



STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

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DATE: October 13, 2020

SUBJECT: Discussion of code changes for occupancy limits and the Planning & Development Services (P&DS) City Council priority code change work program.

EXECUTIVE SUMMARY

There has been significant community interest in exploring changes to the city's occupancy limits. Most recently, on September 15, 2020, council considered a motion to consider whether to allow households to temporarily exceed the city's occupancy limitations until May 31, 2021 to provide additional housing options to those impacted by COVID-19 (a link to staff's memo can be found [here](#)). While the motion did not carry, through a "nod of five," council expressed a desire to explore occupancy code changes in 2021 and reserved time to discuss changes to the city's occupancy regulations in more detail at their October 13, 2020 study session.

The purpose of this study session item is to provide background on the city's occupancy regulations and to solicit specific direction from council regarding scope, scale and timing for code changes related to occupancy limits. This information will assist staff in formulating options for council's consideration in future work programming efforts.

KEY ISSUES IDENTIFIED

- Council's desired scope, scale and timing related to occupancy code changes
- Council's desired level of community engagement
- Staff's existing council priority code change schedule of completion
- Staffing resources

Questions for Council

1. What is council's desired scope and scale for occupancy code changes (i.e. simple changes to definitions versus more complex regulatory changes that allow for increased occupancy in some or all areas of the city).
2. Are there specific aspects of the city's current occupancy regulations that council would like staff to examine?
3. What is council's desired level of community engagement?
4. Does council want staff to consider occupancy changes as part of their 2021 council priority code changes?

BACKGROUND

Occupancy Standards

The city's current occupancy provisions are somewhat complex. The basic rule is that occupancy is limited to three unrelated persons in P, A, RR, RE, and RL zones and four unrelated persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT, IS, IG, IM, and IMS zones. In addition to the basic rule, an unlimited number of family members can live together. Each family can have two "roomers." Finally, two people can live together with all their children.

"Family" is defined as follows:

[T]he heads of household plus the following persons who are related to the heads of the household: parents and children, grandparents and grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, first cousins, the children of first cousins, great-grandchildren, great-grandparents, great-great-grandchildren, great-great-grandparents, grandnieces, grandnephews, great-aunts and great-uncles. These relationships may be of the whole or half blood, by adoption, guardianship, including foster children, or through a marriage or a domestic partnership meeting the requirements of Chapter 12-4, "Domestic Partners," B.R.C. 1981, to a person with such a relationship with the heads of household.

§ 9-16-1 B.R.C. 1981. The domestic partnership provisions allow any two individuals, with limited restrictions, to obtain a certificate of domestic partnership from the city. The purpose statement from the domestic partnership chapter is as follows:

The city values the dignity and worth of all people and is committed to promoting justice, equity and inclusiveness. The city finds that domestic partnerships exist in many different forms, including unmarried couples in either same or opposite sex relationships who are living together. In order to promote equal respect and fair treatment and to protect the public health safety and welfare, it is the policy of the city to allow any two unrelated adults in a committed relationship who meet the domestic partnership

criteria to register with the city and to obtain a certificate attesting to their status or to receive a certificate documenting their status but not be formally registered in the city's domestic partnership registry.

§ 12-4-1 B.R.C. 1981.

In addition to the basic legal occupancy, there is a provision for non-conforming occupancy. Section 9-8-5(c) provides as follows:

- (c) Nonconformity: A dwelling unit that has a legally established occupancy higher than the occupancy level allowed by Subsection (a) of this section may maintain such occupancy of the dwelling unit as a nonconforming use, subject to the following:
 - (1) The higher occupancy level was established because of a rezoning of the property, an ordinance change affecting the property, or other city approval;
 - (2) The rules for continuation, restoration, and change of a nonconforming use set forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-2-15, "Use Review," B.R.C. 1981;
 - (3) Units with an occupancy greater than four unrelated persons shall not exceed a total occupancy of the dwelling unit of one person per bedroom; and
 - (4) The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
 - (5) If a property owner intends to sell a dwelling unit with a non-conforming occupancy that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981, every such contract for the purchase and sale of a dwelling unit shall contain a disclosure statement that indicates the allowable occupancy of the dwelling unit.

§ 9-8-5 B.R.C. 1981 ("Occupancy of Dwelling Units).

Non-conforming occupancy results mostly from previous down-zones, that is changes in the law reducing the density in a zone district or when occupancy regulations have changed from time-to-time. For example, when the city down-zoned a neighborhood, property owners were permitted to keep the then-existing occupancy. There are a total of 1,253 properties identified in the city's rental licensing database as potentially having legal non-conforming occupancies. The properties make up 5,307 dwelling units and 1,017 rooming units. Of these, 1,066, or 85%, were properties listed as having a non-conforming occupancy based upon a prior down-zoning. The other 187 properties, or 15%, had non-conforming occupancies for other reasons. This is likely because they had rooming units. Those 187 properties made up 335 rooming units and 222 dwelling units.

Many of the properties, which have non-conforming occupancies based on down-zoning, are on University Hill. The hill's medium-density residential area has been gradually reduced over the years, giving way to lower-density residential zoning west of 9th and south of College. The 1974 down-zoning dramatically reduced permitted density west of 9th and south of College. At the time of the 1974 down-zoning there were existing multi-family conversions, which would not be permitted today. The multi-family units exist because they were grandfathered after the 1974 down-zoning. In 1997, there was a down-zoning from high density residential to mixed used residential, which further reduced permitted density north of University. Existing apartment buildings and multi-family conversions were again grandfathered.

Before 1993, occupancy of dwelling units in down-zoned areas was treated as a non-conforming use. The maximum number of occupants could be different for each dwelling unit. The city-maintained records to reflect these differences. Before the 1993 code change, at each rental license inspection, the inspector checked the number of occupants against the non-conforming occupancy record to ensure that occupancy had not increased. Also, if the property owner ceased to keep the property occupied at the higher level, the property lost this non-conforming occupancy and was required to comply with the newer legal occupancy level. In 1993, Council effectively eliminated non-conforming occupancy by adding the following provision to the code:

Although the number of dwelling units may be a non-conforming use, subject to discontinuance pursuant to Chapter 9-3.5 Non-conforming Uses and Nonstandard Buildings and Lots, B.R.C. 1981, the number of occupants in a dwelling unit is not a non-conforming use and all occupancies in the city are subject to the restrictions set forth in this title.

Council added this section to create a more uniform system of occupancy. The code change was intended to set a uniform occupancy throughout the city regardless of prior down-zonings. The high and medium density districts allowed a maximum occupancy of four unrelated persons or a family plus two others. After the down-zone, the owners were allowed a maximum occupancy of three unrelated or a family plus two roomers per dwelling unit. This amendment had an impact on both landlords and tenants because it reduced the number of legal occupants in some dwelling units.

This code change was implemented through the rental housing inspection process. Upon rental inspection, landlords of non-conforming units were informed about the code amendment which changed the maximum occupancy limit.

Staff determined that the most equitable way to bring these non-conforming properties into compliance was to allow the existing occupants to remain until the end of their current lease or the expiration of the rental license, whichever came last. At that time, the property owner would have to reduce occupancy to adhere to the occupancy limits in the zone where the property was located.

Landlords objected to the code change and its implementation, because reducing occupancies reduced their rental income and reduced the available housing stock in the

rental market. The code change would cause units to have empty bedrooms that had previously been rented. Landlords also argued that with reduced occupancies, tenants would be forced to pay increased rents to allow landlords to meet operating expenses. The landlords requested that City Council and staff evaluate the possibility of allowing non-conforming occupancies to be maintained at historic levels.

In 1997, Council responded and asked staff to look at the issue and propose appropriate alternatives. Staff reviewed the previous down-zonings of residential areas from higher zoning district classifications to lower zoning district classifications, the city's history of regulating occupancy and the approaches Boulder's peer cities use to regulate occupancy of residential units.

On March 3, 1998, Council adopted ordinance 5970, which replaced the language added in 1993, quoted above, with the current non-conforming occupancy language in section 9-8-5(c), which is also quoted above.¹ It is worth noting that the planning board recommended that the change include a sunset provision. The city attorney's office recommended against including a sunset clause, noting that Council could change the language at any time. The ordinance has remained unchanged since 1998.

In 2015, council undertook an examination of occupancy and enforcement and ultimately adopted ordinances 8072 and 8108 amending the occupancy and rental licensing provisions to allow for more effective enforcement. The changes were focused on enforcing occupancy limitations through the city's rental licensing program. The new code provisions required licensees to post the maximum legal occupancy at the time any unit was shown and in any advertisement. It also required that the rental license include the maximum legal occupancy. Acceptance of the license waived any claim for any additional occupancy. In addition, council approved increased administrative fines, shifting enforcement from criminal prosecution to civil administrative enforcement.

Most recently, in March 2020, a community group called Bedrooms are for People received approval to circulate a petition to amend the city charter. The amendment would have required the city to allow occupancy of up to one person per bedroom, plus one and at least four people in any home with fewer than four bedrooms. The group ultimately submitted 5,235 valid signatures. While this was not enough to qualify for the ballot, it demonstrated a significant community interest in changing the city's occupancy laws.

Council Priority Code Changes / Staff Resources

At their annual retreat in January 2020, council prioritized the following code changes for staff in 2020.

Community Benefits – Phase 2

Community benefit programs typically include a suite of regulations and incentives that tie specific community benefits to requests for additional development rights (like building height, floor area and residential density). These programs identify the specific

¹ The 1998 code change only included subsections 1-4. Council added subsection 5 in 2015.

amount and type of community benefit required with specific development requests. At a check-in with council in April 2020, council prioritized the following benefits for Phase 2 for development projects that exceed the zoning district height limit (typically over 35-feet through the height modification process):

- Below market rate rent commercial
- Space for arts and cultural uses
- Human / social services

Council also provided feedback on the Community Benefit Phase 2 project, including updates to the Site Review criteria, at a study session on August 25, 2020.

Use Tables & Standards – Phase 2

The goal of the Phase 2 Use Tables & Standards update is to amend the Use Table in the Land Use Code to be more consistent with the Boulder Valley Comprehensive Plan (BVCP) with a focus on achieving appropriate locations for 15-minute neighborhoods, mixed-use nodes along corridors, and enhanced neighborhood centers, and

- Streamline and update the Use Table and Standards to correct discrepancies and add clarity to the code.

Feedback was provided to staff on this project as well at the August 25, 2020 study session mentioned above.

Parking Code Changes – Phase 3

The goal of the Phase 3 parking code changes is to:

- Reflect the actual parking supply and demand rates that currently exist throughout Boulder;
- Require an appropriate amount of parking to minimize construction of underutilized parking spaces while also avoiding impacts associated with too little parking;
- Reflect the multimodal goals of the Transportation Master Plan (TMP);
- Coordinate and align parking supply rates with the city's evolving Transportation Demand Management (TDM) goals and strategies;
- Increase predictability in the application of parking standards and reduce the number of parking reductions requested;
- Encourage efficient use of land;
- Reflect changing market conditions nationwide.

Oil and Gas Regulations:

While not on the list for 2020 council priority items, P&DS, Open Space and City Attorney's Office (CAO) staff continue to work on developing oil and gas regulations to add into the Land Use Code. On April 14, 2020 City Council passed an extension of the moratorium on oil and gas development to December 31, 2020 to enable more time to develop city regulations consistent with State Law and considering the ongoing rulemaking occurring at the state and Boulder County level.

Staff Resources and Budget update since May 2020:

On May 19, 2020, council reviewed and discussed the 2020-2021 work program that was identified at the 2020 council retreat and considered changes due to an initial round of staff furloughs, layoffs, and budget reductions caused by the COVID-19 Pandemic. The workplan memo as well as the summary from council 2020 annual retreat can be found [here](#).

Based on resources at the time, staff indicated that the Community Benefit and Use Table Standards projects could continue as scheduled with completion planned no later than first quarter 2021 and that work on Parking Code changes would slow considerably due to a reduction in the consulting budget.

Since May of 2020, P&DS has lost additional staff dedicated to code amendments and core service delivery (e.g., discretionary application review, permit review etc.) and will experience additional budget reductions in 2020, which will impact the code amendment team's capacity in 2021. At present, staff continues to prioritize Community Benefit and Use Standards and Tables but has paused work on the Parking Code changes due to the loss of staff and shifting work responsibilities. Currently, the code amendment team does not have any excess capacity. If work on occupancy code changes were to begin in 2020, work on the Community Benefit and or Use Table code changes would need to slow and or cease depending on the scope and scale of occupancy code changes.

Similarly, staff will be recommending that the Oil and Gas moratorium be extended to the end of the second quarter of 2021 to allow Boulder County to have their regulations adopted. This would allow time for staff to evaluate the county's regulations and complete drafting of consistent city regulations while preserving some immediate staff capacity.

Potential work on Occupancy Changes in 2021:

Changes in the city's occupancy regulations will need to be considered comprehensively with the projects discussed above and other council priority code changes in 2021.

Council's desired scope and scale of the occupancy code changes as well as community engagement efforts will be factors in staff's overall capacity in 2021. The larger the scope of the project, the more commitment would be needed for community outreach, peer community research, legal review and code drafting, which in turn impact the timing of the effort and the completion dates for the projects mentioned above. Since occupancy regulations affect several departments in the city, staffing resources in the City Attorney's Office, Rental Licensing, as well as Code Compliance should be considered as well.

NEXT STEPS

Once council has provided staff with direction, staff will provide a matrix of options for council's consideration at their 2021 annual retreat or sooner at council's direction.