

**CITY OF BOULDER
PLANNING BOARD AGENDA ITEM**

MEETING DATE: April 21, 2016

AGENDA TITLE: Public hearing to consider a recommendation to City Council on an ordinance amending Title 9, "Land Use Code," B.R.C. 1981, to encourage the creation of more cooperative housing units.

REQUESTING DEPARTMENT:

City Attorney's Office

Tom Carr, City Attorney

David Gehr, Deputy City Attorney

Hella Pannewig, Assistant City Attorney

Planning, Housing + Sustainability

David Driskell, Executive Director

Susan Richstone, Deputy Director

Charles Ferro, Development Land Use Review Manager

OBJECTIVES:

1. Hear Staff presentation
2. Planning Board discussion
3. Recommendations on changes to the code

PURPOSE

The purpose of this item is Planning Board consideration of a recommendation to City Council on the following proposed code changes to encourage the creation of cooperative housing units.

BACKGROUND / ANALYSIS:

In February 1994, a group called the Cooperative Housing Committee presented an outline for a cooperative housing ordinance to the city council. Council directed staff to work with the community, CHC and the planning board to draft an ordinance for Council to consider. Staff held two community workshops and worked with CHC to prepare a draft ordinance that the planning board considered over the next 30 months. The planning board reviewed the proposal at the November 2, 1995 meeting, the December 14, 1995 meeting and the April 25, 1996 meeting. Council considered the proposed ordinance at the July 16, 1996, August 6, 1996, September 3, 1996 and September 17, 1996 council meetings. Council adopted ordinance number 5806 on fourth reading.

Two years later, the Boulder Housing Coalition asked Council to consider some changes to the provisions in ordinance number 5806. Council did so and adopted ordinance number 6036 on December 1, 1998. There have been no significant changes in the intervening seventeen years. Although the original plan was to limit the number of applications, this was unnecessary because the city has never received an application under the cooperative housing code provisions. Several factors were likely have driven this outcome, primarily the greater interest in development of rental co-ops such as Masala, Chrysalis and Ostara, which are not covered by the cooperative housing ordinance. In addition, in the absence of any significant enforcement of over-occupancy, there is no incentive to undertake compliance with the strict city code provisions.

At its January 2014 retreat, Council requested that staff identify and propose some “early wins” that could help improve conditions while more significant policy work was undertaken through the Comprehensive Housing Strategy. At the May 27, 2014 study session, staff identified five short term actions, including increasing the permitted occupancy for seniors. Council directed staff to develop an ordinance to implement this proposal. Staff drafted an ordinance that would have permitted up to six unrelated individuals over the age of 62 to live together in the Rural Residential, Residential Estate and Residential Low Density zone districts. The planning board considered the proposed changes at its July 31, 2014 meeting and by a six to one vote recommended approval of the draft ordinance with the addition of a provision increasing the occupancy to ten unrelated in the RR and RE zone districts, provided one resident was the property owner.

Council considered the proposed ordinance on first reading at the September 2, 2014 council meeting. Forty-one people spoke at open comment. Of those, eleven spoke specifically about the proposed occupancy change. Four spoke in favor and six spoke against. In addition, five people expressed general concerns regarding density in Boulder. Council decided not to pass the proposed ordinance on first reading.

At the 2015 Council retreat, Council directed staff to explore ways in which the city’s occupancy limits could be enforced more effectively. At the May 28, 2015 special council meeting, Council considered a staff presentation of seven options to better enforce the city’s occupancy limits in residential properties. Council directed staff to prepare an ordinance implementing four of the seven options. Council held a public hearing on second reading at the September 15, 2015 council meeting. Eighty-three people spoke at the public hearing. The vast majority of speakers expressed their opposition to any enforcement of the city’s occupancy limits. Several stated that they resided in co-ops and should not be subject to the city’s occupancy limitations. There was a view expressed that the city should enforce only for quality of life impacts associated with over occupancy and not for occupancy itself.

Council passed the occupancy enforcement ordinance on third reading at the November 10, 2015 council meeting. Two council members made public statements reassuring residents of illegal co-ops that this ordinance was not intended to be used against them. Both council members provided their personal telephone numbers in the event that the city took enforcement action. Prior to the meeting, someone had submitted an anonymous complaint about over-occupancy at a well-known illegal housing co-op. Without knowing anything other than the address, a staff member contacted the management company associated with the property to schedule a meeting to discuss the complaint. The residents contacted the council members and

council members asked staff not to pursue enforcement. At the November 17, 2015 council meeting, staff raised the issue and sought full council direction regarding future enforcement. Council asked staff to not enforce against legitimate housing co-ops, while Council considered the cooperative housing code provisions.

In 2015, Council faced a similar situation with respect to short-term rentals. That is, in December 2014, staff issued enforcement notices pursuant to a standing city policy with respect to complaints about short-term rentals. This created concern in the community. Staff decided to hold off on further enforcement while Council considered adopting an ordinance regulating short-term rentals. Council held a study session to provide initial direction to staff. Staff brought back a first reading ordinance. Council held two public hearings to consider community input. Ultimately, Council shaped an ordinance without substantial staff work or community outreach outside of the legislative process, although there was significant community participation in that process. The current plan is to adopt a similar approach with respect to the cooperative housing code provisions.

On January 26, 2016, council held a study session to provide direction on a potential first reading ordinance relating to cooperative housing.¹ On April 5, 2016, council approved the study session summary for the January 26, 2016 study session.² Based on council feedback, staff drafted a proposed ordinance. Staff posted a copy of the proposed ordinance on the council Hotline on March 24, 2016. A copy of the proposed ordinance is [attachment A](#). Staff received two emails commenting on the proposed ordinance. Staff posted copies of these responses on the council Hotline as well. Copies of the emails are [attachment B](#).

On April 5, 2016, staff met with representatives of the Boulder Community Housing Association to discuss the proposed ordinance. As a result of this meeting, staff produced a revised ordinance. Staff also made some changes based on feedback from council member Aaron Brockett. A copy of the revised ordinance is [attachment C](#).

PROPOSED ORDINANCE

The proposed ordinance is a first reading ordinance intended to implement the direction provided by the city council on January 26, 2015. At a high level, council's direction was to facilitate the creation of cooperative housing units, while at the same time limiting the effects on the neighborhoods and on the availability of housing for families. The proposed ordinance attempts to strike a balance between facilitating cooperatives and protecting the community. The ordinance includes the following major elements:

- Cooperative housing units would be an allowed use in zoning districts where previously they were a conditional use.
- Cooperatives would be regulated much like rentals, including licensing, initial inspections and renewal inspections.

1 The study session memorandum can be found at the following link:

<https://documents.bouldercolorado.gov/weblink8/0/doc/131329/Electronic.aspx>

2 A copy of the approved study session summary can be found at the following link:

<https://documents.bouldercolorado.gov/weblink8/0/doc/132151/Electronic.aspx>.

- Cooperatives would be exempt from the Title 9 occupancy limits. They would be subject to the limit in the international property maintenance code.
- Rental cooperatives would be subject to a limitation on rent.
- The cooperatives would be required to maintain compatibility with the surrounding neighborhood. This restriction would be enforced through an administrative process in the municipal court, subject to a right to cure through community mediation.
- Cooperatives would be required to develop a parking reduction plan to limit to no more than three, the number of cars parked in the right of way. This plan could include a requirement that all members of the cooperative be required to have a bus pass.

Section by Section Description

Section 1

Adds a new fee in section 4-20-69 for cooperative housing licenses. The fee in the proposed ordinance is the same as that imposed for rental licenses.

Section 2

Amends table 9-6-1 to make cooperative housing an allowed use in the zoning districts where it previously was a conditional use. There is no change to the zone districts in which use review was required.

Section 3

Repeals section 9-6-3(b).

Section 4

Amends section 9-8-5 to exempt cooperative housing units from the city's occupancy limits. The only limit would be the International Property Maintenance Code, which is incorporated in to the Boulder Revised Code by section 10-2-2. The IPMC includes the following occupancy limitation: "Every living room shall contain at least 120 square feet and every bedroom shall contain a minimum of 70 square feet and every bedroom occupied by more than one person shall contain a minimum of 50 square feet of floor area for each occupant thereof."

Section 5

Amends the definition of "Cooperative housing unit" in section 9-16-1 to conform to the new definition in section 10-1-1

Section 6

Adds to section 10-1-1, definitions of "Cooperative," "Cooperative Housing Unit," "Limited Equity Cooperative," "Private Equity Cooperative," and "Rental Cooperative."

Section 7

Adds a new chapter 10-11.

Section 10-11-1

Legislative Intent.

Section 10-11-2

Requires a cooperative housing license before a cooperative is occupied.

Section 10-11-3

Imposes terms for licenses. This section is adapted from section 10-3-3, which regulates rental licenses. It includes a four year renewal period and an inspection requirement. The section also includes dispersion requirements. These are similar to the existing requirements, although references to group homes and accessory units have been eliminated. The section also includes a limit of five licenses per year for each of the three types of cooperatives.

Section 10-11-4

Establishes procedures for applications for cooperative housing licenses. This section also follows a similar section in chapter 10-3. Only fee simple owners may apply for licenses. If there are multiple owners, they must all apply. The reasoning is that the city needs to be able to identify a responsible party. The actual owner of the property is readily identified. The applicant must submit an inspection report and a contract with a trash hauler in the same manner as is required for rental housing. The applicant also is required to submit a parking management plan at the time of initial application and renewal.

Section 10-11-5

Establishes renewal procedures.

Section 10-11-6

Allows the city manager to issue a temporary license if a property fails the inspection.

Section 10-11-7

Provides for an appeal of a denial of a temporary license.

Section 10-11-8

Provides for termination of the license if it is not renewed, if there is an order to vacate, if a temporary certificate of occupancy expires or if the certificate of occupancy is terminated.

Section 10-11-9

Provides for license fees.

Section 10-11-10

Requires that the license be made available to residents of the cooperative or the city upon demand. There is no requirement to post the license.

Section 10-11-11

Makes a parking management plan a condition of issuing a license. The plan must limit the number of cars from the cooperative parked in the right of way to three. The plan can include a requirement that all residents have a bus pass.

Section 10-11-12

Requires the licensee to take reasonable steps to reduce the cooperative's impact on parking, noise, trash and weeds.

Section 10-11-13

Limits the rent that can be charged in an entire rental cooperative to no more than that which would be affordable to a family earning the median family income in Boulder. The city manager is required to adopt a maximum rent based upon the Colorado Housing and Finance Income and Rent Tables or similar resource. For 2015 those rents would be as follows:

Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
\$1,740	\$1,865	\$2,237	\$2,585	\$2,885

Section 10-11-14

Provides the city manager the authority to order the property vacated for building code violations.

Section 10-11-15

Provides the city manager with authority to impose a civil penalty after notice and opportunity for a hearing. It includes enhanced penalties for Martin Acres, University Hill and Goss Grove. For violations based on incompatibility with the neighborhood, any hearing can be continued if the licensee engages in community mediation with concerned neighbors. The city manager may dismiss a violation if community mediation results in a plan to make the cooperative compatible with the neighborhood.

Section 10-11-16

Provides for a criminal penalty. This is identical to the provision in chapter 10-3.

Section 10-11-17

Authorizes the city manager to issue rules.

PROPOSED REVISED ORDINANCE

The revised ordinance includes the following changes.

Section 9-8-5(d)

Imposes an occupancy limit of no more than one person per 200 square feet of habitable space.

Section 10-1-1

Includes a definition of a Cooperative Housing Organization.

Section 10-11-4(a)

Allows a prospective tenant to apply, with the property owner's written approval, to convert a valid rental license into a cooperative housing license.

Section 10-11-4(b)(1)(D)

Adds a requirement that an applicant supply a certificate from a Cooperative Housing Organization certifying that the applicant is a legitimate cooperative. There was a concern that landlords could use the ordinance to legitimize over-occupancy. With a limited number of licenses available each year, this could drive out real cooperatives. This provision would allow a third-party to establish and apply criteria to limit licenses to those actually engaged in cooperative living.

Section 10-11-11

Imposes a limit of four cars for each property.

Section 10-11-12

Adds criteria to define the concept of compatibility with the neighborhood. It also provides that the city manager cannot seek to revoke a license based upon complaints from a single person.

Section 10-11-13

Converts the rent limitation from being based upon affordability to average rental rates in Boulder. The proposal would limit rents to 110% of the average, which would allow for some additional compensation to landlords.

STAFF RECOMMENDATION (MOTION LANGUAGE):

Staff recommends that Planning Board recommend approval to the City Council of an ordinance amending Title 4, "Licenses and Permits," Title 9, "Land Use Code," and Title 10 "Structures," B.R.C. 1981 to support the creation of cooperative housing units.

Approved By:



David Driskell, Executive Director
Department of Community Planning and Sustainability

ATTACHMENTS

- A. Draft ordinance
- B. Emails providing feedback
- C. Revised ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 4 “LICENSES AND PERMITS BY ADDING A NEW SECTION 4-20-69 “COOPERATIVE HOUSING LICENSE FEE,” AMENDING TITLE 9 “LAND USE CODE” BY AMENDING TABLE 9-6-1 TO MAKE COOPERATIVE HOUSING AN ALLOWED USE IN CERTAIN ZONE DISTRICTS, BY AMENDING SECTION 9-6-3, ELIMINATING THE REQUIREMENT OF A SPECIAL USE PERMIT FOR COOPERATIVE HOUSING, AMENDING TITLE 10 “STRUCTURES” BY ADDING A NEW CHAPTER 11 “COOPERATIVE HOUSING” ESTABLISHING REQUIREMENTS FOR LICENSING HOUSING COOPERATIVES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A new section 4-20-69 is added as follows:

4-20-18. – Cooperative Housing License Fee.

The following fees shall be paid before the city manager may issue a rental license or renew a rental license:

(a) \$105 per license or renewal.

(b) To cover the cost of investigative inspections, the city manager will assess to licensees a \$250 fee per inspection, where the city manager has performed an investigative inspection to ascertain compliance with or violations of chapter 10-11 “Cooperative Housing,” B.R.C. 1981.

Section 2. Table 9-6-1 is amended as set forth in an attachment A.

Section 3. Section 9-6-3(b) is repealed and subsequent sections are renumbered.

Section 4. Section 9-8-5 is amended as follows:

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

1 (a) General Occupancy Restrictions: Subject to the provisions of Chapter 10-2,
2 "Property Maintenance Code," B.R.C. 1981, no persons except the following persons shall
3 occupy a dwelling unit:

4 (1) Members of a family plus one or two roomers. The quarters that the roomers use
5 shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate
6 dwelling unit;

7 (2) Up to three persons in P, A, RR, RE, and RL zones;

8 (3) Up to four persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT, IS, IG, IM,
9 and IMS zones; or

10 (4) Two persons and any of their children by blood, marriage, guardianship, including
11 foster children, or adoption.

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

15 (c) Nonconformity: A dwelling unit that has a legally established occupancy higher
16 than the occupancy level allowed by Subsection (a) of this section may maintain such occupancy
17 of the dwelling unit as a nonconforming use, subject to the following:

18 (1) The higher occupancy level was established because of a rezoning of the property,
19 an ordinance change affecting the property, or other city approval;

20 (2) The rules for continuation, restoration, and change of a nonconforming use set
21 forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-2-15, "Use
22 Review," B.R.C. 1981;

1 (3) Units with an occupancy greater than four unrelated persons shall not exceed a
2 total occupancy of the dwelling unit of one person per bedroom;

3 (4) The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and

4 (5) If a property owner intends to sell a dwelling unit with a non-conforming
5 occupancy that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981, every such
6 contract for the purchase and sale of a dwelling unit shall contain a disclosure statement that
7 indicates the allowable occupancy of the dwelling unit.

8 (d) A dwelling unit licensed as a Cooperative Housing Unit pursuant to section 10-
9 11-3 "Cooperative Housing Licenses," B.R.C. 1981, shall not be subject to the occupancy limits
10 set forth in this section.

11
12 (e) Prohibition: No person shall occupy a dwelling unit in violation of this section or
13 intentionally or negligently misrepresent the permitted occupancy of a dwelling unit in violation
14 of this section.

15 **Section 5.** Section 9-16-1 is amended by amending the definition of "Cooperative
16 Housing Unit" as follows:

17 Cooperative housing unit has the same meaning as set forth in Section 10-1-1,
18 "Definitions," B.R.C. 1981 means an individual building for cooperative living that meets the
19 criteria for such units set forth in Subsection 9-6-3(b), B.R.C. 1981.

20 **Section 6.** The following new definitions are added to Section 10-1-1:

21 *Cooperative* means a housing arrangement in which residents share expenses, ownership
22 or labor.

23 *Cooperative housing unit* means a dwelling unit in a Private Equity, Limited Equity or
24 Rental Cooperative.
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1 *Limited equity cooperative* means a cooperative operating on a property owned in part by
2 its occupants. A not-for-profit corporation may own an interest in the property.

3 *Private equity cooperative* means a cooperative operating on a property owned jointly by
4 the residents of the cooperative.

5 *Rental cooperative* means a cooperative in which the some or all of the residents do not
6 have an ownership interest in the property in which the cooperative operates.

7 **Section 7.** A new Chapter 10-11 is added as follows:

8 **Chapter 11 Cooperative Housing**

9 **10-11-1. Legislative Intent**

10 The City Council intends to facilitate cooperative living arrangements. The Council finds
11 that cooperative living arrangements can provide an affordable alternative for living in Boulder.
12 In addition, cooperative arrangements can provide supportive and fulfilling community for their
13 residents. The City Council seeks to balance the benefits of cooperative living against the
14 impacts from the increased density that comes along with cooperative living. The City Council
15 also is concerned about cooperatives competing in a tight housing market with families seeking
16 single family homes.
17

18 **10-11-2. - Cooperative License Required Before Occupancy.**

19 No person shall occupy, allow, or offer to allow through advertisement or otherwise, any
20 person to occupy any cooperative housing unit unless the cooperative housing unit has been
21 issued a valid cooperative housing license by the city manager.
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23 **10-11-3. – Cooperative Housing Licenses.**

24 (a) License terms shall be as follows:
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1 (1) Licenses shall expire four years from issuance or when ownership of the licensed
2 property is transferred.

3 (A) In addition to any other applicable requirements, new licenses and renewals shall
4 require that the licensee submit to the city manager a completed current baseline (for a new
5 license) or renewal inspection report, on forms provided by the City. The report shall satisfy the
6 following requirements:

7 (i) The section of the report concerning fuel burning appliances must be executed by
8 a qualified heating maintenance person certifying compliance with those portions of Chapter 10-
9 2, "Property Maintenance Code," B.R.C. 1981, for which the report form requires inspection and
10 certification.

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

15 (iii) The section of the report concerning trash removal must be executed by the
16 operator certifying that the operator has a current valid contract with a commercial trash hauler
17 for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-
18 3(b), B.R.C. 1981.

19 (b) Whenever an existing license is renewed, the renewal license shall be effective
20 from the date of expiration of the last license if the applicant submits a complete renewal
21 application by or within ninety days from the expiration date. Licenses not renewed within
22 ninety days will be considered expired, requiring a new baseline inspection report.
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1 (c) The city manager shall issue no more than fifteen new cooperative housing
2 licenses in any calendar year. Such licenses shall be allocated as follows:

3 (1) No more than five licenses for limited equity cooperatives;

4 (2) No more than five licenses for private equity cooperatives;

5 (3) No more than five licenses for rental cooperatives; and

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

9 (d) Cooperative housing licenses shall be limited to the following concentrations:

10 (1) Neighborhood Area: In the RL-1, RL-2, RE, RR-1, RR-2, A or P zoning districts,
11 no more than ten percent of the single-family lots or parcels in a neighborhood area contain a
12 cooperative housing unit. For the purpose of this subparagraph:

13 (i) The "neighborhood area" in RL-1, RL-2 and P zoning districts is the area
14 circumscribed by a line three hundred feet from the perimeter of the lot line within which any
15 cooperative housing unit will be located.

16 (ii) The "neighborhood area" in RE, RR-1, RR-2 and A zoning districts is the area
17 circumscribed by a line six hundred feet from the perimeter of the lot line within which any
18 accessory dwelling unit will be located.

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

3 **10-11-4. - License Application Procedure for Cooperative Housing Licenses.**

4 (a) Only the fee simple owners of the property on which the cooperative is to be
5 located may be an applicant for a cooperative housing license. If there are multiple fee simple
6 owners, all owners must apply.

7 (b) Every applicant for cooperative housing license shall submit the following:

8 (1) A written application for a license to the City, on official city forms provided for
9 that purpose, at least thirty days before occupancy of the property including:

10 (A) A housing inspector's certification of baseline inspection dated within twelve
11 months before the application. The applicant shall make a copy of the inspection form available
12 to city staff and tenants of inspected units within fourteen days of a request; and

13 (B) A report on the condition and location of all smoke and carbon monoxide alarms
14 required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
15 applicant; and

16 (C) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C.
17 1981, made and verified by the applicant.

18 (D) A parking management plan meeting the requirements of subsection 10-11-11,
19 B.R.C. 1981, made and verified by the applicant.

20 (c) Pay all license fees prescribed by section 4-20-69, "Cooperative Housing Fee,"
21 B.R.C. 1981, at the time of submitting the license application.
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1 (d) Take all reasonable steps to notify any occupants of the property in advance of the
2 date and time of the inspection. The applicant shall be present and accompany the inspector
3 throughout the inspection, unlocking and opening doors as required.

4 **10-11-5. - License Renewal Procedure for Cooperative Housing Units**

5 Every licensee of a cooperative housing unit shall follow the procedures in this section
6 when renewing an unexpired license:

7 (a) Pay all license fees prescribed by section 4-20-69, "Cooperative Housing Fee,"
8 B.R.C. 1981, before the expiration of the existing license.

9 (b) Submit to the city manager, on forms provided by the manager:

10 (1) A housing inspector's certification of renewal inspection within twelve months
11 before application. The applicant shall make a copy of the inspection form available to city staff
12 and residents of inspected units within fourteen days of a request;

13 (2) A report on the condition and location of all smoke and carbon monoxide alarms
14 required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
15 operator; and

16 (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C.
17 1981, made and verified by the operator.

18 (4) A parking management plan meeting the requirements of subsection 10-11-11,
19 B.R.C. 1981, made and verified by the applicant.

20 (c) Take all reasonable steps to notify in advance all residents of the property of the
21 date and time of the inspection. The operator shall be present and accompany the inspector
22 throughout the inspection, unlocking and opening doors as required.

23 **10-11-6. - Temporary License.**

1 If the inspection shows that there are violations of chapter 10-2, "Property Maintenance
2 Code," B.R.C. 1981, in the building, and the applicant cannot correct the deficiencies before the
3 housing is to be occupied (in the case of a new cooperative housing unit) or the existing license
4 expires (in the case of a renewal), the applicant may apply, on forms specified by the city
5 manager, for a temporary license. If the manager finds, based on the number and severity of
6 violations, that such a temporary license would not create or continue an imminent health or
7 safety hazard to the public or the occupants, the manager may issue a temporary license. The
8 manager shall specify the duration of the temporary license, for a period reasonably necessary to
9 make the needed repairs and changes. Upon receipt of an additional certificate of inspection
10 showing correction of the deficiencies, and an additional housing license fee, the manager shall
11 issue the cooperative housing license.
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13 **10-11-7. - License Appeals.**

14 Any applicant denied a temporary license, or aggrieved by the period of time allowed for
15 correction, may appeal the denial or the time for correction, or both, as provided in section 10-2-
16 2, section 111 "Means of Appeal," B.R.C. 1981. As to an appeal of the time reasonably required
17 to correct a violation, the board shall either affirm the city manager's originally prescribed time
18 or grant a longer time to correct the alleged violation.

19 **10-11-8. - Time of License Expiration.**

20 Every rental license expires upon the earliest of the following dates:

21 (a) The expiration date on the license unless temporary authority is allowed under
22 section 10-11-6, "Temporary License," B.R.C. 1981, of this chapter;

23 (b) The effective date of any order or notice to vacate the property issued under any
24 provision of law;
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1 (c) The expiration of the temporary certificate of occupancy for the property if a
2 permanent certificate of occupancy has not been issued; or

3 (d) The revocation of the certificate of occupancy for the property.

4 **10-11-9. - License Fees.**

5 Applicants for any cooperative housing license, and applicants renewing an existing
6 cooperative housing license, shall pay the license fees prescribed by section 4-20-69,
7 "Cooperative Housing Fee," B.R.C. 1981, upon submission of any license application.

8 **10-11-10. - Availability of License.**

9 No person who holds a cooperative housing license shall fail to make the rental license
10 available to anyone within seventy-two hours of receiving a request. Posting of a cooperative
11 housing license at the property is not required.

12 **10-11-11. – Parking Management Plan Required.**

13 Each applicant for a cooperative housing license shall prepare a parking management
14 plan. Approval of any such plan shall be a condition of issuance of any cooperative housing
15 license. The plan shall be designed to limit the number of automobiles parked in the public right
16 of way to no than three vehicles per license. An agreement by the licensee to require that all
17 residents have a local bus pass with the Regional Transit District may be included in such a plan,
18 but is not required.

19 **10-11-12. – Compatibility with Neighborhoods.**

20 Each cooperative shall at all times maintain compatibility with the neighborhood in
21 which the cooperative is located. The licensee shall take all reasonable steps to reduce excessive
22 parking on the public right of way and noise, trash and weeds on the property.

23 **10-11-13. – Limitation on rent.**

1 As a condition of issuance of any cooperative housing license for a rental cooperative, the
2 applicant shall agree to limit each cumulative rent for the entire property to no more than that
3 which is affordable to households earning no more than the average median income for families
4 in the city of Boulder. The city manager shall, by rule, establish such maximum rents based on
5 the number of bedrooms using the Colorado Housing and Finance Authority Income and Rent
6 Tables or another substantially similar resource.

7 **10-11-14. - City Manager May Order Premises Vacated.**

8 (a) Whenever the city manager determines that any cooperative housing unit is in
9 violation of this chapter or of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, and has
10 caused a summons and complaint requiring the licensee to appear in municipal court to answer
11 the charge of violation to issue, and the summons cannot be served upon the licensee despite
12 reasonable efforts to do so, or, having been served, the licensee has failed to appear in the
13 municipal court to answer the charges or at any other stage in the proceedings, or, having been
14 convicted or entered a plea of guilty or no contest, the licensee has failed to satisfy the judgment
15 of the court or any condition of a deferred judgment, then the city manager may, after thirty days'
16 notice and an opportunity for a hearing to the residents and the licensee, require that the premises
17 be vacated and not be reoccupied until all of the requirements of the Property Maintenance Code
18 and the cooperative housing code have been satisfied and a cooperative housing license is in
19 effect. No person shall occupy any cooperative housing unit after receiving actual or constructive
20 notice that the premises have been vacated under this section.

22 (b) Any notice required by this section to be given to a licensee is sufficient if sent by
23 first class or certified mail to the address of the last known owner of the property as shown on
24 the records of the Boulder County Assessor as of the date of mailing. Any notice to a resident
25

1 required by this section is sufficient if sent by first class or certified mail to or delivered to any
2 occupant at the address of the premises and directed to "All Residents."

3 (c) The remedy provided in this section is cumulative and is in addition to any other
4 action the city manager is authorized to take.

5 **10-11-15. - Administrative Remedy.**

6 (a) If the city manager finds that a violation of any provision of this chapter or
7 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to
8 the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3,
9 "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to
10 remedy the violation:

11 (1) Impose a civil penalty according to the following schedule:

12 (A) For any violation in the following areas: the area south of Arapahoe Avenue,
13 north of Baseline Road, east of 6th Street and west of Broadway; the area south of Baseline
14 Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area
15 south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th
16 Street:

17 (i) For the first violation of the provision, \$500.00;

18 (ii) For the second violation of the same provision, \$750.00; and

19 (iii) For the third violation of the same provision, \$1,000.00;

20 (B) For a violation in any other area:

21 (i) For the first violation of the provision, \$150.00

22 (ii) For the second violation of the same provision, \$300.00; and

23 (iii) For the third violation of the same provision, \$1,000.00;

1 (2) Revoke the cooperative housing license; and

2 (3) Issue any order reasonably calculated to ensure compliance with this chapter and
3 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

4 (b) If notice is given to the city manager by the licensee at least forty-eight hours
5 before the time and date set forth in the notice of hearing on any violation, other than a violation
6 of section 10-11-12 "Compatibility with Neighborhoods," B.R.C. 1981, that the violation has
7 been corrected, the manager will re-inspect the cooperative housing unit. If the manager finds
8 that the violation has been corrected, the manager may cancel the hearing.

9 (c) If notice is given to the city manager by the licensee at least forty-eight hours
10 before the time and date set forth in the notice of hearing on any violation of section 10-11-12
11 "Compatibility with Neighborhoods," B.R.C. 1981, that the licensee has scheduled a community
12 mediation with concerned neighbors, the manager may continue the hearing until the manager
13 receives a report regarding the conclusion of the mediation. If after reviewing a community
14 mediation report, if the city manager is satisfied that the cooperative housing unit meets the
15 requirements of section 10-11-12 "Compatibility with Neighborhoods," B.R.C. 1981, the city
16 manager may dismiss any pending complaint.

17 (d) The city manager's authority under this section is in addition to any other
18 authority the manager has to enforce this chapter, and election of one remedy by the manager
19 shall not preclude resorting to any other remedy as well.

20 (e) The city manager may, in addition to taking other collection remedies, certify due
21 and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-
22 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
23 Collection," B.R.C. 1981.
24
25

1 (f) To cover the costs of investigative inspections, the city manager will assess
2 operators a \$250.00 fee per inspection, where the city manager performs an investigative
3 inspection to ascertain compliance with or violations of this chapter.

4 **10-11-16. – Criminal Penalty.**

5 (a) The penalty for violation of any provision of this chapter is a fine of at least
6 \$500.00 and not more than \$2,000.00 per violation, or incarceration for not more than ninety
7 days in jail, or both such fine and incarceration. In addition, upon conviction of any person for
8 violation of this chapter, the court may issue a cease and desist order and any other orders
9 reasonably calculated to remedy the violation. Violation of any order of the court issued under
10 this section is a violation of this section and is punishable by a fine of not more than \$4,0000.00
11 per violation, or incarceration for not more than ninety days in jail, or both such fine and
12 incarceration.
13

14 (b) It shall be a condition of any deferred prosecution or deferred or suspended
15 sentence under this chapter that the defendant commit no violations of this chapter for at least
16 one year from the date of such deferred prosecution or deferred or suspended sentence.

17 (c) Notwithstanding subsection (a) of this section, the following specific sentencing
18 considerations shall apply to fines imposed for violations:

19 (1) The court shall consider any evidence presented by the defendant that a potential
20 fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally
21 capitalized owner of the ability to continue operating a rental housing business of the sort
22 involved in the case before the court. No fine that is confiscatory shall be enforced by the court.

23 (2) In imposing a fine in any single case or in any consolidated cases, the court may
24 weigh all factors normally and properly considered in connection with the imposition of fines,
25

1 including the seriousness of the violation, the past record of the defendant, the economic
2 circumstances of the defendant and all mitigating or aggravating factors relevant to the violation
3 or to the defendant. In addition, in determining the amount of any fine, the court may consider:

4 (A) The imposition of a fine that would deprive the defendant of any illegal profit
5 collected because of the occurrence of the violation or violations on the rental housing property;

6 (B) The imposition of a reasonable penalty in addition to any level of fine that is
7 attributable to illegally obtained profit; and

8 (C) The imposition of such additional fine as is determined by the court to constitute a
9 reasonable amount to be suspended in order to ensure compliance with any terms of probation
10 imposed by the court.

11 (d) No fine imposed in a single case alleging multiple dates of violation, nor any fine
12 in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that
13 might be imposed for fifteen separate violations unless the court finds special aggravating
14 circumstances. Where special aggravating factors are at issue, the following procedures shall
15 apply:
16

17 (1) The defendant shall be entitled to ten days' notice of any special aggravating
18 factors upon which the prosecution intends to rely at the sentencing hearing or about which,
19 based upon evidence previously presented, the court is concerned. If necessary in order to
20 provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.

21 (2) A judicial finding of the existence of special aggravating factors shall not mandate
22 that the court impose any particular level of fine but will, rather, provide the sentencing court
23 with discretion to determine a fine based upon all the criteria set forth in this subsection.
24
25

1 (3) Special aggravating factors, for the purpose of this subsection, shall require a
2 judicial finding of one or more of the following:

3 (A) The violations at issue were flagrant and intentional on the part of the defendant;

4 (B) The defendant, after learning of the violation, failed to attempt corrective action
5 over a sustained period of time; or

6 (C) A fine equivalent to the maximum fine permitted for fifteen separate violations
7 would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the
8 violations or would be inadequate to ensure that the violation is neither profitable nor revenue
9 neutral for the offender.

10 **10-11-17. - Authority to Issue Rules.**

11 The city manager may adopt reasonable rules to implement this chapter.

12 **Section 8.** This ordinance is necessary to protect the public health, safety, and welfare of
13 the residents of the city, and covers matters of local concern.

14 **Section 9.** The City Council deems it appropriate that this ordinance be published by title
15 only and orders that copies of this ordinance be made available in the office of the city clerk for
16 public inspection and acquisition.
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1 READ ON FIRST READING, PASSED AND ORDERED PUBLISHED BY TITLE

2 ONLY this __ day of April 2016.

3
4
5 _____
6 Suzanne Jones
7 Mayor

8 Attest:

9 _____
10 Lynnette Beck
11 City Clerk

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DRAFT

Attachment A

Zoning District	R R - 1 , R R - 2 , R E , R L - 1	R L- 2, R M -2	R M - 1, R M -3	R M X- 1	R M X- 2	R H - 1, R H - 2, R H - 4, R H -5	R H - 3, R H -7	R H -6	M H	M U -3	M U -1	M U -2	M U -4	B T- 1, B T- 2	B M S	B C - 1, B C -2	B C S	B R - 1, B R -2	D T- 4	D T- 5	D T- 1, D T- 2, D T- 3	I S - 1 , I S - 2	I G	I M	I M S	P	A	
Use Modules	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	M H	M 1	M 2	M 3	M 4	B 1	B 2	B 3	B 4	B 5	D 1	D 2	D 3	I 1	I 2	I 3	I 4	P	A	Specific Use Standard
Cooperative housing units	C A	C A	C A	C A	C A	C A	C A	*	*	C A	C A	C A	*	*	*	*	*	*	*	*	*	*	U	U	*	*	*	9-6-3(b)

Bisset, Mary

From: Carr, Thomas
Sent: Tuesday, March 29, 2016 4:53 PM
To: Steve Pomerance; HOTLINE
Cc: Zane Selvans
Subject: RE: [bouldercouncilhotline] Hotline: RE: Draft co-op ordinance suggestions

Steve,

Thanks for your thoughts.

Tom

From: Steve Pomerance [mailto:stevepom335@comcast.net]
Sent: Tuesday, March 29, 2016 3:14 PM
To: Council <Council@bouldercolorado.gov>
Cc: Zane Selvans <zane.selvans@gmail.com>
Subject: Fwd: [bouldercouncilhotline] Hotline: RE: Draft co-op ordinance suggestions

A suggestion re the coop ordinance —

Zane has done a good job of identifying many of the areas where the proposed ordinance falls short. For example, by generalizing, his comments identified ownership structure and longevity, economics of rent setting, governance, neighborhood impacts including cars, etc., etc. (Someone could go through his comments and do a pretty complete list.)

But there are other issues, including the dissolution process in case of continued violations, more clarity on the neighborhood's ability to influence what happens, the alleged property tax exemption, etc. that should be looked at. (I don't claim to have a handle on this, just providing examples...)

The problem is, that unless you on the council want to individually take on soliciting, gathering and organizing input on these and the remaining issues that others might identify, you are going to have to rely on hit or miss comments from individuals who might be paying close attention (in spite of no formal process), And then you will go into the hearings without organized and more importantly complete input and suggestions for fixes and improvements, and so will almost certainly have a mess coming out that will, once again, have to be redone.

Running this through the Planning Board first doesn't solve this, it just shifts the burden.

So...why not put together a working group of interested parties NOW to try to list all the issues, clarify the conflicts, identify possible alternative solutions, and make recommendations as to the process from there on? You should actually identify and invite people of various perspectives and interests (as well as open it up to people who self select) so as to ensure that you don't miss something critical.

Then operate it like the working group on impact fees — no voting, no requirement for consensus, but provide detailed info and gather and include all input.

The choice of the person(s) to staff this working group is critical — the staff need to be, and need to be perceived, as both knowledgeable (so people don't have to educate them, e.g. on how the various ownership structures work legally) and non-partisan with no preconceived investment in some particular outcome (so that

the participants feel like they can be trusted to accurately convey what is learned and discussed, and so that the discussions are even handed.)

And if one or two CC members participated, this would help provide some needed first hand knowledge of what the discussions were. Otherwise, based on my experience, the results get discounted, and the opportunity to become more aware of what the concerns are is lost.

Regards,
Steve Pomerance

Begin forwarded message:

From: <cmosupport@bouldercolorado.gov>
Subject: [bouldercouncilhotline] Hotline: RE: Draft co-op ordinance suggestions
Date: March 29, 2016 at 1:13:08 PM MDT
To: <bouldercouncilhotline@list.ci.boulder.co.us>

Sender: Carr, Thomas

Zane,

Thanks so much for your thoughtful analysis of the proposed ordinance. You have many good and useful ideas. I am sure that the council will give careful consideration to your work. I look forward to working productively with you and all of the various stakeholders in our community on this important issue.

Thanks again.

Tom

From: Zane Selvans [<mailto:zane.selvans@gmail.com>]
Sent: Monday, March 28, 2016 5:00 AM
To: Council <Council@bouldercolorado.gov>
Subject: Draft co-op ordinance suggestions

Dear Boulder City Council,

The Boulder Community Housing Association (BoCHA), has been working for more than two years to craft policies enabling a variety of housing cooperatives while effectively addressing neighborhood concerns. We do not believe the recently published draft cooperative housing ordinance will accomplish either of these goals. The proposed ordinance would likely make rental cooperatives (including permanently affordable, non-profit owned co-ops) impractical, while the provisions for equity cooperatives seem as though they could either invite abuse by unscrupulous property owners, or make the purchase of a property for use as a true equity

cooperative too risky for most potential buyers to consider. Below we highlight several issues with the proposed ordinance and offer some suggestions for how to address them.

Outline:

Definitions: We propose the following refined definitions:

- o Private equity housing cooperative means a housing cooperative in which a majority of the adult residents own an interest in the property, a majority of the individuals who own an interest in the property are also residents of the property, and the owner-residents hold a controlling ownership interest in the property. A 501(c)3 non-profit with a housing focused mission may own a minority interest in the property.
- o Group equity housing cooperative means a housing cooperative in which a majority ownership interest is held by either a 501(c)3 non-profit organization with an affordable housing focused mission, or a public housing authority.
- o Rental housing cooperative means any housing cooperative which does not satisfy the requirements for either a private or group equity housing cooperative.

Rent Caps: We prefer to limit the impact of co-ops on prevailing rents by giving the co-op permit or license to the cooperative, rather than the property owner. Failing that, indexing acceptable co-op rents to average prevailing rents, rather than what is affordable to a median income household seems more appropriate. Indexing to median income affordability is too restrictive, and will preclude many if not all rental co-ops.

Non-profit Co-op Ownership: We suggest changes that would enable non-profit ownership of permanently affordable housing cooperatives, which we believe the draft ordinance would preclude.

Equity Cooperative License Renewal: We suggest that private & group equity cooperatives must be perpetual, or buying & renovating the properties will present too much risk to potential co-op members.

Non-profit Oversight of Rental Co-ops: For rental co-ops (not owned by a non-profit) we recommend the co-op enter into a management agreement with a qualified non-profit organization.

Neighborhood Impacts: We suggest less permissive occupancy and vehicle limits, in order to more effectively address common neighborhood concerns.

Penalties & Inspections: We suggest less onerous civil & criminal penalties, and inspections no different from rental license inspections.

We feel the draft definition of a "Cooperative" could be improved, to clarify that it is specific to housing cooperatives, and to be slightly more specific about household governance and expense sharing:

Housing cooperative means a group of people operating as a single housekeeping unit, that shares an entire dwelling, pools resources for a majority of the household's expenses, and governs itself democratically, with each adult member of the household having equal say over household decisions.

Rent Caps for Rental Cooperatives:

One key purpose of the ordinance is to provide a legal path for the creation of affordable rental co-ops. The proposed ordinance would grant a rental co-op license to the owner of a property to be occupied by the co-op. It would also impose a rent cap equal to what is considered affordable for a family making 100% of the Area Median Income (AMI) in Boulder County, according to Colorado Housing and Finance Authority (CHFA) guidelines. Currently this would mean that a four bedroom home could be rented as a co-op for a maximum of \$2885/month. The CHFA guidelines do not include rents for homes with more than four bedrooms, but homes with more than four bedrooms are most suitable for cooperatives, and they usually rent for more than \$2885. This is another way of saying that Boulder households earning 100% of AMI are currently unable to affordably rent the larger homes that would be appropriate for cooperatives. If this cap were imposed, rental co-ops would not have meaningful access to the rental market.

If Council wishes to consider imposing a cap on rents in order to ensure that co-ops do not exert upward pressure on housing costs for families, we feel a more appropriate value would be related to prevailing rents for homes of comparable size, quality, and location. For instance, limiting a co-op's rent to no more than the median rent for similar properties would still give co-ops access to roughly half of the rental market, but would keep them from shifting the overall distribution of rents upward.

An Alternative Rent Control Mechanism:

Our preferred means of ensuring that rental cooperatives do not exert undue price pressure on the overall housing market is to give pricing power to the cooperative household (which benefits from low prices), rather than the property owner (who benefits from high prices), by granting a cooperative rental license to a group of prospective co-op residents who have established a corporation in good standing with the state of Colorado. The license would still be granted for use in a particular property, but if the rent were to increase unacceptably, the cooperative group could re-locate, and apply for another license at a different location. The limited number of rental co-op licenses, and the limited number of households interested in this type of living would ensure a market with many sellers (landlords) and few buyers (co-op groups), which gives preferential pricing power to the buyers (see: oligopsony<<https://en.wikipedia.org/wiki/Oligopsony>>). Rents would be set by mutual agreement of the rental co-op and the property owner, and might be marginally higher than prevailing rents for comparable properties to account for increased wear and tear on the property resulting from higher occupancy, but would not affect the overall housing market.

Non-profit Oversight of Rental Cooperatives:

In the case where a rental cooperative occupies a property which is not owned by a 501(c)3 non-profit with an affordable housing mission, we recommend that the rental co-op enter into a management and oversight agreement with such an organization, giving them the power to cure

code violations and terminate resident leases if violated. The management agreement could include requirements as to the content of the master leasing agreement between the co-op and the property owner, as well as the co-op's by-laws, governing household practices and procedures, demonstrating that they are a valid co-op.

Non-profit Ownership of Rental Cooperatives:

The draft ordinance does not differentiate between co-ops renting from profit-motivated, potentially absentee landlords (often known as leasing cooperatives), and co-ops renting from non-profit organizations that are dedicated to providing affordable housing, and which are governed by co-op members. The latter situation is referred to as a group equity cooperative, and it is a common model used by cooperative housing systems nationwide (see the North American Students of Cooperation <<https://www.nasco.coop/>>). We feel that these two cases are qualitatively very different, and require different types of regulation, which we discuss below.

Private Equity Housing Cooperative Definition:

Private equity housing cooperatives are the type of cooperatives BRC 9-6-3(b) was intended to enable, in which several individuals own shares of a house which they occupy. In the proposed ordinance language Private equity cooperatives are defined as, "a cooperative operating on a property owned jointly by the residents of the cooperative." We feel this definition is too broad, because it does not specify what proportion of the property's ownership interest must be held by co-op residents. For instance, might it be possible for an unscrupulous landlord to create an LLC to hold the property and retain 99% ownership of that LLC, giving only 1% ownership to the "co-op" residents? If so, the property owner could then put as many people as they want in the building, subject only to the IPMC occupancy limits. We suggest the following definition:

Private equity housing cooperative means a housing cooperative in which a majority of the adult residents own an interest in the property, a majority of the individuals who own an interest in the property are also residents of the property, and the owner-residents hold a controlling ownership interest in the property. A 501(c)3 non-profit with a housing focused mission may own a minority interest in the property.

This definition would ensure that:

- most residents are owners, with a long term interest in being good neighbors,
- most owners are residents, as opposed to absentee investors, and
- that the residents of the property can exercise control over it if need be.

We believe that this definition will both close the potential loophole noted above, and allow greater flexibility for private equity housing cooperatives. For instance, a prospective equity co-op member could live in the community for a year as a renter before deciding to purchase a share of the cooperative. Allowing partial non-profit ownership can facilitate the gradual conversion of a private equity housing cooperative into a permanently affordable group equity housing

cooperative (discussed below).

Limited Equity Housing Cooperative Definition:

The draft ordinance defines a limited equity cooperative as “a cooperative operating on a property owned in part by its occupants. A not-for-profit corporation may also own an interest in the property.” This definition is at odds with the generally accepted meaning of the term (see the National Association of Housing Cooperatives <<http://coophousing.org/resources/owning-a-cooperative/buying-into-a-housing-cooperative/#paragraph7>>).

Limited equity cooperatives are defined by restrictions on the proceeds that can be realized when a member sells their shares. These are usually imposed because the co-op benefits from favorable financing terms, affordable housing grants, real estate tax abatement, or other policy mechanisms that make the housing more affordable to both initial and future residents. In some cooperatives these limitations are voluntarily imposed by members. This affordability mechanism is similar to the way that the resale formulas defined by community land trusts (CLTs) limit the appreciation of properties located on CLT land, or the way that the city of Boulder imposes limits on the appreciation of permanently affordable homes purchased under its “Homeworks” program.

We do not believe that limited equity housing cooperatives need to be defined in the ordinance. Instead, they can exist as a special case of the private equity housing cooperative, in which limits on share appreciation have been accepted by co-op members.

Group Equity Housing Cooperatives:

Group equity housing cooperatives are not defined in the draft ordinance, but we believe they are important to distinguish from rental cooperatives in which the property owner may have no interest in the cooperative nature of the household. We propose the following definition:

Group equity housing cooperative means a housing cooperative in which a majority ownership interest is held by either a 501(c)3 non-profit organization with an affordable housing focused mission, or a public housing authority.

A public housing authority is included in the definition in case they need to act as an owner of last resort after a group equity non-profit is dissolved, or in case the property is owned by a partnership between a non-profit and a housing authority.

Group equity cooperatives are important to distinguish from rental cooperatives because while individual co-op residents do not accrue equity in the property, they play a role in governing the organization that owns the property. Additionally, the owner has a long term interest in providing affordable housing and maintaining the cooperative nature of the household, rather than being a profit-maximizing market actor. Enabling this type of permanently affordable shared housing is directly supportive of the city’s affordable housing goals.

Rental Housing Cooperative Definition:

Given the above definitions of private equity and group equity housing cooperatives, we propose a new definition for rental cooperatives:

Rental housing cooperative means any housing cooperative which does not satisfy the requirements for either a private or group equity housing cooperative.

This definition would encompass a co-op occupying a property owned by one or two of the residents, as well as a co-op occupied by an absentee landlord.

Housing Cooperative License Renewal Requirements:

We agree that the proposed quadrennial housing cooperative license renewal is appropriate for rental cooperatives (as defined above).

We feel the license renewal requirement is unworkable for private equity cooperatives in which members have invested significant time and capital, and taken on substantial debt in order to purchase the property. Given these commitments, potential equity cooperative members need to know that their permit will remain valid for as long as they comply with the agreements set forth in the initial application.

Similarly, a non-profit organization (like the Boulder Housing Coalition) that is trying to provide affordable housing in the form of a group equity cooperative needs to know that its investment in the property is secure. Most sources of affordable housing funding require a long term commitment to affordability. In the case of funding from the City of Boulder's Division of Housing, permanent affordability is required, and enforced by deed restrictions and covenants that run with the property in perpetuity. Periodically subjecting a group equity cooperative to the possibility of losing its license to operate the property as a housing cooperative would preclude this type of housing from receiving affordable housing funds, and make it very unlikely that any non-profit owned housing cooperatives would be formed.

Neighborhood Concerns: Occupancy Limits, Parking & Traffic:

We are worried that the number of residents and vehicles allowed at each housing cooperative under the draft ordinance will not effectively address neighborhood concerns about quality of life impacts. The only occupancy limits imposed by the draft ordinance are the health and safety limits listed in the International Property Maintenance Code (IPMC). No existing co-op in Boulder that we are aware of comes anywhere close to that level of occupancy, but we suspect that the number of hypothetically possible occupants under the IPMC may be unacceptably high for many neighborhoods.

Instead, we initially proposed a flat minimum of 150 sf habitable area per co-op resident. During the January 26th study session, Council member Appelbaum suggested a fixed minimum area for common space, plus a flat minimum square footage requirement per resident. Requiring 200 sf of common space, plus 140 sf/person would allow for all the existing cooperative households we are aware of to continue operating. It would also provide a well defined occupancy limit for each co-op that can be easily calculated based on county records showing the habitable area of

each property.

Similarly, limiting the number of vehicles by allowing cooperatives to have no more than 3 on-street vehicles may do little to calm neighborhood parking concerns. Instead we have proposed a more restrictive total cap of 4 vehicles, on or off street, per cooperative. We believe this type of regulation is more enforceable, and would also help minimize any additional traffic impacts resulting from the cooperative.

Penalties & Inspections:

The proposed ordinance contains onerous fines, even criminal penalties and additional administrative burdens, including an additional housing inspection on top of what is required to obtain a rental license, are likely to dissuade property owners from renting to cooperatives, limiting the pool of properties available to rental cooperatives. Punishments for violations including up to 90 days in jail and fines of up to \$2,000 appear excessive. We propose that the fines and criminal penalties be reduced and that potential rental cooperative properties simply be required to have a current valid rental license.

Neighborhood Compatibility:

The requirement that cooperatives “maintain compatibility with the neighborhood” described in draft ordinance section 10-11-12 seems overly vague, and unnecessary, given the requirement that the cooperative comply with existing noise, trash, and weed removal ordinances, in addition to implementing a parking management plan.

Thank you for taking the time to read this far. We hope that by addressing these issues together, we can arrive at an ordinance that will enable a range of cooperative housing options while effectively addressing neighborhood concerns, and the potential impacts of cooperative housing on the broader housing market in Boulder.

--

Zane A. Selvans

Amateur Earthling, PhD

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@ZaneSelvans<<https://twitter.com/ZaneSelvans>> (twitter)

PGP: 55E0815F<<http://pgp.mit.edu/pks/lookup?op=get&search=0x9CD7EA1355E0815F>>

[Flat Iron Bike<<http://flatironbike.com>> | Amateur Earthling<<http://amateurearthling.org>> | Clean Energy Action<<http://cleanenergyaction.org>> | Transportation Advisory Board<<https://bouldercolorado.gov/boards-commissions/transportation-advisory-board>> | Better Boulder<<http://betterboulder.com>> | Community Cycles Advocacy Committee<<http://communitycycles.org/advocacy/>> | Boulder Housing Coalition<<http://boulderhousingcoalition.org/>> | BoCHA<<http://bocha-neighbors.org>>]

bouldercouncilhotline mailing list

bouldercouncilhotline@list.ci.boulder.co.us

<http://list.ci.boulder.co.us/mailman/listinfo/bouldercouncilhotline>

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ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 4 “LICENSES AND PERMITS BY ADDING A NEW SECTION 4-20-69 “COOPERATIVE HOUSING LICENSE FEE,” AMENDING TITLE 9 “LAND USE CODE” BY AMENDING TABLE 9-6-1 TO MAKE COOPERATIVE HOUSING AN ALLOWED USE IN CERTAIN ZONE DISTRICTS, BY AMENDING SECTION 9-6-3, ELIMINATING THE REQUIREMENT OF A SPECIAL USE PERMIT FOR COOPERATIVE HOUSING, AMENDING TITLE 10 “STRUCTURES” BY ADDING A NEW CHAPTER 11 “COOPERATIVE HOUSING” ESTABLISHING REQUIREMENTS FOR LICENSING HOUSING COOPERATIVES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A new section 4-20-69 is added as follows:

4-20-18. – Cooperative Housing License Fee.

The following fees shall be paid before the city manager may issue a rental license or renew a rental license:

(a) \$105 per license or renewal.

(b) To cover the cost of investigative inspections, the city manager will assess to licensees a \$250 fee per inspection, where the city manager has performed an investigative inspection to ascertain compliance with or violations of chapter 10-11 “Cooperative Housing,” B.R.C. 1981.

Section 2. Table 9-6-1 is amended as set forth in an attachment A.

Section 3. Section 9-6-3(b) is repealed and subsequent sections are renumbered.

Section 4. Section 9-8-5 is amended as follows:

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

1 (a) General Occupancy Restrictions: Subject to the provisions of Chapter 10-2,
2 "Property Maintenance Code," B.R.C. 1981, no persons except the following persons shall
3 occupy a dwelling unit:

4 (1) Members of a family plus one or two roomers. The quarters that the roomers use
5 shall not exceed one-third of the total floor area of the dwelling unit and shall not be a separate
6 dwelling unit;

7 (2) Up to three persons in P, A, RR, RE, and RL zones;

8 (3) Up to four persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT, IS, IG, IM,
9 and IMS zones; or

10 (4) Two persons and any of their children by blood, marriage, guardianship, including
11 foster children, or adoption.

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

15 (c) Nonconformity: A dwelling unit that has a legally established occupancy higher
16 than the occupancy level allowed by Subsection (a) of this section may maintain such occupancy
17 of the dwelling unit as a nonconforming use, subject to the following:

18 (1) The higher occupancy level was established because of a rezoning of the property,
19 an ordinance change affecting the property, or other city approval;

20 (2) The rules for continuation, restoration, and change of a nonconforming use set
21 forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-2-15, "Use
22 Review," B.R.C. 1981;

1 (3) Units with an occupancy greater than four unrelated persons shall not exceed a
2 total occupancy of the dwelling unit of one person per bedroom;

3 (4) The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and

4 (5) If a property owner intends to sell a dwelling unit with a non-conforming
5 occupancy that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981, every such
6 contract for the purchase and sale of a dwelling unit shall contain a disclosure statement that
7 indicates the allowable occupancy of the dwelling unit.

8 (d) A dwelling unit licensed as a Cooperative Housing Unit pursuant to section 10-
9 11-3 "Cooperative Housing Licenses," B.R.C. 1981, shall not be subject to the occupancy limits
10 set forth in this section. All such dwelling units shall be limited to no more than one occupant
11 per 200 square feet of habitable living space, which is total square foot less garages, attics and
12 basements.

13
14 (e) Prohibition: No person shall occupy a dwelling unit in violation of this section or
15 intentionally or negligently misrepresent the permitted occupancy of a dwelling unit in violation
16 of this section.

17 **Section 5.** Section 9-16-1 is amended by amending the definition of "Cooperative
18 Housing Unit" as follows:

19 Cooperative housing unit has the same meaning as set forth in Section 10-1-1,
20 "Definitions," B.R.C. 1981 means an individual building for cooperative living that meets the
21 criteria for such units set forth in Subsection 9-6-3(b), B.R.C. 1981.

22 **Section 6.** The following new definitions are added to Section 10-1-1:

23 *Cooperative* means a housing arrangement in which residents share expenses, ownership
24 or labor.
25

1 *Cooperative housing unit* means a dwelling unit in a Private Equity, Limited Equity or
2 Rental Cooperative.

3 *Cooperative Housing Organization* means an organization recognized by the city
4 manager as having experience and expertise in the formation, operation and organization of
5 cooperative housing units.

6 *Limited equity cooperative* means a cooperative operating on a property owned in part by
7 its occupants. A not-for-profit corporation may own an interest in the property.

8 *Not-for-Profit Rental Cooperative* means a rental cooperative owned by a corporation
9 registered with the United States government pursuant 26 U.S.C. § 501(c)(3).

10 *Private equity cooperative* means a cooperative operating on a property owned jointly by
11 the residents of the cooperative.

12 *Rental cooperative* means a cooperative in which the some or all of the residents do not
13 have an ownership interest in the property in which the cooperative operates.

14 **Section 7.** A new Chapter 10-11 is added as follows:

15 **Chapter 11 Cooperative Housing**

16 **10-11-1. Legislative Intent**

17 The City Council intends to facilitate cooperative living arrangements. The Council finds
18 that cooperative living arrangements can provide an affordable alternative for living in Boulder.
19 In addition, cooperative arrangements can provide supportive and fulfilling community for their
20 residents. The City Council seeks to balance the benefits of cooperative living against the
21 impacts from the increased density that comes along with cooperative living. The City Council
22 also is concerned about cooperatives competing in a tight housing market with families seeking
23 single family homes.
24
25

1 **10-11-2. - Cooperative License Required Before Occupancy.**

2 No person shall occupy, allow, or offer to allow through advertisement or otherwise, any
3 person to occupy any cooperative housing unit unless the cooperative housing unit has been
4 issued a valid cooperative housing license by the city manager.

5 **10-11-3. – Cooperative Housing Licenses.**

6 (a) License terms shall be as follows:

7 (1) Licenses shall expire four years from issuance or when ownership of the licensed
8 property is transferred.

9 (A) In addition to any other applicable requirements, new licenses and renewals shall
10 require that the licensee submit to the city manager a completed current baseline (for a new
11 license) or renewal inspection report, on forms provided by the City. The report shall satisfy the
12 following requirements:

13 (i) The section of the report concerning fuel burning appliances must be executed by
14 a qualified heating maintenance person certifying compliance with those portions of Chapter 10-
15 2, "Property Maintenance Code," B.R.C. 1981, for which the report form requires inspection and
16 certification.

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

21 (iii) The section of the report concerning trash removal must be executed by the
22 operator certifying that the operator has a current valid contract with a commercial trash hauler
23
24
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1 for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-
2 3(b), B.R.C. 1981.

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

7 (c) The city manager shall issue no more than fifteen new cooperative housing
8 licenses in any calendar year. Such licenses shall be allocated as follows:

9 (1) No more than five licenses for limited equity cooperatives;

10 (2) No more than five licenses for private equity cooperatives;

11 ~~(3) No more than five licenses for not-for-profit rental cooperatives;~~

12 ~~(4) No more than five licenses for rental cooperatives; and~~

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

16 (d) Cooperative housing licenses shall be limited to the following concentrations:

17 (1) Neighborhood Area: In the RL-1, RL-2, RE, RR-1, RR-2, A or P zoning districts,
18 no more than ten percent of the single-family lots or parcels in a neighborhood area contain a
19 cooperative housing unit. For the purpose of this subparagraph:

20 (i) The "neighborhood area" in RL-1, RL-2 and P zoning districts is the area
21 circumscribed by a line three hundred feet from the perimeter of the lot line within which any
22 cooperative housing unit will be located.
23
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1 (ii) The "neighborhood area" in RE, RR-1, RR-2 and A zoning districts is the area
2 circumscribed by a line six hundred feet from the perimeter of the lot line within which any
3 accessory dwelling unit will be located.

4 (iii) If an application for a cooperative housing unit exceeds the ten percent
5 requirement set forth in this subparagraph (a)(2)(A), the city manager will place the applicant on
6 a waiting list for the neighborhood area. At such time as there is room for an additional
7 cooperative housing unit within a neighborhood area, the city manager will notify the first
8 eligible person on the waiting list. Such person on the waiting list shall be required to provide
9 notice of intent to file an application within thirty days and file an application within sixty days
10 of such notice.

11 **10-11-4. - License Application Procedure for Cooperative Housing Licenses.**

12 (a) Only the fee simple owners of the property on which the cooperative is to be
13 located may be an applicant for a cooperative housing license. If there are multiple fee simple
14 owners, all owners must apply. A prospective tenant may, with the written authorization of all
15 fee simple owners, apply for conversion of a valid rental license to a cooperative housing license.

16 (b) Every applicant for cooperative housing license shall submit the following:

17 (1) A written application for a license to the City, on official city forms provided for
18 that purpose, at least thirty days before occupancy of the property including:

19 (A) A housing inspector's certification of baseline inspection dated within twelve
20 months before the application. The applicant shall make a copy of the inspection form available
21 to city staff and tenants of inspected units within fourteen days of a request; and
22
23
24
25

1 (B) A report on the condition and location of all smoke and carbon monoxide alarms
2 required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
3 applicant; and

4 (C) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C.
5 1981, made and verified by the applicant.

6 (D) A parking management plan meeting the requirements of subsection 10-11-11,
7 B.R.C. 1981, made and verified by the applicant.

8 (E) A certificate from a Cooperative Housing Organization certifying that the
9 applicant is a valid housing cooperative. Such certificate shall be issued if the applicant meets
10 specified pre-established criteria. The Cooperative Housing Organization shall make available
11 publically the criteria before considering any applications.

12
13 (c) Pay all license fees prescribed by section 4-20-69, "Cooperative Housing Fee,"
14 B.R.C. 1981, at the time of submitting the license application.

15 (d) Take all reasonable steps to notify any occupants of the property in advance of the
16 date and time of the inspection. The applicant shall be present and accompany the inspector
17 throughout the inspection, unlocking and opening doors as required.

18 **10-11-5. - License Renewal Procedure for Cooperative Housing Units**

19 Every licensee of a cooperative housing unit shall follow the procedures in this section
20 when renewing an unexpired license:

21 (a) Pay all license fees prescribed by section 4-20-69, "Cooperative Housing Fee,"
22 B.R.C. 1981, before the expiration of the existing license.

23 (b) Submit to the city manager, on forms provided by the manager:
24
25

1 (1) A housing inspector's certification of renewal inspection within twelve months
2 before application. The applicant shall make a copy of the inspection form available to city staff
3 and residents of inspected units within fourteen days of a request;

4 (2) A report on the condition and location of all smoke and carbon monoxide alarms
5 required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
6 operator; and

7 (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C.
8 1981, made and verified by the operator.

9 (4) A parking management plan meeting the requirements of subsection 10-11-11,
10 B.R.C. 1981, made and verified by the applicant.

11 (c) Take all reasonable steps to notify in advance all residents of the property of the
12 date and time of the inspection. The operator shall be present and accompany the inspector
13 throughout the inspection, unlocking and opening doors as required.

14
15 **10-11-6. - Temporary License.**

16 If the inspection shows that there are violations of chapter 10-2, "Property Maintenance
17 Code," B.R.C. 1981, in the building, and the applicant cannot correct the deficiencies before the
18 housing is to be occupied (in the case of a new cooperative housing unit) or the existing license
19 expires (in the case of a renewal), the applicant may apply, on forms specified by the city
20 manager, for a temporary license. If the manager finds, based on the number and severity of
21 violations, that such a temporary license would not create or continue an imminent health or
22 safety hazard to the public or the occupants, the manager may issue a temporary license. The
23 manager shall specify the duration of the temporary license, for a period reasonably necessary to
24 make the needed repairs and changes. Upon receipt of an additional certificate of inspection
25

1 showing correction of the deficiencies, and an additional housing license fee, the manager shall
2 issue the cooperative housing license.

3 **10-11-7. - License Appeals.**

4 Any applicant denied a temporary license, or aggrieved by the period of time allowed for
5 correction, may appeal the denial or the time for correction, or both, as provided in section 10-2-
6 2, section 111 "Means of Appeal," B.R.C. 1981. As to an appeal of the time reasonably required
7 to correct a violation, the board shall either affirm the city manager's originally prescribed time
8 or grant a longer time to correct the alleged violation.

9 **10-11-8. - Time of License Expiration.**

10 Every rental license expires upon the earliest of the following dates:

11 (a) The expiration date on the license unless temporary authority is allowed under
12 section 10-11-6, "Temporary License," B.R.C. 1981, of this chapter;

13 (b) The effective date of any order or notice to vacate the property issued under any
14 provision of law;

15 (c) The expiration of the temporary certificate of occupancy for the property if a
16 permanent certificate of occupancy has not been issued; or

17 (d) The revocation of the certificate of occupancy for the property.

18 **10-11-9. - License Fees.**

19 Applicants for any cooperative housing license, and applicants renewing an existing
20 cooperative housing license, shall pay the license fees prescribed by section 4-20-69,
21 "Cooperative Housing Fee," B.R.C. 1981, upon submission of any license application.
22

23 **10-11-10. - Availability of License.**

1 No person who holds a cooperative housing license shall fail to make the rental license
2 available to anyone within seventy-two hours of receiving a request. Posting of a cooperative
3 housing license at the property is not required.

4 **10-11-11. – Parking Management Plan Required.**

5 Each applicant for a cooperative housing license shall prepare a parking management
6 plan. Approval of any such plan shall be a condition of issuance of any cooperative housing
7 license. The plan shall be designed to limit the number of automobiles associated with the
8 property parked in the public right of way to no than fourthree vehicles per license. An
9 agreement by the licensee to require that all residents have a local bus pass with the Regional
10 Transit District may be included in such a plan, but is not required.

11 **10-11-12. – Compatibility with Neighborhoods.**

12 Each cooperative shall at all times maintain compatibility with the neighborhood in
13 which the cooperative is located. The licensee shall take all reasonable steps to reduce excessive
14 parking on the public right of way and noise, trash and weeds on the property. A cooperative
15 may be considered incompatible with the neighborhood if the city manager receives multiple
16 complaints relating to parking on the public right of way, noise, trash or weeds in any twelve
17 month period. Complaints from a single person shall not be sufficient to cause a property to be
18 incompatible with the neighborhood. Prior to making any determination that a cooperative is not
19 compatible with the neighborhood, the city manager shall provide written notice to the licensee
20 and encourage the licensee to address the complaints with the residents of the neighborhood.

21 **10-11-13. – Limitation on rent.**

22 As a condition of issuance of any cooperative housing license for a rental cooperative, the
23 applicant shall agree to limit each cumulative rent for the entire property to no more than one
24 applicant shall agree to limit each cumulative rent for the entire property to no more than one
25

1 ~~hundred and ten percent of the average rent for a similar property in the city of Boulder. that~~
2 ~~which is affordable to households earning no more than the average median income for families~~
3 ~~in the city of Boulder.~~ The city manager shall, by rule, establish such maximum rents based on
4 the number of bedrooms using the Colorado Division of Housing's Metro Denver Area
5 Residential Rent and Vacancy Survey. ~~and Finance Authority Income and Rent Tables or~~
6 ~~another substantially similar resource.~~

7 **10-11-14. - City Manager May Order Premises Vacated.**

8 (a) Whenever the city manager determines that any cooperative housing unit is in
9 violation of this chapter or of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, and has
10 caused a summons and complaint requiring the licensee to appear in municipal court to answer
11 the charge of violation to issue, and the summons cannot be served upon the licensee despite
12 reasonable efforts to do so, or, having been served, the licensee has failed to appear in the
13 municipal court to answer the charges or at any other stage in the proceedings, or, having been
14 convicted or entered a plea of guilty or no contest, the licensee has failed to satisfy the judgment
15 of the court or any condition of a deferred judgment, then the city manager may, after thirty days'
16 notice and an opportunity for a hearing to the residents and the licensee, require that the premises
17 be vacated and not be reoccupied until all of the requirements of the Property Maintenance Code
18 and the cooperative housing code have been satisfied and a cooperative housing license is in
19 effect. No person shall occupy any cooperative housing unit after receiving actual or constructive
20 notice that the premises have been vacated under this section.

21
22 (b) Any notice required by this section to be given to a licensee is sufficient if sent by
23 first class or certified mail to the address of the last known owner of the property as shown on
24 the records of the Boulder County Assessor as of the date of mailing. Any notice to a resident
25

1 required by this section is sufficient if sent by first class or certified mail to or delivered to any
2 occupant at the address of the premises and directed to "All Residents."

3 (c) The remedy provided in this section is cumulative and is in addition to any other
4 action the city manager is authorized to take.

5 **10-11-15. - Administrative Remedy.**

6 (a) If the city manager finds that a violation of any provision of this chapter or
7 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to
8 the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3,
9 "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to
10 remedy the violation:

11 (1) Impose a civil penalty according to the following schedule:

12 (A) For any violation in the following areas: the area south of Arapahoe Avenue,
13 north of Baseline Road, east of 6th Street and west of Broadway; the area south of Baseline
14 Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area
15 south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th
16 Street:

17 (i) For the first violation of the provision, \$500.00;

18 (ii) For the second violation of the same provision, \$750.00; and

19 (iii) For the third violation of the same provision, \$1,000.00;

20 (B) For a violation in any other area:

21 (i) For the first violation of the provision, \$150.00

22 (ii) For the second violation of the same provision, \$300.00; and

23 (iii) For the third violation of the same provision, \$1,000.00;

1 (2) Revoke the cooperative housing license; and

2 (3) Issue any order reasonably calculated to ensure compliance with this chapter and
3 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

4 (b) If notice is given to the city manager by the licensee at least forty-eight hours
5 before the time and date set forth in the notice of hearing on any violation, other than a violation
6 of section 10-11-12 "Compatibility with Neighborhoods," B.R.C. 1981, that the violation has
7 been corrected, the manager will re-inspect the cooperative housing unit. If the manager finds
8 that the violation has been corrected, the manager may cancel the hearing.

9 (c) If notice is given to the city manager by the licensee at least forty-eight hours
10 before the time and date set forth in the notice of hearing on any violation of section 10-11-12
11 "Compatibility with Neighborhoods," B.R.C. 1981, that the licensee has scheduled a community
12 mediation with concerned neighbors, the manager may continue the hearing until the manager
13 receives a report regarding the conclusion of the mediation. If after reviewing a community
14 mediation report, if the city manager is satisfied that the cooperative housing unit meets the
15 requirements of section 10-11-12 "Compatibility with Neighborhoods," B.R.C. 1981, the city
16 manager may dismiss any pending complaint.

17 (d) The city manager's authority under this section is in addition to any other
18 authority the manager has to enforce this chapter, and election of one remedy by the manager
19 shall not preclude resorting to any other remedy as well-, **provided however, the city manager**
20 **shall not seek criminal penalties for any violation of this chapter.**

21 (e) The city manager may, in addition to taking other collection remedies, certify due
22 and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-
23
24
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1 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
2 Collection," B.R.C. 1981.

3 (f) To cover the costs of investigative inspections, the city manager will assess
4 operators a \$250.00 fee per inspection, where the city manager performs an investigative
5 inspection to ascertain compliance with or violations of this chapter.

6 **10-11-16.—Criminal Penalty.**

7 (a) — The penalty for violation of any provision of this chapter is a fine of at least
8 \$500.00 and not more than \$2,000.00 per violation, or incarceration for not more than ninety
9 days in jail, or both such fine and incarceration. In addition, upon conviction of any person for
10 violation of this chapter, the court may issue a cease and desist order and any other orders
11 reasonably calculated to remedy the violation. Violation of any order of the court issued under
12 this section is a violation of this section and is punishable by a fine of not more than \$4,0000.00
13 per violation, or incarceration for not more than ninety days in jail, or both such fine and
14 incarceration.

15
16 (b) — It shall be a condition of any deferred prosecution or deferred or suspended
17 sentence under this chapter that the defendant commit no violations of this chapter for at least
18 one year from the date of such deferred prosecution or deferred or suspended sentence.

19 (c) — Notwithstanding subsection (a) of this section, the following specific sentencing
20 considerations shall apply to fines imposed for violations:

21 (1) — The court shall consider any evidence presented by the defendant that a potential
22 fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally
23 capitalized owner of the ability to continue operating a rental housing business of the sort
24 involved in the case before the court. No fine that is confiscatory shall be enforced by the court.
25

1 (2) — In imposing a fine in any single case or in any consolidated cases, the court may
2 weigh all factors normally and properly considered in connection with the imposition of fines,
3 including the seriousness of the violation, the past record of the defendant, the economic
4 circumstances of the defendant and all mitigating or aggravating factors relevant to the violation
5 or to the defendant. In addition, in determining the amount of any fine, the court may consider:

6 (A) — The imposition of a fine that would deprive the defendant of any illegal profit
7 collected because of the occurrence of the violation or violations on the rental housing property;

8 (B) — The imposition of a reasonable penalty in addition to any level of fine that is
9 attributable to illegally obtained profit; and

10 (C) — The imposition of such additional fine as is determined by the court to constitute a
11 reasonable amount to be suspended in order to ensure compliance with any terms of probation
12 imposed by the court.

13 (d) — No fine imposed in a single case alleging multiple dates of violation, nor any fine
14 in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that
15 might be imposed for fifteen separate violations unless the court finds special aggravating
16 circumstances. Where special aggravating factors are at issue, the following procedures shall
17 apply:

18 (1) — The defendant shall be entitled to ten days' notice of any special aggravating
19 factors upon which the prosecution intends to rely at the sentencing hearing or about which,
20 based upon evidence previously presented, the court is concerned. If necessary in order to
21 provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.
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1 (2) — A judicial finding of the existence of special aggravating factors shall not mandate
2 that the court impose any particular level of fine but will, rather, provide the sentencing court
3 with discretion to determine a fine based upon all the criteria set forth in this subsection.

4 (3) — Special aggravating factors, for the purpose of this subsection, shall require a
5 judicial finding of one or more of the following:

6 (A) — The violations at issue were flagrant and intentional on the part of the defendant;

7 (B) — The defendant, after learning of the violation, failed to attempt corrective action
8 over a sustained period of time; or

9 (C) — A fine equivalent to the maximum fine permitted for fifteen separate violations
10 would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the
11 violations or would be inadequate to ensure that the violation is neither profitable nor revenue
12 neutral for the offender.
13

14 **10-11-167. - Authority to Issue Rules.**

15 The city manager may adopt reasonable rules to implement this chapter.

16 **Section 8.** This ordinance is necessary to protect the public health, safety, and welfare of
17 the residents of the city, and covers matters of local concern.

18 **Section 9.** The City Council deems it appropriate that this ordinance be published by title
19 only and orders that copies of this ordinance be made available in the office of the city clerk for
20 public inspection and acquisition.
21
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25

1 READ ON FIRST READING, PASSED AND ORDERED PUBLISHED BY TITLE

2 ONLY this __ day of April 2016.

3
4
5 _____
6 Suzanne Jones
7 Mayor

8 Attest:

9 _____
10 Lynnette Beck
11 City Clerk

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DRAFT

Attachment A

Zoning District	R R - 1 , R R - 2 , R E , R L - 1	R L- 2, R M -2	R M - 1, R M -3	R M X- 1	R M X- 2	R H - 1, R H - 2, R H - 4, R H -5	R H - 3, R H -7	R H -6	M H	M U -3	M U -1	M U -2	M U -4	B T- 1, B T- 2	B M S	B C - 1, B C -2	B C S	B R - 1, B R -2	D T- 4	D T- 5	D T- 1, D T- 2, D T- 3	I S - 1 , I S - 2	I G	I M	I M S	P	A	
Use Modules	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	M H	M 1	M 2	M 3	M 4	B 1	B 2	B 3	B 4	B 5	D 1	D 2	D 3	I 1	I 2	I 3	I 4	P	A	Specific Use Standard
Cooperative housing units	C A	C A	C A	C A	C A	C A	C A	*	*	C A	C A	C A	*	*	*	*	*	*	*	*	*	*	U	U	*	*	*	9-6-3(b)