



Memorandum

To:	Stillwater Township Planning Commission	Reference:	Potential Zoning Ordinance Amendment – Residential Short-Term Rentals
Copies To:	<u>Barbara Riehle, Clerk</u>	Project No.:	<u>18410.000</u>
From:	<u>Evan Monson, Planner</u>	Routing:	<u></u>
Date:	<u>September 28, 2022</u>		<u></u>

SUBJECT: Potential Ordinances for Residential Short-Term Rentals

MEETING DATE: October 6, 2022

BACKGROUND

A short-term residential rental is a house that would be rented for a period of time of less than 30 days. In the last few years, homeowners have opened up their homes for rent online by visitors who typically rent for a week or weekend. As noted previously, the township has no ordinances or rules addressing short-term residential rentals. The Planning Commission has reviewed and discussed the topic at a number of meetings now over the last few months.

The last meeting included review and discussion on two potential draft ordinances. The consensus of the commissioners was to move forward with a draft ordinance similar to the ordinance used by Marine on St Croix. This ordinance would create a licensing system, which residents will have to apply for in order to use their residence as a short-term rental.

POTENTIAL ORDINANCE DRAFT

Included in the meeting materials is a draft ordinance. It outlines terms/definitions, licensing of a short-term residential rental (license application, length of license, and revocation of licenses), standards for a short-term residential rental, and penalties for violations.

Legal Questions

At the last meeting, the commissioners discussed different items that would need responses from the Township's attorney. One of the issues was in regards to the issue including a 'hold harmless' clause. Per the Attorney, this would not be needed, or able to be added, due to the nature of such a clause being found or created when parties enter into a contract. Since the ordinance is not a contract, including the clause in the ordinance would not be necessary.

There was [a recent court case](#) ruling issued by the US Court of Appeals for the Fifth Circuit on August 22nd that impacts short-term rentals. The case was in New Orleans, specifically on whether the city could only issue licenses to run short-term rentals to residences if they were the owner's primary residence. The Court ruled that the city limiting short-term rental licenses to only an owner's primary residence was an unconstitutional violation of the 'dormant commerce clause'; a residency requirement that prevents an out of town or out of state owner from running a short-term rental would discriminate against interstate commerce.

While Minnesota is not within the Fifth Circuit (MN is within the Eighth Circuit), the courts here would likely refer to the opinion from this case, if and when a similar case comes before them. The Fifth Circuit's ruling opinion noted that municipalities should pursue "reasonable nondiscriminatory alternatives to achieve their policy goals". The opinion from the case noted that alternatives to requiring a short-term rental be owner-occupied are permissible, such as a requirement of having an operator on the site during a short-term rental, increasing license fees, capping the number of licenses, increasing enforcement, and enacting stiffer penalties. As a result of this recent court ruling, our Attorney recommended that the township look to address negative/undesirable effects of short-term rentals in our ordinance, while avoiding occupancy requirements that could run afoul of the courts.

Items to still consider

Given the 'change-up' created by the inability to limit a short-term residential rental to only owner-occupied dwellings, the commission should discuss whether to move forward with an ordinance that addresses potential nuisances/issues through performance standards, whether to maintain the current status-quo for short-term residential rentals, or discuss the option of not allowing short-term residential rentals at all.

The Planning Commission is encouraged to review the attachments and note possible changes or issues. If, based on review and discussion the commissioners finds the draft acceptable, a motion can be made to recommend the draft be reviewed by the Town Board at a future meeting for potential adoption.

Attachments

- Clean and redlined drafts of potential ordinance (draft 5)

