



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & Veterans' Services

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To: Board of County Commissioners

From: Eric Walker, Interim Director, County Community Development

RE: **Zoning Ordinance Text Amendment (File #18-0265) – Short Term Rentals**

I. Background

The County Board of Commissioners (“Board”) held a public hearing on August 20, 2018 to consider modifications to the Hood River County Zoning Ordinance (HRCZO), as they apply to establishing a Short Term Rental (STR) on property within the County¹. The Board was provided a number of alternative options to address certain challenges concerning the implementation of existing STR regulations. These options included everything from maintaining the current STR code to repealing it all. In the end, the Board agreed, in concept, on a potential hybrid approach of maintaining much of the existing code, but with some key modifications, including (1) modifying the requirements concerning “residency,” specifically that STRs be allowed to occur only out of an operator’s primary dwelling/domicile; (2) eliminating the existing cap of 100 STRs (*25 in the farm and forest zones*) within the County; (3) grandfathering certain existing STRs, but with a phase-out period of up to 7 years; and (4) eliminating most or all STRs in resource zones. The Board also directed staff to obtain some additional information related to the above modifications.

Since the August 20th hearing, the Board has held three work sessions. During the first work session on October 15, the Board was provided a staff report containing general details related to the above modifications and other related issues (see Exhibit “C”). Based on the Board’s input, draft ordinances were developed for consideration during its November 19th work session. These ordinances proposed modifications to Article 1 (Definitions) and Article 53 (Short Term Rentals) of the HRCZO. The Board generally accepted the draft ordinances as proposed, with some minor modifications. During its December 17th work session the Board determined that the draft ordinances, as modified, were ready for public hearing.

Pursuant to Oregon Revised Statute (ORS) 215.503, a Measure 56 notice was mailed on December 18, 2018 to all property owners who could potentially be affected by the proposed ordinance amendments, including those located in the Exclusive Farm Use (EFU), Forest (F-1), Primary Forest (F-2), Rural

¹ Not including property within the Urban Growth Areas of Hood River or Cascade Locks or within the Columbia River Gorge National Scenic Area.

Residential (RR), Residential (R-1), Commercial (C-1), Rural Center (RC), and Mt. Hood Unincorporated Community Commercial (MH-C1) zones. The property owners in these zones were specifically identified because that is where STR regulations currently apply. Nearly 3,700 property owners in total were sent this notice, which included a summary of the proposed ordinance amendments, date/time and location of the public hearing, instructions for providing comments either prior to or at the hearing, and details for obtaining additional information. In response to this notice, a number of written comments were received from property owners and others, which are attached to the staff report as Exhibit “D”. Any other written comments received after the date of the staff report will be provided the night of the hearing.

II. Proposed Modification

A copy of all proposed changes to Articles 1 and 53 of the HRCZO are attached as Exhibits “A” and “B”. The changes proposed are based either on direction from the Board received during the above mentioned public hearing and work sessions or recommendation of staff based on experience and “lessons learned” while implementing the existing STR ordinance over the last two years. Most of the changes proposed in the draft ordinances include narrative explaining the reasons for the change and staff’s recommendation.

For more information, see the draft ordinances found in Exhibits “A” and “B”.

III. General Overview of Comments Received (as of January 10, 2019)

In total, comments were received from approximately 14 property owners and interested individuals prior to the date of this report in response to the Measure 56 notice or the previous work sessions. Additionally, staff answered multiple phone inquiries regarding the proposed amendments. Most of the written comments received did not necessarily support or oppose the draft ordinances in whole, but expressed views on certain elements contained within. To date, the proposed changes that received the greatest input (or inquiry) included the grandfathering of existing STRs and the allowance (or not) of STRs in the resource zones.

Another topic that received input included the issue of residency, specifically, whether or not STRs should only be allowed to operate out of a person’s primary residence or not. Since the adoption of the current STR ordinance in December of 2016, this issue has been at the forefront of the STR debate and resulted in multiple permit appeals, as well as STR application withdraws due to the threat of appeal. The conflict resulted in the lack of clear language in the ordinance as to who qualified as a “resident,” which is a key requirement for operating an STR. Initially, the Board accepted the interpretation that a resident was anyone who occupied a dwelling for more than 30 days during a calendar year. However, during its October 15, 2018 hearing, the Board formally revised its interpretation by indicating that the term residence should include only those persons that primarily occupy the dwelling proposed for use as an STR. In fact, the Board signed Resolution #2259 (see Exhibit “E”) directing staff to interpret the word resident, as it applies to STRs, to mean a person who occupies their primary legal residence or domicile until such time as the Board can adopt clarifying language.

The most extensive set of comments received related to the draft ordinances came from Thrive Hood River (“Thrive”), formerly known as the Hood River Valley Residents Committee. Below is a summary of the main issues raised by Thrive with staff’s response:

- *Grandfathered STRs should be limited to only those who are registered with the County and have been paying required transient room taxes (TRT).*

The draft ordinance identifies three potential candidates for grandfathering, including (1) those registered with the County for TRT certification, (2) those who made a good faith effort to apply with the County for an STR, but were unsuccessful due to an appeal of threat of appeal, and (3) those who were assessed and paying additional personal property tax as a result of their STR business. Below is a list of the total number of potential grandfathered candidates per category:

Potential Category	Total ²
Registered TRTs (STRs only)	10
STRs Appealed or Withdrawn Due to Threat of Appeal (<i>does not include denied applications</i>)	12 (4 appealed) (8 withdrawn)
Assessed/Taxed STRs	9

As noted in Exhibit A, staff is recommending that the Board grandfather those individuals who fall into the first two categories of operators (*registered TRTs and STRs under appeal/withdrawn*) based on these owners being proactive and making a good faith effort to comply with some or all of the County’s regulations concerning STR, and not just getting “discovered,” as is the case with most of the third category of operators (*STRs being taxed*).

- *Grandfathered STRs should be allowed to continue for up to 5 years instead of the 7 years currently proposed.*

The 7 year grandfathering period was initially proposed by the Board. This period of time is the same that is currently used by the City of Hood River and other jurisdictions. According to City staff, their council was advised that 5 years was an acceptable “safe harbor” for phasing out grandfathered STRs, but decided to accept 7 years based on testimony from affected property owners that 5 years was not long enough to obtain a reasonable return on their investment. Although, accepting either a 5 or 7 year phase out period seems reasonably consistent with industry norms, and is legally defensible, staff recommends maintaining the 7 year period for a few reasons. Up until

² The numbers provided in this chart include some overlap. For more information, see Attachment “F.”

recently, the zoning ordinance has been silent on whether STRs have been a permitted use or not. In fact, the Planning Department's view on STRs has changed over the years. Initially they were viewed as purely a residential use, no different than a long-term rental. Later, they were viewed as a commercial use and, therefore, not allowed in non-commercial zones. Enforcement of existing STRs has been inconsistent, at best. At the same time, the County Budget and Finance Department has been accepting TRT registrations and collecting the associated tax. This has all resulted in a fair amount of confusion over the years with folks investing in property based on an assumption that STR operation could be allowed in the County. For these reasons, staff finds that a longer phase out period is more appropriate and, therefore, recommends that the Board maintain the proposed 7 year timeframe.

- *Grandfathered STRs should be allowed to continue only to the extent to which they previously operated based on TRT payments received during previous years.*

The idea of limiting the extent to which a grandfathered STR can operate based on past operations is an approach used by the City of Hood River when they initially developed their STR ordinance. As part of this process, the STR operator was tasked with demonstrating the highest number of days per year they had operated in the past, together with documentation confirming that the number of days matched with the amount of TRT collected during that year. City staff then confirmed the information by looking at archived websites that showed the room rates being charged at that time. They then compared the rates charged with the purported number of days to ensure that they matched with the amount of TRT collected. So, for instance, if an STR operator could prove that they operated for 50 days during their best year, then that person would be allowed to continue operating their STR for up to 50 days per year for the next 7 years.

Staff does not support this approach for a couple reasons. First, it does not align with staff's current recommendation of allowing other STR operations to be grandfathered besides just those paying TRTs. Using this approach would effectively eliminate these other potential candidates from being grandfathered. Second, the process required to accurately document the number of days that an STR operated in the past would involve extensive staff time and administrative costs. According to City staff, the amount of time they spent to verify information when initiating the City's STR program was significant. Although the total number of potentially grandfathered STRs in the County is significantly less than those in the City, staff remains concerned about any regulation that would unduly result in expending additional staff time and other County resources, both of which are currently in limited supply.

- *Grandfathered STRs should be given only 60 days to apply with the County permitted authorization instead of the 90 days proposed.*

Staff agrees that unpermitted STRs that qualify for grandfathering should be permitted as quickly as possible. However, staff also understands that the process for notifying property owners, advising them of the application process, and having them prepare their application, including the submittal of required information (e.g. site/floor plans, proof of insurance, property management plans, obtaining

required agency sign-offs) will take some time. Staff finds that 90 days is an appropriate and reasonable amount of time given the steps involved, and that reducing it any further will not improve the process.

- *Proof of residency should be based on three pieces of evidence, including the operator's Oregon income tax form and two other forms of identification, such as an Oregon driver's license, Oregon voter's registration, and Hood River County ID.*

As detailed in Exhibit A, under the “staff comments” section included below Section 53.52(A), staff is generally comfortable with this suggested modification. After meeting with City staff last Fall, they too suggested utilizing tax return documents as a primary piece of evidence to prove residency. They found that such documents are the most reliable form of identification. Based on this input, staff is recommending that instead of just requiring any two types of ID from a list of four, including Federal income tax returns, current voter's registration, current Oregon driver's license, and Hood River County ID card, that Federal or State tax returns be required in every instance and then accept one or two of the other three forms of ID as a second proof of residency. Now, whether the ordinance should require that the income tax returns required be Federal (*as currently used by the City*) or State (*as suggested by Thrive, based on input from a CPA*), staff has no clear preference. Similarly, staff does not have a strong preference whether the ordinance requires two forms of ID as currently proposed or three as suggested by Thrive, although two seems sufficient especially if the Board requires Federal or State tax returns as the primary form of ID.

- *Modify the existing compliance section of the ordinance (HRCZO Section 53.64) by eliminating the requirement that aggrieved neighbors work with the STR operator before filing a complaint with the County.*

Although staff tends to agree that the “compliance” language in Section 53.64 is somewhat unorthodox, it also has some benefits given the nature of STRs and the common challenges of verifying certain complaints associated with them, such as noise, parking, etc. With that said, the current compliance language has existed for two years and staff has not witnessed or heard of any problems with the existing process. Until then, staff has no basis to recommend modifying the code as suggested.

- *Modify HRCZO Section 72.45 as it relates to having standing to appeal a land use decision.*

This modification is in response to a recent Oregon Land Use Board of Appeal (LUBA) decision (*Hood River Valley Residents Committee v. Hood River County, LUBA No. 2018-028*) where they found that Section 72.45 of the HRCZO was out of compliance with State statute as it applies to a person's right to a hearing and standing to appeal. Although staff agrees that changes to Section 72.45 need to be made, we believe these changes are better addressed as part of a larger evaluation of the entire administrative procedure sections of the ordinance instead of adding it to this unrelated legislative review. Nevertheless, it should be noted that the applicable State law, which was the basis

for the LUBA decision, is now being applied directly even though the actual language in the code has not yet been changed.

IV. Recommendation

Based on the above information and the additional “staff comments” included as part of the draft ordinance, attached as Exhibits “A” and “B” of this report, staff recommends that the Board accept the proposed changes to Articles 1 and 53 of the County Zoning Ordinance as they apply to establishing short term rentals in Hood River County.