

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 Section 9-6-3(b) is repealed and subsequent sections are renumbered.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;
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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.
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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.
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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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1 (d) Take all reasonable steps to notify any occupants of the property in advance of the
2 date and time of the inspection. The applicant shall be present and accompany the inspector
3 throughout the inspection, unlocking and opening doors as required.

4 **10-11-5. - License Renewal Procedure for Cooperative Housing Units**

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

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

9 (b) Submit to the city manager, on forms provided by the manager:

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

13 (2) 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 operator; and

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

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

23 **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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1 required by this section is sufficient if sent by first class or certified mail to or delivered to any
2 occupant at the address of the premises and directed to "All Residents."

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

5 **10-11-15. - Administrative Remedy.**

6 (a) If the city manager finds that a violation of any provision of this chapter or
7 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to
8 the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3,
9 "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to
10 remedy the violation:

11 (1) Impose a civil penalty according to the following schedule:

12 (A) For any violation in the following areas: the area south of Arapahoe Avenue,
13 north of Baseline Road, east of 6th Street and west of Broadway; the area south of Baseline
14 Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area
15 south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th
16 Street:

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

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

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

20 (B) For a violation in any other area:

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

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

23 (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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1 (f) To cover the costs of investigative inspections, the city manager will assess
2 operators a \$250.00 fee per inspection, where the city manager performs an investigative
3 inspection to ascertain compliance with or violations of this chapter.

4 **10-11-16. – Criminal Penalty.**

5 (a) The penalty for violation of any provision of this chapter is a fine of at least
6 \$500.00 and not more than \$2,000.00 per violation, or incarceration for not more than ninety
7 days in jail, or both such fine and incarceration. In addition, upon conviction of any person for
8 violation of this chapter, the court may issue a cease and desist order and any other orders
9 reasonably calculated to remedy the violation. Violation of any order of the court issued under
10 this section is a violation of this section and is punishable by a fine of not more than \$4,0000.00
11 per violation, or incarceration for not more than ninety days in jail, or both such fine and
12 incarceration.
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14 (b) It shall be a condition of any deferred prosecution or deferred or suspended
15 sentence under this chapter that the defendant commit no violations of this chapter for at least
16 one year from the date of such deferred prosecution or deferred or suspended sentence.

17 (c) Notwithstanding subsection (a) of this section, the following specific sentencing
18 considerations shall apply to fines imposed for violations:

19 (1) The court shall consider any evidence presented by the defendant that a potential
20 fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally
21 capitalized owner of the ability to continue operating a rental housing business of the sort
22 involved in the case before the court. No fine that is confiscatory shall be enforced by the court.

23 (2) In imposing a fine in any single case or in any consolidated cases, the court may
24 weigh all factors normally and properly considered in connection with the imposition of fines,
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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 **Section 8.** This ordinance is necessary to protect the public health, safety, and welfare of
13 the residents of the city, and covers matters of local concern.

14 **Section 9.** The City Council deems it appropriate that this ordinance be published by title
15 only and orders that copies of this ordinance be made available in the office of the city clerk for
16 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.

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Suzanne Jones
Mayor

6 Attest:

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Lynnette Beck
City Clerk

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