



WORK SESSION AGENDA ITEM SUMMARY

City Council

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SUBJECT FOR DISCUSSION

Housing Strategic Plan Implementation: Occupancy Regulations.

EXECUTIVE SUMMARY

The primary purpose of this work session item is to receive Council guidance on potential changes to the City's occupancy regulations. The work session will include an overview of existing conditions, policy analysis completed to date, and a summary of community engagement. Key policy topics for this work session include: (1) the current family definition used in the City's occupancy regulations; (2) the maximum number of occupants in a home; and (3) the City's current extra occupancy process. Staff will also seek Council direction on a proposed approach to future community engagement on occupancy regulations.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. What additional information do Councilmembers need to inform their policy guidance?
2. What feedback do Councilmembers have about the range of occupancy options outlined?
3. What feedback do Councilmembers have about the proposed approach to community engagement around the occupancy options?

BACKGROUND / DISCUSSION

The City has had an adopted occupancy ordinance since 1963. The City's occupancy ordinance limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant *OR* no more than three unrelated occupants. A dwelling may be designated as an extra occupancy rental through a development review process outlined in Land Use Code Section 3.8.28 in some zoning districts. Occupancy regulations apply to all households in the city regardless of housing tenure (rental/ownership).

Active enforcement of the ordinance (also called U+2) began in 2005 when a violation changed to a civil infraction. Since then, Council has had several in-depth conversations about occupancy and nuisance

regulation as part of the community dialogue about neighborhood livability. Council has also reviewed regular evaluations of the occupancy ordinance and its impacts. A list of relevant Council work sessions and hearings is included as an Attachment for reference.

In December 2020, the Council Ad Hoc Housing Committee expressed a range of opinions and concerns about the City's occupancy ordinance. Many of these concerns were reflected in the City's Housing Strategic Plan, which was formally adopted in March 2021 about three months after the Committee's December 2020 discussion. Specifically, the Housing Strategic Plan identifies challenges related to the existing occupancy ordinance limiting housing choice and posing potential challenges related to fair housing compliance. Additional challenges with the current policy include underutilization of the City's existing housing stock and the family definition no longer reflecting the demographic makeup of many households in the community. All Committee members supported further exploration of potential revisions to the occupancy ordinance. The Council discussed occupancy once again in October of 2021 during a work session in which Councilmembers expressed support for community engagement related to rental housing strategies (licensing/registration), revisions to the occupancy ordinance, and small landlord incentives.

Council's most recent discussion about occupancy regulations occurred at the August 23, 2022, work session. At that time, Council engaged in a robust discussion regarding the changing demographics around occupancy and whether current regulations should be adjusted. Some Councilmembers strongly advocated keeping the occupancy ordinance as it is, or with minor adjustments. Others supported broader changes to the current occupancy ordinance.

Existing Conditions and Policy Analysis

Shifting Demographics of Nonconforming Households. Root Policy Research conducted an analysis of occupancy data in 2021. Microdata at the household level was not available only for households within Fort Collins City limits, so this analysis includes the geographic entirety of Fort Collins as well as unincorporated parts of the County and small communities outside Fort Collins (including Bellvue, Wellington, and Timnath). While the geographic area of analysis extends beyond City limits, the key findings of the data are informative for understanding existing occupancy conditions.

Findings regarding household size indicate that almost half of all households (47%) are married-couple family households. Nonconforming households (i.e., those in violation of occupancy regulations) are more likely to be non-family households (68%); however, 438 households (which constituted 23% of the nonconforming household sample) do include a family unit living in the household:

**Figure 2.
Household Size**

Household size	All Households		Nonconforming Households	
	Number	Percent	Number	Percent
Total	82,691	100%	1,875	100%
1- Person household	19,764	24%	-	0%
2- Person household	33,688	41%	-	0%
3- Person household	13,380	16%	-	0%
4-Person household	10,696	13%	1,284	68%
5-Person household	3,767	5%	355	19%
6-Person household	995	1%	199	11%
7-Person household	210	0%	16	1%
8-Person household	97	0%	21	1%
10-Person household	94	0%	-	0%

Note: Excludes households living in group quarters.

Source: IPUMS USA, University of Minnesota, www.ipums.org and Root Policy Research.

In terms of homeownership and occupancy violations, the analysis finds that the majority of nonconforming households are renter-occupied, though 26% of households in violation of the occupancy ordinance are owner-occupied.

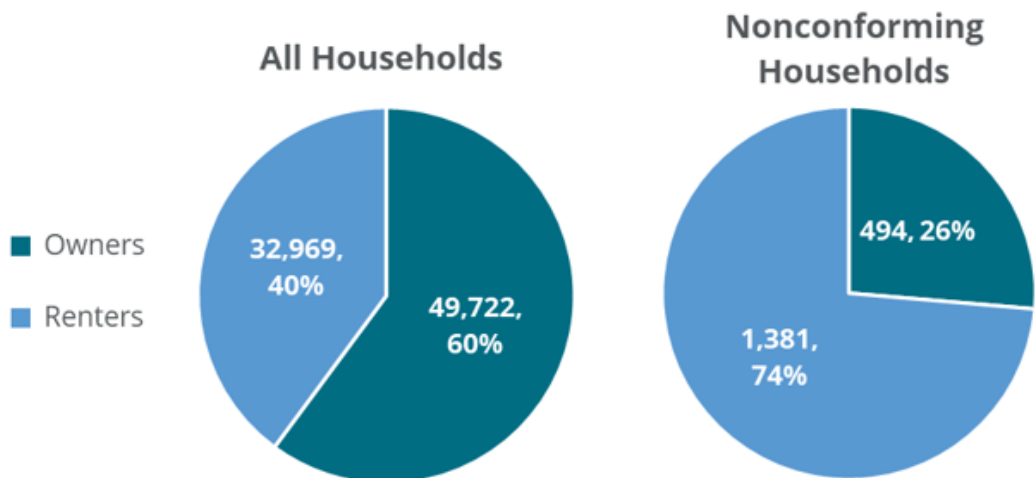
**Figure 4.
Tenure**

Note:

Excludes households living in group quarters.

Source:

IPUMS USA, University of Minnesota, www.ipums.org and Root Policy Research.



Additionally, the Root memo discusses demographics of non-confirming households. Occupancy regulations impact low-income households disproportionately, but occupancy is not solely a low-income issue. Nonconforming households are more likely to have incomes below \$50,000 than all households, but a sizeable percentage (43%) of nonconforming households still have incomes over \$75,000 per year. Nonconforming households are also slightly more racially and ethnically diverse than households overall.

The City has partnered with Corona Insights in 2005, 2009, and 2019 to evaluate the impacts of the occupancy ordinance.

Compared to the previous survey in 2005, the 2018 study reported a dramatic shift in the demographics of households in violation of occupancy regulations. These demographic shifts suggest that, compared to 2005, a wider cross-section of households are bringing in roommates in violation of the occupancy ordinance, likely to defray high housing costs. Between 2005-2018, a price escalation of 78% for rent payments paired with low rental vacancy rates under 5% is likely resulting in “doubling up” to afford housing for a broad range of household configurations.

	2005	2018
Total (est.) households in violation	1,238	1,234
Percentage college age	71%	47%

Demographics Key Findings:

- Estimates indicate that although less than 1% of Fort Collins households are in violation of U+2, households in violation are increasingly likely to include both individuals and families.
- The majority of nonconforming households had a size of four (4) (68%) or five (5) (19%) adults.
- Twenty-three percent (23%) of nonconforming households include a family unit living in the household.
- Twenty-six percent (26%) of nonconforming households are owner-occupied.
- Over half (54%) of nonconforming households live in single unit detached homes, with the rest in various types of attached dwelling units.
- Housing units with three (3) or more bedrooms tend to be underutilized by conforming households, while nonconforming households average one (1) person per bedroom.

Housing Stock: In addition to information about how households are organized, data about the size and number of bedrooms in the city’s current housing stock is an important consideration for occupancy regulations, particularly in the context of efficient use of existing housing. City demographic estimates from 2021 indicate that Fort Collins’ population is about 172,000 people. Census microdata estimates that the City’s housing stock contains approximately 186,718 bedrooms. About 70% of housing units (45,000 units) in Fort Collins have three or fewer bedrooms. About 30% of housing units (19,200 units) have four or more bedrooms. Single-unit detached homes tend to have the most bedrooms, with 3.5 bedrooms on average. Nearly 70% of all bedrooms in Fort Collins are in single-unit detached houses.

Structure Type	Units		Total Bedrooms		Average Bedrooms per Unit
	Number	Percent	Number	Percent	
<i>Single-Unit Detached</i>	36,674	57%	128,506	69%	3.5
<i>Single-Unit Attached</i>	5,129	8%	13,496	7%	2.6
<i>Duplex</i>	1,381	2%	3,091	2%	2.2
<i>3-4 Units</i>	3,445	5%	6,897	4%	2.0
<i>5-9 Units</i>	4,751	7%	9,773	5%	2.1
<i>10-19 Units</i>	4,558	7%	8,519	5%	1.9
<i>20-49 Units</i>	3,237	5%	5,436	3%	1.7

Structure Type	Units		Total Bedrooms		Average Bedrooms per Unit
	Number	Percent	Number	Percent	
50+ Units	3,613	6%	7,236	4%	2.0
Manufactured/Mobile Home	1,424	2%	3,683	2%	2.6
Other	50	0%	81	0%	1.6
Total	64,262	100%	186,718	100%	2.9

Note: Units in Structure and total number of bedrooms reflect data for the City of Fort Collins; bedrooms by units in structure and average number of bedrooms per unit applied from IPUMS analysis of greater Fort Collins area.

Source: 2020 5-year ACS, IPUMS USA, University of Minnesota, www.ipums.org and Root Policy Research

Housing Stock Key Findings:

- Fort Collins' population in 2021 was estimated to be about 172,000 people, and in 2020 (the year the above data on bedrooms was compiled) the population was estimated to be about 169,000. In Fort Collins in 2020, there were an estimated total of 186,718 bedrooms in 64,262 units.
 - With the City's population estimated to be between 169,000-172,000 residents in 2020-2021, there are roughly between 14,718 and 17,718 more bedrooms in the City than there are residents.
 - These figures demonstrate a noteworthy underutilization of the City's existing housing stock.
- Single unit houses (attached and detached) account for 65% of units and 76% of bedrooms.
- On average, single-unit houses have 3.4 bedrooms compared to multi-unit homes.
 - Fifty-five percent (55%) are 1 to 3 bedrooms, 32% are 4 bedrooms, and 13% are 5 or more bedrooms.

Occupancy cases: Currently, enforcement of the occupancy ordinance is managed with a complaint-based system that investigates reports of suspected over-occupancy. The complaints are typically based on parking, noise, or rubbish issues. In the last several years, cases have ranged from 73 to just over 200 annually. Typically, 30-40% of complaints are sustained, and the balance is unfounded or unproven. Although there are clusters of complaints close to campus, cases are geographically distributed throughout the city.

Compliance data from the past five years indicates a steady downward trend in the number of complaints year over year, with the percentage of substantiated complaints ranging from a low of 29% in 2022 to a high of 40% in 2021. The number of citations resulting from failure to come into compliance after a violation has also declined in recent years. Most occupancy violations are successfully resolved through voluntary compliance.

Year	# Cases	# Violations	# Citations
2022	73	21 (29%)	0 – all resolved through voluntary compliance
2021	97	39 (40%)	5 over occupancy 3 not submitting occupancy disclosure

Year	# Cases	# Violations	# Citations
2020	126	44 (35%)	9 over occupancy 3 not submitting occupancy disclosure
2019	162	57 (35%)	6 over occupancy 15 not submitting occupancy disclosure
2018	209	80 (38%)	16 over occupancy 6 not submitting occupancy disclosure

An occupancy disclosure form is required to be signed at the time of lease or sale of any property within the City of Fort Collins. Disclosure forms ensure that homeowners and tenants who buy or lease properties are aware of the occupancy ordinance and its provisions. In the table above, citations for failure to disclose refer to circumstances in which an occupancy disclosure form was not provided to a home buyer or tenant and cannot be produced for the City upon request.

Peer Cities Research: In partnership with Root Policy Research, staff evaluated occupancy definitions and regulations for more than 40 cities, 22 of which are in Colorado. The peer cities research investigated the year regulations were adopted, the maximum number of unrelated adults allowed in a single dwelling unit, the codified definition of a family or household, whether there was a limitation based upon square footage or number of bedrooms, and parking requirements.

Regulatory methods and resulting recommendations varied by peer city. University-anchored communities often regulate occupancy based on familial relatedness in similar ways to Fort Collins. Other common approaches to regulating occupancy included regulating based on number of bedrooms or square footage or regulating based on household functionality rather than familial relatedness.

Some states such as Iowa and Oregon have passed prohibitions on conditioning occupancy regulations on familial relatedness due to concerns about violating provisions of the Fair Housing Act and other federal legislation. The Colorado General Assembly's ongoing conversations about a similar prohibition indicate that removing the family definition may be a best practice for the sustainability and continuity of municipal occupancy regulations.

Peer City Key Findings:

- The number of unrelated adults permitted across 14 peer cities ranged from 2 to 8 people. The most common number of unrelated adults permitted in a household was 5 people.
- Parking requirements per unit range from no parking to 2 spaces plus a garage. About half of the peer cities researched require 1 space per unit, while the other half require 2 spaces per unit.
- Eight peer cities use the term "family" in their code, four use the term "household", and one uses "dwelling unit"

Colorado City Key Findings:

- The number of unrelated adults permitted across 22 Colorado cities ranged from 2 to 5 people. Most permitted 4 or 5 unrelated persons per household.
- Parking requirements ranged from no requirement to up to 4 spaces per unit (2 enclosed and 2 open). Most required 2 parking spaces per unit.
- Seventeen Colorado cities use the term "family" in their code and five use "household".

Community Engagement: At the direction of City Council, staff has conducted several community engagement activities focused on rental housing strategies and occupancy with a broad range of impacted groups over the last two years. During development of the HSP in 2020, extensive community engagement continued to highlight a need to explore rental registration/licensing and occupancy ordinance revisions.

Since then, staff has built on the HSP community dialogue by engaging with a range of community members to ensure that multiple perspectives are included in the current exploration of rental housing strategies.

Group	Engagement Activities Conducted
Renters, neighborhood groups, HOAs	Housing Strategic Plan engagement, 2020-2021
Landlords, realtors, property managers, renters	Presentation to Northern Colorado Rental Housing Association, Feb. 2022 Presentation to Boards of Realtors, Feb. 2022 Rental Industry Questionnaire, Feb./March 2022 Rental Housing Task Force
City Departments	Convening of Rental Housing and Occupancy Core Team Conversations with IT, Building Services, Communications and Public Involvement Office, City Attorney's Office
Council	Ad Hoc Housing Committee Discussion, Dec. 2020 Rental Strategies Work Session, Oct. 2021 and August 2022

These engagement activities have been supplemented by individual and small-group conversations with interested community members, housing industry professionals, advocates, and others who requested to meet with the project team.

Community Engagement Findings

The Housing Strategic Plan engagement process did not result in clear consensus regarding the path forward for the City's occupancy ordinances or any recommended alterations to the current policy. Some participants supported repealing or modifying the occupancy ordinance to potentially benefit people of all ages living on single incomes and to "free up" additional homes for rental or purchase. Others credited the occupancy ordinance with positively impacting their neighborhoods and controlling nuisance issues.

Many concerns that respondents reported specifically referred to the definition of a "family" used in the current occupancy ordinance, pointing to changes in community demographics and household configurations as reasons to reevaluate the ordinance. Several participants shared stories about the impact of high housing costs that led them to "double up" with other households in violation of occupancy limits. Suggestions for potential solutions included limiting occupancy to the number of bedrooms in a home or to a certain amount of space for each person, rather than conditioning occupancy limitations on familial relationships.

The Rental Industry and Community questionnaires provided additional insight into the range of perspectives on occupancy limitations. Responses to the Rental Industry Questionnaire indicated that there was support for increasing the current occupancy limitations depending on the suitability/size of the property. The Community Questionnaire indicated that most respondents were in favor of changing the occupancy ordinance in some way (69%). Overall, there was support for allowing extra occupancy citywide (62%), making the extra occupancy rental process easier (59%), having occupancy match the number of bedrooms in a house (51%), and increasing occupancy limits to more than three unrelated people (56%). However, people who identified themselves as homeowners who were not part of the rental industry (landlord, real estate, etc.) disagreed with all potential policy options and were split evenly regarding nuisance.

Task Force Recommendations

The following recommendations were approved by a vote of 16 in favor and one opposed. The primary recommendation was to change the City's occupancy ordinance. If the occupancy ordinance is not changed, the Task Force recommended adjustments to the extra occupancy process.

- Regulate by number of bedrooms: The Task Force recommends the definition of family be removed from occupancy regulations. Instead, the Task Force recommends that the current occupancy code be replaced with one that is based on the number of bedrooms to utilize the City's existing home inventory more fully; OR
- Make extra occupancy easier: The Task Force recommends considering the following as a new occupancy code is established:
 - Removing the U+2 policy from zoning law and enforce occupancy regulations through administrative processes;
 - Making it easier for property owners to obtain exemptions to occupancy regulations and increasing the regions of the city where extra-occupancy permits are allowed;
 - Requiring properties with extra occupancy designations to renew permits every five years; and
 - Removing extra occupancy designations when property ownership changes and/or when a property violates public nuisance ordinances.

Policy Considerations – Potential Changes to Occupancy Regulations

Staff has outlined several policy considerations for Council discussion based on existing conditions data, research completed to date, and community input that reflects a wide diversity of perspectives around rental housing and occupancy regulations. These policy considerations have been organized into three topics, each of which constitutes a distinct decision point and requires further Council guidance.

Current Policy Scenarios

The current code allows a family of any size plus one additional unrelated occupant OR no more than three unrelated occupants to occupy a single dwelling unit. A house may be designated as an extra occupancy rental house through a development review process.

Examples of both allowable and unallowable occupancy configurations under the current policy include:

Allowable scenarios:	Unallowable scenarios:
<ul style="list-style-type: none"> • A family with both adult children and grandparents living in the home, plus a family friend. • Three siblings, plus an additional unrelated roommate. • Two couples, but only when there is a familial relationship between one person from each separate couple, such as two siblings and their respective partners. • Three unrelated roommates. 	<ul style="list-style-type: none"> • Four unrelated roommates. • Two married couples (when there is no familial relationship between one person from each separate couple, such as two siblings and their respective spouses). • Two single parents and each of their children. • A pair of two siblings, plus two additional unrelated roommates.

Topic 1: Occupancy Definitions. The current ordinance conditions occupancy regulations on familial relatedness. In the current code, the definition of *family* is: 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."

Options for Council to consider regarding the current "family" definition include:

1. *Keep the current definition of "family" in Section 3.8.16 and 5.1.2.* This option would leave occupancy regulations based on familial relatedness intact.
2. *Regulate occupancy based on the number of adults and their dependents; remove the definition of family/relationship from Section 3.8.16 and 5.1.2.* This option would change how occupancy is

regulated and enforced. If Council were to regulate occupancy based on a number of adults and their dependents, the code would require a clear and enforceable definition of “dependents.”

Topic 2: Maximum Number of Occupants. Should Council decide to move forward with removing the family definition from the current code, Council will need to determine a permitted maximum number of adults and their dependents that will be authorized to occupy a single dwelling unit. Options to consider include:

1. Three adults and their dependents
2. Four adults and their dependents
3. _____ adults and their dependents

The current code defines group homes as those dwelling units with eight or more occupants, so staff recommends that Council select a number that does not exceed seven should they decide to move forward with regulation based upon adults and their dependents.

Additional items for Council to consider related to Topics 1 and 2 include:

- Removing the definition of “family” from the code and replacing it with adults and their dependents may put multigenerational households at risk of violating the occupancy ordinance. Currently, a family of any size plus one additional occupant may occupy a single dwelling unit. Shifting to adults and their dependents as the regulatory baseline may, depending on the number of adults and their dependents that are authorized to occupy a single dwelling unit, remove protections for families with adult children or other immediate/extended family members who do not meet the definition of a “dependent.”
- Many neighborhood impacts are being mitigated through current nuisance codes and educational programming. The recently enacted Public Nuisance Ordinance is also another enforcement tool. What if any, additional neighborhood impacts should be considered?
- Council could choose to regulate the number of adults by the number of bedrooms in a unit. Like the petition language below.
- The State’s More Housing Now bill (SB23-213) contains a provision that, if passed, will prohibit local governments from conditioning occupancy regulations on familial relatedness. As a result, the City may need to come into compliance with state law requiring the removal of the current “family” definition should that portion of SB23-213 pass in its current form. Staff will continue to monitor this legislation for potential impacts to the City’s occupancy regulations.
- A letter of intent to petition has been submitted to the Clerk’s Office that would ask Fort Collins voters to remove the family definition in favor of occupancy regulation by number of bedrooms and bedroom size. Should the petition result in a ballot question that passes in November 2023, resulting changes would include:
 - Family definition eliminated.
 - Maximum occupancy allowed per dwelling unit in single-family, two-family, or multi-family dwelling shall not exceed: (1) one person per bedroom of 99 square feet or less, and (2) two persons per bedroom 100 square feet or greater.

This proposed change alone, without additional changes to the extra occupancy process, may impact multi-generational families and individuals living in comparatively smaller dwelling units such as mobile homes. It also does not specify a maximum capacity past which no additional occupants will be allowed.

Staff will continue to monitor the petition process for future impacts to the City’s occupancy regulations.

Topic 3: Extra Occupancy Process. In addition to potential changes related to the family definition and corresponding determinations related to the number of adults and their dependents that should be permitted to occupy a single dwelling unit, staff asked the community for input related to the extra occupancy process. Many community members indicated a desire to see extra occupancy allowed in additional areas around the City and for the process of obtaining an extra occupancy permit to be easier. Others, primarily non-industry homeowners, opposed these revisions to the current policy. The table below demonstrates how Section 3.8.28 of the Land Use Code currently regulates extra occupancy requirements and review types by zone district.

Zone	Maximum number of residents, excluding occupant family	Maximum % of parcels per block face	Parking	Review Type and Approving Authority
Mixed-Use Zones (LMN)	One occupant per 350 square feet of habitable floor space	No more than 25% of a block face	1 bicycle space per occupant	> 4 occupants: Type 1 (hearing officer)
Mixed-Use Zones (MMN, HMN, NCB)		No limit	.75 vehicle space per occupant, rounded up to the nearest whole parking space	5 or fewer occupants: BDR (administrative)
Downtown, Commercial, Employment, and Industrial Zones (D, RDR, CC, CCN, CCR, CG, CN, NC, CL, E, I)	Additional minimum 400 square feet if owner-occupied			>5 occupants: Type 1 (hearing officer)
Residential, Harmony Corridor, and Open Lands (RL, NCL, RF, UE, NCM, HC, POL, RC)	Extra occupancy not allowed			

Options for Council to consider related to the extra occupancy process include:

1. *Maintain the extra occupancy process as it currently exists.*
2. *Remove the extra occupancy process from the Land Use Code.* As codified in the current LUC, extra occupancy approval requires either basic development review or a Type 1 hearing depending on the zone district and the number of occupants. Instead, Council could direct staff to create an administrative permit process for extra occupancy.
 - a. As a land use approval, the current process grants extra occupancy to the property rather than the property owner. An administrative permit could be granted to the property owner rather than the property. Thus, allowing the City to revoke the permit for allowing ongoing nuisance activities.
 - b. An administrative process could have a fee recovery for the staff time involved in the approval, which would be less time intensive than the Development Review process for staff and less costly for the applicant.
3. *Allow extra occupancy in more places or citywide, potentially with streamlined requirements for approval.*
4. *Regulate the number of extra occupants based on number of bedrooms rather than square footage.* The Building Code provides the following minimum requirements for a room to be considered a bedroom:
 - a. A floor area of not less than 70 square feet.
 - b. Not less than 7 feet in any horizontal dimension.
 - c. Provided an emergency escape and rescue opening.
 - d. Provided smoke alarms.
 - e. Other requirements related to lighting, ventilation, etc.

These requirements for bedrooms from the Building Code would constitute the standard of review for extra occupancy based on number of bedrooms should Council decide to move forward with this option.

5. *Council could direct staff to require rental inspections before issuing extra occupancy permits.* If Council is interested in transitioning to an administrative process, these inspections could ensure minimum life, health, and safety standards are met (in addition to property-based requirements such as size, parking, number of bedrooms, etc.) prior to issuing extra occupancy permits.
6. *Reduce the number of parking spots required for extra occupancy from .75 to .5 (excluding tandem spots).*

Potential Example: (Illustrative purposes only)

This table illustrates how the number of bedrooms could be associated with the number of adults in the unit for extra occupancy permits. One column keeps a similar number of adults as U+2 – three (3) adults plus their dependents. The second column uses the assumption of a higher occupancy limit of four (4) adults plus dependents.

Bedrooms	# of adults, if 3 + dependents	# of adults, if 4 + dependents
1 - 2 bedrooms	3	4
3 bedrooms	4	5
4 bedrooms	5	6
5 bedrooms	6	7
6 bedrooms	7	

NEXT STEPS

Engagement approach will be finalized pending Council direction.

Proposed timeline:

- Summer 2023 – Neighborhoods, Nonprofit partners, Rental Industry, etc.
- Fall 2023 – Student/CSU and tenant community engagement.
- Winter 2023 – Council Action

ATTACHMENTS

1. Previous Council Action on Occupancy Regulation Summary
2. Community Engagement Summary
3. Corona Insights Study 2019
4. Root Policy Research – Peer Communities Memo
5. Root Policy Research – Occupancy Code Data Analysis
6. Root Policy Research – Bedroom Capacity Memo
7. Root Policy Research – Investor Market Memo
8. Household Definitions and Restrictions
9. Myler Capstone Community Questionnaire
10. Presentation