

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB17-0726

SERIES OF 2017

COMMITTEE OF REFERENCE:

**AS AMENDED 07-17-17**

Safety, Housing, Education & Homelessness

**A BILL**

**For an ordinance establishing a temporary voluntary disclosure and compliance plan process for existing buildings that have undergone unpermitted work, and temporarily amending Section 142.2 of the administrative section of the Denver Building and Fire Code to allow occupancy of certain existing buildings prior to the issuance of a certificate of occupancy through a conditional certificate of occupancy.**

**WHEREAS**, the city has adopted the Denver Building and Fire Code (the “Code”) for the purpose of providing minimum standards to safeguard life, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use, occupancy, location, and maintenance of all building and structures within the City and County of Denver; and

**WHEREAS**, the city recently has become aware of existing buildings where unpermitted work has been completed and unpermitted occupancy is occurring; and

**WHEREAS**, the city desires to further the public health, safety, and welfare of residents of the City and County of Denver by encouraging building owners and tenants to bring their buildings into compliance with the Code; and

**WHEREAS**, the city, therefore, desires to have building owners promptly and voluntarily disclose any unpermitted work and to work with the city towards a path of compliance with the Code to protect the public health, safety, and welfare of residents of the city.

**NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** During the period July 21, 2017, through ~~July 19, 2019~~ **January 17, 2020**, owners of existing buildings that have been modified without permits required by the Code (“Owner(s)”), or tenants of existing buildings that have been modified without permits required by the Code and have received an owner’s authorization (“Tenant(s)”), may voluntarily disclose the presence of unpermitted work to the city’s Community Planning and Development department or the Denver Fire Department and apply for a compliance plan designed to bring the building into compliance with the Code in a reasonable time. A compliance plan will allow the Owner or Tenant of such existing building time to come into compliance, which shall also include the obtaining of any necessary zoning permits,

1 subject to the completion of certain benchmarks in the compliance plan as agreed to and approved by  
2 the Building Official.

3 **Section 2.** The Building Official shall adopt a written policy governing the issuance and  
4 approval of voluntary compliance plans, which shall include a requirement for an initial inspection  
5 of the existing building and regular inspections during the period of the compliance plan. The  
6 Building Official shall deny any request for a compliance plan if the Owner or Tenant fails to submit  
7 required information in accordance with the timelines established in this written policy.

8 **Section 3.** The city shall not seek penalties against an Owner or Tenant for violations of the  
9 Code as allowed in Administrative Section 107.2 and 107.3 once the Owner or Tenant has been  
10 approved for a compliance plan and completes the compliance plan within the time allowed; however,  
11 the Building Official may seek any remedy allowed by the Code against the Owner or Tenant for  
12 unpermitted work upon revocation or expiration of a compliance plan as authorized in Section 7 below.

13 **Section 4.** To qualify for a compliance plan:

14 (a) The Owner or Tenant must voluntarily disclose unpermitted work, **except as**  
15 **specifically allowed in subsection 4(c) below;**

16 (b) The land uses being conducted in the building must be allowed by the zoning code of  
17 the City and County of Denver;

18 (c) The discovery of unpermitted work must not be the result of inspections conducted  
19 by the city or from information provided to the city from someone other than the Owner or Tenant,  
20 **except during the period July 21, 2017 through January 19, 2018;**

21 (d) The Owner or Tenant shall apply for a compliance plan and receive approval from the  
22 Building Official;

23 (e) The Owner or Tenant shall complete all requirements under the compliance plan  
24 within ~~two hundred seventy (270)~~ **three hundred sixty-five (365)** days, or in a timeframe that  
25 may exceed ~~two hundred seventy (270)~~ **three hundred sixty-five (365)** days as specifically  
26 allowed by the Building Official in the compliance plan for unusual or unique circumstances. If an  
27 Owner or Tenant requires more than ~~two hundred seventy (270)~~ **three hundred sixty-five (365)**  
28 days to complete the compliance plan, the Owner or Tenant must notify the Building Official in  
29 writing before the ~~two hundred seventy (270)~~ **three hundred sixty-five (365)** day period has  
30 passed and receive approval from the Building Official for an extension of time; **and**

31 (f) The Owner or Tenant shall not begin any unpermitted work after the effective date of this  
32 ordinance nor perform any additional unpermitted work during the term of the compliance plan; **and**

1           **(g) During the period July 21, 2017 through January 19, 2018, Owners or Tenants**  
2 **of existing buildings who have received an order to vacate from the city from December 1,**  
3 **2016 through July 21, 2017 due to unpermitted work and/or no valid certificate of occupancy,**  
4 **may apply for a compliance plan subject to the conditions of subsections 4(b), (d), (e), and**  
5 **(f) above.**

6           **Section 5.** That Section 142.2 of the Administrative section of the Code is hereby amended,  
7 but only for the period of July 21, 2017, through ~~July 19, 2019~~ **January 17, 2020**, inclusive, by enacting  
8 the following temporary exception to Section 142.2:

9 **Conditional Certificate of Occupancy.** In addition to the ability to apply for a compliance plan as  
10 explained above, during the period July 21, 2017, through ~~July 19, 2019~~ **January 17, 2020**, Owners  
11 or Tenants of existing buildings that have been modified without permits required by the Code and  
12 that have resulted in unpermitted occupancy at the time of application for a compliance plan may  
13 apply for a Conditional Certificate of Occupancy that would allow occupancy of an existing building  
14 prior to the issuance of a new Certificate of Occupancy while the Owner or Tenant implements and  
15 completes the work required by the compliance plan. The Building Official shall only issue a  
16 Conditional Certificate of Occupancy if the occupancy of the existing building in the judgment of the  
17 Building Official and Fire Official based on physical inspection and evaluation of identified hazards  
18 does not pose a dangerous fire hazard or a dangerous hazard to life, health, property, or public  
19 welfare.

20           **Section 6.** That the following conditions apply to qualify for the Conditional Certificate of  
21 Occupancy:

22           (a) A Conditional Certificate of Occupancy shall only be issued for structures or portions  
23 of such structures that will be administered by the 2015 International Residential Code or will be  
24 classified under any of the following building occupancy classifications according to Section 302 of  
25 the 2015 International Building Code:

- 26           (1) Assembly Group A-3 with an occupant load of 300 or less;
- 27           (2) Business Group B;
- 28           (3) Mercantile Group M;
- 29           (4) Residential Group R-2 and R-3 where the building is not greater than two  
30 stories or more than 16 dwelling units, or not having a building occupant  
31 load greater than 20; or
- 32           (5) Utility and Miscellaneous Group U;

1 (b) The Owner or Tenant shall not begin any unpermitted work after the effective date of  
2 this ordinance nor complete any additional unpermitted work during the term of the conditional  
3 certificate of occupancy;

4 (c) As authorized in Section 2 above and subject to the same conditions, the Owner or  
5 Tenant shall apply for a compliance plan and receive approval from the Building Official; ~~and~~

6 (d) A Conditional Certificate of Occupancy may only be issued for an existing building that  
7 is occupied as of the date of this ordinance; ~~and~~

8 (e) **Owners or Tenants who may apply for a compliance plan as allowed in Section**  
9 **4(g) above, may also apply for a Conditional Certificate of Occupancy, subject to the**  
10 **requirements of Sections 5 through 10 of this ordinance.**

11 **Section 7.** A Conditional Certificate of Occupancy will not be issued for a building or  
12 structure, or portion of a building or structure, where the continued use or existence of the building  
13 or structure, or portion of the building or structure constitutes a dangerous fire hazard or a dangerous  
14 hazard to life, health, property, or public welfare as determined by the Building Official and/or Fire  
15 Official in their sole discretion; or if any of the following conditions are present:

16 (a) Any building, structure, or portion thereof that meets the definition of 'Dangerous' as  
17 defined in the 2015 International Existing Building Code;

18 (b) Damage or deterioration to any exposed exterior member to the extent that the  
19 member provides inadequate protection from the elements to the occupants of the building or  
20 structure;

21 (c) Floors or areas with inadequate means of egress;

22 (d) Parts attached in such a manner that they may fall and cause injury to the occupants,  
23 public, or property;

24 (e) Building envelope damage or deterioration that has caused the interior of the structure  
25 to be open to the elements;

26 (f) Deterioration that has caused the plumbing system, electrical system or heating  
27 system to be no longer functional;

28 (g) Storage of explosives;

29 (h) Excessive amounts of combustible or flammable materials;

30 (i) Vegetation deemed an exposure hazard;

31 (j) Manufacturing of controlled substances;

32 (k) Storage of unstable or hazardous materials;

1 (l) Required fire protection systems are missing, or existing fire protection systems are  
2 inoperative;

3 (m) Any Gas-Fired, Oil-Fired or Solid Fuel-Fired Appliances, Devices, or Apparatuses,  
4 which have any of the following defects:

- 5 (1) Broken or cracked heat exchangers;
- 6 (2) Defective or deteriorated vents, venting or flues which permit leakage of  
7 flue products;
- 8 (3) Defective or improperly installed fuel supply piping;
- 9 (4) Insufficient air supply for the combustion of fuel;
- 10 (5) Equipment locations which constitute a fire or explosion hazard;
- 11 (6) A negative air pressure condition exists in a heating equipment room or  
12 area; or
- 13 (7) Warped or distorted combustion chambers or furnace boiler firing doors  
14 which permit leakage of combustion products;

15 (n) Any electrical systems, appliances, devices, or apparatuses that have any of the  
16 following defects:

- 17 (1) Bare wiring that is not part of a grounding electrode system;
- 18 (2) Missing overcurrent protection;
- 19 (3) Electrical systems exposed to the elements or other extreme conditions and  
20 not listed for such exposure; or
- 21 (4) Missing equipment and system grounding

22 (o) Any plumbing systems or devices that have any of the following defects:

- 23 (1) Supply water not meeting the standards of potability as required by the  
24 Colorado State Department of Public Health; or
- 25 (2) Water systems subjected to the hazards of backflow or back-siphonage,  
26 which might create pollution to the potable water supply; i.e., hose bibbs  
27 shall have anti-siphon devices.

28 (p) Any violation of Article II, Chapter 27 of the Denver Revised Municipal Code (Housing  
29 Code).

30 **Section 8.** Failure to adhere to any conditions of the compliance plan or Conditional  
31 Certificate of Occupancy will result in the revocation of the compliance plan or Conditional Certificate  
32 of Occupancy and an immediate order to vacate any building or portion of a building subject to a  
33 compliance plan or Conditional Certificate of Occupancy. The Building Official and/or Fire Official

1 is authorized to issue an order to vacate during the term of the compliance plan or Conditional  
2 Certificate of Occupancy if any inspections or information show that the existence or occupancy of  
3 the existing building poses a dangerous fire hazard or a dangerous hazard to life, health, property,  
4 or public welfare, regardless of any progress made under the compliance plan.

5 **Section 9.** Final discretion for approving a compliance plan or granting a Conditional  
6 Certificate of Occupancy is solely with the Building Official and the city is not liable nor shall there  
7 be any appeal to the Board of Appeals of the Building Official's decision to deny a request for a  
8 compliance plan or Conditional Certificate of Occupancy.

9 **Section 10.** An Owner or Tenant who completes work under a compliance plan or  
10 Conditional Certificate of Occupancy will be responsible for all permit and inspection fees, but will  
11 not be responsible for any additional fees required for unpermitted work.

12 **Section 11. Every six (6) months from the effective date of this ordinance,**  
13 **Community Planning and Development ("CPD") shall prepare a written report to be delivered**  
14 **to city council explaining CPD's activities related to, and an assessment of outcomes of,**  
15 **applications and issuances of compliance plans and Conditional Certificates of**  
16 **Occupancies. No later than October 18, 2019, CPD shall conduct a policy review of this**  
17 **ordinance, and report any recommendations to city council.**

18

1 COMMITTEE APPROVAL DATE: June 28, 2017

2 MAYOR-COUNCIL DATE: July 4, 2017 by Consent

3 PASSED BY THE COUNCIL: \_\_\_\_\_ July 17, 2017

4 \_\_\_\_\_ *Alan Banks* - PRESIDENT

5 APPROVED: \_\_\_\_\_ *Allegra "Happy" Hayden* - MAYOR Jul 19, 2017

6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_; \_\_\_\_\_

10 PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: July 6, 2017

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12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
15 §3.2.6 of the Charter.

16 Kristin M. Bronson, Denver City Attorney

17 BY: *Kristin M. Bronson* \_\_\_\_\_, Assistant City Attorney

DATE: July 17, 2017