



STAFF REPORT

Proposed Ordinance Text Amendments

- FILE NUMBER:** P-17-0324
- DATE:** Prepared for April 16, 2018 Public Hearing
- APPLICANT:** Hood River County Community Development Department
- PROCEDURE TYPE:** Legislative
- REQUESTS:** Text amendments to twenty-five (25) articles of the Hood River County Zoning Ordinance (HRCZO). The amendments focus on: 1) Updating Article 75 (National Scenic Area) to address requirements resulting from adopted revisions to the *Management Plan for the Columbia River Gorge National Scenic Area*, 2) Incorporating legislative updates as required by law, and 3) Making technical changes in order to clarify and/or improve application and administration of various land use provisions.
- STAFF CONTACT:** John Roberts, Community Development Director
john.roberts@co.hood-river.or.us (541) 387-6840
- RECOMMENDATION:** Accept public testimony, advise staff of additional changes, and approved proposed amendments through emergency ordinance.
- ORDINANCE(S):** Draft Ordinances for Immediate Adoption:
- Ordinance based on Board of Commissioner directive
 - Ordinance incorporating planning commission recommendation
- ATTACHMENTS:** Background Information & Public Comments:
- Attachment A – Planning Commission Recommendation to Board of County Commissioners; dated February 27, 2018
 - Attachment B – Findings: Applicable Planning Goals and Other Criteria
 - Attachment C - Columbia River Gorge Commission correspondence and requirement to initiate amendments to

Article 75 of the HRCZO and recommended revisions.

- Attachment D – Hood River County notification to Gorge Commission to initiate amendments.
- Attachment E – Land Conservation and Development Commission New Policy Projects Required by the 2017 Legislature.
- Attachment F – Land Conservation and Development Commission 2017 Land Use Legislation.
- Attachment G – Land Use Board of Appeal Final Opinions and Orders; 2017-080 & 2017-081.
- Attachment H - Public Comments received as of April 6th, 2018

EXHIBITS:

Proposed Text Amendments to HRCZO:

- Exhibit A – Proposed amendments to Article 75 – National Scenic Area (“NSA”)
- Exhibit B – Proposed amendments to Article 1 – Introductory Provisions & Definitions
- Exhibit C – Proposed amendments to Articles 3 & 4 (EFU and Forest zones)
- Exhibit D – Technical Changes for the Purpose of Clarity, Improved Process and Better Outcomes

I. PURPOSE & NEED

It is necessary to continually update and modify the HRCZO and ideally amendments such as these would be evaluated and proposed annually. Although the county’s resource zones have been modernized to reflect state law many other articles of the HRCZO have not. The proposed amendments were initiated per the request of the Gorge Commission. The Community Development Department is taking this opportunity to also address changes to state law and make needed technical changes.

The purpose of the proposed code amendments is threefold:

- 1) Updating Article 75 (National Scenic Area) to address requirements resulting from adopted revisions to the *Management Plan for the Columbia River Gorge National Scenic Area*.
- 2) Incorporating legislative updates as required by law. The county needs to enact land use legislation by the 2017 legislature that is related to land use planning and programs administered by the Department of Land Conservation and Development.
- 3) Making technical changes in order to clarify and/or improve application and administration of various land use provisions. These changes are intended to create more consistency, decrease ambiguities, and improve process and procedures to improve administration of the HRCZO.

The planning commission conducted two public hearings on the amendments (January 24th and February 14th, 2018). Their recommendations regarding the proposed amendments are contained in Attachment A.

The Gorge Commission requested, per the Oregon Court of Appeals requirement, the specific amendments to the National Scenic Area (Article 75) be completed within 270 days (by April 16, 2018).

II. ATTACHMENTS & EXHIBITS

The staff report does not contain an overview or narrative on the proposed changes. In lieu of developing extensive narrative in a staff report applicable attachments have been included. The attachments more thoroughly elaborate on: 1) the Gorge Commission requirements, 2) 2017 legislative process and changes, and 3) recent LUBA opinions. It is recommended that the Board of Commissioners (“Board”) review the attachments to understand why the majority of the amendments are being required or are proposed.

Moreover, there are four exhibits that accompany the staff report (Exhibits A – D) that identify the proposed changes. The proposed text amendments are shown in ~~strike-through~~ and **bold underline**. Embedded within the exhibits are *//Staff comments//* identified in *italicized yellow highlighting*. The *Staff comments* are included to provide background, and more detail and particulars on important proposed changes. The comments are intended to avoid unnecessary content or redundancy in the staff report and also serve as an immediate reference to a proposed change. The (***) indicates end of section of separate non-contiguous sections of the article (if applicable).

The following text formatting is used to differentiate existing, proposed and deleted language.

- **Bold Underline** = Proposed new language
- ~~Strikethrough~~ = Language proposed for deletion
- (***) = Indicates end of section or separates non-contiguous code sections (if applicable)

III. SUMMARY OF NATIONAL SCENIC AREA (NSA) REQUIREMENTS – ARTICLE 75

The Columbia River Gorge National Scenic Area Act of 1986 created a mandate to, 1) protect and enhance the scenic, cultural, recreational and natural resources of the Columbia River Gorge and to, 2) protect and support the economy of the Columbia River Gorge by encouraging growth to occur in existing urban areas and by allow future economic development in a manner that is consistent with the first purpose above.

Hood River County implements land use zoning regulations on the Gorge Commission's behalf within all portions of the unincorporated county including property located within the Columbia River Gorge National Scenic Area. The county is required to maintain zoning regulations in compliance with the requirements of the Columbia River Gorge Management Plan (Management Plan) for the Columbia River National Scenic Area.

The Gorge Commission is required to conduct periodic review of the Management Plan every 10 years and the last review and plan updated occurred in 2004. Certain provisions of that updated plan were challenged through the court system and recently settled.

On February 9, 2016, the Columbia River Gorge Commission adopted revisions to the Management Plan to respond to an Oregon Court of Appeals' decision (February 23, 2012 Court of Appeals of Oregon Decision A146584). The Gorge Commission notified Hood River County on July 20, 2017 that county code revisions consistent with Management Plan revisions prompted by the Oregon Court of Appeals ruling must be completed within 270 days (by April 16, 2018). Similar notifications were transmitted to the other five National Scenic Area counties. Therefore, the revisions outlined in Exhibit A of this report are mandatory, although variations in code language are permissible as long as language provides equal protection of gorge resources.

In general, revisions include required changes to both the General Management Area and Special Management Area guidelines to comply with the cumulative adverse effects mandate of the Columbia River Gorge National Scenic Area Act for natural resources. The amendments better align protection measures in the General Management Area and the Special

Management Area and will help protect natural resources from individually minor but collectively significant adverse impacts over time.

More specifically, the proposed text amendments:

- Clarifies cumulative effects to natural resources as a type of adverse effect prohibited by the Management Plan.
- Adds definitions of 'Adversely Affect' and 'Air' found in the Management Plan.
- Codifies (adopts into code) existing practice of requiring a cultural reconnaissance survey if any element of a land use application requires a reconnaissance survey, such as a proposal for a land division when a new dwelling is proposed on the newly created property and that dwelling requires a reconnaissance survey.
- Clarifies uses allowed in streams, ponds, lakes and riparian areas that can also be considered for land use review if proposed in natural resource buffer zones.

Generally, Exhibit A proposes identical language to the Management Plan with occasional minor grammatical modifications to help amendments better align with county code structure. For consistency, the location of new text proposed was also selected by staff to align as closely as possible with language approved by the Gorge Commission in Attachment C.

The amendments presented in Exhibit A respond to finalization of portions of the current Management Plan (updated in 2004) which, in part, was delayed by litigation. The Gorge Commission is currently undertaking a larger update to the Management Plan (Gorge 2020) which should contain more substantive updates when that work is complete in 2020. Staff will submit county code revisions to the Gorge Commission for final approval after approved by the Board.

IV. Planning Commission – Clarification/Additional Information Requested

At the January 24th public hearing the planning commission reviewed the prepared staff report, six attachments providing detailed background information, and Exhibits A – D identifying the proposed amendments to the HRCZO. In light of the breath of information provided, the commission indicated they wanted to further discuss the residency aspect of short-term rentals. As such, the commission requested additional detail on the following specifics pertaining to short-term rentals:

- Provide examples of “residency” from other jurisdictions.
- Why short-term rentals would be more appropriate as an “accessory use” than a “home occupation”, particularly in the Exclusive Farm Use (EFU) zone.

- Provide data available on the status of second homes in the county.
- Identify options the Board has in addressing or moving forward with short-term rentals.

Residency: Staff provided to the planning commission examples of residency from three other jurisdictions: City of Hood River, City of Boulder (Colorado) and City of Portland. It was noted, when initially researching and development short-term rental regulations in 2015 a range of different jurisdictions were looked at. Specifically other counties: Clatsop County – Arch Cape STR Rental Ordinance, Coos County, Tillamook County, Pacific County – Washington, Wallowa County, Sonoma County – California. None of these respective ‘county’ regulations or ordinances contains or addresses a residency requirement.

Accessory Use vs. Home Occupation: It was asked by the planning commission why short-term rentals would be more appropriate as an “accessory use” than a “home occupation”, particularly in the Exclusive Farm Use (EFU) zone. Per the narrative already provided to the planning commission:

//Staff comment: There is no clear statutory guidance to permit STRs in either resource or other zones. Acknowledging STRs as an accessory use is in lieu of STRs not being considered a home occupation and would better meet the original intent of the regulations. As already mentioned, coupling STRs in the Home Occupation section of the Ordinance simply did not work.

The proposed changes and approach to recognizing STRs as an accessory use recognize existing definitions of ‘incidental’ and ‘subordinate’ contained in Article 1 of the HRCZO. Similar to the City of Portland, the word “accessory” as applied to short-term rentals emphasizes that the primary use of the residential dwelling is long term occupancy, and only a part of the dwelling unit is used for short-term rental purposes (i.e., less than 180 days). Moreover, it is an attempt to provide a pathway to permit and approve STRs while applying all the same standards and conditions originally contained in the STR component of the Home Occupation article.

If the county cannot navigate permitting STRs as a home occupation or accessory use, there is no known pathway to permit them in the resource zones. Another option to explore would be to remove STRs from land use completely and make them a business license. Issuing a business license was the preferred option when the STR regulations were initiated. However, the county does not currently issue business licenses and a new process would need to be created.//

Additional Information of Second Homes: The study *Hood River County Short-Term Rentals and*

Second Homes (ECONorthwest Study; September 17, 2015) was provided to the planning commission. Overall, 100 short-term rentals (the county's cap) would be less than 1% of the county's total housing stock. When all "types" of dwelling units are taken into consideration (e.g., accessory farm dwellings, hardship dwellings, illegal ADUs) there are well over 10,000 dwelling units in the entire county. Nevertheless, two excerpts from the study:

- The inventory of short-term rentals and second houses developed by ECONorthwest and Hood River County shows that Hood River County (excluding housing in the City of Hood River's UGB) has about 73 dwelling units used as short-term rentals and 51 likely second homes. These 124 units account for 2% of Hood River County's housing stock (5,050 dwelling units), excluding units within the City of Hood River UGB.
- The conclusion of the City of Hood River's housing needs analysis and inventory of short-term rentals and second houses showed that between 8% and 12% of housing in the City of Hood River is used for short-term rentals and second houses.

Board of County Commissioners: A status update and anecdotal observations of the short-term rental regulations were provided to the Board at a September 18th and November 20th, 2017 work sessions. The changes to the short-term rental provisions, regarding residency, provided to the planning commission was in response to feedback from the Board received at the work sessions. The planning commission recommendations regarding additional changes to aspects of the short-term rental regulations are provided in Exhibit A and Exhibit D. The planning commission was also made aware of the options the Board can consider in administering short-term rental regulations moving forward, which include:

- Adopt the proposed text amendments as written.
- Modify and adopt any portions of the proposed text amendments.
- Initiate repealing the short-term rental regulations.
- Explore developing a business license to permit short-term rentals.

V. RECOMMENDATION

1. Enable staff to provide additional clarity on proposed changes or process; provide more depth on any questions from the Board.
2. Accept public testimony.
3. Overview and discuss proposed amendments (Exhibits A – D).
4. Advise staff of additional changes/modifications.
5. Approve and adopt proposed amendments through emergency ordinance.

VI. CONCLUSION/RECOMMENDATION & MOTION

Staff concludes that all criteria have been met to adopt the proposed text amendments. Based on the findings and other relevant information contained in the staff report, attachments and exhibits, staff recommends that the Board direct staff to make additional changes, if desired, and approve the amendments.

The Board has the ability to adopt three (3) ordinances, of which **two ordinances** are attached for the Board's consideration.

- #1: Ordinance based on directive from the Board.
- #2: Ordinance that incorporates/acknowledges the recommendations from the planning commission.
- #3: If the Board proposes additional changes, the above Ordinance(s) will immediately be amended accordingly to identify those specific changes.

Recommended Motion by Board (First and Second Reading): The Board of County Commissioners move to accept the proposed legislative text amendments and findings identified in the staff report, accompanying documents and Exhibits A through D prepared for the April 16 Public Hearing (**possibly identify the specific/additional changes to be incorporated**).

VII. MATERIALS & CONTACT INFORMATION

Staff Report and proposed amendments are available for review on the Community Development Department website at: <http://hrccd.co.hood-river.or.us/> (Community Development page) or <http://hrccd.co.hood-river.or.us/departments/planning-zoning/> (Planning & Zoning Page). The information will be updated until after the final hearing by the Board of County Commissioners.

For additional information or questions concerning the proposed amendments, contact John Roberts, Hood River County Planning Director, by e-mail at plan.dept@co.hood-river.or.us or at (541) 387-6840.

Proposed amendments are also available for review or purchase (at 0.25¢/sheet) at County Community Development at 601 State Street, Hood River, OR 97031.

Hood River County

P-17-0324

Legislative Amendments

Ordinance for Adoption

Based on Board of County Commissioner

Directive

HOOD RIVER COUNTY

ORDINANCE NO. _____

AN ORDINANCE TO ADOPT MULTIPLE AMENDMENTS TO THE HOOD RIVER COUNTY ZONING ORDINANCE AND DECLARING AN EMERGENCY

WHEREAS, on July 20, 2017 the Columbia River Gorge Commission requested Hood River County adopt required revisions to the county's local land use ordinance (Article 75 – National Scenic Area) in light of revisions to the *Management Plan for the Columbia River Gorge National Scenic Area* to respond to a Oregon Court of Appeals decision; and

WHEREAS, on September 18, 2017 the Board initiated an amendment to Article 75 of the Hood River County Zoning Ordinance pursuant to Article 62 (Legislative Amendments) to comply with the Gorge Commission request and as required by law (File #: 415-17-0324); and

WHEREAS, the Planning Director requested and initiated concurrent legislative amendments, in accordance with authority provided in Hood River County Zoning Ordinance Article 62, to make additional amendments to the Hood River County Zoning Ordinance to respond to 2017 legislation and rule making adopted by the Land Conservation and Development Commission; and

WHEREAS, the legislative updates also provided an opportunity to make technical updates to other various Articles of the Hood River County Zoning Ordinance in order to clarify or improve application and administration of various land use provisions to better serve the citizens of the county; and

WHEREAS, the above matter came before the Hood River County Planning Commission at two public hearings conducted on January 24th and February 14th, 2018 and thereupon voted 4 to 2 to refer the proposed changes incorporated in the Staff Report and accompanying Exhibits A-D presented to the Board at the April 16, 2018 Public Hearing for adoption; and

WHEREAS, the above matter came before the Board for a Public Hearing on April 16, 2018 at 6:00 p.m. in the First Floor Conference Room, 601 State Street, Hood River, Oregon to consider the changes to the Hood River County Zoning Ordinance recommended by the County Planning Commission; and

WHEREAS, due notice was given of all the hearings before the County Planning Commission and Board and opportunity provided to allow testimony to all parties; and

WHEREAS, at the April 16, 2018 Public Hearing the Board voted to accept the findings and proposed legislative text amendments identified in the Staff Report, Exhibits A through D based on Board directive, in their entirety, and incorporated herein; and

NOW, THEREFORE, the Board of County Commissioners for Hood River County adopts this Ordinance, as set forth below:

NOW, THEREFORE, THE HOOD RIVER COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

I. **EFFECT.** The Hood River County Zoning Ordinance be amended to incorporate modifications to twenty-five Articles as set forth in the Staff Report and Exhibit A-D prepared for the April 16, 2018 Public Hearing, specifically: Article 75 (National Scenic Area), Article 1 (Introductory Provisions and Definitions), Article 3 (Exclusive Farm Use Zone), Article 4 (Forest and Primary Forest Zones), Article 10 (Residential Zone, R-1), Article 15 (Rural Residential Zone, RR), Article 16 (Mobile Home Parks Zone), Article 18 (Subdivisions), Article 21 (Commercial Zone, C-1), Article 22 (Rural Center Zone, RC), Article 25 (Rural Unincorporated Community Commercial Zone), Article 27 (Mt. Hood Unincorporated Community Commercial Zone, MH-C1), Article 31 (Industrial Zone, M-1), Article 32 (Light Industrial Zone, M-2), Article 33 (Airport Development Zones), Article 50 (Buffer Requirements), Article 51 (Off-Street Parking and Loading), Article 53 (Home Occupations), Article 55 (Supplementary Provisions), Article 60 (Administrative Procedures), Article 61 (Review by the Board), Article 64 (Land Use Permits), Article 66 (Variances), Article 72 (Planning Director's Review Procedure), and Article 74 (Communication Facilities and Towers), and by this reference incorporated herein.

II. **SEVERABILITY.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

III. **EMERGENCY.** The Gorge Commission notified Hood River County on July 20, 2017 that county code revisions consistent with Management Plan revisions prompted by the Oregon Court of Appeals ruling must be completed within 270 days (by April 16, 2018). As such, an emergency is declared to exist as it is necessary to immediately meet mandated timelines.

DATED THIS __ DAY OF APRIL, 2018

HOOD RIVER COUNTY BOARD OF COMMISSIONERS

Ron Rivers, Chair

Les Perkins, Commissioner

Rich McBride, Commissioner

Karen Joplin, Commissioner

Bob Benton, Commissioner

Approved as to Form: _____
Diana McDougale, County Counsel

Hood River County

P-17-0324

Legislative Amendments

Ordinance for Adoption

Based on Planning Commission
Recommendation

HOOD RIVER COUNTY

ORDINANCE NO. _____

AN ORDINANCE TO ADOPT MULTIPLE AMENDMENTS TO THE HOOD RIVER COUNTY ZONING ORDINANCE AND DECLARING AN EMERGENCY

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WHEREAS, due notice was given of all the hearings before the County Planning Commission and Board and opportunity provided to allow testimony to all parties; and

WHEREAS, at the April 16, 2018 Public Hearing the Board voted to accept the findings and proposed legislative text amendments identified in the Staff Report, Exhibits A through D based on the recommendation from the planning commission, in their entirety, and incorporated herein; and

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DATED THIS __ DAY OF APRIL, 2018

HOOD RIVER COUNTY BOARD OF COMMISSIONERS

Ron Rivers, Chair

Les Perkins, Commissioner

Rich McBride, Commissioner

Karen Joplin, Commissioner

Bob Benton, Commissioner

Approved as to Form: _____
Diana McDougle, County Counsel