



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 29, 2018

AGENDA TITLE

Request for a “Nod of Five” for staff to develop an ordinance requiring annual certification of principal residence for short-term rental licenses.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Maureen Rait, Executive Director, Public Works
Trish Jimenez, Deputy Director of Public Works for Development Services
Sara Easton, Administrative Services Manager

EXECUTIVE SUMMARY

Council Member Yates requested that the Council Agenda Committee schedule a “Nod of Five.” The purpose of the nod of five would be to direct staff to prepare a change to the short-term rental licensing regulations to require annual certification of principal place of residence. The work to prepare such an ordinance would be minimal. The ordinance would add a new subsection (o) to Section 10-3-19, requiring annual certification of principal residence on a form provided by the city manager. Council may also wish to amend Section 4-20-18 to impose a fee to pay the cost of processing the annual certification. Drafting these amendments would take less than one hour. It is possible, however, that community interest in such changes might necessitate a lengthy public hearing.

The purpose of this memorandum is to provide council with background to consider this request.

BACKGROUND

On September 29, 2015, the city council adopted ordinance 8050 legalizing short-term rentals in Boulder under certain conditions, including a requirement that the property be the owners' principal residence. Ordinance 8050 did not define "principal residence." After adoption, council received numerous complaints about short-term rentals run by absentee owners. One problem was couples who would claim different principal residences. After receiving substantial community feedback, council passed ordinance 8154 on November 10, 2016, defining principal residence as follows:

Principal residence means the dwelling unit in which a person resides for more than one-half of the year. However, if (1) the entire unit is offered and available for rental for more than twenty days in any month; or, (2) the person owns another dwelling unit that is not licensed for long term rental; (3) the person's spouse or domestic partner has a different principal residence; (4) the person's driver's license, voter registration or any dependent's school registration shows a different residence address, or (5) the Boulder County Assessor lists a mailing address different from the dwelling unit address it shall be presumed that the dwelling unit in question is not a principal residence. Provided, however, no presumption shall apply in any criminal proceeding.

Enforcement

In addition to the code changes, the city council directed staff to undertake an aggressive enforcement program. The city hired a full-time employee whose sole responsibility is short-term rental enforcement. Another employee supports long-term rental enforcement. These employees proactively enforce the city's rules by monitoring advertisements and checking county real property records. Hiring dedicated staff allowed the city to move from a complaint-based enforcement effort to a more proactive approach. Since 2015, most enforcement actions have been initiated proactively by city staff. The following is a breakdown of enforcement actions over the last few years:

Year	New Cases	Closed Cases	Closed Cases (no violation)	Open Cases
2016	173 (147 Proactive)	167	1	6
2017	426 (376 Proactive)	420	1	6
2018 YTD (1/1/2018- 7/31/2018)	268 (251 Proactive)	188	4	80

There are over 100 short-term rental advertising platforms, each with thousands of listings. Most platforms encourage or require hosts to be vague about their property's location. This makes enforcement very difficult since enforcement cannot begin until the

property and property owner have been identified. Identifying a property requires staff to compare photos from the advertisement with angles from street views, cross reference social media platforms, and physically drive to the neighborhood to find the actual property. Once the property is identified, staff needs to determine who the host is in relation to the property. Are they the owner, a tenant, or property manager? If they are the owner, do they live onsite, and if so, for how much of the year? Collecting this information only establishes the basis for the compliance case. Once staff verifies this information, the enforcement process begins with a notice of violation and continues with additional notices assessing civil penalties and potentially criminal summons to achieve compliance.

These steps are taken in every case. Thus, with 426 cases in 2017, efficient use of staff time is important. During an investigation, staff can uncover a variety of violations, such as renting without a license, renting a property that is not the operator's principal residence, or renting a leased property. Based on staff's experience, it has become clear that many short-term rental operators are not willing to adhere to the requirements that they agreed to when they signed the required statements and submitted their license applications, or, they simply fail to obtain a license at all. In any enforcement case, the city has the burden of proving that the property is being used in violation of the short-term rental requirements. This is particularly difficult when addressing cases involving the question whether the property is the owner's principal residence. In such cases, the city must prove, generally through circumstantial evidence, that a person is not living at a particular location. It is always difficult to prove a negative.

Staff is seeking to augment its enforcement program to make the process more efficient by using a web-based tool that will connect advertisements with the actual property addresses and record whatever information is available online to catalog the rental history of the property. This program continually identifies properties across the different platforms and catalogs the activity. Once implemented, staff will spend less time investigating each property's identity and can move straight to the enforcement process. The live record of rental history for each property will help staff identify how much of the year the property was rented versus owner-occupied. Staff has reviewed the products from three different service providers and identified the service that best meets the needs of all departments involved. The service contract is currently being reviewed for purchase and should be fully functional within a month of purchase. Staff's recommendation is that such a system be implemented to improve enforcement before requiring annual affidavits.

There are 809 active short-term rental licenses in the city. Many proactive cases are identified due to licenses not being renewed on time. If affidavits are required annually staff expects an increase in violations that will need to be investigated and resolved by compliance staff. Based on data from the long-term rental program, staff estimates that approximately 15% of short-term rental licenses may result in a compliance case. Staff spends an average of 2.5 hours per case which translates to 300 hours on an annual basis. This is the time equivalent of a .15 FTE. A fee sufficient to cover this enforcement cost would be in the \$13-\$14 range.

The annual affidavits may help to raise suspicion on some properties that are not operating in compliance with the principal residency requirement, but, it will not assist staff in investigating the case to meet the burden of proof necessary to resolve the violation and may result in unintended violations on properties that would otherwise be in compliance.

Administration

Staff members responsible for processing short-term rentals also manage long-term rental licenses, cooperative housing licenses and contractor licenses. Staff estimates that it takes approximately 20 minutes to process an affidavit. Thus, processing an additional 809 affidavits each year would take approximately 260 hours. This is the time equivalent of a.125 FTE. A fee sufficient to cover this administrative cost would be in the \$10- \$11 range. The annual fee required to cover the total cost for both administration and enforcement would be \$23-\$25 per year.