

**DATE:** May 4, 2010  
**STAFF:** Steve Dush  
Beth Sowder

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**24**

**SUBJECT**

Second Reading of Ordinance No. 042, 2010, Amending Section 5-265 of the City Code Relating to Occupancy Disclosure Statements.

**EXECUTIVE SUMMARY**

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The current occupancy regulations should be amended to ensure that they meet Council's original intent for limiting the occupancy of dwelling units. This Ordinance, adopted on First Reading on April 6, 2010, by a vote of 5-2 (Nays: Kottwitz, Troxell) revises the disclosure statement requirement related to occupancy limits to ensure that the statement is truthful, is provided by the property owner or manager to the tenants at the time of lease signing, and is readily available when requested by the City.

The Ordinance has been revised for Second Reading and now requires that the occupancy ordinance disclosure statement be signed by the property owner or manager and all tenants at the time of lease signing with the execution date verified by electronic means or have all signatures on the statement notarized by a Notary Public. A copy of the disclosure statement shall be retained at the leased property and shall be made available to the City immediately upon request. In the case of a multi-family unit with an on-site manager, the disclosure statement may be kept on file in the on-site office as long as it is available during business hours immediately upon request of the City.

**STAFF RECOMMENDATION**

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Staff recommends adoption of the Ordinance on Second Reading.

**ATTACHMENTS**

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1. Copy of First Reading Agenda Item Summary - April 6, 2010  
(w/o attachments)

**DATE:** April 6, 2010  
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 Beth Sowder

**AGENDA ITEM SUMMARY**  
 FORT COLLINS CITY COUNCIL

**20**

**SUBJECT**

Items Relating to Occupancy Limits.

- A. First Reading of Ordinance No. 041, 2010, Amending Sections of the Land Use Code Relating to Occupancy Limits.
- B. Second Reading of Ordinance No. 042, 2010, Amending Section 5-265 of the City Code Relating to Occupancy Disclosure Statements.

**EXECUTIVE SUMMARY**

In 2005, City Council adopted significant changes to the Municipal Code and the Land Use Code for the purpose of establishing new occupancy regulations that are understandable, fair, and enforceable. This was accomplished in part by redefining the make-up of the types of groups or individuals that can live together in a dwelling unit and by establishing ways in which the number of persons allowed to live together can be increased.

It has recently come to City staff's attention that the current regulations do not meet Council's original intent for limiting the occupancy of dwelling units. The proposed Land Use Code changes address this problem by refining the definition of *Dependent*, by adding a "host family" category as another acceptable way to increase the number of occupants allowed in a dwelling unit, and by changing the definition of *Family* and amending the definition of *Occupancy*.

In addition, the disclosure statement requirement related to occupancy limits has been revised to ensure that the statement is truthful, is provided by the property owner or manager to the tenants at the time of lease signing, and is readily available when requested by the City.

**BACKGROUND / DISCUSSION**

At the October 27, 2009 Council Work Session regarding the Occupancy Ordinance Two-Year Review and Policy Discussion, Council directed staff to bring the following three items back to them for further consideration (See Attachment 1):

1. Redefine the Occupancy Limit – Further define and clarify changes to the occupancy limit in order to:
  - a. Clarify the definition to meet Council's original intent.
  - b. Provide an option to allow a permit to be issued for "host families" to temporarily house one or more additional persons as long as certain criteria are met.
2. Zoning Option 1 – Further explore adding Extra Occupancy Rental Houses (EORH) as a permitted use in the Neighborhood Conservation Medium-density (NCM) zone.
3. Rental Registration and Rental Licensing – Staff will provide Council with research and background information regarding rental registration and rental licensing.

This agenda item focuses on Item #1 above. Item #2 is scheduled to be discussed at the Council work session on April 27, 2010, and Item #3 was prepared and provided to Council in December 2009.

The original intent of the 2005 occupancy ordinance was to allow for both a family and a group that is the functional equivalent of a family to have only one additional person living with them. It was not intended to allow for such groups to have two additional people.

The current regulation states that the maximum occupancy allowed per dwelling unit is:

- (1) one (1) family as defined in Section 5.1.2 and not more than one (1) additional person; or
- (2) two (2) adults and their dependents, if any, and not more than one (1) additional person.

*Family* is defined as an individual living alone or any number of persons who are all related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, and who live together as a single housekeeping unit and share common living, sleeping, cooking and eating facilities.

After close examination of the current regulation, including the definition of "dependent," it appears that the second part of the regulation would allow a family to house two additional people instead of just one. For example, one spouse could be considered as a dependent of the other spouse, meaning a husband and wife in this scenario would only count as one of the two adults allowed. They could then have one other adult and dependents, if any, plus one additional person.

This interpretation of the regulation is not consistent with the original intent of the ordinance, which was to allow both a family and a group that is the functional equivalent of a family to have only one additional person.

At the October 27, 2009 City Council work session, Council directed staff to process an amendment to the current occupancy regulation that would be consistent with the original intent (see Attachment 1). Council also expressed interest in an exception to allow for a second additional person in situations where the increased occupancy would not likely cause neighborhood problems, such as a family wanting to provide temporary housing to missionaries, exchange students, etc.

#### **Ordinance No. 041, 2010, Amending Sections of the Land Use Code Relating to Occupancy Limits.**

These Council objectives can be accomplished by:

1. Amending the Land Use Code language, specifically the definition of *Dependent* in Section 3.8.16(D)(2)
2. Adding a new Section (3) to Section 3.8.16(E)
3. Amending the definition of *Family* in Section 5.1.2
4. Amending the definition of *Occupancy* or *Occupy* in Section 3.8.16(D)(3).

#### **Part I**

Amend Section 3.8.16(D)(2), definition of *Dependent*:

Current definition: *Dependent* shall mean a person related to an adult occupying a dwelling unit by blood, marriage, adoption, guardianship or other duly authorized custodial relationship who receives financial support from said adult and who resides with said adult in the dwelling unit at least three (3) calendar months in a calendar year.

Proposed definition: *Dependent* shall mean the natural child of an adult occupying a dwelling unit, or a person related to the adult by reason of adoption, guardianship or other duly authorized custodial relationship, who receives financial support from the adult and who resides with the adult in the dwelling unit at least three (3) calendar months in a calendar year.

#### **Part II**

Add a new Section (3) to Section 3.8.16(E) to increase the occupancy limit for host families. With respect to single-family, owner-occupied dwellings, the number of persons allowed under Section 3.8.16(A)(1) may be increased to allow one additional person by the issuance of a "host family permit" provided that the following conditions are met:

- (a) Adequate off-street parking is available to accommodate the additional occupant;

- (b) There have been no violations of Chapters 17 or 20 of the Code of the City or Section 3.8.16 of the Land Use Code at the premises for which the permit is sought within the twelve (12) months immediately preceding the date of the application for the permit; and
- (c) At least two (2) months have elapsed since the issuance of any previous host family permit for the same premises.

Permits issued shall be valid for ten (10) months from the date of issuance; provided, however, that in the event that the Municipal Judge or Municipal Court Referee determine, during the term of any such permit, that a violation of Chapters 17 or 20 of the Code of the City or Section 3.8.16 of the Land Use Code has occurred at the premises for which the permit was issued, the permit may be revoked.

A fee of \$25 will be charged by the City for the host family permit in order to cover the costs of processing the application, which shall be payable at the time of application.

### Part III

Amend the definition of family in Section 5.1.2 of the Land Use Code to remove "an individual living alone". *Family* shall mean any number of persons who are all related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, and who live together as a single housekeeping unit and share common living, sleeping, cooking, and eating facilities.

### Part IV

Amend the definition of "occupancy or occupy" in section 3.8.16(D)(3) to state specifically that thirty (30) overnight visits constitutes occupancy and is not just one factor to be considered in determining occupancy, and to change the thirty (30) overnight visits from being "within a calendar year" to "within a twelve month period". The proposed definition would read as follows:

*Occupancy or occupy* shall mean the use of a dwelling unit or any portion thereof for living and sleeping purposes by a person acting in any of the following capacities:

- (1) as an owner of the unit;
- (2) as a tenant under an express or implied lease or sublease of the unit or of any portion thereof; or
- (3) as a guest or invitee of the owner, property manager, lessee or sublessee of the unit, if such guest or invitee stays overnight at the unit for a total of thirty (30) or more days within any twelve-month period of time.

Note: This definition change will be brought to the Planning and Zoning Board at its April 15, 2010 meeting.

### Ordinance No. 042, 2010, Amending Section 5-265 of the City Code Relating to Occupancy Disclosure Statements.

To address concerns expressed about the accuracy and accessibility of the required "disclosure statements", staff recommends amending Section 5.265(c) to require that the property owner or manager's signature on the disclosure statement be notarized, and that a copy of the disclosure statement be made available at the premises. Since this change would be new to property owners and managers, staff suggests a two month period for public education prior to implementation. This public education process will consist of a letter to all landlords and property management companies that the City is currently aware of. The letter will explain the policy change, the rationale for the change, when it will take effect, and, that from that date forward, all disclosure statements must be notarized and available at the premises.

Additionally, the proposed amendments will state that will be a violation for a property owner/manager to rent to anyone who has not signed a disclosure statement, and, it will be a violation for any tenant to occupy a dwelling unit if they have not signed a disclosure statement.

## **FINANCIAL IMPACT**

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A \$25 fee will be charged by the City to the property owner for the host family permit in order to cover the costs of processing the application.

## **SUSTAINABILITY: ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACTS**

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Staff does not expect these Code amendments to have any economic or environmental impacts.

The social impacts include preserving single-family neighborhoods by ensuring the Code is consistent with Council intent of limiting the occupancy of dwelling units and by allowing a process for host families to house a second adult in situations where the increased occupancy would not likely cause neighborhood problems.

## **STAFF RECOMMENDATION**

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Staff recommends adoption of the Ordinances on First Reading.

## **BOARD / COMMISSION RECOMMENDATION**

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The Planning and Zoning Board has recommended approval (5-0) of the Land Use Code Amendments that are intended to clarify the occupancy limit regulations in Section 3.8.16 and the definition of family in Section 5.1.2 with a change that a host family permit be available for a ten-month period of time rather than the nine months in the staff report.

Staff adjusted the host family permit to be available for a ten-month period as recommended by the Planning and Zoning Board.

## **PUBLIC OUTREACH**

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The Occupancy Ordinance Stakeholder Committee (which includes representatives from the Associated Students of Colorado State University, tenants, landlords, property managers, Fort Collins Board of Realtors, Northern Colorado Rental Housing Association, the Latter-Day Saints Church, and neighborhood representatives) was informed of the recommended changes proposed to Council:

- Provide an exception rather than a permit process so that the host family does not have an added expense for their charitable intent.
- Do not limit the permit to ten months and do not require two months between permits. Allow the exception or permit indefinitely unless adequate parking is not provided or violations occur at the premises.
- There is concern that a family cannot host others in need in exigent circumstances (families displaced due to unemployment, financial reversals, or natural disasters). So long as there is adequate parking and no violations, charitable families should be allowed to help others without the burden and expense of a permit process.

Neighborhood representatives provided feedback in support of the proposed changes, specifically that:

- The host family permit is a proper approach that will prevent abuses of this very worthy adjustment to the occupancy limit.

- Requiring the disclosure statement to be notarized and available on the premises is an appropriate response to assure the statement is provided to the tenants.

The proposed changes were presented to the Northern Colorado Rental Housing Association on March 16, 2010 and to landlords who attended the February 2010 Landlord Education Series. While some feedback included the concern that the notary requirement for the disclosure statement will put an added cost and burden on landlords, other feedback was in favor of the added requirements because it will help landlords who are already providing the disclosure form show that they are abiding by the requirements.

The Fort Collins Board of Realtors supports requiring all parties' signatures to be notarized or verified by an electronic time stamp. The Board would like to see more of a shared accountability which would require the tenants' signatures to be notarized or verified.

Staff has discussed some of the concerns and contends that an increased occupancy exception for host families needs to be clearly defined and temporary. The permit process with a nominal fee allows host families to house an additional person while clearly identifying conditions and time limits so that single-family neighborhoods have less potential to be negatively impacted. Staff does acknowledge that there will be some additional burden on landlords to have the disclosure statements notarized; however, it is important to ensure that the disclosure statement is being provided to the tenants at the time of lease signing. While staff understands the desire to have shared responsibility among both landlords and tenants, the enforcement need for the landlord's notarized signature is to specifically tie the date of execution of the Disclosure Statement. The addition of requiring the tenants' signatures to be notarized is not necessary.

If Council chooses to adopt the amendments to the disclosure statement requirements, staff intends to conduct a two-month public education process. This education will be primarily directed toward landlords and property managers since they will be required to notarize the document and make it available at the premises; however, education to tenants will also be conducted. Staff recommends the implementation date of this amendment to be July 1, 2010.

## ATTACHMENTS

1. Work Session Summary – October 27, 2009
2. Planning and Zoning Board Minutes – January 21, 2010
3. PowerPoint presentation

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**Occupancy Limit Disclosure Statement  
Proposed Amendments  
Second Reading  
City Council Meeting  
May 4, 2010**

Steve Dush, Community Development & Neighborhood  
Services Director

Beth Sowder, Neighborhood Services Manager



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**Proposed Amendments**

Proposal to amend the Occupancy Ordinance  
Disclosure Statement requirements to include:

- Signed and dated by all parties and either notarized OR dated by verifiable electronic record
- Copy kept at the property
- If multi-family with on-site manager, can be kept at on-site office
- Lease renewals with all the same parties do not need to sign a new Disclosure Statement



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ORDINANCE NO. 042, 2010  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 5-265 OF THE CODE OF THE CITY OF FORT COLLINS  
RELATING TO OCCUPANCY DISCLOSURE STATEMENTS

WHEREAS, residential rental housing in the City can be subject to overcrowding which can lead to a decline in neighborhood quality of life, neighborhood appearance and the value of real estate; and

WHEREAS, to address these concerns, the City has, for many years, limited the number of persons who can occupancy dwelling units in the City; and

WHEREAS, on October 18, 2005, the City Council adopted Ordinance No. 123, 2005, amending various sections of the City's Land Use Code ("LUC") to clarify these occupancy limits and make them more readily enforceable; and

WHEREAS, in conjunction with these amendments to the LUC, the City Council subsequently adopted Ordinance No. 124, 2005, making certain changes to the provisions of the City Code, including the addition of a provision requiring that any person selling or leasing a dwelling unit in the City give advance notice of the applicable occupancy limits for the units they are renting to potential property owners and potential tenants on a form provided by the City and signed by all parties to the transaction; and

WHEREAS, recent staff investigations of alleged occupancy violations have shown that landlords sometimes do not sign the disclosure statements in a timely fashion, and do not present the disclosure statements to their tenants for signature at the time the lease is executed as required by the City Code, but do so only if the property owner and occupants are under investigation for a violation; and

WHEREAS, the City Council continues to believe that property owners and tenants should be jointly responsible for ensuring that the occupancy of a rental unit is within lawful limits; and

WHEREAS, in order to address concerns about the accuracy of the required disclosure statements, the timeliness of their execution, and their availability to the City upon request, City staff has recommended that Section 5-265 of the City Code be amended to require **that all signatures that the signature of the property owner or landlord on the disclosure statement either be notarized or be verifiable by electronic means** and that the statements be kept at the leased premises; and

~~WHEREAS, City staff has suggested a two-month period for public education prior to implementation of this requirement in order to increase the likelihood of compliance; and~~

WHEREAS, Council desires to make the **foregoing** amendments in the interest of the health, safety and welfare of tenants, the City's neighborhoods and the public.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

**Section 1.** That Section 5-235 of the Code of the City of Fort Collins is hereby amended by the addition of a new definition “*Electronic record*” which shall read as follows:

*Electronic record* shall mean a record created, generated, sent, communicated, received or stored by electronic means and reproducible in a physical document.

**Section 2.** That Section 5-265 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 5-265. Posting; inspection of books and records; disclosure.**

(a) Any certificate of occupancy for a boarding or rooming house specifying the number of allowable tenants must be posted on the back of the front door of the dwelling.

(b) Whenever reasonable cause exists to believe that a violation of the Code or Land Use Code has occurred at any rental dwelling unit, the owner and property manager, if any, of said unit shall, immediately upon request, make available to the City all lease, rental payment and tenant information pertaining to the unit, together with the written disclosure statement required by Subsection (c) of this Section.

(c) Any person selling or leasing a dwelling unit shall forthwith provide all purchasers, lessees or sublessees of such unit with a written disclosure statement, on a form provided by the City, specifying the maximum permissible occupancy of such unit under Section 3.8.16 of the Land Use Code. Such disclosure statement shall be signed and dated by all parties to the transaction immediately upon execution of any deed, contract for purchase and sale, or lease pertaining to such unit, ~~and the signature of the person selling or leasing the dwelling unit shall be notarized by a Notary Public. In the case of a lease, the disclosure statement shall be attached to a copy of the fully executed lease agreement and retained at the leased premises by the owner of the unit and the property manager, if any, for the duration of the lease term for the unit.~~ All signatures on such disclosure statement shall be notarized by a notary public or, as an alternative to notarization, an electronic record may be used to verify the date that the disclosure statement was signed by the parties. In the case of a lease, the disclosure statement shall be attached to a copy of the fully executed lease agreement and retained at the leased premises by the owner of the unit and the property manager, if any. In the case of a multi-family building with an on-site manager, the lease and disclosure statement may be retained in the office of the property manager for the unit. If an electronic record is used to verify the date that the disclosure statement was signed, then documentation evidencing the electronic record shall also be attached to a copy of the fully executed lease agreement.

(d) Notwithstanding the foregoing, a new disclosure statement need not be provided upon renewal of a written lease agreement if all parties to such renewal agreement executed a disclosure statement at the time of execution of the original lease agreement.

(de) It shall be a violation of this Section for any person to rent a dwelling unit, or portion thereof, to any person who has failed or refused to sign the disclosure statement required by Subsection (c) of this Section.

(ef) It shall be a violation of this Section for any person to occupy a dwelling unit pursuant to a lease or sublease unless such person has signed the disclosure statement required by Subsection (c) of this Section.

Introduced, considered favorably on first reading, and ordered published this 6th day of April, A.D. 2010, and to be presented for final passage on the 4th day of May, A.D. 2010.

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Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 4th day of May, A.D. 2010.

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Mayor

ATTEST:

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City Clerk