

# Community Presentation on TRH Rule Changes

# Planning Commission should refer the amendments to 9.29, 28.151, 28.211

1. The amendments **do not accomplish drafter's goals.**
2. Many other concerns are introduced.
3. The amendments should be rewritten with all **stakeholders'** input.
  - Zoning, Public Health, Treasurer
  - Licensed TRH Operators
  - Community Members
  - Alders
4. **Two Step Process**
  1. **Goals** – clearly articulate goals of ordinance changes
  2. **Codify** those goals into a new ordinance amendment

# Current Goals – as stated in DRAFTER'S ANALYSIS

From the analysis at the top of the proposed amendment:

1. Simplify process and eliminate confusion
2. Centralize requirements into one ordinance
3. Ensure only licensed TRH operators
4. Ensure TRH is a primary residence
5. Ensure operator on-premises except for 30 days per year
6. Enforce regulations
  - Public health license
  - Pay room tax
  - Comply with zoning regulations

# 1. Simplify process and eliminate confusion

## New Ordinance

- 9.29(3)(a)-(c) lays out numbered list of requirements.
  - 18 different requirements split across three headings
  - Still works with three different agencies.
  - Redefinition of terms defined elsewhere
    - Tourist Rooming House
    - Primary Residence

## Problems

- Convoluted. All Ordinances have gotten longer and more complicated.
- No consolidation at all since operators must still work through three different agencies.
- Far more layers of bureaucracy, not fewer.

**Currently:** works as is and **licensed 244 TRHs** since creation.

## 2. Centralize requirements into one ordinance

### New Ordinance

- 9.29 – application
- 28.151 – applicability
- 28.211 – definitions

And by reference:

- 4.21 – room tax
- 28 (all of) – zoning rules
- 9.49 – review standards
- Wis Stat 66.0615
- Wis Stat 66.01014

### Problems

- **This hasn't been centralized into one ordinance.**
- It is even more convoluted because it's being split between zoning and licensing chapters.
- More references to outside sources have been added.
- Does not consolidate other TRH areas: 7.51 (fees) 23.12 (records) 7.50 (public health) 23.61 (internet solicitation)
- Ordinances are organized already. No need for an omni-bus. Instead, just provide appropriate guides.
- **Currentlv:** Well organized by subject matter. Zoning already provides a simple 3 page guide.

# 3. Ensure only licensed TRH operators

## New Ordinance

- 9.29(11) - Penalties: \$500 to \$1000 per day for operating unlicensed TRH.
- 9.29(12) – Penalties double for licensed operators that lose their license.

## Problems

- Most penalties only apply to licensed operators (like the double penalty if your license is revoked)
- Incentive to scofflaws to stay below the radar, not to do things correctly.
- No provisions added to help the city inspect “suspected” TRH units.
- **Does nothing to ensure licensing and penalizes those that are licensed.**

**Currently:** Contracted services successfully find unlicensed operators. 25.09 Nuisance laws available to punish problem units and are well understood and fair.

# 4. Ensure TRH is a primary residence

## New Ordinance

- 28.211 – add definition of Primary Residence, Tourist Rooming House, and Bedroom
- 9.29(3)(c)(5) - Require notarized affidavit from operators

## Problems

- Primary residence is tricky since it's not easy to concretely define a primary residence.
- This is why the **IRS, US Statutes, Wisc Statutes** and our own **Ordinances** use a facts and circumstances test.
- What is the underlying goal? Limit operators to one TRH and require them to be present? **Then say that.**

# 5. Ensure operator on-premises except for 30 days per year

## New Ordinance

- 9.29(5) - Random, short or no notice inspections
- 28.151 TRH (l) keep a registry
- 28.151 TRH (m) – quarterly reports of the same info already available by inspection

## Problems

- Will require 30+ inspections to verify compliance.  
**Unworkable.**
- When does a short or no notice inspection make sense? Only at threat to life and limb.
- Quarterly reports are too late to do anything about it and a lot of administrative overhead.
- **Currently:** The same data is available by subpoena for suspected problem houses.



# 6. Enforce regulations - Public health license

## New Ordinance

- 9.29(3)(b)(1) – Application requires operator to provide already obtained public health license
- 9.29(10) – Renewal requires updated licenses

## Problems

- Ordering problem: public health doesn't always issue license in time for Zoning's license.
- This adds bureaucracy without helping to enforce public health licensing.

**Currently:** PH license works as is. PH can shut down operators by not issuing license.

# 6. Enforce regulations – Pay room tax

## **New Ordinance**

- 9.29(3)(b)(2) – Application requires operator to provide proof of registration with the Treasurer’s office
- 9.29(10) – Renewal requires updated licenses

## **Problems**

- New documentation that Treasurer doesn’t currently provide.
- Airbnb (and soon all Marketplaces) pay Treasurer directly, so unnecessary.

**Currently:** Automatic and manual payments work as is.

# 6. Enforce regulations – Comply with zoning regulations

## New Ordinance

- 9.29(7) – No permit issued unless in full compliance with zoning regulations
- 9.29(5) & 28.151 Tourist Rooming House (k)

## Problems

- Redundant - Already have this tool: building inspection can inspect for compliance with zoning regulations.
- Inspections are onerous for non-life threatening situations.
- Inspections **conflict** with the Ordinance since operators are allowed to be gone for 30 days.

**Currently:** Zoning law already allows inspection, plus PH is already inspecting for zoning issues.

# Issues Unrelated to the Drafter's Goals

- Privacy Concerns – 9.29(3)(c)(2) – Guest registry
- Privacy Concerns – drop-in inspections
- How is guest information held secure? How long will it be kept? Is this subject to FOI requests and if so, how will the city protect privacy?
- Drop-in inspections will be invasive to guests. **No one expects to be inspected without a life-and-limb threatening emergency.**

# Issues Unrelated to the Drafter's Goals

Lack of clarity for current operators

- **What happens if a current operator is denied when Ordinance takes effect?**  
Does this go as a review of a renewal or a review of a new license? What recourse do the 244 current operators have?

# The State Legislature - Preemption

- State legislature has preempted local ordinances for Uber, Lyft.
- Right-To-Rent legislation took some local control away because communities were making it impossible to operate short term rentals (7-day or more carve out).
- Wisconsin stepped in because municipalities didn't work to find compromise.
- Much of this amended Ordinance is taken up with adaptive language trying to carve out control of 7-29 days stays where the state allowed it.
  - **The adaptive language conflicts with the Statute as it stands now!**
    - 9.29(3)(c)(5) & 128.151 TRH(e) seems to be **impermissibly** requires an operator to select **either** 7-29 day stays **or** 0-6 day stays.)
- The way for Madison to succeed here is to **work with all stakeholders** including licensed TRH operators to find a middle ground that works for the community as well.

# How should this have been written?

We respectfully request the Planning Commission:

- Refer this amended ordinance
- Create a subcommittee of City, TRH Operator, and Community Members, tasked with:
  - Write a **Set of Goals** for TRH operations in Madison,
  - Submit the goals to the Planning Commission for approval,
  - **Write an Ordinance** that minimally implements those goals, and
  - Return the ordinance to the Planning Commission for passage.