



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 19, 2019

AGENDA TITLE

Third reading and consideration of a motion to adopt Ordinance 8304, amending the short-term rental licensing requirements by amending Chapter 10-3, "Rental Licenses," B.R.C. 1981, to add a requirement that operators of short-term rentals annually certify that the property is the operator's principal residence; adding an associated fee to Section 4-20-18, "Rental License Fee," B.R.C. 1981, and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Mary Ann Weideman, Acting Director, Public Works
Trish Jimenez, Deputy Director of Public Works for Development Services
Sara Easton, Administrative Services Manager
Jonathan Bergelin, Code Compliance Supervisor

EXECUTIVE SUMMARY

On August 29, 2018 the council gave a "Nod of Five" for staff to prepare a change to the short-term rental licensing regulations to require annual certification of principal place of residence. The proposed ordinance would add a new subsection (l) to Section 10-3-19, requiring annual certification of principal residence on a form provided by the city manager. The proposed ordinance would also amend Section 4-20-18 to impose a fee to pay the cost of processing the annual certification.

On February 5, 2019 at the second reading of the proposed ordinance, council recommended decreasing the fee for the annual certification to remove the enforcement portion of the fee. Council discussed that, since there are already penalties for failure to comply with short-term rental license requirements, there is no need for the fee for an annual affidavit to include enforcement of the new requirement. As such, the proposed ordinance was amended at second reading to decrease the fee for the annual certification from \$47 per affidavit to \$20 per affidavit.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt on third reading, Ordinance 8304 amending the short-term rental licensing requirements by amending Chapter 10-3, "Rental Licenses," B.R.C. 1981, to add a requirement that operators of short-term rentals annually certify that the property is the operator's principal residence; adding an associated fee to Section 4-20-18, "Rental License Fee," B.R.C. 1981, and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Short-term rentals provide additional income for Boulder residents.
- Environmental: Not applicable.
- Social: Less expensive travel is an important social benefit. Short-term rentals provide additional opportunities for visitors to Boulder. Short-term rentals can remove housing stock from the long-term rental market. Boulder's requirement of owner occupancy was intended to limit this effect.

OTHER IMPACTS

- Fiscal-Budgetary: The proposed fee is intended to cover the cost of certification and enforcement.
- Staff Time: An additional 0.60 FTE at \$54,000 would be required to support the administration and enforcement of the proposed changes. A subsequent budget appropriation and FTE funded by additional revenue would be requested as part of the first budget supplemental in 2019.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

Boulder Area Rental Housing Association (BARHA) expressed concern that the fee for annual certification of principal residence was not limited to short term rentals based on the placement in Section 4-20-18 (e), “Rental License Fee,” B.R.C. 1981. At second reading, council amended the proposed ordinance to include clarifying language. On February 5, 2019 at the second reading of the proposed ordinance, two members of the public spoke during the public hearing.

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.

Code Enforcement Activity

In addition to the code changes, 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 short-term rental 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	342 (307 Proactive)	305	18	37

There are over 100 short-term rental advertising platforms nationally, each with thousands of listings. Most platforms encourage or require hosts to be vague about their property's location. Enforcement efforts cannot begin until the property and property owner have been identified, which can often require a thorough and time-intensive investigation. Once staff confirm a violation, the enforcement process begins with a notice of violation and continues with additional notices assessing civil penalties and potentially criminal summons to achieve compliance.

With hundreds of cases to investigate every year, efficient use of staff time is critical. 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, for a variety of reasons, many short-term rental operators do not 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, usually through circumstantial evidence, that a person is not living at a particular location.

Staff is implementing a new software tool to help make the process of identifying properties in potential violation of the short-term rental regulation more efficient. This web-based tool will connect advertisements with the actual property addresses and catalog the rental history of the property. Once implemented, staff will spend less time investigating each property's identity and can move straight to the enforcement process. Although the software program is expected to help reduce the amount of time spent during each investigation, it will likely also increase the number of cases by identifying more properties that are in violation.

ANALYSIS

Annual Certification of Principal Place of Residence

Applicants for a short-term rental license currently acknowledge the requirement of principal residence at the time of application for the license and are required to provide documentation to prove the property is in fact their principal residence. This process currently takes place every four years, in which time an owner's principal residency may change. The proposed change to the short-term rental licensing regulations to require annual attestation of principal residency is intended to regularly and frequently remind owners of the requirement and give them an opportunity to either reconfirm that the

property is their principal residence or to notify staff that their principal residence has changed.

Administration

Staff members responsible for processing short-term rental applications also manage long-term rental licenses, cooperative housing rental licenses, the SmartRegs program and contractor licenses. Staff estimates that it takes 30 minutes on average to process an affidavit, which includes staff time spent researching and verifying ownership, performing contact management in EnerGov (the city's new land management software), notifying customers, answering customers' questions, making EnerGov system changes, and working with code compliance staff. Thus, processing approximately 1,141 additional affidavits each year would take approximately 570 hours. This is the time equivalent of a 0.25 FTE. A fee sufficient to cover this administrative cost would be approximately \$20 per affidavit.

The fee required to cover the total cost for both administration and enforcement would be \$47 per affidavit and was originally included as part of the proposed ordinance. At second reading council members expressed concern that individuals who complied would be paying for enforcement against those who did not. Council directed staff to use fine revenue to pay enforcement costs. Council amended the ordinance to reduce the fee to \$20 to cover the administrative costs only.

NEXT STEPS

Since owners verified their principal residence when they first applied for their short-term rental license and did not expect to have to recertify until their renewal four years later, an education and outreach period will be imperative, and the enforcement of the new requirement should be phased in. Staff plans to begin initial education and outreach regarding the new requirement to all short-term rental license holders in March 2019.

Staff will notify owners of the affidavit requirement annually 30 days prior to the anniversary of their license issuance date via the email address they provided on their application and it is the owner's responsibility to keep up-to-date their email address that is on file with the city. Owners who don't have an email address on file will be notified via mail. Owners will have 30 days from when the notification is sent to log on to their EnerGov self-service account and certify under penalty of perjury that the property is still their principal residence. This method of self-attestation should be available after an upgrade to EnerGov in early spring and will be the most efficient way for staff to administer this new regulation.

ATTACHMENTS

Attachment A – Proposed Ordinance 8304

ORDINANCE 8304

AN ORDINANCE AMENDING THE SHORT-TERM RENTAL LICENSING REQUIREMENTS BY AMENDING CHAPTER 10-3 "RENTAL LICENSES," B.R.C. 1981, TO ADD A REQUIREMENT THAT OPERATORS OF SHORT-TERM RENTALS ANNUALLY CERTIFY THAT THE PROPERTY IS THE OPERATOR'S PRINCIPAL RESIDENCE; ADDING AN ASSOCIATED FEE TO SECTION 4-20-18, "RENTAL LICENSE FEE," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 4-20-18, "Rental License Fee," B.R.C. 1981, is amended to read as follows:

4-20-18. - Rental License Fee.

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

- (a) Dwelling and Rooming Units: \$105 per building.
- (b) Accessory Units: \$105 per unit.
- (c) For any rental license or renewal of a rental license that has not passed an inspection demonstrating compliance with Chapter 10-2, "Property Maintenance Code" Energy Efficiency Requirements as of December 31, 2017: \$100 per rental license.
- (d) To cover the cost of investigative inspections, the city manager will assess to operators a \$250 fee per inspection, where the city manager has performed an investigative inspection to ascertain compliance with or violations of this chapter.
- (e) For an annual certification of principal residence: \$20 pursuant to Section 10-3-19(1)(1), "Short Term Rentals," B.R.C. 1981.

Section 2. Section 10-3-19, "Short Term Rentals," B.R.C. 1981, shall be amended to add a new subsection (l) as follows:

10-3-19. – Short Term Rentals.

- (l) Any licensee that has submitted a sworn statement pursuant to paragraphs (c)(1) or (2) of this section as part of its original application shall complete the following each year within thirty days of the anniversary of the issuance of the short-term rental license:

(2) Pay the fee described in Section 4-20-18, "Rental Licensing Fees," B.R.C. 1981.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of residents of the city and covers matters of local concern.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 18th day of December 2018.

Attest:

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1 READ ON SECOND READING, AMENDED AND PASSED this 5th day of February
2 2019.

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5 _____
Suzanne Jones
Mayor

6 Attest:

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8 _____
Lynnette Beck
9 City Clerk

10 READ ON THIRD READING, PASSED AND ADOPTED this 19th day of February 2019.

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13 _____
Suzanne Jones
Mayor

14 Attest:

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16 _____
Lynnette Beck
17 City Clerk