

ORDINANCE NO. 4
Series 2015

November 18, 2014: Introduced as Council Bill 14, Series 2014 by Councilor Russell Stewart, seconded by Councilor Alex Brown and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

January 20, 2015: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

**A BILL FOR AN ORDINANCE
 OF THE CITY OF CHERRY HILLS VILLAGE
 AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL
 CODE CONCERNING LEGAL NON-CONFORMING USES, SHORT TERM
 RENTAL OF SINGLE FAMILY DWELLINGS AND ASSOCIATED PROVISIONS**

WHEREAS, the City of Cherry Hills Village ("Village") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23, Title 31 of the Colorado Revised Statutes, the Village has broad, local authority to regulate the development of land within the City for the purposes of promoting the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, the Village has adopted zoning regulations codified in Chapter 16 of the Municipal Code and an official zoning map that designates zone districts in which permitted, conditional and prohibited uses are established; and

WHEREAS, the Village is a semi-rural residential community in which large lots and low density residential zoning districts comprise the majority of the City; and

WHEREAS, the Village Master Plan acknowledges that the existing low-density development pattern and semi-rural character makes Cherry Hills Village a unique community in the Denver metropolitan area; and

WHEREAS, the Village Master Plan discourages rezoning of property that would increase residential density or the intensity of the use of residential properties; and

WHEREAS, based on the experience in the Village and in other jurisdictions, it is known that short term vacation rentals create or have the potential to create negative land use impacts for neighboring residential uses and the community at large; and

WHEREAS, identified negative impacts to the character of the Village resulting from short term rentals within the Village's residential zoning districts include, but are not limited to, noise disturbances due to late night arrivals and parties with numerous guests; insufficient parking; trash accumulation; lack of investment in the property; and the regularity of transient occupants and guests; and

WHEREAS, the City Council finds that short term rentals of single family residential properties will negatively impair the stability of the semi-rural, residential character of the City; and

WHEREAS, the use of single family dwellings for transient occupancy poses building safety and health risks to members of the public who stay in these dwellings; and

WHEREAS, the use of a single family dwelling for transient occupancy is substantially similar to a commercial hotel, motel, or boarding house and that the use of a single family dwelling for short term transient occupancy is not a residential use of property; and

WHEREAS, persons seeking short term rental of residential property have a reasonable expectation that such rental will include amenities customarily associated with commercial short term rental such as commercial-level fire safety systems and emergency egress improvements; and

WHEREAS, in order to protect the residential character of the Village, the City Council previously adopted Ordinance No. 9, Series 2012 to prohibit short term rentals of less than ninety (90) days of residential dwelling units; and

WHEREAS, it has come to the attention of the City Council that existing short term rental uses may qualify, under limited or unique circumstances, as legal non-conforming uses; and

WHEREAS, the City Council finds that amendments to the existing legal non-conforming provisions of the Municipal Code are necessary to clarify the purpose, scope and procedures to declare and maintain legal non-conforming uses; and

WHEREAS, the City Council further finds that regulations must be adopted to address legal non-conforming short term rental uses of property in order to mitigate the negative effects of such commercial-oriented uses on the City's existing residential neighborhoods; and

WHEREAS, the City Council proposes to regulate legal non-conforming short term rental uses as set forth in this Ordinance; and

WHEREAS, in compliance with the Municipal Code, the Planning and Zoning Commission considered the changes proposed in this Ordinance at a duly noticed public meeting and has recommended approval of the Ordinance.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. The following definitions set forth in Section 16-1-10, titled *Definitions*, are amended or deleted to read as follows with underline to show added text and strike-through to show deleted text:

Dwelling, single-family means a detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family only on a stable and permanent basis.

Dwelling unit means a single unit providing complete independent living facilities for one or more persons meeting the definition of a family, including permanent improvements and provisions for living, sleeping, eating, cooking and sanitation. ~~one (1) room or rooms connected together, constituting a separate independent housekeeping establishment for owner occupancy, or rental or lease, physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.~~

Nonconformance means ~~structures, lots, and uses of land, structures or lots which do not meet the requirements of this Chapter but which were legally established and maintained at the time of adoption of the initial ordinance codified herein, or are otherwise deemed to be lawful structures by this Chapter.~~

Section 2. Section 16-14-10, titled *General*, of Article XIV of the Municipal Code is hereby amended to read as follows with underline to show added text and strike-through to show deleted text:

Sec. 16-14-10. General.

(a) **Purposes.** The purpose of this Article is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this Chapter for the district in which they are located. The protection afforded owners of property under this Article exists only in order to permit the continuance of a legal non-conforming use of land, structure or lot to the extent necessary to safeguard the investment of the property owner. The specific purposes of requiring certification and licensure of legal non-conforming short term rental use of properties are to: (1) ensure the safety of guests and occupants of short term rental properties through compliance with building code requirements applicable to transient residential occupancy; (2) maintain the stability of the rural, residential character of the City; and (3) mitigate the negative effects that short term rentals pose within residential neighborhoods in terms of trash, parking and noise issues.

(b) **Application.** Subject to the provisions of this Article, any use of land, structure, or lot which does not meet the requirements of this Chapter shall be lawful only if one or more of the following conditions apply:

(1) The use of land was legally established and maintained at the time of adoption of the initial ordinance codified herein or of any amendment causing nonconformance, thereby constituting a non-conforming use. For purposes of this section, "legally established and maintained" means compliance with each of the following criteria: (i) the use of land was, at time of commencement in compliance with all applicable federal, state and City regulations; (ii) the financial

investment in the use or property improvements must be of a substantial nature so as to warrant protection under this Article; (iii) the use is not accessory to the primary or principle use; and (iv) the use of property is determined to be legally established and maintained by City administrative certification as set forth in subsection (d) of this Section 16-14-10. The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a non-conforming use. The existence of a non-conforming use on a portion of a lot or parcel of land shall not be construed to establish a non-conforming use on the entire lot or parcel of land.

(2) Any structure or portion of a structure which was not legally established and maintained but has existed unmodified for more than twenty (20) years; or

(3) Any lot which was not so legally established but on which a residence was located prior to September 6, 1987.

(c) Burden of proof. In any administrative or judicial proceeding wherein it is claimed that a structure, lot or use is allowed as a non-conforming use, the party asserting that such non-conforming status exists shall have the burden of providing proof of the same by a preponderance of the evidence. Evidence of legal non-conforming use shall show that the criteria in subsection (b) (1) above have been met and may include the following: approved permits, copies of applicable zoning, building or other code provisions in effect at the time of establishment of legal nonconformity; leases; and verified affidavits of persons with personal knowledge of the circumstances of the use.

(d) Non-conforming use certification. To establish a legal non-conforming use, the owner or designated representative of the owner must apply for and obtain a non-conforming use certification from the Community Development Director. The application for legal non-conforming certification shall include: (1) proof of ownership of the property; (2) evidence of reasonable financial investment in the improvements on the property necessary to operate the claimed non-conforming use; (3) narrative explanation of the claimed non-conformity; (4) documentation of the date that the use/activity commenced and evidence of continuous operation for each successive year; (5) any judicial determinations affirming legal non-conforming use status; and (6) a site plan including boundaries of the property, total area of the property, use and dimensions of all existing buildings and structures including setbacks, dimensioned parking lay-out, north arrow and scale, and precise location and limits of use to be certified. The Community Development Director shall deny any certification if it appears that the evidence presented does not show the existence of a prior legal non-conforming use by a preponderance of the evidence in accordance with the criteria set forth in subsection (b) (1) above. Any certification issued by the Community Development Director shall include a detailed description of the specific use constituting a non-conforming use for the property.

Section 3. Section 16-14-60, titled *Discontinuance of non-conforming use of land or structure*, of Chapter 16 of the Municipal Code is hereby retitled and amended to read in full as follows:

Sec. 16-14-60. Discontinuance of non-conforming use.

If a nonconforming use of land or of a structure is discontinued for one (1) year or longer, no nonconforming use may be reestablished upon such land or within such structure. No land or structure or portion thereof used in whole or in part for a non-conforming use that remains idle or unused for a continuous period of six (6) months, whether or not any equipment, fixtures, improvements or facilities are maintained, shall again be used except in conformity with the regulations of the zoning district in which such land or structure is located.

A certification of non-conforming use issued by the Community Development Director shall be invalid and void in the event that a certified non-conforming use is discontinued for a continuous period of six (6) months.

Section 4. Section 16-14-70, currently titled *Change in non-conforming use*, of Chapter 16 of the Municipal Code is hereby retitled and amended to read in full as follows:

Sec. 16-14-70. No change or expansion of non-conforming use, structures.

(a) A non-conforming use may be maintained and continued, provided there is no expansion in the area or volume occupied or devoted to such non-conforming use, and

further provided there is no increase in intensity of such non-conforming use except as otherwise provided in this chapter.

(b) A non-conforming use of land or of a structure shall not be changed to another non-conforming use, except with the approval of the Board of Adjustment and Appeals. The Board of Adjustment and Appeals, in granting or denying such an application or in conditioning approval of such application, shall consider the degree of incompatibility of the present and proposed uses, the interests of the applicant and of neighboring property owners and the objectives of the City's Master Plan and this chapter.

Section 5. Section 16-14-90, titled *Variances by Board of Adjustment and Appeals*, of Chapter 16 of the Municipal Code is hereby renumbered as Sec. 16-14-100 with no other amendments.

Section 6. Section 16-14-100, titled *Fees*, of Chapter 16 of the Municipal Code is hereby renumbered as Sec. 16-14-110 with no other amendments.

Section 7. A new Section 16-14-90 of Chapter 16 of the Municipal Code is hereby enacted to read in full as follows:

Sec. 16-14-90. Legal non-conforming short-term rental of a single-family dwelling.

(a) General Requirements. Any short term rental of a single family dwelling seeking certification as a non-conforming use and operating within the City shall comply with the requirements in this Section.

(b) Certification. The owner of property operated as a short term rental must submit an application to the Community Development Director for legal non-conforming use certification as set forth in Section 16-14-10(d) above within sixty (60) days of February 8, 2015. Any property owner may seek an extension of up to thirty additional days for submission of application upon good cause shown.

(c) License requirement. An annual short term rental license issued by the City is required to operate a legal non-conforming short term rental of a single family dwelling. Upon receiving a legal non-conforming use certification, an owner of a short term rental shall apply for a short term rental license and bring the property into compliance with all building code and licensing requirements set forth in this subsection (c) within one hundred eighty (180) days of the date of certification of legal non-conforming use status. The Community Development Director may grant requests for extensions of time up to an additional one hundred eighty (180) days to comply with such requirements upon a finding that the necessary improvements cannot be completed within the 180 days due to scope of improvements or other good cause shown by the owner. The following licensing requirements shall be met as a condition of license issuance and continued operation of a certified non-conforming short term rental property within the City:

(1) The owner of the non-conforming short term rental shall provide the City with a copy of each short term rental lease at least five (5) business days in advance of the rental period, along with the information required in subsections (c)(10) and (c)(11) below.

(2) Unless otherwise further limited in the non-conforming use certification, the maximum number of overnight occupants for any short term rental period allowed shall not exceed the number of occupants that can be accommodated by the available off-street parking and shall not exceed two (2) occupants per bedroom up to a maximum of ten (10) occupants.

(3) All parking shall occur off-street on a paved driveway or in a garage. There shall be a minimum of one (1) parking space per bedroom.

(4) Notwithstanding any provision to the contrary in the City building code, single family dwellings used for short term rentals shall be considered a "Residential Group R-3 Boarding House" occupancy due to the transient nature of occupancy and shall be subject to applicable building code regulations adopted by the City, as may be amended. The structure and the property shall be brought into compliance for Residential Group R-3 Boarding House occupancy under the International Building Code, as adopted by the City, except that Chapter 13, entitled *Energy Efficiency*, Chapter 14, entitled *Exterior Walls*, and Chapter 16, entitled *Structural Design*, of the International Building Code

shall not apply, as a condition of issuance of a license to operate a legal non-conforming short term rental use.

(5) By operating short term rentals of a single family dwelling, the owner agrees to authorize, at a minimum, annual on-site inspections by appropriate building, fire and zoning officials to ensure compliance with these licensing requirements.

(6) Properties and structures in which short term rentals occur shall comply with all applicable City ordinances and regulations including but not limited to zoning, noise, nuisance, lighting and building codes.

(7) Short term rental properties shall not be altered to change the residential character or outside appearance of the property through the use of paint colors, materials, signage or lighting, or by the addition or alteration of accessory structures, recreational structures/uses or garages.

(8) Short term rentals shall have a designated local property manager that resides or is physically located within sixty (60) miles of the short term rental property and is available by phone twenty-four (24) hours a day to respond to tenant and neighborhood questions and concerns. The owner is required to provide to the City updated contact information of the local property manager, including address and telephone number.

(9) Solicitation, advertising or rental of a single family dwelling for the purpose of holding a party, special event, social gathering, wedding or similar use is prohibited.

(10) Prior to occupancy of each short-term rental of a single-family dwelling, the owner shall provide to the City's Community Development Department the name and home address and copy of a government-issued identification of each occupant and relation of each occupant in order to confirm compliance with the City's definition of *single family*. Prior to occupancy, the owner shall also provide to the City a written acknowledgment signed by the primary adult occupant of the short term rental that such occupant: (i) he or she is legally responsible for compliance by all occupants of the short term rental or their guests with all applicable laws, rules and regulations pertaining to the use and occupancy of the property; (ii) shall cooperate with City officials to determine compliance with this section; and (iii) shall provide identification of all occupants upon reasonable request of any City official.

(11) The owner shall provide the City with evidence of payment of all applicable taxes and fees, including applicable state sales tax for each period of short term rental use.

(d) Licensing Fees; Revocation. Application and licensing fees shall be set forth by City Council resolution. In accordance with the procedures set forth in Article I, Chapter 6 of the Municipal Code, the City may revoke a short term rental license if the owner, operator, tenants or guests of a short term rental property violate any provision of this Code or these licensing requirements. If a license is revoked, an owner or operator may not apply for a new license within 90 days of the effective date of revocation.

(e) Continued operation during certification and licensure. During the period in which the owner is actively seeking licensure for operating a short term rental, the owner shall be permitted to use the property for short term rentals pursuant to fully executed leases or rental agreements in effect as of the effective date of this Ordinance, provided that any such short term rental may not be relied on to assert that a legal non-conforming use is not discontinued in accordance with Section 16-14-60.

(f) Violation. It is unlawful for any person to use or allow the use of property in violation of this Section. Penalties for violations of this Section shall be as provided in Sections 16-2-60 and 1-4-20 of this Code.

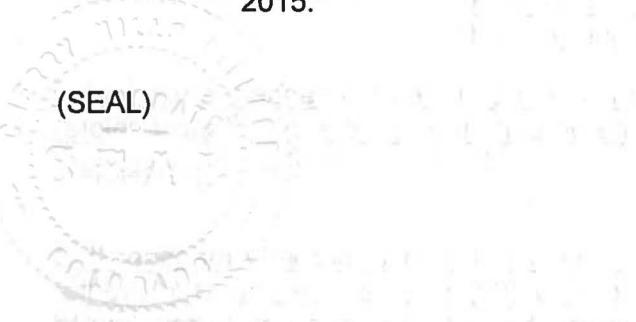
Section 8. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each

section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 9. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

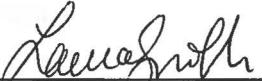
Adopted as Ordinance No. 4, Series 2015, by the City Council of the City of Cherry Hills Village, Colorado this 20th day of January, 2015.

(SEAL)

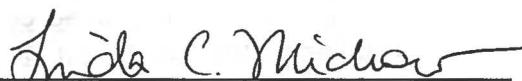

Laura Christman

Laura Christman, Mayor

ATTEST:


Laura Smith, City Clerk

Approved as to form:


Linda C. Michow, City Attorney

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Legal # 5432

CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 4, SERIES 2015

A BILL FOR AN ORDINANCE OF THE
CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 18 OF THE
CHERRY HILLS VILLAGE MUNICIPAL
CODE CONCERNING LEGAL NON-
CONFORMING USES, SHORT
TERM RENTAL OF SINGLE FAMILY
DWELLINGS AND ASSOCIATED
PROVISIONS

Copies of the Ordinances are on file at
the office of the City Clerk and may be
inspected during regular business hours.

Published in The Villager
Published: January 29, 2015
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