COUNCIL ACTION FORM

SUBJECT: **TEXT AMENDMENT REQUEST TO ALLOW BEDROOMS IN PROGRESS TO COUNT TOWARD OCCUPANCY**

BACKGROUND:

During the 'Disposition of Communications to Council' discussion at the Council meeting on January 8, 2019, the City Council discussed the January 2, 2019 letter from Mr. Al Warren regarding his ability to add bedrooms in a capped neighborhood. Council discussed changing code language and ultimately referred it back to staff in the following motion:

> *Moved by Gartin, seconded by Corrieri, to refer this item to city staff to provide us with options and to place on a future agenda.*
> *Vote on the Motion: 5-1. Martin voting nay.*

In memos to Council sent in May 2018 and January 2019, staff indicated that a text amendment would be the only way Mr. Warren could increase his maximum occupancy. The code currently reads as follows:

> ***Sec. 13.503(4) Limits based on Zoning District – Maximum Occupancy***
> *(e) The maximum occupancy for a single-family or at two-family dwelling unit shall be based upon compliance with all standards of the Code, including but not limited to parking spaces, area requirements, habitable space requirements, and the following:*
> > *i) Three adult occupants for one, two and three bedroom dwelling units.*
> > *ii) One adult occupant per bedroom, with a maximum of five adult occupants, for dwelling units with four or more bedrooms.*
> > ***(iii) For rental dwelling units located within the Near Campus Neighborhoods and that are registered as of January 1, 2018, the number of bedrooms for determining maximum occupancy shall be determined by the number of bedrooms listed in the records of the Ames City Assessor as of January 1, 2018, or by the number of bedrooms reflected in the inspection records of the City of Ames Inspections Division as of January 1, 2018, whichever number is higher.***
> > *(iv) For rental dwellings for which a registration is being sought after January 1, 2018, the number of bedrooms for determining maximum occupancy shall be determined by an inspection by the Inspections Division.*

Mr. Warren's property at 2334 Storm Street is located in the SCAN neighborhood which is listed as a Near Campus Neighborhood in Resolution 18-242 adopted on 4/24/18. The code language in bold above freezes the number of occupants to what was allowed on 1/1/18. It does not prohibit bedrooms from being added. Rather, it prohibits those additions from counting toward the allowed occupancy. Neighborhoods outside of the Near Campus Neighborhoods

have the same occupancy limitations, but are not prohibited from increasing their allowed occupants by adding legal bedrooms.

In November of 2015, Mr. Warren demolished the existing home and constructed a new home on the property at 2334 Storm Street. The home was constructed with three finished bedrooms on the main floor. At the time of construction, the occupancy ordinance limited the number of unrelated occupants to three people so the layout was designed to accommodate three unrelated people.

Mr. Warren's building plan showed two egress windows in the basement (one more than what is required for new construction), but no formal bedrooms. A note on the approved permit states, "This permit includes (1) bathroom finished in the basement & no other basement finishes."

Mr. Warren has stated that his intent was to add bedrooms in the basement if the occupancy regulations changed in a way that would allow him more than three occupants. Until that time, he felt it was better to not have bedrooms there because it could encourage over-occupancy. **At this time, there have been no additional permits submitted to construct the bedrooms in the basement.**

Mr. Warren would like to be able to finish the bedrooms in the basement and have them count toward his maximum occupancy. This would change the allowed number of occupants to a total of five, two more than what he is currently allowed. He proposed the following text amendment in his January 2, 2019 letter to Council:

> *Anyone who was in the process of adding bedrooms, with the City of Ames Inspection Department, when the moratorium began, may finish these bedrooms and have them count towards occupancy.*

Staff is unaware of any other property owners in a similar situation as Mr. Warren. However, if Council is interested in a text amendment, they should consider the possibility of other owners requesting the same exception. If this language is used, the burden of proof will be on the property owner to show that they were "in the process" of adding bedrooms. Under the proposed language, it will be difficult for staff to verify the property owner's claim. **In fact, based on the materials on file for Mr. Warren's house, staff is unable to determine that he was "in process" because there are no records showing the intent to establish bedrooms in the future.**

If Council is considering a text amendment, it would be helpful for staff to have direction on what "in process" means when drafting the language. Options to determine if someone is "in process" could include the application of a building permit for additional bedrooms, dated plans with bedrooms on it, any written correspondence with City staff regarding the addition of bedrooms, a dated construction bid from a contractor, or other additional information as determined by Council.

In addition to determining if someone is "in process", staff recommends including language about when the applicant needed to be in process and establishing a timeframe for which applications would be accepted (E.g., one month from the effective date of this ordinance). January 1, 2018 would be an appropriate date for which someone would be required to show they were "in process," since this is the date that the bedroom counts were frozen. Additional dates include October 27, 2017 (when the moratorium went into effect) or April 24, 2018 (when

the occupancy standards were set placing the cap on properties in the Near Campus Neighborhoods.)

On February 20, 2019, Mr. Warren met with staff to propose an alternative solution that would allow the Building Official to approve a Code Modification Request. Sec. 13.103(1) of the Municipal Code addresses Modifications:

> ***13.103 Approvals.***
> ***(1) Modifications.*** *Whenever there are practical difficulties involved in carrying out the provisions of this Code, the Building Official shall have the authority to grant code modifications for individual cases, provided the Building Official shall first find that special individual reason makes the strict letter of this Code impractical and the modification is in compliance with the intent and purpose of this Code and that such modification does not lessen health, life and fire safety requirements. The details of action granting code modifications shall be recorded and entered in the Inspection Division records.*

Mr. Warren's opinion is that the short period of time in which Council decided to freeze occupants and tie the occupancy rate to the number of bedrooms created a practical difficulty. Had there been more time before the code changed, he would have had a chance to finish the bedrooms he had planned to create. He also feels that the new code language is intended to limit the number of occupants in an area and that allowing two additional occupants in his home does not have enough of an effect on the neighborhood that it would go against the intent of the code.

Staff has reviewed the code section in regards to this situation and does not feel that the intent of the code would be upheld if approved. The code change was intended to limit properties from being expanded to increase the number of allowed occupants. Approval of this modification would do the opposite of what was intended by increasing the allowed occupants to five at this property. The property is currently in compliance so staff is unable to determine that compliance is impractical.

ALTERNATIVES:

1. **Deny** the request for a text amendment, keeping the existing code in place. Under this alternative, Mr. Warren would not be able to add additional occupants.

2. Direct staff to draft a text amendment that would allow **only** Mr. Warren's property at 2334 Storm Street to increase occupants with the addition of two bedrooms.

3. Direct staff to draft a text amendment similar to Mr. Warren's request that would allow **anyone who was "in process"** of building additional bedrooms to qualify for the exemption. If this alternative is preferred, Staff would need Council to address the following questions to guide them in drafting the ordinance:

    a. **What criteria** will be used to determine that someone is "in process"? Criteria may include the application of a building permit for additional bedrooms, dated plans with bedrooms on it, any correspondence with City staff regarding the addition of bedrooms, and a dated construction bid from a contractor.

b. **When** did the applicant need to be "in process"? At the beginning of the moratorium? On January 1, 2018 when occupancy was frozen?

c. What is the appropriate **window of time** for which these requests would be accepted?

Example: "Anyone that was in the process of adding bedrooms <u>prior to the bedroom counts being frozen (January 1, 2018)</u> may apply to the Inspection Division, <u>within 30 days of the effective date of this ordinance</u>, to have their bedrooms counted for occupancy purposes. In process means having an <u>approved building permit dated prior to 1/1/18</u>."

(The underlined text above are examples and not necessarily recommendations.)

CITY MANAGER'S RECOMMENDED ACTION:

The question before the City Council is whether or not to create an exception to allow additional bedrooms to be completed and used in determining occupancy after January 1, 2018 as requested by Mr. Warren. Staff is not aware of any other rental property owners who would request this same exemption.

Since it would be difficult for staff to determine that Mr. Warren was "in process" because there are no records showing the intent to establish bedrooms in the future, it is the recommendation of the City Manager that the City Council support Alternative #1, thereby denying the request to amend the rental code to allow bedrooms to be added in capped neighborhoods so as to count towards increased occupancy.