



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: June 2, 2015

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

PRESENTER/S

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

EXECUTIVE SUMMARY

The purpose of this council agenda item is to amend the city’s rental licensing code to expressly permit short-term rentals.¹ At the February 10, 2015 study session the council directed staff to bring forward a draft ordinance incorporating concepts from council’s discussion. The intent is that the council will use the legislative process to receive public input on various policy questions. This first reading ordinance should not, therefore, be viewed as a reflection of council policy, but more of a sounding board to begin the community conversation.

¹ There are many different terms for the activity addressed by this memorandum. Historically, staff has referred to them as “vacation rentals by owner.” This seemed appropriate when the principal website offering such rentals was vrbo.com. With the growth of airbnb.com and other companies, it would seem that using “VRBO” could lead to confusion. One group of residents uses the term “Private Guest Accommodations.” This memorandum uses the term “short-term rentals.” The proposed ordinance incorporates the regulatory scheme into the rental licensing program, which regulates rentals of 30 days or longer. The proposed ordinance would add provisions for regulating rentals for less than 30 days. Thus, the name short-term rentals would appear to be appropriate.

STAFF RECOMMENDATION

Suggested Motion Language:

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

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

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

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

OTHER IMPACTS

Fiscal – Regulation of short-term rentals will require the expenditure of city funds for which there is no budget. Staff intends to bring forward a proposed tax measure for the fall 2105 ballot that would provide revenue to support the regulatory program.

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

BOARD AND COMMISSION FEEDBACK

None

BACKGROUND

At a February 10, 2015 study session, council considered regulation of short-term rentals in Boulder. Boulder residents have long rented their homes to visiting vacationers. Previously, such rentals were sporadic and incidental. The so-called “sharing economy” growing out of almost universal internet usage has caused a significant increase in this type of rental activity in Boulder. This growth has coincided with and been spurred by the

evolution of companies created to facilitate such rentals. In 2008, city staff examined all listings for vacation rentals in Boulder on the website www.vrbo.com. Staff found 31 properties listed, with only 21 actually located in the City of Boulder. In December 2014, staff accessed the website www.airbnb.com and found over 1800 listings referring to the City of Boulder. Of these, staff confirmed 514 in the city.

Boulder's Current Regulations

Boulder's current code was not drafted in contemplation of large-scale rental of private residences for less than thirty days. Accordingly, the Boulder Rental Licensing code applies only to rentals for thirty days or more. There are regulations for motels, hotels and bed and breakfasts, but nothing directed specifically at the short-term rental of residential properties.

Because these rentals fall between the cracks, enforcement has been challenging. Staff has applied several code sections. Strict enforcement of these sections would effectively prohibit most residential vacation rentals.

Zoning

The city's land use code includes the following definitions:

"Bed and breakfast" means a building of a residential character other than a hotel or motel compatible with the neighborhood offering:

- (1) Temporary lodging for less than one month;
- (2) Twelve or fewer rooms for guests;
- (3) At least one meal daily for guests; and
- (4) A manager residing on the premises, but not providing the accessory uses normally associated with a hotel.

"Hostel" means a facility for residence of under one month that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers who direct the guests' participation in the domestic duties and activities of the hostel.

"Hotel/motel" means an establishment that offers temporary lodging in rooms, for less than one month, and may include a restaurant, meeting rooms, and accessory uses and services, including, without limitation, newsstands, gift shops, and similar incidental uses conducted entirely

within the principal building but excludes a bed and breakfast, as defined in this section.

§ 9-16-1, B.R.C. 1981, “General Definitions.”

Most vacation rentals could be considered either a “Hotel/motel” or a “Bed and breakfast.” If categorized as a hotel/motel, most short-term rentals would be illegal, because the code prohibits hotels and motels in all residential zones. Bed and Breakfasts are permitted in residential zones. The definition quoted above would only include short term rentals with a resident operator that served at least one meal. Arguably such arrangements are legal under current code. However, the investigative and proof issues make effective enforcement very difficult.

The purpose of the proposed ordinance is to attempt to develop a coherent, policy-based regulatory system for short-term rentals.

Proposed Ordinance

The proposed ordinance, which amends the city’s current rental licensing code,² would include the following:

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

Alternative Proposal

While developing the proposed ordinance, staff met with a group of individuals who rent properties in Boulder that they do not occupy. This group drafted a proposed ordinance that reflects a different regulatory approach. Staff has attached a copy of this draft as Attachment B. Some features of this proposal are as follows:

- Short-term rentals would be limited to no more than 5% of the number of long-term rental licenses issued.

² Because the proposed ordinance is intended to fit within the existing regulatory scheme, staff has attached a copy of the current rental licensing code for reference.

- No more than 5% of the properties on a block could be issued short-term rental licenses.
- Requires a responsible party residing at, or located within ten miles of, the property.
- Require that the owner or manager respond to any complaint within 90 minutes.
- Only 3% of the units in a census block could be non-owner occupied short-term rentals.
- Owners would have a fifteen day cure period for any violations.

ATTACHMENTS

Attachment A - Proposed Ordinance

Attachment B - Ordinance Proposed By Community Members

Attachment C - Current Rental Licensing Code

ORDINANCE NO. 8050

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

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

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

10-1-1. – Definitions.

...

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

...

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

...

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

...

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

10-3-19. – Short Term Rentals.

Short-term rentals are prohibited except:

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

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

3 Section 6. The City Council deems it appropriate that this ordinance be published by title
 4 only and orders that copies of this ordinance be made available in the office of the city clerk for
 5 public inspection and acquisition.

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

9
 10 _____
 Mayor

11 Attest:

12
 13 _____
 City Clerk

14
 15 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
 16 PUBLISHED BY TITLE ONLY this 21st day of July, 2015.

17
 18
 19 _____
 Mayor

20 Attest:

21 _____
 City Clerk

Ordinance Language pertaining to Private Property Rentals for a duration of less than 30 days.

LEGISLATIVE INTENT: The rental of homes by the owner can provide a flexible housing inventory that allows people a safe accommodation while contributing to the Boulder economy; hotel taxes from such accommodations can be used in the community to support the low-income housing goals for future community residents and address other housing needs in the Boulder community; the needs of long-term residents will be balanced with the allowance of flexible rentals.

Private Guest Accommodations Properties (PGAP's).

For purposes of this ordinance, "Private Guest Accommodations Properties (PGAP)" shall mean a residential dwelling unit containing not more than four (4) sleeping rooms that is used and/or advertised as a private accommodation for occupancy by guests, per terms defined in Boulder City code, as less than thirty (30) days. Residential dwelling units rented to the same occupant for more than thirty (30) continuous days, Bed and Breakfast establishments, boarding houses, hotels, and motels shall not be considered a PGAP.

- I. No person or entity shall operate a PGAP or advertise a residential property for use as a PGAP without the owner of the property first having obtained a PGAP permit and Rental License issued by the City.
 - a. To protect the inventory of properties that can be leased to long term permanent residents in the City of Boulder, the total number of PGAP licenses shall not exceed five-percent (5%) of the total Boulder Rental Licenses at any point in time. Should the five-percent (5%) threshold be reached, no additional licenses shall be issued until allowable.
 - b. Additionally, to protect the integrity of Boulder's neighborhoods, there shall be no more than five-percent (5%) of the rental properties on a given block awarded a PGAP license in a given year.
- II. The permit holder shall be responsible for collecting and remitting all applicable room, occupancy, and sales taxes required by state law or City Code. The applicable sales tax rate shall be ten-percent (10%) of the gross rental amount excluding cleaning fees. All revenues from PGAP's shall be directed to Boulder's Affordable Housing Program.
- III. PGAP Permit Application Contents:
 - a. Name, number, address, and email address of the owner or property manager ("responsible party") residing or located within ten (10) miles of the PGAP that is responsible for addressing all maintenance and life safety concerns and is available twenty-fours (24) hours per day during any occupancy period.
 - b. The owner or property manager will respond within 90 minutes should a complaint arise and face \$500 penalty if response isn't within this time period.
 - c. Results of Boulder Rental Inspection;
 - d. A PGAP marketing plan detail where the property will be listed and the associated listing identifiers
- IV. All PGAP's shall utilize marketing companies that provide due diligence vetting of both the property and the potential guests. Classified advertisements shall be strictly prohibited due to their susceptibility to fraud. A list of approved marketing vendors shall be provided with licensing materials and posted to the city's website.
- V. All PGAP's shall provide upon demand proof of insurance evidencing homeowner's fire, hazard, and liability insurance. Liability coverage shall have limits of not less than \$1,000,000 per occurrence.
- VI. If the PGAP unit shares a common wall or a common driveway with another property owner, proof of written notification to such neighboring property owner(s) prior to filing the application.
- VII. Signage. Signs, advertising, or any other display on the property indicating that the dwelling unit is being utilized, in whole or in part, as a PGAP is prohibited.
- VIII. All PGAP occupants shall abide by all applicable noise and waste restrictions.
- IX. The PGAP permit shall expire three hundred sixty-five (365) days after it is issued. PGAP permits may be renewed upon the payment of a XXX dollar renewal fee.
- X. No more than 3% of the single-family or detached two-family residential units within each census block shall be permitted as non-owner-occupied short-term rental use.

Attachment B - Ordinance Proposed By Community Members

- XI. Before revoking any permit, the department of codes administration shall give the permit holder fifteen days written notice of the alleged violation(s) against him/her. If the department of codes administration determines that more than 3 violations of this section or any other ordinance or law relating to PGAPs have occurred, the permit to operate a PGAP may be revoked.

Current Rental Licensing Code

10-1-1. - Definitions.

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

Accessible means, with respect to energy conservation measures, able to be modified to comply with this code at reasonable expense. The city manager shall determine the reasonableness of any expense after submission of evidence by the owner and a request for such determination. In such regard, the manager shall take account of the payback period for the measure, its contribution to the capital value of the dwelling unit, and whether or not the measure can be financed.

Air infiltration means the leakage of air through cracks in a building, including, without limitation, cracks associated with doors, windows, baseboards, penetrations for entry of pipes and wires, and places where dissimilar materials meet.

Approved means approved by the city manager to serve the purpose for which it is intended to be used.

Approved semi-rigid tubing connector means a flexible metal pipe connecting a gas residential dryer or range, if it meets the requirements of and is installed in accordance with the city mechanical code, or, if it is a commercial gas dryer or range, it is a connector supplied with the appliance from the manufacturer, or is an equivalent commercial grade flex connector, and is installed in accordance with the manufacturer's instructions.

Approved sewer system means a sewer system authorized by the city manager to be connected to the municipal waste water system or by the Boulder County Health Department to be connected to a properly constructed individual sewage disposal system.

Approved water system means a water system authorized by the city manager to be connected to the municipal water system or by the Boulder County Health Department to be connected to a potable water system.

ASTM means American Society for Testing Materials.

Baseline inspection as used in Chapter 10-3, "Rental Licenses," B.R.C. 1981, means a physical inspection of a dwelling unit performed by a qualified city-licensed contractor for the purpose of determining compliance with all required items specified on a rental housing inspection checklist developed by the city manager based on the requirements of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

Basement means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a story as that term is used in Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

Caulk means material designed to reduce air infiltration and having an estimated effective life exceeding five years.

Cellar means that portion of a dwelling that is located partly or wholly below grade and has half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

Cleanable means having a smooth, hard surface that is free from unsealed breaks and impervious to the amount of water that would be used in cleaning.

Condominium unit means a form of property ownership of airspace, as defined in § 38-33-103, C.R.S.

Cooking device excludes, where cooking devices are prohibited or excluded in this section or in Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, one microwave oven unit or one microwave oven unit combined with a refrigerator-freezer.

Door means an opening in a solid wall for the ingress and egress of persons, including, without limitation, doorways, lintels, or headers, casing, frames, sills, and doors with or without glazing.

Draft diverter means a device attached to or made part of the vent outlet from an appliance and designed to: insure the ready escape of products of combustion in the event of no draft, back draft, or stoppage in the vent or flue beyond the draft hood; prevent a back draft from entering the appliance; and neutralize the effect of stack action of the flue upon operation of the appliance.

Dwelling means any building, structure, or other housing accommodation that is wholly or partly used or intended to be used for living or sleeping by human occupants, but excludes temporary housing.

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

Electrical convenience outlet means a point on the electrical wiring system equipped with one receptacle box that may contain one or more receptacles to receive plugs from which current is taken to supply electrical appliances.

Elements means wind, rain, snow, hail, or sleet, or surface run-off water.

Energy efficiency requirements inspection means a physical inspection performed by a class G city-licensed contractor for the purpose of determining compliance with the Prescriptive Energy Efficiency Option under Section C101.2.2.

Extermination means control and elimination of insects, rodents, vermin, or other pests by eliminating their harborage and materials that may serve as their food or by taking recognized, legal methods of eliminating pests, including, without limitation, poisoning, spraying, fumigating, or trapping.

Garbage means putrescible animal or vegetable waste resulting from the preparation, cooking, and serving of food or the storage or sale of produce.

Grade means the average of the finished ground level at the center of all walls of a building. When walls are parallel to and within five feet of a sidewalk, grade means the sidewalk level.

Habitable room means a room or enclosed floor space used, intended to be used or designed to be used for living, sleeping, eating, or cooking and excludes bathrooms, toilet compartments, closets, halls, and storage places.

Infestation means the presence of insects, rodents, vermin, or other pests of a kind or in a quantity that endanger health within or around a dwelling.

Makeshift repairs means repairs not made in accordance with the requirements of this code, any ordinance of the city, or rule or regulation adopted thereunder; accepted practices; prevailing standards; design of a licensed contractor; or manufacturer's recommendations.

Occupant means any person living in, sleeping in, cooking in, or possessing a building or part thereof.

Operator means any person who is an owner, is an owner's representative, has charge of, or controls any dwelling or parts thereof.

Owner means a person as defined by this code, who, alone, jointly or severally with others, or in a representative capacity (including, without limitation, an authorized agent, executor, or trustee), has legal or equitable title to any property in question.

Permanently affordable unit has the same meaning as in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.

Qualified heating maintenance person means a licensed professional engineer; a licensed mechanical contractor; or an employee of a regulated public utility whose duties include such inspections.

Qualifying carbon offset means a financial instrument aimed at a reduction in greenhouse gases, purchased from the Colorado Carbon Fund (CCF) or from an alternative fund established by the city. One qualifying carbon offset represents the reduction of one metric ton of carbon dioxide or its equivalent (CO₂e) in other greenhouse gases (if purchased from CCF) or another level of reduction specified by any alternative fund established by the city.

Readily accessible means capable of being reached safely and quickly for operation, repair, or inspection without the necessity of climbing over or removing obstacles, or using portable access equipment.

Renewal inspection means, with respect to any rental housing unit covered by a current rental license, an inspection performed by a qualified city-licensed contractor for the purpose of determining compliance with all required items specified on a rental housing renewal inspection checklist that are likely to become noncompliant over time, based on the requirements of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

Rental housing inspector means a person licensed as a D-9 contractor under Chapter 4-4, "Building Contractor License," B.R.C. 1981, to perform inspections under contract to owners or operators of rental housing to determine compliance with Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, using forms supplied by the city manager, and to certify compliance to the manager as part of the process of licensing rental housing.

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

Rooming house means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers not related to the family of the heads of the household.

Rooming unit means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a private bath but does not include a sink or any cooking device.

Sound condition means freedom from defects that would endanger the health, safety, and welfare of the occupants of the structure, and in good working condition if applicable.

Stairway means all stairwells, and includes stair stringers, risers, treads, handrails, banisters, and vertical and horizontal supports.

Story means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the top-most floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade for more than fifty percent of the total perimeter or is more than twelve feet above grade at any point, such usable or unused under-floor space shall be considered as a first story.

Supplied means paid for, furnished, provided by, or under the control of the owner or operator.

Temporary housing means any mobile home, camper, or other structure used for human shelter that is designed to be transportable and is not attached to the ground, to another structure, or to any utilities system.

Trap means a fitting or device in a plumbing system designed and constructed to provide, when properly vented, a liquid seal that will prevent the back passage of air without materially affecting the flow of sewage or wastewater through it.

Vent means a pipe designed to convey the product of combustion from an appliance to a flue or chimney.

Ventilation means not less than one square inch of area of contiguous inside and outside air for every square foot of floor space.

Water heater insulation means a thermal insulation blanket with a membrane facing which has a flame spread classification of no more than two hundred for an electric water heater and twenty-five for an oil- and gas-fired water heater when tested in accordance with ASTM E 84-80, or originally installed insulation integral to the water heater which provides equivalent resistance to heat loss.

Window means an opening in a solid wall for the interior illumination and ventilation of a structure and includes lintels or headers, casings, sills, frames, and glazing.

- (b) Words defined in Chapter 1-2, "Definitions," B.R.C. 1981, have the meanings therein expressed if not differently defined by this chapter.
- (c) For the purposes of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, a word not defined in this chapter or in Chapter 1-2, "Definitions," B.R.C. 1981, but defined in the International Building Code adopted in Chapter 10-5, "Building Code," B.R.C. 1981, the International Residential Code adopted in Chapter 10-5.5, "Residential Building Code," B.R.C. 1981, the National Electrical Code adopted in Chapter 10-6, "Electrical Code," B.R.C. 1981, the International Energy Conservation Code adopted in Chapter 10-7, "Energy Conservation Code," B.R.C. 1981, the International Mechanical Code adopted in Chapter 10-9, "Mechanical Code," B.R.C. 1981, the International Fuel Gas Code adopted in Chapter 10-9.5, "Fuel Gas Code," B.R.C. 1981, and the International Plumbing Code adopted in Chapter 10-10, "Plumbing Code," B.R.C. 1981, has the meaning expressed in such code if it and the housing code provision concern similar subjects.

Chapter 3 - Rental Licenses

10-3-1. - Legislative Intent.

This chapter provides for comprehensive enforcement of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, by establishing a system of rental licenses for all dwelling and rooming accommodations in the City that are rented to tenants.

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

- (a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager.
 - (1) Any dwelling unit occupied by the owner or members of the owner's family and housing no more than two roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the occupant owns an interest in a corporation, firm, partnership, association, organization or any other group acting as a unit that owns the rental property.
 - (2) A dwelling unit meeting all of the following conditions:
 - (A) The dwelling unit constitutes the owner's principal residence;
 - (B) The dwelling unit is temporarily rented by the owner for a period of time no greater than twelve consecutive months in any twenty-four-month period;
 - (C) The dwelling unit was occupied by the owner immediately before its rental;
 - (D) The owner of the dwelling unit is temporarily living outside of Boulder County; and
 - (E) The owner intends to re-occupy the dwelling unit upon termination of the temporary rental period identified in subparagraph (b)(2)(B) of this section.

- (3) Commercial hotel and motel occupancies which offer lodging accommodations primarily for periods of time less than thirty days, but bed and breakfast facilities are not excluded from rental license requirements.
- (4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.

10-3-3. - Terms of Licenses.

(a) License terms shall be as follows:

- (1) Licenses, other than reduced term licenses issued under section 10-3-4, "Reduced Term License," B.R.C. 1981, or temporary licenses issued under section 10-3-9, "Temporary License Appeals," B.R.C. 1981, shall expire four years from issuance or when ownership of the licensed property is transferred.
 - (A) In addition to any other applicable requirements, new licenses and renewals shall require that the licensee submit to the city manager a completed current baseline (for a new license) or renewal inspection report, on forms provided by the City. The report shall satisfy the following requirements:
 - (i) The section of the report concerning fuel burning appliances must be executed by a qualified heating maintenance person certifying compliance with those portions of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, for which the report form requires inspection and certification.
 - (ii) The section of the report concerning smoke and carbon monoxide alarms must be executed by the operator certifying that the operator inspected the smoke and carbon monoxide alarms in the licensed property and that they complied with the requirements of chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
 - (iii) The section of the report concerning trash removal must be executed by the operator certifying that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with subsection 6-3-3(b), B.R.C. 1981.
- (b) The city manager shall issue separate licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate licenses for each dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the City. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the licenses for all dwelling and rooming units, the city manager may consider the whole complex to be the equivalent of a single building for the purposes of licensing and the fee schedule in section 4-20-18, "Rental License Fee," B.R.C. 1981.
- (c) Whenever an existing license is renewed, the renewal license shall be effective from the date of expiration of the last license if the applicant submits a complete renewal application by or within ninety days from the expiration date. Licenses not renewed within ninety days will be considered expired, requiring a new baseline inspection report.
- (d) Issuance of any license (new or renewed) extending beyond December 31, 2018 requires meeting the energy efficiency requirements of chapter 10-2, "Property Maintenance Code, Appendix C - Energy Efficiency Requirements," B.R.C. 1981.

10-3-4. - Reduced Term License.

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

- (1) Violations of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed during an inspection, individually or in combination, demonstrate a failure to maintain the rental property in a safe, sanitary and clean condition so that the dwelling endangers the health and safety of the occupants;
 - (2) There is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in title 9, "Land Use Code," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title; or
 - (3) The term of an initial license or renewal of an existing license would otherwise extend beyond December 31, 2018 for a property that has not received an "Energy efficiency requirements inspection" demonstrating compliance with chapter 10-2, "Property Maintenance Code," Appendix C - "Energy Efficiency Requirements," B.R.C. 1981.
 - (A) For violations of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the license term shall be reduced to twenty four months.
 - (B) For violations of title 9, "Land Use Code," B.R.C. 1981, the license term shall be reduced to twelve months.
 - (C) In the case of failure to demonstrate a satisfactory energy efficiency requirements inspection for the subject property, under paragraph (3), above, the license term shall expire December 31, 2018, unless, before that date, the city manager receives an energy efficiency requirements inspection demonstrating compliance, in which case the license term shall extend the full period otherwise prescribed by this chapter.
- (b) If an operator disagrees with the decision of the city manager to issue a reduced term license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:
- (1) For reduced term licenses issued as a result of violations of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the appeal shall be made as provided in section 10-2-2, section 111, "Means of Appeal," B.R.C. 1981.
 - (2) For reduced term licenses issued as a result of violations of title 9, "Land Use Code," B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the fee amount shall be as specified for an appeal to the board of building appeals.

10-3-5. - License Procedure for Newly Constructed Rental Property.

Baseline inspections are not required before issuance of the first rental license for newly constructed rental property if a license application is submitted by or within one year after the date of issuance of the first certificate of occupancy or temporary certificate of occupancy.

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

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

- (a) Submit a written application for a license to the City, on official city forms provided for that purpose, at least thirty days before rental of the property including:
 - (1) A rental housing inspector's certification of baseline inspection dated within twelve months before the application. The operator shall make a copy of the inspection form available to city staff and tenants of inspected units within fourteen days of a request; and
 - (2) A report on the condition and location of all smoke and carbon monoxide alarms required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the operator; and

- (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C. 1981, made and verified by the operator.
- (b) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, at the time of submitting the license application.
- (c) Take all reasonable steps to notify any occupants of the property in advance of the date and time of the inspection. The operator shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

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

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

- (a) Pay all license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, before the expiration of the existing license.
- (b) Submit to the city manager, on forms provided by the manager:
 - (1) A rental housing inspector's certification of renewal inspection within twelve months before application. The operator shall make a copy of the inspection form available to city staff and tenants of inspected units within fourteen days of a request;
 - (2) A report on the condition and location of all smoke and carbon monoxide alarms required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the operator; and
 - (3) A trash removal plan meeting the requirements of subsection 6-3-3(b), B.R.C. 1981, made and verified by the operator.
- (c) Take all reasonable steps to notify in advance all tenants of the property of the date and time of the inspection. The operator shall be present and accompany the inspector throughout the inspection, unlocking and opening doors as required.

10-3-8. - Temporary License.

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

10-3-9. - Temporary License Appeals.

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

10-3-10. - Time of License Expiration.

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

- (a) The expiration date on the license unless temporary authority to rent is allowed under section 10-3-8, "Temporary License," B.R.C. 1981, of this chapter;
- (b) Thirty days after the date upon which transfer of ownership of the rental property occurs. However, for purposes of this section and section 10-3-11, "Change of Rental Property Owner or Agent," B.R.C. 1981, shall not include situations in which a rental property is transferred from ownership by one or more individuals into a limited liability company form of ownership, if all of the following conditions exist:
 - (1) At least one transferring owner is a member of the limited liability company;
 - (2) No exchange of consideration takes place as a condition of the transfer; and
 - (3) The transferring owners certify on forms approved by the city manager that there will be no significant change in the persons who manage the rental property or, in the alternative, in the persons who are responsible for managing the rental property.
- (c) The effective date of any order or notice to vacate the rental property issued under any provision of law;
- (d) The expiration of the temporary certificate of occupancy for the rental property if a permanent certificate of occupancy has not been issued; or
- (e) The revocation of the certificate of occupancy for the rental property.

10-3-11. - Change of Rental Property Ownership or Agent.

- (a) Within thirty days after transfer of ownership or change of local agent of a licensed property, the operator shall notify the city manager of the identity and mailing address of the new owner or new local agent.
- (b) Within sixty days after transfer of ownership of a property for which there is a current and valid license, the new operator of the property shall apply for a new license under section 10-3-6, "License Application Procedure for Buildings Converted to Rental Property," B.R.C. 1981.
- (c) Issuance of any licenses extending beyond December 31, 2018, requires meeting the energy efficiency requirements of chapter 10-2, "Property Maintenance Code," Appendix C, "Energy Efficiency Requirements," B.R.C. 1981.

10-3-12. - License Fees.

- (a) Applicants for any rental housing license, and operators renewing an existing rental housing license, shall pay the license fees prescribed by section 4-20-18, "Rental License Fee," B.R.C. 1981, upon submission of any license application.
- (b) If an operator of rental property legally changes the use of a structure by adding units for which such operator receives a license under this chapter separate from the license for the remainder of the rental property, the operator shall apply for a single rental license to cover the entire property no later than thirty days before the expiration date of the license that first expires. There shall be no additional fee assessed for the dwelling units or rooming units that were added to the structure at the time the separate licenses are consolidated.
- (c) If an operator of rental property reduces the number of dwelling units or rooming units within a rental property, the operator is not entitled to a refund of any fee previously paid.
- (d) The city manager shall charge no license fee for the following rental dwelling units, so long as such units have also been individually certified to the city manager as low income rental property by the housing authority of the City of Boulder, and such certification is valid at the time the fee would otherwise be due:
 - (1) Units owned by or leased and operated by the housing authority of the City of Boulder;

- (2) Units owned by or leased and operated by an entity which has a current valid tax status determination by the United States Internal Revenue Service as a section 501(c)(3) tax exempt organization and such units are permanently affordable, as that term is defined in chapter 9-16, "Definitions," B.R.C. 1981; or
- (3) Units covered by an assistance payment contract under 49 U.S.C. § 1437(b), "Lower-income housing assistance - authorization for contracts for assistance payments for existing dwellings."
- (4) If a housing complex under common ownership operates a fixed number or percentage of units as qualifying units under this subsection, but the individual units occupied by low income tenants vary over time, the license and fee waiver allowed by this subsection shall be applied pro rata to the total amount.

10-3-13. - Availability of License.

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

10-3-14. - Local Agent Required.

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is domiciled within Boulder County, Colorado, to serve as the local agent of the owner and the operator for service of such notices as are specified in section 10-2-2, "Property Maintenance Code," section 108, "Unsafe Structures and Equipment," and section 109, "Emergency Measures," B.R.C. 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

10-3-15. - City Manager May Order Premises Vacated.

- (a) Whenever the city manager determines that any rental housing is in violation of this chapter or of chapter 10-2, "Property Maintenance Code," B.R.C. 1981, and has caused a summons and complaint requiring the operator to appear in municipal court to answer the charge of violation to issue, and the summons cannot be served upon the operator despite reasonable efforts to do so, or, having been served, the operator has failed to appear in the municipal court to answer the charges or at any other stage in the proceedings, or, having been convicted or entered a plea of guilty or no contest, the operator has failed to satisfy the judgment of the court or any condition of a deferred judgment, then the city manager may, after thirty days' notice and an opportunity for a hearing to the tenants and the operator, require that the premises be vacated and not be reoccupied until all of the requirements of the Property Maintenance Code and the rental licenses code have been satisfied and a rental housing license is in effect. No person shall occupy any premises as a tenant after receiving actual or constructive notice that the premises have been vacated under this section.
- (b) Any notice required by this section to be given to an operator is sufficient if sent by first class or certified mail to the address of the last known owner of the property as shown on the records of the Boulder County Assessor as of the date of mailing. Any notice to the tenant required by this section is sufficient if sent by first class or certified mail to or delivered to any occupant at the address of the premises and directed to "All Tenants."
- (c) The remedy provided in this section is cumulative and is in addition to any other action the city manager is authorized to take.

10-3-16. - Administrative Remedy.

- (a) If the city manager finds that a violation of any provision of this chapter or chapter 10-2, "Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to the operator and an opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:
 - (1) Impose a civil penalty according to the following schedule:
 - (A) For the first violation of the provision, \$150.00;
 - (B) For the second violation of the same provision, \$300.00; and
 - (C) For the third violation of the same provision, \$1,000.00;
 - (2) Revoke the rental license; and
 - (3) Issue any order reasonably calculated to ensure compliance with this chapter and chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
- (b) If notice is given to the city manager by the operator at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the building. If the manager finds that the violation has been corrected, the manager may cancel the hearing.
- (c) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.
- (d) The city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.
- (e) To cover the costs of investigative inspections, the city manager will assess operators a \$250.00 fee per inspection, where the city manager performs an investigative inspection to ascertain compliance with or violations of this chapter.

10-3-17. - Penalty.

- (a) The penalty for violation of any provision of this chapter is a fine of at least \$500.00 and not more than \$2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration. In addition, upon conviction of any person for violation of this chapter, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court issued under this section is a violation of this section and is punishable by a fine of not more than \$4,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.
- (b) It shall be a condition of any deferred prosecution or deferred or suspended sentence under this chapter that the defendant commit no violations of this chapter for at least one year from the date of such deferred prosecution or deferred or suspended sentence.
- (c) Notwithstanding subsection (a) of this section, the following specific sentencing considerations shall apply to fines imposed for violations:
 - (1) The court shall consider any evidence presented by the defendant that a potential fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally capitalized owner of the ability to continue operating a rental housing business of the sort involved in the case before the court. No fine that is confiscatory shall be enforced by the court.
 - (2) In imposing a fine in any single case or in any consolidated cases, the court may weigh all factors normally and properly considered in connection with the imposition of fines, including the seriousness of the violation, the past record of the defendant, the economic circumstances of

the defendant and all mitigating or aggravating factors relevant to the violation or to the defendant. In addition, in determining the amount of any fine, the court may consider:

- (A) The imposition of a fine that would deprive the defendant of any illegal profit collected because of the occurrence of the violation or violations on the rental housing property;
 - (B) The imposition of a reasonable penalty in addition to any level of fine that is attributable to illegally obtained profit; and
 - (C) The imposition of such additional fine as is determined by the court to constitute a reasonable amount to be suspended in order to ensure compliance with any terms of probation imposed by the court.
- (d) No fine imposed in a single case alleging multiple dates of violation, nor any fine in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that might be imposed for fifteen separate violations unless the court finds special aggravating circumstances. Where special aggravating factors are at issue, the following procedures shall apply:
- (1) The defendant shall be entitled to ten days' notice of any special aggravating factors upon which the prosecution intends to rely at the sentencing hearing or about which, based upon evidence previously presented, the court is concerned. If necessary in order to provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.
 - (2) A judicial finding of the existence of special aggravating factors shall not mandate that the court impose any particular level of fine but will, rather, provide the sentencing court with discretion to determine a fine based upon all the criteria set forth in this subsection.
 - (3) Special aggravating factors, for the purpose of this subsection, shall require a judicial finding of one or more of the following:
 - (A) The violations at issue were flagrant and intentional on the part of the defendant;
 - (B) The defendant, after learning of the violation, failed to attempt corrective action over a sustained period of time; or
 - (C) A fine equivalent to the maximum fine permitted for fifteen separate violations would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the violations or would be inadequate to ensure that the violation is neither profitable nor revenue neutral for the offender.

10-3-18. - Authority to Issue Rules.

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

10-3-19. - Owner Occupied Designation.

Repealed.