

CITY OF MADISON, WISCONSIN

A SECOND SUBSTITUTE
ORDINANCE

PRESENTED
REFERRED

January 7, 2020
Plan Commission; Board
of Health

Creating Section 9.29, amending Section 28.151, amending and creating portions of Section 28.211 of the Madison General Ordinances to create an annual permit for tourist rooming houses, to amend the supplemental zoning regulations applicable to tourist rooming houses, amend the definition of Tourist Rooming House and Bedroom, and create a definition for Primary Residence.

PUBLIC HEARING

P.C. 1/27/20
C.C. 2/04/20

LEGISTAR #58895

Drafted by: John Strange

Date: February 4, 2020

SPONSORS: Aids. Martin, Bidar, Heck &
Rummel

DRAFTER'S ANALYSIS: This ordinance creates a new requirement that individuals operating a tourist rooming house (TRH) obtain an annual TRH permit from the City. In the years since the City permitted tourist rooming houses the tourist rooming house agency has expanded and changed. With this expansion, staff has experienced challenges enforcing TRH regulations, including specifically the requirement that TRH operators obtain a public health license, pay room tax, and comply with applicable zoning regulations. Moreover, prospective TRH operators have expressed confusion over what regulations apply and who is responsible for enforcing them. By creating an annual permit requirement, this ordinance centralizes TRH requirements in one ordinance. Moreover, it requires TRH operators to submit documentation confirming compliance with applicable regulations and requires TRH operators to update this information on an annual basis. Under the ordinance, failing to do either of these things can result in permit denial or revocation. Further, this ordinance specifically provides for TRH inspections so that the Zoning Department can ensure that a TRH is being operated in a manner that is consistent with the documentation the operator has provided. In the event that the operator violates any of the requirements in this permitting ordinance, the ordinance contains a process for revoking the TRH operator's TRH permit.

This ordinance also makes several changes to existing TRH supplemental regulations contained in Sec. 28.151, of the Zoning Code. These amendments are necessary because as the TRH industry in Madison has expanded, it has become increasingly difficult for staff to enforce certain key provisions of the TRH regulations. For example, two critical provisions of the current TRH ordinance are that 1) the TRH must be the operator's primary residence, and 2) a TRH operator may only rent the TRH for 30 days per calendar year if they are not present at the time of the rental. The combined purpose of these two provisions is to ensure that the TRH operator is on premises the majority of the time a dwelling unit is being rented as a TRH and to prevent investors from purchasing properties for the sole purpose of renting out the entire unit as a TRH. However, increasingly, staff is encountering situations where TRH operators either do not understand or purposely mislead staff with regard to whether a specific dwelling unit being used as a TRH is their primary residence. Other TRH operators have either failed to keep a guest registry or have been reluctant to share the required guest registry, making it difficult or impossible for staff to determine if TRH operators are exceeding the 30 days of rental days per year when the TRH operator may be absent from premises. Finally, other TRH operators appear to be purchasing or leasing properties in Madison for the sole purpose of renting it as TRH.

Approved as to form:

Staff believes that the combination of the permitting ordinance and changes to existing zoning ordinances will lead to more effective enforcement of TRH regulations.

A substitute ordinance was created to delay the effective date of the ordinance until April 15, 2020 and to set a compliance date of July 1, 2020 for the permitting process. This will allow staff and operators time to administer and comply with the permit requirements contained in Sec. 9.29. This substitute also requires condominium owners who propose to use a condominium as a TRH to get permission from their condominium association before doing so. In this way, the ordinance treats condominium associations similarly to renters, who are required to provide proof that their lease allows them to use their apartment as a TRH. In addition to these two changes, this substitute also makes a number of typographical and stylistic changes.

This second substitute ordinance was created to implement changes suggested by the Plan Commission and sponsoring alders, including removing the requirement to identify all guests and provide for the make, model, and license plate number associated with a TRH guest. The substitute also adopts the maximum regulations allowed by state law for individuals operating a TRH for stays of more than 6 but less than 29 days. Finally, this ordinance specifies that a TRH host may not rent to multiple unassociated parties at the same time unless the host is going to occupy the TRH at the time of rental.

The ordinance shall be effective April 15, 2020.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 9.29 entitled "Regulation of Tourist Rooming Houses" of the Madison General Ordinances is created to read as follows:

"9.29 REGULATION OF TOURIST ROOMING HOUSES.

- (1) It shall be unlawful for any person to operate a tourist rooming house (TRH) in the City of Madison without a permit issued by the Zoning Administrator.
- (2) Definitions. For the purposes of this section:
 - (a) A "tourist rooming house" is defined in Section 28.211, MGO.
 - (b) An "operator" is a person who is the owner or lessee of property being used as ~~both~~ a TRH ~~and their primary residence~~ and who is conducting the TRH business by, among other things, interacting digitally and in person with guests and is identified in TRH listings and advertisements as the TRH "host." An operator may not be a LLC, Trust, Nonprofit, or other corporate entity.
 - (c) A "primary residence" is defined in Section 28.211.
- (3) Application. Any person wishing to operate a TRH shall submit an application in writing to the City Zoning Administrator along with a non-refundable application fee of one hundred (\$100) dollars. Any submitted application that is not completed and still pending within one (1) year of the date the application is filed and the application fee is paid shall be administratively closed and the applicant must begin the licensing process anew.
 - (a) All applications shall state each of the following:
 - 1. The name and address of the TRH operator.
 - 2. The address of the proposed TRH.
 - 3. Whether the TRH operator is the owner or lessee of the property.
 - 4. Whether ~~That~~ the proposed TRH is the primary residence of the operator.
 - 5. Whether the TRH operator proposes to use the TRH solely for stays of more than six (6) but fewer than twenty-nine (29) consecutive days.
 - 6. Whether the proposed TRH is contained in a dwelling unit that is subject to rules, regulations, or bylaws of a condominium association.
 - ~~5-7.~~ Any other information the Zoning Administrator may reasonably require.
 - (b) All applications shall be accompanied by documented proof that:
 - 1. The applicant has obtained a License from Public Health of Madison and Dane County;

2. The applicant has registered with the City of Madison's Treasurer's office to pay room tax as required under Sec. 4.21, MGO;
 3. In the case of a renter/applicant, a signed lease explicitly allowing the renter to operate a TRH at the property, a copy of the form used to notify property owner the TRH operation, acknowledgement from property owner that they have been notified of the TRH operation; and
 4. ~~Any other information the Zoning Administrator may reasonably require.~~ In the case of an owner who proposes to operate a TRH in a dwelling unit that is subject to rules, regulations, or bylaws of a condominium association, a letter of permission from the condominium association stated that operating a TRH in the dwelling unit is allowed by the association's rules, regulations, or bylaws.
 5. Any other information the Zoning Administrator may reasonably require.
- (c) All applications shall be accompanied by the following documentation:
1. Floor plans of the dwelling unit intended for use as tourist rooming house.
 2. A guest registry as required by the Zoning Code.
 3. Contact phone numbers and email addresses of both the property owner and TRH operator as required by the Zoning Code
 4. A listing of all websites and places where the TRH operator has advertised and intends to advertise the TRH.
 5. A signed and notarized affidavit stipulating that the TRH is the operator's primary residence or that the TRH will be used solely for stays of more than six (6) but fewer than twenty-nine (29) days.
 6. Any other information the Zoning Administrator may reasonably require.
- (4) Notice. Prior to receiving a TRH permit, the operator shall provide notice to the property owner (unless the property owner is also the operator). The notice shall be on a form provided by the Zoning Administrator and provide a brief description of the proposed TRH, including the maximum number of occupants and how the operation will meet the zoning code regulations contained in Sec. 28.151, MGO.
- (5) Inspection. Prior to issuing a permit to operate a TRH or approving the renewal of an existing permit, the Zoning Administrator shall inspect the premises to ensure compliance with Chapter 28, MGO (Zoning Code). ~~verify that the TRH is the operator's primary residence and to verify that the bedrooms to be rented meet the building code requirements for sleeping rooms.~~ At all other times, a TRH shall be available for inspection by City staff with at least forty-eight (48) hours prior written notice. However, if the City has probable cause to believe that a violation of this ordinance has occurred or is occurring, an inspection may occur at other times.
- (6) Permit Issuance. The Zoning Administrator shall grant a TRH permit upon verification of a complete TRH application and compliance with Chapter 28, MGO (Zoning Code), including specifically the zoning regulations contained in Sec. 28.151 related to the operation of a TRH.
- (7) Compliance with Zoning Code. No permit shall be issued or maintained unless the proposed TRH is in full compliance with Chapter 28, MGO (Zoning Code), including specifically the zoning regulations contained in Sec. 28.151 related to the operation of a TRH.
- (8) Transferability. Permits issued under this Section shall not be transferrable.
- (9) Permit Fees. The fee for a TRH operator permit shall be one hundred dollars (\$100) per year. Annual permits shall expire on the thirtieth (30) day of June after the granting thereof. Renewal permits shall be obtained on or before June 30 of each year as provided in sub. (10) below or be subject to a late filing fee of one hundred dollars (\$100) in addition to the permit renewal fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to possess or obtain a permit.
- (10) Renewal. TRH operator permits shall be renewed by the thirtieth (30) day of June of each year. Prior to receiving a renewal permit, the TRH operator shall provide the Zoning Administrator with any updates or changes to any of the documentation required in sub. (3) above or submit a statement to the Zoning Administrator stating there have been no changes to the information contained in the documentation. Prior to issuing a renewal permit, the Zoning Administrator may conduct a reinspection as provided in sub. (5) above.
- (11) Enforcement and Violations. The Director of Building Inspection or designee shall enforce this ordinance. Any person who operates a TRH without a permit or in violation of this

ordinance, upon conviction thereof, shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000). Each day or portion thereof such violation continues shall be considered a separate offense. Any fine imposed under this subsection shall be doubled if the violator's permit has been revoked under Sub. (12) below.

- (12) Revocation. The Director of Building Inspection or the Common Council may suspend, deny or revoke a permit issued hereunder for failure of a permittee to comply or maintain compliance with, and/or for violation of, any applicable provisions of this ordinance. Any such suspension or revocation is reviewable under Sec. 9.49, MGO. A revocation shall result in a 6-month prohibition on the issuance of a new permit at the property.
- (13) Initial Compliance Date. This ordinance becomes effective on April 15, 2020. All TRH Operators in the City of Madison shall obtain a permit as required by this section no later than July 1, 2020."

2. Subsection entitled "Tourist Rooming House" of Section 28.151 entitled "Applicability" of the Madison General Ordinances is amended to read as follows:

"Tourist Rooming House.

- ~~(a)~~ The establishment Tourist Rooming House shall have a valid Tourist Rooming House Permit from the City of Madison Zoning Administrator, as required by Sec. 9.29, MGO.
- ~~(ab)~~ The establishment Tourist Rooming House shall have a current a valid license from Public Health Madison and Dane County, as required by Wis. Admin. Code ch. DHS 195.
- ~~(c)~~ The Owner or operator of the Tourist Rooming House shall register with Treasurer's office and shall pay room tax as required under Sec. 4.21, MGO.
- ~~(bd)~~ The tourist rooming house shall be the operator's primary residence.
- ~~(de)~~ Only the owner of the property may operate a Tourist Rooming House, except that a renter may operate if explicitly allowed in the lease. A property owner proposing to operate a TRH in a dwelling unit that is subject to rules, regulations, or bylaws of a condominium association may only operate the dwelling unit as TRH if explicitly allowed by the condominium association.
- ~~(e)~~ If the tourist rooming house is operated for stays of more than six (6) but fewer than twenty-nine (29) consecutive days, the tourist rooming house may be operated for no more than 180 days in any consecutive 365-day period as provided in Wis. Stat. § 66.01014(2)(d). The 180 allowable days in any 365-day period must run consecutively and the TRH operator must give the Zoning Administrator notice of the first rental of any 365-day period.
- ~~(d)(f)~~ If the tourist rooming house is operated for stays of one (1) to six (6) consecutive days, the tourist rooming house shall be the operator's primary residence.
- ~~(g)~~ If an operator who is operating a TRH pursuant to sub. (f) above occupies the residence at the time of rental, there is no limit to the number of days the Tourist Rooming House may operate.
- ~~(efh)~~ If the operator an operator who is operating a TRH pursuant to sub (f) above does not occupy the residence at the time of rental, the tourist rooming house may operate no more than thirty (30) days per licensing permitting year; July 1 to June 30th. This regulation does not apply to individual stays of seven (7) consecutive days or longer.
- ~~(i)~~ If an operator who operating a TRH pursuant to sub. (f) above does not occupy the resident at the time of the rental, the TRH may not be rented to multiple unassociated parties at the same time.
- ~~(fg)~~ If the operator occupies the residence at the time of rental, there is no limit to the number of days the Tourist Rooming House may operate.
- ~~(ghi)~~ Maximum tourist occupancy shall comply with maximum family occupancy rules in the underlying zoning district regulations not exceed the lesser of two times the number of legal bedrooms in the dwelling unit or twelve (12). Children under the age of 12 shall not count toward the maximum tourist occupancy.
- ~~(ik)~~ A TRH shall be available for inspection by City staff with at least forty-eight (48) hours prior written notice. However, in the event the City has probable cause to believe that a violation of this ordinance has occurred or is occurring, an inspection may occur at other times.
- ~~(hjl)~~ Each establishment shall have a registry available on-site for inspection, indicating the true name of the individual making the TRH reservation; the telephone number, mailing address, or e-mail address for the individual making the TRH reservation; identity of all guests, dates of stay, acknowledgement of operator presence or absence length of stay, guest license plate number if traveling by motor vehicle, and whether the operator was present or absent during the each date of the stay, and length of stay. The registry shall include all information from the current registry year and the year immediately prior.

- ~~(km)~~ In addition to the requirement in sub. (l) above, each establishment shall provide the Zoning Administrator with a TRH report by February 1, May 1, August 1, and November 1 of each year indicating for the previous quarter the identity of all guests, dates of stay, and length of stay, guest license plate number if traveling by motor vehicle, whether the operator was present or absent during each date of the stay, and a listing of all websites and places where the TRH operator has advertised. Failure of the TRH operator to submit two (2) such reports by required deadlines in any one year period shall be grounds for automatic revocation of a TRH permit issued under Sec. 9.29.
- ~~(ln)~~ All advertisements of the tourist rooming house, including advertisements on the website of a Lodging Marketplace, must contain a clearly displayed valid TRH permit number issued under Sec. 9.29.”

3. Section 28.211 entitled “Definitions” of the Madison General Ordinances is amended by amending and creating therein the following:

“Bedroom. Any room of a dwelling unit in excess of kitchens, bathrooms and one (1) living room, which meets the standards for habitability habitable space in a Dwelling Unit other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas, is within the dwelling unit thermal envelope, that is at least seventy (70) square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation according to the Uniform Dwelling Code, Wis. Admin. Code chs. SPS 320-325, or the Uniform Multifamily Dwelling Code, Wis. Admin. Code ch. SPS 366. A room identified as a den, library, study, office, dining room, or other extra room that satisfies this definition will be considered a bedroom.

Primary Residence. A dwelling unit that serves as an individual’s true, fixed and permanent home for at least 183 days in a calendar year and to which, whenever absent therefrom, that individual intends to return. Additional characteristics of a primary residence include, but are not limited to, where an individual receives mail, claims residence for purposes of voter registration, pays for utilities, and lists as their address on state issued identification cards. An individual can have only one primary residence.

Tourist Rooming House. A building or portion thereof dwelling unit, other than a Hotel, Motel, Bed and Breakfast Establishment or Hostel, in which sleeping accommodations are offered for pay to tourists or transients for stays between one (1) and twenty-nine (29) days. The definition does not include private boarding, lodging or rooming houses not accommodating tourists or transients.

Lodging Marketplace. This regulation adopts the definition of Lodging Marketplace contained in Wis. Stat. § 66.0615(1)(bs).”

4. This ordinance shall be effective April 15, 2020.