



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 4, 2020

AGENDA TITLE:

Third reading and consideration of motion to adopt Ordinance 8372 amending Subsection 9-6-4(a), “Accessory Units,” B.R.C. 1981, to modify the roof pitch standards for existing legal accessory structures that are converted to an Accessory Dwelling Unit (ADU), to allow ADUs as part of cooperative housing units, and to clarify existing ADU standards, and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Chris Meschuk, Asst. City Manager / Interim Director of Planning
Charles Ferro, Development Review Manager, Planning
Karl Guiler, Senior Planner / Code Amendment Specialist
Andrew Collins, Planner II / Code Amendment Specialist
Gabby Hart, Planner I, Planning

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider the adoption of proposed Ordinance 8372 amending the Land Use Code to clean-up and update existing regulations related to Accessory Dwelling Unit (ADU) standards. See **Attachment A** for proposed Ordinance 8372. The intent of the existing ADU regulations is to foster additional housing choices in the form of ADUs within residential zoning districts, including the conversion of legally existing accessory structures into ADUs. The proposed updates provide flexibility to the implementation of the design requirements for existing structures, and provide additional updates that clarify existing ambiguities in the code related to ADU’s and cooperative housing units (co-ops), as well as the occupancy standard. While the current design requirements for detached ADUs,

including the roof pitch ratio, can be achieved with new construction, the required roof pitch ratio requirement (for structures greater than 20 feet) can add prohibitive costs for extensive renovations or incentivize the demolition of legally existing accessory structures in order to meet the current ADU requirement. The proposed changes are intended to update regulations where needed, and to correct discrepancies in the code that have been identified in the application of these standards.

Council passed the proposed Ordinance 8372 on first reading at its Dec. 3, 2019 meeting. A second reading and public hearing was conducted on Jan. 7, 2020 ([link to the Jan. 7th memo and meeting packet](#)), where the proposed ordinance was amended to incorporate the amendment options, as recommended by Planning Board, that:

- Remove the architectural consistency provision for all detached ADUs (Jan. 7, 2020 memo Attachment B option).
- Expressly allow and regulate the establishment of ADUs and co-ops on the same lot or parcel (Jan. 7, 2020 memo Attachment B option).
- Prohibit the conveyance of an ADU separate from the principal dwelling unit (Jan. 7, 2020 memo Attachment C option).

Council approved the ordinance with the board amendments on an 8-0 vote (S. Weaver absent) at the Jan. 7th hearing.

Proposed Ordinance 8372 includes the amendments listed above as approved by City Council at second reading of the ordinance. The proposed updates to the ADU regulations as contained in proposed Ordinance 8372 (**Attachment A**) would:

1. Allow for an administrative modification to the roof-pitch ratio standards for legally existing accessory structures converting to detached ADUs exceeding 20 feet in height and no taller than 25 feet in height.
2. Remove the architectural consistency provision for all detached ADUs.
3. Expressly allow Cooperative Housing Units (co-ops) and ADUs to be established on the same lot or parcel.
4. Clarify the ADU occupancy standards and related definitions.
5. Prohibit the conveyance of an ADU separate from the principal dwelling unit.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt on third reading Ordinance 8372 amending Subsection 9-6-4(a), “Accessory Units,” B.R.C. 1981, to modify the roof pitch standards for existing legal accessory structures that are converted to an Accessory Dwelling Unit (ADU), to allow ADUs as part of cooperative housing units, and to clarify existing ADU standards, and setting forth related details.

ATTACHMENTS

A: Proposed Ordinance 8372

ORDINANCE 8372

AN ORDINANCE AMENDING SUBSECTION 9-6-4(a), "ACCESSORY UNITS," B.R.C. 1981, TO MODIFY THE ROOF PITCH STANDARDS FOR EXISTING LEGAL ACCESSORY STRUCTURES THAT ARE CONVERTED TO AN ACCESSORY DWELLING UNIT (ADU), TO ALLOW ADUS AS PART OF COOPERATIVE HOUSING UNITS, AND TO CLARIFY EXISTING ADU STANDARDS AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-6-4, "Conditional Use and Use Review Standards - Residential Uses,"

B.R.C. 1981, is amended to read as follows:

9-6-4. - Conditional Use and Use Review Standards - Residential Uses.

(a) Accessory Units:

(1) General Requirements: Three types of accessory units are permitted: Attached ~~A~~accessory ~~D~~dwelling ~~U~~units, ~~D~~etached ~~A~~accessory ~~D~~dwelling ~~U~~units, and ~~L~~imited ~~A~~accessory ~~U~~units. The following standards apply to all three types of accessory units:

(A) Standards:

...

(v) No Independent Conveyance: No person shall convey an accessory unit independently of the principal dwelling unit on the lot or parcel.

...

(2) Attached Accessory Dwelling Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to attached accessory dwelling units. The owner or the owners of a lot or parcel with an ~~existing~~ single-family dwelling unit may establish and maintain an attached accessory dwelling unit within the principal structure of a detached dwelling unit in the RR, RE, RL, RMX, A or P districts if all of the following conditions are met and continue to be met during the life of the attached accessory dwelling unit:

(A) Neighborhood Area: In the RL-1 or RL-2 zoning districts, no more than twenty percent of the lots or parcels in a neighborhood area contain an accessory unit.

1 for the purpose of this subparagraph:

2 (i) The "neighborhood area" in RL-1 and RL-2 zoning districts is the area
3 circumscribed by a line three hundred feet from the perimeter of the lot
4 line within which any accessory unit will be located. Within the
5 "neighborhood area" only accessory units within the RL-1 and RL-2
6 zoning districts are counted towards the twenty percent limitation factor.

7 (ii) For the purpose of calculating the twenty percent limitation factor, the
8 following shall apply:

9 a. A legal, nonconforming structure containing two or more dwelling
10 units is counted as an accessory unit; or

11 b. A cooperative housing unit is counted as an accessory unit;

12 c. An accessory unit that is licensed as part of a cooperative housing unit
13 and said cooperative housing unit shall be counted together as one
14 accessory unit; and

15 ~~a.d.~~ The city manager may promulgate regulations defining additional
16 methods to be used in calculating the twenty percent limitation factor
17 and the neighborhood area.

18 (iii) If an application for an accessory unit exceeds the twenty percent
19 requirement set forth in this subparagraph (a)(2)(A), the city manager will
20 place the applicant on a waiting list for the neighborhood area. At such
21 time as there is room for an additional accessory unit within a
22 neighborhood area, the city manager will notify the first eligible person
23 on the waiting list. Such person on the waiting list shall be required to
24 provide notice of intent to file an application within thirty days and file an
25 application within sixty days of such notice.

...

(C) Criteria: The attached accessory dwelling unit is clearly incidental to the
principal dwelling unit and meets the following criteria:

...

(iv) Any additional entrance resulting from the creation of an attached
accessory dwelling unit may face the side of the lot fronting on the street only
if such entrance is adequately and appropriately screened in a manner that does
not detract from the single-family appearance of the principal dwelling unit.

...

(D) Affordable Accessory Units: If the attached accessory dwelling unit is licensed
as an affordable accessory unit, the following standards apply:

(i) The unit shall only be required to provide the parking required in the
zoning district for the principal dwelling unit.

~~(i)~~ (ii) The unit and may be more than one-third of the total floor area of the

principal structure but shall not exceed one-half of the floor area of the principal structure or one thousand square feet, whichever is less. The BOZA may grant a variance to this size requirement pursuant to Section 9-2-3, "Variances and Interpretations," B.R.C. 1981.

(iii) If the unit is or will be offered for rental for compensation, the owner must obtain and at all times thereafter maintain a valid rental license for an affordable accessory unit issued by the ~~city~~ manager consistent with the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.

...

(3) Detached Accessory Dwelling Units: In addition to the general accessory unit standards in paragraph (a)(1) of this section, the following standards apply to detached accessory dwelling units. An owner or the owners of a lot or parcel with ~~an existing~~ single-family detached dwelling unit may establish and maintain a detached accessory dwelling unit within an accessory structure meeting the size restrictions described below, on a lot or parcel in the RR, RE, RL, RMX, A and P districts if all of the following conditions are met and continue to be met during the life of the detached accessory dwelling unit:

(A) Neighborhood Area: In the RL-1 and RL-2 zoning districts, no more than twenty percent of the lots or parcels in a neighborhood area contain an accessory unit. For the purpose of this subparagraph:

...

(ii) For the purpose of calculating the twenty percent limitation factor, the following shall apply:

a. A legal, nonconforming structure containing two or more dwelling units is counted as an accessory unit;~~or~~

b. A cooperative housing unit is counted as an accessory unit;

c. An accessory unit that is licensed as part of a cooperative housing unit and said cooperative housing unit shall be counted together as one accessory unit; and

~~a.d.~~ The ~~city~~ manager may promulgate regulations defining additional methods to be used in calculating the twenty percent limitation factor and the neighborhood area.

(iii) If an application for a detached accessory dwelling unit exceeds the twenty percent requirement set forth in subparagraph (a)(3)(A), the ~~city~~ manager will place the applicant on a waiting list for the neighborhood area. At such time as there is room for an additional accessory unit within the neighborhood area, the ~~city~~ manager will notify the first eligible person on the waiting list. Such person on the waiting list shall be required to provide notice of intent to file an application within thirty days and file an application within sixty days of such notice.

...

1 (C) Incidental to Principal Dwelling Unit: The detached accessory dwelling unit is
 2 clearly incidental to the principal dwelling unit and meets the following
 3 criteria:

4 (i) The detached accessory dwelling unit is created on a lot of five thousand
 5 square feet or larger.

6 (ii) The detached accessory dwelling unit's floor area does not exceed five
 7 hundred and fifty square feet, unless a variance is granted pursuant to
 8 Section 9-2-3, "Variances and Interpretations," B.R.C. 1981.

9 (iii) The following design standards apply to detached accessory dwelling
 10 units:

11 a. Maximum height of accessory buildings with a detached accessory
 12 dwelling unit shall not be greater than twenty feet unless the roof
 13 pitch is greater than 8:12 and the resulting ratio of the height of the
 14 roof (measured from the eave line to the top of the roof) to the height
 15 of the side walls (measured from the low point of grade to the eave
 16 line) is less than a 1:2 ratio. The city manager may modify this height
 17 standard for a legal existing accessory building that is being
 18 converted to a detached accessory dwelling unit to the extent that the
 19 existing accessory building's height and size is not proposed to be
 20 modified. In no case may a building height exceed ~~be taller than~~
 21 twenty-five feet.

22 ...

23 c. ~~Architectural design shall be consistent with the existing residence
 24 on the site or the adjacent building(s) along the side yards of the lot.~~

25 d. ~~Setbacks shall comply with accessory building setbacks. Where
 the rear yard of a property in the RR or RE zoning district directly
 abuts an RL zoning district, the rear yard accessory building
 setback shall be the same as the side yard setback for accessory
 buildings for applicable RR or RE zoning districts.~~

(D) Affordable Accessory Units: If the detached accessory dwelling unit is
 licensed as an affordable accessory unit, the following standards apply:

(i) ~~The~~ The unit shall only be required to provide the parking required in
 the zoning district for the principal dwelling unit.

(ii) ~~and~~ and ~~The~~ The unit's floor area may be up to eight hundred square feet. The
 BOZA may grant a variance to this size requirement pursuant to Section
 9-2-3, "Variances and Interpretations," B.R.C. 1981.

(i)(iii) ~~If~~ If the unit is or will be offered for rental for compensation, the owner

1 must obtain and at all times thereafter maintain a valid rental license for
 2 an affordable accessory unit issued by the city manager consistent with
 the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.

3 (E) Designated Historic Property: If either the accessory structure the detached
 4 accessory dwelling unit is located in or the principal structure on the lot or
 5 parcel ~~If the detached accessory dwelling unit is located within an accessory~~
 6 ~~structure that is designated as an individual landmark or recognized as~~
 7 ~~contributing to a designated historic district or the principal structure is~~
 8 designated as an individual landmark or recognized as contributing to a
 9 designated historic district under Chapter 9-11, "Historic Preservation," B.R.C.
 10 1981, the following modifications to the standards of this paragraph (a)(3)
 11 apply:

- 12 (i) In the RL-1 and RL-2 zoning district, the unit is not subject to the twenty
 13 percent limitation factor of subparagraph (a)(3)(A) provided that no
 14 more than thirty percent of the lots or parcels in the neighborhood area
 contain an accessory unit;
- 15 (ii) The unit shall only be required to provide the parking required in the
 16 zoning district for the principal dwelling unit; and
- 17 (iii) The unit's floor area may be up to one thousand square feet. The BOZA
 18 may grant a variance to this size requirement pursuant to Section 9-2-3,
 19 "Variances and Interpretations," B.R.C. 1981.

20 ...

21 Section 2. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to
 22 read as follows:

23 **Section 9-8-5. - Occupancy of Dwelling Units.**

- 24 (a) General Occupancy Restrictions: Subject to the provisions of Chapter 10-2, "Property
 25 Maintenance Code," B.R.C. 1981, no persons except the following persons shall occupy
 a dwelling unit:
- (1) Members of a family plus ~~one or up to two~~ additional roomerspersons. ~~The~~
 26 ~~quarters that the roomers use shall not exceed one-third of the total floor area of~~
 27 the dwelling unit and shall not be a separate dwelling unit;
- (2) Up to three persons in P, A, RR, RE, and RL zones;
- (3) Up to four persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT, IS, IG, IM,
 and IMS zones; or
- (4) Two persons and any of their children by blood, marriage, guardianship, including
 foster children, or adoption.

- 1 (b) Attached Accessory Dwelling Unit, Detached Accessory Dwelling Unit, or Limited
 2 Accessory Dwelling Unit: The occupancy of an attached accessory dwelling unit,
 3 detached accessory dwelling unit, or limited accessory dwelling unit must meet the
 4 requirements of Subsection 9-6-43(a), B.R.C. 1981.
- 5 (c) Nonconformity: A dwelling unit that has a legally established occupancy higher than
 6 the occupancy level allowed by Subsection (a) of this section may maintain such
 7 occupancy of the dwelling unit as a nonconforming use, subject to the following:
- 8 (1) The higher occupancy level was established because of a rezoning of the property,
 9 an ordinance change affecting the property, or other city approval;
 - 10 (2) The rules for continuation, restoration, and change of a nonconforming use set
 11 forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-
 12 2-15, "Use Review," B.R.C. 1981;
 - 13 (3) Units with an occupancy greater than four unrelated persons shall not exceed a
 14 total occupancy of the dwelling unit of one person per bedroom;
 - 15 (4) The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and
 - 16 (5) If a property owner intends to sell a dwelling unit with a non-conforming
 17 occupancy that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981,
 18 every such contract for the purchase and sale of a dwelling unit shall contain a
 19 disclosure statement that indicates the allowable occupancy of the dwelling unit.
- 20 (d) Cooperative Housing License: A dwelling unit licensed as a ~~C~~cooperative ~~H~~housing
 21 ~~U~~unit pursuant to Section 10-11-3 "Cooperative Housing Licenses," B.R.C. 1981, shall
 22 not be subject to the occupancy limits or any exceptions as set forth in this section; and
 23 an attached accessory dwelling unit or detached accessory dwelling unit licensed with
 24 such dwelling unit as a cooperative housing unit shall not be subject to the occupancy
 25 standards of Subparagraph 9-6-4(a)(1)(A)(ii), "Occupancy Requirements," B.R.C.
 1981. All such dwelling units together with any attached accessory dwelling unit or
detached accessory dwelling unit so licensed shall be limited to no fewer than four
 occupants with the maximum number of occupants, without regard to whether the
 occupants are related or not, as follows:
- 20 (1) In the ~~Rural Residential~~RR, ~~Residential Estate~~RE and ~~Residential Low Density~~RL
 21 zone districts to no more than twelve occupants, provided, however, that
 22 occupancy shall not exceed more than one person per two hundred square feet of
 23 habitable space;
 - 24 (2) In all other zone districts to no more than fifteen occupants, provided, however,
 25 that occupancy shall not exceed more than one person per two hundred square feet
 of habitable space; and
 - 26 (3) The city manager may authorize a greater number of occupants in any
~~C~~cooperative ~~H~~housing ~~U~~unit that is deed restricted as permanently affordable if
 the planning board after a public hearing recommends a greater number. Before
 making any such recommendation, the planning board shall consider the potential
 impacts on the surrounding community, the number of residents proposed, the

1 proposed habitable square feet per person, the available off-street parking, and the
2 mission of the cooperative.

- 3 (e) Prohibition: No person shall occupy a dwelling unit or accessory unit in violation of this
4 section or intentionally or negligently misrepresent the permitted occupancy of a
5 dwelling unit or accessory unit in violation of this section.

6 ...

7 Section 3. Chapter 9-16, "Definitions," B.R.C. 1981, is amended to read as follows:

8 **Chapter 9-16. - General Definitions.**

9 ...

10 *Accessory dwelling unit* means a separate and complete single housekeeping unit within a
11 detached dwelling unit or within an accessory structure to the principal dwelling unit of the
12 lot or parcel upon which the unit is located, permitted under the provisions of Subsection
13 9-6-34(a), B.R.C. 1981.

14 ...

15 *Roomer* means a person occupying a room or group of rooms within a dwelling unit that
16 are arranged primarily for sleeping and study, and that may include a private bath but does
17 not include a sink or any cooking device.

18 ...

19 Section 4. Section 10-11-3, Cooperative Housing Licenses," B.R.C. 1981, is amended to
20 read as follows:

21 **10-11-3. - Cooperative Housing Licenses.**

- 22 (a) License terms shall be as follows:
23 (1) Licenses shall expire four years from issuance or when ownership of the licensed
24 property is transferred.
25 (A) In addition to any other applicable requirements, new licenses and renewals
shall require that the licensee submit to the city manager a completed
current baseline (for a new license) or renewal inspection report, on forms
provided by the City. The report shall satisfy the following requirements:
(i) The section of the report concerning fuel burning appliances must be
executed by a qualified heating maintenance person certifying
compliance with those portions of Chapter 10-2, "Property
Maintenance Code," B.R.C. 1981, for which the report form requires

1 inspection and certification.

2 (ii) The section of the report concerning smoke and carbon monoxide
3 alarms must be executed by the operator certifying that the operator
4 inspected the smoke and carbon monoxide alarms in the licensed
5 property and that they complied with the requirements of Chapter 10-
6 2, "Property Maintenance Code," B.R.C. 1981.

7 (iii) The section of the report concerning trash removal must be executed
8 by the operator certifying that the operator has a current valid contract
9 with a commercial trash hauler for removal of accumulated trash from
10 the licensed property in accordance with Subsection 6-3-3(b), B.R.C.
11 1981.

12 (b) Whenever an existing license is renewed, the renewal license shall be effective from the
13 date of expiration of the last license if the applicant submits a complete renewal
14 application by or within ninety days from the expiration date. Licenses not renewed
15 within ninety days will be considered expired, requiring a new baseline inspection
16 report.

17 (c) The city manager shall issue no more than ten new cooperative housing licenses in any
18 calendar year. Provided, however, if in any calendar year, after the city manager issued
19 ten licenses, there are fewer than two licenses issued to not-for-profit permanently
20 affordable cooperatives, private equity cooperatives or rental cooperatives, the city
21 manager may issue sufficient additional license so that there are at least two licensees
22 issued in each category up to a total of no more than fourteen licenses for all categories
23 in any calendar year.

24 If an application for a cooperative housing unit exceeds the limits set forth in this
25 subparagraph (c), the city manager will place the applicant on a waiting list.
Applicants on the waiting list shall be given priority for consideration of applications
in the next calendar year.

(d) The boundary of a property on which a cooperative housing unit is located shall not be
within five hundred feet from the boundary of the property on which another cooperative
housing unit is located, but the city manager may permit two cooperative housing units
to be located closer than five hundred feet apart if they are separated by a physical
barrier, including, without limitation, an arterial, a collector, a commercial district or a
topographic feature that avoids the need for dispersal. The planning department shall
maintain a map showing the locations of all cooperative housing units in the city.

(e) Any Not-for-Profit Permanently Affordable Cooperative shall be permanently
affordable. Affordability shall be measured by individual households. That is, a
household consisting either of an individual or a family. Rents charged must be
affordable to households earning no more than sixty percent of the area median income.

- 1 (f) A cooperative license may be issued to any group of natural persons or organization
2 formed under Colorado law. If the applicant is an organization, all owners must be
3 natural persons.
- 4 (g) No rental cooperative shall be located in a dwelling unit with less than two thousand
5 square feet of habitable space nor in any dwelling unit that within five years prior to the
6 application was modified to have two thousand square feet or more of habitable space.
- 7 (h) No cooperative shall be located in an agricultural, industrial or public zone.
8 Cooperatives shall be permitted in all other zone districts.
- 9 (i) No person under twenty-one years of age may own an interest in a cooperative, in real
10 property on which a cooperative is located or in an organization owning real property
11 on which a cooperative is located.
- 12 (j) Any cooperative in which any person resides in return for valuable compensation shall
13 be subject to the rental licensing provisions included in Section 10-3-2, "Rental License
14 Required Before Occupancy and License Exemptions," B.R.C. 1981. The exceptions to
15 the rental licensing requirements that are set forth in Section 10-3-2(b) shall not apply
16 to any dwelling unit licensed pursuant to this chapter.
- 17 (k) No dwelling unit licensed pursuant to this chapter shall be licensed as or used as a short-
18 term rental.
- 19 (l) Any attached accessory dwelling unit or detached accessory dwelling unit to a
20 dwelling unit that is licensed pursuant to this chapter shall be part of the licensed
21 cooperative housing unit and subject to the standards of this chapter. The occupants of
22 the dwelling unit and accessory unit shall all be members of the cooperative. While
23 such units are licensed as a cooperative housing unit under this chapter, neither the
24 principal dwelling unit nor the accessory unit shall be required to be owner-occupied
25 as would otherwise be required under Subparagraph 9-6-4(a)(1)(A)(i), "Owner-
Occupied," B.R.C. 1981.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

Section 6. This ordinance is being adopted near in time to Ordinance 8337. This ordinance
revises sections of the Boulder Revised Code that may also be amended by Ordinance 8337. This
ordinance is not intended to revise the changes that may be adopted with Ordinance 8337. The
city council directs the city manager to adjust the formatting, language, and numbering of this
ordinance, so as to make the changes in both ordinances effective and consistent with each other.

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READ ON THIRD READING, PASSED AND ADOPTED this 4th day of February 2020.

Sam Weaver,
Mayor

Attest:

Lynnette Beck,
City Clerk