

6/10/2013
6/3/2013
5/22/2013
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50-O-13

AN ORDINANCE

**Enacting a New Title 5, Chapter 9 of the City Code
to Require the Licensing of Vacation Rentals**

WHEREAS, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970 states that, generally, “a home rule unit may exercise any power and perform any function pertaining to its government and affairs;” and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

WHEREAS, the Local Government Committee to the delegates of the Sixth Illinois Constitutional Convention found that

home-rule powers are most urgently needed by larger municipalities in the more highly urbanized areas of the state. Although the problems of urban society affect many small localities, they are felt most intensely in larger cities and villages. Dense concentrations of population and industry call for the creative use of flexible governmental powers to achieve and maintain order, social justice and a satisfactory quality of life. (7 Record of Proceedings, Sixth Illinois Constitutional Convention, 1628-29); and

WHEREAS, the Supreme Court of Illinois held that, even in 1981,

[t]he City of Evanston is a densely populated and highly urbanized municipality with a large number of rental units... In accordance with the goals attempted to be achieved by the creation of home rule, the local governing body can create an ordinance specifically suited for the unique needs of its residents and is keenly and uniquely aware of the needs of the community it serves... the home rule unit of Evanston may act under its constitutionally granted police powers to pass reasonable regulations concerning the activities of landlords and tenants in order to protect the public health, safety, morals, and welfare... The right of a private party to contract in regard to his property must be subordinate to the overriding needs to protect the interests of the public at large (*City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 113-15); and

WHEREAS, on September 24, October 8, November 26, 2012, and January 14, and March 2, 2013 the Planning and Development (“P&D”) Committee held meetings, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*), received input from the public and carefully considered the issue of vacation rentals; and

WHEREAS, during the P&D Committee meeting on March 2, 2013, the Committee heard public opinion supporting prohibition, exemplified by a resident who was concerned that, because of operation of Vacation Rentals near his home, he no longer knew his neighbors; and

WHEREAS, the P&D Committee also heard a resident speak in favor of prohibition, saying that banning short-term rentals would eliminate a safety risk; and

WHEREAS, during the P&D Committee meeting on March 2, 2013, the Committee heard public opinion against prohibition, exemplified a resident who stated that property owners have the right to rent their homes for weekends and that the need has increased since the economic collapse because one tax bill can be paid by one such rental; and

WHEREAS, the P&D Committee also heard a resident speak against prohibition, saying that he bought and lives in a three-flat building and operates the other two units as Vacation Rentals and that the revenue allows him to live in Evanston; and

WHEREAS, on April 1, May 13, May 28, and June 10, 2013, after careful consideration of the issue and public comment, the P&D Committee determined that there is a compelling governmental interest in licensing vacation rentals to protect the health, safety, and welfare of City residents, and recommended the same to the City Council; and

WHEREAS, on May 28 and June 10, 2013, the City Council held meetings in compliance with the provisions of the Illinois Open Meetings Act, considered the recommendation of the P&D Committee, received additional input from the public, and adopted said recommendation,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The foregoing recitals are hereby found as fact and incorporated herein by reference.

SECTION 2: Title 5 of the Evanston City Code of 2012, as amended, is hereby further amended by the enactment of a new Chapter 9 thereof, "Vacation Rentals," to read as follows:

CHAPTER 9 - VACATION RENTALS

5-9-1: PURPOSE:

The purpose of this Chapter is to promote the public health, safety, and welfare by licensing the operation of Vacation Rentals within the City of Evanston.

5-9-2: DEFINITIONS:

For the purposes of administering this Chapter, the following definition(s) shall apply:

VACATION RENTAL: A Dwelling Unit or portion thereof offered for rent for a period shorter than thirty (30) consecutive days to any person other than a member of the Owner's Family, as those terms are defined in Section 6-18-3 of this Code. The term "Vacation Rental" shall not include hotels or motels, licensed pursuant to Title 3, Chapter 2 of this Code, lodging establishments, licensed pursuant to Title 5, Chapter 2 of this Code, bed and breakfast establishments, licensed pursuant to Title 8, Chapter 19 of this Code, and/or home sharing in accord with Subsection 6-4-1-14-(B) of this Code.

5-9-3: LICENSE REQUIRED; LICENSE TERM; EXEMPTIONS:

- (A) It shall be unlawful to operate a Vacation Rental within the City of Evanston without a current, valid license issued pursuant to the terms of this Chapter.
- (B) Each license issued pursuant to this Chapter shall be valid for one (1) year, subject to renewal per Section 4 of this Chapter.
- (C) Subsection (A) of this Section notwithstanding, no license shall be required to operate a Vacation Rental for no more than one (1) rental period per Dwelling Unit per twelve (12)-month period for:
 - 1. Any Dwelling Unit;
 - 2. A rental agreement executed pursuant to or in conjunction with a contract to sell the Dwelling Unit containing the Vacation Rental;
 - 3. Vacation Rental guest(s) who is/are displaced from his/her/their own Dwelling Unit so that it may be renovated and/or repaired;
 - 4. An operator who will suffer demonstrable hardship.

5-9-4: APPLICATION; NOTICE; STANDARDS & PROCEDURES; RENEWAL; FEES:

- (A) **Applications:** A property owner who seeks a Vacation Rental license pursuant to this Chapter shall submit a written application that contains all information required for a registration statement pursuant to Chapter 8 of this Title.
- (B) **Notice:** Each application shall be accompanied by proof the applicant mailed notice thereof to all owners, whose addresses appear on the current tax assessment list, of real property located within a radius of two hundred fifty feet (250') of the subject property, inclusive of public streets, alleys and other public ways. The notice shall contain the applicant's name, the address of the subject property, the matter under consideration, and the date, time, and location of the relevant meeting of the Planning and Development Committee.

(C) Standards and Procedures for License Approval: The Planning and Development Committee will review all applications for Vacation Rentals and will report to the City Council upon each application with respect to the standards set forth below. The City Council after receiving said report, may refer the application back to that body for additional review, or, by motion, may approve, approve with conditions, or disapprove, an application for a Vacation Rental license, upon findings of fact with respect to each of the standards set forth below:

1. The proposed Vacation Rental will not cause a negative cumulative effect when its effect is considered in conjunction with the effect of other Vacation Rentals in the immediate neighborhood.
2. The Vacation Rental will not have a substantial adverse impact on the use, enjoyment, or property values of adjoining properties.
3. The proposed Vacation Rental will comply with all the rules and regulations contained herein.
4. The proposed Vacation Rental is not likely to have an adverse effect upon the public health, welfare, or safety.

Regardless of its finding on any or all of the foregoing standards, the City Council may deny a Vacation Rental license upon a finding that such denial is in the public interest.

(D) Renewal: If a Vacation Rental license was issued for the prior year, the approval for a renewal license shall be obtained from the City Manager or his/her designee, provided the previously-issued license was not revoked or suspended, and the Vacation Rental did not receive citation(s) from any City inspector or Police officer during said prior calendar year. Every renewal application shall satisfy all requirements set forth in Section 4 of this Chapter.

(E) License Fee: The annual fee for a license issued pursuant to this Chapter shall be fifty dollars (\$50.00).

5-9-5: REQUIREMENTS AND STANDARDS:

(A) No Vacation Rental operator shall:

1. Rent or lease any Vacation Rental for any period of time shorter than twenty-four (24) consecutive hours;
2. Rent or lease any Vacation Rental more than once within any consecutive twenty-four (24) hour period measured from the commencement of one rental to the commencement of the next;
3. Advertise an hourly rate or any other rate for a Vacation Rental based on a rental period of fewer than twenty-four (24) consecutive hours; and/or

4. Serve or otherwise provide any food or beverage to any guest.
 5. Cause or permit, by action or failure to act, the Vacation Rental or its use to suffer from and/or create any violation of the following portions of the City Code: Title 4, "Building Regulations;" Title 5, "Housing Regulations;" Title 6, "Zoning;" Title 8, "Health and Sanitation;" Title 9, "Public Safety."
- (B) Every Vacation Rental shall be subject to inspection by staff members of the City's Fire, Health, and Community & Economic Development Departments.
 - (C) Every Vacation Rental operator shall keep a register in which shall be entered the name of every guest and his/her arrival and departure dates. The operator shall make said register freely accessible to any officer of the City's Police, Fire, Health, and/or Community & Economic Development Departments.
 - (D) Every Vacation Rental operator shall post, in a conspicuous place within the Vacation Rental, the name and telephone number of the operator's authorized agent identified pursuant to City Code Section 5-8-3-(A)-2.
 - (E) Any kitchen in a Vacation Rental shall be cleaned and sanitized between guests and all food and beverages shall be discarded. All dishes, utensils, pots, pans and other cooking utensils shall be cleaned and sanitized between guests.
 - (F) The operator of every Vacation Rental shall change supplied bed linens and towels therein at least once each week, and prior to the letting of any room to any new guest. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

5-9-6: PENALTY:

- (A) Any owner, tenant or other person who shall be found to have violated any of the provisions of this Chapter shall be guilty of an offense punishable as follows:
 1. The fine for a first violation is two hundred dollars (\$200.00).
 2. The fine for a second violation is five hundred dollars (\$500.00).
 3. The fine for a third or subsequent violation is seven hundred fifty dollars (\$750.00).
- (B) Each day a provision of this Chapter is found to have been violated constitutes a separate violation subject to the fine schedule set forth in this Section.
- (C) Any fines shall be debts due and owing to the City that the City may collect by any means allowed by law, including, but not limited to, filing a lien against the Vacation Rental or the premises containing the Vacation Rental.

- (D) The fines provided for herein shall not be construed as limiting the power of a court of competent jurisdiction or an administrative hearing officer to impose other penalties and/or remedies as provided for by applicable legislation. In addition, a licensee found to have violated any provision of this Chapter may be subject to license revocation, suspension, or nonrenewal.

5-9-7: REVOCATION; SUSPENSION; PROCEDURES:

- (A) The City Manager may revoke or suspend a license issued pursuant to the terms of this Chapter for any of the following reasons:
1. If the owner of the relevant Vacation Rental or his/her agent violates any of the terms of this Chapter;
 2. If the Owner of the Vacation Rental or his/her agent is deemed to have maintained a Nuisance Premises therein, in violation of Section 9-5-4 of the City Code;
 3. If, pursuant to Title 4, Chapter 16 of the City Code, the Director of Community & Economic Development ("Director") deems the Vacation Rental, or the premises wherein it is located, to be a Vacant Building, as defined therein; and/or
 4. If the City or other governmental agency condemns the Vacation Rental or the premises wherein it is located.
- (B) Not less than fourteen (14) business days prior to a revocation hearing for a license issued pursuant to the terms of this Chapter, the Director shall send, via First Class U.S. mail, a notice of revocation hearing to the Owner or his/her authorized agent at the address provided on the most recent license application. Notice shall be sufficient if sent to the address of the authorized agent indicated on the license application. Said notice shall include the following:
1. Description of the Vacation Rental, sufficient for identification;
 2. A statement that the license is subject to revocation;
 3. A statement of the reasons for the revocation;
 4. The date and time upon which a revocation hearing shall occur; and
 5. The location for said revocation hearing.
- (C) If the Director certifies to the City Manager that he/she has reason to believe that immediate suspension of the license is necessary to prevent the threat of immediate harm to the community, the City Manager may, upon the issuance of a written order stating the reason for such conclusion and without notice or

hearing, order the license suspended for not more than seven (7) days. The City Manager may extend the suspension during the pendency of a hearing upon a written determination that doing so is necessary to prevent the aforesaid harm to the community.

- (D) Hearings shall be conducted by the City Manager in accordance with procedures drafted by the Corporation Counsel.
- (E) Within ten (10) business days after the close of the hearing, the City Manager shall issue a written decision that shall constitute a final determination for purposes of judicial review pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, as amended. In reaching a decision, the City Manager may consider any of the following:
 1. The nature of the violation.
 2. The nature and extent of the harm caused by the licensee's action or failure to act.
 3. The factual situation and circumstances surrounding the violation.
 4. Whether or not the action or failure to act was willful.
 5. The record of the licensee with respect to violations.
- (F) A licensee whose license has been revoked shall not be eligible to reapply for a new license.

5-9-8: SEVERABILITY:

If any provision of this Chapter or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Chapter is severable.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect after its passage, approval, and publication in the manner provided by law.

SECTION 5: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: _____, 2013

Approved:

Adopted: _____, 2013

_____, 2013

Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene, City Clerk

W. Grant Farrar, Corporation Counsel