

## ORDINANCE NO. 2032

### **An Ordinance Adopting an Exclusive Alternative Process for Evaluating and Deciding Applications for the Verification of Nonconforming Short-Term Rentals Under HRMC 17.04.115 and Declaring an Emergency.**

The Hood River City Council adopts the following findings:

**WHEREAS**, the City of Hood River adopted a comprehensive set of regulations for Hosted Homeshares and Vacation Home Rentals (collectively “Short-term Rentals” or “STRs”) by Ordinance No. 2026, which became effective on October 12, 2016, and was codified in part in Title 17 (Zoning), Chapter 04 (Supplementary Provisions) of the Hood River Municipal Code (“HRMC”); and

**WHEREAS**, as part of those regulations, the City recognized the nonconforming status of STRs that were lawfully established and were in existence at the time of enactment of the new regulations and could demonstrate a particular level of nonconforming use; and

**WHEREAS**, HRMC 17.04.115(D), provides in pertinent part the following standards by which the owner of a lawful preexisting STR can demonstrate entitlement to a particular level (number of nights) of nonconforming use in their STR:

“...any hosted homeshare or vacation home rental lawfully established and actually in existence prior to the effective date of this 2016 ordinance may continue as a legal nonconforming use...”

“A hosted homeshare or vacation home rental in the R□1, R□2 and R□3 zones shall be deemed to be lawfully established and actually in existence if, at any time between January 1, 2013 and the effective date of this 2016 ordinance all of the following occurred:

- “a. The home was actually used as a hosted homeshare or vacation home rental as defined in HRMC 17.01.060;
- “b. The owner obtained from the City a Certificate of Authority to Collect Transient Room Tax; and
- “c. The owner actually paid a Hotel Tax to the City pursuant to HRMC Chapter 5.09.”

**WHEREAS**, the determination of a nonconforming use and its quantification, as provided in HRMC 17.04.115(D) is a “land use decision” under state law that requires compliance with the decision making procedures in ORS 197.763; and

**WHEREAS**, HRMC 17.09.030 provides a lawful land use decision making process for these decisions that complies with ORS 197.763, but involves the possibility of successive hearings before the planning commission and city council which would be time consuming and could result in inconsistent application of the criteria in the newly adopted STR regulations; and

**WHEREAS**, the City has determined that the right to a single hearing before a professional and experienced land use hearings officer is also a lawful decision making process that is consistent with ORS 197.763 and would provide the right to a single, focused, public, evidentiary hearing and a professional, consistent analysis of the evidence and nonconforming use criteria in HRMC 17.04.115(D)(2) by a qualified land use hearings officer for all of these nonconforming STR applications; and

**WHEREAS**, all applications for nonconforming STR verification under HRMC 17.04.115(D) were submitted by a December 12, 2016 deadline; all will be processed concurrently; all require consistent and uniform application of the law and interpretation of the evidence in the record for each application, and all require the procedural safeguards of notice, an opportunity to comment and call for a hearing by the applicants and those within the required notice range as provided in ORS 197.763; and

**WHEREAS**, the City Council sees a compelling need to create an exception and alternative process to the one set forth in HRMC 17.09.030 for all of these nonconforming STR applications to ensure they are competently, consistently, fairly and expeditiously processed in a lawful manner as required by state law; and

**WHEREAS**, the process set forth in Exhibit A, attached hereto and incorporated herein by this reference, provides a consistent and fair decision making process for this class of nonconforming use applications that meets the requirements of ORS 197.763, and if administered by a suitably qualified land use hearings officer will be expeditious and lawful; and

**WHEREAS**, the City Council held a duly noticed public hearing on this proposed exception and alternative decision making process for verifying (making a qualitative and quantitative determination) all nonconforming STR applications under HRMC 17.04.115(D) at its regular meeting on February 13, 2017, at which time the Council accepted public testimony on this single modification to the process otherwise provided in HRMC 17.09.030 for these applications.

**NOW THEREFORE**, the City Council for the City of Hood River ordains as follows:

**Section 1. Incorporation of Recitals:** The foregoing recitals are adopted and incorporated herein by this reference and made a part hereof as findings in support of the City Council's action taken herein.

**Section 2. Alternative Decision Making Process Adopted.** Notwithstanding the land use decision making process provided in HRMC 17.09.030, and as an alternative to that administrative process, the Council hereby adopts the process set forth in Exhibit A, attached hereto and incorporated herein by this reference, as the exclusive process for evaluating and deciding all nonconforming STR applications submitted under HRMC 17.04.115(D). The Council specifically finds that the alternative process set forth in Exhibit A is consistent and compliant with the land use decision making procedures


required by ORS 197.763 and provides all of the procedural rights otherwise accorded by HRMC 17.09.030 to applicants and anyone adversely affected or aggrieved by these decisions.

**Section 3. Severability.** If any provision, paragraph, word, section, or article of this Ordinance or the alternative land use decision making process set forth in Exhibit A is invalidated in whole or in part by any court of competent jurisdiction or LUBA, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

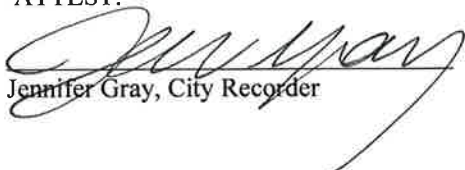
**Section 4. Emergency.** The City Council finds and declares that there is a compelling need for a timely, consistent and fair process for evaluating and deciding all applications for nonconforming short-term rental verification requests that provides the procedural safe guards required by state law. Inconsistent, delayed or unfair decision making for this class of land use applications endangers the public health, safety and welfare, and there is a compelling need to avoid inconsistent, unfair or untimely decisions on these applications or a violation of state procedural safeguards for land use decisions. For this reason, the Council finds there is a compelling need for immediate implementation and effect of the procedures adopted herein and an emergency exists that necessitates the immediate effect and implementation of this ordinance to preserve the public health, safety and welfare.

**READ FOR THE FIRST TIME** on February 13, 2017.

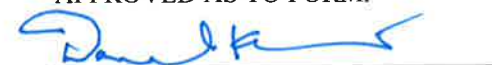
**READ FOR THE SECOND TIME** and adopted on February 27, 2017. This Ordinance shall take effect immediately upon the second reading.

  
\_\_\_\_\_  
Paul Blackburn, Mayor

ATTEST:

  
\_\_\_\_\_  
Jennifer Gray, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel Kearns, City Attorney

# EXHIBIT A

## EXCLUSIVE PROCESS FOR EVALUATING AND DECIDING APPLICATIONS FOR NONCONFORMING SHORT-TERM RENTALS UNDER HRMC 17.04.115(D)

### Sections

1. Purpose and Applicability
2. Application and Submission Requirements
3. City Completeness Check
4. Approval Criteria and Burden of Proof
5. Notice of Application and 14-day Comment Period
6. Director's Decision and Notice of Decision
7. Appeal of Director's Decision
8. Notice of Appeal Hearing Before the Hearings Officer
9. Conduct of Hearing Before the Hearings Officer
10. Final Decision and Right of Appeal

1. **Purpose and Applicability.** Notwithstanding any provision of HRMC Chapter 17.09 to the contrary, the procedures set forth herein and adopted by this 2017 Ordinance shall be the exclusive process for evaluating and deciding applications under HRMC 17.04.115(D) for verification of the existence and extent of a claimed nonconforming hosted homeshare or vacation home rental (collectively "short-term rental" or "STR") in the City's R-1, R-2 or R-3 zone, following adoption of Ordinance 2026 (effective on October 12, 2016). To the extent there is a conflict between the provisions of this 2017 Ordinance and HRMC Chapter 17.09, the provisions of this Ordinance shall control. To the extent there is a conflict between the provisions of this 2017 Ordinance and ORS 197.763, the requirements of state law shall apply. For purposes of this process, "Director" means the Hood River Planning Director, or the Director's designee.
2. **Application and Submission Requirements.** All applications for verification of a claimed nonconforming status under HRMC 17.04.115(D) shall be submitted on forms provided by the City, along with the required application fee. The application shall not be accepted or processed without the required fee. The applicant shall provide copies of sufficient credible documentation to demonstrate compliance with all of the nonconforming STR requirements set forth in HRMC 17.04.115(D)(2) and restated in Section 4 below.
3. **City Completeness Check.** Upon submission of an application, the City shall review the application and determine that the application form is complete, the appropriate fee is included, and all documentation needed to address the approval criteria in HRMC 17.04.115(D)(2) and restated in Section 4 below is included. The City shall review all

applications to determine that each contains information or documentation addressing all of the applicable approval criteria and shall notify the applicant of any deficiencies and allow the applicant the opportunity to submit additional information or documentation and make the application complete for purposes of processing. The applicant may then submit the missing or requested information or refuse to submit any further documentation. The City shall deem each application complete and begin processing the application once the applicant has submitted all required information or notifies the city that he/she refuses to submit any more information and that the City should process the application in its then-existing form.

4. **Approval Criteria and Burden of Proof.** The applicant has the burden of proving by a preponderance of credible evidence that the claimed nonconforming STR was lawfully established and actually in existence prior to October 12, 2016 (the effective date of Ordinance 2026).
  - A. A STR shall be deemed to be lawfully established and actually in existence under HRMC 17.04.115(D) if, at any time between January 1, 2013 and October 12, 2016, the applicant provides credible evidence that all of the following occurred:
    1. The home was actually used as a hosted homeshare or vacation home rental as defined in HRMC 17.01.060;
    2. The owner obtained from the City a Certificate of Authority to Collect Transient Room Tax; and
    3. The owner actually paid a Hotel Tax to the City pursuant to HRMC Chapter 5.09.
  - B. The measure or quantification of a nonconforming STR established under Subsection 4A shall be equal to the number of nights for which the applicant can prove with credible evidence that the STR met all of the requirements of Subsection 4A 1-3.
5. **Notice of Application and 14-day Comment Period.** Once an applicant has either made the application complete under Section 3 or refused to submit any additional documentation, the Director shall provide notice of the application and an invitation to comment on the application for a period of 14 days.
  - A. Notice of the application and the 14-day comment period shall be mailed to the applicant and to the owners of all properties within 250 feet of the perimeter of the property that is the subject of the application. For purposes of sending notice under this section, the City shall mail notice of the application to the applicant and owners of property within 250 feet of the subject property. The list shall be compiled from the last available complete property tax assessment roll for each property within the notice range.
  - B. The City may consolidate the notice of application for all properties for which a nonconforming STR is claimed into a single notice that will be sent to everyone entitled to notice.

C. The notice of application shall include the following information about each application property:

1. A legal description, mailing address, tax lot number or some other easily understood geographical reference for each property for which nonconforming STR status is sought and a unique city planning file number.
2. A description of the nonconforming use request for each property and the number of nights for which the applicant is claiming nonconforming status.
3. A list the applicable criteria from HRMC 17.04.115(D) that will control the City's decision on the application.
4. A statement that anyone interested in any one or more of the applications may review and obtain copies of the application materials from the City Planning Department, along with contact information for the Planning Department. Public access to and disclosure of these records is limited by HRMC 5.09.160(D) (Confidential Character of Information Obtained; Disclosure Unlawful) relating to confidential Hotel Tax information.
5. A statement that anyone interested in any of the applications may submit written comments to the Planning Department within 14 days from date the notice of application is mailed as to whether a particular application meets or does not meet the applicable approval criteria.
6. A statement that failure to raise an issue in writing within the comment period, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue, precludes appeal to the Land Use Hearings Officer or LUBA on that issue.
7. A statement that the Director will render a decision on each application as to whether or not the applicable approval criteria are met based on evidence and arguments in the record by the close of the 14-day comment period for each application.
8. A statement that the Director's Decision will be the City's final decision on each application unless an appeal to the Land Use Hearings Officer is filed no later than 14 days after the Director's Decision is issued.
9. A statement that only those who submit written comments by the close of the 14-day comment period or specifically request a copy of the Director's Decision will receive notice of the Director's Decision on any particular STR application.
10. A statement that only the applicant or someone who submits written comments on an application by the close of the 14-day comment period will have standing or be eligible to file an appeal of the Director's Decision to the Land Use Hearings Officer.

D. The failure of a property owner to receive notice as provided in this Section shall not invalidate the proceedings if the City can show that the notice was sent pursuant to this Section.

6. **Director's Decision and Notice of Decision.** The Director shall issue a written decision on each STR application for nonconforming status based on the evidence in the record, including comments received before the close of the comment period.

A. The Director's Decision on each STR application shall include the following information:

1. A description of the applicable approval criteria in HRMC 17.04.115(D) and an explanation as to how the application meets those criteria.
2. A statement of the number of nights for which the applicant has demonstrated a nonconforming status.
3. A brief description of the facts and evidence relied upon.

B. Individual notice of the Director's Decision on each application shall be mailed to the applicant and to anyone who submitted timely comments on that application or otherwise requested notice of the decision.

C. Each notice of Director's Decision shall provide a statement that the applicant and anyone who submitted timely comments may appeal the Director's Decision to the Land Use Hearings Officer by filing an appeal with the Director no later than 14 calendar days after the date the notice of Director's Decision was issued. To be accepted and filed, any such appeal shall include a \$250 filing fee.

D. The failure of a party of record to receive notice as provided in this Section shall not invalidate the proceedings if the City can show that the notice was sent pursuant to this section.

E. The Director's Decision shall become final and effective on the 15<sup>th</sup> day after issuance unless it is timely appealed pursuant to Section 7.

7. **Appeal of Director's Decision.** The applicant and anyone who submitted comments within the 14-day comment period on an application may appeal the Director's Decision to the Land Use Hearings Officer by filing a notice of appeal, along with a \$250 filing fee pursuant to this Section. No appeal shall be accepted after 5:00 p.m. on the 14<sup>th</sup> day following issuance of the Director's Decision, nor without the filing fee.

A. The notice of appeal shall include the following information:

1. Identify the specific Director's Decision being appealed and the date it was issued;

2. The specific STR property and applicant involved;
  3. The name and complete contact information of the person appealing the Director's Decision;
  4. An explanation of the specific error(s) or way(s) in which the Director's Decision is incorrect.
- B.** The appeal and fee shall be delivered and accepted by the City at City Hall no later than 5:00 p.m. on the 14<sup>th</sup> calendar day following issuance of the Director's Decision. If the 14<sup>th</sup> day falls on a legal holiday or city hall is closed, the appeal deadline shall be extended to 5:00 p.m. on the next business day.
- C.** Anyone appealing a Director's Decision is limited in the appeal to the legal issues that were raised before the Director issued his/her decision, including comments submitted during the 14-day comment period.
- 8. Notice of Appeal Hearing Before the Hearings Officer.** At least 20 days before a scheduled hearing before the Hearings Officer, the City shall mail notice of the hearing to the applicant and owners of property within 250 feet of the subject property. The list shall be compiled from the last available complete property tax assessment roll.
- A.** The appeal hearing notice shall include the following information:
1. An explanation of the nature of the application at issue;
  2. The street address or other easily understood geographical references to the subject property.
  3. A statement that failure to raise an issue in writing at or before the hearing, or failure to provide statements or evidence sufficient to afford the Hearings Officer an opportunity to respond to the issue, precludes appeal to LUBA on the issue.
  4. A listing of the approval criteria in HRMC 17.04.115(D).
  5. A statement of the place, date, and time of the hearing.
  6. A statement that the application, all documents and evidence relied upon by the applicant, and all applicable criteria are available for inspection at no cost and copies will be provided at a reasonable cost. Public access to and disclosure of these records is limited by HRMC 5.09.160(D) (Confidential Character of Information Obtained; Disclosure Unlawful).
  7. The name and telephone number of the planning staff to contact for additional information.



8. A general explanation of the requirements for submission of testimony, the procedure for conduct of hearings, and public participation.
- B. The failure of a party of record to receive notice as provided in this Section shall not invalidate the proceedings if the City can show that the notice was sent pursuant to this section.
9. **Conduct of Hearing Before the Hearings Officer.** The Hearings Officer shall convene the appeal hearing at the designated time and place and shall conduct the hearing in accordance with the procedural requirements of ORS 197.763 and the following additional rules:
  - A. The Planning Director's Decision shall suffice as the staff report and the Director shall provide a brief verbal description of the decision.
  - B. The applicant has the burden of proving by a preponderance of evidence in the record that the application meets the approval criteria in HRMC 17.04.115(D) or can be made to comply through appropriate conditions. Similarly the applicant has the burden of proving that the STR meets these criteria for a specific number of nights as prescribed in HRMC 17.04.115(D)(2).
  - C. The applicant and appellant, or their authorized representative(s), shall attend the public hearing.
  - D. The scope of the Hearings Officer's review shall be de novo with regard to evidence, i.e., new evidence is allowed. The Hearings Officer's scope of review with regard to legal issues shall be limited to the legal issues preserved in the record compiled by the Director prior to issuance of the Director's Decision. There is no limitation on who may participate before the Hearings Officer.
  - E. Failure to raise an issue in person or by letter by the close of the record, or failure to provide statements or evidence sufficient to afford the Hearings Officer an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
10. **Final Decision and Right of Appeal.** After the close of the record, the Hearings Officer shall issue a written decision on the appeal, which shall be the City's final decision in the matter.
  - A. The Hearings Officer's final decision shall conform to state law requirements for final land use decisions.
  - B. The City shall mail notice of the Hearings Officer's decision to the applicant and to everyone who participated orally or in writing in the proceeding before the close of the record.

- C. The Hearings Officer's decision is appealable to LUBA within 21 days of the date it is signed pursuant to ORS 197.830.