

COMMISSION ACTION FORM

SUBJECT: ZONING ORDINANCE TEXT AMENDMENT TO ADD FIREARM SALES TO SEC. 29.1304(1)(C) 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. The Zoning Board was faced with multiple concerns from neighboring residents who felt the request caused undue concern for safety, therefore the Zoning Board approved the Home Occupation with conditions, that included such items as the business operating only by appointment during specific restricted hours, that the address of the business not be listed in advertising, no ammunition sales are permitted as part of the business, proof of federal firearms licensing, and monitoring of appointment logs and gun transfers by the City upon request. The list of stipulations on the approval was in an effort to mitigate and monitor the concerns of the residents. The Zoning Board of Adjustment recommended to the concerned 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 Mr. and Mrs. John and Kitty Lamont, requesting 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 to staff the request to address firearm sales as a prohibited use as a Home Occupation.

Zoning Ordinance, Section 29.1304, is intended 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 standard 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. It was therefore approved by the ZBA under the provisions of Section 29.1304(1)(b)(ix), which allows uses that are not included on either the permitted or prohibited list.

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

- (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; and
 - (vi) Repair or painting of motor vehicles, including motorcycles.

Staff proposes that the text amendment (included in the attached draft ordinance) add a line item to Section 29.1304(1)(c) indicating firearm sales as a prohibited home occupation.

Under the stipulations of the Home Occupation Permit approved by the Zoning Board of appeals on April 25, 2012, the “permit shall expire after one year and is subject to the usual enforcement procedures”. Should the owner wish to continue his home occupation after expiration, a new application would be required to be submitted for review under the current Zoning Ordinance. Staff notes that approval of the proposed text amendment by the Planning and Zoning Commission would prohibit the approval of a new firearm sales home occupation permit for the resident.

ALTERNATIVES:

1. The Planning and Zoning Commission can recommend that the City Council approve the zoning code text amendment to add firearm sales to Section 29.1304(1)(c) prohibited home occupations.
2. The Planning and Zoning Commission can recommend that the City Council not adopt the proposed text amendments.
3. The Planning and Zoning Commission can refer this issue back to staff for further information.

RECOMMENDED ACTION:

Staff believes that the proposed amendment addresses the intent of the code to protect residents from uses in the district as home occupations that may cause adverse impacts to the residential neighborhood. Staff therefore recommends that the Commission act in accordance with Alternative 1, which is to recommend that the Council approve the zoning code text amendment to add firearm sales to Section 29.1304(1)(c) Prohibited Home Occupations.

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:

Kristine Stone, Assistant City Attorney