

January 26, 2020

Detailed Comments on Proposed Tourist Rooming House Ordinance

From: Peter Taglia, District 13 Resident and Current Licensee

Members of the Plan Commission, Board of Public Health, Alders, Mayor and Staff:

My wife and I started renting our house as a Tourist Rooming House (TRH), through Airbnb, about 3 years ago. During that time we have done a lot to comply with city requirements including substantial paperwork, undergoing 3 inspections and interacting with City staff while hosting over 500 guests from approximately 25 countries around the world. We have made a conscious effort to fully comply with all City requirements and I am not aware of any compliance deficiencies or complaints against our TRH. I have lived in the neighborhood for nearly 20 years - my wife nearly 10 - and have been heavily involved with our neighbors, elected officials and city staff in making this a better area for everyone. It is from that perspective that I would like to provide detailed comments on portions of the proposed ordinance and suggestions for improvements.

In my opinion, the proposed ordinance does a good job of centralizing the TRH requirements, simplifying the bedroom occupancy calculations and making it more difficult for licensed TRH operators to rent entire homes for more than 30 days per calendar year if they are not present. **Unfortunately, I think the draft ordinance will make it even more difficult to obtain a TRH license and I am a firm believer TRHs can provide many positive attributes to residents, visitors and our city as a whole. For the following specific reasons, I predict that implementing the ordinance as currently drafted, and narrowing the TRH playing field, will have a negative impact on our community and offer suggestions to improve the regulation:**

1.) The existing and proposed TRH ordinance is one-size fits all. As the Monona Bay Neighborhood Association (MBNA), in their January 24th letter to the Plan Commission highlighted, *"It makes little sense to impose the same requirements on residents who wish to rent their homes during one two-week vacation per year and those having guests for the bulk of the summer tourist season or even most days of the year."*

Recommendation: Regulate TRHs with a tiered approach based on how often they are used. ¹

2.) The existing requirements for a new TRH license from Public Health are prohibitively expensive and the new Zoning permit fees will make this worse. These fees actively discourage residents who would rent out their houses for only a few weeks a year and the benefits they could bring during our peak travel season and major events like CrossFit. The fees are also not equitable compared to hotels. A new TRH license currently costs \$561 while a license for a new hotel with 30 rooms costs only \$640 and for a large, 200 room hotel with potentially large impacts to multiple neighborhoods, the cost is only \$913.² The proposed ordinance would add another \$100 per year for a permit from the Zoning Administrator for TRHs, but not hotels, thus further exacerbating the disproportion. Should a resident who wants to host people in their children's former bedroom after they have moved out pay *more* to be permitted than a 30 room hotel? ³

¹ e.g., a *de minimis* threshold for residents who host less than 7 or 14 days per year, a medium tier for TRHs who operate seasonally, such as no more than 90 days per year, and a full TRH tier for hosts like myself that operate most of the year

² <https://www.publichealthmdc.com/sites/default/files/city-of-madison/public-health/documents/Ldg-Pool-Body%20Art%20Fees%20Effective%2001-01-2020.pdf>

³ An initial TRH permit from Public Health Madison Dane County (\$561) plus the new \$100 permit from the City Zoning Administrator.

Recommendation: Revise the fees downward. Evaluate TRH regulations using an equity tool.

3.) The proposed ordinance will impose severe rules on all TRHs in response to complaints about a narrow subset of licensed TRHs who are in violation of the 30 day limit for hosting when the resident is not present. The requirements in proposed ordinance 9.29 section 3 (Application) are more consistent with regulations of a health and neighborhood menace, like smoking, than a balanced approach to regulating an activity that has positive as well as potential negative impacts. The letter and survey from the MBNA found that 28 of the 32 respondents "*feel the impact of short-term rentals has made their lives 'About the Same' or 'Better.'*" The proposed ordinance is inconsistent with the experience of Monona Bay neighbors and would be more appropriate to regulate an activity that threatened the quality of life of the vast majority of neighborhood residents. I believe a reasonable comparison of Section 3 (Application) of the proposed ordinance with the regulations applicable for conventional landlords helps illustrate the disparate treatment:

- All applications shall have "documented proof" that TRHs will follow the ordinance by "a signed lease explicitly allowing the renter to operate a TRH ... a signed form used to notify property owner the TRH operation, acknowledgement from property owner that they have been notified of the TRH operationA listing of all websites and places where the TRH operator has advertised and intends to advertise the TRH" and a "signed and notarized affidavit stipulating that the TRH is the operator's residence." ⁴ **No similar pre-emptive requirements are demanded from conventional landlords in the City of Madison.** For example, conventional landlords are required by ordinance to follow zoning rules for occupancy, building rules such as required smoke and CO detectors and storm windows for all single pane windows, etc. But landlords do not have to submit their leases for review by the City, are not subject to annual inspections, do not have to sign and notarize an affidavit that they have and will comply with building codes and do not have to list where their rental properties are advertised. **In the City of Madison, conventional landlords are assumed to be complying with the law and neighbors or tenants need to file a complaint to initiate additional investigation by the city.**
- Under proposed subsection 28.151 ("Applicability"), in addition to the severe permit requirements 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.... the identity of all guests, dates of stay, length of stay, guest license plate number... 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...all advertisements of the tourist rooming house must contain a clearly displayed valid TRH permit number..." **I am aware of no other housing or small business policy that is more aggressively invasive than these reporting requirements.**

Recommendation: Instead of requiring all TRHs to pre-emptively prove compliance, a more balanced approach in a new ordinance could differentiate and expand requirements for those TRHs that have received complaints. This approach would be more equitable and consistent with the way the City regulates other housing types, such as conventional landlords and homeowners. For example, the existing Chronic Nuisance Ordinance could be amended to better coordinate efforts against problem residences that are also licensed TRHs. As the MNBA letter highlights "*We think it wise to focus regulation and enforcement on those short-term rentals with the potential to become significant, continuing problems.*"

⁴ The draft ordinance also includes "Any other information the Zoning Administrator may reasonably require" under subsections a, b, and c. I discourage the Plan Commission and Council from delegating this much authority to staff.

Another option to better focus enforcement is the use of compliance services such as those that have already been used by the City to identify unlicensed TRHs on platforms such as Airbnb.⁵ These services can also identify hosts who are renting an entire unit for many days a year, and conversely, identify hosts who rent a shared space or bedroom for a small number of days per year.

4.) The "Vic Pierce Liquor" Problem. The City of Madison is surrounded by municipalities and towns, many of whom do not have the resources or desire to regulate TRHs as aggressively as the proposed ordinance. Discouraging TRHs in Madison will provide a perverse incentive for TRHs to locate in surrounding communities. Citizens and businesses in our area already experience negative impacts from the lack of hotels and other accommodations during economically-significant major events (e.g., CrossFit, Epic Users Group Meeting⁶) and this proposed ordinance will make that problem worse. It will also increase traffic, congestion and parking impacts by shifting accommodations to surrounding areas as more guests and visitors will drive into Madison. **A local illustration of the potential negative impacts of regulatory "cliffs" along municipal boundaries, in this case for alcohol sales ordinances, are the experiences of neighborhoods near Vic Pierce Liquor on Sherman Avenue, from 9 pm until Midnight, every day.**

Recommendation: Revise the proposed ordinance to be more proportional and recognize that some regulation of TRHs is better implemented at the County or State level than the by the City.

5.) The proposed ordinance will increase the use of "Medium Term" rentals with no additional regulation other than existing landlord/tenant ordinances; no permitting, licensing or inspection; and no collection of occupancy taxes. I am concerned that overly-aggressive TRH regulations will provide a perverse incentive for some property owners in the City of Madison to avoid the regulation altogether through the use of "30+ day" written or verbal leases. This is because according to the WI Dept. of Revenue, Pub 219, hotels and lodging marketplaces have many exemptions under Wisconsin law for stays longer than a month:⁷

"Furnishing lodging to the same person or entity (e.g., corporation, partnership, sole proprietorship) at a hotel for a continuous period of one month or more is not taxable. Note: If the sale of the lodging service is exempt from Wisconsin sales tax, it is also exempt from the local room taxes (i.e., municipal room taxes, local exposition district taxes).... A 'lodging marketplace' is a person or business that (1) provides a platform through which an unaffiliated third-party offers a short-term rental of a residential dwelling for a fee, for fewer than 29 consecutive days, and (2) collects the consideration for the rental from the occupant."

Experience has shown that excessive regulation can lead to evasive behavior, unintended consequences and undermine the rule of law (e.g., excessive cigarette taxes can drive illicit market sales; and cannabis use in permitted states versus prohibition states is not appreciably different but revenue and product safety is dramatically different). I predict that some property owners in the City of Madison will chose to implement "30+ day" written or verbal leases and evade the law by providing no early termination clause. In other words,

⁵ The City of Madison hired Host Compliance LLC in 2017 to identify units being rented to tourists or guests such as Airbnb, VRBO, Home Away for a one year contract with one-year renewal.

⁶ We have hosted multiple out-of-state employees of Epic Systems who said they are specifically encouraged by Epic to use Airbnb during the UGM because hotel shortages are adversely impacting the five day event that draws over 8,000 guests.

⁷ <https://www.revenue.wi.gov/DOR%20Publications/pb219.pdf>

property owners will offer guests a 30+ day lease, even one that's written, with the tacit assumption that the "guest" will stay much fewer than 30 days⁸.

6.) The existing TRH and proposed ordinance will encourage activities that make the housing affordability problem worse, not better. The current ordinance and proposed ordinance prevent the flexible use by residents of multi-unit properties. For example, the owner and occupant of the lower floor of a two-flat cannot operate a TRH in the second floor unit. The draft ordinance and summary do not use the term "affordable housing" but in conversation with staff and alders, it is clear that one goal of the ordinance is to prevent potentially affordable housing units from being diverted to a tourist housing market. *I agree with that goal.* But the proposed ordinance also prevents the upper unit of a two flat or an accessory dwelling unit (ADU) from being a TRH that operates seasonally (e.g., houses students during the school year and tourists during the summer), or operates in ways that provide flexibility to diverse family circumstances (e.g., an owner of a two-flat who anticipates housing their ageing parents in the upper unit at some point in the future but needs to offset the purchase cost or repairs required for an old two-flat). The experience of the MNBA from their survey highlights how TRHs can *benefit* affordability:

"The most frequently chosen benefits of short-term rentals are providing homeowners with needed extra income and allowing some homeowners to stay in their homes."

In addition, I already know of one two-flat in my neighborhood that was converted to a single unit specifically so that the young couple who owned the two-flat could host tourists upstairs as a TRH. Many studies have found that older two-flats are an important source of affordable housing that can provide residents with more options to stay in their homes than those permanently converted to single units.⁹

Recommendation: Change the ordinance to allow residents of multi-unit properties (such as two-flats and ADUs) to operate a TRH in secondary units on the property. The ordinance could limit these TRHs to a certain number of days a year to ensure that tourist housing wasn't the only or primary use (e.g., less than 90 days per year) or limit the duration that the TRH could operate (e.g., limit two-flat or ADU operators to a certain number of years) so that the housing unit wasn't permanently removed from the residential market.

Thank you for your patience if you read all of this. I encourage policymakers in the City of Madison to table the proposed ordinance and take the time to hear from all stakeholders the best way to balance the positive and negative potential of TRHs in our community.

Sincerely,

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⁸ How likely is this? A former problem rental property in my neighborhood, at 720 West Brittingham Place, was previously owned by an absentee landlord and managed by Madison Property Management. The absentee landlord was allowing students to sign leases that grossly exceeded the legal occupancy limit. It was up to neighbors and myself, working with building inspection, to identify the problem and force Madison Property Management to lower the occupancy. This is one of the largest local rental property management companies in Madison that was flouting the zoning rules; how many small time absentee landlords are also violating local rules?

⁹ <https://www.wbez.org/shows/wbez-news/the-tale-of-the-two-flat/8a385f49-42d6-4cd1-8978-666181064d59>