

ITEM # 15
DATE 03/04/08

COUNCIL ACTION FORM

SUBJECT: AMENDMENT TO AMES MUNICIPAL CODE ZONE USE TABLES IN COMMUNITY COMMERCIAL/RESIDENTIAL NODE, CAMPUSTOWN SERVICE CENTER, AND DOWNTOWN SERVICE CENTER (CCR, CSC, DSC) DISTRICTS ON EXCEPTION ALLOWING HOUSEHOLD LIVING

BACKGROUND:

Seven zoning districts in Ames allow some combination of Household Living and Trade uses. Most of these districts are within what the Zoning Ordinance classifies as Commercial Zones. In the Community Commercial/Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts, Household Living is not permitted except under the circumstance where the Household Living use is located above the first floor in a commercial building. This is consistent with the commercial purposes and intents for these districts as described in the Land Use Policy Plan and Zoning Ordinance.

In each of these three zoning districts, Short-term Lodging is also a permitted use. Table 29.501(4)1 (attached) defines Short-term Lodging as "facilities offering transient lodging accommodations to the general public, where the average length of stay is less than 60 days." Examples listed include bed and breakfasts, hotels, motels, recreational vehicle parks, boarding, rooming or lodging houses, and single room occupancy (SRO) hotels, where the average length of stay is less than 60 days." These uses most often occur in commercial building types and are not allowed in the City's residential zoning districts, except for bed and breakfasts as a Home Occupation. However, Table 29.501(4)-1 lists short-term lodging as a subcategory under the Residential Use Categories, so even though it typically occurs in a commercial building, it is by definition a residential use. Additional subcategories under the Residential Use category include (1) "group living", which includes such things as assisted living facilities, boarding rooms dormitories, nursing homes, etc., and (2) "Household living," which includes apartments, single-family dwellings, two-family dwellings, etc.

The use tables in each zoning district refer to these subcategories as defined above. Accordingly, the beginning portion of the use tables for the CCR, DSC, and CSC Districts appear similar to the following:

USE CATEGORY	STATUS	APPROVAL REQUIRED	APPROVAL AUTHORITY
RESIDENTIAL USES			
Group Living	N	--	--
Household Living	N, except in combination with a commercial building, in which case it shall be located above the first floor.	SDP Minor	Staff
Short-term Lodgings	Y	SDP Minor	Staff
OFFICE USES			
	Y	SDP Minor	Staff
TRADE USES			
Retail Sales and Services - General	Y	SDP Minor	Staff

Because short-term lodging is a residential use, buildings wholly occupied with residential uses are allowed in these zones, even though the intent and the policy of the City is that these be commercial zoning districts. By the current zoning map, the areas where this can occur are downtown, the Campustown core, and the West Towne area on Mortensen Road.

City Council Initiated Text Amendment. Section 29.1507 of the Municipal Code, "Zoning Text and Map Amendment" states, "The City Council may, from time to time, on its own initiative, on petition, or on recommendation of the Planning and Zoning Commission, after public notice and hearings, and after a report by the Planning and Zoning Commission, or after 30 days written notice to said Commission, amend, supplement or change the regulations, districts, or Official Zoning Map herein or subsequently established."

At its meeting of February 6, 2008, City Council referred to the Planning and Zoning Commission a proposed zoning text amendment to modify the existing language under "STATUS" for Household Living in Table 29.806(2), Table 29.808(2) and Table 29.809-R(2) as follows:

"N, except in combination with a ~~commercial building~~ permitted non-residential use or uses, in which case Household Living shall be located above the first floor."

The effect of this change would be that household living units, including apartments and condominiums, would not be allowed if they were located above short-term lodging on the first floor. However, household living units would be allowed above the first floor as long as the first floor use consisted of offices or trade uses, such as retail sales and services. This mixture of first floor commercial with upper floor residential uses will be more consistent with the original commercial intent of these zoning districts.

Recommendation of the Planning & Zoning Commission. At its meeting of February 20, 2008, with a vote of 6-0, the Planning and Zoning Commission recommended that Table 29.806(2), Table 29.808(2), and Table 29.809(2) not be amended as proposed. The Commission stated that they needed additional information on the purpose of the proposed change. The Commission further stated that they believed that any changes

should be both reasonable and enforceable. They suggested that the 60-day average length of stay provisions should be looked at due to the difficulty in both determining and enforcing a 60-day average length of stay. They also suggested that it may be prudent to list hotels and motels in a category separate from the residential category that short-term lodging is defined under, because any changes to short term lodging provisions would also apply to hotels and motels, and that these may not be perceived as the same types of uses.

Comments from the Owner of West Towne Development

Mr. Haverkamp has emphasized that he has met several times with the planning staff and was told that use of the first floors of his buildings for short-term lodging was legal. As a result he designed some units that would be rented out by the week or by the month. He also worked with the Inspections Division to receive the necessary permits to accomplish these modifications in three of his buildings. He stated that he made the investment to purchase the total development knowing that there was 70,000-75,000 square feet of vacant commercial space on the first floors of all seven buildings, but was excited that the space could legally be converted to short-term lodging. He has made a substantial financial investment without being told the ordinance would be altered. He is concerned that the three buildings that have received approval for short-term lodging on the first floors will become non-conforming if the Council approves the proposed text change. Furthermore, he is attempting to take a project that he describes as failing in terms of commercial on the first floors and trying to revitalize it and make it into something that is economically viable.

ALTERNATIVES:

1. The City Council can approve the amendment to Table 29.806(2), Table 29.808(2), and Table 29.809-R(2) modifying the exception allowing Household Living in the Community Commercial/Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts, allowing household living above the first floor only if in combination with a non-residential use.
2. The City Council can refer this issue back to the City Attorney to develop a text amendment that will accomplish the same policy change as reflected in Alternative #1, but which would eliminate the non-conformity of the three buildings that have already been approved for Mr. Haverkamp to provide short-term lodging units on the first floor below apartments.
3. The City Council can refer this issue back to the City Attorney to develop a text amendment that would prevent apartments above short-term lodging, but apply this policy only to the Campustown Service Center and Downtown Service Center Districts.

Since the West Towne development is located in the only designated Community Commercial/Residential Node, this action would allow Mr. Haverkamp the ability to

convert all of his buildings to short-term lodging on the first floor, but will prevent this concept from spreading to the other commercial districts.

4. The City Council can refer this issue back to the City Attorney to develop a text amendment that would remove hotels and motels from under the use category of short-term lodging in Table 29.501(4)1 of the Zoning Ordinance.

The text change proposed in Alternative #1 could conceivably allow buildings like the ones owned by Mr. Haverkamp to become totally short-term lodging units in the CCR, CSC, and DSC Districts. By establishing hotels and motels in a separate category, the Council could mandate that short-term lodging be restricted to above the first floors in these three commercial districts without inadvertently applying the same restriction to hotels and motels.

5. The City Council can refer this issue back to the City Attorney to develop a text amendment that would modify the Zoning Ordinance to establish a more realistic maximum timeframe for stays in short-term lodging, perhaps 60 days rather than an average of 60 days.

Because the current language that calls for an average length of stay is impractical to enforce, a modification to this requirement should be made to the Code.

6. The City Council can decide not to make any revisions to the Zoning Ordinance at this time as it relates to short-term lodgings.

MANAGER'S RECOMMENDED ACTION:

Several years ago a new Community Commercial/Residential Node (CCR) commercial zoning designation was created to facilitate "mixed use development". It is staff's recollection that the City Council ultimately decided to apply this zone on Mortensen Road in order to assure the availability of commercial uses to serve the growing westerly portion of the city and, at the same time, allow for residences above the commercial development.

The Planning and Housing staff has been working with the owner of West Towne development with his plans to convert the commercial area on the first floor of three of his buildings to short-term lodging units. In consultation with the Legal Department, it was determined that the proposed residential use on the first floor for short-term lodging was allowable under the current ordinance.

During this same time, Inspection staff members were reviewing the plans to renovate the first floors of these buildings into what they believed look like apartments. Because of this proposed change in use, the Manager's Office was alerted. Remembering the City Council's intent to create this commercial area to service west Ames and learning of the legality of short-term lodging on first floors in the CCR zone, the City Council was informed of this transformation in the event that members would like to pursue a

legislative change to prevent the conversion of office/retail/entertainment space to residential units.

In response to this notification, the City Council directed staff 1) to prepare a revision to our Municipal Code that would prohibit household living in CCR, CSC, and DSC Districts except in combination with permitted non-residential uses, in which case household living shall be located above the first floor, and 2) to refer this issue to the Planning and Zoning Commission for their recommendation.

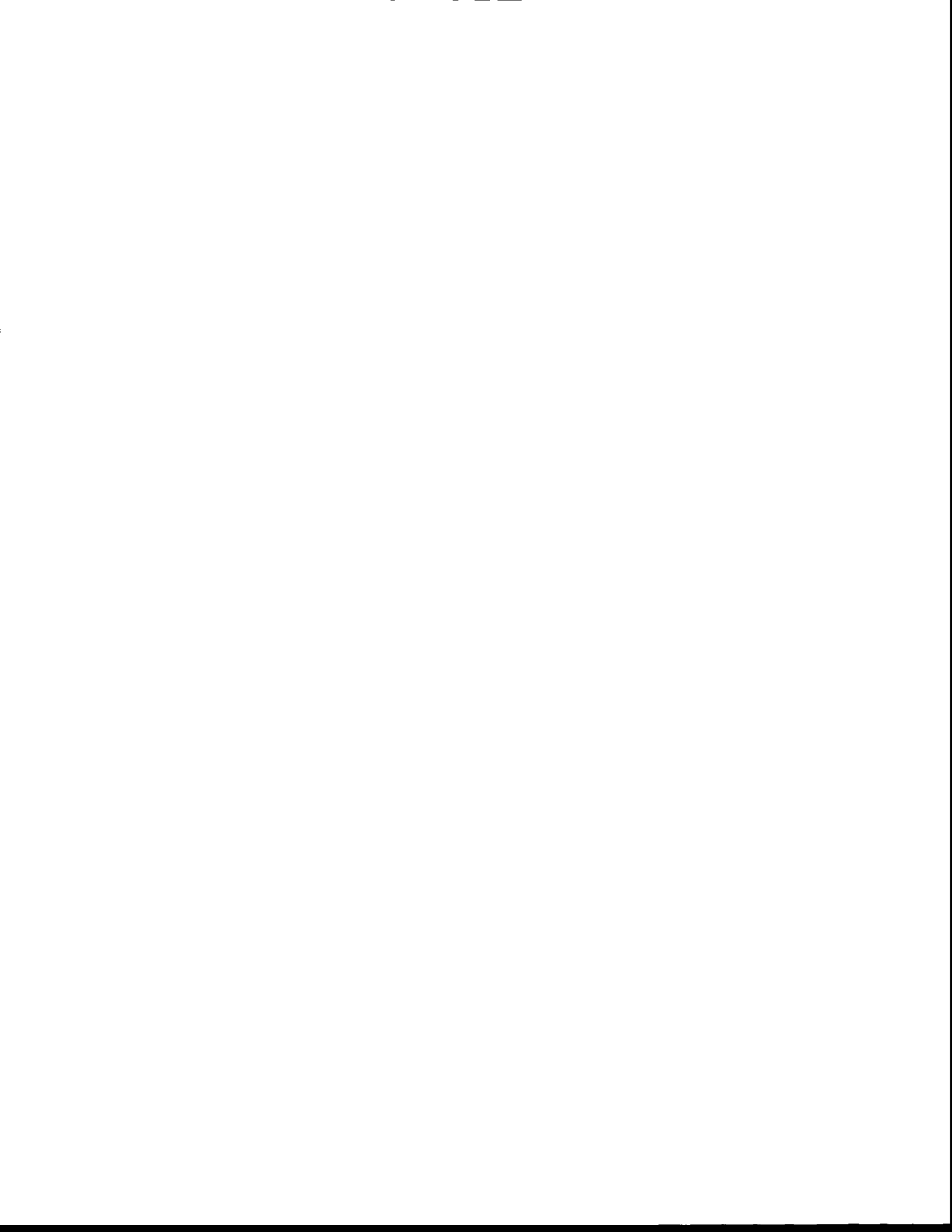
As is evident from the attached minutes from the Planning and Zoning Commission meeting, members 1) were unclear as what "problem" the City Council was attempting to correct with this self-initiated zoning ordinance text amendment, and 2) were concerned about the negative impact the proposed change would have on the owner since the converted buildings will become non-conforming.

In response to the City Council's directive, it is the recommendation of the City Manager that the City Council adopt Alternative #1. This alternative will authorize the amendment to Table 29.806(2), Table 29.808(2), and Table 29.809-R(2) modifying the exception allowing Household Living in the Community Commercial/Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts.

The recommended option will make the regulations clearer and more consistent with original commercial intent for these three zoning districts. Short-term lodging (hotels, motels, bed & breakfasts, and other facilities offering lodging for an average of less than 60 days) will still be permitted in these commercial districts, but regular apartments for household living could not be located on upper floors of short-term lodging buildings.

The staff has also provided above a number of other alternatives in the event that the City Council wishes to minimize the impact on the owner of West Towne development who made recent investments under the assumption that the ordinance would not be modified.

In either case, it would also be appropriate to initiate another City-initiated text amendment that modifies the "average length of stay" requirement. This provision is impractical to enforce, and since staff will now have the responsibility to judge compliance with this requirement for the ground floor short-term stay units in the West Towne properties, a modification to this requirement should be made to the Code.



**ARTICLE 5
USE CATEGORIES**

Sec. 29.500. PURPOSE.

The purpose of this Section is to describe the different classifications of uses found in this Ordinance and to provide a systematic basis for assignment of present and future uses to zones.

Sec. 29.501. CLASSIFICATION OF USES.

(1) **Standards for Classification.** Uses shall be assigned to the category with the description and listing of uses most closely describing the nature of the Principal Use.

(2) **Developments with Multiple Principal Uses.** When all the Principal Uses of a development fall within one Use Category, then the development is assigned to that Use Category. When the Principal Uses of a development fall within different Use Categories, each Principal Use is classified in the applicable category and is subject to the regulations for that category.

(3) **Accessory Uses.** Unless otherwise stated in this Ordinance or otherwise indicated in the Use Tables for each zone:

(a) Accessory Uses are allowed by right in conjunction with a Principal Use;
(b) Accessory Uses are subject to the same regulations as the Principal Use except as otherwise indicated;

(c) All uses include parking for residents, customers or employees as an Accessory Use;

(d) Examples of common Accessory Uses are listed within the Use Categories;

(e) Accessory Uses are incidental and customary to and commonly associated with the operation of the Principal Use;

i. Is clearly incidental and customary to and commonly associated with the operation of the Principal Use;

ii. Is operated and maintained under the same ownership or by lessees or concessionaires of the owner, and on the same zone lot as the Principal Use;

iii. Does not include structures or structural features inconsistent with the Principal Use;

iv. Does not include residential occupancy in conjunction with uses other than hotels, motels, tourist homes and similar transient housing accommodations, except by owners and employees employed on the premises and the immediate families of such owners and employees; and

v. Has a gross floor area that, in combination with all other uses accessory to Principal Uses located in the same structure or on the same lot, does not exceed 25% of the gross floor area utilized by all Principal Uses. This 25% floor area limitation, however, shall not apply to off-street parking.

(4) **Uses Included.** The names of uses on the following Tables are generic, and similar uses not listed in the "Uses Included" list may also be included in the Use Category if they are not included in another Use Category. Uses included are based on the common meaning of the terms and not on the name that an owner or operator might give to a use.

**Table 29.501(4)-1
RESIDENTIAL USE CATEGORIES**

Group Living

Definition. Residential occupancy of a structure by a group of people who do not meet the Household Living definition. Size is larger than the average household size. Average length of stay is 60 days or longer. Structures generally have a common eating area for residents. Residents may receive any combination of care, training, or treatment, or none of these, as long as they also reside at the site.

Uses Included

Assistant Living Facilities

Boarding, rooming or lodging houses and single room occupancy (SRO) hotels with more than 6 units

Congregate housing

Dormitories or residence halls

Dormitories or residence halls
Fraternities and sororities
Hospices
Nursing and convalescent homes
Residences for the physically disabled, mentally retarded, or emotionally disturbed which do not meet the definition of Family Home
Transitional Living Facilities, such as halfway houses for former offenders
Accessory Uses
Recreational facilities

Household Living

Definition. Residential occupancy of a dwelling unit by a family, where the average length of stay is 60 days or longer.

Uses Included

Apartment Building

Manufactured Housing

Other structures with self-contained dwelling units

Single Family Attached Dwellings

Single and Two-family houses

Single Room Occupancy Housing (SRO's), if the average length of stay is 60 days or longer, there are no common dining facilities, and there are 6 units or less

Accessory Uses

Recreational activities; home occupations, and home day care are Accessory Uses that are subject to limitations found in the Zone Use Tables and the Use Development Standards.

Accessory Uses Specific to Manufactured Housing

Those buildings or structures that are complimentary to the manufactured home or mobile home such as carport, cabanas, garages, patio awnings, porches and storage buildings. Accessory structures shall not obstruct required opening for light and ventilation nor shall prevent the inspection of mobile home equipment and ventilation.

Subcategories of Uses

Single Family House: A detached structure containing one Residential Unit.

Two Family House: A single structure containing 2 Residential Units.

Single Family Attached Dwelling: One of 2 or more attached residential buildings having a common or party wall separating the dwelling units.

Apartment Building: A single structure containing 3 or more Residential Units.

Family Home: As defined in Section 29.201 of this Ordinance and in Iowa Code Section 414.22(c).

Short-Term Lodging

Definition. Facilities offering transient lodging accommodations to the general public, where the average length of stay is less than 60 days.

Uses Included

Boarding, rooming or lodging houses and single room occupancy (SRO) hotels, where the average length of stay is less than 60 days.

Bed and breakfasts

Hotels

Motels

Recreational vehicle parks

Accessory Uses

Coffee shops and dining areas primarily for use by guests or residents of the facility

**Table 29.501(4)-2
OFFICE USE CATEGORIES**

Definition. Activities conducted in an office setting and primarily focusing on administrative, business, government, professional, medical, or financial services. Contractors and others who perform services off-site are included in this Use Category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

Exception: Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity.

Uses Included

Office uses such as:

- Banking and bank-related services
- Brokerage houses
- Data processing centers
- Government offices
- Insurance services
- Lenders and credit services
- Public utility offices
- Real estate and related services
- Sales offices
- General office uses
- Medical and dental clinics, laboratories and offices
- Professional service offices such as:
 - Accountants
 - Architects
 - Engineers
 - Lawyers
- Televisions and radio studios

Accessory Uses

Cafeterias, health facilities, and other amenities primarily for the use of employees or visitors of the firm or building

**Table 29.501(4)-3
TRADE USE CATEGORIES**

Automotive and Marine Craft Trade

Definition. Retail sale or leasing of automobiles, including cars and trucks, and marine craft, including all types of boats and ships.

Uses Included

Sales or leasing of consumer vehicles, including:

- Passenger vehicles
- Motorcycles
- Light and medium trucks
- Other recreational vehicles
- Marine craft and accessories, retail

Accessory Uses

**DRAFT
MINUTES
CITY OF AMES
PLANNING AND ZONING COMMISSION**

Date: February 20, 2008	Darryl Knight, Chairperson	2008
	*Kori Heuss	2008
Call to Order: 7:00 p.m.	Chuck Jons	2009
	Elizabeth Beck	2009
Place: Ames City Hall	Norman Cloud	2010
Council Chambers	Keith Barnes, Vice-Chairperson	2010
	Justin Platts	2012
Adjournment: 8:33 p.m.		
	*Absent	

MAJOR TOPICS DISCUSSED:

1. Amendment to Municipal Code Zone Use Tables in Community Commercial Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts on Exception Allowing Household Living

CALL TO ORDER: Darryl Knight, Chairperson, called the meeting to order at 7:00 p.m.

APPROVAL OF AGENDA:

MOTION: (BARNES/JONS) to approve the Agenda for the meeting of February 20, 2008.

MOTION PASSED: 6-0

APPROVAL OF THE MINUTES OF THE MEETING OF FEBRUARY 6, 2008:

MOTION: (BARNES/PLATTS) to approve the Minutes of the meeting of February 6, 2008.

MOTION PASSED: 6-0

PUBLIC FORUM: There were no public comments.

Amendment to Municipal Code Zone Use Tables in Community Commercial Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts on Exception Allowing Household Living

Steve Osguthorpe, Director, gave an overview of the proposed amendment to the Zoning Ordinance. Approval of the amendment to Table 29.806(2), Table 29.808(2), and Table 29.809-R(2) modifying the exception allowing Household Living in the Community Commercial/Residential Node, Campustown Service Center, and Downtown Service Center (CCR, CSC, DSC) Districts. This will make the regulations for these three districts clearer and more consistent with the intent of the City's land use policy and zoning. Short-term lodging will still be permitted in these commercial districts, but regular apartments for household living could not be located on upper floors of short-term lodging buildings.

Chuck Jons asked for clarification on what the City Council is concerned about to initiate the proposed changes.

Mr. Osguthorpe explained that he believes the City Council is concerned about the commercial districts being developed more as residential and not the intended commercial that infrastructure and investments were put there for. There may also be a concern that we have a lot of apartments, and that our commercial districts should not be over utilized for residential purposes.

Norman Cloud asked if it is the intent that commercial enterprises on the first floor be something other than short-term lodging if there is going to have any sort of permanent residence above the first floor. The intent is not to have short-term lodging or permanent residences above the first floor and have the first floor as a hotel.

Mr. Osguthorpe clarified that this amendment would exclude short-term lodging on the first floor as long as those upper floors were residential. He further explained that the average length of stay for short-term lodging is defined as less than 60 days, which is very difficult to track and monitor, and something the City has tried to address with Mr. Haverkamp's recent proposal. Because of that, there are various issues with this that will make it difficult to assure that a use like that doesn't become more of an apartment building over time because we can't readily monitor the length of stay.

Mr. Barnes said he is trying to understand from the Council's perspective why it is bad to have short-term lodging on the bottom floor and apartments above. He said he understands what they are trying to change, but he does not understand the logic or concern for the proposed amendment.

Mr. Osguthorpe reiterated that he believes the Council is concerned that these are areas that were intended to be mixed use, and that this has the affect of giving an overemphasis to what is going to from all appearances be more of a residential use for the building.

Mr. Barns asked if the Council is concerned for what is going to happen to those first floors that are empty.

Mr. Osguthorpe reiterated that he thinks the concern is that it was the intent to maintain more of a commercial type use in those first floors. If you have an area that you want to encourage commercial development and the first floor doesn't have that day-to-day type of commercial type of use, you have lost some of the synergy that retailing needs.

Mr. Cloud asked if we are separating out certain commercial enterprises from other commercial enterprises.

Mr. Osguthorpe said we are separating out a use that falls under the residential use table; it is residential by definition, but maybe occurring in a commercial building.

Elizabeth Beck said she believes there is a need in the community for this kind of short-term housing that is longer than 60 days, but shorter than one year. She stated that she could see if a commercial space is not utilized by what we consider to be traditional retail or office space, that it might be suitable to turn this space into short-term lodging. She questioned if this change is to prevent a potential problem on the horizon and that is why it is coming before the Commission, or does the Council has some indication this is going to be a problem, because she is not aware that there is really a problem.

Mr. Osguthorpe said he doesn't want to say that it is or isn't a problem, all he can tell the Commission is that he thinks the first situation that has utilized the Code provision is when Mr. Haverkamp purchased the buildings at the West Towne development on Mortensen. It is Mr. Haverkamp's intent to utilize the first floors in this development for the short-term lodging. He said he doesn't know if that is a problem, but he is aware that this is a situation where the provision has been utilized, and how that raised concern or how it was determined to be or not to be a problem, he doesn't know.

Ms. Beck asked staff to clarify that currently the Code allows short-term lodging to occur on the first floor.

Mr. Osguthorpe replied "yes." The current Code would allow residential use on the first floor and residential use on the upper floor in a commercial building. Even though all of the uses themselves are defined as residential if they are in a commercial type building, the whole building could be used for residential purposes. It is the first floor that this Code change would make sure is retained for commercial use purposes. This is between a commercial use and a commercial type building. The current language allows a residential use in a commercial type building because of its construction methods. A commercial use in the other definitions is more retail or service type uses, not just in a commercial type building, but also a commercial use.

Brent Haverkamp, 4915 Timber Creek Lane, Ames, Iowa, stated that he is the owner of the project that was the impetus for this ordinance change. He explained that in November, he purchased a project called West Towne, which is located on Mortensen Road in west Ames. There are seven, three story buildings with commercial on the first floor, which are mostly vacant, with apartments on the second and third floors.

Mr. Haverkamp went on to explain that he met several times with City staff on this idea of short-term lodging, which appeared to be a legitimate commercial use for the first floor of the buildings. He then designed several small units (about the size of a hotel room) with the plan to rent them out by the week or month to meet what he saw as an unmet need for this type of housing in the community. He said he was excited because he had the possibility of taking all of this vacant commercial space and converting it into a viable, economic use, and still have the apartments on the second and third floors. Last fall, after going through the City process, he was granted permission to go ahead with his project and was issued a building permit to proceed.

Mr. Haverkamp continued by stating that he was surprised when he received a phone call yesterday afternoon asking if he was aware of the proposed amendment that is going before the Planning and Zoning Commission tonight. He explained that this amendment would prevent him from building out any more of the vacant commercial space for his project, and make what currently exists out there to a non-conforming use. He said it is his understanding, after making several phone calls, that this amendment originated from the City Manager's office after two Council members made the recommendation at the February 6 Council meeting. He stated that he thinks Council believes there is too much residential in what they would like to see as commercial zones.

Mr. Haverkamp further stated that it is the Commission's job to decide if this is the proper zoning and proper amendment for the city of Ames. He has made a significant investment that will be greatly impeded if this amendment is passed. This development has been there for 3-4 years, mostly vacant. His first choice would be to put retail or an office use in there, but that has not happened. He is trying to take a depressed problem property, revitalize it, and make it into something that is economically viable. He stated that this amendment is targeted for his

property. He asked the Commission to not approve this Code amendment. If the Commission feels like it is the appropriate thing for zoning for the community in these districts, go ahead and do that, but do it for new construction and in such a way that it would exempt existing. He said he personally thinks there is an unmet need for this type of housing in the community as a commercial use, and doesn't know why you would want to restrict that. If you do restrict it, please restrict it to new projects coming on and don't deny him his property rights from something that he just purchased three months ago and worked very hard with City staff to get approved.

Mr. Cloud asked if expected revenues going to be better using short-term lodging on the first floor of these units compared to retail.

Mr. Haverkamp said there is no question that retail and office space pays better. The reason he wants to do short-term lodging is because the development right now is generating zero money, and some money is better than nothing.

Mr. Barnes asked Mr. Haverkamp to clarify his comment that this amendment originated out of a City office.

Mr. Haverkamp said he was shocked when he heard about this because he did not know where it originated. He explained that he called the City Manager's office and was told by Bob Kindred that this request originated out of the City Manager's office after the City Council made the referral.

Darryl Knight asked if the units would be furnished similar to a hotel.

Mr. Haverkamp explained that some of the units will be furnished, and others will have options to be furnished. He stated that he took three of the vacant buildings, which have 28 units in each building, making a total of 84 units that are being converted into short-term lodging. He said if this type of use turns out to be successful, he would convert the remaining units over time if needed. He said his concern is that he won't be able to convert the rest of his buildings if this amendment passes, which will also make the buildings he has already converted non-conforming.

Ms. Beck asked if any of those 84 units have more than one room.

Mr. Haverkamp said there are 28 units per building, and 26 of those units are about 450-460 square feet, about the size of a good suite hotel room. Two units per building have more of a two-room suite type hotel room. There is also cooking facilities in these units, which are very similar to an extended stay hotel.

Mr. Barnes asked for clarification from staff that the buildings Mr. Haverkamp has already converted would become non-conforming if this amendment were passed.

Mr. Osguthorpe said the buildings that Mr. Haverkamp already has permits for to renovate and are currently under construction would be non-conforming as long as he retains the upper floor of those buildings as a residential household living unit.

Mr. Norman asked if Mr. Haverkamp has the option of getting a variance from the Zoning Board of Adjustment to continue constructing short-term lodging units.

Mr. Osguthorpe explained that a variance would not apply to this kind of a situation; they are obtained for more dimensional issues.

Mr. Cloud asked if Mr. Haverkamp would have to stop construction or have to convert the top floors to short-term lodging if this amendment is passed.

Mr. Osguthorpe said the permits that have been issued were and are being processed under the Codes in place at the time he was vested.

Mr. Cloud then asked staff to clarify that Mr. Haverkamp's buildings would be non-conforming and would not be able to be replaced should something happen to them.

Mr. Osguthorpe said generally, any time you amend a Code to not allow a use that the Code currently allows, any uses in place at the time before the Code was changed would be a non-conforming use. He mentioned that there are several sections in the Code addressing non-conformities and how they can be continued and maintained.

Ms. Beck said should anything happen to those buildings and Mr. Haverkamp needs to be reimbursed by the insurance company, could the insurance company come back and say they are not obligated because they are a non-conforming building.

Mr. Osguthorpe said he is sure there are properties all over town that are non-conformities because of code changes that have occurred over the years. He said it is not uncommon, but it is certainly a concern, for those people that own those kinds of structures.

Mr. Barnes asked what a person could do to protect one's investment based on the laws that were on the books when the property was purchased.

Mr. Osguthorpe said the best thing an individual can do who owns a non-conforming structure is to maintain it and not let it deteriorate to the point that is no longer existing.

Mr. Barnes asked how the language in the proposed amendment could be rewritten so that it doesn't affect what he did based on the laws of three months ago. He said he is having trouble changing the law for this type of use now.

Mr. Osguthorpe explained that this change is not targeted to this project; it is targeted for all of the districts. He stated that he thinks Mr. Haverkamp's project may have brought an awareness of what the current code potentially allows, but this is a change that would occur to all of these different zones.

Several members of the Commission disagreed with Mr. Osguthorpe's statement that this code change is not targeted to Mr. Haverkamp's project.

Mr. Jons said his biggest concern is the transparency issue of the whole process. There isn't anybody present from the City Manager's office to explain how this whole process got started, which makes him very uncomfortable about making a recommendation.

Mr. Osguthorpe said he doesn't believe this was a request from the City Manager's office as has been indicated. What occurred here is that the public gave notice to the Council of a situation that may be misperceived by the public that are concerned that we are getting nothing but apartments in an area and not understand that this is short-term lodging as opposed to more apartments.

Mr. Jons said it goes back farther than that. This was University land that got sold, the City had no plans on board at that time for what kinds of development should occur in this area and things happened very quickly. He stated that he suspects that this lower floor commercial was an attempt to set up another commercial node at that intersection, which did not materialize as initially envisioned, and now we are trying to correct another problem and we are kind of behind the 8 ball again.

Mr. Osguthorpe said there might be some truth to that in the sense that this commercial node is in a highly desirable location for retail and economic development type purposes. He said we could all agree that the site is not conducive to a retail setting because it was not laid out that way, and because of some design flaws it has been difficult to market.

Mr. Cloud mentioned that he has known people that have tried to find office space in one of those buildings, and the rent was way too high. He said this is a situation where somebody is taking something that is not making any money. They are not making money on office space or retail and trying to do it in some commercial enterprise and we are going to eliminate that if we approve this ordinance amendment. He asked if there is any way we could alter some of the language to specify a certain percentage of the first floor; instead of all or nothing, could we specify only a certain percent could be used for short-term lodging?

Mr. Osguthorpe said if you think there is a way to address what you understand to be the perceived problem, then maybe there is a way to take a different approach to this.

Justin Platts said he thinks the change is just to maintain consistency to make sure that these areas develop in a way that may have been intended, or the way that they have developed over time. He said it is funny how the Code allows short-term lodging in a number of different ways; it could be the second and third floor as long as it is in combination with residences, and the big deal is to make sure that entire buildings do not become residential that might otherwise be better used in someone's opinion as commercial. He said it seems that this is something we need more information on. If we are talking about percentages of a first floor becoming this or that, he does not feel qualified to make that decision without further information. This amendment has come about quickly and seems to be just one more piece of Code or land use policy that might need further study as far as commercial nodes and the Campustown area. He said he understands the investment that Mr. Haverkamp has made on his property, but he believes we need more information than to just go ahead and make a change. If we were to make this change, then maybe we need to change that short-term lodging becomes a commercial use.

Mr. Osguthorpe said one approach might be to pull out motels and hotels and put them in a different use table so that we are not having to work around that issue. Another thing that has been broken is the City's ability to monitor and regulate that word "average." From an enforcement standpoint average creates all kinds of difficulties and doesn't know how we could ever monitor that over time. He said it is not a reasonable requirement to monitor over time and just eliminating the word average would solve all kinds of problems in that regard. It would still allow short-term lodging, but it would be clear that it would be 60 days or less with no averages involved.

Mr. Platts said all of this discussion for him points to needing more information. He thinks it would be nice to know what would be the appropriate way of moving hotels, motels, and short-term lodging – what category would they best be served under. Having things in their proper place as far as commercial versus residential makes sense to him. Once these things are determined, it might be nice to understand if short-term lodging is a use that may not be

appropriate in a commercial building with apartments above it, what percentage of an area is acceptable to do that with, or what percentage of a first floor building is acceptable to do that with.

Mr. Jons asked if Mr. Haverkamp currently has a building permit for his project.

Mr. Osguthorpe said Mr. Haverkamp does have a building permit for three of the five vacant buildings.

Mr. Jons said to him that means the City as an entity gave Mr. Haverkamp permission to do what he did by giving him a building permit. At this point to come back and say that he can't do this doesn't seem very ethical.

Mr. Osguthorpe explained that we are not telling Mr. Haverkamp that he cannot do what he currently has building permits for; what we are telling him is that he cannot create more than what he already had permission to build. Once you take out a permit, you are vested under the codes that were in place at the time the permits were applied for.

Ms. Beck said she wants to go back to the question on how this whole thing got started. She said the February 6, 2008 Council minutes were essentially the third or fourth day of the budget hearings. She said this Council referral comes as the next to the last paragraph in the February 6 Council minutes as just a motion. There is no background or anything leading up to the motion to how this referral was made. She stated that she wants to go back to the very first question that we don't have enough information to know how or why the City Council referred this to the Planning and Zoning Commission to make this change.

Mr. Barnes asked that staff address the non-conforming issue as they are putting more information together. He said he understands Mr. Haverkamp has the building permit and the right to go ahead with what he has gotten approval for on the three buildings, but this change will make those three buildings non-conforming. What does that mean to developers and investors when their building is now non-conforming?

Ms. Beck said she is wondering if there might be larger consequences of non-conforming buildings beyond the Code that might affect this development. She said we don't want to do spot zoning, but this is a specific instance that may indeed have prompted this request, but we can't tell because we don't have enough information from the Council to know if it was this specific instance of Mr. Haverkamps that brought this proposed change forward. On the other hand, is there a general concern that the Council noted in August that needed to be brought forward and it is finally moving forward to the Commission?

Mr. Cloud said it seems that the current zoning has been on the books for a long time that it would have been possible for many different owners of buildings to have done something like this in the past. In addition, maybe it hasn't been done in Ames because short-term lodging is at the bottom for revenue for commercial space. He said it appears that all of a sudden we have some commercial space that is going to happen as a way to generate some revenue and somebody in the community apparently doesn't like that mode of revenue generation for a commercial space. He said it has sort of brought this before us as let us change this so this doesn't happen because we don't like where this is going. Even though it has been possible to do this for many years, typically it hasn't happened because the economics wasn't right for it to happen, but right now the economics for that particular location appear to make it right so we are going to change the law so it can't happen anymore out there. He wonders if this is a case

where we are closing the door after the horse has gotten out. It is specific to that location. Is it going to happen any place else in Ames with or without a ruling change is another question? Darryl Knight said staff has brought before the Commission a Code amendment. And we have before us a developer stating that it is not an amendment to the Code, but an amendment that personally affects him and his development. He went on to explain that he has said for a long time that Ames is overbuilt with apartments and even voted against the development out there because we were overgrown with them.

They are not actually apartments and we all realize that. What Mr. Haverkamp is proposing is a short-term lodging, which is not an apartment. They serve a different clientele and they have an entirely different basis for existence. But as we are given the amendment, one of the keen things that he was always told was when you are going to come up with something like this there is a purpose behind it. And that is probably what most of the Commission members are asking and he is not sure that staff has the answer for that. Even though it includes all of the districts, there is only one development happening in one district. He understands that this is not spot zoning, but is wondering what is the true purpose. We can't glean it out of the Council minutes and is wanting to know if the true purpose is do we have too many apartments; do we have too many things that look like apartments and we don't want to have any more of those and that is why we are preventing this? Is the true purpose because originally we wanted to see retail out there and the City isn't going to be happy unless there is retail out there of a real nature and not short-term lodging. What is reasonable out of this? When we are talking about an average of 60 days, if you are going to write a policy, it has to be enforceable. As you said many times, that is not enforceable. It has to be either up to 60 days, up to 90 days, we don't know how to enforce it and why have something out there that is unenforceable. If you are going to write the policy, it has to be something that is enforceable, has a purpose, and needs to be reasonable. For us to sit and say this person's district is because he wants to do something there and we are going to exclude that, again that is spot zoning. We are going to let you do it, but we aren't going to let anybody else do it. He said he thinks what everybody is looking for is either to table it or ask that staff seek out what is the true purpose behind the amendment. This is just kind of out of the blue and what he is hearing is that the City doesn't want this to be available on the first floor of a building is what he is hearing. Because obviously if you have rented out the apartments above, you certainly are not going to throw everybody out so you can put some iffy housing in on the bottom. But you certainly don't want to throw everybody out either because you went belly up and you couldn't get anything in on the bottom; you kind of get behind the rock and the hard place.

Mr. Knight stated that he thinks the Commission is looking for the purpose for the change and to ensure that the change is reasonable, and that what is there now is enforceable. He said right now what he is hearing from the Commission is that the proposed ordinance amendment is either going to be rejected or it is going to be worded significantly differently than how it is worded now. If that is enough for staff to go back and do something to do something with, that is fine. If not, he would propose that somebody make an amendment to the proposed language, or go ahead and put forth some action on this. We aren't getting any further with this so it either needs to go back to staff for more information, or it needs to be voted on.

Mr. Osguthorpe clarified the information the Commission is requesting:

1. What is the Council's intended purpose for the amendment? What is the problem and how is this proposal intended to fix the problem.
2. Find some alternatives ways to approach this (i.e. move hotel/motel to a different category). Are there different ways to differentiate these types of uses?

3. Look at the enforcement of the average of 60 days.
4. It is believed that there is a distinct need in this community for short-term lodging but it is unclear whether first floor lodging is covered or not covered for that sort of use.
5. Short-term lodging could be considered as a commercial operation.

MOTION: (BECK/JONS) to accept Alternative #3, which states:

The Planning & Zoning Commission can recommend that Table 29.806(2), Table 29.808(2), and Table 29.809-R(2) not be amended as proposed.

It was clarified that it is not the Commission's intent to send this back to staff to try to rework and bring back to the Commission to accept.

MOTION PASSED: 6-0

Ms. Beck suggested that the Commission minutes be forwarded to the Council along with its decision on the proposed amendment.

COMMISSION COMMENTS: There were no Commission comments.

STAFF COMMENTS: Mr. Osguthorpe thanked the Commission for attending last night's Council workshop regarding the historical background of how the Land Use Policy Plan was developed.

Mr. Osguthorpe then updated the Commission on the action Council took regarding term limits for Commissions and Boards.

Mr. Osguthorpe informed the Commission that the Planning and Housing Department would be fully staffed at the end of the month.

The Planning & Zoning Commission meeting scheduled for March 5 has been cancelled because of the lack of agenda items.

With no further business coming before the Commission, the Chair declared the meeting adjourned at 8:33 p.m.

Cindy L. Hollar, Secretary
Department of Planning & Housing

Darryl Knight, Chairperson
Planning & Zoning Commission