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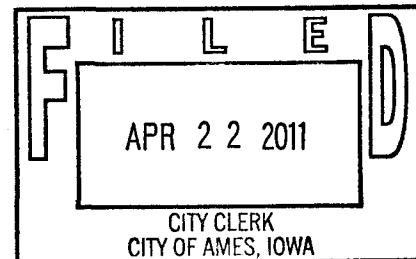
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VIA FACSIMILE TO 515/239-5142 AND
VIA E-MAIL TO DMAREK@CITY.AMES.IA.US

The Honorable Ann H. Campbell, Mayor, and
Members of the Ames City Council
City of Ames, Iowa
515 Clark Avenue
Ames, IA 50010



Attn: City Clerk

Re: Proposed Ordinance – Rental Housing Code § 13.600(4)(a)(ii) (the “Proposed Ordinance”)

Dear Mayor Campbell, Ms. Voss, Mr. Marek, and
Members of the Ames City Council:

We hereby submit this letter on behalf of our client, the Ames Rental Association (the “ARA”), to bring to the attention of the Ames City Council (the “Council”) certain issues related to the passage and codification of the Proposed Ordinance. The Proposed Ordinance provides that “S traps” are unlawful and “shall be replaced by a trap and vent system that complies with the current Ames Plumbing Code by July 1, 2016.” It is our opinion that the Proposed Ordinance is violative of several constitutional rights of the ARA and the citizens of the City of Ames, in general, including, but not limited to, the equal protection, due process, and takings clauses of the United States Constitution and the Iowa Constitution.¹ For the sake of brevity, we will address

¹ A few other points of contention that may be raised by the ARA, although not on constitutional grounds, are: (i) that the drafters of the Proposed Ordinance have misinterpreted the plumbing provisions of prior plumbing codes in determining that “S traps” have never been lawful; (ii) that the Uniform Plumbing Code provides for the use of the same “S traps” that the Proposed Ordinance plans to ban; (iii) that the issuance of Letters of Compliance to rental properties that contain “S traps” after inspection of said rental properties by City of Ames inspectors has created precedent concerning the use of “S traps” on which the ARA may rely; (iv) that the issuance of occupancy permits and building permits for properties that contained “S traps” at the time of construction has created precedent concerning the use of “S traps” on which the ARA may rely; and (v) that the requirement to replace the “S traps” amounts to an interference with prospective contracts of rental property owners by the City of Ames.

only the equal protection argument below.

The Proposed Ordinance is violative of the 14th Amendment to the United States Constitution and Section 6 of Article I of the Iowa Constitution which provide for equal protection of the laws. In support of this position we would like to bring to the attention of the Council a case that the Council may already be quite familiar with; *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007). In *Ames Rental Property Association*, the Supreme Court of Iowa held that an ordinance that discriminated between related and unrelated persons in determining the occupancy limitations within zoning districts: (i) did not violate the United States Constitution because the ordinance was less strict than an ordinance already declared constitutional by the Supreme Court of the United States, and (ii) did not violate the Iowa Constitution because the ordinance was rationally related to the city's legitimate government interest in promoting a sense of community and peaceful neighborhoods.

The Proposed Ordinance is quite dissimilar and distinguishable from the ordinance at issue in Ames Rental Property Association, and thus with the passage of the Proposed Ordinance, the Council will be treading on unchartered ground. Specifically, instead of using its police powers to enact legislation that promotes community well-being by discriminating between related and unrelated persons, the Proposed Ordinance makes an irrational distinction between tenant-occupants and owner-occupants of residential dwellings in determining the plumbing specifications in certain properties. The purpose of the Proposed Ordinance is purportedly to further the City of Ames' legitimate interest in promoting the health and safety of its citizens by preventing the use of "S traps" in rental properties under the belief that "S traps" can vent toxic gases that may be harmful to the occupants of the rental properties – although, we have not been provided with a scintilla of evidence that anyone in the City of Ames has, in fact, become ill or acquired an airborne disease as the result of an "S trap" over the past one hundred (100) years that "S traps" have been used. Neither the Proposed Ordinance, nor any other proposed amendments or additions to the Ames Municipal Code, prevent the continued use of "S traps" in non-rental properties.

The key word in determining whether the Proposed Ordinance is rationally related to a legitimate interest of the City of Ames is "rational". In other words, is it rational for the City of Ames to discriminate between tenant-occupants of residential dwellings and owner-occupants of residential dwellings in determining whether the use of an "S trap" can continue? *We opine that such distinction is quite irrational.* Is an "S trap" in an owner-occupied residential dwelling safer than an "S trap" in a tenant-occupied residential dwelling? Are owner-occupants less likely than tenant-occupants to become ill from the toxic gases or airborne diseases purportedly incubated by "S traps"? The answer to both of these questions is most likely NO.

In *Ames Rental Property Association*, the Supreme Court of Iowa, in *dicta*, provided some guidance concerning ordinances similar to the City of Ames' related/unrelated persons ordinance that have been declared unconstitutional for various reasons. *Id.* at 262-63. One such ordinance is a zoning ordinance from the City of San Diego that was held unconstitutional because it made an irrational distinction between tenant-occupants and owner-occupants. *Id.* at 263 (*citing College Area Renters and Landlord Association v. City of San Diego*, 50 Cal.Rptr.2d 515 (Cal. App. Ct. 1996) ("*CARLA*")). The facts in *CARLA*, unlike the facts in *Ames Rental Property Association*, are similar to the disparate treatment that will be effectuated upon passage of the Proposed Ordinance. In *CARLA*, the California Court of Appeals held that an ordinance that discriminated

between owner-occupants and tenant-occupants in determining occupancy limitations was unconstitutional because there was no rational relationship between the legitimate purpose of the ordinance – to prevent excessive occupancy – and the disparate treatment of tenant-occupants and owner-occupants as codified in the ordinance. *CARLA*, at 520-21. Similarly, there is no rational relationship between the legitimate purpose of the Proposed Ordinance – to promote the health and safety of the citizens of the City of Ames – and the effect of the Proposed Ordinance which may result in promoting only the health and safety of tenant-occupants, and not owner-occupants.

Accordingly, the ARA hereby submits this letter to notify the Council that the ARA strongly disagrees with the language in the Proposed Ordinance that “S traps” need to be replaced by July 1, 2016, and that the ARA will pursue any and all available legal remedies to challenge the Proposed Ordinance on constitutional and other grounds.

Respectfully,

Brian D. Torresi

Cc: Lad Grove
Chuck Winkleblack
Judy Parks