



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 4, 2018

AGENDA TITLE

Introduction, first reading and motion to publish by title only an ordinance updating the city's code provisions regulating short-term rentals, by amending Chapter 10-1 "Definitions," and Chapter 10-3 "Rental Licensing" and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Maureen Rait, Executive Director, Public Works
Trish Jimenez, Deputy Director of Public Works for Development Services and Interim Building Services Manager

EXECUTIVE SUMMARY

The purpose of this council agenda item is to amend the city's code provisions relating to short-term rentals. Council passed Ordinance 8050 on September 29, 2015. The ordinance became effective January 4, 2016. After an education period, staff began significant enforcement efforts in June 2016. With two years of experience, staff has identified several areas where updates would be helpful. The proposed ordinance includes the following proposed changes:

- Conforms definitions in title 10 to those in title 9.
- Clarifies that a license is required for advertising a vacant property.
- Clarifies that a short-term rental license is intended for residential uses and not banquets, weddings and fund-raisers.
- Clarifies that applicants must file a complete application.
- Clarifies that all fees and fines must be paid prior to issuance of a license except for fines that are the subject of an appeal.

- Requires an affidavit of exemption prior to rental of exempted properties.

In addition, staff seeks guidance about whether council wishes to consider a future amendment limiting the number of occupants in short-term rentals to a fixed number without regard to family relationship.

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce on first reading and order published by title only an ordinance updating the city’s code provisions regulating short-term rentals, by amending Chapter 10-1 “Definitions,” and Chapter 10-3 “Rental Licensing” and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Short-term rentals provide additional income for Boulder residents.
- Environmental: Not applicable.
- Social: Less expensive travel is an important social benefit. Short-term rentals provide additional opportunities for visitors to Boulder. Short-term rentals can remove housing stock from the long-term rental market. Boulder’s requirement of owner occupancy was intended to limit this effect.

OTHER IMPACTS

- Fiscal-Budgetary: None.
- Staff Time: The proposed changes and clarifications may provide some staff time savings.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND & ANALYSIS

Staff began issuing short-term rental licenses on January 4, 2016. As of December 18, 2017, short-term licensing statistics are as follows:

Licenses Issued: 738
Incomplete Applications Pending: 2
Applications Being Processed: 20
Applications Moved to Enforcement: 4
Denied/Withdrawn (*could not meet requirements*) 17

Through September 30, 2017, staff has received complaints about 61 properties and undertaken pro-active investigations of another 449 properties. Prior to 2016, virtually all enforcement was complaint-based. Beginning in 2016, council budgeted for dedicated staff to shift to a more proactive enforcement model. As a result, there has been a significant increase in compliance through enforcement, with almost 90% of enforcement cases now being initiated by city staff.

PROPOSED CHANGES

Staff has developed a few recommendations for potential changes.

1. Definition Changes

Both title 9 and title 10 include definitions of “dwelling unit” and “family.” The definitions are consistent, but not identical. The proposed changes would incorporate the title 9 definitions into title 10.

In addition, the proposed ordinance would also amend the definition of “Short-term rental” to clarify that short-term rentals include properties offered for rental as well as those actually rented. The proposed ordinance also would prohibit the use of a short-term rental license for weddings, banquets, fund raisers or similar gatherings.

2. Change to section 10-3-2

The proposed ordinance would eliminate the reference to “rental property” in section 10-3-2 and replace it with the phrase “dwelling, dwelling unit or rooming unit.” Rental property is defined as follows:

Rental property means all dwellings, dwelling units, and rooming units located within the city and rented or leased for any valuable consideration, but excludes dwellings owned by the federal government, the state, or any of their agencies or political subdivisions and facilities licensed by the state as health care facilities. Rental property includes any property used as a short-term rental.

One recent challenger to a citation asserted the city could not enforce against a unit that was not actually rented, because it did not meet the definition of “rental property.” That is, because it was vacant, it was not “rented or leased for any valuable consideration.” The proposed change would clarify that the regulations apply to vacant properties as well as those being rented.

The proposed ordinance also would add a requirement that a person seeking to rent without a license under two specific exemptions file an affidavit of exemption prior to rental. The two specific exemptions are in subsections (1) and (2) of section 10-3-2(b). They exempt from the licensing requirement “roomers” and properties leased for more than 30 days by individuals traveling out of the county for up to a year. A few property owners have used the exemption provision to avoid enforcement for illegal short-term rentals by claiming that the rentals were exempted long-term rentals. The proposed change would require prior documentation of the basis for the claimed exemption.

3. Change to Section 10-3-4.

The proposed ordinance would clarify that the city manager would have the authority to issue a reduced term license if the licensee has received a penalty, suspension or other administrative penalty.

4. Change to Section 10-3-6

The proposed ordinance would clarify that an applicant must submit a complete license packet. It also requires that all fees and penalties be paid, other than penalties subject to a pending appeal.

5. Change to Section 10-3-7

The proposed ordinance would make similar changes in section 10-3-7, which addresses license rentals as are in section 10-3-6, which governs properties converted to rentals.

OTHER POTENTIAL CHANGES

A bigger issue only partially addressed by these proposed changes is regulation of large parties at short-term rentals. There have been circumstances in which a large group rents a residence. The groups claim that they are not subject to occupancy restrictions because they are “related.” By their nature short-term rentals are transitory. Thus, by the time the city receives a complaint or discovers the rental, the renters are gone. This makes it very difficult to prove an occupancy violation. Council could consider imposing a fixed occupancy limit that would make enforcement much easier. This, of course, would be a significant change that would require careful consideration of the various policy implications.

ATTACHMENTS

Attachment A – Proposed Ordinance

ORDINANCE 8234

AN ORDINANCE UPDATING THE CITY’S SHORT-TERM RENTAL REGULATIONS BY AMENDING CHAPTER 10-1 “DEFINITIONS,” B.R.C. 1981; AND AMENDING CHAPTER 10-3 “RENTAL LICENSES” B.R.C. 1981; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The following definitions in Chapter 10-1, “Definitions,” B.R.C. 1981, are amended as follows, all other definitions remain unchanged:

Chapter 10-1. - Definitions,

(a) —The following terms used in this title have the following meanings unless the context clearly indicates otherwise:

...

Dwelling unit shall have the same meaning as set forth in Section 9-16-1, "General Definitions," B.R.C. 1981. ~~means one room or rooms connected together for residential occupancy and including bathroom and kitchen facilities. If there is more than one meter for any utility, address to the property or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they: 1) share a single common bathroom as the primary bathroom, or 2) share a single common kitchen as the primary kitchen.~~

...

Family shall have the same meaning as set forth in Section 9-16-1, "General Definitions," B.R.C. 1981.

...

Owner shall have the same meaning as set forth in Section 9-16-1, "General Definitions," B.R.C. 1981. ~~means any person who is a commercial or industrial building owner, or is an owner's representative, such as a property manager, who has charge of, or controls any building or parts thereof.~~

...

1 *Short-term rental* means any dwelling, dwelling unit, rooming unit, room or portion of any
2 dwelling unit, rooming unit, room being offered, advertised rented or leased to any person for
3 valuable consideration for periods of time less than thirty days, but excludes commercial hotels,
4 motels or bed and breakfasts. A short-term rental is a residential use that is accessory to such
5 dwelling, dwelling unit, rooming unit, or room and shall not be used for direct or indirect
6 compensation for meetings, including but not limited to weddings, banquets, fund raisers or similar
7 gatherings.

8 Section 2. Section 10-3-2, “Rental License Required Before Occupancy and License
9 Exemptions,” B.R.C. 1981, shall be amended as follows:

10 **10-3-2. - Rental License Required Before Occupancy and License Exemptions.**

- 11 (a) No operator shall allow, or offer to allow through advertisement or otherwise, any person to
12 occupy any dwelling, dwelling unit or rooming unit rental property as a tenant or lessee or
13 otherwise for a valuable consideration unless each room or group of rooms constituting the
14 rental property has been issued a valid rental license by the city manager. Any advertisement
15 shall include the rental licensing number assigned by the city manager.
- 16 (b) Buildings, or building areas, described in one or more of the following paragraphs are
17 exempted from the requirement to obtain a rental license from the city manager, provided,
18 however that the exemptions in subsections (b)(1) and (b)(2) below shall not apply to short-
19 term rentals. No operator shall allow any person to occupy any dwelling, dwelling unit or
20 rooming unit exempted pursuant to subsections (b)(1) and (b)(2) below prior to submitting to
21 the city manager an Affidavit of Exemption for the dwelling, dwelling unit or rooming unit.
- 22 (1) Any dwelling unit occupied by the owner or members of the owner's family who are at
23 least 21 years of age and housing no more than two roomers who are unrelated to the
24 owner or the owner's family. An owner includes an occupant who certifies that the
25 occupant owns an interest in a corporation, firm, partnership, association, organization or
any other group acting as a unit that owns the rental property.
- (2) A dwelling unit meeting all of the following conditions:
- (A) The dwelling unit constitutes the owner's principal residence;
- (B) The dwelling unit is temporarily rented by the owner for a period of time no greater
than twelve consecutive months in any twenty-four-month period;
- (C) The dwelling unit was occupied by the owner immediately before its rental;
- (D) The owner of the dwelling unit is temporarily living outside of Boulder County; and
- (E) The owner intends to re-occupy the dwelling unit upon termination of the temporary
rental period identified in subparagraph (b)(2)(B) of this section.
- (3) Commercial hotel and motel occupancies which offer lodging accommodations primarily
for periods of time less than thirty days, but bed and breakfast facilities are not excluded
from rental license requirements.

- 1 (4) Common areas and elements of buildings containing attached, but individually owned,
2 dwelling units.

3 Section 3. Section 10-3-4, "Reduced Term License," B.R.C. 1981, shall be amended as
4 follows:

5 **10-3-4. - Reduced Term License.**

- 6 (a) The city manager shall issue a reduced term license whenever the city manager determines
7 that:

8 (1) Violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed during
9 an inspection, individually or in combination, demonstrate a failure to maintain the rental
10 property in a safe, sanitary and clean condition so that the dwelling endangers the health
11 and safety of the occupants;

12 (2) There is or has been a violation of a limitation on numbers of occupants or numbers of
13 dwelling units found in Title 9, "Land Use Code," B.R.C. 1981, which demonstrates a
14 failure to maintain the rental property in compliance with that title; or

15 (3) The term of an initial license or renewal of an existing license would otherwise extend
16 beyond December 31, 2018 for a property that has not received an "Energy efficiency
17 requirements inspection" demonstrating compliance with Chapter 10-2, "Property
18 Maintenance Code," Appendix C - "Energy Efficiency Requirements," B.R.C. 1981.

19 (A) For violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the
20 license term shall be reduced to twenty-four months.

21 (B) For violations of Title 9, "Land Use Code," B.R.C. 1981, the license term shall be
22 reduced to twelve months.

23 (C) In the case of failure to demonstrate a satisfactory energy efficiency requirements
24 inspection for the subject property, under paragraph (3), above, the license term shall
25 expire December 31, 2018, unless, before that date, the city manager receives an
energy efficiency requirements inspection demonstrating compliance, in which case
the license term shall extend the full period otherwise prescribed by this chapter.

(b) The city manager may issue a reduced term license if the operator has received a penalty,
suspension or other order pursuant to section 10-3-16(a), "Administrative Remedy," B.R.C.
1981.

(c) If an operator disagrees with the decision of the city manager to issue a reduced term license
under subsection (a) of this section, such person may appeal the city manager's decision within
thirty days after the issuance of the reduced term license, as follows:

(1) For reduced term licenses issued as a result of violations of chapter 10-2, "Property
Maintenance Code," B.R.C. 1981, the appeal shall be made as provided in section 10-2-
2, section 111, "Means of Appeal," B.R.C. 1981.

- 1 (2) For reduced term licenses issued as a result of violations of title 9, "Land Use Code,"
2 B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the
3 fee amount shall be as specified for an appeal to the board of building appeals.

4 Section 4. Section 10-3-6, "License Application Procedure for Buildings Converted to
5 Rental Property," B.R.C. 1981, shall be amended as follows:

6 **10-3-6. - License Application Procedure for Buildings Converted to Rental Property.**

7 Every operator converting a property to rental property shall follow the procedures in this
8 section for procuring a rental license:

- 9 (a) Submit a ~~complete written~~ application packet for a license to the City, on official city forms
10 provided for that purpose, at least thirty days before rental of the property including:
11 (1) A rental housing inspector's certification of baseline inspection dated within twelve
12 months before the application. The operator shall make a copy of the inspection form
13 available to city staff and tenants of inspected units within fourteen days of a request; and
14 (2) A report on the condition and location of all smoke and carbon monoxide alarms required
15 by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
16 operator; and
17 (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C. 1981, made
18 and verified by the operator.
19 (b) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, at the
20 time of submitting the license application. The city manager shall not issue any rental license
21 if the operator owes any fees or penalties, unless the penalties are subject to a pending appeal.
22 (c) Take all reasonable steps to notify any occupants of the property in advance of the date and
23 time of the inspection. The operator shall be present and accompany the inspector throughout
24 the inspection, unlocking and opening doors as required.

19 Section 5. Section 10-3-7, "License Renewal Procedure for Buildings Occupied as
20 Rental Property," B.R.C. 1981, shall be amended as follows:

21 **10-3-7. - License Renewal Procedure for Buildings Occupied as Rental Property.**

22 Every operator of a rental property shall follow the procedures in this section when renewing
23 an unexpired license:

- 24 (a) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, before
25 the expiration of the existing license. The city manager shall not issue any rental license if the
operator owes any fees or penalties, unless the penalties are subject to a pending appeal.

- 1 (b) Submit to the city manager a complete application packet, on forms provided by the manager
2 including:
- 3 (1) A rental housing inspector's certification of renewal inspection within twelve months
4 before application. The operator shall make a copy of the inspection form available to
5 city staff and tenants of inspected units within fourteen days of a request;
 - 6 (2) A report on the condition and location of all smoke and carbon monoxide alarms required
7 by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
8 operator; and
 - 9 (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C. 1981, made
10 and verified by the operator.
- 11 (c) Take all reasonable steps to notify in advance all tenants of the property of the date and time
12 of the inspection. The operator shall be present and accompany the inspector throughout the
13 inspection, unlocking and opening doors as required.

14 Section 6. This ordinance is necessary to protect the public health, safety, and welfare of
15 the residents of the city, and covers matters of local concern.

16 Section 7. The City Council deems it appropriate that this ordinance be published by title
17 only and orders that copies of this ordinance be made available in the office of the city clerk for
18 public inspection and acquisition.

19 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
20 TITLE ONLY this 4th day of January 2018.

21 _____
22 Suzanne Jones
23 Mayor

24 Attest:

25 _____
Lynette Beck
City Clerk