



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 17, 2016

AGENDA TITLE: Consideration of a motion to introduce, consider on first reading and publish by title only of an ordinance intended to expand the availability of cooperative housing units by amending Title 4 “Licenses and Permits by adding a new section 4-20-69 “Cooperative Housing License fee,” amending Title 9 “Land Use Code” by amending table 9-6-1 to make cooperative housing an allowed use in certain zone districts, by amending section 9-6-3, eliminating the requirement of a special use permit for cooperative housing, amending title 10 “Structures” by adding a new chapter 11 “Cooperative Housing” establishing requirements for licensing housing cooperatives and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Gehr, Deputy City Attorney

David Driskell, Executive Director, Planning, Housing and Sustainability

Susan Richstone, Deputy Director, Planning, Housing and Sustainability

Charles Ferro, Development Land Use Review Manager, Planning, Housing and Sustainability

EXECUTIVE SUMMARY

Since 1995, the city of Boulder has had a cooperative housing ordinance. Unfortunately, not a single cooperative housing unit has been developed pursuant to that ordinance. There are, however, illegal cooperatives operating without any regulatory oversight. One of council’s priorities for this year is to attempt to address the concerns raised about the existing code provisions. At a study session on January 26, 2016, council gave staff initial direction regarding a new potential cooperative housing ordinance. Staff developed a draft and posted a version for community consideration. Responding to community feedback, staff developed and posted a revised version of the

ordinance. The Planning Board considered and made recommendations at their meeting on April 21, 2016. Staff now requests that council consider a proposed ordinance on first reading.

Suggested Motion Language:

Motion to introduce, consider on first reading and order published by title only an ordinance intended to expand the availability of cooperative housing units by amending Title 4 “Licenses and Permits by adding a new section 4-20-69 “Cooperative Housing License fee,” amending Title 9 “Land Use Code” by amending table 9-6-1 to make cooperative housing an allowed use in certain zone districts, by amending section 9-6-3, eliminating the requirement of a special use permit for cooperative housing, amending title 10 “Structures” by adding a new chapter 11 “Cooperative Housing” establishing requirements for licensing housing cooperatives and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Cooperative housing may have a positive economic impact by providing access to affordable housing. There is also the possibility that by competing for access to single family homes the existence of legal cooperatives could affect the market for such homes.
- Environmental: Cooperative housing could have a positive environmental impact by limiting the number of in-commuters and by the philosophy of shared resources.
- Social: Communal living can have social benefits. Higher density could have negative impacts on neighborhoods.

OTHER IMPACTS

- Fiscal: The fiscal impact will depend upon the final version adopted. With a limited number of units permitted, any fiscal impact should be limited.
- Staff Time: Implementation will be accomplished with existing staff. The principal staff work necessary will be implementing a licensing system. The more complex the requirements included, the more staff time that will be required.

BOARD AND COMMISSION FEEDBACK

The Planning Board considered the proposed ordinance on April 21, 2016. The Planning Board gave careful consideration to the proposed ordinance. The board heard over three hours of public testimony and deliberated for an additional three hours. The board had a wide ranging discussion. To provide the best support for council, the board decided to conduct a series of “straw polls.” This process was intended to give council

an idea of the level of support for recommendations, even those that were not supported by a majority of planning board members.

Straw Poll Results

1. Process

The board discussed the question whether the process is proceeding too fast. Member discussed various options including convening an advisory committee, slowing down the entire process or just taking more time with rental cooperatives. The board conducted the following polls with the following results:

- Do rental cooperatives need further study and special attention? (7-0, in favor)
- Should the entire process slow down? (2-5, L. Payton, J. Gerstle in favor of the entire process slowing down)
- Should only the rental process slow down? (4-3, L. May, J. Putnam, L. Payton, and C. Gray in favor of the rental process slowing down)
- Evaluate what characteristics certification might require/specified pre-established criteria? (7-0, in favor)

Council decided to address cooperative housing through the legislative process. Council made this decision, in part, because of a pending over-occupancy complaint against a well-known illegal cooperative. It would be difficult to justify continued non-enforcement if legislation is not proceeding. In addition, it appears that the universe of issues to be addressed with respect to rental cooperatives is limited.

Staff also does not recommend developing detailed certification criteria. Staff added the certification process to the ordinance at the request of cooperative supporters. The addition responded to a concern that with a limited number of licenses could exclude true cooperatives in favor of landlords who sought to simply over-occupy a dwelling. The proposed ordinance purposely left developing certification criteria to an expert third-party organization designated by the city manager. The city does not have expertise in the characteristics of a cooperative. The intent of the ordinance is to regulate safety and community impacts. Regulating the relationship among residents would be beyond the scope of council's direction to staff.

2. Renters in Equity Cooperatives

The Planning Board discussed whether renters should be permitted in equity cooperatives. One member suggested a limit of 30% renters in an equity cooperative. Planning Board took the following poll with the following result:

- Should renters be allowed in equity co-ops? (7-0, in favor)
- Should the percentage be decided now? (0-7, failed)

Staff recommends a clean distinction between rental cooperatives and equity cooperatives.

3. Definitions

A Planning Board member suggested that he preferred the definitions proposed by the Boulder Cooperative Housing Association. The board addressed the following question:

- Does the board prefer BoCHA's definitions to the City of Boulder's definition? (7-0, in favor)

4. Not For Profit Structure

The Planning Board considered the question whether the definition of non-profit cooperatives should be altered. The board considered two different approaches. The board considered whether non-profits organized under Colorado law and not registered with the Internal Revenue Service be included. The board also discussed requiring that the non-profit also serve the public interest. The board took the following polls:

- Should the ordinance widen certifying authority to allow Colorado non-profit or legitimate other entities beyond the 501(c)(3) requirement? (7-0, in favor)
- Should the ordinance add "and the public interest" to cooperative housing organization definition? (5-2, in favor)

5. Occupancy

The Planning Board discussed the proposed occupancy limit. The board considered both the existing limit in the International Property Maintenance Code and the one person per 200 square foot limit incorporated in the revised ordinance. The board took the following poll:

- In support of the 200 square footage limitation per person per unit size with a cap? Some were agreeable with less. (7-0, in favor)

6. Separation

The Planning Board had a robust discussion around the question of separation of cooperative housing units. The board was not able to reach a consensus on the issue of separation. The poll results were as follows:

- Should the ordinance include a separation requirement? (3-4, in favor)
- Should the ordinance not include a separation requirement? (4-3, in favor)

7. Fines

A Planning Board member suggested removing the provision for increased fines in Goss Grove, University Hill and Martin Acres. The poll result was as follows:

- Should the fines be the same regardless of the neighborhood? (7-0, in favor)

7. Enforcement

The Planning Board discussed enforcement. Members questioned the city's reliance on complaints from the neighbors. A member suggested that the real issue was not necessarily the number of cars, but could have other root causes. The poll result was as follows:

- Recommend to Council to address the root cause of the issues with the neighbors? (7-0, in favor)

8. Limit on the Number of Cooperative Housing Licenses

The Planning Board discussed whether the limit on licenses was appropriate. The board split between those who thought that fifteen per year was too many and those who did not. The poll result was as follows:

- Recommend support of the proposed annual limit of fifteen (5+5+5) co-ops? (4-3, in favor).

9. Zone Districts

The Planning Board discussed expanding the zone districts in which cooperative housing. The board generally agreed that cooperatives should be permitted in all zone districts. One board member asserted that they should be encouraged in districts other than single family residential zone districts. The poll result was as follows:

- In support of broadening the allowed "by-right" zones to include RH-6, MU-4, and A, at a minimum. In addition to more dense zones, (all zones)? (7-0, in favor)

10. Ownership

One board member questioned whether fee simple ownership should be required. His intent was to allow cooperatives in condominium developments. Ownership would still be required. It would not, however, necessarily be fee simple. The result was as follows:

- In support of removing the limit for fee simple properties? (7-0, in favor)

11. Property Rights and Revocation

The Planning Board discussed providing some greater surety, particularly for equity cooperatives. The board also discussed revocation as well as the question whether the ordinance should address issues of housing discrimination. The poll result was as follows:

- In support of making it more difficult to revoke licenses. (7-0, in favor)

12. Parking

The Planning Board discussed parking. A board member suggested that the city manager consider whether a Neighborhood EcoPass Program be considered as part of the process. The board did not pursue this. They did discuss whether there should be some limit on the number of cars. The poll result was as follows:

- In support of limiting cooperatives to four vehicles? (7-0, in favor)

13. Historic Preservation

A board member suggested encouraging the council to consider providing incentives for properties used as cooperative housing units to become landmarked. The poll result was as follows:

- In support of exploring incentivizing co-ops to buy and preserve historic homes and apply for landmark status? (7-0, in favor)

BACKGROUND & ANALYSIS

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

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

ordinance. In addition, in the absence of any significant enforcement of over-occupancy, there is no incentive to undertake compliance with the strict city code provisions.

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

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

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

Council passed the occupancy enforcement ordinance on third reading at the November 10, 2015 council meeting. Two council members made public statements reassuring residents of illegal co-ops that this ordinance was not intended to be used against them. Both council members provided their personal telephone numbers in the event that the city took enforcement action. Prior to the meeting, someone had submitted an anonymous complaint about over-occupancy at a well-known illegal housing co-op. Without knowing anything other than the address, a staff member contacted the management company associated with the property to schedule a meeting to discuss the complaint. The residents contacted the council members and council members asked staff not to pursue enforcement. At the November 17, 2015 council meeting, staff raised the issue and sought full council direction regarding future enforcement. Council asked staff to not enforce against legitimate housing co-ops, while Council considered the cooperative housing code provisions.

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

On January 26, 2016, council held a study session to provide direction on a potential first reading ordinance relating to cooperative housing.¹ On April 5, 2016, council approved the study session summary for the January 26, 2016 study session.² Based on council feedback, staff drafted a proposed ordinance. Staff posted a copy of the proposed ordinance on the council Hotline on March 24, 2016. A copy of the proposed ordinance is attachment A.

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

On April 21, 2016, the Planning Board considered the ordinance and made the recommendations described above. The Planning Board recommendations did not lend themselves to making specific revisions in the proposed ordinance. Accordingly, staff has not provided a revised ordinance, but assumes that council will give appropriate weight to the Planning Board recommendations when considering potential amendments to the proposed ordinance.

Staff also met with members of the Martin Acres Neighborhood Association. These individuals expressed concern that many, if not all, of the cooperative housing licenses could be issued for homes in their neighborhood, because homes in Martin Acres tend to be among the most affordable in the city. Staff recommends that council consider such a change.

PROPOSED ORDINANCE

The proposed ordinance is a first reading ordinance intended to implement the direction provided by the city council on January 26, 2015. At a high level, council's

¹ The study session memorandum can be found at the following link:
<https://documents.bouldercolorado.gov/weblink8/0/doc/131329/Electronic.aspx>

² A copy of the approved study session summary can be found at the following link:
<https://documents.bouldercolorado.gov/weblink8/0/doc/132151/Electronic.aspx>.

direction was to facilitate the creation of cooperative housing units, while at the same time limiting the effects on the neighborhoods and on the availability of housing for families. The proposed ordinance attempts to strike a balance between facilitating cooperatives and protecting the community. The ordinance includes the following major elements:

- Cooperative housing units would be an allowed use in zoning districts where previously they were a conditional use.
- Cooperatives would be regulated much like rentals, including licensing, initial inspections and renewal inspections.
- Cooperatives would be exempt from the Title 9 occupancy limits. They would be subject to the limit in the international property maintenance code.
- Rental cooperatives would be subject to a limitation on rent.
- The cooperatives would be required to maintain compatibility with the surrounding neighborhood. This restriction would be enforced through an administrative process in the municipal court, subject to a right to cure through community mediation.
- Cooperatives would be required to develop a parking reduction plan to limit to no more than three, the number of cars parked in the right of way. This plan could include a requirement that all members of the cooperative be required to have a bus pass.

Section by Section Description

Section 1

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

Section 2

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

Section 3

Repeals section 9-6-3(b).

Section 4

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

occupied by more than one person shall contain a minimum of 50 square feet of floor area for each occupant thereof.”

Section 5

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

Section 6

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

Section 7

Adds a new chapter 10-11.

Section 10-11-1

Legislative intent.

Section 10-11-2

Requires a cooperative housing license before a cooperative is occupied.

Section 10-11-3

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

Section 10-11-4

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

Section 10-11-5

Establishes renewal procedures.

Section 10-11-6

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

Section 10-11-7

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

Section 10-11-8

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

Section 10-11-9

Provides for license fees.

Section 10-11-10

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

Section 10-11-11

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

Section 10-11-12

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

Section 10-11-13

Limits the rent that can be charged in an entire rental cooperative to no more than that which would be affordable to a family earning the median family income in Boulder. The city manager is required to adopt a maximum rent based upon the Colorado Housing

and Finance Income and Rent Tables or similar resource. For 2015 those rents would be as follows:

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

Section 10-11-14

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

Section 10-11-15

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

Section 10-11-16

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

Section 10-11-17

Authorizes the city manager to issue rules.

PROPOSED REVISED ORDINANCE

The revised ordinance includes the following changes.

Section 9-8-5(d)

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

Section 10-1-1

Includes a definition of a Cooperative Housing Organization.

Section 10-11-4(a)

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

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

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

Section 10-11-11

Imposes a limit of four cars for each property.

Section 10-11-12

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

Section 10-11-13

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

ATTACHMENTS

Attachment A – Original draft ordinance

Attachment B – Revised ordinance

ORDINANCE NO. _____

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

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

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

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

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

(a) \$105 per license or renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 *Cooperative housing unit* means a dwelling unit in a Private Equity, Limited Equity or
23 Rental Cooperative.
24
25

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

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

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

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

8 **Chapter 11 Cooperative Housing**

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

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

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

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

22 **10-11-3. – Cooperative Housing Licenses.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Pay all license fees prescribed by section 4-20-69, "Cooperative Housing 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 housing inspector's certification of renewal inspection within twelve months before application. The applicant shall make a copy of the inspection form available to city staff and residents 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.

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

(c) Take all reasonable steps to notify in advance all residents 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.

10-11-6. - Temporary License.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10-11-15. - 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 any violation in the following areas: the area south of Arapahoe Avenue, north of Baseline Road, east of 6th Street and west of Broadway; the area south of Baseline Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th Street:

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

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

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

(B) For a violation in any other area:

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

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

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

1 (2) Revoke the cooperative housing license; and

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

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

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

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

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

10-11-16. – Criminal 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 \$4,0000.00 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,

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

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

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

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

11 (d) No fine imposed in a single case alleging multiple dates of violation, nor any fine
12 in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that
13 might be imposed for fifteen separate violations unless the court finds special aggravating
14 circumstances. Where special aggravating factors are at issue, the following procedures shall
15 apply:
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17 (1) The defendant shall be entitled to ten days' notice of any special aggravating
18 factors upon which the prosecution intends to rely at the sentencing hearing or about which,
19 based upon evidence previously presented, the court is concerned. If necessary in order to
20 provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.

21 (2) A judicial finding of the existence of special aggravating factors shall not mandate
22 that the court impose any particular level of fine but will, rather, provide the sentencing court
23 with discretion to determine a fine based upon all the criteria set forth in this subsection.
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1 (3) Special aggravating factors, for the purpose of this subsection, shall require a
2 judicial finding of one or more of the following:

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

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

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

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

11 The city manager may adopt reasonable rules to implement this chapter.
12

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

15 **Section 9.** The City Council deems it appropriate that this ordinance be published by title
16 only and orders that copies of this ordinance be made available in the office of the city clerk for
17 public inspection and acquisition.
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1 READ ON FIRST READING, PASSED AND ORDERED PUBLISHED BY TITLE
2 ONLY this ___ day of April 2016.

3
4
5 _____
Suzanne Jones
Mayor

6 Attest:

7
8 _____
Lynnette Beck
City Clerk

ORDINANCE NO. _____

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

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

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

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

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

(a) \$105 per license or renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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;

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Chapter 11 Cooperative Housing**

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

17 The City Council intends to facilitate cooperative living arrangements. The Council finds
18 that cooperative living arrangements can provide an affordable alternative for living in Boulder.
19 In addition, cooperative arrangements can provide supportive and fulfilling community for their
20 residents. The City Council seeks to balance the benefits of cooperative living against the
21 impacts from the increased density that comes along with cooperative living. The City Council
22 also is concerned about cooperatives competing in a tight housing market with families seeking
23 single family homes.
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10-11-2. - Cooperative License Required Before Occupancy.

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

10-11-3. – Cooperative Housing Licenses.

(a) License terms shall be as follows:

(1) Licenses 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

1 for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-
2 3(b), B.R.C. 1981.

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

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

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

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

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

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

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

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

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

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

4 (iii) If an application for a cooperative housing unit exceeds the ten percent
5 requirement set forth in this subparagraph (a)(2)(A), the city manager will place the applicant on
6 a waiting list for the neighborhood area. At such time as there is room for an additional
7 cooperative housing unit within a neighborhood area, the city manager will notify the first
8 eligible person on the waiting list. Such person on the waiting list shall be required to provide
9 notice of intent to file an application within thirty days and file an application within sixty days
10 of such notice.
11

12 **10-11-4. - License Application Procedure for Cooperative Housing Licenses.**

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

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

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

20 (A) A housing inspector's certification of baseline inspection dated within twelve
21 months before the application. The applicant shall make a copy of the inspection form available
22 to city staff and tenants of inspected units within fourteen days of a request; and
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1 (B) A report on the condition and location of all smoke and carbon monoxide alarms
2 required by chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and verified by the
3 applicant; and

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

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

8 (E) A certificate from a Cooperative Housing Organization certifying that the
9 applicant is a valid housing cooperative. Such certificate shall be issued if the applicant meets
10 specified pre-established criteria. The Cooperative Housing Organization shall make available
11 publically the criteria before considering any applications.
12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **10-11-10. - Availability of License.**

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

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

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

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

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

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

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

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

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

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

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

10-11-15. - 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 any violation in the following areas: the area south of Arapahoe Avenue, north of Baseline Road, east of 6th Street and west of Broadway; the area south of Baseline Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th Street:

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

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

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

(B) For a violation in any other area:

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

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

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

1 (2) Revoke the cooperative housing license; and

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

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

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

17 (d) The city manager's authority under this section is in addition to any other
18 authority the manager has to enforce this chapter, and election of one remedy by the manager
19 shall not preclude resorting to any other remedy as well-, provided however, the city manager
20 shall not seek criminal penalties for any violation of this chapter.
21

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

(f) 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.

10-11-16. — Criminal 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 \$4,0000.00 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.

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

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

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

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

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

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

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

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

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

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

13 **10-11-167. - Authority to Issue Rules.**

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

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

17 **Section 9.** The City Council deems it appropriate that this ordinance be published by title
18 only and orders that copies of this ordinance be made available in the office of the city clerk for
19 public inspection and acquisition.
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1 READ ON FIRST READING, PASSED AND ORDERED PUBLISHED BY TITLE
2 ONLY this ___ day of May 2016.

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5 _____
Suzanne Jones
Mayor

6 Attest:

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