

**Meeting Held Electronically**



**COMMITTEE OF THE WHOLE MEETING  
MONDAY, MARCH 21, 2022**  
(Immediately following the Village Board Meeting)

**AGENDA**

**CALL TO ORDER**

**ROLL CALL**

**AUDIENCE COMMENTS**

**TRUSTEE COMMENTS**

**DISCUSSION**

1. Short Term Rentals
2. Budget Overview Presentation

**EXECUTIVE SESSION**

**ADJOURN**

Initials: \_\_\_\_\_

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**VILLAGE OF NORTH AURORA  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR

**FROM:** MIKE TOTH, COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR

**SUBJECT:** SHORT TERM RENTALS

**AGENDA:** MARCH 21, 2022 COMMITTEE OF THE WHOLE MEETING

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At the February 7, 2022 Committee of the Whole meeting staff provided the Village Board with information pertaining to the Village's current authority to regulate short term rentals (Airbnb, VRBO, etc.) and how other communities are regulating such use. The Village of North Aurora currently does not have any regulations specific to short term rentals. As a non-home rule municipality, the Village lacks short term rental licensing authority and must rely on policing and code enforcement to maintain harmony. A majority of the communities that staff reached out to do not have specific regulations pertaining to short term rentals.

Several residents were in attendance at the February 7, 2022 Committee of the Whole meeting to voice their concerns and share specific incidences regarding a property in the Oak Hill Subdivision that is currently an Airbnb host. The Village Board gave the initial direction to staff to develop options for prohibiting short term rentals in the Village, which seems to be the preference, or limiting and regulating them (which seems to be the preference only if prohibiting them is something we cannot do).

After the meeting staff viewed video and pictures provided by one of the area residents. The images showed people walking on the walkway along the side of the Airbnb property, people standing in front of the Airbnb property and cars parked on the street. Staff also reviewed all police reports relative to the property. None of the reports involved an ordinance violation and only one can be reasonably tied to the short-term rental. Staff had begun working simultaneously with the Village Attorney on determining long-term options for the Village Board to consider. The Village Attorney has prepared information on the topic for discussion purposes.

Staff and the Village Attorney discussed two primary options for regulating short-term rentals – nuisance provisions and zoning. The Village Attorney does not believe there is enough evidence to declare short-term rentals a nuisance; therefore, zoning seems to be the best option for regulating the use. Short-term rentals were not nearly as well-known as they are now when the Zoning Ordinance was adopted in 2013. As such, a separate zoning use was never created for short-term rentals. The effect of not identifying short-term rentals as a permissible use in residential districts is that they are not allowed. All of this means that short-term rentals are currently only classified as a special use in the I-2 Industrial District and prohibited anywhere else.

Staff and the Village Attorney are of the opinion that the Village should define short-term rentals and be clearly delineated in relation to other similar uses (Bed and Breakfast Guest Home, Hotel, Motel, etc.). The Village Board may also want to consider where short-term rentals should be allowed and set a delineating timeframe in the definition for the use. As an example, Bed and Breakfast Guest Homes are offered for rent to transient guests *for a continuous period of thirty (30) days or less*. As the use can't lawfully be excluded, short term rentals must be classified as a use in a zoning district; otherwise, they would remain classified as a special use in the I-2 General Industrial District. Staff is seeking direction from the Village Board on the short term rentals.



# MEMORANDUM

TO: North Aurora Village Board

FROM: Drendel & Jansons Law Group

DATE: March 15, 2022

RE: Short Term Rentals in the Village of North Aurora

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The Village Board entertained complaints from several residents about one particular residence in the Village that is being advertised on Airbnb and rented out on a periodic basis. The Board gave the immediate direction to staff to develop options for prohibiting short term rentals in the Village. We have researched and analyzed the various options and discussed them with staff. Following is our assessment.

### Licensing Authority

As you know, the Village as a non-home rule entity does not have authority to license and regulate the business of short-term rentals. Regulation in this sense means licensing and regulating businesses with local regulations that might deviate from State law.

### General Enforcement Authority

We always have authority to enforce general ordinances and code provisions we have adopted. Thus, we can address excessive noise, disturbance of the peace, traffic, property maintenance, and parking requirements, etc. when there are violations. We can issue citations for violations and impose fines. If citations and fines don't stop the violations, we can seek an injunction (a court order) mandating compliance. In order to seek an injunction, we have to prove to the court that other methods of enforcement have not worked. No court will issue an injunction as an initial remedy. Injunctions are only issued if the other remedies have not worked to stop the violations.

### Nuisance

When activity on a property rises to the level of a public nuisance, we can seek a mandatory injunction to prohibit the nuisance. As a general proposition, whether a public nuisance exists depends upon the facts of a particular case. Courts will examine the following factors to determine whether a nuisance exists in a particular instance:

- The extent of the injury or harm incurred to the public;
- The extent that the operations, methods, or effects of any, comply with standards outlined by any applicable regulations (federal, state, and local);



## MEMORANDUM

- The suitability of the activity at the location;
- The gravity of the harm done to the public compared with the utility of the activity to the community.

Nuisance law is not preempted by state or federal regulatory laws. Thus, even though we do not have the ability to license and regulate short-term rentals as businesses, we can “regulate” them though established nuisance law, but this is a fact and circumstances matter. An injunction might be appropriate for one short-term, while an injunction would not be appropriate for another, depending on the activity that is unique to each property.

This ties back into the enforcement of the ordinances and codes that we already have in place. If ongoing violations occur in connection with a short-term rental and violations continue despite citations and fines, we could shut the short-term rental down by obtaining an injunction.

An injunction is an extraordinary remedy. That means that courts will not grant an injunction lightly. Likewise, a nuisance is activity that rises to the level of an extraordinary problem. Only an extraordinary problem merits an extraordinary remedy/injunction.

### **Nuisance Per Se**

The City of Naperville has taken the extraordinary step to declare short-term rentals a nuisance *per se*. The Naperville ordinance is not based upon the City’s home rule power, but on its common law authority to abate nuisances. Naperville has, essentially, made a finding that all short term rentals are a nuisance, and therefore, they are prohibited. Period.

Naperville’s stance is very aggressive. They are taking advantage of their legislative authority to make findings to declare short term rentals a nuisance. They are counting on the deference that courts show to legislative bodies in making those determinations.

This does not mean that Naperville’s ordinance will necessarily withstand judicial scrutiny. If a challenger is able to show that many short-term rentals are operated with no problems, no ordinance violations, no complaints from neighbors, etc., Naperville’s determination (essentially) that all short-term rentals are a nuisance may not stand up. Isolated examples of problems at short-term rentals may not be sufficient to convince a court that they are a nuisance in and of themselves.

### **Application to the Village of North Aurora**

The inquiry naturally starts with our own experience. We have some evidence that, at least, one short term rental in the Village is problematic. We had three different property owners complain in person to the board about the one property, but it’s only one property. We don’t have enough evidence in the Village that short-term rentals are a nuisance per se.

Digging a little deeper on that one property reveals that we have had no citations of ordinance or code violations connected to the one short-term rental. We have also received only three incident reports related to that one property.

## MEMORANDUM

- The first incident report from May 29, 2021, involves a complaint of a “suspicious person” when three people exited a vehicle and walked up the complainant’s driveway and around to the back door of the short-term rental.
- The second incident report, dated June 17, 2021, was generated by a mother complaining that her daughter’s father took her cellphone away.
- The third incident report, which is dated February 17, 2022, involved a complaint of improper parking, which involved the owner of the property parking in the street in order to shovel their driveway.

Those are all the complaints the police have for that property. None of these reports involve an ordinance violation. Only one of the reports can be reasonably tied to the short-term rental. One of the reports was against the owner of the property who parked in the street to shovel their driveway. We have virtually no record to be able to declare this property a nuisance based upon a history of ordinance or code violations in the Village.

While the property owners who complained to the board brought up other incidents, none of them involved the police. Legally, complaints, by themselves, are not evidence that an ordinance violation occurred. At best, it is evidence that a violation may have occurred

### Zoning

Zoning turns out to be the issue here. As you will see from our analysis of the existing Zoning Code and the law, short-term rentals are not allowed in single-family residential districts in the Village at the present time. ***Thus, the real decision for the Board to make is not whether to allow short-term rentals, but whether to allow short-term rentals and, if so, on what basis and in what zoning districts.***

We agree with Mike Toth that short-term rentals do not (typically) fall into the definition of bed and breakfast guest houses. Bed and breakfast guest houses are defined in the Code, and they are allowed in certain residential districts (R-3, R-4, & E-R) (See Table 7.1. Thus, short-term rentals that meet the definition of a bed and breakfast guest house could only be operated in these zoning districts.)

When the current Zoning Code was adopted in 2013, short-term rentals were not nearly as well-known as they are now. Thus, it’s not terribly surprising that the Code doesn’t define short-term rentals, and it doesn’t designate which districts they can operate in. The effect of not identifying short-term rentals as a permissible use in residential districts is that they are not allowed. (See Section 7.2, stating, “A blank space or the absence of a use from the table indicates that use is not permitted within that district.”)

Further, the Zoning Code deals with uses not specifically allowed in any particular district by fitting them into the I-2 Industrial District. This is not an unusual occurrence. The same analysis applied to cannabis dispensaries, which is why we needed to amend the Code to define them and identify the zoning districts they can operate in and the conditions/limitations that would apply to them.

## MEMORANDUM

### Residential Use vs. Commercial Use.

We have analyzed whether short-term rentals might be considered a residential use consistent with the provisions for residential uses in our Zoning Code (including single-family residential) and have determined that they are not. To begin with, the closest use to a short-term rental the current Code allows is a bed and breakfast guest house, which is identified as a “retail” use. The Code allows no other retail, commercial or business uses in any residential districts.

But is it really a commercial use? A 2021 First District Illinois Appellate court says a short-term rental is a commercial use. In Wood v. Evergreen Condo. Ass’n., 2021 Il App. 1st 200687, the court held that the activity of renting a house for short terms meets the common definition of a commercial activity. The court disagreed with the defendant in that case who argued it was not commercial use.

Further, the City of Chicago regulates them as commercial uses similar to hotels (Chicago Municipal Code §§ 4-14-020, 4-14-040(b)(1)-(9)) and taxes them. (Chicago Municipal Code § 3-24-020(A)(4) (amended Nov. 21, 2017); Chicago Municipal Code § 3-24-030(A)- (C) (amended July 25, 2018); Chicago Municipal Code §§ 3-24-060, 3-24-070 (amended Nov. 16, 2011) In fact, we could tax them as hotels under the Hotel Operators' Occupation Tax Act, which defines “hotels” as follows:

*"Hotel" means any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses, retreat centers, conference centers, and hunting lodges.*

The definition is not limited to hotels as we think of them. The Act provides that the power to tax applies to any “room”, defined as “any living quarters, sleeping or housekeeping accommodations” that is rented out to the public. 35 ILCS 145/2(4). The big exception is for “permanent residents” defined as “any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or rooms, in a hotel for at least 30 consecutive days.” 35 ILCS 145/2(5). The tax does not apply to permanent residents. The 30-day rule also seems to differentiate a short-term rental (that would be a commercial use) from a “permanent” rental that might be considered a non-commercial use consistent with residential uses.

Finally, short-term rentals do not fall into any of the categories of “home occupations” as defined in the Code (which prohibits customers between the hours of 9:00 PM and 8:00 AM).

All of this means that short-term rentals are currently only classified as a special use in the I-2 Industrial District, unless the Board wants to allow short-term rental use in other districts. This is the discussion that the Board should have: whether to allow them, and, if so, where?

Staff and we are of the opinion that we should define short-term rentals regardless of what the Board decides to do. We recommend that short-term rentals be clearly defined in relation to bed and breakfast guest houses so that the differences are clearly understood. We can provide the Board some suggestions to consider. We also encourage the Board to consider where short-term rentals should be allowed. We must allow them somewhere in the Village. We can't exclude any lawful use. Thus, some consideration should be given to where they should be allowed and what conditions or limitations should apply.