



## AGENDA REPORT

TO: Mayor & City Commission  
FROM: Ken Hibl, City Manager  
DATE: August 11, 2010

RE: Ordinance 2010-003 and Ordinance 2010-004: Michigan Plumbing Code Ordinance  
and Michigan Mechanical Code Ordinance

For the Agenda of August 16, 2010

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Background. The City received approval (*see copy of att'd letter*) from the State of Michigan to commence issuance of plumbing and mechanical permits, thereby streamlining the building permit issuance and inspection process and procedures for local residents, businesses, and builders. The City entered into an intergovernmental agreement (*copy att'd*) with Isabella County to perform the actual plumbing inspections and mechanical inspections. But we are also required (*see copy of previously referenced letter*) by the State of Michigan to adopt plumbing and mechanical ordinance codes (*copies of each att'd*) before we can commence offering these new services for our residents and businesses.

All changes, additions, or deletions of the City's Ordinance Codes require the approval of the Clare City Commission. Prior to adoption of any change, addition, or deletion, the City Commission is required to hold a public hearing and consider the proposed change at two separately scheduled public meetings.

We have noticed (*see copy of att'd public notice*) the City's intent to adopt the proposed new ordinances and the required public hearing to solicit comments regarding the proposed change; to date we have received no written comment.

The City Commission is asked to hold the required public hearing and allow a first reading of the proposed ordinances to facilitate the process of adopting the ordinances and thereby allowing us to commence providing these two new building services to the City's residents and businesses.

Issues & Questions Specified. Should the City Commission hold the required public hearing and approve a first reading of the proposed ordinances?

Alternatives.

1. Hold the hearing and allow a first reading.
2. Hold the hearing and insignificantly change the proposed ordinances.
3. Direct major change(s) to the proposed ordinance and require the City Clerk to issue new notice of the revised ordinance and schedule a new public hearing date.
4. Do not hold the hearing and first reading, thereby essentially disapproving the proposed ordinance revision in its current form.
5. Set aside decision regarding this matter to a later date.

*Financial Impact.* There is no immediate fiscal impact to the City other than the administrative costs of publishing the public notice. We believe providing these new services to our City residents and businesses will be highly beneficial.

*Recommendation.* I recommend that the City Commission, by appropriate motion, conduct a public hearing and allow a first reading of the proposed new ordinances.

*Attachments.*

1. State of Michigan Letter.
2. Intergovernmental Agreement.
3. Proposed Ordinance 2010-003.
4. Proposed Ordinance 2010-004.
5. Public Notice.



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
LANSING

STANLEY "SKIP" PRUSS  
DIRECTOR

July 9, 2010

Ms. Jean McConnell, Mayor Pro Tem  
City of Clare  
202 West Fifth Street  
Clare, MI 48617

RE: Application to Administer and Enforce/Proposed Ordinance  
Michigan Mechanical and Plumbing Codes

Dear Ms. McConnell:

The City's Application for Approval to Administer and Enforce the Michigan Mechanical and Plumbing Codes, and proposed ordinance received June 9, 2010, were presented to the Construction Code Commission and approved at its meeting on July 7, 2010.

Upon official passage of the ordinance, please forward a **certified copy** to this office.

Once the ordinance is formally adopted and a copy is forwarded to this office, the City of Clare, will be notified of the date it becomes responsible for the administration and enforcement of the Michigan Mechanical and Plumbing Codes within the city, pursuant to the provisions of the approved application and ordinance.

As a reminder, no mechanical and plumbing permits are to be issued or inspections conducted by the city, until the Bureau has notified the city of the effective date.

If you have any questions, please contact me at (517) 241-9347.

Sincerely,

Michael Somers, Analyst  
Office of Administrative Services

MS/jlp

cc: Diane Schmidt, Clerk, City of Clare  
Tim Nieporte, Director, Community Development, Isabella County  
Mechanical Division, BCC  
Plumbing Division, BCC  
Plan Review Division, BCC  
Office of Management Services, BCC

*Providing for Michigan's Safety in the Built Environment*

BUREAU OF CONSTRUCTION CODES  
P.O. BOX 30254 • LANSING, MICHIGAN 48909  
Telephone (517) 241-9347 • Fax (517) 241-9308  
[www.michigan.gov/dleg](http://www.michigan.gov/dleg)

FILED  
JUN 17 2010  
ISABELLA COUNTY CLERK  
PLEASANT, MICH.

INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CLARE TO PROVIDE  
PLUMBING AND MECHANICAL CODE INSPECTION SERVICES

THIS AGREEMENT, made and entered into this 17 day of May, 2010, by and between the County of Isabella, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as "Isabella") and the City of Clare, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as "City of Clare").

WITNESSETH:

WHEREAS, City of Clare desires Plumbing and Mechanical Code Inspection and Enforcement services; and

WHEREAS, Isabella shall provide a Registered and Certified Code Official with an established and active business record in the Plumbing and Mechanical Inspections Trade in the State of Michigan; and

WHEREAS, Isabella and the City of Clare have agreed to the terms and conditions of this intergovernmental agreement to provide Plumbing and Mechanical Code inspection services.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED, as follows:

1. **Services to be provided by Isabella.** Isabella agrees to provide the following services to the City of Clare:
  - A. Provide timely Plumbing and Mechanical inspections of any and all new construction.
  - B. As requested by City of Clare, meet with the Construction Board of Appeals on any issue regarding an appeal of action taken on your part.
  - D. Respond to calls and/or inquiries as soon as practicable or on scheduled work days.
  - E. Prepare all reports required by the City of Clare and/or the State of Michigan in compliance with any State and/or Local Ordinance or Law.
  - F. Provide plan reviews on all commercial, industrial and new home construction.
2. **Compensation.** Payment shall be in monthly installments, due and payable on the 10<sup>th</sup> of every month, for services rendered during the prior month. Compensation for the term of this agreement shall be agreed upon as expressed in the annual Isabella County Building Inspections Fund budget at a rate of \$45.00 per inspection. The per inspection rate includes time, mileage and operating expenses. In addition to the described services, any further service required by the City of Clare including attendance at meetings necessary to enhance the implementation of the City of Clare's Plumbing and Mechanical Code administration, as requested by Clare, which are mutually agreed upon will be billed to the City of Clare at the rate of \$35.00 per hour plus mileage. Payments shall be made to: "ISABELLA COUNTY"
3. **Qualifications of Isabella.** Isabella agrees that at all times during the term of this Agreement the Plumbing and Mechanical Code Inspector shall maintain his/her professional status and shall satisfy applicable licensing requirements of the State of Michigan, which qualify him/her to continue service to the City of Clare in the designated Registered Code Official capacity. Isabella further agrees to keep current in the disciplinary fields required to maintain his/her license, to remain in good standing with the State of Michigan in the capacity required to fulfill the terms of this Agreement. It is understood that the failure to comply with these requirements is a material breach of this Agreement and grounds for immediate termination of this Agreement.
4. **Title to Records, Documents, Papers, Etc.** The City of Clare shall have the sole and exclusive right, title and interest to any and all records, documents, papers, maps or manuscripts pertaining to or prepared pursuant to this Agreement.

5. **Avoidance of Conflicts of Interest.** Isabella agrees, during the term of this Agreement or any extended term in which this Agreement remains in effect, to avoid both actual and the appearance of conflicts of interest.

6. **City of Clare Responsibilities.** The City of Clare agrees to provide Isabella with the following:

- A. The reasonable cooperation of the City of Clare personnel.
- B. Access to existing records to perform duties as depicted in this document.
- C. A list of Inspections to be performed on scheduled inspection days.
- D. Code Books and necessary inspection forms to complete the Inspections requested including field reports.

7. **Nondiscrimination.** Isabella and the City of Clare, as required by law, shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, or marital status. Breach of this section shall be regarded as a material breach of this Agreement.

8. **Compliance with the Law, Applicable Law and Venue.** Isabella, while engaged in any activity pursuant to this Agreement, shall comply with all applicable Federal, State or local laws, ordinances, rules and regulations. Breach of this covenant shall be regarded as a material breach of this Agreement.

This Agreement shall be construed according to the laws of the State of Michigan. The venue for the bringing of any legal or equitable action under this Agreement shall be established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules.

9. **Independent Contractor.** It is expressly understood and agreed that Isabella is an Independent Contractor. Isabella and the employees and agents of Isabella shall in no way be deemed to be and shall not hold themselves out as employees or agents of the City of Clare. Isabella and its employees and agents shall not be entitled to any fringe benefits which the City of Clare affords its employees, such as, but not limited to, health and accident insurance, life insurance, paid vacation leave, or paid sick leave. Isabella shall be responsible for the payment of salaries, wages and other compensation due its staff for services they perform under this Agreement and for withholding and payment of all applicable taxes, including, but not limited to, income and social security taxes to the proper Federal, State and local governments. Isabella, to the extent required by law, shall carry workers' compensation insurance coverage.

10. **Liability.**

A. All liability to third parties, loss or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by Isabella in the performance of this Agreement shall be the responsibility of Isabella, and not the responsibility of the City of Clare, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of Isabella, any subcontractor, anyone directly or indirectly employed by Isabella, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to Isabella or their employees by statutes or court decisions.

B. All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as the provision of policy and procedural direction, to be carried out by the City of Clare in the performance of this Agreement shall be the responsibility of the City of Clare and not the responsibility of Isabella if the liability, loss, or damage is caused by, or arises out of, the action or failure to act on the part of any City of Clare employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the City of Clare or its employees as provided by statute or court decisions.

C. In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the City of Clare and Isabella in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by the City of Clare and Isabella in relation to each party's responsibilities under these joint activities provided that nothing herein shall be construed as a waiver of any governmental immunity by the City of Clare, Isabella or their employees, respectively, as provided by statute or court decisions.

D. **Risk Management Systems.** Each of the parties to this Agreement agrees to cooperate with the other party in the constitution and operation of their respective risk management systems. Each party agrees that if an incident occurs and is reported as a part of its respective risk management system, and if the incident report involves either institution or its respective staff or agent, a copy of said incident report will be immediately delivered to the designated representative of the other party. It is agreed and understood that said incident reports will be held in the strictest of confidence and that each party agrees to cooperate fully with the other in the investigation and resolution of the incident or liability exposure revealed as a result of its respective risk management system.

E. **Non-Beneficiary Contract.** This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties hereto.

11. **Insurance.** During the term of this Agreement, Isabella shall maintain the following insurances:

A. Workers' Compensation Insurance, including Employers' Liability Coverage, covering its employees, to the extent required by applicable statutes of the State of Michigan.

B. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$500,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

C. Cancellation Notice - Isabella shall promptly notify the City of Clare in the event any of the insurance described above is canceled or expires during the term of this Agreement.

12. **Waivers.** No failure or delay on the part of either of the parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

In no event shall the making by the City of Clare of any payment due to Isabella constitute or be construed as a waiver by the City of Clare of any breach of a provision of this Agreement, or any default which may then exist, on the part of Isabella, and the making of any such payment by the City of Clare while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the City of Clare in respect to such breach or default.

13. **Modification of Agreement.** Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties hereto.

14. **Agreement Term.** Isabella shall commence performance of the services required under this Agreement on \_\_\_\_\_, and the Agreement shall continue through September 30, 2011, unless terminated as provided in paragraph 3 or 13; or is otherwise amended by the written authorization of the parties.

15. **Termination of Agreement.** Either party shall have the right, upon ninety (90) calendar days prior written notice to the other party, to terminate this Agreement. In the event this Agreement is terminated, compensation shall cease at the end of the calendar month during which the termination is effective.

16. **Return of the City of Clare Records and Equipment upon Agreement Termination.** Upon termination or completion of this Agreement, Isabella shall turn over to the City of Clare all records, property, and equipment of the City of Clare within fifteen (15) days of such termination or completion.

17. **Section Titles.** The titles of the sections set forth in this Agreement are inserted for the convenience of reference only, and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

18. **Complete Agreement.** This Agreement contains all of the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

19. **Invalid Provisions.** If any provision of this Agreement is held to be invalid, it shall be considered to be deleted, and the remainder of this Agreement shall not be affected thereby. Where the deletion of the invalid provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the provision was declared invalid.

20. **Certification of Authority to Sign Agreement.** The persons signing on behalf of the parties certify by their signatures that they are duly authorized to sign this Agreement on behalf of said parties and that this Agreement has been authorized by said parties.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have fully executed this instrument on the day and year first above written.

WITNESSED BY:

COUNTY OF ISABELLA

Brenda Young 6/15/2010  
Date

By: Pavel P. P. P.

Brandy Hoag 6/15/10  
Date

By: L. M. H.

WITNESSED BY:

CITY OF CLARE

Sarah Schumacher 6/3/10  
Date

Sarah Schumacher

By: Jean McConnell  
Jean McConnell, Mayor Pro Tem

Adrienne McCormick 6/3/10  
Date

Adrienne McCormick

By: Diane Schmidt  
Diane Schmidt, City Clerk

CITY OF CLARE  
STATE CONSTRUCTION CODE ACT  
AND THE MICHIGAN PLUMBING CODE ORDINANCE

Ordinance No. 2010-003

An ordinance to designate an enforcing agency to discharge the responsibility of the City of Clare, County of Clare, located in the State of Michigan, under the provisions of the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, MCL 125.1501 et seq. The City of Clare ordains:

Section 1. AGENCY DESIGNATED. Pursuant to Section 8b(6) of 1972 PA 230, the City of Clare is hereby designated as the enforcing agency to discharge the responsibility of the City of Clare under 1972 PA 230 and the Michigan Plumbing Code, as amended. The City of Clare assumes responsibility for the administration and enforcement of said Acts and Codes throughout its corporate limits of 1972 PA 230 and the Michigan Plumbing Code, as amended. The City of Clare shall also administer and enforce the respective provisions of the Michigan Residential, Rehabilitation, and Uniform Energy Codes and all applicable laws and ordinances. A governmental official registered in accordance with 1986 PA 54 shall be appointed to receive all fees, issue permits, plan reviews, notices, orders, and certificates of use and occupancy. All personnel performing plan reviews and inspections shall be registered in accordance with 1986 PA 54.

Section 2. REPEALS. All ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Section 3. FEE. Pursuant to Section 22(1), of 1972 PA 230, the City of Clare Commission shall establish reasonable fees to be charged for acts and services performed by the enforcing agency. The fees shall be intended to bear a reasonable relation to costs of the acts and services. The fees collected by the enforcing agency shall only be used for the operation of the enforcing agency and shall not be used for any other purpose.

Section 4. PUBLICATION. This ordinance shall be effective after legal publication and in accordance with provisions of the Act governing same.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

This ordinance duly adopted on \_\_\_\_\_, 2010, at a regular meeting of the City of Clare Commission and shall become effective \_\_\_\_\_, 2010.

Attested:

\_\_\_\_\_  
JEAN McCONNELL, Mayor Pro Tem  
City of Clare

\_\_\_\_\_  
Diane Schmidt, Clerk  
City of Clare

CITY OF CLARE  
STATE CONSTRUCTION CODE ACT  
AND THE MICHIGAN MECHANICAL CODE ORDINANCE

Ordinance No. 2010-004

An ordinance to designate an enforcing agency to discharge the responsibility of the City of Clare, County of Clare, located in the State of Michigan, under the provisions of the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, MCL 125.1501 et seq. The City of Clare ordains:

Section 1. AGENCY DESIGNATED. Pursuant to Section 8b(6) of 1972 PA 230, the City of Clare is hereby designated as the enforcing agency to discharge the responsibility of the City of Clare under 1972 PA 230 and the Michigan Mechanical Code, as amended. The City of Clare assumes responsibility for the administration and enforcement of said Acts and Codes throughout its corporate limits of 1972 PA 230 and the Michigan Mechanical Code, as amended. The City of Clare shall also administer and enforce the respective provisions of the Michigan Residential, Rehabilitation, and Uniform Energy Codes and all applicable laws and ordinances. A governmental official registered in accordance with 1986 PA 54 shall be appointed to receive all fees, issue permits, plan reviews, notices, orders, and certificates of use and occupancy. All personnel performing plan reviews and inspections shall be registered in accordance with 1986 PA 54.

Section 2. REPEALS. All ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Section 3. FEE. Pursuant to Section 22(1), of 1972 PA 230, the City of Clare Commission shall establish reasonable fees to be charged for acts and services performed by the enforcing agency. The fees shall be intended to bear a reasonable relation to costs of the acts and services. The fees collected by the enforcing agency shall only be used for the operation of the enforcing agency and shall not be used for any other purpose.

Section 4. PUBLICATION. This ordinance shall be effective after legal publication and in accordance with provisions of the Act governing same.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

This ordinance duly adopted on \_\_\_\_\_, 2010, at a regular meeting of the City of Clare Commission and shall become effective \_\_\_\_\_, 2010.

Attested:

\_\_\_\_\_  
JEAN McCONNELL, Mayor Pro Tem  
City of Clare

\_\_\_\_\_  
Diane Schmidt, Clerk  
City of Clare



# CITY OF CLARE

202 West Fifth Street • Clare, Michigan 48617-1490  
989/386-7541 • Fax 989/386-4508  
[www.cityofclare.org](http://www.cityofclare.org)

## CITY HALL

Ph 989/386-7541  
Fx 989/386-4508  
[www.cityofclare.org](http://www.cityofclare.org)

## DEPARTMENT OF PUBLIC WORKS

Ph 989/386-2182  
Fx 989/386-3445

## W/WWT PLANT

Ph 989/386-2321  
Fx 989/386-2387

## POLICE DEPT.

Non-emergency  
Ph 989/386-2121  
Fx 989/386-0440

## FIRE DEPT. NON-EMERGENCY

Ph 989/386-2151  
Fx 989/386-3020

## PARKS & RECREATION

Ph 989/386-7541  
Fx 989/386-4508

## AIRPORT

Ph 989/386-0445  
Fx 989/386-4508

## MAIN STREET MANAGER

Ph 989/386-9190  
Fx 989/386-9190

## PUBLIC NOTICE

**The City of Clare City Commission will hold a public hearing on Monday, August 16, 2010, at 6:00 p.m. at Clare City Hall, 202 W. Fifth Street, to receive public comments pertaining to proposed Ordinance 2010-003: The State Construction Code Act And The Michigan Plumbing Code Ordinance; And, Ordinance 2010-004: The State Construction Code Act And The Michigan Mechanical Code Ordinance; Ordinances to designate an enforcing agency to discharge the responsibility of the City of Clare for mechanical and plumbing inspections and enforcement under the provisions of the State Construction Code Act. Copies of the proposed Ordinances are available for review in the Clerk's office, Monday through Friday, 8 am to 5 pm. The City Commission will accept comments at the hearing or in writing if the written comments are received by the City Clerk not later than 5 p.m. on the date of the hearing.**

**Diane Schmidt  
City Clerk**

**Published: July 23, 2010**