

**BOULDER CITY COUNCIL MEETING  
MUNICIPAL BUILDING, 1777 BROADWAY  
SPECIAL MEETING  
Thursday, August 27, 2015  
6 PM**

**AGENDA**

**1. CALL TO ORDER AND ROLL CALL**

**2. PUBLIC HEARING**

There will be **one public hearing** for the following items: **Second reading of Ordinance No. 8050** Amending Title 10 for regulating Short-Term Rentals **AND Second reading of Emergency Ordinance No. 8065** regarding the question of, shall the City of Boulder tax be increased for Short-Term rentals.

- A. Second reading** and consideration of a motion to adopt and order published by title only, **Ordinance No. 8050 amending Title 10** “Structures” for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property” adding a new definition of “Short-Term Rental” adding a new section 10-3-19 “**Short-Term Rentals**” and setting forth related details.
- B. Second reading** and consideration of a motion to adopt **by emergency, Ordinance No. 8065** submitting to the electors of the City of Boulder at the General Municipal Coordinated Election to be held on Tuesday, November 3, 2015, **the question of, shall City of Boulder taxes be increased by up to \$350 thousand annually** (in the first full fiscal year) and by whatever amounts as may be collected annually thereafter by the imposition of **a tax on Short-Term rentals** not already taxed as hotel, motel or other public accommodations, to fund administration, enforcement and the creation of additional affordable housing and giving approval for the collection, retention and expenditure of the full tax proceeds and any earnings relating to this tax notwithstanding any state revenue or expenditure limitation; and setting forth related details.

**3. ADJOURNMENT**

This agenda and the meetings can be viewed at [www.bouldercolorado.gov](http://www.bouldercolorado.gov) / City Council. Meetings are aired live on Municipal Channel 8 and the city’s Web site and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library.

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Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 3:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 27, 2015**

**AGENDA TITLE:** Second reading and consideration of a motion to adopt and order published by title only, Ordinance No. 8050 amending Title 10 “Structures” for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property” adding a new definition of “Short-Term Rental” adding a new section 10-3-19 “Short-Term Rentals” and setting forth related details.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Bob Eichen, Chief Financial Officer

**EXECUTIVE SUMMARY**

The purpose of this council agenda item is to amend the city’s rental licensing code to expressly permit short-term rentals. At the February 10, 2015 study session, the council directed staff to bring forward a draft ordinance incorporating concepts from council’s discussion. The intent is that the council will use the legislative process to receive public input on various policy questions. At first reading on June 2, 2015, council held a public hearing at which approximately 40 individuals testified regarding the ordinance. Council adopted the first reading ordinance as proposed, with the expectation that there could be substantial changes on second reading.

**STAFF RECOMMENDATION**

Suggested Motion Language:

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

Motion to adopt and order published by title only, on second reading Ordinance No. 8050

amending Title 10 “Structures” for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property” adding a new definition of “Short-Term Rental” adding a new section 10-3-19 “Short-Term Rentals” and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic: Short-term rentals provide an alternative to hotels and motels. They may provide increased tourist activity. Short-term rentals also could provide revenue to city residents. Short-term rentals could have an adverse economic effect on hotels and motels.
- Environmental: Increased visitation generated through short-term rentals could also increase the city’s carbon footprint.
- Social: Short-term rentals provide increased opportunities for residents to interact with visitors from other parts of the country or the world. Short-term rentals could adversely affect the neighborhoods in which they are located.

## **OTHER IMPACTS**

Fiscal – Regulation of short-term rentals will require the expenditure of city funds for which there is no budget. Staff intends to bring forward a proposed tax measure for the fall 2015 ballot that would provide revenue to support the regulatory program.

Staff Time – Regulation of short-term rentals will require additional staff.

## **BOARD AND COMMISSION FEEDBACK**

None

## **BACKGROUND**

At a February 10, 2015 study session, council considered regulation of short-term rentals in Boulder. Boulder residents have long rented their homes to visiting vacationers. Previously, such rentals were sporadic and incidental. The so-called “sharing economy” growing out of almost universal internet usage has caused a significant increase in this type of rental activity in Boulder. This growth has coincided with, and been spurred by, the evolution of companies created to facilitate such rentals. In 2008, city staff examined all listings for vacation rentals in Boulder on the website [www.vrbo.com](http://www.vrbo.com). Staff found 31 properties listed, with only 21 actually located in the City of Boulder. In December 2014, staff accessed the website [www.airbnb.com](http://www.airbnb.com) and found over 1800 listings referring to the City of Boulder. Of these, staff confirmed 514 in the city.

On June 2, 2015, council held a public hearing at the first reading of the proposed ordinance to allow for community input. The views expressed by the community were largely supportive of short-term rentals. An organized group proposed an ordinance that

council considered but did not adopt. Several of those who spoke supported allowing short-term rentals of properties not occupied by the owner.

### **Proposed Ordinance**

The proposed ordinance adopted on first reading, included the following provisions:

- Short-term rentals would need to meet all of the requirements of a rental license.
- Short-term rentals would be an accessory use and therefore would be permitted in any zone that permits dwellings, dwelling units, rooming units, or rooms. This would include all residential zones.
- Short-term rentals would be limited to the lessor's principal residence.
- Renters would be permitted to engage in short-term rentals.
- The resident would be required to reside in the unit at least 275 days each year.
- The short-term rental occupancy would be limited to the occupancy otherwise permitted by the code.
- Short-term rentals would be prohibited in permanently affordable units.

### **Effective Date**

The proposed ordinance would be effective thirty days after final passage. These regulations are premised on the assumption that there will be tax revenue to support administration. Council may want to consider whether a different approach should be taken in the event that the tax fails to pass.

### **Potential Amendments**

After the conclusion of the public hearing, council members discussed several possible amendments or different approaches to regulation. In reviewing the council discussion staff identified eight different areas for consideration. These are as follows:

#### **1. Create a de minimus exception, or in the alternative, eliminate the current “sabbatical” exception to the rental licensing code.**

The current rental licensing code includes an exemption that is sometimes referred to as the sabbatical exemption. This provision allows residents to rent a person's principal place of residence for a period of not more than 12 consecutive months in a 24 month period, if the resident is out of the county during the rental period and the resident intends to re-occupy the dwelling at the end of the rental period. The proposed ordinance would have required a rental license for any short-term rental. One council member questioned whether it was fair to require a license for a single one week rental, but not to require a license for a twelve month long-term rental.

Attachment B includes potential amendments to Ordinance 8050 as passed on first reading. Amendment 1 would eliminate the “sabbatical exemption.” Amendment 2 would exempt short-term rentals of less than 14 days in any twelve month period.

Staff recommends elimination of the “sabbatical exemption.” Relieving homeowners from the relatively small burden of obtaining a rental license does not justify the risk associated with the possibility of renting a home that may be unsafe. Obtaining a rental license is relatively simple. A license is required only once every four years. The current fee is \$70. Regardless of this issue, staff already is planning to ask council to consider a fee increase as part of the 2016 budget process. The required inspection is generally \$350. Inspections are done by outside contractors using a city checklist. It is also worth noting that owners taking advantage of this exception will be required to comply with SmartRegs beginning January 2, 2019.

## **2. Clarify the application of the ordinance to a second dwelling unit on the same property.**

During the June 2 council discussion, the city attorney expressed his opinion that the ordinance as drafted would only allow short-term rental of one dwelling unit on a property. There is no express limitation on the rental of such an additional dwelling unit. The reasoning was that only one dwelling unit could be the owner’s principal place of residence. However, the proposed ordinance allows a lessee to engage in short-term rentals. Thus, it is possible that a person occupying an accessory unit as a renter could rent that unit or a part of the unit as a short-term rental. Thus, as drafted, accessory units would be treated the same as principal units, that is, they could be rented short term as long as they were owner-occupied. All accessory units have an occupancy limit of two persons. Under the ordinance as drafted, any short-term rental of an accessory unit would be limited to two people.

Amendment 3 is a potential amendment allowing short-term rental of all accessory units, even if it is not a principal place of residence. Amendment 4 would prohibit short-term rental of all accessory units.

## **3. Limitation on number of licenses instead of requiring that short-term rentals be owner-occupied.**

One suggestion for limiting the impact of short-term rentals on the long-term rental stock was to impose a limit on the number of short-term rental licenses that could be issued rather than limiting such rentals to owner-occupied dwelling units. The issue with a numeric limitation is deciding to whom the licenses will be issued. It would seem that the fairest means to allocate licenses would be on a first come, first served basis. Staff recommends that if council limits the number of licenses, that the number be sufficiently large so as not to encourage disregard for the law. The imposition of a limit on the number of licenses would create a significant increase in the administrative burden associated with this program. The proposed ordinance was drafted to fit into the business process used currently for rental licensing. If the number of short-term licenses is limited then staff will have to create a separate class of license for short-term rentals and keep track of the number.

Amendment 5 would limit the number of short-term rental licenses to 1000 and eliminate the requirement that the unit be owner occupied.

**4. Remove provision allowing renters to sublease as short-term rentals.**

At least one council member questioned whether renters should be permitted to engage in short-term rental of their rented homes. Amendment 6, would remove the language expressly permitting renters to engage in short-term rentals.

**5. “Grandfather” existing short-term rentals.**

Another council member suggested that we should impose restrictions, but not apply those to those who have been renting short term. Amendment 7 would exempt those who can demonstrate a history of short-term rental from the requirement that the unit be owner-occupied. Similar language could be used to exempt existing renters from other requirements.

**6. Restrict advertising of illegal rentals.**

One of the most difficult challenges in rental licensing enforcement is proving that a dwelling unit is being occupied without a rental license. It would make violations much easier to prove, if the code were to be clarified to ban advertising of illegal rentals. Amendment 8 would impose such a restriction. The proposed amendment would apply to both existing rental licenses and new rental licenses.

**7. Impose energy requirements on short-term rentals.**

There was a suggestion that short-term rentals should be required to comply with the same energy requirements as those to which long-term rentals will be subject in 2019. The proposed ordinance treats short-term rentals the same as long-term rentals. Thus, the SmartRegs requirements would apply to all licensed rentals, both short-term and long term as of January 2, 2019.

**8. Eliminate owner-occupied requirement and limit licenses to one license per resident.**

Council Member Young proposed replacing the owner-occupied restriction with a limitation of one license per resident. Amendment 9 would effect this change.

**ATTACHMENTS**

**Attachment A** - Ordinance 8050 as passed on first reading

**Attachment B** - Proposed amendments

ORDINANCE NO. 8050

AN ORDINANCE AMENDING TITLE 10 “STRUCTURES” AMENDING SECTION 10-1-1 “DEFINITIONS” BY AMENDING THE DEFINITION OF “OPERATOR,” AMENDING THE DEFINITION OF “RENTAL PROPERTY” ADDING A NEW DEFINITION OF “SHORT-TERM RENTAL” ADDING A NEW SECTION 10-3-19 “SHORT-TERM RENTALS” AND SETTING FORTH RELATED DETAILS.

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

Section 1. Amend section 10-1-1 as follows:

**10-1-1. – Definitions.**

...

*Operator* means any person, who is an owner, is an owner’s representative, has charge of, or controls any dwelling or parts thereof. An operator includes a lessee.

...

*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.

...

Short-term rental means any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit, room rented or leased for valuable consideration for periods of time less than 30 days, but excludes commercial hotels, motels or bed and breakfasts. A short-term rental is a use that is accessory to such dwelling, dwelling unit, rooming unit, or room.

...

Section 2. A new section 10-3-19 is added to read:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- (a) The rental is of the operator’s principal residence;
- (b) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 (“Occupancy of Dwelling Units”);

- 1 (c) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- 2 (d) The rental property is not a permanently affordable unit.

3 Section 3. The City Council deems it appropriate that this ordinance be published by title  
 4 only and orders that copies of this ordinance be made available in the office of the city clerk for  
 5 public inspection and acquisition.

6 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
 7 TITLE ONLY this 2nd day of June, 2015.

8  
 9  
 10 \_\_\_\_\_  
 Mayor

11 Attest:

12 \_\_\_\_\_  
 13 City Clerk

14 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
 15 PUBLISHED BY TITLE ONLY this 27<sup>th</sup> day of August, 2015.

16  
 17  
 18 \_\_\_\_\_  
 Mayor

19 Attest:

20 \_\_\_\_\_  
 21 City Clerk

**Attachment B**

**Amendment 1 – Eliminate the “Sabbatical” exemption**

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

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

- (a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.
  - (1) Any dwelling unit occupied by the owner or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the 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.
  - (3) Common areas and elements of buildings containing attached, but individually owned, dwelling units.

**Amendment 2 – Create a de minimus exemption for short-term rentals.**

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

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

- (a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.
  - (1) Any dwelling unit occupied by the owner or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the 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.
  - (4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.
  - (5) Any dwelling unit rented for fourteen days or less during any calendar year.

**Amendment 3 – Allow short-term rental of accessory units.**

Section 10-3-19 is amended to read as follows:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- (a) The rental is of the operator’s principal residence or the dwelling unit is an accessory unit permitted under section 9-6-3(a), B.R.C 1981;
- (b) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 (“Occupancy of Dwelling Units”);
- (c) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- (d) The rental property is not a permanently affordable unit.

**Amendment 4 – Prohibit short-term rental of accessory units.**

Section 10-3-19 is amended to read as follows:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- (a) The rental is of the operator’s principal residence unless the dwelling unit is an accessory unit permitted under section 9-6-3(a), B.R.C 1981;
- (b) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 (“Occupancy of Dwelling Units”);
- (c) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- (d) The rental property is not a permanently affordable unit.

**Amendment 5 – Limitation on number of licenses instead of requiring that short-term rentals be owner-occupied.**

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

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

- (a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.
  - (1) Any dwelling unit occupied by the owner or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the 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.
  - (4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.
- (c) The city manager shall allow no more than 1000 short-term rental licenses to be active at any one time.

Section 10-3-19 is amended to read as follows:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- ~~(a)~~ ~~The rental is of the operator's principal residence;~~
- (a) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 ("Occupancy of Dwelling Units");
- (b) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- (c) The rental property is not a permanently affordable unit.

**Amendment 6 – Exclude renters**

The definition of “Operator” in Section 10-1-1 is amended to read as follows:

*Operator* means any person, who is an owner, is an owner’s representative, has charge of, or controls any dwelling or parts thereof. An operator does not include a lessee.

**Amendment 7 – Grandfather existing hosts**

Section 10-3-19 is amended to read as follows:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- (a) The rental is of the operator’s principal residence, provided, however, that this restriction does not apply to any dwelling unit for which the operator can demonstrate to the city manager’s satisfaction that the dwelling unit was available and rented as a short-term rental on or before August 1, 2015;
- (b) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 (“Occupancy of Dwelling Units”);
- (c) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- (d) The rental property is not a permanently affordable unit.

**Amendment 8 – Restrict Illegal Advertising**

Amend section 10-3-2(a) to read as follows:

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

- (a) No operator shall allow, or offer to allow through advertisement or otherwise, any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.

**Amendment 9 – Eliminate owner-occupied requirement and limit licenses to one license per resident.**

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

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

- (a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.
  - (1) Any dwelling unit occupied by the owner or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the 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.
  - (4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.
- (c) The city manager shall issue short-term rental licenses only to residents of the city of Boulder. No person may have more than one license active at any one time.

Section 10-3-19 is amended to read as follows:

**10-3-19. – Short-Term Rentals.**

Short-term rentals are prohibited except:

- ~~(a)~~ The rental is of the operator's principal residence;
- (a) The occupancy during any rental period does not exceed the occupancy permitted pursuant to section 9-8-5, B.R.C 1981 ("Occupancy of Dwelling Units");
- (b) The operator resides in the premises rented for a period of at least 275 days in each calendar year; and
- ~~(c)~~ The rental property is not a permanently affordable unit.



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 27, 2015**

**AGENDA TITLE:** Second reading and consideration of a motion to adopt Ordinance No. 8065, submitting to the electors of the City of Boulder at the General Municipal Coordinated Election to be held on Tuesday, November 3, 2015, the question of, shall City of Boulder taxes be increased by up to \$350 thousand annually (in the first full fiscal year) and by whatever amounts as may be collected annually thereafter by the imposition of a tax on short-term rentals not already taxed as hotel, motel or other public accommodations, to fund administration, enforcement and the creation of additional affordable housing and giving approval for the collection, retention and expenditure of the full tax proceeds and any earnings relating to this tax notwithstanding any state revenue or expenditure limitation; and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

Bob Eichen, Chief Financial Officer

David Driskell, Executive Director of Community Planning and Sustainability

Maureen Rait, Executive Director of Public Works

Cheryl. Pattelli, Director of Finance

Alisa Lewis, City Clerk

Cheryl Pattelli, Director of Finance

Pat Brown, Revenue and Licensing Officer

Peggy Bunzli, Budget Officer

Elena Lazarevska, Senior Financial Analyst

## **EXECUTIVE SUMMARY**

On August 4, 2015, council passed Ordinance No. 8065 on first reading. The ordinance submits to the voters a ballot issue for a tax of short-term rental transactions.

The discussion by council leading up to Ordinance No. 8065 indicated there was interest in developing a new category of taxation in the Boulder tax code. The tax would be the same rate as the accommodations tax. The basis for the distinction of the short-term rental tax and the accommodations tax is to recognize that short-term rentals are based on a different business model and usually occur in residential style dwellings rather than commercial type buildings. Though these types of transactions have similarities to the hotel and motel accommodations tax they are expected to require more intense administration and compliance efforts. These transactions are part of a distinct and separate part of a new business segment sometimes called the sharing economy.

The projected income for the first full year of compliance ranges from \$150 to \$350 thousand. The range is large due to not knowing for certain, at this time, what the scope of regulatory allowance may allow. Full compliance would most likely not occur until 2017 when the education program is more effective. The amount of the actual collections will be dependent on what would be made legal and of course if the voters approve it. For Taxpayer Bill of Rights (TABOR) purposes the amount for first reading is set at the higher end. There is no penalty under TABOR if the revenue projection is not met.

## **STAFF RECOMMENDATION**

### **Suggested motion language:**

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

Motion to adopt Ordinance No. 8065 submitting to the registered electors of the City of Boulder, at the general municipal coordinated election to be held on November 3, 2015, the question of, shall City of Boulder taxes be increased by up to \$350 thousand annually (in the first full fiscal year) and by whatever amounts as may be collected annually thereafter by the imposition of a tax on short-term rentals not already taxed as hotel, motel or other public accommodations, to fund administration, enforcement and the creation of additional affordable housing and giving approval for the collection, retention and expenditure of the full tax proceeds and any earnings relating to this tax notwithstanding any state revenue or expenditure limitation; and setting forth related details.

## **BACKGROUND and ANALYSIS**

The agenda materials for first reading on August 4 can be found at:

<https://documents.bouldercolorado.gov/weblink8/0/doc/129844/Electronic.aspx>

The following link leads to the Feb. 10 agenda packet when 2015 ballot items were considered by the City Council.

<https://documents.bouldercolorado.gov/WebLink8/0/doc/127865/Electronic.aspx>

As follow up to the February 18 meeting, more specific ballot topics were considered at the April 14 study session. The meeting and what was discussed at the study session can be found on the following video link labeled as agenda item number 2.

[http://boulderco.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=433](http://boulderco.granicus.com/MediaPlayer.php?view_id=2&clip_id=433)

### **NEXT STEPS**

If this proposed ballot issue is passed on final reading it will be considered by the voters at the November 3, 2015 election.

### **ATTACHMENT**

Attachment A – Ordinance No. 8065

ORDINANCE NO. 8065

(Short-Term Rental Tax)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE SPECIAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2015, THE QUESTION OF WHETHER THE CITY OF BOULDER TAXES BE INCREASED BY UP TO FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) ANNUALLY (IN THE FIRST FULL FISCAL YEAR) AND BY WHATEVER AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY THE IMPOSITION OF A TAX ON SHORT-TERM RENTALS NOT ALREADY TAXED AS HOTEL, MOTEL OR OTHER PUBLIC ACCOMODATIONS, TO FUND ADMINISTRATION, ENFORCEMENT AND THE CREATION OF ADDITIONAL AFFORDABLE HOUSING AND GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY EARNINGS RELATING TO THIS TAX NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, county of Boulder and state of Colorado, on Tuesday, November 3, 2015, between the hours of 7 a.m. and 7 p.m.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of authorizing a short term rental tax on the lease or rental of dwelling units for periods of less than thirty days and spend the revenues generated from such tax notwithstanding any state revenue or expenditure limitations.



1 The purpose of this tax is to level the playing field for short-term rentals by imposing a tax on  
 2 the rental of dwelling units in private residences in an amount equal to that paid by hotels, motels  
 3 and other public accommodations. It is council's intent that this program be self-sufficient.  
 4 Proceeds from the tax will first be used to fund enforcement and administration of the short-term  
 5 rental regulatory program. The conversion of residential dwelling units into short-term rentals  
 6 can adversely affect the supply of affordable housing in Boulder. Accordingly, after  
 7 administration expenses are met, any additional funds shall be placed in the city's affordable  
 8 housing fund.

### 6 **3-15-2. - Imposition and Rate of Tax.**

7  
 8 There is and shall be paid and collected an excise tax of seven and one-half percent on  
 9 the price paid for the leasing or rental of any dwelling unit for a period of thirty days or less.  
 10 This tax does not apply to any person subject to Chapter 3-3 "Public Accommodations Tax,"  
 11 B.R.C. 1981.

### 11 **3-15-3. - Liability for Tax.**

- 12 (a) No lessee or renter of a dwelling unit, for any period of thirty days or less shall fail  
 13 to pay, and no lessor or renter of such dwelling shall fail to collect, the tax levied by  
 14 this chapter.  
 15 (b) The burden of proving that any transaction is not subject to the tax imposed by this  
 16 chapter is upon the person upon whom the duty to collect the tax is imposed.

### 17 **3-15-4. - Taxes Collected Are Held in Trust.**

18 All sums of money paid by a person who leases or rents any dwelling unit as the short  
 19 term rental tax imposed by this chapter are public monies that are the property of the city. The  
 20 person required to collect and remit the short term rental tax shall hold such monies in trust for  
 21 the sole use and benefit of the city until paying them to the city manager.

### 22 **3-15-5. - Exempt Transactions.**

23 The following entities and transactions are exempt from the duty to pay tax under this  
 24 chapter but not the duty to collect and remit the tax levied hereby:

- 25 (a) The United States Government, the State of Colorado, its departments and  
 26 institutions and the political subdivisions thereof including the city, when acting in  
 27 their governmental capacities and performing governmental functions and activities,  
 28 and when the government's obligation is paid for directly to the licensee by a  
 purchase card or a draft or warrant drawn on the government's account; and  
 (b) Religious, charitable and quasi-governmental organizations but only in the conduct  
 of their regular religious, charitable and quasi-governmental capacities, only if each  
 such organization has obtained an exempt organization license under section 3-2-  
 12, "Exempt Institution License," B.R.C. 1981, and furnishes the exempt tax license  
 to the person who rents or leases a dwelling unit to the organization, and only if the

1 organization's obligations have been paid for directly by it to the short term rental  
2 tax licensee without reimbursement therefor.

- 3 (c) Burden of Proof for Exemptions. The burden of proving that any person or entity  
4 is exempt from payment of the short term rental tax under this section shall be on  
5 the person or entity claiming such exemption, and such proof shall be by a  
6 preponderance of evidence.
- 7 (d) Limitations. Nothing contained in this chapter shall be construed to empower the  
8 city to levy and collect the tax hereby imposed upon any taxpayer not within the  
9 taxing power of the city under the laws of the United States or the State of  
10 Colorado.

11 **3-15-6. - Licensing and Reporting Procedure.**

- 12 (a) Every person with a duty to collect the tax imposed by this chapter shall obtain a  
13 license to collect the tax and shall report such taxes collected on forms prescribed  
14 by the city manager and remit such taxes to the City on or before the twentieth day  
15 of the month for the preceding month or months under report.
- 16 (b) The city manager shall issue a short term rental tax license to persons who pay the  
17 fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete  
18 an application therefor stating the name and address of the person and the business  
19 and such other information as the manager may require. The license shall be  
20 numbered, show the name, residence, place and character of the business of the  
21 license of the licensee, and be conspicuously posted in the place of business for  
22 which it is issued. No short term rental tax license is transferable. The manager  
23 shall not issue a short term rental tax license until the zoning administrator has  
24 verified that the location of the business complies with the provisions of title 9,  
25 "Land Use Code," B.R.C. 1981. The license is effective until December 31 of the  
26 year of issue, unless sooner revoked.
- 27 (c) The license is valid so long as the business remains in continuous operation or the  
28 license is canceled by the licensee or revoked by the City.
- (d) Whenever a business entity that is required to be licensed under this chapter is sold,  
purchased or transferred, so that the ownership interest of the purchaser or seller  
changes in any respect, the purchaser shall obtain a new short term rental tax  
license.
- (e) The license may be revoked as provided in section 3-2-13, "Revocation of License,"  
B.R.C. 1981.

29 **3-15-7. - Maintenance and Preservation of Tax Returns, Reports and Records.**

- 30 (a) The city manager may require any person to make such return, render such  
31 statement or keep and furnish such records as the manager may deem sufficient and  
32 reasonable to demonstrate whether or not the person is liable under this chapter for  
33 payment or collection of the tax imposed hereby.
- 34 (b) Any person required to make a return or file a report under this chapter shall  
35 preserve those reports as provided in section 3-2-18, "Taxpayer Duty to Keep  
36 Records, Provide Information and File Returns," B.R.C. 1981.

- 1 (c) The city manager shall maintain all reports and returns of taxes required under the  
2 chapter as provided in section 3-2-20, "Preservation of Tax Returns and Reports,"  
3 B.R.C. 1981.

4 **3-15-8. - Interest and Penalties for Failure to File Tax Return or Pay Tax.**

- 5 (a) Penalties for failure of a person to collect the short term rental tax or to make a  
6 return and remit the correct amount of tax required by this chapter and procedures  
7 for enforcing such penalties are as prescribed in section 3-2-22, "Penalties for  
8 Failure to File Tax Return or Pay Tax (Applies to Entire Title)," B.R.C. 1981.  
9 (b) Interest on overpayments and refunds is as prescribed in section 3-2-24, "No  
10 Interest on Overpayments and Refunds (Applies to Entire Title)," B.R.C. 1981.

11 **3-15-9. - Refunds.**

12 Refunds of taxes paid under this chapter are as prescribed in section 3-2-23, "Refunds  
13 (Applies to Entire Title)," B.R.C. 1981.

14 **3-15-10. - Enforcement of Tax Liability.**

- 15 (a) The short term rental tax imposed by this chapter, together with all interest and  
16 penalties pertaining thereto, is a first and prior lien on tangible personal property in  
17 which the person responsible to collect and remit the tax has an ownership interest,  
18 subject only to valid mortgages or other liens of record at the time of and prior to  
19 the recording of a notice of lien, as provided in subsection 3-2-27(c), B.R.C. 1981.  
20 (b) The provisions of sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale of  
21 Business Subject to Lien," 3-2-30, "Certificate of Discharge of Lien," 3-2-31,  
22 "Jeopardy Assessment," 3-2-32, "Enforcing the Collection of Taxes Due (Applies to  
23 Entire Title)," 3-2-33, "Recovery of Unpaid Tax by Action at Law," 3-2-34, "City  
24 May Be a Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations of  
25 Fiduciaries and Others," 3-2-37, "Violations of Tax Chapter," and 3-2-38,  
26 "Limitations," B.R.C. 1981, govern the authority of the city manager to collect the  
27 taxes, penalties and interest imposed by this chapter.

28 **3-15-11. - Duties and Powers of City Manager.**

The city manager is authorized to administer the provisions of this chapter and has all  
other duties and powers prescribed in section 3-2-17, "Duties and Powers of City Manager,"  
B.R.C. 1981.

**3-15-12. - City Employee Conflicts of Interest Prohibited.**

No deputy, agent, clerk or other officer or employee of the City engaged in any activity  
governed by this chapter shall engage in the business or profession of tax accounting or accept  
employment with or without compensation from any person holding a short term rental tax  
license from the City for the purpose, directly or indirectly, of preparing tax returns or reports

1 required by the City, the State of Colorado, its political subdivisions, any other state or the  
2 United States, or accept any employment for the purpose of advising, preparing materials or data  
3 or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that  
4 has been assessed by the City, the State of Colorado, its political subdivisions, any other state, its  
5 political subdivisions or the United States.

6 Section 5. If a majority of all the votes cast at the election on the measure submitted shall  
7 be for the measure, the measure shall be deemed to have passed and shall be effective upon  
8 passage, and it shall be lawful for the City Council to provide for the amendment of its tax code  
9 in accordance with the measure approved.

10 Section 6. The election shall be conducted under the provisions of the Colorado  
11 Constitution, the charter and ordinances of the City, the Boulder Revised Code, 1981, and this  
12 ordinance, and all contrary provisions of the statutes of the state of Colorado are hereby  
13 superseded.

14 Section 7. The officers of the City are authorized to take all action necessary or  
15 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
16 conduct the election for the City.

17 Section 8. If any section, paragraph, clause, or provision of this ordinance shall for any  
18 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
19 provisions of this ordinance.

20 Section 9. This ordinance is necessary to protect the public health, safety, and welfare of  
21 the residents of the City, and covers matters of local concern.

22 Section 10. The council deems it appropriate that this ordinance be published by title  
23 only and orders that copies of this ordinance be made available in the office of the city clerk for  
24 public inspection and acquisition.  
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26  
27  
28

1 INTRODUCTION, READ ON FIRST READING, AMENDED, AND ORDERED

2 PUBLISHED BY TITLE ONLY this 4th day of August 2015.

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4  
5 \_\_\_\_\_  
Mayor

6 Attest:

7  
8 \_\_\_\_\_  
9 City Clerk

10 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

11 PUBLISHED BY TITLE ONLY this 27<sup>th</sup> day of August 2015.

12  
13  
14 \_\_\_\_\_  
Mayor

15 Attest:

16  
17 \_\_\_\_\_  
18 City Clerk