated and has not been deemed feasible for these items.

(c) A Tiered or Phased Compliance Option, applicable to buildings with four (4) or fewer rental units, that allows extended timelines or alternative compliance pathways when full checklist compliance would cause undue financial burden.

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Staff Response: There is an existing phase-in process that was built into the ordinance. Additionally, the Ordinance includes many low-or-no-cost items that can be used for compliance to help alleviate any undue financial burden. The program as a whole, and the checklist specifically, was designed in a way to be equitable and achievable across building type.

(d) Displacement Prevention Measures, including requirements for:

- Notification to tenants of planned upgrades and cost implications;
- Reasonable limits on cost pass-throughs tied to checklist compliance; and
- Monitoring of rents in properties that receive city incentives or meet compliance thresholds using bonus items.

(3) The Office of Sustainability and Innovations, shall publish the Green Rental Equity Implementation Plan within six (6) months of the effective date of this ordinance and prior to the start of Compliance Period 2.

(4) Failure to publish and make available the Equity Implementation Plan shall result in suspension of enforcement of increased Energy Efficiency Score thresholds under Compliance Period 2 until such time as the plan is implemented.

Staff Response: Staff understand and appreciate the sentiment of this addition. Yet, much of this work was done during the creation of the program and associated Ordinance and is therefore baked into the program. As pre-work in creating this Ordinance, staff worked with other communities to understand their programs, impacts, and mitigation techniques regarding income qualified households and changes to housing costs. This information helped shape the Ordinance before Council. Staff paid particular attention to impacts on the housing market, learning that no one with a program, even those with programs SIGNIFICANTLY more stringent than what is being proposed for Ann Arbor, saw cost impacts outside of normal market inflation.

OSI has already been working on rebates and incentives – including our existing residential rebates and what we secured through our franchise negotiations. And OSI is exploring more rebates for the next fiscal year – depending on engagement we are doing with landlords, renters, commercial businesses, and associations.

Moreover, the proposed Green Rental Housing Ordinance was designed to be flexible and to be phased in, in coordination with the rental inspection process, so it's easily integrated into an existing process.