

Wisconsin Counties Association
2025 ANNUAL *GAME DAY*
CONFERENCE

1:00 – 2:00 PM

**Short-Term Rentals: Residential Use? Commercial
Use? What May a County Do?!**

WCA Annual Conference Workshop: County Regulation of Short-Term Rentals

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County Regulation of Short-Term Rentals

1. Statutory Overview
2. What may a county regulate?
3. How may a county regulate?
4. Looking ahead:
 - a. Wis. Admin. Code Ch. ATPC 72 revisions
 - b. Recent case law

Short-Term Rental Regulation - Terminology

- Wis. Stat. § 66.1015 – “Short-term rental” = a residential dwelling that is offered for rent for a fee and for fewer than 30 consecutive days.
- Wis. Stat. § 66.1014(2)(d) – References “short-term rental”.
- Wis. Stat. § 97.01(15k) – “Tourist rooming house” = any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients.
- “Tourist rooming house” does not include:
 - A private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients.
 - A hotel.
 - Bed and breakfast establishments.

Short-Term Rental Regulation – Statutory Overview



- Wis. Stat. § 66.1014 – “Right to Rent” Law
 - Statutory response to increase in local regulation of short-term rentals due to marketplace accessibility (thank you, Airbnb and VRBO.)
- Applies to counties. See Wis. Stat. § 66.1014(1)(a).
- Applies to any ordinance (zoning or other license requirement).
- “Residential dwelling” = any building, structure, or part of a building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or two or more persons maintaining a common household, to the exclusion of all others.



Short-Term Rental Regulation - Statutory Overview

- Wis. Stat. § 66.1014 – “Right to Rent” Law
 - Time limitations in Wis. Stat. § 66.1014(2)(a):
 - County may prohibit short-term rentals for periods less than seven (7) consecutive days.
 - Counties may not prohibit the rental of a residential dwelling for 7 consecutive days or longer.
 - County may limit short-term rentals of 7 to 29 consecutive days to a consecutive period.
 - A county may limit the total number of days within a 365-day period in which a residential dwelling may be rented to 180 consecutive days.
 - A county may not specify when that 180-day period will be. *See Wis. Stat. § 66.1014(2)(d)1.*
 - Limitation applies to rented periods of more than 6 but fewer than 30 consecutive days.

Short-Term Rental Regulation – Statutory Overview



- Wis. Stat. § 66.1014(2)(d)2.b – Licensing requirements for those who “maintain, manage or operate” a short-term rental for more than 10 nights each year:
 - Obtain a license from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP).
 - Wis. Stat. § 97.615(2); Wis. Admin. Code Ch. ATPC 74 – Local agents and regulation.
 - “Piggy-back” regulations.
- Obtain a license from the “political subdivision” (county) for maintaining, managing or operating a short-term rental if the municipality “enacts an ordinance requiring such a person to obtain a license.”
 - Regulation must be by ordinance.
 - “License” = special use or conditional use?



Short-Term Rental Regulation - Statutory Overview

- Wis. Stat. § 97.605(1)(a) – No person may conduct, maintain, manage or operate a hotel, tourist rooming house, vending machine commissary or vending machine if the person has not been issued an annual license by DATCP or by a “local health department” that has agent status under Wis. Stat. § 97.615(2).
 - Separate license required for each tourist rooming house/short-term rental.
 - May condition license upon correction of other lodging violations.
 - License duration:
 - Every license expires June 30 of each year.
 - Exception: License issued between April 1 and June 30 expires June 30 of the following year.

Short-Term Rental Regulation – Statutory Overview



- Pre-licensing inspection required.
- Transferability of license restricted:
 - Immediate family member.
 - Business entity if reorganized from sole proprietorship or different business entity formed if:
 - TRH is in the same location for which the license was issued.
 - At least one individual who had an ownership interest in the sole proprietorship or business entity has an ownership interest in the newly formed business entity.



Short-Term Rental Regulation - Statutory Overview

- Wis. Admin. Code Ch. ATPC 72 – Hotels, Motels and Tourist Rooming Houses.
 - “Tourist rooming house” = all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients.
 - Does not include private boarding houses or bed and breakfast establishments.

Short-Term Rental Regulation – Statutory Overview



- Wis. Admin. Code Ch. ATPC 72 = Comprehensive regulation of tourist rooming houses/short-term rentals:
 - Application requirements.
 - Initial license and renewal license.
 - Timeline for application review – 30 days.
 - Basis for denial or refusal to renew.



Short-Term Rental Regulation - Statutory Overview

- ATPC 72.04(5)(c) – DATCP or the local agent may refuse to issue or renew a license “under any of the following circumstances”:
 - DATCP or the local agent has not conducted a pre-inspection for which an initial or new license is required.
 - The operator has not corrected a condition for which DATCP or the local agent has issued a written health or safety–related order.
 - All applicable fees have not been paid, including the license fee, pre-inspection fee, reinspection fee, or other applicable fees.
 - The operator has modified, repaired or maintained the TRH/STR in a manner that is not in accordance with what “the department recognizes as safe practice as outlined in this chapter.”
 - The operator, applicant, or license holder has failed to provide DATCP or the local agent with all required application information under ATPC 72.04(4).
 - The operator or applicant has violated Wis. Stat. Ch. 97, ATPC 72, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the hotel, motel, or tourist rooming house.

Short-Term Rental Regulation – Statutory Overview



- ATPC 72.04(5)(d) – If DATCP or the local agent denies an application:
 - DATCP or local agent must provide notice in writing;
 - Detail the reasons for the denial; and
 - Provide information of appeal rights pursuant to Wis. Stat. § 97.625(e) and ATPC 72.08.
 - Request for hearing pursuant to Wis. Stat. Ch. 227 for denial, a voided license, suspension, revocation, forfeiture or other order of enforcement:
 - Must be filed within 15 days of notice.
 - Must be filed with the Division of Hearings & Appeals and to the DATCP Secretary.



Short-Term Rental Regulation - Statutory Overview

- Other operations regulated by ATPC 72:
 - ATPC 72.10 - Water supply and waste disposal:
 - Public utility service vs. private systems.
 - Water supply, soap and towels.
 - Drinking water available in each “guest room.”
 - Separate waste containers for garbage not disposed of in sewerage system.
 - Plumbing must comply with Wis. Admin. Code Ch. SPS 382.
 - ATPC 72.11 – Furnishings, equipment and utensils:
 - Design and installed so “easily cleanable” and “durable.”
 - Sanitation and reuse of equipment.
 - Cleanliness of linens and towels (new at least once per week).

Short-Term Rental Regulation – Statutory Overview



- Other operations regulated by ATPC 72:
 - ATPC 72.13 – Employee health:
 - A person with communicable disease “shall refrain from working in” a TRH/STR.
 - No operator may employ a person suspected of having a communicable disease.
 - ATPC 72.14 – Building structure and safety:
 - All TRHs/STRs must comply with state commercial building code, SPS 361 – 365.
 - DATCP enforces SPS 361-365 relating to fire detection and fire safety requirements.
 - ATPC 72.15 – Carbon monoxide detectors:
 - Requirements for installation, maintenance, tampering prohibitions, and inspections.

Short-Term Rental Regulation - Statutory Overview

- Other operations regulated by ATCP 72:
 - ATCP 72.15 – Overall maintenance:
 - Every TRH “shall be maintained and equipped in a manner conducive to the health, comfort, and safety of its guests.”
 - Police power standard?
 - Rooms maintained in a “clean and sanitary condition” and “good state of repair.”
 - Operator must employ “effective measures” for insect and rodent control.
 - Overall premises shall be maintained in “a clean, neat condition, free of refuse and other objectionable conditions or hazards.”

Whew! So What May a County Regulate?

- General regulatory goal: Minimize or eliminate impacts resulting from short-term rentals:
 - Noise
 - Excessive vehicles/parking concerns
 - Garbage or other refuse in surrounding areas
 - Impacts on natural resources
 - “Change of neighborhood character”
- Argument: Existing ordinances and state laws are already in place to address these impacts:
 - Excessive noise regulations
 - Disturbing the peace
 - Disorderly conduct

However....



What May a County Regulate?

- Limitations on reliance of existing ordinances and state laws:
 - Strain on law enforcement resources.
 - Lack of deterrent effect on renters (So what if they get a ticket? We leave on Sunday!)

***Not efficient to rely on traditional disorderly conduct laws when streamlined regulation is possible.*



How May a County Regulate?

- Zoning ordinance:
 - Administrative review with permit.
 - Conditional use or special use permit.
- Licensing ordinance:
 - “Piggy back” off work as DATCP agent.
 - Allows for additional regulations beyond state requirements if not inconsistent.
 - Wildwood Estate, LLC v. Village of Summit, 2024-AP-178: An ordinance claiming it is a licensing ordinance may be a zoning ordinance.
 - Court is to apply to Zwiefelhofer elements to determine whether an ordinance is a zoning ordinance.
 - Impact: A county may not avoid the requirements of a zoning ordinance by calling a short-term rental ordinance a licensing ordinance.

Key point: A county should adopt a well-reasoned, thorough, and legally compliant ordinance.



(Back to) What May a County Regulate?



- Short answer: Anything not inconsistent with state law.
 - Wis. Stat. § 66.1014(2)(c): County may enact an ordinance regulating short-term rentals that is “not inconsistent with the limitations on municipal regulation.”
- Preemption:
 - Legislature expressly withdraws political subdivision's authority to act;
 - Local ordinance logically conflicts with state legislation;
 - Ordinance defeats purpose of state legislation; or
 - Ordinance violates spirit of state legislation.
- Analysis goes beyond duration and “right to rent” law.
 - Due process considerations.
 - Application of underlying legal standards for regulatory mechanism, i.e., conditional use permit requires substantial evidence for required conditions.

What May a County Regulate?

- “Low hanging fruit” regulations:
 - Duration:
 - Prohibit short-term rentals less than 7 days.
 - Prohibit rental for more than 180 days within consecutive 365-day period.
 - Garbage receptacles and removal.
 - Building requirements such as smoke detectors, fire extinguishers and exit points that are consistent with ATCP 72.
 - No loose dogs or other animals unattended.
 - “House rules” posted indoors on premises.
 - An owner or agent contact for renters and neighbors.
 - Compliance with tax reporting laws.
 - Application materials showing site plan, floor plan, parking plan, and other general use information.



What May a County Regulate?

- “Likely fine” regulations:
 - Property insurance (in reasonable amounts).
 - Proof of registration and compliance with sales and other tax requirements.
 - Parking regulations.
 - Avoid “no on street parking” specifically for short-term rentals.
 - Parking plan may be required as part of application.
 - Proof of homeowner association or condominium association approval.
 - Owner or agent representative located within a reasonable distance.
 - Maintain record of occupants.
 - “Quiet hours” in reasonable timeframes.
 - No outdoor advertising on rental property.



What May a County Regulate?

- Questionable regulations:
 - Prohibiting short-term rentals in a residential district.
 - Cannot prohibit short-term rentals in residential district on a general basis because “nothing inherent in the concept of a residence or dwelling that includes time.” See *Heef Realty and Investments, LLP v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23.
 - Look at the *use*, not the length of occupancy, if not specific in ordinance.
 - Restrictions on “commercial use” in residential districts. See *Forshee v. Neuschwander*, 2018 WI 62.
 - “Resident/Lodging District” option. See *Vilas County v. Accola*, 2015 WI App 52.



What May a County Regulate?

- Questionable regulations:
 - Blanket compliance with commercial building code requirements.
 - Owner-occupancy requirements.
 - Specific signage designating property as a short-term rental.
 - Requirements for owner or agent contact:
 - Excessive mileage restrictions.
 - Posting contact information on exterior of the property.



What May a County Regulate?

- Questionable regulations:
 - Prohibition of certain recreational vehicles on outdoor campers on rental property.
 - Issue: occupancy limitations and impact on waste facilities?
- Limitations on number of occupants:
 - Preemption argument: ATCP 72.14 establishes requirements for “size of sleeping rooms.”
 - Standard: Number of bedrooms.
 - Regulation through septic sizing? See SPS 383.
 - Applying hotel occupancy standards to short-term rentals?
 - No clear standards in state law.





Looking Ahead – Legislative Changes

- Revisions to ATPC 72 - Background:
 - Statement of Scope submitted January 1, 2023.
 - Review group commenced in 2023 with the goal of “modernizing” ATPC to accommodate the changing short-term rental industry.
 - Draft submitted to legislature on July 21, 2025.
 - Assembly referred to committee on July 17, 2025, and Senate referred to committee on July 23, 2025.

Looking Ahead – Legislative Changes

- Summary of proposed revisions to ATCP 72:
 - Includes updated fire safety and protection requirements.
 - Modernizes slip, trip and fall hazards and other updated definitions.
 - Updates licensing and fee structure.
 - Requires annual testing of private wells.
- Includes requirements similar to commercial building code that are applicable to short-term rentals:
 - Handrails.
 - Guards on elevated areas.



Looking Ahead – Legislative Changes

- Summary of proposed revisions to ATP 72:
 - Updates pest and rodent control requirements.
 - Includes new death, injury, food or waterborne illness that require EMS response and relate to the operation or maintenance of the facility.
- Modifies definition of tourist rooming house to include:
 - A lodging place with four or fewer keyed-units.
 - A one- or two-family dwelling or condominium unit where the entire residence is rented to a tourist or transient, family or rental group. Includes a “note” that a short-term rental and vacation home rental are examples of a tourist rooming house.

Looking Ahead – Legislative Changes

- Proposed revisions to ATCP 72.18(3) – Occupancy:
 - Spacing and number of occupants in a sleeping room.
 - Beds shall be arranged to provide an aisle at least 3 feet in width from one side of each bed to create a clear path for emergency egress.
 - The number of occupants per bed shall not exceed the following:
 - No more than one occupant for a mattress width of 50 inches or less.
 - No more than two occupants for a mattress width of more than 50 inches.
 - The number of individuals in a sleeping room shall not exceed the requirements established under subd. 1. and 2. *or the posted occupancy limit established and enforced by a local government agency, whichever is less* (emphasis added.)



Looking Ahead – Legislative Changes

- What is not included in proposed revisions:
 - Clarification of septic sizing requirements for occupancy determination.
 - Clarification of elements that may be further regulated by local municipalities.

Looking Ahead – Recent Case Law



- *Wildwood Estate, LLC v. Village of Summit, 2024-AP-178*
 - Primary issue: Was the ordinance prohibiting rentals of fewer than 7 days and imposing licensing and guest log requirements a zoning ordinance, requiring substantive and procedural safeguards, like a public hearing?
 - Short Answer: Yes
 - Court's Analysis: Despite the fact that the ordinance was enacted purportedly under the Village's police powers and applied throughout the entire Village, it impacted "land use" – specifically, short-term rental periods of less than 6 consecutive days, making it a zoning ordinance.
 - Outcome: Ordinance was declared void and unenforceable AND property owner was awarded attorney's fees under 42 USC § 1988 due to violation of due process rights.



Looking Ahead – Recent Case Law

- *Wisconsin Realtors Association, Inc. v. City of Neenah*, 2024-AP-994.
 - Issue: Was the ordinance requiring short-term rentals to be an owner's "primary" residence preempted by state law?
 - Short Answer: Yes
 - Court's Analysis: Wis. Stat. § 66.1014 defines "residential dwelling" as "any building, structure, or party 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." (emphasis added).
 - Excluding non-primary residences from being used as short-term rentals logically conflicts with the Statute's prohibition on limitations on short-term rentals of "any" residential dwellings. Therefore, the limiting language of the Ordinance is preempted by the clear language of the statute.
 - Additional "dicta" indicated that the Wisconsin Realtor's Association had standing – however it was not fully briefed at the Court of Appeals and so the Court did, "not disturb the circuit court's holding that the WRA has standing."** See pending Polk Case discussed next.

Looking Ahead – Recent Case Law



- Wisconsin Realtors Association, Inc. v. Polk County, 4-AP-1638.
 - Issue: Did WRA lack associational standing to challenge the County's Zoning Ordinance that regulates short-term rentals?
 - Circuit Court Answered: Yes
 - Case Status: This case was fully briefed as of July 25, 2025, and is awaiting a decision from the Court of Appeals – District 3.
 - Despite the “dicta” from WRA v City of Neenah, which found that the WRA had associational standing to challenge local zoning ordinances, this case extensively briefed the issue of associational standing for the WRA.



THANK YOU!



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THANK YOU.

