

## Staff Report

**Rental Concentration Hardship and Exception Options**

June 12, 2018

**BACKGROUND:**

The City Council has recently adopted a rental concentration limitation for specific neighborhoods where new rental property registrations are prohibited if the neighborhood has 25% or more single-family rental properties. The Council at their May 22, 2018 meeting discussed potential allowances to exceed the concentration cap for hardships or as a one-time exception process. City Council directed staff to draft ordinance language specifically for a hardship process related to the sale of property and a separate exception process for property owners with their primary residence in a cap neighborhood to register their property as a rental property. The draft ordinance language is attached.

**PROPERTY SALE HARDSHIP:**

The Property Sale Hardship process is designed to allow property owners that have owned property prior to the establishment of the Rental Moratorium on October 27, 2017 to request an allowance to exceed the concentration cap in order to sell their property. **This option is only available to property owners, or buyers in contract to purchase the property, prior to October 27, 2017 and would not be available to any purchaser of property subsequent to October 27, 2017.**

Staff has included the application requirements and standards directed by the Council on May 22, 2018 and included additional language to assist in administration of the process. Staff has highlighted below the proposed additional language that augments the direction from May 22<sup>nd</sup>:

1. Approval of the allowance to exceed the cap is for a six month period with an option for a six month extension to allow for the property to receive a Letter of Compliance and to be sold. If the property is not sold, the allowance to register the property is voided and the Letter of Compliance cannot be renewed after the first year.
2. Either the current property owner or the buyer may complete the requirements for receiving a Letter of Compliance within the stated time period. If the Letter of Compliance is not obtained in the given time period, the allowance to register the property will be voided.

3. The definition of a property side abutting a rental property now states that it is for a minimum of 20 feet. An abutting side also include properties across a street or an alley. Alleys were not previously addressed.
4. Approval Criterion #2 includes the phrase “at a reasonable market value as a single family dwelling” to clarify the intent of the standard.

### **RENTAL CONCENTRATION CAP EXCEPTION:**

This option was described as Option 3 within the May 22<sup>nd</sup> report. The Rental Concentration Cap Exception is a one-time exception process for a current property owner that may or may not sell their property. This allowance is restricted to only properties that are the primary residence of the property owner as of May 22, 2018. Additionally, the allowance to register the property and obtain a Letter of Compliance is restricted to the property owner and may not be obtained by buyers of property after this date. This standard is intended to help safeguard against speculative property registrations and focus the exception process on those that are interested in making an investment in conforming to the Rental Code in the near term. However, once the property is registered and has a Letter of Compliance it may be sold to another property owner.

This option is designed to be approved by Staff, but it includes an option for staff to forward an application to City Council or for someone to appeal the decision of the Building Official to the City Council. Alternatively, City Council could designate the Property Maintenance Appeals Board for a role in the process.

**Part of the motion to draft this option was to include a mandatory timeframe to actually rent the property within five years. Staff recommends a different timeframe for a mandatory rental requirement to coincide with the Letter of Compliance cycles of 1,2,3, or 4 year periods. With Council’s direction to consider a five-year requirement, staff recommends language that a Letter of Compliance cannot be renewed after year four without actual use of the dwelling as a rental property.** City Council can also clarify if the intent for using the dwelling as a rental is a one-time requirement or that it must then continue to be a rental to allow for subsequent renewals.

The timeframe to register the property with the City under this exception is September 1<sup>st</sup>. Based upon the schedule of first reading to adopt an ordinance on June 26<sup>th</sup> and third reading on July 31<sup>st</sup>, the proposed exception process could be in place for applications by August 3<sup>rd</sup>. This would allow four full weeks in August for applications to be submitted. Inspections Division staff would setup initial inspections as time allows and could take one to two months to complete based upon their experience prior to the

moratorium. All Letter of Compliance improvements are required to be completed within six months of the initial inspection.

### **ENFORCEMENT OF UNREGISTERED RENTALS:**

Throughout the discussions on occupancy and the percentage cap, several people have indicated they believe there is a high number of unregistered rental properties in the City. Staff is unable to estimate how many there might be, but does know that several have surfaced in the last year. Many are in areas that now have a concentration cap and will be unable to register in accordance with the Rental Code.

The Staff Report regarding hardships for the May 22nd meeting included an option that would allow any property to be registered and obtain a Letter of Compliance within a certain window. Council directed staff to bring back information on this potential hardship that would exclude those currently operating illegally and those that wish to obtain an LOC for the future sale of their property from registering. The inability for property owners to register a property may result in an increase of unregistered rentals.

The primary goal of the Inspection Division is to gain compliance through education. Currently, when Inspections is made aware of an unregistered rental, a violation notice is sent to the owner giving them 14 days to register their property. We have learned from past experiences that most violation notices resulted in either the owner registering the property, or providing staff with an explanation as to why the living situation did not require a registration. Chapter 13 of the Ames Municipal Code gives us the ability to issue a \$500 Municipal Infraction Citation to the property owner. We have had instances in which we were unable to serve the citation to the property owner so the property remains unregistered.

Now that the opportunity to become a registered rental does not exist on every property (due to the cap), there will be instances when the only solution will be for the landlord to evict the tenants and sell the property or owner-occupy it. The Rental Code currently lacks provisions for enforcement other than the citation process. In the instances where the owner cannot be located, the tenants are able to continue to reside in the home and the landlord continues to collect rent. Staff can ask that the landlord begin the eviction process, but has no way to enforce this without the help of a citation.

One possible solution to this issue is to adopt language from the State Code that allows for rent abatement. Such language allows the City to post on the property and serve the landlord a notice stating that rent shall not be recoverable by the owner until the dwelling complies with the Code. Iowa City recently adopted this language to be used when an owner fails to provide essential services (water, sewer, electricity, etc.), fails to remedy a condition that poses a substantial risk to the tenant, or rents the dwelling without a rental permit.

**Because the current tools have not been working, staff would support utilizing this rent abatement procedure to bolster our enforcement of rental property violations. If the Council agrees, then staff should be instructed to draft the appropriate language for this new rent abatement procedure.**

### Hardship Option 3: Impacted Neighborhoods' Response

As leaders of neighborhoods with a 25% rental cap we first want to thank you for passing the cap and for the stringent requirements for exemptions under Option 1. However, we strongly oppose the Option 3 exemption as discussed at the May 22 Council meeting. With the exception of the last point below, we see no justification for a policy that subverts the effectiveness of the cap. Our objections are as follows:

1. Allowing a window for anyone to get an LOC completely undermines the intent of a rental cap. As Staff has reported, before the moratorium was imposed it received 42 applications for rental permits (40 of which actually resulted in LOCs). **Now that most of Ames is aware of the cap, there could be many more applications in a three-month window.** The experience of Duluth, MN supports this serious concern; a 2-week window before implementation of a policy to limit rental density resulted in **500** new rental permits (see email sent to you by John Pleasants on 6/2 for details).
2. One of the most important benefits of a rental cap is to let residents and potential purchasers know that things will get no worse in their neighborhoods. **The longer the period of time you give an owner to exercise an LOC the longer uncertainty prevails; this effectively delays meaningful implementation of the rental cap.**
3. The uncertainty about what their neighbors might be doing in regard to obtaining LOCs could cause residents to do the same as insurance against a future rental percent increase. **This will exacerbate the very problem the cap is meant to prevent.**
4. If Ames puts a program in place to convert rental properties back to owner-occupied, but enacts Option 3, it will be difficult to accomplish the goal of reducing rental percentages. **Any such program would first have to counteract the increase caused by this option.** This would be a slow process. For example, Iowa City, with a yearly budget of \$250,000, is only able to convert 7 or 8 houses each year.
5. **This will clearly create more Option 1 hardships in all affected neighborhoods.** Claims for exemption can be made based on being surrounded by properties with LOCs, yet due to Option 3 some of these properties might not actually be rented, but simply holding LOCs for possible future use.
6. Neighborhoods with already high rental percentages may suffer rental increases that make them unlikely ever to attract additional owner-occupiers.

7. The only real “hardship” this option could possibly address is the case of a homeowner who was in the process of preparing a home for rental but failed to apply for an LOC before the moratorium. In such situations, we feel that homeowners do not need more than a very brief window of time during which to apply for an LOC and should be given no more than 12 months from issuance of the LOC to actually rent/sell the home. For anyone who truly faced this problem, a year from issuance of the LOC should be plenty of time to exercise the permit. **Allowing a homeowner to hold it for several years will be extremely detrimental to neighborhoods and is unnecessary to address this true hardship.**

SCAN: Barbara Pleasants, Leslie Kawaler, Sandra McJimsey

Colonial Village: Chris Colvin (SCAN Board & CV representative)

CC/OAMS: Joanne Pfeiffer, Elin Herrman

Oakwood–Forest: Dilys Morris

Old Edwards: Kathy Schnable (representing herself)

Westside: Pat Brown

Oak to Riverside: Debbie Lee (representing herself)

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING NEW SECTIONS 13.201 TERMS DEFINED “PRIMARY RESIDENCE” AND SECTION 13.300 (10) AND (11) THEREOF, FOR THE PURPOSE OF RENTAL CONCENTRATION EXCEPTIONS 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.**

**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 enacting new Sections 13.201 Terms Defined “Primary Residence” and Section 13.300 (10) and (11) as follows:

**“Sec. 13.201. TERMS DEFINED**

...

**PRIMARY RESIDENCE:** A residence which is the only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return. A property owner may have only one primary residence.

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**Sec. 13.300. GENERAL**

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**(10) Rental Concentration Cap Exception**

For properties within a Rental Concentration Cap Neighborhood, a property owner of record on May 22, 2018 may apply for an exception in order to register their primary residence as a rental property and complete all requirements of the Rental Code to obtain a Letter of Compliance. The exception only applies to the primary residence of a property owner established prior to May 22, 2018. The property owner is responsible for all application requirements for the exception, registering the property, and obtaining a Letter of Compliance. Upon completion of the requirements for the Letter of Compliance, the property may be sold to another property owner for use as a rental property. Any property sold subsequent to May 22, 2018 without a valid Letter of Compliance in regards to this exception shall not be eligible for a Letter of Compliance.

The exception is subject to minimum application standards and performance requirements described below. The exception may be approved by Building Official upon review of the application for consistency with the standards of this Chapter. The Building Official may forward the application to the City Council for review upon any finding of irregularity in documentation with the application. A property owner may appeal the decision of the Building Official to the City Council.

**(a) Exception Requirements**

- i. The property is the primary residence of the property owner as of May 22, 2018.
- ii. An application to register the property must be received by September 1, 2018.
- iii. The property owner of a primary residence must obtain an initial inspection and complete all requirements for a Letter of Compliance within six (6) months of the inspection date.
- iv. If a property owner has not obtained a Letter of Compliance within six months, the property registration shall expire and may not be renewed or reapplied for under this exception.

v. Upon receipt of a Letter of Compliance for the property, a Letter of Compliance may not be renewed after four (4) years from the original approval if the property is not used as bonafide rental property. Each subsequent renewal of the Letter of Compliance after the initial four (4) years is subject to the property's continued use as a bonafide rental property.

(11) **Property Sale Hardship.**

For properties within a Rental Concentration Cap Neighborhood, a property owner may apply to the Building Official for a hardship exception to allow registration of the property for rental purposes in order to facilitate the sale of the property. The hardship exception is subject to minimum application standards described below and may be approved by the City Council upon review of the application.

Approval of the Property Sale Hardship by the City Council is for a six-month period to allow for sale of property to a new owner in an arms-length transaction to another party. The property owner may request a six month extension of the approval in order to complete work required to obtain a letter of compliance and/or to complete the sale and transfer of the property. An initial Letter of Compliance (LOC) will only be issued for one year for property registered under the hardship exception process. The LOC cannot be renewed by the property owner approved for a hardship, but can be renewed by the new property owner consistent with the standards of the Rental Code.

(a) **Application Requirements.** A property owner must submit documentation related to the following as part of the hardship application:

i. The property must abut registered rental properties on three sides, or the substantial equivalent of three sides. An abutting side includes any shared property line of the subject site and includes property lines with residential property located across the street or an alley. An abutting side includes any length of a property line that is 20 feet in length or greater.

ii. The property must have been purchased or under a purchase agreement by the current owner prior to October 27, 2017.

iii. The property has been offered and advertised for a minimum nine (9) consecutive months with a licensed realtor prior to the application for hardship.

iv. Disclosure of any offers to purchase the property which have been declined.

v. The original purchase price, date of purchase, and current mortgage balance.

vi. An appraisal prepared by a licensed appraiser for the value of the dwelling that also includes comparable sales within the appraisal.

vii. A home inspection report describing the condition of the property.

viii. Rental Housing Code pre-inspection and cost estimate for compliance with the Rental Housing code.

Upon submittal of the application to the Building Official, staff will review for completeness and adequacy of documentation provided within 10 days. Staff may request additional documentation in relation to the application requirements to determine completeness. Upon a determination that the application is complete, the application will be forwarded to the City Council within 30 days for Council review.

The City Council may approve a property sale hardship upon making both of the following findings:

1. The advantages to the neighborhood and the City of allowing for the property to be registered as a rental property to facilitate its sale outweigh the disadvantages to the neighborhood and City of exceeding the rental concentration cap.
2. The sale of the property would have been possible at a reasonable market value as a single family dwelling, but for the existence of the rental concentration cap.”



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 \_\_\_\_\_, \_\_\_\_\_.

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Diane R. Voss, City Clerk

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John A. Haila, Mayor