

ORDINANCE NO. 8072

AN ORDINANCE AMENDING TITLE 9 "LAND USE CODE" BY AMENDING SECTION 9-8-5 "OCCUPANCY OF DWELLING UNITS" BY ADDING A DISCLOSURE REQUIREMENT FOR NON-CONFORMING OCCUPANCY AND A PROHIBITION ON MISREPRESENTING OCCUPANCY, AMENDING SECTION 9-15-9, "MULTIPLE DWELLING UNITS AND OCCUPANCY - SPECIFIC DEFENSES," AMENDING A DEFENSE TO OVER-OCCUPANCY, AMENDING TITLE 10 "STRUCTURES" AMENDING SECTION 10-3-2, "RENTAL LICENSE REQUIRED BEFORE OCCUPANCY AND LICENSE EXEMPTIONS" ADDING A PROHIBITION OF OFFERING OR ADVERTISING RENTAL OF A PROPERTY WITHOUT A VALID RENTAL LICENSE, AND LIMITING THE RENTAL LICENSING EXEMPTION FOR FAMILY MEMBERS; AMENDING SECTION 10-3-16 "ADMINISTRATIVE REMEDY" BY INCREASING THE FINES FOR FIRST AND SECOND VIOLATIONS AND SETTING FORTH RELATED DETAILS AND ADDING A NEW SECTION 10-3-20 "OCCUPANCY" REQUIRING THAT THE MAXIMUM LEGAL OCCUPANCY BE POSTED IN ALL RENTAL PROPERTIES, REQUIRING ALL RENTAL LICENSES TO INCLUDE A NOTATION OF MAXIMUM OCCUPANCY AND REQUIRING ALL RENTAL ADVERTISEMENTS TO INCLUDE THE MAXIMUM LEGAL OCCUPANCY.

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

Section 1. Section 9-8-5, "Occupancy of Dwelling Units," is amended to read:

9-8-5. - Occupancy of Dwelling Units.

(a) General Occupancy Restrictions: Subject to the provisions of Chapter 10-2, "Property 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 two roomers. The quarters that the roomers use shall not exceed one-third of the total floor area of 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.

(b) Accessory Dwelling Unit, Owner's Accessory Unit, or Limited Accessory Dwelling Unit: The occupancy of an accessory dwelling unit, owner's accessory unit, or limited accessory dwelling unit must meet the requirements of Subsection 9-6-3(a), B.R.C. 1981.

- 1 (c) Nonconformity: A dwelling unit that has a legally established occupancy higher than the
2 occupancy level allowed by Subsection (a) of this section may maintain such occupancy
3 of the dwelling unit as a nonconforming use, subject to the following:
- 4 (1) The higher occupancy level was established because of a rezoning of the property, an
5 ordinance change affecting the property, or other city approval;
 - 6 (2) The rules for continuation, restoration, and change of a nonconforming use set forth in
7 Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-2-15, "Use
8 Review," B.R.C. 1981;
 - 9 (3) Units with an occupancy greater than four unrelated persons shall not exceed a total
10 occupancy of the dwelling unit of one person per bedroom; and
 - 11 (4) The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and
12 (5) If a property owner intends to sell a dwelling unit with a non-conforming occupancy
13 that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981, every such
14 contract for the purchase and sale of a dwelling unit shall contain a disclosure
15 statement that indicates the allowable occupancy of the dwelling unit.
- 16 (d) Prohibition. No person shall occupy a dwelling unit in violation of this section or
17 intentionally or negligently misrepresent the permitted occupancy of a dwelling unit in
18 violation of this section.

19 Section 2. Section 9-15-9(c) is amended to read as follows:

20 **9-15-9. - Multiple Dwelling Units and Occupancy - Specific Defenses.**

- 21 (c) Specific Defenses to Alleged Violations Related to Occupancy of a Unit Which Is a Rental
22 Property: The following shall constitute specific defenses to any alleged violation of
23 subsection 9-8-5(a), B.R.C. 1981, relating to the occupancy of units:
- 24 (1) It shall be a specific defense to an alleged violation of subsection 9-8-5(a), B.R.C.
25 1981, that a defendant is a nonresident landlord or nonresident property manager and:
 - 26 (A) ~~Prior to the initiation of the prosecution process, the defendant undertook and~~
27 ~~pursued means to avoid over-occupancy violations by engaging in active and~~
28 ~~diligent property management practices that were reasonable under the~~
29 ~~circumstances; or~~ Prior to the initiation of the prosecution process, the
30 defendant undertook and pursued means to avoid over-occupancy violations by:
 - 31 (i) complying with adverting requirements of Chapter 10-3-2, B.R.C. 1981
32 and the posting requirements of Chapter 10-3-20, B.R.C. 1981;
 - 33 (ii) receiving rent payments from only those persons on a lease that includes no
34 more than the number of tenants associated with the occupancy limitation
35 of the unit; and
 - 36 (iii) requiring each tenant to acknowledge, through a lease provision or
37 otherwise, the established occupancy limitation for the unit; and
 - 38 (B) The defendant had no actual knowledge of the over-occupancy of the relevant
39 rental housing property prior to the initiation of the prosecution process.
40 However, this specific defense shall not apply when a defendant reasonably
41 should have been aware of the occupancy violation ~~through the use of active~~
42 ~~and diligent property management practices.~~

- (C) For the purposes of this subsection, the initiation of a prosecution process occurs when any of the following events occurs:
- (i) A potential defendant is first contacted by a city investigator in connection with the investigation of an occupancy violation;
 - (ii) A summons and complaint alleging an occupancy violation is served upon a defendant; or
 - (iii) A criminal complaint is filed against a defendant alleging an occupancy violation.

(D) For purposes of this subsection, a nonresident landlord or nonresident property manager means a person who is neither a full-time nor part-time resident of the property that he or she owns or manages.

- ~~(2) For the purpose of this subsection, active and diligent management practices means those practices that, under the circumstances, are reasonably likely to prevent or correct any over occupancy violations. The following factors will be considered in determining whether or not a nonresident landlord or nonresident property manager utilized diligent and active management practices. However, the existence or nonexistence of any single one of these factors shall not, of itself, be determinative:~~
- ~~(A) Written leases or other writings that document the maximum permitted number of occupants in each rental housing unit, the names of such occupants, the procedures required to add additional occupants, and a description of the potential consequences that may apply in any case of over occupancy;~~
 - ~~(B) Annual inspections of rental premises and more frequent inspections when tenants change or when there is any indication of problems at a rental housing site;~~
 - ~~(C) The use of periodic written communications to remind tenants of applicable occupancy rules;~~
 - ~~(D) Investigation and prompt action, where appropriate, when there are indications that occupancy violations may be occurring. Such indications may include, but are not limited to, the following:~~
 - ~~(i) Receipt of a rent or lease payment from any person not listed on the lease or approved as an agent of the resident;~~
 - ~~(ii) Receipt of a complaint or information from any source regarding alleged occupancy violations;~~
 - ~~(iii) Receipt of a complaint or information from any source related to excess parking, excess trash, excess noise or of any other condition or impact associated with a rental housing site that would put a reasonable property manager on notice that additional investigation related to occupancy is appropriate;~~
 - ~~(iv) Receipt of a complaint or information from any source suggesting that conditions at the rental housing site are less than safe or habitable; or~~
 - ~~(E) Any other reasonable steps taken to ensure compliance with applicable code provisions with regard to levels of occupancy.~~

Section 3. Section 10-3-2 is amended to read as follows:

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

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

Section 4. Section 10-3-16 is amended to read as follows:

10-3-16. - Administrative Remedy.

- (a) If the city manager finds that a violation of any provision of this chapter or chapter 10-2,
"Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to the
operator and an opportunity for hearing under the procedures prescribed by chapter 1-3,
"Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions
to remedy the violation:
- (1) Impose a civil penalty according to the following schedule:
- (A) For any violation in the following areas: the area south of Arapahoe Avenue, north
of Baseline Road, east of 6th Street and west of Broadway, the area south of
Baseline Road, north of Table Mesa Drive, east of Broadway; and the area west of
U.S Route 36 and the area south of Canyon Boulevard, north of Arapahoe Avenue,
west of Folsom Street and east of 15th Street:
- (i) For the first violation of the provision, ~~\$500~~ \$50.00;
- (ii) ~~(B)~~ For the second violation of the same provision, ~~\$300~~ 750.00; and
- (iii) ~~(C)~~ For the third violation of the same provision, \$1,000.00;
- (B) For a violation in any other area

- 1 (i) For the first violation of the provision \$150
2 (ii) For the second violation of the same provision \$300; and
3 (iii) For the third violation of the same provision \$1,000

- 4 (2) Revoke the rental license; and
5 (3) Issue any order reasonably calculated to ensure compliance with this chapter and
6 chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
7 (b) If notice is given to the city manager by the operator at least forty-eight hours before the
8 time and date set forth in the notice of hearing on any violation that the violation has been
9 corrected, the manager will reinspect the building. If the manager finds that the violation
10 has been corrected, the manager may cancel the hearing.
11 (c) The city manager's authority under this section is in addition to any other authority the
12 manager has to enforce this chapter, and election of one remedy by the manager shall not
13 preclude resorting to any other remedy as well.
14 (d) The city manager may, in addition to taking other collection remedies, certify due and
15 unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-
16 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
17 Collection," B.R.C. 1981.
18 (e) To cover the costs of investigative inspections, the city manager will assess operators a
19 \$250.00 fee per inspection, where the city manager performs an investigative inspection to
20 ascertain compliance with or violations of this chapter.

21 Section 5. A new Section 10-3-20 is added as follows:

22 **10-3-20. - Occupancy.**

- 23 (a) Every operator shall post conspicuously on the inside of the main entrance to each dwelling
24 unit the maximum number of unrelated individuals permitted under section 9-8-5, B.R.C.
25 1981 ("Occupancy of Dwelling Units") in a form specified by the city manager.
26 (b) Each license shall include a notation of the legal occupancy, including the number of
27 unrelated individuals permitted for each dwelling unit covered by the license. Acceptance
28 of the license shall constitute a waiver of any claim for a non-conforming occupancy in
29 excess of the occupancy stated on the license. The Notation on the license shall also not
30 provide the basis for an assertion of non-conforming occupancy.
31 (c) Each advertisement for rental shall include a statement of the maximum occupancy by
32 unrelated individuals permissible pursuant to Section 9-8-5, B.R.C. 1981 of the dwelling
33 unit to be rented.

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

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

Section 8. This ordinance shall be effective January 4, 2016, unless disapproved by the voters pursuant to section 43 of the Boulder Home Rule Charter.

Section 9. The requirements of Section 9-1-5, B.R.C. 1981 “Amendments and Effect of Pending Amendments” are waived.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 1st day of September, 2015.


Mayor

Attest:

Lynette Beck
City Clerk

READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY
TITLE ONLY this 20th day of October, 2015.


Mayor

Attest:

Lynnette Beck
City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED
2 BY TITLE ONLY this 10th day of November, 2015.
3

4 
5 Mayor

6 Attest:

7 
8 City Clerk