



Short-Term Rentals

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As short-term rentals (STRs) such as Airbnb and VRBO become more popular, local governments face classic issues associated with the influx of new uses that can create adverse side effects for the community. Some communities welcome the trend; others do not. For those questioning STRs, two competing interests arise: NIMBY versus “fundamental right to unfettered use of my property.” For unprepared communities, residential zoning and other public and private land use controls do not adequately address this growing trend. Some communities have tried to adopt amendments to their zoning ordinances to expressly restrict and/or regulate short-term rentals, but those amendments have fallen flat in court.

Seeking to address the competing interests, the Legislature created Wis. Stat. § 66.1014 in the 2017 WI Act 59, Biennial Budget Act. The statute contains one relevant definition for “residential dwelling” (“any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others”).¹

Section 66.1014 has several features of note.

First, municipalities cannot prohibit STRs for 7 consecutive days or longer, referred to here as the “prohibition” provision.²

Second, the Legislature addressed regulation of the “durational” aspects of

STRs. If a residential dwelling is rented for periods of more than 6 but fewer than 29 consecutive days, a municipality may limit the total number of days within any consecutive 365-day period to no fewer than 180 days and may require those maximum days to run consecutively. However, it may not specify the period of time during which the residential dwelling may be rented, such as requiring rentals stretch over winter.³

Third, the Legislature unambiguously retained local power – “[n]othing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling...”⁴ That section leaves local government free to regulate other aspects of STRs in a manner that is “not inconsistent” with the prohibition or durational provisions noted above. Significantly, “[a]ny person who *maintains, manages, or operates*” an STR “shall” obtain a local license, if required by local ordinance.⁵

Fourth, there are non-textual aspects to § 66.1014. The Legislature did not place the law under the city and village zoning enabling statute, Wis. Stat. § 62.23. Moreover, when the Legislature wants to completely regulate an industry and preclude or limit the ability for local regulation, it does so clearly. The Legislature did only two things with this statute: removing the power to prohibit STRs and setting durational provisions on the “total number of days.” Of all the other areas the Legislature could have withdrawn from local government (other than taxation, not discussed here), the Legislature did not address such areas but allowed local control and

licensing. The Legislature’s treatment of STRs stands in stark contrast to the Legislature’s sweeping removal of local power elsewhere, such as cellular tower regulation, wind farms, livestock siting operations, concealed carry, conditional uses, shoreland zoning and alcohol. In these areas, and many others, the Legislature’s regulatory framework has various and extensive subject matter components that are expressly meant to curtail local power.

Until recently, no Wisconsin court had addressed this statute. Just last month, in *Good Neighbors Alliance (GNA) v. Town of Holland*, Case No. 2019CV000269, the Sheboygan County Circuit Court, the Honorable Edward Stengel presiding, issued a decision of first impression in this state, specifically addressing various aspects of Holland’s STR ordinance that were specifically designed to address local concerns, harmonize the statute and address the pre-suit complaints and demands of the plaintiffs. The Town Board worked hard to draft an Ordinance that satisfied competing concerns, followed § 66.1014 and Wis. Admin. Code § ATCP 72 (administrative rules “tourist rooming houses” such as STRs) and could withstand judicial scrutiny.

GNA’s primary claim asserted the statute created a preemptive effect on local regulation, enshrining the right to free and unrestricted use of one’s property. They argued STRs involve private use of homes, not commercial activity. The court, however, found that the Legislature preserved local power due to carve-outs in the statute and that the Town acted comfortably within its powers.

GNA attacked specific features of Holland's Ordinance as conflicting with § 66.1014, such as:

- **Property Manager:** "Unless the Property Owner resides within thirty-five (35) miles of the short-term rental property, a local Property Manager must be designated for contact purposes and his or her name must be included in the application filed with the Town Clerk. The local Property Manager must reside within thirty-five (35) miles of the short-term rental property and must be available at all times the property is rented. The Property Owner must notify the Town Clerk within three (3) business days of any change in the Property Manager's contact information for the short-term rental and submit the revised contact information to the Town Clerk within the same time period."
- **Insurance:** "The Property Owner shall have and maintain homeowner's liability or business liability insurance for the premises that are used for short-term rental and shall provide written evidence of such insurance with the license application and renewal application forms."
- **Property diagram with application:** "A diagram drawn to scale showing the location of buildings and the on-site, off-street parking area(s) designated for tenants and invitees on the premises."
- **Revocation for Unpaid Fees, Taxes, Or Forfeitures or For Any Violation of State or Local Laws:** "A license may be revoked by the Town Board during the term of a License Year and following a due process hearing for one or more of the following reasons: (1) Failure by the licensee to make payment of delinquent fees, taxes, special charges, forfeitures or other debt owed to the Town. (2) Failure to maintain all required local, county and state licensing requirements.

(3) Any violation of local, county or state laws or regulations which, based upon their number, frequency and/or severity, and their relation to the short-term rental property, its owner(s), tenant(s), occupant(s) or visitor(s), substantially harm or adversely impact the predominantly residential uses and nature of the surrounding neighborhood."

- **One On-Site, Off-Street Parking Space:** "Not less than one (1) on-site, off-street parking space shall be provided for every four (4) occupants, based upon maximum occupancy."
- **Forfeitures:** "Any person who violates any provision of this chapter shall be subject upon conviction thereof to a forfeiture of not less than \$250 nor more than \$750 for each offense, together with the costs of prosecution, and in the event of default of payment of such forfeiture and costs shall be imprisoned in the Sheboygan County Jail until such forfeiture and costs are paid, except that the amount owed is reduced at the rate of \$25 for each day of imprisonment and the maximum period of imprisonment is 30 days. Each violation and each day a violation occurs or continues to exist shall constitute a separate offense."

With STRs, there are many side-effects related to the health, safety, and welfare of the public. The goal is to allow such use of the property for rentals yet protect the interests and quality of life for long-term residents. The interests being served include: preserving the character of a neighborhood; eliminating nuisances like noise, parking, and trash problems; ensuring building safety; over-occupancy; and responsiveness to neighbor complaints. Such concerns arose in the town of Holland, where it received complaints over a significant period of time, often occurring weekly during the summer months. Complaints of adverse

impacts caused by STR properties in the town of Holland included lewd behavior, unsafe fires on the beach, dogs running at large, excessive noise, trash left on the beach, traffic and RVs along narrow lake roads, and trespassing. One such trespassing event involved the complainant arriving home at night to find renters from a nearby property in the complainant's hot tub.

The town carefully considered its proposed ordinance over the course of several months, including several drafts to balance the Legislature's new statute, preservation of residential property rights and the local interests in protecting the public health, safety, and welfare. After passage of the Ordinance, GNA sought total repeal. The town passed an amended ordinance accomplishing the following:

- the elimination of any restriction on the number of days a property may be rented,
- elimination of restrictions on outdoor events on rental properties,
- elimination of minimum levels of insurance coverage,
- added a provision to allow short-term rental licensure by the town to proceed with evidence that a Wisconsin tourist rooming house license has been applied for rather than actually received,
- removed the requirement for property managers to be licensed with the town,
- removed insurance requirements for property managers,
- documented the appeal steps and procedures for licensure decisions,
- clarified the vehicle restrictions,
- removed annual building and fire inspections requirement,

- removed requirement to provide a property management agreement,
- removed town access to property without consent or inspection warrant,
- removed minimum bathroom requirement, and
- lowered the maximum forfeiture amount.

The Sheboygan Circuit Court found local government can regulate within the same field as § 66.1014 so long as it does not conflict. Due to its careful development of the STR ordinance, Holland survived four-factor preemption analysis and its ordinance was upheld.⁶

Any community desiring such an ordinance should consult with its legal counsel and should also determine if the Holland case has been reviewed by the Court of Appeals.

Licensing and Regulation 403

About the Author:

Remzy Bitar is an attorney with the Municipal Law & Litigation Group, S.C. and has been practicing in the area of Municipal and Civil Rights Litigation Defense for over 17 years. Remzy handles all aspects of such litigation in both state and federal court including trial and appeals. His experience ranges

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Remzy began his legal practice after college at Lawrence University, law school at Washington University School of Law in St. Louis, and then completed a judicial clerkship with the Supreme Court of Missouri for the Honorable Laura Denvir Stith. Contact Remzy at rbitar@ammr.net

1. § 66.1014(1)(b).
2. § 66.1014(2)(a).
3. § 66.1014(2)(d)1.

4. § 66.1014(2)(c).
5. § 66.1014(2)(d) & (2)(d)2b.
6. *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI 19, 373 Wis.2d 543, 892 N.W.2d 233.

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