

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STARKER
Council Bill No. 17
Ordinance No. 1520
Series of 2012

TITLE: AN ORDINANCE ADDING A NEW SECTION 26-638 TO CHAPTER 26 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING ZONING, TO DEFINE OCCUPANCY LIMITS AND AUTHORIZE THE ENFORCEMENT OF SUCH LIMITS AS A CIVIL MATTER

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23 of Title 31 of the Colorado Revised Statutes, the City, acting through its City Council (the "Council"), previously adopted planning and zoning regulations, codified as Chapter 26 of the Wheat Ridge Code of Laws (the "Code"); and

WHEREAS, the City's zoning regulations currently limit the number of unrelated individuals who may reside in a residential dwelling unit by virtue of the definitions of "family," "dwelling unit," and the permitted use schedule and table codified in various sections throughout Chapter 26 of the Code; and

WHEREAS, the Council finds that adopting a single Code section concerning occupancy limits in regards to dwelling units would facilitate public understanding of what is permitted and prohibited as well as facilitate the City's enforcement of the occupancy limits; and

WHEREAS, the Council further finds that it is appropriate and desirable to designate a violation of such occupancy limits as a civil matter, for which violators may not be sentenced to jail and for which the City's burden of proof is by a preponderance of the evidence.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Article VI of Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning supplementary regulations, is hereby amended by the addition of a new Section 26-638, to read in its entirety as follows:

Sec. 26-638. Occupancy Limits.

A. Except as provided in subsections B. and E. hereof, the maximum occupancy allowed per dwelling unit in a one-family, two-family or multi-family dwelling shall be either:

1. One (1) family, as defined by Section 26-123 of this Code, 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.

B. *Exceptions.* The following shall be exempt from the maximum occupancy limit established in Subsection A above:

1. Residential group homes that conform to the requirements of Section 26-612 of this Code; and
2. Dwellings owned and operated by a nonprofit organization incorporated under the laws of this state for the purpose of providing housing to victims of domestic violence as such is defined in C.R.S. § 18-6-800.03.

C. A violation of this Section shall be proven by a preponderance of the evidence as a civil matter for which imprisonment shall not be imposed. The owner and any other person responsible for the management or control of a dwelling unit shall be liable for allowing occupancy in excess of this Section if he or she knew, or through reasonable diligence should have known, that a violation of this Section was occurring.

D. *Definitions.* The following words, terms and phrases, when used in this Section, shall have the following meanings:

1. *Adult* shall mean any person eighteen (18) years of age or older who is not a dependent.
2. *Dependent* shall mean the biological child of an adult occupying a dwelling unit, or a person related to an 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.
3. *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:
 - a. As an owner of the unit;
 - b. As a tenant under an express or implied lease or sublease of the unit or of any portion thereof;
 - c. As the dependent of such an owner or tenant; or
 - d. As a guest or invitee of the owner, property manager, lessee or sublessee of the unit or of the dependent of any of the same, if such guest or invitee stays overnight at the unit for a total of thirty (30) or more days within any twelve-month period.

E. Nothing in this Section shall operate to amend, abrogate or otherwise affect the validity of occupancy limitations as applied to building standards and regulations of the City, as set forth in Chapter 5 of this Code, including all technical codes adopted by reference therein. In the event of a conflict between two applicable occupancy standards, the stricter (lower) occupancy limit shall apply.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 27th day of August, 2012, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for September 10, 2012, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 6 to 0, this 10th day of September, 2012.

SIGNED by the Mayor on this 10th day of September, 2012.



ATTEST:

Bruce Koome, Deputy Clerk
Janelle Shaver, City Clerk

Jerry DiTullio
Jerry DiTullio, Mayor

Approved As To Form

Gerald E. Dahl
Gerald E. Dahl, City Attorney

First Publication: August 30, 2012
Second Publication: September 13, 2012
Wheat Ridge Transcript
Effective Date: September 28, 2012