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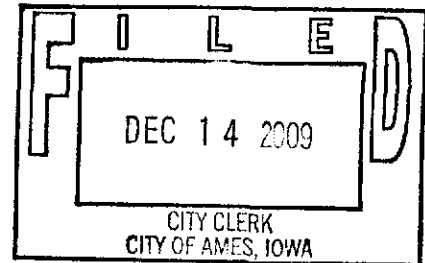
City Attorney's Office

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December 14, 2009

The Honorable Ann Campbell, Mayor,
and Members of the City Council
of the City of Ames, Iowa



Re: Proposed Addition to City of Ames Criminal Code

Dear Mayor Campbell and Council Members:

Principles of criminal justice generally hold that repeat violations should be treated more severely and punished more harshly than an initial violation. This is true in federal, state and local criminal codes. As an example, under the state code, a first offense possession of alcohol under the legal age charge carries a penalty of \$200 while a second violation carries a mandatory penalty of \$500. The general belief is that this type of enhanced penalty helps to deter crime and repeat offenders.

From the City's perspective, problems have arisen with our criminal prosecutions when prior offenses have occurred in a different municipality or when they have been charged under the state code. For example, if someone is charged with a public intoxication charge in Ames, under the Ames Municipal Code, and they already have a prior conviction for public intoxication, but that conviction is from Iowa City, we are restricted to charging the new violation as a first offense. This is because our current municipal code does not explicitly state that prior offenses, regardless of where they occur, will count when charging someone with a subsequent offense.

In order to correct this, the City Attorney's office proposes adding a new section to Chapter 17 that defines what can properly be charged as a subsequent offense. This new section should clearly state that prior judgments from other jurisdictions will be considered appropriate prior offenses to justify charging the new offense in Ames as a subsequent offense.

The City Attorney's office has consulted with the police department regarding this proposal and the police department supports these actions. The City Attorney's office believes that by adding this new section, we will be better able to enforce the laws of the City of Ames.

Sincerely,

Kristine Stone
Assistant City Attorney

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 17.35 THEREOF, FOR THE PURPOSE OF DETERMINING IF A VIOLATION CHARGED IS A SECOND OR SUBSEQUENT OFFENSE; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 17.35 as follows:

“Sec. 17.35. SECOND OR SUBSEQUENT OFFENSES.

In determining if a violation charged is a second or subsequent offense for purposes of sentencing under this chapter:

(1) Deferred judgments entered pursuant to Section 907.3 for violations of any offense listed in this chapter shall be counted as previous offenses.

(2) Convictions or the equivalent of deferred judgments for violations in any other municipality, county, or state under statutes or ordinances substantially corresponding to those offenses contained in this chapter shall be counted as previous offenses.

(3) The courts shall judicially notice the statutes or ordinances of other municipalities, counties or states which define offenses substantially equivalent to the ones defined in this chapter and can therefore be considered corresponding statutes.

(4) Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.”

Section Two. Violation of the provisions of this ordinance shall constitute a simple misdemeanor punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk
001208

Ann H. Campbell, Mayor