

**COUNCIL ACTION FORM**

**SUBJECT: ZONING TEXT AMENDMENTS RELATING TO DEFINITIONS OF “DWELLING, TWO FAMILY PRE-EXISTING” AND “PRE-EXISTING” FOR ALL USES**

**BACKGROUND:**

As part of the adopted “Planning and Housing Department Work Plan Priorities”, the City Council has directed that staff prepare a text amendment to add definition to the meaning of “*Two Family Dwelling, Permitted, Y, if pre-existing*” and determine how to address previous single family conversion homes that are non-conforming. It is also necessary to define the term “pre-existing”, as it applies to two family dwelling, single family attached dwelling, and apartment dwelling, as found in Table 29.703(2), Urban Core Residential Medium Density (UCRM) Zone Uses of the *Municipal Code*. Staff provided an overview of the options for defining these terms at the April 11, 2017 City Council meeting. The City Council gave direction to staff to prepare an ordinance to define each of these terms consistent with April 11<sup>th</sup> staff report.

**The proposed ordinance narrows the meaning of the phrase “pre-existing” to clarify the intent of the term to be similar to a traditional non-conforming use that is only permitted if it has been continuously used as a two-family home, and that if the use has ceased, it is not eligible to be reestablished despite what was its condition in 2000.**

As part of the amendment, the definition of a two-family home would address former conversions that were subject to retroactive conversion permits as not meeting the definition of a two family home, which is consistent with the previous 1999 zoning standards. The balance of the proposed amendments is to preserve the intent of allowing established two-family homes as permitted uses, but ensuring their reuse is consistent with current expectations, and that unexpected two-family uses do not appear in established areas. A more thorough explanation of prior terminology is in the addendum.

**Proposed Definitions for “Dwelling, Two Family Pre-existing” and “Pre-existing”.**

The following proposed definitions for “*Dwelling, Two Family Pre-existing*”, and “*Pre-existing*” address uses that existed, prior to adoption of certain zoning districts, that do not fit within the ‘Use Categories’ for the particular zone, as a permitted use, yet are uses which the City Council has chosen to allow.

**“*Dwelling, Two Family Pre-existing*” would be defined, as follows:**

*“A two family dwelling designed and built as, or converted to a two-family dwelling, pursuant to a zoning and building permit as a two family dwelling as evidenced by*

*approved building/zoning permits on file with the Chief Building Official. However, a home subject to a retroactive conversion permit does not meet the definition of being a dwelling, two family pre-existing.”*

The proposed definition recognizes that any property lawfully constructed as a two-family dwelling originally or was able to obtain a building permit under prior zoning standards to convert or create a second dwelling unit prior to 2000 would meet the definition of permitted and pre-existing. However, dwellings that are conversions of an originally built single-family structure, approved through a Retroactive Conversion Permit, which traditionally did not enjoy the benefit of being classified as a permitted use, does not qualify as two-family dwelling pre-existing. Retroactive Conversion Permits are treated as a legal non-conforming use subject to the standards of Article 3 of the Zoning Ordinance.

The term “*pre-existing*” is a term used for other uses in the Zoning Ordinance, such as social service providers, apartments and single family attached. This is most commonly an issue in R-L, UCRM, RM and some commercial zoning districts due to the significant changes in zoning standards in 2000.

“***Pre-existing***” would be defined, as follows:

*“A legally established use that was a permitted use existing on a site at the time of adoption of Ordinance No. 3557, Enacting a New Chapter 29 (Zoning), in the year 2000, and remaining in continuous use since that time. For the purposes of this definition, ‘continuous use’ would include a period of discontinuance of the permitted use when that period is for less than one year.”*

This definition clarifies at what point in time a use must have existed and that it must be continuously used to have the benefits of being pre-existing rather than nonconforming. A property owner would be required to demonstrate that they have continuously used the property consistent with the definition. Based upon the options presented in April, staff included the allowance for a one-year period of discontinuance with the ability to reestablish. City Council could choose to strike the one year allowance if they did not believe allowing for reestablishment was appropriate.

### **ALTERNATIVES:**

1. The City Council can approve on first reading a text amendment for the proposed zoning definitions of “*Dwelling, Two Family Pre-existing*”, and “*Pre-existing.*”
2. The City Council can approve on first reading a text amendment for the proposed zoning definitions of “*Dwelling, Two Family Pre-existing*”, and “*Pre-existing*” without the allowance for a one year period of discontinuance in the definition of Pre-existing.
3. The City Council can decline to adopt the proposed zoning definitions for “*Dwelling, Two Family Pre-existing*”, and for “*Pre-existing.*”

**CITY MANAGER’S RECOMMENDED ACTION:**

The proposed definitions for “*Dwelling, Two Family Pre-existing*”, and for “*Pre-existing*” serve to clarify what does, and does not, fall within the use category of pre-existing for two-family dwellings. Based upon the categories of use that existed in 1999, it is appropriate to use those references for “conversions” to explain the meaning of pre-existing. Language from Chapter 29 (as of 1999), prior to enacting a new Chapter 29 in the year, 2000, has been used in the definitions for consistency with past practice of administering the zoning regulations. The proposed language will assist Planning and Inspection staff in explaining the regulations to our customers.

**Therefore, it is the recommendation of the City Manager that the City Council act in accordance with Alternative #1 to approve the zoning text amendments.**

## Addendum

**Zoning Regulations in 1999.** Prior to the adoption of the new Zoning Ordinance (Chapter 29) in 2000, in the “R1-6” (Low-Density Residential) zoning district, two family dwellings were a permitted use if constructed or under construction prior to November 1, 1983, and if originally designed and built pursuant to a zoning and building permit as a two-family dwelling, and not a single family dwelling converted to a two family dwelling as evidenced by the plans on file with the Chief Building Official.

Two-family dwellings were a permitted use in the “R-2” (Low-Density Residential District), which was established to accommodate single and two family dwellings and other uses customarily found in existing low-density residential areas. Provided, however, that no permit could be issued to convert a single family structure to a two family use, except by means of a Special Permit issued by the Zoning Board of Adjustment.

In 1985, the City Council adopted zoning regulations to allow for the **retroactive conversion of single family dwellings to two family dwellings**. This was done in response to numerous buildings and parts of buildings that were rented as dwelling units, which were built, remodeled, converted and occupied at various times, over many years, without proper City permits in violation of various Codes and Ordinances, including zoning regulations. Such that these dwellings were in non-conformance with zoning regulations pertaining to lot area, setbacks, lot frontage, or building height, were then **made lawful under the zoning regulations of Chapter 29, if the owner of the premises obtained a retroactive conversion permit, pursuant to Section 13.39 (Retroactive Conversion Permits) of the *Municipal Code***. If the use of the premises, legalized pursuant to the issuance of a Retroactive Conversion Permit, was discontinued for one year, or if the structure was wholly or partially destroyed, the zoning provisions pertaining to a lawful nonconforming use applied. Such provisions stated that: *“If any such nonconforming use of a structure or land and structure in combination ceases for any reason for a period of one (1) year, any subsequent use of such structure shall conform to the district regulations for the district in which such structure is located. When vested nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall terminate the authorization for the nonconforming use of the land.”*

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTIONS 29.201(63.1) AND 29.201(160.1) THEREOF, FOR THE PURPOSE OF DEFINING TWO-FAMILY PRE EXISTING DWELLING AND PRE EXISTING; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; 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 29.201(63.1) as follows:

**Sec. 29.201. DEFINITIONS.**

(63.1) “Dwelling, Two Family Pre-existing: A two family dwelling designed and built as, or converted to a two family dwelling, pursuant to a zoning and building permit as evidenced by approved building/zoning permits on file with the Chief Building Official. However, a home subject to a retroactive conversion permit does not meet the definition of being a two family dwelling pre-existing.”

Section Two. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 29.201(160.1) as follows:

(160.1) “Pre-existing” means a legally established use that was a permitted use existing on a site at the time of adoption of Ordinance No. 3557, Enacting a New Chapter 29 (Zoning) in the year 2000, and remaining in continuous use since that time. For purposes of this definition, ‘continuous use’ would include a period of discontinuance of the permitted use when that period is for less than one year.”

Section Three. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

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

Section Five. 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

\_\_\_\_\_  
Ann H. Campbell, Mayor