

**CITY OF MADISON  
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**MEMORANDUM**

TO: Madison Common Council  
City of Madison Plan Commission

FROM: John Strange, Assistant City Attorney

RE: Tourist Rooming House Regulations

DATE: February 10, 2020

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Our office has received several requests for a summary of the proposed TRH ordinance. Therefore, the purpose of this Memorandum is to supplement the Drafter's Analysis accompanying the proposed Tourist Rooming House regulations in Legistar #58895 and briefly highlight the history of Madison's Tourist Rooming House regulations.

When the City enacted the initial Tourist Rooming House ("TRH") regulations in 2013, it created a definition for a TRH and Supplemental Regulations to govern their operation. Two key regulations in the initial law require that a TRH operator be the owner or lessee of the TRH and that the TRH be the operator's primary residence. The purpose of these two regulations is to ensure that properties are not purchased or leased for the sole purpose of then operating as a TRH. The policy reason behind these regulations is to ensure that Madison does not lose affordable housing stock to TRH operators and to preserve the residential character of its neighborhoods.

Another of the key regulation included in the initial law states that if a TRH operator occupies the TRH at the time of rental, then there is no limit on the number of days the TRH could be rented. However, if the TRH operator does not occupy the TRH at the time of rental, then the TRH can only be rented 30 days per calendar year. The purpose of this regulation is to reinforce the primary residence regulation and prioritize operator presence at the time of rental.

Finally, the initial zoning regulations includes a requirement that the operator be appropriately licensed by Public Health Madison Dane County and pay the appropriate room tax to the Treasurer's Office, thus recognizing that TRH operators have three key regulatory requirements in the City, and making each of those requirements enforceable through Zoning.

Since the enactment of the original TRH zoning regulations, staff has encountered challenges identifying TRH operators, confirming that TRH operators use the TRH as their primary residence, and ensuring that TRH operators occupy the TRH at the time of rental for all but 30 or less rentals. As a result, Madison has experienced some of the issues faced by other cities, including properties being purchased or leased for the sole purpose of renting as a TRH. Meanwhile, because there are three regulatory pieces to TRH operation in Madison (Health, Treasurer, and Zoning) there is no single agency residents and operators can look to for purposes of TRH questions, concerns, or administration.

As the City's handling of TRHs has evolved, so too has the State's. For example, in 2017, the state enacted Wis. Stat. § 66.01014 to preempt, with a few exceptions, cities from regulating TRHs renting for individual stays of more than six (6) but fewer than twenty-nine (29) consecutive days. This legislation was primarily targeted at vacation areas where the majority of rentals are for a full seven (7) day week. Since the state law does not require that a TRH used for stays of more than six (6) days be the operator's primary residence, the City cannot impose that same requirement for such rentals. Within this type of rental, though, cities can still require such operators to obtain a TRH permit. A city may also limit the number of seven (7) day plus stay rentals to no more than 180 days in any consecutive 365-day period. Further, cities may identify that the 180 days must run consecutively.

In addition to enacting Wis. Stat. § 66.01014, the State also recently enacted a law, effective on January 1, 2020, requiring all lodging marketplaces to collect and remit room tax from TRH operators to municipalities. City staff continues to monitor how the various lodging marketplaces will comply with this new law. Meanwhile, the City continues to collect room tax pursuant to a Voluntary Collection Agreement with Airbnb and from individual hosts who use rental platforms other than Airbnb.

The purpose of this new TRH law is to address some of the challenges staff has faced in enforcing the original regulations while incorporating the new state laws. It does so in the following key ways, the order of which is based largely on how they are presented in the ordinance.

1. Creates a permitting ordinance in Section 9.29, MGO, administered by the Zoning Department. Under this permitting process, TRH operators will be required to confirm compliance with all relevant regulations before receiving an initial or renewal permit. A failure to comply with all regulations could result in revocation of the permit. Under the ordinance, which would take effect on April 15, 2020, all hosts must be permitted by July 1, 2020.
2. Clarifies the TRH definition to state that a TRH is contained in a single dwelling unit. This change will prevent operators from attempting to use multiple dwelling units in a single building or portion thereof as a single TRH.

3. Creates a definition for primary residence to assist in the administration and enforcement of the primary residence regulation that has been a regulation since 2013.
4. Reaffirms that only the owner of the property may operate a TRH, except that a renter may do so if explicitly provided for in the lease.
5. Creates a new regulation stating that if the dwelling unit proposed to be used as a TRH is part of a condominium association, then the owner or lessee may only operate as a TRH if explicitly allowed by the condominium association.
6. Adopts the strictest regulations allowed under state law for rentals of more than six (6) but less than twenty-nine (29) days. Under the proposed law, such operators must still get a TRH permit and are limited to a total of 180 days, which must run consecutively in a 365-day period. This means that such TRH operation can operate for no more than 180 days of any 365-day calendar year.
7. Reaffirms that for stays of one (1) to six (6) days the TRH must be the operator's primary residence.
8. Reaffirms that if an operator occupies the TRH at the time of rental there is no limit to the number of days it can be rented.
9. Reaffirms that if an operator does not occupy the TRH at the time of rental, then they may only rent the TRH for 30 or less days per permitting year.
10. Creates a new regulation that states if an operator is going to rent to multiple unassociated parties at the same time, then the operator must occupy the TRH at the time of rental. The purpose of this new regulation is to address situation where a TRH operator rents to different parties at the same time and then is not present at the property to facilitate the stay.
11. Creates an easier to apply occupancy limit by stating that it is the lesser of two times the number of legal bedrooms in the dwelling unit or twelve (12), rather than referring to the maximum occupancy rules in the underlying zoning district. Children under the age of 12 do not count toward the maximum tourist occupancy.
12. Creates a new requirement that all advertisements for the TRH, including those contained on the website of a Lodging Marketplace, must contain a clearly displayed valid TRH permit number. Failure to comply with this regulation may result in zoning enforcement and revocation of the TRH permit.

As can be seen from this list, the proposed TRH ordinance reaffirms the key regulations contained in the initial TRH laws that have been in place since 2013. Only the owner or lessee of a property may operate a TRH. The TRH must be the operator's primary residence (unless the sole use of the TRH is for stays of more than six (6) but less than twenty-nine (29) days). The number of days a TRH may be rented is limited to thirty (30) days in a calendar year if the operator does not occupy the TRH at the time of rental. Moreover, many of the new regulations, such as the requirements contained in the proposed ordinance, are written to reinforce these key regulations and provide for more effective administration and enforcement of them. The balance of the new recommendations are largely to take into account changes in state law since the City's TRH regulations were originally enacted in 2013.

As noted above, if enacted, the ordinance would become effective on April 15, 2020 and all TRH operators would be required to have a permit pursuant to M.G.O. § 9.29 by July 1, 2020.