

Short-term Rentals, Room Tax, & Lodging Regulation *Town Authority Related to Online Vacation Rentals*

2021 TOWN LAW CONFERENCE

Larry A. Konopacki
Rick A. Manthe
Stafford Rosenbaum LLP
222 West Washington Avenue
P.O. Box 1784
Madison, WI 53701
[*lkonopacki@staffordlaw.com*](mailto:lkonopacki@staffordlaw.com)
[*rmanthe@staffordlaw.com*](mailto:rmanthe@staffordlaw.com)

LONGSTANDING REGULATION OF RENTALS OF RESIDENTIAL DWELLINGS

- Zoning?
- Licensing?
- What limits existed on these authorities?

RECENT LIMITATIONS ON REGULATION OF SHORT-TERM AND LONG-TERM RENTALS

- “A political subdivision (city, village, town, or county) may not **prohibit** or **unreasonably restrict** a real property owner from alienating any interest in the real property. [Wis. Stat. § 700.28(2); 2015 Act 391]
- A political subdivision (city, village, town, or county) generally may not enact or enforce an ordinance that **prohibits** the rental of a residential dwelling for 7 consecutive days or longer. [Wis. Stat. § 66.1014(2)(a)]
- Regulation of rentals for less than 30 days must be consistent with the additional limitations in this statute controlling the scope of local authority. [Wis. Stat. § 66.1014(2)(a)]

RESIDENTIAL RENTALS – LESS THAN 7 DAYS

- No preemption of pre-existing local regulatory authority in this statute. In addition, authority to adopt local *licensing* ordinances is explicit:

- “Any person who maintains, manages, or operates a short-term rental...for more than 10 nights each year, shall ... [o]btain from a political subdivision a 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)2.b.]
- A **tourist rooming house** license is required from the state (often administered by the local health department (the county is the local health department for many towns)). [Wis. Stat. §§ 66.1014(2)(d)2.; 97.605(1)(a)]
 - For more information about this license, see:
 - https://datcp.wi.gov/Pages/Programs_Services/TouristRoomingHouses.aspx
- A Sellers Permit (for sales tax) is required from DOR if sales are over \$2,000 annually.
- May need a room tax registration depending on the location.
 - A city, village, or town (not a county) may impose a room tax on the sales price from selling or furnishing at retail, rooms or lodging to transients by hotelkeepers, motel operators, marketplace providers, owners of short-term rentals, and other persons furnishing accommodations that are available to the public. [Wis. Stats. § 66.0615(1m)(a)]

RESIDENTIAL RENTALS – 7 TO 30 DAYS

- All of the same approvals must be obtained by a property owner as are required for rentals for less than 7-days.
- Local regulatory restrictions are limited by statute [Wis. Stat. §§ 66.1014(2)(d)1.]:
 - “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 period of time 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 the person’s residential dwelling shall notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.”*

HOW CAN A LOCAL GOVERNMENT DETERMINE WHERE THIS IS HAPPENING?

- Rooming house licensure information.
- Local ordinance requiring licensure.
- Room tax information.
 - “Marketplace providers” such as Airbnb and VRBO are required by state law to coordinate with municipalities, including submitting quarterly reports.

WHAT TO PUT IN A LOCAL ORDINANCE?

- The foundational question is whether the local government has zoning authority.
 - If so, be attentive to nonconforming uses that may be created, and how to handle those.
 - If not, options are clearly more limited. Regulate the activity throughout the entire municipality, not the use in a particular location.
- Impose limits on number of nights of operation per year?
 - Most restrictive is a 180-day limit.
 - Require a limit to run consecutively?
 - Treat rentals of 1-6 nights differently than 7-30 nights?
- Impose applicant/property registration requirements?
- Require information to be provided to the local government regarding renters? Names, addresses, dates of birth, telephone numbers, number of occupants, dates of stay, rent paid?
- Impose fees? How much is too much? “Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed. [Wis. Stat. § 66.0628(2)]
- Require inspections?
 - Fire.
 - Building code/safety.
 - Other?
- Create special nuisance regulations?
 - Noise?
 - Hours of outdoor activity?
 - Limitations on special events (weddings, parties, etc.)?
- Other provisions seen in various ordinances:
 - Maximum number of guests? Based on what factors?
 - Minimum number of nights rented for the ordinance to apply?
 - Minimum parking availability off-street?
 - Based on number of bedrooms? Have to justify why the ordinance treats these rentals differently than an owner or long-term rental-occupied housing?
 - Multiple current ordinances prohibit on-street parking. What about residences with no off-street parking?
 - Only detached single-family homes?
 - Only hosted or non-hosted stays?

- Insurance requirements?
- Limit short-term rentals to only a person’s primary residence?
 - *“Residential dwelling” means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others. [§ 66.1014(1)(b)] People have argued that “to the exclusion of all others allows this type of restriction.*
- Require owners to respond to contact regarding nuisances within a specified period of time? Require owner/operator to be located within a specified mileage of the rental during rental periods?
- Advertising restrictions?
- Administration of the ordinance.
 - Approval by staff or the governing body? Public hearing requirement prior to approval?
 - Deny licensure if there are outstanding fees, taxes, or forfeitures owed by the owner or associated with the property?
 - Enforcement – citation amount? Higher re-application fee after revocation? Automatic revocation under certain circumstances?

MISCELLANEOUS ISSUES

- Overlapping county ordinances AND Town ordinances.
- Homeowner’s associations, covenants, and condominium restrictions.
- Lessees renting their leased properties without owner consent.