

**COUNCIL ACTION FORM**

**SUBJECT: ZONING ORDINANCE TEXT AMENDMENT TO ADD FIREARM SALES TO THE LIST OF PROHIBITED HOME OCCUPATIONS**

**BACKGROUND:**

On April 25, 2012, the Zoning Board of Adjustment approved an application for a Home Occupation for home based firearm sales. The Zoning Board of Adjustment determined that in this case the Zoning Ordinance did not distinguish among the type of retail sales by type of merchandise, so the application was treated as any other retail request and approved under the ordinance. At that time the Board heard multiple concerns from neighboring residents who felt that the proposed use was a safety issue.

The Board, thereafter, approved the Home Occupation with conditions that included such items as 1) the business operating only by appointment during specific restricted hours, 2) that the address of the business not be listed in advertising, 3) that no ammunition sales be permitted as part of the business, 4) that proof of federal firearms licensing be provided, and 5) that the City be able to monitor appointment logs and gun transfers upon request.

This approval by the Board was granted for one year only. Should the owner wish to continue his home occupation after expiration, a new application would be required to be submitted for review under the then-existing Zoning Ordinance. Therefore, if the proposed text amendment is approved, the applicant would not be allowed to obtain a renewed home occupation permit for this use.

The list of stipulations on the approval was an effort to mitigate and monitor the concerns of the residents. The Zoning Board of Adjustment recommended to the residents that they raise their concerns with the City Council should they wish to request an amendment to the ordinance to list firearm sales as a prohibited use as a Home Occupation.

**On April 30, 2012, after approval of the previous home occupation, the City received a formal request from John and Kitty Lamont requesting that the City Council add “residential gun sales” to the prohibited list of businesses for home occupation permits. The City Council, at the May 8, 2012 meeting, referred the request to staff to address firearm sales as a prohibited use as a Home Occupation.**

Section 29.1304 of the Zoning Ordinance has the stated intent to “protect residential areas from potential adverse impacts of activities defined as home occupations; to permit residents of the community a broad choice in the use of their homes as a place

of livelihood in the production or supplementing of personal/family income; to restrict incompatible uses; to establish criteria and develop standards for the use of residential structures or dwelling units for home occupations.” **The Zoning Ordinance currently does not list firearm sales as either a permitted, special permitted, or prohibited home occupation.**

The uses specifically prohibited in Section 29.1304(1)(c) as home occupations are listed as follows:

- (i) Animal hospitals;
- (ii) Dancing studios or exercise studios;
- (iii) Private clubs;
- (iv) Restaurants;
- (v) Stables and kennels; and
- (vi) Repair or painting of motor vehicles, including motorcycles.

**Consistent with the City Council referral, staff is proposing that the text amendment (included in the attached draft ordinance) add a line item to Section 29.1304(1)(c) designating firearm sales as a prohibited home occupation.**

**Recommendation of the Planning & Zoning Commission.** At the meeting of September 5, 2012, the Planning and Zoning Commission heard public comment regarding the neighborhood concerns for having firearm sales as an allowed home occupation. Public comment was also voiced on behalf of the current resident who was approved by the ZBA for a Home Occupation permit for firearm sales. The Planning and Zoning Commission made three motions, two of which failed on 2 to 4 and 3 to 3 votes, and the third of which failed due to lack of second.

While the Planning and Zoning Commission submits no formal recommendation to the City Council, they suggested that the City Council review the conditions of the previously approved Home Occupation Permit along with comments from the Planning and Zoning Commission meeting. A copy of the Planning and Zoning Commission minutes on this item is attached.

#### **ALTERNATIVES:**

1. The City Council can approve the zoning code text amendment to add firearm sales to Section 29.1304(1)(c) Prohibited Home Occupations.
2. The City Council can choose not to adopt the proposed text amendments to add firearm sales to Section 29.1304(1)(c) Prohibited Home Occupations.
3. The City Council can refer this issue back to staff to consider drafting an amendment for a restricted use home occupation for firearm sales which would include the

criteria that were established for the Home Occupation Permit approved by the ZBA on April 25, 2012. (Per the Planning and Zoning Commission discussion.)

**MANAGER'S RECOMMENDED ACTION:**

In accordance with the City Council referral, it is the recommendation of the City Manager that the City Council approve Alternative #1, thereby approving the Zoning Code text amendment to add firearm sales to Section 29.1304(1)(c) Prohibited Home Occupations.

of re-establishing dimensional standards for compact parking stalls. In addition the Planning and Zoning Commission recommends that the City Council suspend the rules and approve and adopt the ordinances upon first reading.

MOTION PASSED: 6-0

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Mr. Cloud made a motion to further delay the Preliminary Plat for Deery Subdivision.

MOTION: (Wannemuehler/Siefert) to delay the item number for the Preliminary Plat for Deery Subdivision and instead hear the Zoning Ordinance Text Amendment to Add Firearm Sales to Sec. 29.1304(1)(C) Prohibited Home Occupations.

MOTION PASSED: 6-0

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→ **Zoning Ordinance Text Amendment to Add Firearm Sales to Sec. 29.1304(1)(C) Prohibited Home Occupations**

Steve Osguthorpe, Director, gave an overview of the proposed text amendment and recommendation. He explained that in April of 2012, the Zoning Board of Adjustment reviewed and approved an application for a special home occupation permit to allow the sale of firearms from a home occupation. At that time, staff determined that the use was acceptable for review by the Zoning Board of Adjustment because it was neither listed as permitted nor as prohibited use in the home occupation section. Mr. Osguthorpe gave an overview of what is currently listed as a prohibited use per the Code. He explained that the Zoning Board of Adjustment approved the application in April, but with some conditions and limitations. One of the limitations was that it only be approved for one year. After this application was approved, there were a lot of concerns raised from property owners. The Council then referred a text amendment to staff to include firearm sales on the list of prohibited uses for home occupations.

Julie Gould asked if the applicant was required to provide proof of license to sell firearms when he went to the Zoning Board of Adjustment for approval of the home occupation.

Mr. Osguthorpe said he was unsure of the specific details.

Rob Bowers asked for a definition of home occupation and how many sales qualify for a home occupation.

Mr. Osguthorpe stated that home occupations are a provision in the Code that allows people to utilize their home for a limited type of business and the idea is that it doesn't have any outward appearance of a business, that the residential character of the neighborhood is retained, but allowing people some private use of their home for business purposes. He explained that some home occupations are outright permitted and others that are called a special home occupation require approval from the Zoning Board of Adjustment.

Ray Anderson, Planner, listed the permitted home occupations per the Code.

Mr. Osguthorpe explained that a home occupation also limits what percent of the home is used for the home occupation; he stated that no more than 25% of the home's floor area to be devoted to the home occupation.

Ms. Wannemuehler asked if a permit would be required for a home occupation.

Mr. Osguthorpe stated that a permit is required for both home occupations and special home occupations.

Mr. Bowers brought up his concern for creating an unintended consequence with the approval of this proposed ordinance.

Ms. Gould asked if it is typical for all special home occupations to be conditioned and not just the one case.

Mr. Osguthorpe stated that it isn't unusual for special home occupations to be conditioned.

There was a discussion on examples of different types of home occupations.

Mr. Cloud raised a discussion regarding types of goods being sold for a mail-ordered business and traffic issues.

Mr. Osguthorpe explained that if someone had a mail-ordered business involving the sale of one of the items on the list of prohibited home occupations, the mail-ordered business would not be approved. The list of prohibited home occupations would supersede the mail-ordered business allowance.

Mr. Cloud asked if there was any issue with traffic or if it was just an issue on what is being sold.

Mr. Osguthorpe stated that it's not an issue with traffic, but more with the product being sold.

John Lamont, 1005 Idaho Avenue, stated that the applicant is his next door neighbor and he is required to have a federal firearms license. Mr. Lamont said he turned in a petition with 129 signatures in opposition to the approval of the home occupation. He expressed his concern to the Council prior to the approval of the special home occupation by the Zoning Board of Adjustment. He explained that he put in a request to the Council to put forward this text amendment to add firearms to the list of Prohibited Home Occupations. He said the majority of the neighbors signed the petition and two or three didn't sign for a couple different reasons, one being they had neighbors that had a special home occupation permit for child care and were afraid the petition would affect them and the other being the neighbor felt no need for the action from the residents. He explained that the neighbors concern was not about the guns but whether they want a business running in their neighborhood. He explained some of the other concerns of the neighborhood.

Vaughn Seaton, father of special home occupation applicant, explained that his son does have all of the permits necessary for the home occupation.

Julie Gould asked Mr. Seaton if his son has a verification process for a person to purchase a firearm from him.

Mr. Seaton explained that that is also part of having all of his licenses.

Mr. Osguthorpe reviewed the stipulations of the special home occupation as approved.

Yvonne Wannemuehler asked if this is unusual to add firearms as a restriction to the code and if other cities have added it as well.

Mr. Osguthorpe explained that he is unaware as to how other cities have handled home occupations.

Debra Lee asked if this list of prohibited home occupations is just going to keep expanding as people have issues with particular instances that are approved.

Mr. Osguthorpe explained that often times that is how the code gets amended.

There was a brief discussion regarding the procedure for notification as there weren't many people in the audience concerning this case.

Ms. Gould asked if this is the first time a special home occupation for the sale of firearms has been approved.

Mr. Osguthorpe stated that he was unaware of any others.

Mr. Cloud asked for continuation of commission comments.

Rob Bowers explained that he checked with the City of Ames Police Department and he said there are a number of people in the city that have firearm licenses. Mr. Bowers stated his concern about this being more of a gun issue rather than a business issue. He stated that there are requirements for shipping firearms.

Ms. Wannemuehler asked if there are any restrictions if this type of business would go to a commercial district.

Mr. Osguthorpe stated that they would still need the appropriate licenses, but they wouldn't need to go through any special process for approval.

There was discussion pertaining to what would make a person with a valid permit to sale firearms be in violation and whether or not there was volume attached to this text amendment. Staff and commissioners discussed what would constitute a business by definition.

Ms. Gould stated her concern for creating a reactionary code.

Ms. Lee asked if the firearm sales could be included as permitted, but be codified to include limitations such as the ones adopted by the Zoning Board of Adjustment.

Mr. Osguthorpe stated that the question here is whether or not firearm sales are an appropriate use as a home occupation.

A brief discussion ensued regarding the limitation to the one year approval from the Zoning Board of Adjustment and the process of getting reapproved after the one year approval is expired.

Mr. Bowers said he would be interested in reviewing this at a later time. He would like to hear from all interested parties.

Ms. Gould stated that she likes the idea of alternative 3 and receiving more information.

Ms. Lee stated that she is hesitant to make a decision without having all of the information before her.

Mr. Cloud asked when the Zoning Board of Adjustment approved the special home occupation for the sales of firearms.

Mr. Osguthorpe stated that it was approved on April 25, 2012.

Mr. Cloud asked if that individual would be grandfathered in under the existing home occupation permit.

Mr. Osguthorpe that it would be grandfathered in until the one year is up.

Mr. Cloud stated that if the Commission isn't ready to vote, that this case can be brought back at the next Planning and Zoning Commission meeting.

Troy Siefert stated that he is looking at how a business, whether or not it's selling firearms or any other type of business, would affect the neighbors' quality of life.

MOTION: (Bowers/Gould) to accept a motion, which states:

The Planning and Zoning Commission recommends that the City Council not adopt the proposed text amendments.

MOTION FAILS: 2-4

MOTION: (Siefert/Wannemuehler) to accept a motion, which states:

The Planning and Zoning Commission recommends that the City Council approve the zoning code text amendment to add firearm sales to Section 29.1304(1)(c) prohibited home occupations.

MOTION FAILS: 3-3

Mr. Osguthorpe stated that if there are no other motions staff will report to City Council the action tonight of going forward with no approved motion.

Mr. Bowers stated that he is unsure of what information he would ask for if there is a motion for alternative 3.

Mr. Osguthorpe suggested that the motion include the Council to include more specific criteria to reflect the Zoning Board of Adjustment's approval of allowing firearm sales in the home. He explained that if the Council did approve the Commission's recommendation, they would still need to send the language back to Planning and Zoning Commission for review and a recommendation.

Mr. Cloud stated if the Commission wants to send the case to Council unresolved, that is possible.

MOTION: (Bowers/)

The Planning and Zoning Commission recommend that the City Council consider adopting a restricted use home occupation for firearm sales including the criteria that were set out by the Zoning Board of Adjustment on April 25, 2012.

MOTION FAILS: Nobody seconded the motion.

Mr. Cloud stated that this will go on to City Council with no recommendation from the Planning and Zoning Commission, but that all the conditions of the Zoning Board of Adjustment be presented to the City Council along with a summary of discussion and concerns from this meeting. He recommended an interested parties to show up to the City Council meeting to voice their concerns.

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#### **Preliminary Plat for Deery Subdivision**

Ray Anderson, Planner, gave an overview of the request for a Preliminary Plat for Deery Subdivision. He stated that the proposal is to divide the subdivision into four lots. Mr. Anderson reviewed staff's approval and the findings of fact.

Mr. Osguthorpe stated that since the request for the waiver is included in this process, the Commission can make a recommendation on whether to approve or not approve the waiver for the sidewalk requirement.

Troy Siefert asked who would be responsible for maintenance of the sidewalk in front of Outlot A.

Mr. Osguthorpe stated that the abutting property owner would be responsible for the maintenance. He stated that the only time the City does take care of the maintenance is when there is a shared use path.

There was a brief discussion regarding water drainage throughout the development.

Mr. Cloud asked what the differences are between the Gateway Overlay as opposed to Highway Oriented Commercial.

Mr. Osguthorpe stated that the uses remain the same, but that there are more stringent design standards with the Gateway Overlay district such as landscaping, signage, and building materials.

Mr. Cloud asked if there are restrictions on how the land on Outlot A can be utilized.

Mr. Anderson stated that since it's an outlot and a floodway overlay, neither are buildable by definition.

Ms. Wannemuehler asked whether the sidewalk would be necessary in the future.

Mr. Osguthorpe stated that because of the location of the bridge it only allows pedestrians to cross on the north side of the bridge.

There was a brief discussion regarding the river straightening.



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

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 29.1304(1)(c), AND ADOPTING NEW SECTION 29.1304(1)(c) TO ADD FIREARM SALES AS A PROHIBITED HOME OCCUPATION; 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.**

**WHEREAS**, the City Council received a request from Mr. and Mrs. John and Kitty Lamont to amend the Zoning Ordinance to add firearm sales as a prohibited home occupation; and

**WHEREAS**, the Council referred said request on May 8, 2012, directing staff to initiate the text amendment process; and

**WHEREAS**, firearm sales are not listed as either a permitted, special permitted or prohibited home occupation, but may be permitted under Section 29.1304(1)(b)(ix) as other activities not included on either the permitted or prohibited list; and

**WHEREAS**, one of the stated purposes of section 29.1304 is to protect residential areas from potential adverse impacts of activities defined as home occupations, and

**WHEREAS**, the council finds that the sale of firearms from residential areas is inconsistent with goals to protect residential areas from adverse uses or activities, and

**NOW THEREFORE, 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 repealing Section 29.1304(1)(c), and adopting a new Section 29.1304(1)(c), to read as follows:

**Sec. 29.1304. HOME OCCUPATIONS.**

(1) Permitted, Special and Prohibited Home Occupations

...

- (c) The following are prohibited Home Occupations;
  - (i) Animal hospitals;
  - (ii) Dancing studios or exercise studios;
  - (iii) Private clubs;
  - (iv) Restaurants;
  - (v) Stables and kennels;
  - (vi) Repair or painting of motor vehicles, including motorcycles; and
  - (vii) Firearm sales

...

**Section Two.** Violation of the provisions of this ordinance shall constitute a municipal infraction 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 \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Diane R. Voss, City Clerk

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

Approved as to form:

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Kristine Stone, Assistant City Attorney