

Short-term rental regulation and legislation

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Zoning and legislation:

Identical Senate and House bills have been introduced, SB 446 and HB 4722, again this session to prohibit local governments from treating short-term rentals as anything but a residential use under zoning.

Zoning ordinances in a number of communities have been newly interpreted to prohibit short-term rentals outright. These decision by local zoning boards of appeal or zoning administrators say short-term rentals are a commercial use not permitted in a residential zone because money is paid, or are not “residential” based on a reading of “residential” or “dwelling” combined with “single-family” to mean that occupation of the home must be permanent in nature. The effect of interpretation is to take away legal nonconforming use status from any property that has been used as a vacation rental, regardless of the length of time, unless it predates the zoning ordinance entirely.

In interpreting these terms, Michigan is an outlier. Most courts around the country conclude that receipt of income does not transform residential use of property into commercial use. The actual use of the property as a single-family dwelling rented to people who use it for the purposes of eating, sleeping, and other residential purposes does not violate a prohibition on commercial business activity as those terms are commonly understood.

Most recently, the Michigan Supreme Court, ____ Mich ____; 959 NW2d 522 (2020), denied leave to appeal the three unpublished opinions of the Court of Appeals in *St Clair Shores v Dorr*, Michigan Court of Appeals, Docket No. 349910 (October 29, 2020). Dorr rented his principal residence once in 2017 and then again to a single guest for a single night in 2018. He was convicted of a misdemeanor violation of the St. Clair zoning ordinance. In the opinion for the court, Judge Borrello concluded that because he was engaged in using his home to offer short-rental accommodations, he was operating a business out of his home, but it could not be a home occupation or business which must be clearly “incidental to the principal use of the dwelling unit for dwelling purposes.” Here, the opinion says, the “purpose of the business is identical, not incidental, to the principal use of the dwelling unit for dwelling purposes.” Judge Jansen concurred in the result only. Judge Swartzle dissented, arguing that a single-day’s rental could certainly be viewed as incidental, and at best, the ordinance is ambiguous and therefore unconstitutionally vague as applied to Dorr’s conviction for renting his home for a single night. “Simply put, if the City wants to regulate or prohibit Airbnb rentals and the like, then it should clearly say so.”

Other local governments have amended their zoning ordinances,ⁱ for example:

Casco Township (Allegan) covers both short-term and long-term rentals in its zoning ordinance by stating them as permitted uses in each zone, although capping short-term rental days per year. Casco also has a regulatory ordinance for just short-term rentals.

The Village of Elk Rapids divides short-term rentals into business units that rent for more than 14 days and personal units but permits them in all residential zones subject to a regulatory ordinance. The regulatory ordinance, not the zoning ordinance, creates a cap on the number of registrations, giving preference to owners whose principal residence is in the village, and defines “concentration: the number of Short-Term Rental Business Units allowed per designated area.” The village has not yet established designated areas or limits within them. Those are to be set by the city council on or before the first village council meeting in December. In effect then, it would be a zoning ordinance, as it regulates use by area or district, although not adopted in accordance with the zoning enabling act.

Spring Lake now divides short-term rentals into short-term rentals and limited short-term rentals (up to 14-day terms, 14 total days per year) and says the former is “historically” a commercial use not permitted in residential zones. The latest amendment to the zoning ordinance names either short-term rental or limited short-term rental as a permitted use in particular residential districts.

Charlevoix also has a purported regulatory ordinance that is, in fact, a hybrid zoning ordinance (not meeting the requirements of the zoning enabling act). It divides short-term rentals into (1) personal units that rent between seven and 28 days per year when the owner is not present or for an unlimited period when the property owner is present; and (2) business units are an owner’s second unit or any unit rented without restriction on days per year. The city council, by resolution, establishes a cap on the number of business units allowed within the R-1, R-2, and R-2A zones with an initial cap of 80 business units.

Traverse City’s zoning ordinance regulates “vacation home rentals” which are permitted uses in particular districts, with certain restrictions.

Holland has provisions in its zoning ordinance for rental overlay districts that regulate all rentals but has not established any overlay districts.

Ann Arbor regulates short-term rental by both regulatory ordinance and zoning.

Regulation

Confusion seems to arise from the language in the bill requiring consistent regulation of rental and owner-occupied residences. What the bill states is that a zoning ordinance may not treat residences differently because they are occupied by a renter or by an owner. That is the central principle of the bill. It does not affect any other form of regulation of rentals – short or long term – and local governments have any extraordinary range of regulation outside of zoning.

Local governments in Michigan have housing codes, whether they use the default state housing code or adopt the International Property Maintenance Code. Those codes, in most communities, apply only to homes that are rented, whether short or long term, usually with local amendments, requiring registration or licensing. As examples:

Royal Oak (Oakland) uses the 2006 International Property Maintenance Code, with amendments including the requirement of a license for any rental. Licenses may be suspended or revoked for a broad range of violations, including conduct on the premises.

Berkley (Oakland) applies the 2015 International Property Maintenance Code without a license provision. Instead, it has a separate rental property ordinance that requires registration and certificate of compliance with the building code, fire prevention code, and zoning code.

Ferndale (Oakland) uses the 2015 IPMC and the Michigan Housing Law, with a requirement of registration of one- and two-family dwellings for rent. Ferndale, since 1956, has also required a business license for apartment rentals. This year Ferndale adopted a separate short-term rental licensing ordinance. The new Ferndale ordinance also includes zoning provisions, although they are not labeled as such, that the legislation would prohibit.

Grand Rapids (Kent) applies the 2012 IPMC with additional provisions for registration and inspection of rental dwellings.

Carson City (Montcalm) requires registration of all rental dwellings, with its own standards, rather than adoption of another code by reference.

Casco Township (Allegan) adopted a registration ordinance for short-term rentals only, with more basic terms than a full housing code. It requires registration, posting of street address, smoke and carbon monoxide detectors, minimum insurance, and notice to renters of regulations. Registration can be revoked for repeated violations by the owner or renters of the rental ordinance or other ordinances, including those for noise and controlled substances.

There's an app for that.

To respond to the issue and the concerns of local governments that do not have staff or prefer to contract for services, there are contract inspectors, and both [Granicus](#) and [Safebuilt](#) offer services to implement short term (and long term) rental regulation.

ⁱ Spring Lake Township did both, maintaining that the use was already prohibited before an amendment to the ordinance. *Reaume v Spring Lake Township*, 505 Mich 1108 (2020) affirming in part and vacating in part the judgment of the Court of Appeals in 328 Mich App 321 (2019)

SENATE BILL NO. 446

May 13, 2021, Introduced by Senators NESBITT, ANANICH, SANTANA, MACDONALD, HOLLIER, BARRETT, BIZON and SCHMIDT and referred to the Committee on Regulatory Reform.

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
(MCL 125.3101 to 125.3702) by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 206b. (1) For the purposes of zoning, all of the
2 following apply to the rental of a dwelling, including, but not
3 limited to, short-term rental:

4 (a) It is a residential use of property and a permitted use in
5 all residential zones.

6 (b) It is not subject to a special use or conditional use

1 permit or procedure different from those required for other
2 dwellings in the same zone.

3 (c) It is not a commercial use of property.

4 (2) This section does not prohibit regulation applied on a
5 consistent basis to rental and owner-occupied residences for any of
6 the following:

7 (a) Noise, advertising, traffic, or other conditions, for the
8 prevention of nuisances.

9 (b) The number of persons that may occupy a dwelling.

10 (c) Inspections and inspection fees.

11 (d) Taxes otherwise permitted by law.

12 (3) As used in this section, "short-term rental" means the
13 rental of a single-family residence, a dwelling unit in a 1-to-4-
14 family house, or any unit or group of units in a condominium, for
15 terms of not more than 30 consecutive days.

16 Enacting section 1. This amendatory act takes effect 90 days
17 after the date it is enacted into law.