

Town of Highlands, North Carolina
UDO Text Changes
(Revised September 14, 2022)

A TEXT AMENDMENT TO THE HIGHLANDS UNIFIED DEVELOPMENT ORDINANCE: (i) DEFINING CERTAIN LODGING USES, INCLUDING SHORT TERM RENTALS; (ii) MODIFYING CERTAIN DEFINITIONS IN THE UDO; (iii) LIMITING THE LOCATION AND OPERATION OF SHORT TERM RENTALS TO CERTAIN SPECIFIED ZONING DISTRICTS; (iv) ESTABLISHING CERTAIN STANDARDS GOVERNING SHORT TERM RENTALS WHERE THEY ARE PERMITTED; AND (v) MAKING OTHER CLARIFYING AMENDMENTS TO VARIOUS PORTIONS OF THE UDO

Preamble

WHEREAS, the Vision Statement of the Town of Highlands provides: “Highlands is a vibrant and scenic mountain community founded on the beauty of the plateau’s natural environment, the uniqueness of its village character, and the richness of the area’s culture and history;” and

WHEREAS, in its Comprehensive Plan, adopted in June 2022, the Town of Highlands has established Guiding Principles to expand upon the Vision Statement and further clarify the goals of the community around specific topics critical to preserving and enhancing the high quality of life in Highlands; and

WHEREAS, these Principles embody the Town’s core philosophy of embracing and celebrating Highland’s history; and

WHEREAS, Goal No. 1 in the Comprehensive Plan provides that Highlands shall “Maintain and enhance the town center’s village character that is surrounded by mostly low-density housing that blends with the natural environment; and

WHEREAS, Goal No. 2 in the Comprehensive Plan provides that the Town shall “Preserve and enhance the natural environment and the scenic beauty of Highlands;” and

WHEREAS, Section 160A-174 of the North Carolina General Statutes empowers local government to, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to health, safety or welfare of its citizens and the peace and dignity of community, and may define and abate nuisances; and

WHEREAS, Section 160D-701 of the North Carolina General Statutes provides: “Zoning regulation shall be made [by local governments] in accordance with a comprehensive plan and shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to promote the health, safety, morals, or general welfare of the community. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the local government’s planning and development regulation jurisdiction;” and

WHEREAS, Pursuant to the foregoing, Highlands has enacted a Unified Development Ordinance (“UDO”), one of the goals of which is to “Preserve and enhance Highlands residential neighborhoods while addressing the housing needs of current and future residents;” and

WHEREAS, a “short term rental” (“STR”) is the practice whereby a residential dwelling unit is rented for a period of less than thirty (30) days. The term “Short term rental” is not now defined in the UDO, and “short term rental” does not now appear as a permitted use under the Use Table set forth in Section 6.2.2 of the UDO. Short term rentals were generally operated on a seasonal basis by a relatively small number of property owners in Highlands. Historically such activity remained modest and stable and did not have a material adverse effect on the health, safety, atmosphere, character or culture of the single-family neighborhoods in which they were located; and

WHEREAS, the aforementioned modest and stable short term rental activity in Highlands and around the country has, in the last several years, transformed into a large-scale commercial industry; and

WHEREAS, growing, significant numbers of residential dwellings have commenced rental operation in single family residential zoning districts – primarily the R-1 and R-2 zoning districts- which districts were planned, approved and constructed for single-family occupancy by permanent residents, or as second homes; and

WHEREAS, these rental properties are often altered or constructed to increase tenant capacity, parking and impervious surfaces, recreational activities, etc., in ways that are inconsistent with the notion of single-family occupancy, and that more closely resemble commercial lodging businesses such as hotels, motels and resort properties; and

WHEREAS, the commercial short term rental industry engages in internet-based marketing of these properties to the general public on a large scale, national basis, using short term rental hosting platforms intensifying the demand for them; and

WHEREAS, as a result of the foregoing, the majority of these short-term rental properties are occupied by non-resident visitors to Highlands in a series of daily or weekly stays, over the majority of the year. Contrary to the past practice in Highlands, such properties are not occupied by tenants on a seasonal basis or by their owners as permanent or part-time residents; and

WHEREAS, the foregoing has significantly increased the number and concentration of short-term rental properties in Highlands over the last several years; and

WHEREAS, the above-described evolution of the commercial short-term rental industry has occurred without any oversight regarding: (i) the health, safety and welfare of the residents of Highlands; (ii) the character and culture of neighborhoods that were planned, approved, and constructed for single family residential uses occupied by permanent residents; or (iii) the tenants of short-term rental properties; and

WHEREAS, concurrent with the unregulated growth of the commercial short term rental industry, Highlands has experienced measurable and material increases in incidents of tenant misconduct, conditions of poorly maintained real property, and deterioration in the character, culture, and quality of life in single family residential districts such as the R-1 and R-2 zoning districts; and

WHEREAS, based on data accumulated by the short-term rental industry and reviewed by Commissioners, the growth of commercial short term rental properties in Highlands is estimated to continue unabated; and

WHEREAS, the Board of Commissioners has taken note of the regulations governing short term rental properties adopted by other communities such as Southern Pines, Blowing Rock, Asheville, Chapel Hill, and others; and

WHEREAS, in April of 2022 in the case of *Schroeder v. Wilmington*, 2022 NCCOA 210, the North Carolina Court of Appeals issued a ruling on some regulations commonly-enacted by communities in North Carolina; and

WHEREAS, the Wilmington Court ruled that the City of Wilmington's registration requirements for STRs, and those provisions of its ordinance inseparable from those registration requirements are prohibited by Section 160D-1207(d) of the North Carolina General Statutes; and

WHEREAS, at the same time, the Wilmington Court upheld some of Wilmington's program of short-term rental regulation that the Court found severable from the invalid registration process; and

WHEREAS, in its analysis of the Wilmington decision, the UNC School of Government ("UNCSOG") concluded that, pursuant to Wilmington, a lawful program of short-term rental regulation could be enacted by a local government; and

WHEREAS, the UNCSOG recommended that local governments define short term rentals as a land use and apply operational standards for STRs. The Wilmington court, and the UNCSOG found that these operating standards may include occupancy limits, safety requirements, operating standards, the restriction of STRs to certain zoning districts, parking requirements, prohibition of variances, requiring insurance, posting of emergency information, and creation of an amortization (grace) period for STRs which become non-conforming uses by virtue of a zoning-district prohibition; and

WHEREAS, the Town of Highlands has a legitimate governmental interest in: (i) safeguarding the life, health, safety, welfare, and property of Short-Term Rental occupants, neighborhoods, and the general public; (ii) minimizing the present and future adverse impacts resulting from the increase in transient rental uses in neighborhoods planned, approved, and constructed for Single Family Dwelling Units occupied by permanent residents; and (iii) encouraging policies that promote affordable housing within the Town; and

WHEREAS, the Town of Highlands may, in the future, consider amortization of nonconforming STRs within the Town's residential districts in order to accomplish the aforementioned legitimate governmental interests; and

NOW THEREFORE, be it ordained by the Town of Highlands that the following Sections of the UDO be amended by the enactment of the following as set forth below.

(EXISTING CODE LANGUAGE IN BLACK, DELETIONS BY STRIKETHROUGH, & ADDITIONS UNDERLINED AND IN RED.)

Unified Development Ordinance of Highlands, NC (UDO)
Article 2 – Definitions, Section 2.3 Definitions

1. Particular terms, as hereinafter set forth, within Section 2.3 Definitions are hereby amended or added to the list of defined terms to read as follows:

ARTICLE 2 – DEFINITIONS

Sec 2.3 Definitions

Building, Multi-Family: Any building, other than a motel, hotel, ~~or~~ tourist home or short-term rental as defined in this Ordinance, ~~intended, designed, or used as a dwelling unit by two (2) or more families or households living independently of each other and including permanent provisions for separate living, sleeping, eating, cooking and sanitation facilities~~ containing more than one (1) dwelling unit. This term includes single-family attached dwellings, duplexes, and apartments.

Duplex: A building containing two (2) dwelling units located on the same lot or parcel.

Dwelling, Multi-Family: ~~A building constructed in compliance with the North Carolina Uniform Building Code containing two (2) or more dwelling units on a single lot, including but not limited to, apartment buildings and condominiums.~~ A dwelling unit designed, intended and used by more than one (1) family.

Lodging: The use of a building, or any portion thereof, for someone to live or stay temporarily, often for periods of less than thirty (30) consecutive days in return for the payment of compensation. Lodging includes a hotel, motel, tourist home and short-term rental.

Multi-Family Residential Use: The use of a lot or parcel for human habitation by more than one (1) family within a multi-family building or a multi-family dwelling unit. This term does not include lodging uses such as hotel, motel, tourist home or short-term rental.

Single-Family Residential Use: The use of a single-family dwelling by a single family for human habitation. This term does not include lodging uses such as hotel, motel, tourist home, or short-term rental.

Short-term rental: The rental of a residential dwelling unit, for compensation, for a period of less than thirty (30) consecutive days. This term does not include hotels, motels, or tourist homes.

Tourist home: A building or part thereof, ~~other than~~ not including a motel, ~~or~~ hotel, or short-term rental, where sleeping accommodations or lodging of not more than four (4) bedrooms are provided for occasional transient ~~paying to~~ paying compensation, where the owner, operator or manager also stays on the same parcel during any period of guest occupancy. This term

includes; ~~tourist homes shall include~~ bed and breakfast homes, ~~or inns,~~ or rooming or boarding houses.

Unified Development Ordinance of Highlands, NC (UDO)
Article 6 – Use Regulations

2. The “Overnight Accommodations” and “Household Living” Use Categories contained in Section 6.2 Use Table are hereby amended as follows:

ARTICLE 6 – USE REGULATIONS

Section 6.2.2 Use Table

KEY: "P" = PERMITTED "S" = SPECIAL "L" = LIMITED X = NOT ALLOWED		RESIDENTIAL			NONRESIDENTIAL					
USE CATEGORY	SPECIFIC USE	R-1	R-2	R-3	B-1	B-2	B-3	B-4	GI	NOTES:
OVERNIGHT ACCOMMODATIONS	Hotels and motels	X	X	X	X	S	S	X	X	Sec. 6.5.9
	Tourist homes (bed and breakfast)	X	S	X	X	S	S	S	X	Sec. 6.5.10
	<u>Short-term rentals</u>	X	X	L	L	L	L	L	X	<u>Sec. 6.5.18</u>

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USE CATEGORY	SPECIFIC USE	R-1	R-2	R-3	B-1	B-2	B-3	B-4	GI	NOTES:
RESIDENTIAL USES										
HOUSEHOLD LIVING	Single-family dwellings detached	P	P	P	P	P	P	P	X	Sec. 6.3.1.A
	<u>Single-Family Residential Use</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	
	Modular homes	P	P	P	P	P	P	P	X	Sec. 6.3.1.B
	Manufactured homes	X	L	L	X	X	X	X	X	Sec. 6.3.1.C
	<u>Multi-family building, including duplexes, apartments and single-family attached dwelling</u>	<u>X</u>	<u>X</u>	<u>S</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	Multi-family dwellings	X	X	S	X	X	X	X	X	Sec. 6.3.2
	<u>Multi-Family Residential Use</u>	<u>X</u>	<u>X</u>	<u>S</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	

3. **Section 6.3.2 Multi-family Dwelling is hereby amended to rename the heading to “Multi-family building or dwelling”**
4. **Section 6.3.3 Residential Accessory Uses and Structures is hereby amended to amend Subsection A as follows:**
 - A. *Customary Accessory Outbuildings.* Appurtenant to single-family dwellings such as private garages, noncommercial buildings such as greenhouses and workshops. No residential or lodging use of any kind is allowed.

5. **Section 6.5 Commercial Uses is hereby amended to add a new subsection 6.5.18 for Short-Term Rental use to read as follows:**

Section 6.5 Commercial Uses

Section 6.5.18 Short-term rentals

Short-term rentals are hereby recognized as an independent use category within the planning jurisdiction of the Town of Highlands.

- A. Short-term rentals are permitted in the Zoning Districts identified in Sec. 6.2.2, Use Table, subject to the following standards:
 1. Short-term rental overnight occupancy shall not exceed two persons per bedroom plus two additional persons. Provided, however, the number of bedrooms permitted for a short-term rental shall not exceed the number of bedrooms approved for the dwelling in an improvement permit issued for the property or, if no improvement permit is available, not exceed the number of bedrooms listed on the property tax record card for the property. For properties served by a public wastewater system, overnight occupancy shall not exceed the lesser (i) two persons per bedroom plus two additional persons; or (ii) twelve persons.
 2. Short-term rentals shall not be used for special events or gatherings in excess of the overnight occupancy limit.
 3. Occupants or guests of short-term rentals shall not park vehicles on the property other than within designated parking area(s) and all parking shall be in compliance with Chapter 7, Article IV of the General Code of Ordinances and Article 9 of this Unified Development Ordinance. Vehicles parked in public right-of-way so as to violate the Town's street or parking ordinances are subject to towing at the vehicle owner's expense.
 4. Household trash shall be bagged and disposed of in Town-approved trash receptacles and short-term rentals shall otherwise comply with Chapter 12 of the General Code of Ordinances, Solid Waste Management.
 5. Occupants of short-term rentals shall at all times comply with the Town's Nuisance Ordinance, Chapter 8; and Noise Ordinance, Chapter 8, Article II of the General Code of Ordinances.
 6. The owner or operator, or an agent of the owner or operator, shall be fully responsive at any time that the property is used as a short-term rental to take and resolve complaints regarding operation of the short-term rental and its occupants and guests. The name and phone number of the owner, operator or an agent of the owner operator shall be conspicuously displayed inside near the main entrance of the short-term rental.
 7. There shall be no more than one (1) short-term rental contract governing a short-term rental during the same period of time the short-term rental is rented. Every contract for a short-

term rental shall contain an addendum, in a form provided by the Town, setting forth the requirements of this Section and other applicable provisions of law. The operator shall obtain a signed acknowledgment from the renter(s) that they have received such addendum prior to delivering possession of the dwelling unit.

8. Exterior signage is allowed in accordance with Sec. 13.4.1.C, Temporary Signs Allowed without a Permit.
- B. Notwithstanding anything in this UDO, short-term rentals in operation as of September 15, 2022 are nonconforming uses in the R-1 and R-2 zoning districts.
- C. Failure to comply with the standards and regulations as found in this Section may be enforced by the remedies and penalties in Article 15 of this ordinance.

Unified Development Ordinance of Highlands, NC (UDO)
Article 7 – Nonconformities

6. Portions of Article 7 are hereby amended as follows:

ARTICLE 7 – NONCONFORMITIES

Section 7.1.1 Purpose

Zoning regulations established by the adoption of this Ordinance or amendments to this Ordinance may cause properties and uses which were lawful prior to the adoption of certain regulations to not meet requirements after adoption of the regulations. The purpose of this section is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of this Ordinance. It is not the intent of this section to encourage the continuance of nonconformities that are out of character with the standards of the zoning district. It is the intent of this section, however, to allow certain nonconforming situations to continue as legal exceptions to this Ordinance. The provisions of this Section are intended and designed to limit substantial investment in nonconformities, to prohibit the intensification of nonconformities and to bring about eventual elimination or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located.

Section 7.2.1 Limitations on Nonconforming Uses

The lawful use of any building or premises at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, may be continued even though the use does not conform with the provisions of this Ordinance, under, and subject to, the following conditions:

- A. A nonconforming use may not have its use changed to another nonconforming use;
- B. A nonconforming use may not be re-established after its discontinuance for a period of twelve (12) consecutive months. Continuous uninterrupted utility services without documented occupation or intermittent operation shall not constitute active operations. If the discontinuance of the use is seasonal it may be reopened provided it is done so within 12 continuance months or if caused by damage from an unintentional fire or other natural disaster, then the building in which the use is located may be repaired and/or reconstructed and the use may thereby be re-established provided repair or reconstruction has begun within twelve (12) months and completed with a Certificate of Compliance within two (2) years of such damage.

C. A nonconforming use may not be changed, enlarged, expanded, or intensified, including expanding the use into any part of a building or property not previously occupied or in use as of the date when the legal nonconformity was established. A nonconforming use of property that is an accessory use as a result of its frequency or duration of proven historical use cannot be changed, enlarged, expanded, or intensified to become a principal use.

7. **Land Use Plan References.** All reference with the Town of Highlands Unified Development Ordinance to the term “Land Use Plan” shall be deleted and replaced with “Comprehensive Plan.”

8. **Severability.** Should any section or provision of this ordinance be declared invalid by any court of competent jurisdiction, such declaration shall affect the validity of any ordinance as a whole or any part thereof which is not specifically declared to be invalid. If any court of competent jurisdiction invalidates the application of any provision of this ordinance, then such judgement shall not affect the application of that provision to any other building, structure or use not specifically included in that judgment.

9. **Effective Date.** This Ordinance shall take effect and be in force from the date of its adoption by the Town Board of Commissioners.

READ, APPROVED AND ADOPTED this the ____ day of September, 2022.

TOWN CLERK

MAYOR