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TO: Eddie Dichter, Principal Planner

FROM: Ron Sailon, Assistant City Attorney

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SUBJECT: Definition of family unit

Recently, we examined which use classification most closely applied to a situation existing at two homes in Serene Country Estates, in which homeless individuals received vouchers for \$400.00 through Clark County Social Service's GATE program. These vouchers are paid to the homeowners in exchange for providing these homeless individuals lodging for 30 days at a time and a maximum of 90 days. The determination was made that this unique living arrangement most closely fit our definition of Single-Family Residence, which is broadly defined to include, among other things, any group of ten or fewer persons with common access to living and eating areas. Our definition does not require that there be any family-like relationship between members of the group, and we were unsure as to the extent to which the law permits the City to require such a relationship.

After researching the law in this area, it is my opinion that our ordinance can and should be amended in order to provide that a group of people living in the same household must function as at least a functional family unit, such that transient people living together merely as a result of a government program would not qualify as living in a single-family residence. Maintenance of a family environment is a valid zoning objective, and while defining the family as a traditional nuclear family is not permitted, it is still permissible to require that single family districts be restricted to single-housekeeping units, that is, persons living together as a relatively stable and bona fide single-housekeeping unit. Mid Michigan Rentals, Inc. v. City of Mount Pleasant, 2003 WL 22439721 (Mich.App. 2003); Albert v. Zoning Hearing Bd. of North Abington Tp., 854 A.2d 401 (Pa. 2004); Village of Quogue v. Ladd, 337 N.Y.S.2d 868 (2d Dep't 1972). Below, I will attempt a suitable definition of family unit:

A family unit is defined as a person living alone or any of the following groups living together as a stable single housekeeping unit and sharing common living, sleeping, cooking and eating facilities:

- a. any number of related people and no more than two unrelated persons;
- b. four unrelated people; or
- c. two unrelated people and any minor children related to either of them.

A family unit does not include any society, club, fraternity, sorority, lodge, organization or group where people come and go on a transient basis or where the relationship is merely based on a commercial basis; rather, the composition of a family unit must be sufficiently

stable and permanent and of a demonstrable bond characteristic of a cohesive family unit. The size of a family unit is subject to the maximum dwelling unit occupancy set forth in Section 19.7.2.F.3. For purposes of this section, “related” means by blood, marriage, adoption, guardianship or other duly and legally authorized custodial relationship.

This suggested definition of family unit promotes a sense of community, sanctity of family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency. These are valid zoning objectives. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). The proposed definition is flexible and expansive enough to encompass numerous other household relationships in addition to that of a traditional family, and yet limiting enough to exclude transient, purely commercial arrangements such as boardinghouses.

While it is true that the proposed definition of family unit creates distinctions between different groups of people, by allowing, for example, more related people to live in a home than unrelated persons, such distinctions are permissible. Courts have taken notice that groups of unrelated persons typically have different living styles in comparison to groups of related persons, and that although related persons may live together in large numbers, they normally live together in one place for a longer time and tend to establish roots in the community. Groups of related people often have children. In contrast, groups of unrelated persons typically live together as roommates and, relatively speaking, don't stay together for a long period of time, and they are less likely to have children. Ames Rental Property Association v. City of Ames, 736 N.W.2d 255, 261 (Iowa 2007). The distinctions in the proposed definition further the City's interest in creating family-oriented neighborhoods that are safe and quiet for young children, and in keeping reasonable limits on density.

For enforcement purposes, it will be necessary sometimes to draw the appropriate line, on a case-by-case basis, between a living arrangement that is a purely commercial one and one that is a bona fide single housekeeping unit. In doing so, it would be appropriate to look at the nature of the relationship. For example, it would certainly be a boardinghouse and not a single housekeeping unit if the person owning the home didn't live there himself, contracted separately with each of the occupants, each of the occupants had no say in the selection of the others, each occupant had possession of only one room or used different doors to enter and leave the house. Each of these factors, in other words, tend to show that there is not a genuinely stable single housekeeping unit.

Thus, the proposed ordinance promotes the City's legitimate zoning interests, makes appropriate distinctions, is flexible enough to encompass various living arrangements while at the same time not permitting living arrangements inconsistent with a single family zoning district.