



**Docket AP 1-22, Appeal of a
Planning Commission denial of a short-term
rental permit, 790 NW 21st Street**



**City of
McMinnville**

HISTORY OF DOCKET AP 1-22

- ❖ **May 25, 2022 – Neighborhood meeting conducted.**
- ❖ **June 10, 2022, Application submitted.**
{Normal Type 1 Review Underway}
- ❖ **July 4, 2022 – City received a complaint that the property was operating as a short-term rental without an approved permit.**
- ❖ **July 4, 2022 – City staff tested the property to see if it could be rented as a short-term rental and discovered it could be.**
- ❖ **July 5, 2022 – the property was put into code enforcement for mitigation and the decision was made to send it to a public hearing with the Planning Commission.**
- ❖ **September 1, 2022 – Public hearing held by the Planning Commission. Public hearing was closed but the record was kept open per the applicant’s request.**
- ❖ **October 6, 2022 – Planning Commission deliberated and voted to deny the application.**

THE APPEAL PROCESS

McMinnville Municipal Code – Land Use Appeals

- **Appeal of a Planning Director Decision** → **Planning Commission**
- **Appeal of a Planning Commission Decision** → **City Council**

17.72.180 Appeal from Ruling of Planning Commission.

*An action or ruling of the Planning Commission pursuant to this title may be appealed to the City Council within 15 (fifteen) calendar days of the date the written notice of the decision is mailed. Written notice of the appeal shall be filed with the City Planning Department and shall identify the decision sought to be reviewed, including the date of the decision and a statement of interest from the person seeking review specifying that they were party to the initial proceedings. If the appeal is not taken within the 15 (fifteen) day period, the decision of the Planning Commission shall be final. **If the appeal is filed, the City Council shall receive a report and recommendation thereon from the Planning Commission and shall hold a public hearing on the appeal. Notice of a City Council hearing on an appeal of a decision of the Planning Commission shall take the form of that provided for the initial application before the Planning Commission.***

Neighborhood



STR Spacing Standards



Zoning = R1 (section 17.12.010(P))

City of McMinnville GIS

Zoom In Zoom Extent Zoom Previous Pan Address Search by House number: 790 Search 790 NW 21ST ST

Layer List:

- Urban Growth Boundary
- Sanitary Mainlines
- Sanitary Manholes
- Street Names
- Streets
- Partition Plats
- Asbuilts
- Subdivisions
- Taxlots
- Zoning
- Comprehensive Plan
- Easements
- Public Schools
- City Limits

Taxlots will always be identified. Select additional Layers to identify.

- Autocad inch 100 record maps
- Autocad inch 50 record maps
- Service Line Inspections
- Subdivision Plats
- Partition Plats
- As Built drawings
- Sanitary Mainline TV Inspections
- Easements
- FEMA Flood Maps
- Public Schools

City Zoning

- R-1
- R-2
- R-3
- R-4
- O-R
- C-1
- C-2
- C-3
- M-L
- M-1
- M-2
- A-H
- F-P

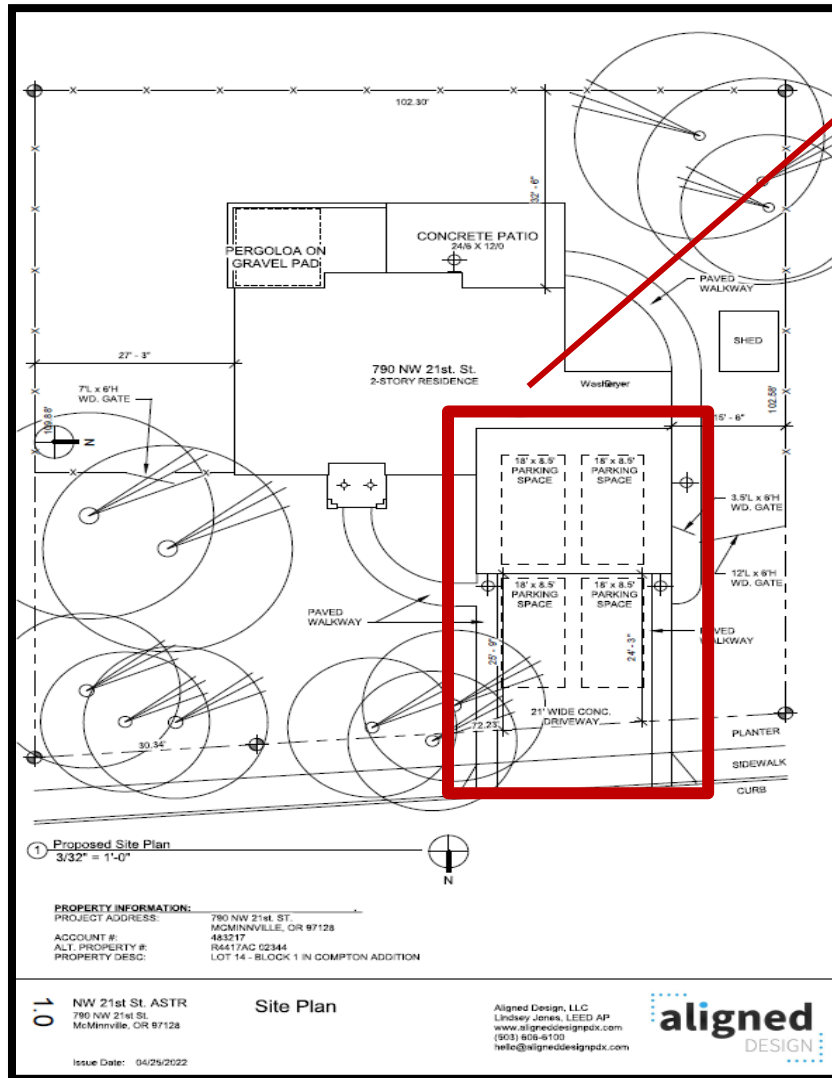
STR PERMIT CRITERION (Section 17.12.010(P))

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	Satisfied. The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	Satisfied. The map provided as Figure 4 shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling. As an ongoing condition of approval, the structure shall retain the characteristics of a residence.
3. That a minimum of one off-street parking space be provided for each guest room.	Not Satisfied. The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.

STR PERMIT CRITERION (Section 17.12.010(P))

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	Satisfied. The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	Satisfied. The map provided as Figure 4 shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling. As an ongoing condition of approval, the structure shall retain the characteristics of a residence.
3. That a minimum of one off-street parking space be provided for each guest room.	Not Satisfied. The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.

Parking (One space per guest room)

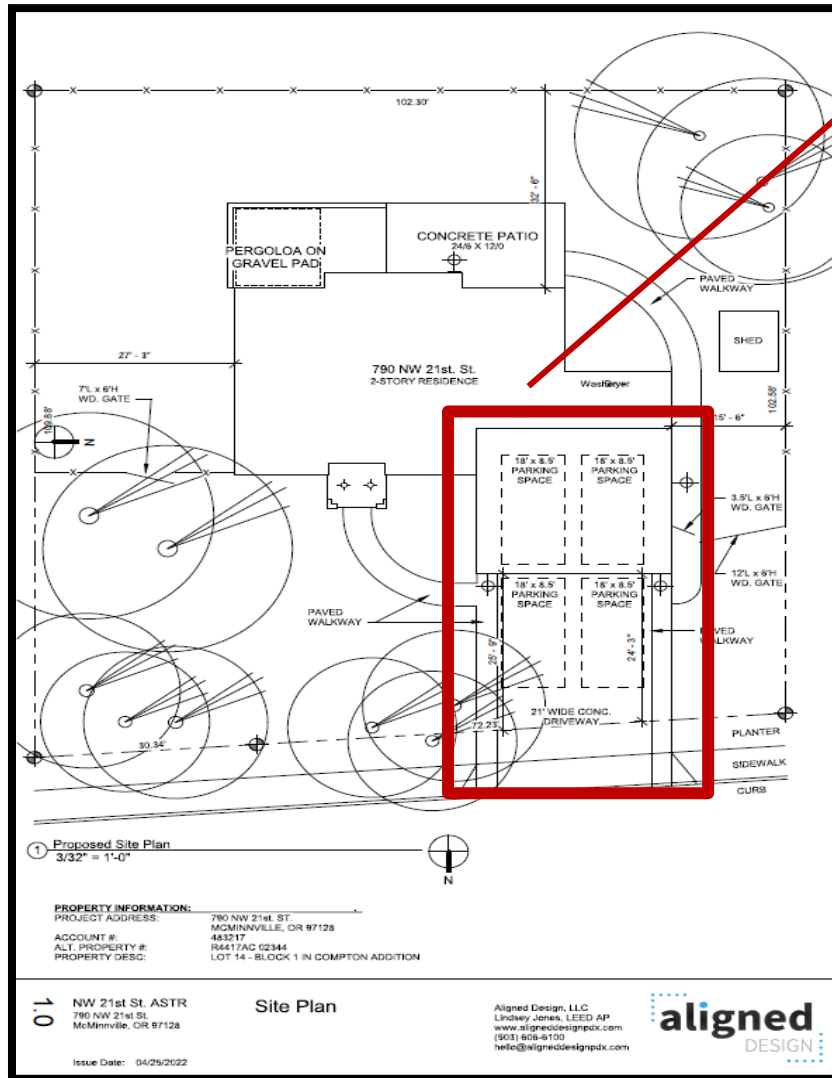


**4 Off-Street
Parking Spaces**

**Application Submittal:
June 10, 2022**

**Property represented as a
four-bedroom property with four
off-street parking spaces.**

Parking (One space per guest room)



**4 Off-Street
Parking Spaces**

**Application Submittal:
June 10, 2022**

**Property represented as a
four-bedroom property with four
off-street parking spaces.**

Only room for four spaces.

Discrepancy of # of Bedrooms

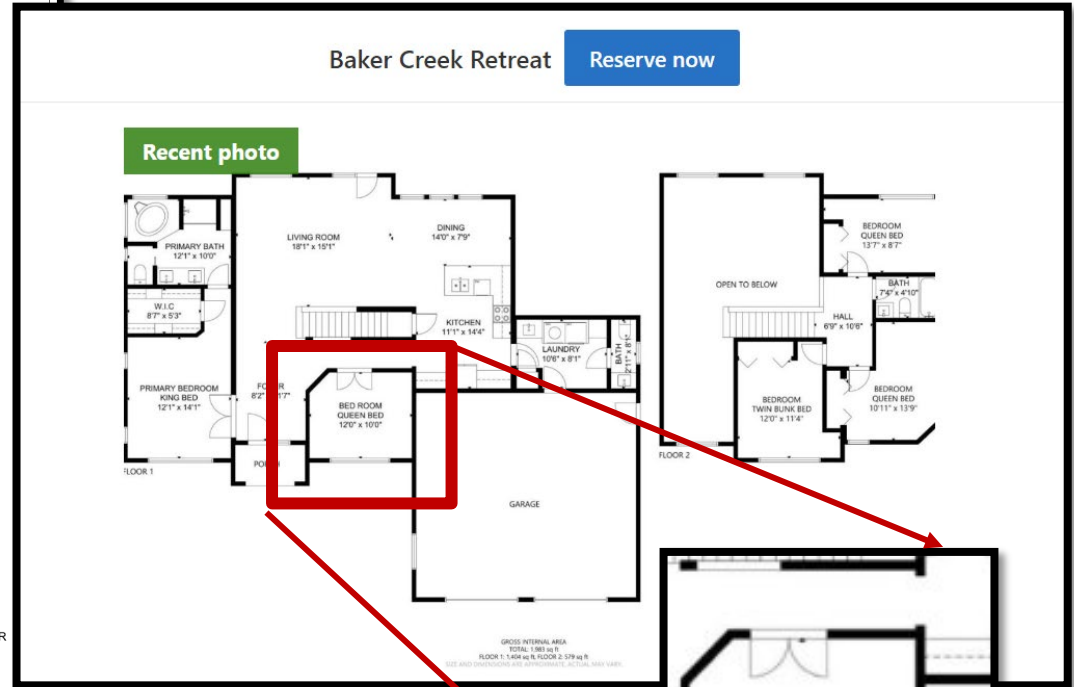
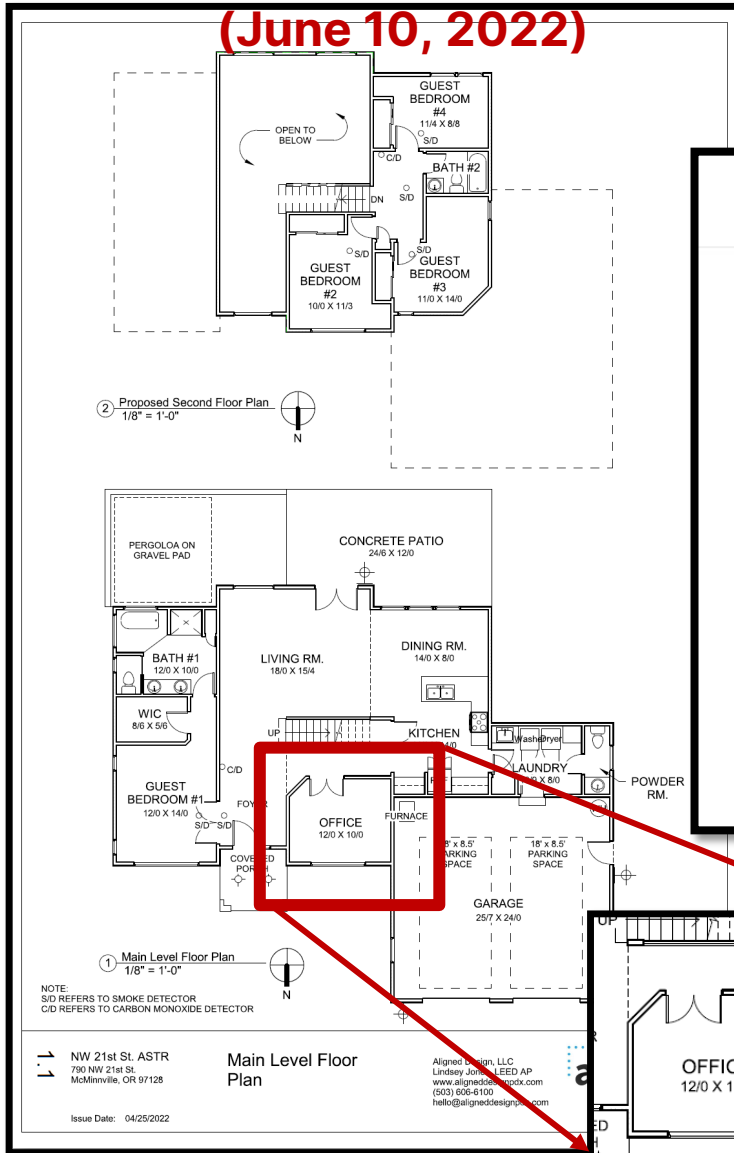
- ❖ **Application referenced four bedrooms.**
- ❖ **Public testimony at the September 1, 2022, public hearing indicated that the property was actually operating with five bedrooms.**
- ❖ **Planning Commission asked staff to do some research after the September 1, 2022, public hearing and learned that it was marketed as a five-bedroom property.**
- ❖ **This information was brought back to the Planning Commission on October 6, 2022, at which time the Planning Commission decided that there was enough evidence to demonstrate that the property was being operated with five guest rooms and that this criteria was not satisfied with only the four off-street parking spaces that were provided.**

Discrepancy of # of Bedrooms

Application Submitted = 4 Bedrooms

(June 10, 2022)

Online Marketing = 5 Bedrooms
(September 30, 2022)



Booking.com

Discrepancy of # of Bedrooms

(Online Marketing, Itrip Vacations, 09.30.22)

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

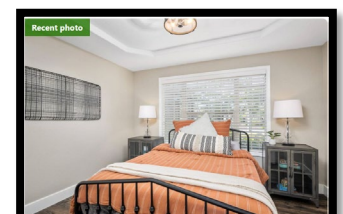
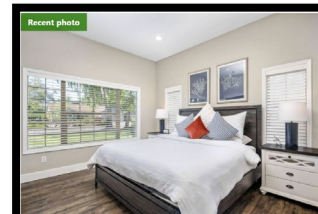
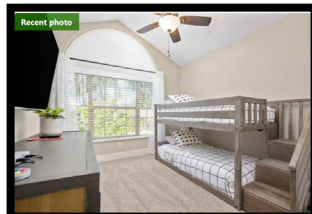
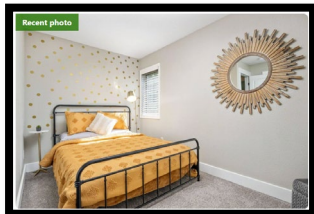
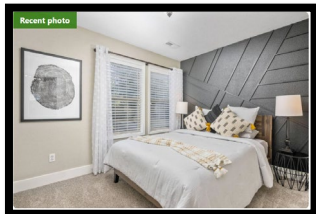
Bedroom 1 (main floor): King bed

Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed



STR PERMIT CRITERION (Section 17.12.010(P))

Standard	Summary of Findings
17.12.010(P)	
4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	Satisfied with Conditions. No signage is proposed at this time. As an ongoing condition of approval, any signage shall comply with this standard.
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	Satisfied with Conditions. As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	Satisfied with Conditions. The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application. As an ongoing condition of approval, the structure shall remain in compliance with this standard.
7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	Not Satisfied The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.

STR PERMIT CRITERION (Section 17.12.010(P))

Standard	Summary of Findings
17.12.010(P)	
4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	Satisfied with Conditions. No signage is proposed at this time. As an ongoing condition of approval, any signage shall comply with this standard.
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	Satisfied with Conditions. As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	Satisfied with Conditions. The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application. As an ongoing condition of approval, the structure shall remain in compliance with this standard.
7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	Not Satisfied The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.

Management:

- ❖ Applicant provided a name and phone number to satisfy this criteria.
- ❖ Public testimony at the September 1, 2022, public hearing indicated that a phone call at that number went to a call service. Ensuing discussion with the applicant and her team was confusing as to what had been set up to respond to this criteria.
- ❖ Planning Commission asked the applicant to clarify their set-up.
- ❖ The applicant provided a written response that stated that the person on the application was available, but in another section of their response stated that calls between 11 PM – 7 AM went to an answering service.
- ❖ The Planning Commission deliberated and decided that the applicant's set-up did not meet the code criteria.

Management:

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (www.avachato.com) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she is sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

Response from applicant, 09.09.22

Management:

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at [619 NE 3rd St, McMinnville, OR 97128](#). Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Response from applicant, 09.09.22



**City of
McMinnville**

Management:

Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?

A. From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.

Response from applicant, 09.09.22

Management:

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.

The Planning Commission decided that the applicant's response did not demonstrate compliance with this criteria either.

STR PERMIT CRITERION (Section 17.12.010(P))

Standard	Summary of Findings
17.12.010(P)	
8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	Satisfied with Conditions. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

PUBLIC TESTIMONY

Written - PC

Mark Pitts, 07.04.22
Mark Pitts, 08.29.22
Kelli Grinich, 08.30.22
Jay Post, 08.30.22
Kathy Loving, 09.01.22

Oral - PC

Emily Smith, 09.01.22
Mark Pitts, 09.01.22
Nick Grinich, 09.01.22
Kelli Grinich, 09.01.22

Written - CC

Mark Pitts, 11.29.22
Mollie Post, 11.29.22
Nick Grinich, 12.07.22
Kathy Loving, 12.08.22
Linda Storr, 12.08.22
Jay Post, 12.12.22
Kelli Grinich, 12.12.22

APPLICANT

Letter from Ross Day, Day Law PC dated and submitted on 12.13.22.

CITY COUNCIL OPTIONS

ORS 197.797(6)(e) states,): “Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant’s final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.”

To satisfy this request: Close the public hearing and close the record for all testimony except for the final argument by the applicant which needs to be provided by 5:00 PM, December 20, 2022.

Then state for the record that the City Council will deliberate on Tuesday, January 10, 7:00 PM. Ordinance No. 5128 will not be considered tonight.

CITY COUNCIL OPTIONS

In their letter dated and submitted today on 12.13.22, the applicant requested “Pursuant to ORS 197.797(6)(a), an additional seven (7) days to submit additional evidence. And pursuant to ORS 197.797(6)(e), seven (7) days from the date the record is closed to new and/or rebuttal evidence to submit final argument.”

However, the additional seven (7) days to submit additional evidence is only triggered during the initial evidentiary hearing – this is not the initial evidentiary hearing, that was at the Planning Commission.

ORS 197.797(6)(e) states,): “Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant’s final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.”



**Docket AP 1-22, Appeal of a
Planning Commission denial of a short-term
rental permit, 790 NW 21st Street**



**City of
McMinnville**