

May 13, 2024

Item No. 9.5.

Civil Unrelated Overoccupancy for ROO

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 26, "Miscellaneous Provision and Offenses," of the Code of Ordinances by adding Sec. 26-14 Restricted Occupancy Overlay - Civil Unrelated Overoccupancy, related to overoccupancy.

Relationship to Strategic Goals:

Good Governance, Neighborhood Integrity

Recommendation(s): Staff recommends approve of this ordinance.

Summary: As requested by City Council, this ordinance amends Chapter 26 of the Code of Ordinances to add Sec. 26-14 Restricted Occupancy Overlay - Civil Unrelated Overoccupancy. The ordinance provides a tool for civil enforcement and includes definitions, administrative penalties, and notice requirements. The ordinance contains a civil violation, presumptions and defenses.

Budget & Financial Summary: The expense for enforcement is included in the General Fund Code Enforcement budget.

Attachments:

1. Ord 26-14 ROO-Civil Unrelated Overoccupancy

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 26, “MISCELLANEOUS PROVISIONS AND OFFENSES,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING CERTAIN SECTIONS RELATING TO OVER OCCUPANCY; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 26, “Miscellaneous Provisions and Offenses,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.

PART 2: If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

PART 3: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 26, “Miscellaneous Provisions and Offenses,” of the Code of Ordinances of the City of College Station, Texas is hereby amended by adding **Sec. 26-14 Restricted Occupancy Overlay-Civil Unrelated Overoccupancy** and is to read as follows:

Sec. 26-14 Restricted Occupancy Overlay-Civil Unrelated Overoccupancy.

A. Administrative Enforcement. The City Manager or designee may issue administrative citations and impose an administrative penalty for Unrelated Overoccupancy violations as a civil offense against any responsible person violating this section. Administrative penalties in this section are in addition to any other enforcement or remedies, including the penal provisions authorized by the Code of Ordinances. A Code Enforcement Officer or a Peace Officer has the authority to issue administrative citations or file notice of an administrative penalty with the Municipal Court for violations.

B. Non-Applicability ROO Restricted Occupancy Overlay Legacy Clause. If a single-family dwelling unit or accessory living quarter meets the ROO Restricted Occupancy Overlay Legacy clause as defined in UDO Section 5.11, as amended this section does not apply.

C. Definitions.

- 1. Accessory Living Quarter.** Is defined in UDO Section 11 as amended.
- 2. Dwelling Unit** means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating, and sanitation.
- 3. Family** means any number of persons occupying a single dwelling unit, provided that no such family shall contain more than two (2) persons, unless all members are related by blood, adoption, guardianship, or marriage, are an authorized caretaker, or are part of a group home for disabled persons. When counting the number of unrelated persons in a single dwelling unit, a maximum of one group of persons related by blood, adoption, guardianship, marriage, an authorized caretaker, or members of a group home for disabled persons shall be permitted, provided that all other persons shall each count as one unrelated person. Guardianship shall include foster children, exchange students, or those in the process of securing legal custody of a person under age 18. Any asserted common law marriage must be subject to an affidavit of record under the family code, or a judicial determination. The term “family” shall not be construed to mean a club, a lodge, or a fraternity/sorority house.
- 4. Responsible Persons** means a property owner, property manager or agent, local contact person, person living or staying at the property, or any person in possession of the property violating Unrelated Overoccupancy regulations.

5. Restricted Occupancy Overlay or ROO. A Restricted Occupancy Overlay or ROO is defined in UDO Section 5.11 as amended.

6. Single-Family means a structure providing one (1) dwelling unit on a single lot or building plot.

7. Single-Family Dwelling means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating and sanitation.

D. Administrative Penalty.

1. The administrative penalty is **\$250 dollars** for the first violation.
2. The administrative penalty is **\$350 dollars** for the second violation.
3. The administrative penalty is **\$500 dollars** for three or more violations
4. An administrative penalty may be assessed for each day a violation continues.

E. Administrative Penalty Notice. An administrative citation or notice of the administrative penalty may be served personally by issuing an administrative citation to a responsible person. The notice of administrative penalty may be served personally or by regular or certified mail.

F. Civil Violation, Presumptions and Defenses.

1. Civil Violation. It is unlawful for a responsible person to allow or have in a ROO a family of more than two unrelated persons occupying a single-family dwelling unit or accessory living quarter.

2. Unrelated Overoccupancy. Unrelated Overoccupancy is evidence showing more than two vehicles with registrations to persons having different surnames and addresses are parked on the property, on the street directly in front of the property, on either side of the street, or immediately adjacent to the property on a majority of days during any 30-day period creates a rebuttable presumption that a responsible person is violating this section.

3. Residence. Residence is evidence showing a vehicle registered to a person or registered to an immediate family member of a person that is parked on the property, on the street directly in front of the property, on either side of the street, or immediately adjacent to the property on a majority of the days during any 30-day period creates a rebuttable presumption that a person occupies a property and violating this section.

4. Affirmative Defenses. It is an affirmative defense to prosecution to an offense under this section if:

- a. The occupants meet the requirements for definition of family in this section and the total number of family and unrelated persons is less than two (2).
- b. The residence qualifies as a Group Home as defined in the UDO.
- c. The occupants are not residents of the single-family dwelling unit or accessory living quarter.
- d. The single-family dwelling unit or accessory living quarter is not in a ROO.

G. Administrative Hearing Procedures.

1. Administrative Process. The administrative adjudication process is initiated by issuing an administrative citation or notice of administrative penalty. An administrative citation or notice of administrative penalty serves as notice of administrative hearing.

2. Notice. A person is presumed to have received notice of a violation upon personal service or notice posted at the property. A person is presumed to have notice of a violation 10 business days after the notice of the administrative penalty was mailed.

3. Administrative Citation Information. An administrative citation or notice of administrative penalty shall include the following information:

- a. The nature, date, time and location of the alleged violation;
- b. A statement that a person charged with a civil offense under the Code of Ordinances is entitled to an administrative hearing to determine liability for the charged offense and that such right to a hearing shall be exercised by personally appearing before the Hearing Officer, within ten days from the date of the citation or receipt of notice of administrative penalty; and
- c. Failure to answer the administrative citation or to appear at the administrative hearing is considered an admission of liability for the violation and will result in the assessment of all penalties, civil fines, costs and fees.

4. Administrative Hearing. A person receiving an administrative citation or notice of administrative penalty under this section is entitled to an administrative hearing.

- a. At a hearing before a Hearing Officer, the defendant may either admit, admit with explanation, or deny the alleged violation.
- b. The issuing Code Enforcement Officer or Peace Officer is not required to attend the hearing.
- c. The City Attorney is not required to attend the hearing. However, if the defendant is represented by legal counsel, the Hearing Officer may notify the City Attorney, who shall have the right to appear on behalf of the City at the hearing.
- d. No formal or sworn complaint shall be necessary.

- e. The Hearing Officer shall base their decision upon an examination of the contents of the citation or summons and the evidence related to the presumptions and other prima facie evidence established by this section and other applicable law, and the evidence and testimony presented by the defendant and the City.
- f. If the Hearing Officer determines by a preponderance of the evidence that the defendant is liable for the violation, the Hearing Officer shall find the defendant liable.
- g. At the conclusion of the hearing, the Hearing Officer shall issue an order stating whether the defendant is liable for the violation of this section and the amount, if any, of civil fines, costs or fees assessed against the defendant.
- h. All orders issued by the Hearing Officer shall be filed with the Clerk of the College Station Municipal Court. All such orders shall be maintained in a separate index or file by the Municipal Court Clerk. The order may be recorded using computer printouts, or electronic or data processing techniques.
- i. Failure of a defendant to appear by mail or personal appearance within the aforesaid ten-business-day period shall be considered an admission of liability for the charged offense. Such defendant shall be liable for the civil fines, costs and fees assessed by order of the Hearing Officer.

5. Hearing Officer. The City Manager or designee shall appoint one or more Hearing Officers to administratively adjudicate all violations and with having the authority to:

- a. Administer oaths;
- b. Accept admissions and hear and determine contests of violations under this section;
- c. Issue orders enforceable by the Municipal Court compelling the attendance of witnesses and the production of documents;
- d. Issue orders at administrative hearings stating whether the person charged with violating the ordinance is liable for the violation or not; and the amount of the penalty, civil fines, fees and costs assessed against the person; and
- e. Dismiss citations that are found unenforceable.

6. Citation Record. The original or a copy of the citation or notice of administrative penalty, including an electronic copy, is a governmental record kept in the ordinary course of City business and is rebuttable proof of the facts it contains.

7. Service. The original and all copies of any administrative citation or notice of administrative penalty are prima facie evidence that it was issued, and service was proper.

8. Administrator Procedures. The City Manager or designee shall implement and enforce this section with necessary and consistent procedures and may file an action to collect the fine, cost, or fee in a court of competent jurisdiction.

H. Appellate Review. Any person assessed an administrative penalty under this section shall have the right to appeal the Hearing Officer's decision to the Municipal Court. A petition appealing

the decision of the Hearing Officer must be filed with the Municipal Court not later than 30 calendar days after the Hearing Officer's order is filed with the Municipal Court.

- 1. Appeal.** A person determined by a Hearing Officer to be liable for an Unrelated Overoccupancy violation may appeal the determination by filing a petition with the Municipal Court, along with any other costs required by law for Municipal Courts not later than 30 calendar days after the Hearing Officer's order is filed with the Municipal Court.
- 2. Notice.** Upon receipt of an appeal petition, the Municipal Court shall schedule an appeal hearing and notifying the City Attorney and all parties of the date, time, and location of the hearing.
- 3. Review.** The appeal hearing shall be a de novo review by the Municipal Judge. Based upon the evidence presented at the appeal hearing and if the Judge determines by a preponderance of the evidence that the defendant committed the violation, the Judge shall find the defendant liable.
- 4. Bond.** Service of notice of appeal under this section does not stay the enforcement and collection of any order of a Hearing Officer, unless the person filing the appeal posts with the Municipal Court an appeal bond in an amount equal to all civil fines, costs and fees assessed by the Hearing Officer.