

# MEMO

## Legal Department

**To:** Mayor Haila and City Council Members

**From:** Mark O. Lambert, City Attorney

**Date:** July 6, 2018

**Subject:** Item No. 27: Rental Cap/Hardship Exceptions ordinance amendments

I thought it would be helpful to you if I detailed the changes made in the hardship/rental cap exceptions ordinance, in response to motions to amend the ordinance adopted at first reading.

There was a motion to rewrite section 13.300(10)(a) to ensure that all of the conditions for receiving the exception were applied also to the property owners who had obtained a building permit prior to October 27, 2017. This was accomplished by deleting subparagraph “vi” which included the building-permit language and incorporating it into subparagraph “i.”

Previously, subparagraph “i” read:

i. The property owner must have owned the property as of October 27, 2017 and the property must be the primary residence of the property owner as of the date of application.

And subparagraph “vi” previously read:

vi. A property owner who, prior to October 27, 2017, had obtained a building permit which would indicate an intent to convert the property to a rental property is also eligible for the exception, regardless if the property is the property owner’s primary residence.

As already stated, subparagraph "vi" was deleted and incorporated into subparagraph "i" so that 13.300(a)(i) is now amended to read:

- i. The property owner must have owned the property as of October 27, 2017 and either 1) the property must be the primary residence of the property owner as of the date of application, or 2) the property owner had obtained, prior to October 27, 2017, a building, electrical, plumbing or mechanical permit which would indicate an intent to convert the property to a rental property.

Another motion approved by Council was to add "electrical, plumbing, or mechanical" to "building permit." This was accomplished in the above paragraph.

The words "of a primary residence" were stricken from subparagraph "iii" because not only primary residence owners but also certain building/etc. permit holders can qualify for the exception. This was a necessary clean up to address the Council motions. The sentence "The exception only applies to the primary residence of a property owner established prior to the date of application" was deleted from the first paragraph under paragraph (10), as it was not accurate given the building/etc. permit exception, and the topic is addressed in subparagraph "i."

Another motion adopted was to strike the words "and current mortgage balance" from (11)(a)(v), and that was done (and the word "and" was inserted between the two items remaining).

If you have any questions, feel free to contact me.

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**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.

...

**Sec. 13.300. GENERAL**

...

**(10) Rental Concentration Cap Exception**

For properties within a Rental Concentration Cap Neighborhood, a property owner of record on October 27, 2017 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 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 October 27, 2017 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 the 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. Property owners determined to have been renting without a required Letter of Compliance are not eligible for the exception.

**(a) Exception Requirements**

i. The property owner must have owned the property as of October 27, 2017 and either 1) the property must be the primary residence of the property owner as of the date of application, or 2) the property owner had obtained, prior to October 27, 2017, a building, electrical, plumbing or mechanical permit which would indicate an intent to convert the property to a rental property.

- ii. An application to register the property must be received by September 1, 2018.
- iii. The property owner 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 twelve months 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 twelve months is subject to the property's continued use as a bonafide rental property.

(11) **Property Sale Hardship Exception.**

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. Property owners determined to have been renting without a required Letter of Compliance are not eligible for a Property Sale Hardship Exception.

(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 and date of purchase.
- 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