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Legal Department

TO: Mayor and City Council Members
FROM: Doug Marek, Judy Parks, Kristine Stone, Attorneys for the City of Ames
RE: Text Amendment Adding Firearm Sales as Prohibited Use for Home Occupations
DATE: October 5, 2012

Since the first passage of this ordinance at the September 25th Council Meeting, there have been many inquiries regarding the constitutionality of this text amendment. The main question that we have heard is does this text amendment infringe on a person's constitutional right to bear arms under the Second Amendment? The answer to this question is no.

The Code of Iowa states that “[a] political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state.” Iowa Code § 724.28. Is our ordinance therefore preempted by the State Code? The answer to this question is also no.

The ordinance that was passed on first reading on September 25th does not, in any fashion, regulate the personal possession, ownership, legal transfer, transportation, registration or licensing of firearms within the City of Ames. The ordinance only prohibits the ability to sell firearms as a permissible home occupation (home-based business).

The US Supreme Court recently addressed municipal gun regulation in *McDonald v. City of Chicago*, 130 SCt. 3020 (US 2010). In *McDonald*, the Supreme Court stated that “individual self-defense is the central component of the Second Amendment right” and that the cities of Chicago and Oak Park, Illinois, could not ban the possession of handguns in the home. Again, the text amendment passed by the City of Ames is not related to the personal possession of firearms at all. This basic right is therefore not affected by the ordinance.

A similar zoning ordinance was reviewed by the Eight Circuit Court of Appeals in 2006. The Court stated that “because the operation of a firearms dealership is not a constitutionally protected right, the City ordinance must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the [ordinance].” *Koscielski v. City of Minneapolis*, 435 F.3d 898, 901 (8th Cir.Ct.App. 2006).

A United States District Court in Michigan has also held that there were no state preemption concerns raised by a local zoning ordinance which prohibited the dealing in firearms from a residence. *Morgan v. US Dept of Justice, Bureau of Alcohol, Tobacco, firearms & Explosives*, 473 F. Supp.2d 756 (E.D. Mich 2007). The Court stated that “the ordinance simply limits, in a generally applicable manner, the types of uses which are permitted in residential areas.” *Id.* at 768. The Court described the resulting effect on the property owner as “incidental”. *Id.*

The City’s ordinance is generally applicable to all homes in the city. In addition to prohibiting the sale of guns, Section 29.1304(1)(c) also prohibits the following home occupations: animal hospitals, dancing or exercise studios, private clubs, restaurants, stables and kennels, and the repair or painting of motor vehicles.

In conclusion, the zoning text amendment adding firearms sales to the list of prohibited home occupations in residential areas complies with all statutory and constitutional requirements.