

Short-Term Rental Regulations--Review and Update

Q. We are receiving questions and complaints from residents about people using their properties as short-term rentals. Is there a state law about regulating short-term rentals?

A. In recent years, many property owners have decided to pursue the idea of renting out their homes, cabins, and other investment properties for overnight stays to the general public. In 2017, a state law was passed addressing the regulation of short-term rentals. The key provisions of that law are laid out below:

- 1) A political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 (seven) consecutive days or longer. Wis. Stat. § 66.1014(2)(a). The inability to ban short-term rentals of 7 days or longer appears to apply regardless of any zoning classification and, therefore, the local government cannot ban these rentals in any part of the municipality. Proceed with caution if you want to require a conditional use permit for short-term rentals as such a permit cannot be overly restrictive and effectively ban certain dwellings from being used for short-term rentals in violation of state law.
- 2) If a residential dwelling is rented for periods of more than 6 but fewer than 30 consecutive days, a political subdivision may limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days. The political subdivision may not specify the season(s) during which the residential dwelling may be rented, but the political subdivision may require that the maximum number of allowable rental days within a 365-day period must run consecutively. A person who rents their residential dwelling must notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins. Wis. Stat. § 66.1014(2)(d).
- 3) Any person who maintains, manages, or operates a short-term rental for more than 10 nights each year must obtain a local license for conducting such activities, if a political subdivision enacts an ordinance requiring such a person to obtain a license. Wis. Stat. § 66.1014(2)(d)2b. They would also need to obtain a tourist rooming house license from the Wisconsin Department of Agriculture and Consumer Protection.
- 4) Under the law, a “short-term rental” is defined as a residential dwelling that is offered for rent for a fee and for fewer than 30 consecutive days. Wis. Stat. § 66.1014(1)(c).
- 5) The room tax statute makes it clear that “lodging marketplaces” (such as an online 3rd party rental platform like Airbnb or VRBO and other entities, like property management companies that rent short-term rentals for the owner) and owners of short-term rentals must collect room tax and forward such amounts to the municipality if there is a local room tax ordinance in place. Wis. Stat. § 66.0615(1m)a. Towns with a room tax should review their room tax ordinances and amend them, if necessary, to make sure that lodging marketplaces and owners of short-term rentals are included in the definitions of who is subject to the ordinance.

Q. If our town has concerns about short-term rentals, are we still able to pass regulations to address the board's concerns and complaints we are getting from the neighbors?

A. People staying in short-term rentals, like any other person in the town, would be required to comply with noise ordinances, parking regulations, and other generally applicable local ordinances your town may already have in place. The short-term rental law also provides that political subdivisions may enact ordinances regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of the statute. Wis. Stat. § 66.1014(2)(c). So, your town or village board might decide to establish an ordinance with additional regulations owners of short-term rentals must comply with and require them to obtain a local rental license or permit. In doing so, think carefully about what legal authority your board has to establish such regulations. Notably, if your town has been authorized to exercise village powers under Wis. Stat. § 60.10(2)(c), your board may wish to consider whether there are any public health, safety, or welfare type concerns created by short-term rentals and whether reasonable local regulations are needed to address such concerns. For example, communities with village powers might consider adopting public health and safety provisions that do the following:

1. Prohibit the use of temporary lodging (like tents) on the property in a way that allows the property to have more overnight guests than would otherwise be allowed under the property's tourist rooming house license. For example, if the tourist rooming house license allows the property to safely accommodate up to 12 overnight guests, your ordinance might prohibit the use of additional tents on the property to accommodate overnight guests beyond the allowable number.
2. Require that there be a named property manager or other agent available by phone in case the town, emergency services, or members of law enforcement need to get ahold of that person.
3. Require building and fire code inspection and compliance with all state and county building codes and regulations.
4. Require proof of appropriate insurance for the short-term rental.
5. Require all guests to register and that records be kept with names, addresses and dates of rental. The town might also require that records be kept on the amount of consideration paid for the rental if a room tax ordinance is in place.
6. Require the dwelling to have adequate parking available for those using the property at a given time.

Note that any restrictions or conditions must be reasonable and not so restrictive as to amount to an illegal prohibition on short-term rentals. A sample short-term rental ordinance is available on the WTA website.

Q. Given the wording of Wis. Stat. § 66.1014, can our town or village adopt an ordinance prohibiting short-term rentals of 6 days or less?

A. If you establish this restriction under your town *zoning* ordinance, maybe. In 2019, the Village of Summit adopted an ordinance using its police powers to regulate vacation rental establishments in the Village. Included in the ordinance were provisions that 1) required the rental establishment to obtain an annual license from the Village; 2) required that each rental establishment require its guests to sign a log with their legal names and addresses; and 3) prohibited rental of a residential dwelling for six (6) consecutive days or fewer. Wildwood Estate, LLC sued the Village arguing that, among other things, the ordinance was void and unenforceable because it was actually a zoning ordinance and the Village had

failed to follow the required procedures in adopting a zoning ordinance. In Wildwood Estate, LLC v. Village of Summit, No. 2024AP178, unpublished slip opinion, (WI App July 9, 2025), recommended for publication, the Wisconsin Court of Appeals held that although the ordinance applied throughout the entire Village and did not divide the Village into multiple districts, “it makes certain use of the land—namely short-term rentals for periods shorter than six days—prohibited”. Id. ¶ 31. Further, the Court found that this provision of the ordinance amounted to a zoning regulation because it allowed *no* 6-day or less short-term rentals to take place in the Village and was not a regulation about *how* short-term rentals take place. Id. In addition, the Court was concerned that since short-term rentals (of 6-days or less) had been legal in the Village prior to passage of the ordinance, the new ordinance effectively resulted in a change to Wildwood’s permitted uses of its property. ¶ 32. For its part, the Village asserted that its ordinance did not violate Wis. Stat. § 66.1014. However, the Court determined that this was not relevant in deciding the question of whether the ordinance was actually a zoning ordinance. Because the Court found that the ordinance was a zoning ordinance and that the Village had failed to follow the proper procedures to enact a valid zoning amendment, the ordinance was declared void and unenforceable. ¶¶ 37-38. For those towns that have adopted short-term rental ordinances relying on village powers as their authority to regulate to protect the public health, safety or general welfare (rather than local zoning authority), now would be a good time to re-examine your ordinance and determine whether any of its provisions might be construed as an improper land use restriction and amend the ordinance, if necessary. As of the writing of this article, the Village has filed a petition for review of this decision. Should this decision be overturned in the future, we will be sure to write a follow-up article.

Q. Our town is thinking of including a provision in our short-term rental permitting ordinance that would require that the short-term rental property be the “primary residence” of the applicant. Is this allowable?

A. Most likely not. In 2022, the Wisconsin Realtors Association sued the City of Neenah over its Tourist Housing Ordinance which included such a provision. In a recent decision, the Wisconsin Court of Appeals ruled that the explicit language of Wis. Stat. § 66.1014 indicates that a local government cannot prohibit the short-term rental of “any” buildings that are “residential dwellings” and that this provision of the City’s ordinance was therefore preempted by state law and unenforceable. Wisconsin Realtors Association, Inc. v. City of Neenah, No. 2024AP994, unpublished slip opinion, ¶15 (WI App July 9, 2025), recommended for publication. The City may still petition for review of this decision.

Q. Does our town or village have to regulate short-term rentals?

A. No, if your town does not have concerns about short-term rentals, you may find there is no need to regulate them locally. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) must license “tourist rooming houses” which would include any short-term rental that operates for more than 10 nights per year. When a license application is submitted to them, they assign a sanitarian to inspect the business. The sanitarian will check for building safety issues (clear exits, door locks, fire extinguishers, recent private well test, etc.) and other public health concerns (facility cleanliness, proper linen and towel handling, size of sleeping rooms, garbage disposal, etc.) So, your town or village board may decide that little or no additional regulation is needed.