

(Language highlighted below was not included in the Planning Commission recommendation and responds to issues raised by City Council members at the 3/8/19 work session. Explanatory notes are provided for context and would be removed from an adopted code.)

## CHAPTER 14.25 SHORT-TERM RENTAL LAND USE REGULATIONS

### 14.25.005 Purpose

This chapter establishes criteria by which short-term rental uses may be permitted in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.).

It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others who are in need of housing for a limited duration.

*Explanatory Note: This section is as it was presented in the Planning Commission recommendation.*

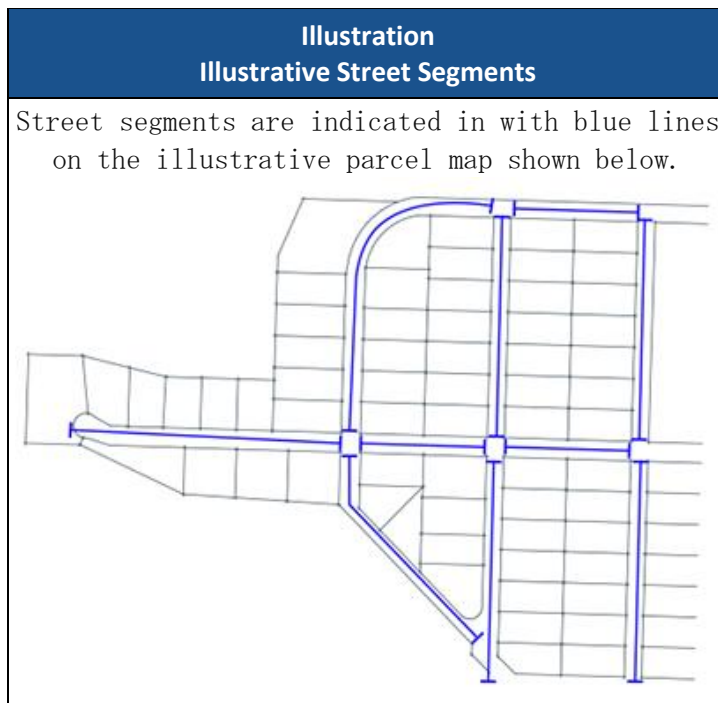
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(The following definitions will be added to, or will update terms defined in Chapter 14.01. They are included here for reference.)

### 14.01.010 Definitions

The following definitions apply in this chapter.

- A. Authorized Agent. A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.
- B. Bed and Breakfast Facility. A short-term rental where the operator resides on the premises and meals are provided for a fee.
- C. Bedroom. A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.

- D. Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- E. Home share. A short-term rental, other than a Bed and Breakfast Facility, where a portion of a dwelling unit is rented while the homeowner is present. For the purposes of this definition, “present” means the homeowner is staying in the dwelling overnight for the duration of the rental.
- F. Owner. Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.
- G. Short-Term Rental. A dwelling unit, or portion thereof, that is rented to any person for a period of less than thirty (30) consecutive nights.
- H. Street Segment. A portion of a local or collector street which is located between two intersections, or between an intersection and the end of a cul-de-sac or dead-end. *See Illustration: Illustrative Street Segments, below.*



- I. Sale or Transfer. Means any change of ownership during the period of time that a license is valid, whether or not there is consideration, except a change in ownership where title is held not as tenants in common but with the right of in survivorship (e.g., survivorship estates recognized in ORS 93.180, such as with a spouse or domestic partner, or

transfers on the owner's death to a trust which benefits only a spouse or domestic partner for the lifetime of the spouse or domestic partner).

Exceptions:

1. A license holder may transfer ownership of the real property to a trustee, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, or other similar entity and not be subject to license termination so long as the transferor lives and remains the only owner of the entity. Upon the transferor's death or the sale or transfer of his or her interest in the entity to another person, the license held by the transferor shall terminate.
2. A license holder may transfer ownership of the real property to the license holder and a spouse or domestic partner with the right of survivorship and not be subject to license termination.

- J. Vacation Rental. A short term rental where the entire dwelling unit is rented.

*Explanatory Note: The only change to the definitions is the addition of a definition for sale or transfer. The language used for this definition aligns with what was reviewed by the ad-hoc work group and Planning Commission when a license cap was being discussed, and is needed to ensure that persons owning vacation rentals subject to a license cap cannot avoid triggering the need for a new license by allowing a purchaser to assume a license through an ownership structured as a business entity.*

14.25.010 Approval Authority

- A. Upon receipt of a request by an owner or authorized agent to complete a land use compatibility statement for a short-term rental the Community Development Director, or designee, shall determine if the request satisfies the standards of section 14.25.030. If the request satisfies the standards, then the Director shall sign the statement confirming that short-term rental is a permitted use. Such action is ministerial and, as a non-discretionary act, is not subject to appeal.
- B. In the event that the Community Development Director or designee, determines that an application does not meet one

or more of the standards of section 14.25.030, then the land use compatibility statement shall not be signed.

- C. If one or more of the standards under section 14.25.030 cannot be met, an owner may seek relief from those standards through a conditional use permitting process, pursuant to section 14.34.010. Such an application is subject to review by the Planning Commission via a Type III decision making process, consistent with section 14.52.010, and is to be limited in scope to those standards that cannot be satisfied.
- D. A Conditional Use Permit may authorize more than one vacation rental use on street segments in R-1 and R-2 zones where ten or more lots front the street. In such cases, no more than one vacation rental may be permitted for every five lots fronting the street.
- E. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of section 14.25.030 shall serve as evidence that standards have been satisfied so that the Director can sign the land use compatibility statement.

*Explanatory Note: This section is as it was presented in the Planning Commission recommendation.*

#### 14.25.015 Submittal Requirements

Land use compatibility statements shall be submitted on a form provided by the Community Development Department, and shall include the following:

- A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations.
- B. Floorplan of the dwelling unit that identifies the rooms dedicated to short-term rental use.
- C. If the dwelling unit is within a residential zone, a calculation of the percentage of front yard and total lot area maintained in landscaping.
- D. If the dwelling unit relies upon shared parking areas, a copy of a covenant or other binding legal instrument detailing unit owner rights and responsibilities related to the parking areas.

*Explanatory Note: This section is as it was presented in the Planning Commission recommendation.*

14.25.020 Allowed Locations

A. Short-term rental use of a dwelling unit is permitted in all residential, commercial, and water-related zone districts.

*Explanatory Note: In the Planning Commission recommendation, this section established a vacation rental overlay zone. That language has been removed and replaced with a provision indicating that short-term rentals are allowed within dwelling units city-wide, subject to a license cap, spacing standards and other provisions of this chapter. The new language is consistent with what was discussed with the ad-hoc work group and Planning Commission when a license cap concept was discussed, with the clarification that water-related zoning is included. It had previously been assumed to be a type of commercial zoning.*

*This section also replaces the “Allowed Locations” language in the Planning Commission recommendation, which had allowed short-term rentals that are home shares or bed and breakfast facilities in dwellings city-wide, but restricted vacation rentals to a vacation rental overlay zone.*

14.25.025 Approval Standards

A. Density. The total number of vacation rentals shall be capped at level not to exceed five (5) percent of the total number of dwelling units within the city. For the purpose of this subsection “total number of dwelling units” shall be the estimated number of dwelling units listed in the most current, publicly available U.S. Census Bureau publication.

1. A specific cap number shall be established by City Council resolution and that number shall serve as the maximum number of business license endorsements the City will issue for vacation rentals.
2. In the event the cap number established by City Council is reached, the City shall establish a waiting list for the issuance of business license endorsements as they become available on a first come, first served basis.

*Explanatory Note: This standard was not included in the Planning Commission recommendation, because the Commission favored the use of a zoning overlay and spacing standards in lieu of a license cap. It has been added because a majority of the City Council, at its March 8, 2019 work session, asked to see language that would cap the number of licenses the city will issue for vacation rentals.*

*The ad-hoc work group provided a license cap as a policy option with 4% to 5% of total housing units being the “not to exceed” upper limit. A specific number would be set by Council resolution, and the group talked about that being somewhere between 200 and 300 licenses. The Planning Commission, while it was still considering a license cap, added a third option of 3% as a not to exceed threshold, which at that time equated to about 165 units.*

*It is not uncommon for communities to impose caps on the number of short-term rental licenses they will issue. The 3-5% range is in line with cities where tourism is a part, but not the sole economic driver. Cities that rely more exclusively on tourism tend to have a higher limit (e.g. Lincoln City 10% portion of the city, Yachats 15%, Manzanita 17.5 %)*

*Staff has added language specifying that Census Bureau estimates are to be used for the count of total housing units. This is what was used in discussions with the ad-hoc work group and Planning Commission, since there has never been an exact count of housing units in the city. The Census Bureau’s American Community Survey (ACS) 2012-2016 data set estimates 5,537 housing units, with a margin of error of +/- 267. This was rounded down to 5,500 and has been the top end number used during this process since the fall of 2017. The 2013-2017 ACS figures are now available, which estimate 5,723 housing units, with a margin of error of +/- 259. Using this figure, a specific limit on the number of vacation rental licenses can be set by Council resolution. Here is what that could look like:*

*175 licenses (roughly 3%)*

*230 license (roughly 4%)*

*285 licenses (roughly 5%)*

*There are presently 211 licensed vacation rentals in the city, with an additional 26 in process. Under Oregon law, persons that submit an application to the city, and provide any missing information within 6-months, are entitled to proceed under the city regulations in effect when the application was first submitted (ORS 227.178(3)). This means that many of the applicants “in process” would have an opportunity to obtain their business license endorsements for a period of time after a new ordinance is adopted.*

*The city has four (4) licensed bed and breakfast facilities and three (3) licensed home share units. There are also two (2) home share applications in process. These types of short-term rentals would not be subject to a license limitation.*

*Staff has also added language indicating that a waiting list would be created once a cap limit is reached and that it would be administered on a first come, first served basis. The concept of a waiting list was discussed with the ad-hoc work group and Commission, but not formally added to the code.*

- B. Spacing. Vacation rental use shall be limited to a single building on a lot, or group of lots, that abut a street segment. All dwelling units contained within the building are eligible for vacation rental use. For buildings on corner lots, this standard applies to both street segments.

*Explanatory Note: This standard is the same as the one recommended by the Planning Commission for areas within the vacation rental zoning overlay. With the overlay now removed the spacing standards would apply city-wide. Staff prepared maps for the ad-hoc work group and Planning Commission showing how the spacing standards would work. These have been updated and refined for clarity.*

- C. Occupancy. Maximum occupancy for a short-term rental shall be two (2) persons per bedroom, plus two additional persons per property.
- D. Guestroom Limitations. The following limitations apply to the number of bedrooms within a dwelling unit that may be occupied by guests staying at a short-term rental.
1. Vacation Rentals and Bed and Breakfast Facilities. A maximum of five (5) bedrooms.
  2. Home shares. A maximum of two (2) bedrooms.
- E. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use, unless the dwelling unit is within a parking district as defined in section 14.14.100, in which case on-street parking may be used to meet the one (1) space per bedroom requirement provided the parking is allocated in accordance with the requirements of the parking district. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.
- F. Shared Access. Short-term rentals that rely upon use of shared access and parking areas may only be permitted if a covenant or other binding legal instrument establishes that the

owner of the unit maintains exclusive use of the required parking space(s).

- G. Landscaping. For short-term rentals situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements.

*Explanatory note: All other standards in this section are as they were recommended by the Planning Commission.*

#### 14.25.030 Non-Conforming Short-Term Rentals

A. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date of this ordinance, except:

1. Vacation rental units located within, or adjacent to, a commercial or water-related zone shall count towards the specific cap number established pursuant to NMC 14.25.025(A)(1) but are not otherwise subject to the density limitation of NMC 14.25.025(A). Such units may be sold or transferred notwithstanding the waiting list provisions of NMC 14.25.025(A)(2).
2. All other vacation rental units shall be subject to the density and spacing limitations of NMC 14.25.025. Upon sale or transfer, such units are eligible for vacation rental use if license endorsements are available under the cap established with NMC 14.25.025(A) and the units meet the spacing standards of NMC 14.25.025(B).

*Explanatory Note: This section only applies to short-term rentals licensed under the rules this draft code is intended to replace. The Planning Commission recommended that bed and breakfast facilities and home share units throughout the city, and vacation rental units within the zoning overlay, be treated as non-conforming uses. Such uses are allowed to continue as they had been previously authorized, subject to annual licensing, as long as they are not discontinued for a period of 12 consecutive months. Vacation rentals outside the zoning overlay would be phased out over 5 years.*

*At its March 8, 2019 work session, a majority of the City Council members indicated that they were uncomfortable with the zoning overlay and phase out concept. However, they did express a desire to see that vacation rentals within or adjacent to*



*commercial zones be allowed to continue, even upon sale. Existing vacation rentals elsewhere in the City, namely in residential areas, could continue under current ownership, but would be subject to a license cap and spacing standards upon sale.*

*The new language has been crafted to address the Council's concerns. Existing bed and breakfast facilities and home shares, to the extent that they do not comply with the provisions of this chapter, can continue as non-conforming uses under 14.25.030(A) since they are both types of short-term rentals.*

*Existing vacation rentals within, or adjacent to, commercial or water-related zones count against the cap number, but are not otherwise subject to the density limitations NMC 14.25.025(A). Such units may be sold or transferred notwithstanding the waiting list provisions. If use of such a rental ceases for a period of 12 consecutive months, then the reestablishment of a vacation rental use would have to comply with all provisions of this ordinance, including the density limits. All but one vacation rental building in this category falls within what was the "permitted area" of the zoning overlay recommended by the Planning Commission, which would have afforded the units the same "non-conforming status." The one outlier is a townhouse complex next to Roby's Furniture in Agate Beach.*

*Existing vacation rental units that are not within, or adjacent to, a commercial or water-related zone count against the cap number, may continue as vacation rental under current ownership provided the use is not discontinued for 12 consecutive months. However, such units cannot be sold or transferred as vacation rentals unless there are licenses available under the cap and the units meet the spacing standards. This is more lenient than the 5 year phase out that would have applied to many of these units under the Planning Commission recommendation, but still responds to persons concerned that once a vacation rental is established in a residential area it will always be a vacation rental. This change specifically allows persons currently licensed to use their home as a vacation rental in a residential area, to continue to do so until they can relocate to the area.*

*This draft of the code includes areas adjacent to commercial zones, whereas the previous iterations referred to property across the street. The change impacts a small number of properties and prevents odd results that hadn't been fully identified until mapped. It also includes the clarification that vacation rentals in water related zones, which are mostly at the Embarcadero, are to be treated the same way as vacation rentals in commercial zones.*

B. In the event that a property owner believes they can establish that imposition of these regulations results in a demonstrable reduction in the property's fair market value, such owner may apply to the City for compensation and/or relief from the regulation under ORS 195.310 to 195.314. If the property owner demonstrates with credible evidence a reduction in fair market value the City may provide compensation and/or regulatory relief in a form and amount of its choosing. The property owner may appeal any such final determination pursuant to ORS 195.318.

*Explanatory Note: This addresses circumstances where the owner of a short-term rental believes the ordinance has adversely impacted their property value, and requires they address the issue with the City before pursuing other remedies. Council members, at the March 8, 2019 work session, asked that this type of language be added to the ordinance.*