

Staff Report

RENTAL CODE CHANGES

July 23, 2019

BACKGROUND:

City Council held a workshop on June 18, 2019 to discuss possible changes to the Rental Code as a result of the invalidation of the rental concentration cap by the State Legislature. During this workshop, staff was asked to return with a draft ordinance reflecting several motions made at the Council meeting. The draft ordinances are attached. Each change is summarized below. **It should be emphasized the options presented apply to single-family and two-family rentals City-wide, unless otherwise stated.**

HOLDING LANDLORDS ACCOUNTABLE FOR NUISANCE ISSUES:

The Council was presented with several options for holding landlords accountable for nuisance issues at the February 20, 2018 Rental Workshop. None of the options were pursued at that time as the primary focus was on the rental occupancy and cap ordinances. The addition of the third Housing Inspector has allowed staff to more strictly adhere to the timeframes set by code for issuing an LOC because they can accommodate a higher inspection load. In the past, staff was very generous in issuing four year LOCs because they didn't have the ability to inspect all of the units they needed to as often as required.

The current code specifies the criteria needing to be met to achieve each level of an LOC:

Sec. 13.301(3)(a) One Year

- i.) All dwellings in which a verified incident of over-occupancy occurred during the previous year;*
- ii.) All dwellings which, due to a documented history of neglect and lack of maintenance, require additional inspections to obtain compliance*

Sec. 13.301(3)(b) Two Years

- i.) All dwellings in which life safety violations, including broken/inoperable doors, ceiling, wall and floor penetrations, have been found during the previous year;*
- ii.) All dwellings in which provided alarm or fire sprinkler systems have not been continuously maintained;*
- iii.) All dwellings which have been subject to more than two reinspection fees in the previous year, due to owner or operator failure to correct deficiencies in a specified time period;*
- iv.) All dwellings which have been the subject of more than two verified property maintenance complaints within the previous year; with verification by Inspection staff of maintenance issues below neighborhood standards.*

Sec. 13.301(3)(c) Three Years

- i.) All dwellings which are found to have minor code violations (of a cosmetic rather than life safety nature) which are found to be corrected at the first inspection;*
- ii.) All multiple family dwellings not equipped with automatic fire sprinkler protection*

Sec. 13.301(3)(d) Four Years

- i.) All single family dwellings with no code violations at the time of initial inspection;*
- ii.) All multiple family dwellings with no code violations at the time of initial inspection and which are equipped with automatic fire sprinkler protection throughout.*

Sec. 13.301(4) New Construction

A four year Letter of Compliance shall be issued to each newly-constructed multiple family dwelling or unit or single family dwelling for which a building permit has been issued and a Certificate of Occupancy has been issued. The Certificate of Occupancy issued at completion of construction shall constitute the rental inspection approval required for issuance of the first Letter of Compliance.

This process penalizes landlords with more frequent inspections when they've had multiple property violations or needed multiple inspections to gain compliance. It also allows staff to focus on properties with a history of violations or neglect instead of units that are well maintained with no violations. **Staff feels that this process works when properly implemented and is manageable with the resources they have. The Council could approve issuing longer LOCs, but the staff does not feel comfortable with increasing the inspection interval to five years.**

Council requested additional options for holding landlords accountable at the June 18, 2019 Council Workshop. These options are presented in the attached draft ordinances.

All of the options classify violations using the same point system. Violations classified as simple misdemeanors (noise, nuisance parties, keg ordinances) would be assessed two points per occurrence and violations classified as municipal infractions (parking, vegetation, furniture, garbage, snow removal) would be assessed one point per occurrence. To be considered an occurrence, the tenant and/or owner would have been issued a citation and been found guilty of the violation by the court. Once the property has accumulated four points in a twelve month period, it would be subject to the First Tier of enforcement actions. If, after the first enforcement action, the property accumulates four more violations in a year it would be subject to the Second Tier of enforcement. The Third Tier of enforcement would be in effect for the third and subsequent occurrences.

In addition to the penalties for the individual violations, a suspension or additional fine could be imposed for reaching one of the tiers shown below. The City Council will need to select one or more of the following enforcement options.

ENFORCEMENT OPTIONS TO HOLD LANDLORDS ACCOUNTABLE

	Impose Suspension/ Revocation	Increase Annual Registration Fees : (currently \$48.77/single, \$41.40/duplex)	Introduce fees in addition to those already in Chapter 13
1st TIER (4 Points in a 12-month period)	180 Day Suspension	Double standard amounts	\$500
2nd TIER (4 Additional Points in subsequent 12-month period)	1 Year Suspension	Triple standard amounts	\$750
3rd TIER (4 Additional Points in subsequent 12-month period)	Revoke LOC	Quadruple standard amounts	\$1,000

The draft ordinance includes a provision that prohibits a property (not the owner) that has had the LOC revoked from being able to register as a rental for two years from the date of revocation. If Council should choose this option, they will also need to consider when the suspension should become effective. This decision will determine when the tenants would be required to vacate the unit.

Two options addressing the effective date of the suspension are presented in the draft ordinance (highlighted text) under 13.301(11)(c):

Option 1.) Suspension Effective Immediately

The eviction process must begin within five days of the suspension and the unit must be vacated within 30 days of the suspension. Thirty days was chosen to accommodate the eviction process which is as follows:

1. Landlord serves a Three Day Notice (if it is for non-payment of rent, it's called a Three Day Notice to Cure or Quit. If it's for noncompliance or failure to terminate it's called a Three Day Notice to Quit.)
2. Landlord files and has served an Original Notice for Forcible Entry and Detainer with Small Claims Court
3. Court hearing is held where judge decides if landlord has the right to regain possession of the unit. If decided in Landlord's favor, an Order of Removal is issued by the Judge. If decided in tenant's favor, the case is dismissed.
4. If tenant does not vacate by the date on the Order of Removal, the Landlord can obtain a Writ of Removal from the Small Claims Office enabling them to remove the tenant's possessions and place them on the curb.

Option 2.) Suspension Effective At The End Of The Lease

The landlord may allow the current tenants to continue renting through the end of the lease or through July 31st, whichever comes first. The landlord may end the lease earlier at their request.

Staff has added a section called "Defenses to an Enforcement Action of the Provisions of this Section" to the draft ordinance. This is modeled after Iowa City and Cedar Falls and allows for points to be waived by the Building Official if the landlord was the reporting party to law enforcement for a nuisance call, has begun the eviction process, or has pursued reasonable means to avoid a recurrence of the violation. It also protects landlords from accumulating points when the tenant was the reporting party to law enforcement.

One major concern with this process is the time that it will take staff to gather and maintain the violation and nuisance call data. Inspections would need to obtain data from the Police Department on a regular basis and enter any nuisance citations into Inspection's software. They will also need to enter the code cases into the same field so that an up-to-date count of violations is maintained. Prior to issuing an LOC, the inspector will need to review the data to determine the length of LOC that can be issued.

ILLEGAL RENTALS INELIGIBLE FOR AN LOC:

The draft ordinance includes three different options that would prevent properties found to have been rented without an LOC from obtaining an LOC. If Council should choose to move forward with this they will need to determine how long the ineligibility applies:

Option 1.) Indefinite: Tied To The Property

Regardless of ownership changes or time lapse the property will never be able to obtain an LOC

Option 2.) Ineligible For One Year

The property shall not receive an LOC for a period of one year from the date in which the illegal rental was discovered.

Option 3.) Ineligible Under Same Ownership

The owner which was renting without an LOC will not be able to obtain an LOC at the property. If the property changes ownership, the new owner may obtain an LOC.

With this ordinance, there is no way to determine if an owner was knowingly in violation of the registration requirement or not. Inspections' goal has always been to ensure safe living conditions through education and code compliance. **Staff would prefer to be given an opportunity to educate the owner and gain compliance prior to making them ineligible for an LOC. If the owner failed to comply after the initial notice of non-compliance, then staff could issue a citation and make them ineligible for an LOC.** Additionally, if the property is ineligible for an LOC, the owner would have no option other than eviction.

RENT ABATEMENT:

The Rent Abatement section (13.104(2)(f)) being proposed is drafted very similarly to Iowa City's Rent Abatement Ordinance. This ordinance provides staff with an additional tool for non-compliant landlords. Staff has added a subsection in addition to what Iowa City uses that would give them authority to use this tool when they are unable to get a landlord to make corrections required as the result of an inspection. Rent abatement could be used in addition to, or as an alternative to, a citation.

In Iowa City, Rent Abatement is an order issued by the City that prohibits the owner from collecting rent until all violations have been resolved. The owner and tenants are both notified of the order and the order is posted on the property. Staff is uncertain of how this section would be enforced because there really is no way to know if the landlord has collected rent, especially if the tenants want to continue paying rent. However, it allows the tenant to cease paying rent immediately instead of requiring them to take the landlord to court to recover rent paid.

An alternative option would be to give the Building Official the authority through the code to notify the tenants and landlord, in writing, of their ability to withhold rent in accordance with the State Code. Payment of rent would remain a civil matter between the tenant and landlord (they would need to take each other to court) and would not be ordered by the City. A landlord's noncompliance is not typically communicated to the

tenant unless it is submitted as a tenant complaint. This code section would allow staff to notify all parties when efforts to gain compliance have failed.

REMOVAL OF CONSANGUINITY EXCEPTION:

Chapter 13 of the Ames Municipal Code includes those related to the owner (deed holder) within the first degree of consanguinity (mother, father, sister, brother) in the definition of “owner-occupied dwelling unit.” This allows children of the owner to reside in a home without the owner (parent and deed holder) present. **In this living situation, the child/children could have one additional roommate reside in the unit with them without being subject to the rental code.** If there were ever more than one roommate, the property would need to be registered as a rental property.

Removing the consanguinity clause would eliminate the ability for owner’s relatives (within the first degree of consanguinity) from being considered owner-occupied. This would require a property in which the owner’s child resides without the owner present to be registered as a rental, regardless of the number of tenants or children living in the unit. If the relative is on the deed, they would be considered owner-occupied and would not need to register as long as they have no more than one roomer.

It is important to note that it is impossible to know the number of properties this change would affect, but it’s very probable that some of these owners made the decision to purchase the property based on the fact that they would not need to register. Staff has done a lot of education on this topic and will need to do a lot more if the standard is changed. This will be difficult since these owners are not on any of the rental mailing lists and likely are not following the rental changes, because they know currently they don’t pertain to them.

FREEZE BEDROOMS IN NEAR CAMPUS NEIGHBORHOODS:

When the occupancy ordinance was drafted in 2019, Council froze the number of occupants in rental properties at a number equal to the number of bedrooms that existed on January 1, 2018. This allowed owners to add bedrooms, but not occupants. Staff was asked to draft language that would do the same thing to owner-occupied properties so that they would not be able to add bedrooms and then convert the dwelling to a rental with the additional bedrooms.

The draft ordinance includes the removal of 13.503(4)(e)(iv) that based the number of bedrooms in new rentals on the number of legal bedrooms found during the first inspection. It also eliminates a few words in 13.503(4)(e)(iii) so that the section applies to all properties, regardless of their rental registration status. This amendment will freeze the number of occupants in the Near Campus Neighborhoods at the number of bedrooms that were in existence on January 1, 2018 according to Assessor’s records.

It’s possible the number of bedrooms could increase based on building permit records so staff did not limit the freeze to only the Assessor records. Staff has reviewed Assessor records and obtained the number of bedrooms for almost all properties in the Near Campus Neighborhoods. This will provide a snapshot for staff to use as a basis for

bedroom counts in new rentals. If someone questions their bedroom count at the initial inspection, the Inspector will review building permit records. **Should the inspector find a building permit dated prior to January 1, 2018 for an additional bedroom that is not reflected in the Assessor's records, the bedroom count will reflect the additional bedroom.**

OPTIONS:

The following options are available to Council:

1. Place any of the following items on a future agenda for public input as written, or with minor changes:
 - a. Holding landlords accountable for nuisance issues
 - b. Illegal rentals ineligible for LOC
 - c. Rent Abatement
 - d. Remove consanguinity exception
 - e. Freeze bedrooms in Near Campus Neighborhoods

2. Direct staff to make changes to any of the following proposed ordinances and bring them back for discussion at a future meeting.
 - a. Holding landlords accountable for nuisance issues
 - b. Illegal rentals ineligible for LOC
 - c. Rent Abatement
 - d. Remove consanguinity exception
 - e. Freeze bedrooms in Near Campus Neighborhoods

Holding Landlords Accountable for Nuisance Issues:

Suspension/Revocation

13.301(11) Suspension or Revocation due to Nuisance Violations

a. Points Assigned

i.) Violations that may be enforced as simple misdemeanors shall be assigned two points for each occurrence (not per person cited). Examples of this include: noise violations, nuisance parties, public intoxication, etc.

ii.) Violations that can only be enforced through a municipal infraction citation shall be assigned one point for each occurrence. Examples of this include: garbage in unapproved containers, vehicles parked on unapproved surfaces, outdoor storage, vegetation maintenance, occupancy, etc.

b. Accumulation of points

i.) A single-family or two-family dwelling unit that accumulates four violation points in a 12 month period beginning August 1st and ending July 31st shall have their LOC suspended for 180 days.

ii.) If there is a recurrence of 13.301(11)(b)(i) the LOC shall be suspended for one year.

iii.) If there is a third recurrence of 13.301(11)(b)(i) the LOC shall be revoked.

iv.) A property with a revoked LOC shall not be able to register as a new rental for two years from the date of revocation.

c. Terms of Suspension. Suspension of the LOC shall become effective immediately. The eviction process must be initiated within five days of the date of suspension. The property should be vacant within 30 days of the date of suspension.

c. Terms of Suspension. Suspension of the LOC shall become effective at the end of Lease. The landlord may allow the current tenants to continue renting through the end of the lease or through July 31st, whichever comes first. The landlord may end the lease earlier at their request.

d. Defenses to an Enforcement Action of the Provisions of this Section: Any points accumulated for which a landlord can provide a defense shall be waived by the Building Official. It shall be a defense to an enforcement action pursuant to the provisions of this section if an owner or owner's designated agent has:

i.) Reported the violation to law enforcement;

ii.) Evicted or attempted to evict by commencing and pursuing with due diligence all legal remedies to evict those tenants charged with one of the specified violations. It is not the intention of this provision to apply to tenants who have not been charged with one of the specified violations;

iii.) Undertaken and pursued with due diligence, reasonable means to avoid a recurrence of Code violations on the premises by the present and future tenants or occupants of the premises;

It shall also be a defense to enforcement action if the tenant was the reporting party to law enforcement of a nuisance party at their property. The points associated with the nuisance party may only be waived once per property and all effects of the party shall be resolved.

Holding Landlords Accountable for Nuisance Issues:

Annual Rental Fee Increase

13.301(11) Enforcement for Accumulated Nuisance Violations

a. Points Assigned

- i.) Violations that may be enforced as simple misdemeanors shall be assigned two points for each occurrence (not per person cited). Examples of this include: noise violations, nuisance parties, public intoxication, etc.
- ii.) Violations that can only be enforced through a municipal infraction citation shall be assigned one point for each occurrence. Examples of this include: garbage in unapproved containers, vehicles parked on unapproved surfaces, outdoor storage, vegetation maintenance, occupancy, etc.

b. Accumulation of points

- i.) A single-family or two-family dwelling unit that accumulates four violation points in a 12 month period beginning August 1st and ending July 31st shall have their annual rental fee for that unit doubled for each year thereafter.
- ii.) If there is a recurrence of 13.301(11)(b)(i) the annual rental fee shall be tripled for each year thereafter.
- iii.) If there is a third recurrence of 13.301(11)(b)(i) the annual fee shall be quadrupled for each year thereafter.

c. Defenses to an Enforcement Action of the Provisions of this Section: Any points accumulated for which a landlord can provide a defense shall be waived by the Building Official. It shall be a defense to an enforcement action pursuant to the provisions of this section if an owner or owner's designated agent has:

- i.) Reported the violation to law enforcement;
- ii.) Evicted or attempted to evict by commencing and pursuing with due diligence all legal remedies to evict those tenants charged with one of the specified violations. It is not the intention of this provision to apply to tenants who have not been charged with one of the specified violations;
- iii.) Undertaken and pursued with due diligence, reasonable means to avoid a recurrence of Code violations on the premises by the present and future tenants or occupants of the premises;

It shall also be a defense to enforcement action if the tenant was the reporting party to law enforcement of a nuisance party at their property. The points associated with the nuisance party may only be waived once per property and all effects of the party shall be resolved.

Holding Landlords Accountable for Nuisance Issues:

Municipal Infraction Penalty

13.301(11) Enforcement for Accumulated Nuisance Violations

a. Points Assigned

i.) Violations that may be enforced as simple misdemeanors shall be assigned two points for each occurrence (not per person cited). Examples of this include: noise violations, nuisance parties, public intoxication, etc.

ii.) Violations that can only be enforced through a municipal infraction citation shall be assigned one point for each occurrence. Examples of this include: garbage in unapproved containers, vehicles parked on unapproved surfaces, outdoor storage, vegetation maintenance, occupancy, etc.

b. Accumulation of points

i.) A single-family or two-family dwelling unit that accumulates four violation points in a 12 month period beginning August 1st and ending July 31st shall be assessed a Municipal Infraction Citation in accordance with 13.104(2)(a).

ii.) A second recurrence of 13.301(11)(b)(i) will be considered a 2nd offense and shall be assessed as a second offense under 13.104(2)(a).

iii.) A third recurrence of 13.301(11)(b)(i) will be considered a 3rd offense and shall be assessed as a third offense under 13.104(2)(a).

c. Defenses to an Enforcement Action of the Provisions of this Section: Any points accumulated for which a landlord can provide a defense shall be waived by the Building Official. It shall be a defense to an enforcement action pursuant to the provisions of this section if an owner or owner's designated agent has:

i.) Reported the violation to law enforcement;

ii.) Evicted or attempted to evict by commencing and pursuing with due diligence all legal remedies to evict those tenants charged with one of the specified violations. It is not the intention of this provision to apply to tenants who have not been charged with one of the specified violations;

iii.) Undertaken and pursued with due diligence, reasonable means to avoid a recurrence of Code violations on the premises by the present and future tenants or occupants of the premises;

It shall also be a defense to enforcement action if the tenant was the reporting party to law enforcement of any nuisance party. It shall also be a defense to enforcement action if the tenant was the reporting party to law enforcement of a nuisance party at their property. The points associated with the nuisance party may only be waived once per property and all effects of the party shall be resolved.

Illegal Rentals Ineligible for LOC.

Indefinitely

13.301(12) Ineligible for Letter of Compliance. Properties determined to have been rented without a valid Letter of Compliance are indefinitely ineligible for a Letter of Compliance.

For One Year

13.301(12) Ineligible for Letter of Compliance. Properties determined to have been rented without a valid Letter of Compliance are ineligible for a Letter of Compliance for a period of one year beginning on the date in which City staff determined the property was being illegally rented. The property cannot be leased during this year.

Under Same Ownership

13.301(12) Ineligible for Letter of Compliance. Properties determined to have been rented without a valid Letter of Compliance are ineligible for a Letter of Compliance so long as they remain under the same ownership as they were under when the property was illegally rented. If the property is transferred in an arm's length transaction between disinterested parties as determined by the City, the new owner may obtain a Letter of Compliance.

Rent Abatement

Order Rent to Be Abated

13.104(2)(f) Rent Abatement.

- i.) The Building Official may order rent abated when the Building Official determines that the owner has, after issuance of a notice of violation of this chapter:
 - a.) Failed to provide an essential service (water, sewer, electricity, heat);
 - b.) Failed to remedy a condition that poses a substantial risk to the health or safety of the tenant;
 - c.) Rented a dwelling unit without a valid Letter of Compliance; or,
 - d.) Failed to make corrections as required in the inspection report.
- ii.) Rent abatement means that the owner may not recover rent from the tenant. Rent shall be abated until the condition for which rent abatement was ordered has, in the judgment of the Building Official, been remedied.
- iii.) The Building Official shall provide a copy of the rent abatement order to the owner at the address on the rental permit and to the tenant by U.S. mail and by posting the entrance door to the dwelling unit. Notice of termination of the rent abatement will be given in the same manner.

Notify Tenant of Right to Withhold (Not an Order)

13.104(2)(f) Rent Withholding Notice.

i.) The Building Official may notify tenants of their ability to recover damages and obtain injunctive relief in accordance with Iowa Code 562A.21.2 when the Building Official determines that the owner has, after issuance of a notice of violation of this chapter:

- a.) Failed to provide an essential service (water, sewer, electricity, heat);
- b.) Failed to remedy a condition that poses a substantial risk to the health or safety of the tenant;
- c.) Rented a dwelling unit without a valid Letter of Compliance; or,
- d.) Failed to make corrections as required in the inspection report.

ii.) A rent withholding notice shall be sent to the property owner and the tenant. Such notice shall alert the tenant of the owner's failure to comply and of the tenant's legal rights due to the noncompliance in accordance with Chapter 562A of the State of Iowa Code.

Removal of Consanguinity Exception:

Delete language (indicated with strikethrough) from the current code so it applies to all properties, regardless of relationship to the deed holder.

13.100(5)(a) Excepts Owner-Occupied single family dwellings from the rental code.

13.200 defines Owner-Occupied Dwelling Unit as: Any townhouse, condominium, or detached dwelling that is occupied as a dwelling by the owner ~~or owner's relative within the first degree of consanguinity (mother, father, daughter, son, sister, brother);~~ and may include a live-in nanny; live-in nurse; one live-in exchange student; or one roomer. If there is more than one roomer, nanny, live-in nurse or live-in exchange student living in the unit, the unit will be considered a rental unit, and not an owner-occupied dwelling unit. Dwellings that were compliant with the previous definition of owner-occupied have until January 1, 2020 to submit rental registration or cease operation as a rental.

Freeze Bedrooms in Near Campus Neighborhoods:

Delete language (indicated with strikethrough) from the current code so the section applies to all properties, regardless of rental registration status.

13.503(4)(e)(iii) For rental dwelling units located within the Near Campus Neighborhoods ~~and that are registered as of January 1, 2018,~~ the number of bedrooms for determining maximum occupancy shall be determined by the number of bedrooms listed in the records of the Ames City Assessor as of January 1, 2018, or by the number of bedrooms reflected in the inspection

records of the City of Ames Inspection Division as of January 1, 2018, whichever number is higher.

~~13.503(4)(e)(iv) For rental dwellings located within the Near Campus Neighborhoods for which a registration is being sought after January 1, 2018, the number of bedrooms for determining maximum occupancy shall be determined by an inspection of the Inspection Division.~~