Wayzata City Council Workshop Meeting Agenda
Wayzata City Hall Community Room, 600 Rice Street
TUESDAY, JULY 23, 2024

WORKSHOP TOPICS FOR DISCUSSION:

1. Discussion of the Establishment of Public Art Committee (5:00-5:30 p.m.)
2. Discussion of Short-Term Rental Ordinance and Review of Draft Alternatives (5:30-6:15 p.m.)
3. Discussion of Council Vacancy and Appointment Process (6:15-6:30 p.m.)

City Council Workshop
City Council Agenda Report

MEETING DATE: July 23, 2024	**WORKSHOP AGENDA ITEM:** 1
TITLE: Discussion of the Establishment of Public Art Committee (5:00-5:30 p.m.)	
PREPARED BY: Nick Kieser, Parks and Environment Planner	
REVIEWED BY: Emily Goellner, Community Development Director, Jeffrey Dahl, City Manager	

DISCUSSION OBJECTIVE:
To provide feedback and direction on the potential to create a Public Art Committee.

2024-2026 STRATEGIC PLAN PRIORITIES RELEVANCE:
Sustain Community Character and Safety
The Strategic Plan notes the establishment of a Public Art Committee as a desired outcome and target for 2024. A public art installation is also noted to be completed in 2025.

BACKGROUND:
As part of our Strategic Planning process, the Council has identified the creation of a Public Art Committee as a key initiative aimed at installing public art throughout Wayzata. Currently, the city operates under a Public Art Policy enacted in 2015, which outlines procedures for proposing public art. This policy convenes an ad-hoc Committee for each proposal, typically tied to specific development or infrastructure projects.

Notably, the Big Water art piece at the Lake Street/Arlington Circle/Eastman Lane roundabout was planned and installed in 2016-17. For this installation, a Public Art Selection Committee was created with six resident stakeholders and one staff member. The Committee took approximately one year to complete the art selection process with the help of a local consultant called Forecast, to conduct the artist and artwork selection process. The installation of the project took approximately eight months to complete. The project cost was $60,000 which was funded by the Promenade development and the Wayzata Rotary. From 2016 – 2017, the Meyer Place development completed a similar process to incorporate a public art piece at the corner of Lake St E and Ferndale Rd S.

City staff has conducted research on public art committees across Minnesota to determine how a committee could be suitable for Wayzata. Informational staff meetings were held with municipalities including Minneapolis, Hastings, Fergus Falls, Northfield, and Duluth, each of which maintains either a Public Art Committee or an Arts and Culture Commission. While these entities vary in their committee structures and management approaches, their common goal is to fund, select, install, and maintain public art within their respective communities with support from the City Council and City staff.

Before discussing the details of a potential committee and specific projects that could be completed, the Council's vision for a public art committee needs to be aligned. Staff would like to have a clear understanding of the Council's priorities with this initiative and knowing the "why", which will help staff create a work plan and an estimated timeline for implementation. To help this discussion question, purpose statements from Wayzata's current Policy as well as some neighboring cities are attached for review.

Committee Framework Considerations:
In response to the objectives and aspirations articulated by the Council, staff will initiate the development of a comprehensive framework designed to achieve these objectives. For this framework, the staff of the surveyed municipalities have identified the following crucial components:

- Work Plan/Master Plan – Work Plan/Master Plan: Establishing a clear work plan or policy framework is essential to define the scope and direction of projects and initiatives undertaken by committee

members. This plan will outline specific projects for implementation, subject to review and approval by the Council.

- Funding Source – Establishing a reliable funding source capable of supporting the goals and projects outlined in the work plan/master plan. Council approved an additional $50,000 from excess reserves for a total of $100,000 allocated for public art in 2025.
- Committee Membership – Determining the optimal number of committee members and drafting specific bylaws outlining the committee's roles and responsibilities.
- Committee Meetings – Establishing the frequency and scheduling of committee meetings.

These elements will be further deliberated with the Council in an upcoming meeting. Based on research findings and consultations with other municipalities, the staff will propose a recommended framework to guide future discussions and decisions.

Potential Next Steps:
The following outlines a proposed timeline of key objectives that must be accomplished should the establishment of a committee move forward:

- August/September - Develop a comprehensive committee framework to be presented at an upcoming Council meeting.
- October/November- Draft bylaws encompassing the mission statement, purpose, duties, objectives, meeting protocols, membership criteria, and ethical guidelines.
    - Present these bylaws to the Council for approval.
- December/January - Initiate the solicitation of applications from residents interested in participating on the committee.
- February/March - Collaborate with the committee to formulate a work plan delineating specific projects for approval by the Council.
- April - Commence implementation of the projects outlined in the approved work plan.

ATTACHMENTS:
1. Examples of Public Art Committee Purpose Statements
2. Wayzata Public Art Policy 2015-2016

Examples of Public Art Committee Purpose Statements

Wayzata Public Art Policy

Guide the city's approach to Public Art in new development or redevelopment;

1. Provide a mechanism for the inclusion of Public Art throughout the city;
2. Encourage the creation and enhancement of public spaces;
3. Enrich the city's public environment for its residents, business community, and visitors by providing a world class guest experience;
4. Insure the stakeholders in the community are given a forum share their perspectives, input, experience, and knowledge; and
5. Provide Public Art with the highest quality of aesthetic experience that has a "Home Town" feel and celebrates the proud history of the Lake.

Northfield Arts and Culture Commission

Assist Northfield in becoming a community in which arts and cultural activities:

1. Are recognized as vital components of community life worthy of investment and support from the public, private, and nonprofit sectors
2. Are valued and promoted for their economic benefits and development potential, especially in the downtown
3. Include new ethnic groups in Northfield's identity and sense of community
4. Represent an integral part of Northfield's educational mission and programs for young people
5. Engage the talents and involvement of retirees and senior citizens
6. Develop a wider array of opportunities for collaboration between faculty and student artists at the two colleges and community artists
7. Cooperate to enhance the public perception of Northfield's identity and quality of life in the community itself, the surrounding region, and beyond

Edina Arts and Culture Commission

The Commission strives to build a vibrant community through support of arts and culture and advises the City Council on artistic initiatives in Edina, including the Edina Art Center.

Fergus Falls Public Arts Commission

- Our vision is that we can add a piece of public art no less than every 5 years.
- We envision that we will educate the City about art.

- We aspire to continue to be recognized nationally as a city that develops and supports arts and artists.
- We will work toward developing a dedicated revenue stream.
- We look to solve the following problems for the greater good:
    - We will help to foster more culture within our community.
    - We will help cultivate understanding and education that arts have intrinsic and extrinsic value.
    - We envision that the arts will become a catalyst for Fergus Falls becoming a destination place.

Public Art Policy 2015 -2016

ADOPTED BY THE WAYZATA CITY COUNCIL AT MEETING HELD NOVEMBER 17th, 2015

City of Wayzata
Public Art Policy 2015-2016

Purpose and Intent.

The purpose of this Public Art Policy is to foster the city's Comprehensive Plan goal of addressing the community's desire to increase the city's public arts programs and policies. The intent of the Public Art Policy is to develop processes, policies and procedures that will:

1. Guide the city's approach to Public Art in new development or redevelopment;

2. Provide a mechanism for the inclusion of Public Art throughout the city;

3. Encourage the creation and enhancement of public spaces;

4. Enrich the city's public environment for its residents, business community, and visitors by providing a world class guest experience;

5. Insure that stakeholders in the community are given a forum share their perspectives, input, experience, and knowledge; and

6. Provide Public Art with the highest quality of aesthetic experience that has a "Home Town" feel and celebrates the proud history of the lake.

Public Art

Public Art is defined as works of craft or art in any medium that have been reviewed against adopted and standardized criteria, approved, and formally accepted for ownership by the city for installation in public locations, in or on publicly owned buildings, on publicly owned land, or in or on other locations leased or provided to the city through donation, easement or other means for a period of not less than five years duration. Public Art includes sculpture, murals, fountains, statues and any other form of two or three dimensional work in any medium appropriate for the location otherwise meeting the approval criteria. All art, sculpture or other works owned by the city acquired through any means or process and located in or on publicly owned or controlled buildings or land at the adoption of this policy are, by definition, Public Art as herein defined.

All proposed Public Art must comply with applicable statues such as the Uniform Municipal Contracting Law, environmental laws, and disability/accessibility laws. In addition, all proposed Public Art must meet the following guidelines before being considered:

1. The selected artist shall enter into a Personal Services contract with the city for the creation of the Public Art that shall include but not be limited to the following:
   a. The Public Art is made of quality materials.
   b. The Public Art is free of defects.
   c. The Public Art is an original product of the artist's own creative efforts and do not infringe on any third party's copyrights or other intellectual property rights.
   d. The complete work for the Public Art will be done in a timely and professional manner.
   e. Public Art that is purchased, commissioned or accepted as a donation Public Art shall be the property of the city.

f. The Public Art shall remain accessible to public viewing for as long as the city owns the Public Art.
g. The City retains the right to transfer Public Art from one city-owned site to another, as it deems necessary, to place the Public Art in storage, in another facility, or to make a temporary loan to another agency or organization.
h. Absolute ownership and control of the Public Art must pass to the city, including all drawings, proposals, sketches, and other conceptualizations of the Public Art. All intellectual property rights, including patents, copyrights and moral rights, must be assigned to the city. The applicant artist or donor shall waive all intellectual property rights, including moral rights, to the Public Art.

2. The city retains the right to deaccession of Public Art if it no longer desires to retain it as a component of the public art program.
3. Donations will not be accepted where a condition of donations requires permanent exhibition.
4. The city is discouraged from accepting donations of Public Art when funds for the on-going maintenance and repair of the gift are not included and when as a condition of the gift the city is required to pay for the installation, framing, and restoration.
5. In any city initiated Public Art project, the city shall take into account the on-going maintenance and repair anticipated throughout the lifespan of the project in its operating and maintenance budgets.
6. Artist or provider may request a specific site. However, each placement will be evaluated based upon suitability of the Public Art for the site. The Public Art Selection Committee will make a recommendation to the City Council concerning an appropriate site the Public Art.
7. In the judgment of the majority of the Public Art Selection Committee and the City Council, the Public Art must be appropriate for display to the general public.
8. If the proposal accepted by the city is a concept design for Public Art then the final product must match the approved concept design.

Process for Selection

Public Art may be acquired through limited competition, open competition, artist invitation, or direct purchase. The process for evaluating proposals is as follows:

1. Proposals for placement of Public Art must be made in writing to the city.
2. Public comment period announced whereby the city can obtain feedback from the community.
3. Evaluation by an advisory Public Art Selection Committee selected by the City Council on project by project basis.
4. Public Art Selection Committee shall make an advisory recommendation regarding the proposed Public Art to the City Council based upon the public comment and the Public Art Selection Committees' perspectives, input, experience, and knowledge.
5. Action by the City Council.

Public Review and Comment Period

Each Public Art proposal will be announced to the public at a regular City Council meeting and then made available for public review and comment for a minimum of thirty (30) days after the Public Art Selection Committee's recommendation has been submitted to the City Council.

Required Information for Public Art Proposal

The written Public Art proposal submitted to the city must include the following:

1. A photo or drawing of the Public Art.
2. Appraised value of the Public Art.
3. Description of materials used to create Public Art, including materials needed to display/secure the Public Art.
4. Dimensions of Public Art including appropriate base materials needed at the public site.
5. Description, including materials, dimensions, wording and location, of interpretive signage for the Public Art.
6. Statement regarding relationship to proposed site including aesthetic, cultural, or historic ties.
7. Statement of probable lifespan of the Public Art and annual maintenance needed to maintain Public Art integrity.
8. Statement as to whether the Public Art is unique or duplicates other work by the same artist.

Composition of the Public Art Selection Committee

The Public Art Selection Committee is not a standing committee of the city and each Public Art Selection Committee will be appointed on a project by project basis by the City Council. Each Public Art Selection Committee will consist of a minimum of seven (7) members. The seven (7) members shall be as follows:

1. One (1) interested member of the community-at-large.
2. One (1) City Council member.
3. One (1) representative of the City's Parks and Trails Board.
4. One (1) representative of the City's Heritage Preservation Board.
5. One (1) representative of the City's Public Works Department.
6. One (1) member of the architect or design team, or of the non-public site owner, if applicable. If no architect, design team member, or non-public site owner is involved, an interested member of the community-at-large will be appointed.
7. One (1) arts professional, if available. A qualified member and/or staff member of the Minnesota State Arts Board or Metropolitan Regional Arts Council, or Minnetonka Center for the Arts may serve in this capacity. Appointments will specifically exclude dealers, agents or representatives of artists applying or working before or with the panel.
8. Wayzata Historical Society Liaison: When the site under consideration is located within or near a locally or nationally designated historic property (or upon any individually designated city of listed property, the City Council will request the appointment of one (1) liaison from the Wayzata Historical Society to serve on the Public Art Selection Committee. The liaison shall be appointed by the Wayzata Historical Society Board.

Duties and Responsibility of the Public Art Selection Committee

In all cases, a Public Art Selection Committee decision is an advisory recommendation, with final authority remaining with the City Council**.** The Public Art Selection Committee shall work within parameters established by the City Council including overall budget, site constraints, and program goals. The Public Art Selection Committee's duties may include the following:

1. Based on the established budget, develop a realistic project scope, and determine if the budget is sufficient to warrant advertising for artists locally, regionally or nationally.
2. Drafting, printing and distributing a Request for Proposal (RFP) plus any specific instructions relative to the chosen site. The RFP will provide a clear statement of project goals, a copy of the site plan, if applicable, and any other materials or considerations related to the project review.
3. Advertise for RFP using normal distribution methods, providing adequate time for artist response.
4. Review, evaluate, and discuss credentials, proposals and/or materials submitted by the artists.
5. Via majority vote, recommend the award of the commission or decide to further investigate any chosen finalists.
6. If further investigation of finalists is decided, draft a list of information and/or additional materials required. Conclude investigation as rapidly as possible, convene for further discussion and, via majority vote, recommend the award of the commission.
7. Inform the City Council in writing of the Public Art Selection Committee's advisory recommendation and cite reasons for their decision. If the Public Art Selection Committee cannot reach an agreement on an advisory recommendation, the matter will be referred to the City Council.
8. The Public Art Selection Committee retains the right to make no advisory recommendation if, in its opinion, there is insufficient merit among the submissions. If this occurs, the City Council will determine whether to recommend that the Public Art project be abandoned, begin a new selection process, or take some other course of action.

Criteria for Review

The Public Art Selection Committee will make a recommendation based upon the following criteria:

1. The proposed Public Art should be compared with the artists' best work and the best works in the city's collection. The acquisition should strengthen, rather than dilute the city's collection.
2. If the Public Art is to be erected outdoors, the physical condition of the Public Art should be considered in terms of durability in an outdoor setting. Any requirements for immediate or future conservation should be noted.
3. The Public Art must add interest and meaning to the public location in which it is placed.
4. The Public Art must be compatible in scale, material, form and content with its surrounding and form an overall relationship with the public location. Public Art must conform to any existing Master Plan for the site.

5. The Public Art must have social, cultural, historical and physical context to both the public location, both existing and planned.
6. The Public Art must have a "Home Town" feel and celebrate the proud history of the lake.
7. The city's overall collection shall strive for diversity in style, scale, media, and artists.
8. Public Art whose message is exclusively religious in nature will not be accepted.
9. Public Art whose message is exclusively political in nature will only be considered if the political message is of a historical context.

Deaccessioning Public Art

Deaccession is a procedure for the removal and disposal of Public Art from city ownership. The city shall remove and dispose of Public Art in its collection when it finds such action to be in the best interest of the public based upon the following:

1. As a means of improving the quality of the city's Public Art collection
    a. The Public Art has no relevance to the collection or serves no exhibition function.
    b. The Public Art has a duplicate in the collection.
    c. The Public Art no longer meets the current standards for Public Arts.
2. Due to concerns for public safety when a Public Art becomes a hazard or a public liability.
3. The Public Art is in a seriously deteriorated condition.
4. Removal should not be based on current fashion or taste. Attention should be paid to maintaining a Public Art collection which forms a continuum of the city's "Home Town" feel.

Recommendations for removal shall be made to the City Council who will then make a recommendation based upon the public benefit of the action to the City Council for final approval.

Each request for removal will be announced to the public a regular City Council meeting and then made available for public review and comment for a minimum of thirty (30) days before action is taken by the City Council.

Once approval for removal is granted, the Public shall be disposed of in accordance with Minnesota Statues Chapter 471.

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MEETING DATE: July 23, 2024	**WORKSHOP AGENDA ITEM:** 2
TITLE: Discussion of Short-Term Rental Ordinance and Review of Draft Alternatives (5:30-6:15 p.m.)	
PREPARED BY: Emily Goellner, Community Development Director	
REVIEWED BY: Jeffrey Dahl, City Manager	

DISCUSSION OBJECTIVE:
To review background information, priorities, and options for an ordinance regulating short-term rentals.

2024-2026 STRATEGIC PLAN PRIORITIES RELEVANCE:
Sustain Community Character & Safety
The City strives to keep its neighborhoods safe and maintain their character through reasonable ordinances that balance property rights with the greater vision of the community.

BACKGROUND:
In 2023, residents shared concerns with the City about the amount of homes being rented out on a short-term basis (less than one month) in two neighborhoods: Benton Avenue and the intersection of Central Avenue and Wise Avenue. Short-term rentals do not currently require a rental license. It was last discussed by the City Council in 2018. At the time, the issue was not critical enough to address and was left unregulated. The City still has authority to address issues of safety and nuisances. The City Attorney has analyzed the authority that the City Council has to regulate short-term rentals. A memo addressing this is attached.

In 2023, the City Council established a strategic priority focused on addressing the concerns of short-term rentals in the community. City staff began researching options in early 2024 and has the capacity to adopt an ordinance by the end of 2024 if that is Council's direction. The length of the process will be determined by the amount of time devoted to community engagement, the intricacy of the regulatory framework proposed, and if the ordinance requires Planning Commission review. Below is a list of considerations in staff's analysis of short-term rentals.

<u>Ordinances in Neighboring Jurisdictions</u>
Staff has reviewed ordinances in several jurisdictions. A comparison that ranks the ordinances from most restrictive to least restrictive is attached.

<u>Existing Short-Term Rentals</u>
Identifying the number of short-term rentals within the community is challenging since specific addresses are hidden in listings on booking websites. Using photos from the listings, staff has made their best effort to identify the locations of short-term rentals. A map of staff's best estimation is attached. It includes approximately 18 homes, mostly concentrated on Benton Avenue as well as near the intersection of Wise and Central Avenues. There are a variety of booking websites being utilized. AirBnb, VRBO, Trip Advisor, and Expedia are the most common. There are 1,111 total homes in Wayzata, so short-term rentals are comprising approximately 1.6% of the single-family housing stock. No listings in condominium or apartment buildings have been identified yet.

<u>Police Department Interactions</u>
Community Development staff reviewed information with the Police Department to understand if any specific safety and nuisance concerns were present. The Police Department noted that there have been several recent calls for service, primarily focused on parking on streets and suspicion of large parties. No more severe criminal activity has been identified.

<u>Investment Properties</u>

It is not yet clear to staff whether any of the homes being rented on a short-term basis are rented out throughout the entire year or if the owner is occupying the property for a portion of the year. Further research and outreach to owners could clarify this. This was the focus of the short-term rental ordinance discussion in the City of Excelsior earlier this year. Ultimately, the Excelsior City Council chose to limit short-term rentals to only homes that are occupied by the owner for a majority of the year. The house must be homesteaded and an affidavit confirming owner occupancy is required for a license. It is staff's understanding that this was the original intent of short-term rentals – that the owner could be out of town and rent their home temporarily or they are still on site and the renter is in an accessory unit on the same property. However, it has become a national trend to see these properties used instead as investments. In many cases, the owner does not live on the property and rents it out on a short-term basis throughout the year. This allows an owner to operate multiple rentals within a community without residing there. Some owners still live close by while others can live in another state.

Neighborhood Character Issues – Lodging Uses within Residential Neighborhoods

The amount of properties being used as investments in lodging opportunities has furthered the shortage of available housing within communities. While the percentage of homes in Wayzata being used for lodging is still relatively low, the conglomeration within a few neighborhoods has raised concerns. A conglomeration impacts the originally intended character for the neighborhood, which is residential. Long-term rentals don't typically have the same impacts that short-term rentals can. Long-term rentals (over 30 days, but typically leased on an annual basis) are regulated by the Rental Licensing program. Issues of building and fire safety, noise, parking, traffic, and trash problems are readily addressed through the licensing program. Residents often rent for a series of years and get to know their neighbors, vote, participate in community activities, and call Wayzata their home.

Staff's Recommended Priorities for a Short-Term Rental Ordinance

- Reduce noise, parking, traffic, and trash complaints
- Eliminate party houses
- Reduce the impact that lodging has on the character of a residential neighborhood
- Ensure building and fire safety
- Ensure that the demand for lodging options in a community are not impacting the availability of long-term housing options
- Reduce tensions between short-term rental property operators and neighbors
- Collect fees and/or future lodging tax from lodging uses, even if located in a residential neighborhood
- Establish location restrictions for these lodging options to prevent zoning inconsistencies and conglomeration

Bed and Breakfast Ordinance

The City has had a Bed and Breakfast Establishment Ordinance (Ch. 925) for many years, which requires a CUP. City records do not show evidence of any CUPs for this use. This ordinance could remain in place as it is or it could be used as a basis for a short-term rental ordinance. Amendments made to Ch. 925 require a public hearing with the Planning Commission prior to City Council review.

Engagement with Current Operators

The City has not yet contacted known operators within the City, but staff would recommend this as a next step in the process. Letters could be sent to known operators requesting input. Potentially, a meeting of operators could be hosted to facilitate the sharing of information.

Engagement with Neighborhoods

The City has received complaints from residents located in the two areas with known conglomerations: Benton Avenue and the Wise Avenue/Central Avenue area. In the process of reviewing an ordinance, neighbors could provide public comments at public meetings that are yet to be scheduled. Generally, the concerns heard so far are incorporated into the staff's recommended priorities for an ordinance.

Engagement with the Planning Commission

The Planning Commission's involvement in this issue is determined by the section of Code that is amended. If the Zoning Ordinance (Part 9 of the City Code) is amended, a public hearing is required. If there are suggested limits in certain zoning districts, this likely requires an amendment to the Zoning Ordinance. If the amendments are limited to only the Rental Licensing section of the City Code (Ch. 815), than only City Council review is required. This section will likely need clarification regardless to ensure that short-term rentals are defined and it's clear whether licensing is required or not. Currently, there is no mention of short-term rentals and they are left unlicensed.

Next Steps

If the Council agrees that this should remain a priority for 2024, then staff recommends:

- Council reviews staff's recommended priorities for a short-term rental ordinance to ensure that their largest concerns will be addressed
- Council authorizes staff to begin communication with operators
- Staff establishes a webpage on the City website for information updates and a general feedback form
- Staff returns to Council at a future workshop to discuss operator input and a recommended ordinance

ATTACHMENTS:

1. Legal Authority to Regulate Short Term Rentals (City Atty 6.20.24)
2. Short Term Rentals in Surrounding Communities Comparison
3. Short Term Rental Map_2024-7-18

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Memorandum

DATE: June 20, 2024

TO: Wayzata Planning Department and City Council

FROM: David G. Schelzel, Wayzata City Attorney

REGARDING: Legal Authority for Wayzata to Regulate of Short Term Rentals

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This memo looks at the extent to which the City of Wayzata can regulate short term rentals (STRs). Generally speaking, the City may regulate STRs as long as those regulations do not conflict with any state or federal law (which owner/operators of STRs also need to follow), and generally fall within a City's authority to adopt local controls for the health, safety and welfare of the community. The two main areas of City regulation are "zoning" and "licensing". The former essentially regulates where STRs can be located, and the latter regulates the facilities and operations of STRs.

I. Summary Questions & Answers

A. Question: How are STRs regulated in Minnesota generally?

Answer: STRs in Minnesota are regulated by local ordinances (when in place) and state regulations. No state statute completely supersedes a city's ability to regulate STRs within its borders. Essentially, cities may regulate STRs in the same way they can regulate other property rentals. City regulations generally focus on zoning and licensing ordinances, including inspections, and some cities impose local sales and special taxes.

B. Question: Do Minnesota state statutes and regulations for licensing of hotels, and food and beverage facilities apply to STRs?

Answer: Yes. Businesses in Minnesota that provide overnight sleeping accommodations (as defined in Minn. Stats. § 157.15) are licensed and inspected by the Minnesota Department of Health (MDH). STRs are not called out by name in state statutes and regulations, but are regulated as "hotels" (rooms rented for a period of less than one week). Minnesota Statutes increasingly regulate STRs through separate health and safety regulations, as well as taxes, but enforcement appears lax. The state is currently in the process of revising lodging codes that will likely impact STRs in the future.

C. Question: Has any Minnesota city successfully banned or strictly limited STRs?

Answer: Yes. Marine, MN implemented a licensing ordinance that banned certain types of STRs. As detailed more below, the court determined that its ordinance was a valid exercise of the city's police power. *Norusis v. City of Marine,* 1-5, 2021 Minn. Dist. LEXIS 462. Additionally, Excelsior, MN banned STRs and only recently modified its ordinances to allow them under a city licensing framework (Excelsior Minn. Mun. C. Ord. 660 Sec. 10-1301 (2024)). *See* more below.

II. Analysis

A. MN Statutes and Caselaw Support Cities' Broad Power to Regulate STRs.

Cities have broad powers under Minnesota law to determine and plan land-uses within their boundaries. Minnesota "provide[s] municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning." Minn. Stat. § 462.351 (referencing Minn Stat. §§ 462.351-462.364). The state does not impose significant requirements on a city in how it regulates STRs within its boundaries, provided the city regulations do not conflict with state requirements. Two primary cases in Minnesota support cities' authority to regulate in this area.

The first, *Norusis v. City of Marine*, involved a landlord plaintiff that claimed the city's STR ordinance, which applied to all areas of the city outside of the Central Business District, violated rights of equal protection. *Id.*, 1-5, 2021 Minn. Dist. LEXIS 462. The plaintiff argued that by allowing STRs when the owner was present to host, or when the owner primarily lived in the residence, while categorically banning STRs by a non-resident owner, the city was in violation of his rights. The court rejected this argument relying on the principle that to be in violation there must be an initial showing that "similarly situated persons have been treated differently." *Id.* at 18-19 (quoting *Dean v. City of Winona*, 843 N.W.2d 249, 259 (Minn. App. 2014)). "The distinction between owner occupiers and renter occupiers is genuine, not fanciful, in light of the added responsibilities of homeowners and their different relation to the property from renters." *Norusis* at 21 (quoting *Fletcher Prop., Inc. V. City of Minneapolis*, 947 N.W.2d 1,22 (Minn.2020)).

The second, *Dean v. City of Winona,* found that cities may limit, even drastically, the amount of STRs within the city, and upheld a City of Winona ordinance limiting the number of STR rental licenses to 30% in any one-block area. *Id.*, 843 N.W.2d 249, 263 (Minn. Ct. App. 2014).

B. State Regulations for STRs Must be Followed in Addition to City Regulations.

City STR regulations are one layer of regulation that must be followed in addition to an existing layer of state regulations, such as those requiring lodging licenses, fire code inspections, and health code inspections that are administered by state agencies. These include following:

- *Hotel License from MDH*. An STR falls under the definition of "hotel" in the Minnesota Health and Public Safety code. Minn. Stat. § 157.15 subd. 7; Minn. Stat. 299F.391 subd. 1(a). The Minnesota Department of Health ("MDH") takes the position that home rentals

for one night or more are treated like hotels and require hotel licenses. *See* https://www.health.state.mn.us/communities/environment/recreation/lodging

- *Taxes*. STRs are also subject to additional taxes on a state level. Minnesota defines the renting or licensing of real property for less than 30 days as "retail sales" and subjects accommodations providers and intermediaries, such as Airbnb, to additional sales tax. *See* Minn. Stat. §§ 297A.61, 297A.63.
- *Notice Posting*. If a city requires a rental license be posted in a building with multiple dwelling units, such posting must include a statement alerting tenants that information regarding the rights and obligations of landlords and tenants is available through the Minnesota Attorney General ("AG") including the AG's phone number and address. *See* Minn. Stat. § 471.9995.
- *Rent Control / Federal Housing*. Two other statutes apply in the regulation of rent control and with respect to impact statements required by owners of federally assisted rental housing. *See* Minn. Stat. § 471.9996; Minn. Stat. § 471.99997.

It is important to note that the state-level regulations are evolving. The topic of STRs is of high interest among state legislators and rule makers, and MN Dept. of Health (MDH) is in the process of revising Minnesota Lodging Codes likely to affect "Yurts, Airbnb's and other vacation rentals." Minn. Lodging Rule Rev. ch. 4625 - MN Dept. of Health (state.mn.us).

C. How other cities have regulated STRs.

1. Excelsior initially banned, then limited, STRs.

The City of Excelsior previously banned STRs but, grappling with enforcement, sought a way to balance competing interests. *See* Todd Carlson, A Letter from the Mayor, Spring Newsletter 2024 at 1. As a result, Excelsior now allows STRs with certain restrictions. City Ordinance 660 restricts rentals to transient guests for periods less than twenty-eight consecutive days. Excelsior Minn. Mun. C. Ord. 660 Sec. 10-1301 (2024). Licensing is required and such rentals are "prohibited in residential districts except in a property that is a primary residence in the R1 and R2 zoning districts." *Id.* at 1302(b). STRs are also allowed in selected commercial and mixed commercial districts, but are prohibited in the General Commercial district. *Id.* at 1302(b). The ordinance includes licensing fees and performance standards, like parking and maintenance standards. *Id*. at 1303-04. Posting of notice is required on the property and provisions are made for enforcement regarding actual and "threatened violation." *Id.* at 1306-07. Excelsior also included a limited waiver of enforcement of primary residence requirements to allow operators time to become compliant. *Id.* at sec. 5. Relatedly, bed and breakfast establishments also require the primary owner-occupant to reside on or adjacent to the proposed bed and breakfast. Excelsior Minn. Mun. C. § 32-2. Ordinance 660.

2. Plymouth Allows STRs with Licensing.

"The Plymouth City Council adopted changes to the city code that address STRs, commonly referred to as Vrbo or Airbnb." Community & Econ. Dev. Dept., Rental Dwelling Licenses, Rental Dwelling Licenses | City of Plymouth, MN (plymouthmn.gov). All property owners must fulfil short-term rental licensing requirements including application, fee, rental inspection, completion of mandatory city training, and completion of a monthly lodging tax submittal. *See* Plymouth Minn. C. of Ord. § 2023-05.

3. Other Cities have varying requirements.

The City of Walker requires each property to have a non-transferable interim use permit, good only for two years. Applicants must obtain appropriate lodging licensing from MDH and property must be inspected by Walker's building official. *See* https://www.lmc.org/news-publications/magazine/july-aug-2023/tws-july-2023/).

The City of Red Wing uses both an interim use permit (non-owner occupied) and "certificate of compliance" (owner occupied) to regulate STRs. *See* https://www.red-wing.org/1144/Short-Term-Rentals#.

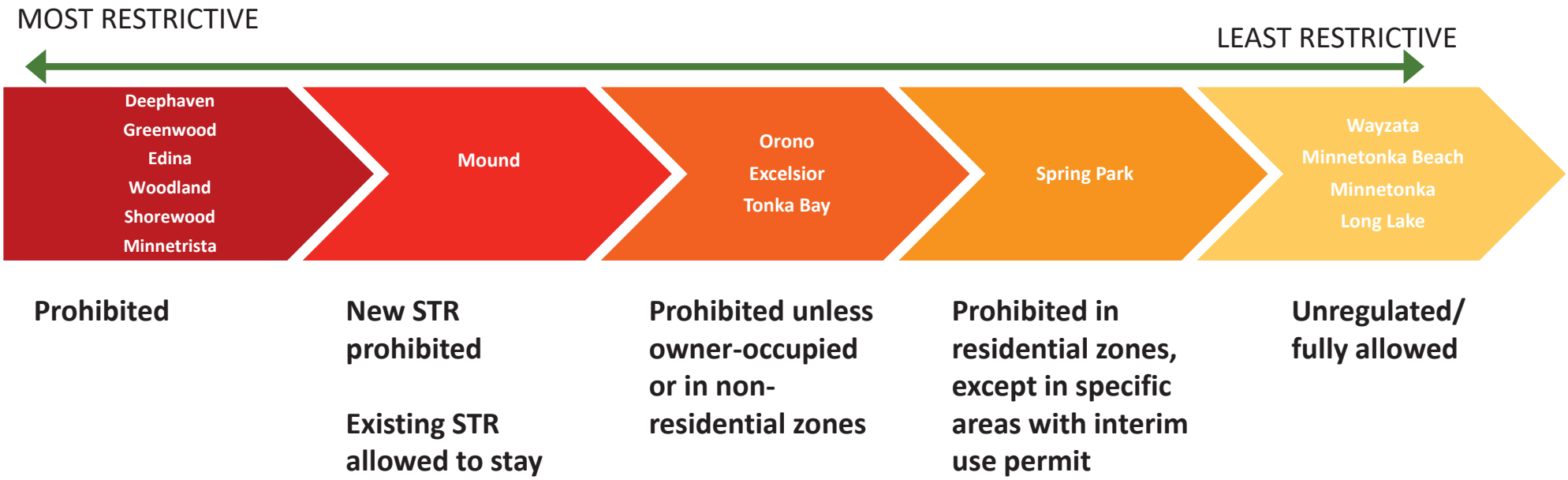
The City of New Brighton requires only a permit for landowners renting out short term rentals. *See* https://www.lmc.org/news publications/magazine/july-aug-2023/tws-july-2023/.

The City of Minnetonka does not differentiate between short-term and standard rentals. Every rental property must register and renew yearly. *See* https://www.minnetonkamn.gov/our-city/housing/renters-and-landlords; Minnetonka City Code Section 530.

III. Conclusion

Minnesota leaves many options open to cities regulating STRs. Cities across the state have adopted a variety of local approaches, running from minimal or no regulation, to stricter limits and requirements, and even banning some types of STRs altogether. In general, these approaches have either been upheld by Minnesota courts or remain unchallenged legally. State regulations (including licensing, inspection, tax, and health and safety regulations) apply to STRs in addition to city-level regulations. Given the nature of STRs, however, state and city regulations are not always understood or uniformly enforced. Upcoming revisions to the lodging codes in state law are likely to impact STRs.

STR Regulations in Surrounding Communities



Wayzata Rental Map

Legend

Short Term Rental Locations

- 18 Known Locations

0 0.25 0.5 0.75 1 Miles

N

This map shows approximate locations of known short term rental properties. Updates to this map will occur as needed.

Updated: July 18, 2024

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

City Council Workshop
City Council Agenda Report

MEETING DATE: July 23, 2024	**WORKSHOP AGENDA ITEM:** 3
TITLE: Discussion of Council Vacancy and Appointment Process (6:15-6:30 p.m.)	
PREPARED BY: Jeffrey Dahl, City Manager	
REVIEWED BY: Not Applicable.	

DISCUSSION OBJECTIVE:
To inform the Council about a pending vacancy on the City Council and gain alignment on an appointment process.

2024-2026 STRATEGIC PLAN PRIORITIES RELEVANCE:
Not Applicable.

BACKGROUND:
On July 18, Council Member Iverson submitted the attached intent to resign from the City Council, effective August 6, as a result of her residence moving outside the city limits of Wayzata. Because her term expires at the end of this year, the City's Charter indicates that the City Council should move to appoint a resident to fulfill her seat as appropriately and quickly as possible. The Council has two primary process options in filling her vacancy after the effective date of resignation:

- The Mayor individually solicits and ultimately nominates an interested community member for discussion at a regular meeting and then the Council considers appointment. This action could be accomplished at the August 7 City Council Meeting.
- The Council directs staff to solicit applicants to fill the seat, interviews applicants at a workshop in August, and then considers the appointment at the August 7 or August 20 Council Meeting.

A few other notes:

- Council Member Iverson would not be able to vote on the appointment as consideration cannot be made until the seat is officially vacant.
- If there is a 2-2 tie after three rounds of voting, the Mayor shall make the final determination.
- Typically, once the appointment is made, the new Council Member is sworn-in first thing at the subsequent meeting.
- The term, for whoever is appointed, will expire on December 31, 2024.
- This appointee is not obligated, through the City Charter or Code, to run or not run for City Council as a part of this year's general election.

ATTACHMENTS:
None