



VILLAGE OF HOFFMAN ESTATES PLANNING AND ZONING COMMISSION STAFF REPORT

PROJECT NUMBER: TA22-0002
PROJECT NAME: SHORT TERM RENTAL TEXT AMENDMENTS
REQUEST: TEXT AMENDMENTS - ZONING CODE
APPLICANT: VILLAGE OF HOFFMAN ESTATES
PZC MEETING DATE: JUNE 1, 2022
PUBLIC HEARING: YES
STAFF ASSIGNED: PHIL GREEN, TRANSPORTATION & LONG-RANGE PLANNER

REQUESTED MOTION

Approval of Text Amendments amending Sections 7-8-11, 8-11-4, 8-13-1, and 9-2-1 of the Municipal Code (Short Term Rentals)

BACKGROUND

On April 11, 2022, the Planning, Building and Zoning Committee directed staff to proceed with drafting text amendments to the Zoning Code regulating short term rentals. Staff proposes text amendments to the Village's Zoning Ordinance from time to time to keep the Code aligned with current business practices and development trends.

Short term rentals, popularized by platforms including Airbnb, VRBO, and Homestay, offer property owners the opportunity to rent out rooms or entire homes on a no-minimum stay basis.

Considered a "market disruptor" for more traditional hotel and lodging businesses, short term rentals have raised enforcement issues for municipalities who cite concerns around excess traffic and noise (so-called "party rentals"), as well as the impacts such property uses may have on housing supply and affordability.

Due to the emerging nature of such platforms and arrangements, zoning codes rarely explicitly address the use of properties as short term rentals. Instead, regulation is typically by exception, with many municipalities relying on the interpretation that if the use is not expressly permitted, it is inherently prohibited. For example, Hoffman Estates has successfully required short term rentals to cease operation by citing the fact that the residential zoning districts in the Village do not list the business use (short term rental) as a permitted or special use and therefore the use is not allowed.

To further strengthen the Village's position on this issue, and in line with direction received from the Planning, Building, and Zoning Committee, staff is proposing text amendments to the Village's Municipal Code as outlined in Exhibit A to more explicitly prohibit such uses from operating in the Village.

ANALYSIS

Legal Precedents

On March 17, 2022, the Illinois Appellate Court, in the case of *Wortham vs Village of Barrington Hills*, upheld the Village's action against homeowners who had been renting their home via VRBO. The homeowners had argued that the use of their property as a short term rental was not similar to that of a hotel or lodging house (prohibited as uses in the Barrington Hills zoning district of the property). However, the Court found that a combination of the Village's regulation of home occupations, the allowable uses within the zoning district, and the nature of advertising a home for rental via VRBO combined to make a clear violation even without explicit reference to short term rental platforms.

This decision aligned with a previous case brought before the Appellate Court (*Wood v Evergreen Condominium Association*), in which the Court found that similar language within the Declarations of a condominium owners' association should also be construed as an effective prohibition of short term rental usage.

The language referenced within the *Wortham vs Barrington Hills* case, it should be noted, is markedly similar to language found within the Hoffman Estates Village Code, and procedurally speaking represents how Village staff currently approach inquiries and enforcement surrounding short term rental uses.

Following the *Wortham* case, some land use law publications began recommending that municipalities wishing to prohibit short term rentals provide a clear definition of the use.

Other Community Approaches

A 2021 survey of nearby communities undertaken by the Northwest Municipal Conference found that communities that do allow such uses either do not regulate them at all, or typically do so through their standard residential rental license program. Many of those communities, such as Schaumburg, collect Hotel & Motel Taxes from short term rentals.

Communities that do not allow short term rentals often rely on identifying them as uses not listed as "permitted" within their zoning districts, and therefore they should be considered to be prohibited. A few communities, including Niles, have adopted specific Ordinances defining and prohibiting short term rentals.

Municipal Code Review

§9-2-1 Definitions

To support the Village's prohibition of short term rentals, staff is proposing to add a definition of *Short Term Rental* in the Zoning Code as outlined below:

Short Term Rental: The rental of a dwelling unit, portion thereof, or accessory structure (whether permanent or temporary) on the same lot as a dwelling unit, for a period of less than thirty (30) nights, for which the guest compensates an owner or lessee of the unit in return for the right to occupy or use the property. Short Term Rental uses are prohibited within the Village of Hoffman Estates.

§7-8-11 Miscellaneous Public Nuisances

There a number of public nuisances specifically prohibited in the Code, such as littering, burning, tall grass and weeds, debris accumulation, and bee keeping among others. Staff proposes adding the offering, marketing, or usage of property as a short term rental as a specifically prohibited nuisance. This will allow for more robust enforcement of the Village's prohibition on this use.

§8-11-4 Home Based Business Regulations

Licensed Home Based Businesses are considered to be permitted ancillary uses in all residential districts so long as the use is incidental and secondary to the use of the property as a *primary* residence. Short term rentals are considered

a business rather than residential use in which the premise is not used as a *primary* residence; thus such uses do not meet the intent of Home Based Businesses. Staff proposes amending the Home Based Business License regulations to explicitly state that a short term rental is not considered by the Village to be a valid Home Based Business.

Upon review of the Code, staff found that the regulations for Home Based Businesses were duplicated in both §8-11-4 ("Licenses"), and within the Home Based Business definition found in §9-2-1. Staff proposes to amend the definition of Home Based Business found under §9-2-1 to remove the regulations. Although still defined within the Zoning Code, Home Based Business regulations will then be exclusively regulated under the Licenses section of the Code.

§8-13-1 Residential Rental License Program

The Village's Residential Rental License Program requires all residential rental units to be licensed and inspected annually. Residential rental units licensed under this program are intended for property that is used as a *primary* residence, not as a short term rental. Staff is proposing modifications to the definition of *Residential Rental Property* to clarify that a permitted residential rental license is only valid on properties being rented for periods of 30 (thirty) days or more, excluding short term rentals from this program.

PROPOSED ZONING TEXT AMENDMENTS

A blackline of the proposed text amendments is included as Exhibit A and summarized below:

1. §7-8-11: Add a *Miscellaneous* nuisance prohibiting the offering, marketing, or usage of property as a Short Term Rental within the Village.
2. §8-11-4: Amend regulations for Home Based Businesses to state that a Short Term Rental is not considered to be a valid Home Based Business.
3. §8-13-1: Amend the *Residential Rental Property License* definition to state that a permitted Residential Rental Property is to be offered for thirty (30) days or more, as a contrast to a prohibited Short Term Rental.
4. §9-2-1: Amend the definition of *Home Based Business* to remove regulations found within the definition, and instead a reference made to the regulations found within §8-11-4.
5. §9-2-1: Add a definition of *Short Term Rental*.

TEXT AMENDMENT STANDARDS - Section 9-1-17

The Planning and Zoning Commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such amendment is in the public interest and is not solely for the interest of the petitioner.

Text amendments to the Zoning Code involve changes to the regulations that apply to all properties in the Village as a whole. The Zoning Code text amendments meet the Standards set forth in the Zoning Code, and were developed with consideration of the entire Village holistically.

NOTIFICATION

The public notice was published in the Daily Herald 15 days prior to the hearing. No objections have been received.

Attachment: Exhibit A: Blackline of Proposed Text Amendments

New language is shown as underlined.
Language to be removed is shown in ~~strikethrough~~.

CHAPTER 7 – OFFENSES AND PUNISHMENT

ARTICLE 8. PUBLIC NUISANCES

Sec. 7-8-11. Miscellaneous.

- A. *Forest Preserves*. Persons using the Forest Preserves within the Village of Hoffman Estates shall obey all laws and regulations promulgated by the Cook County Forest Preserve District.
- B. *Grease Containers*. Storage of grease in 55 gallon containers shall be approved provided that they are stored on a concrete or asphalt slab; the outside container kept clean and free from grease; a tight-fitting lid is used to prevent odor or the entrance of insects or rodents; is placed in such a location as not to create a nuisance and is approved by the Department of Code Enforcement.
- C. *Barefoot Persons in Establishments*. It shall be unlawful for any person while barefoot to enter any premises open to the public where food is sold, displayed or consumed. Barefoot persons in non-food establishments are prohibited provided a sign is posted on the door in clear view stating such prohibition.
- D. *Bees*. It shall be unlawful for anyone to keep bees in the Village.
- E. *Removal of Snow*. It shall be the duty of all owners or occupants of any business premises to keep the sidewalks abutting the premises free from snow and other obstructions.
- F. *Elimination of Rodent Harborage*. It shall be unlawful to cause to accumulate in any area, debris, junk or materials of any kind in such quantities and in such condition as to constitute an undesirable nuisance, or which may serve as harborage for rodents, or the breeding of mosquitos and other insects.
- G. *Parking Lots*. Parking lots shall be in good repair and shall maintain proper water drainage as otherwise required by the Hoffman Estates Municipal Code.
- H. *Debris Accumulation*. It shall be unlawful to cause to accumulate in any area, debris of any kind, or to allow to remain on any premises any debris of any kind in such quantities and in such condition to constitute an undesirable nuisance.
- I. *Subdivision Street Snow Removal*. It shall be unlawful for any developer and/or subdivider to fail to reasonably clear ice and snow from improved streets that have not yet been accepted by the Village within eight hours after a snowfall of two inches or more has occurred.
- J. *Fire Lane Snow Removal*. It shall be unlawful for any owner of private property with designated fire lanes to fail to reasonably clear ice and snow from said fire lanes within eight hours after a snowfall of two inches or more has occurred.
- K. *Delivery Hours*. It shall be a nuisance and, therefore, unlawful for any person to disturb the peace and quiet of the village by making commercial deliveries prior to the hours stated below at the following commercial sites that abut residential properties:
 - 1. Jewel-Osco, 1485 Palatine Road—Prior to 7:00 a.m. or after 9:00 p.m.
 - 2. Valli Produce, 850 N. Roselle Road—Prior to 7:00 a.m. or after 6:00 p.m.
- L. **Short Term Rentals: It shall be unlawful for any persons to offer, market, or use their property as a Short Term Rental as defined in §9-2-1.**

CHAPTER 8 - LICENSES

ARTICLE 11. SPECIAL LICENSES

Sec. 8-11-4. Home based business.

- A. Definition. "Home Based Business" - Business activity conducted within any residential dwelling and carried on by the inhabitants thereof, which business activity is clearly incidental and secondary to the use of the residential dwelling for dwelling purposes and does not change the character thereof.
- B. License Required. It shall be unlawful to operate a home based business as herein defined without having obtained a license therefor. A license is not required for individuals who work from their home, on a part-time or full-time basis, for an employer who maintains a separate place of business.
- C. Application. An application for a Home Based Business License shall be made in conformity with the general requirements of this Chapter relating to application for licenses.
- D. Regulations.
 1. No article shall be sold or offered for sale except such as may be produced on the premises by a member of the immediate family, provided, however, articles produced by others may be sold or offered for sale when such articles are shipped directly to the consumer from another legal premise. Visitors are permitted to the dwelling only for permitted services. The physical delivery of goods directly to the visitor from the dwelling shall be prohibited.
 2. ~~The following uses are explicitly prohibited as home based businesses: medical treatment of people and animals, massage services, hair/nail/beauty salons, and businesses involving the preparation and packaging of food.~~ **Uses deemed to be prohibited as home based businesses include, but are not limited to:**
 - a. **Medical treatment of people and animals**
 - b. **Massage services**
 - c. **Hair/nail/beauty salons**
 - d. **Businesses involving the preparation and packaging of food**
 - e. **Clinics**
 - f. **Doctors' offices**
 - g. **Hospitals**
 - h. **Barber shops**
 - i. **Beauty parlors**
 - j. **Clothing shops**
 - k. **Tea rooms**
 - l. **Short Term Rentals**
 - m. **Animal Hospitals**
 - n. **Kennels**
 - o. **Livery services**
 - p. **The repair and/or servicing of automobiles or other vehicles**
 3. There shall be no exterior evidence of the conduct of the home based business.
 4. A home based business shall not create significant additional vehicular or pedestrian traffic to the dwelling. Visitors to the home based business shall be scheduled by appointment only and the appointments shall result in no more than two (2) additional vehicles at the home at any time.
 5. Visitors to the home based business shall be limited to occur between the hours of 8:00 a.m. to 8:00 p.m. on weekdays and between 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays.
 6. A maximum of one vehicle, related to the home based business, shall be permitted to be maintained on the premises. Such vehicle shall comply with the requirements of Section 6-2-1 of the Traffic Code.
 7. The conduct of any home based business shall not reduce or render unusable areas provided for the required off-street parking or prevent the number of cars intended to be parked in a garage from doing so. No structural alterations to the home that are inconsistent with the principal residential use shall be made to accommodate the home based business.
 8. The distribution of articles/products from the dwelling to independent contractors or other employees shall be prohibited.
 9. The home based business shall comply with all applicable regulations of the Division of Code Enforcement, Police Department and Fire Department, including the right of inspection.
 10. The home based business shall comply with all State and Local laws.

CHAPTER 8 - LICENSES

ARTICLE 13. RESIDENTIAL RENTAL PROPERTY LICENSE

Sec. 8-13-1. Definitions.

Unless the context otherwise requires, the following terms as used in this Article shall be construed according to the definitions given below:

- A. *Residential Rental Property* shall mean residential structures or dwelling units that are intended to be rented or leased for income or for payment to the Owner or Lessee in return for the right to occupy or use the property of another for thirty (30) days or more and are not owner-occupied, including single-family detached and attached structures and condominium units, but excluding the following:
 1. Apartments as defined in Section 12-1-1 of this Code.
 2. Single-family owner-occupied residential structures or dwelling units.
 3. Single-family residential structures or dwelling units which are vacant but which are not intended to be rented or leased.
 4. Hotels and motels that rent rooms to occupants if such occupancy is transient only.
 5. Assisted Residential Facilities, Independent Residential Facilities, Skilled Nursing Facilities, Nursing Homes, Intermediate Care Facilities, Sheltered Care Facilities, and Congregate Care Facilities.
- B. *Building Official* shall mean that person designated by the Village Manager as having Code enforcement authority relating to Residential Rental Property.
- C. *Owner* shall mean any person, agent, operator, firm, association or corporation having a legal or equitable interest in the Residential Rental Property, or having an interest that has been recorded in the Office of the Recorder of Deeds of the County of Cook, Illinois or in the Office of the Registrar of Titles if the property affected is under the Torrens System, or otherwise having control of the Residential Rental Property pursuant to an order of possession issued by a court.
- D. *Tenant* shall mean that person or persons occupying the Residential Rental Property pursuant to a rental agreement or lease for income or for payment to the Owner in return for the right to occupy or use the Residential Rental Property.

CHAPTER 9 – ZONING CODE

ARTICLE 2. DEFINITIONS

Sec. 9-2-1. Definitions.

(...)

Home Based Business: Any use that requires a business license (pursuant to Section 8-11-4) and is conducted entirely within the dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. Such home based businesses shall comply with the following regulations **as set forth in Section 8-11-4.:**

1. ~~No article shall be sold or offered for sale except such as may be produced on the premises by a member of the immediate family, provided, however, articles produced by others may be sold or offered for sale when such articles are shipped directly to the consumer from another legal premise. Visitors are permitted to the dwelling only for permitted services. The physical delivery of goods directly to the visitor from the dwelling shall be prohibited.~~
2. ~~The following uses are explicitly prohibited as home based businesses: medical treatment of people and animals, massage services, hair/nail/beauty salons, and businesses involving the preparation and packaging of food.~~
3. ~~There shall be no exterior evidence of the conduct of the home based business.~~
4. ~~A home based business shall not create significant additional vehicular or pedestrian traffic to the dwelling. Visitors to the home based business shall be scheduled by appointment only and the appointments shall result in no more than two (2) additional vehicles at the home at any time.~~
5. ~~Visitors to the home based business shall be limited to occur between the hours of 8:00 a.m. to 8:00 p.m. on weekdays and between 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays.~~
6. ~~A maximum of one vehicle, related to the home based business, shall be permitted to be maintained on the premises. Such vehicle shall comply with the requirements of Section 6-2-1 of the Traffic Code.~~
7. ~~The conduct of any home based business shall not reduce or render unusable areas provided for the required off street parking or prevent the number of cars intended to be parked in a garage from doing so. No structural alterations to the home that are inconsistent with the principal residential use shall be made to accommodate the home based business.~~
8. ~~The distribution of articles/products from the dwelling to independent contractors or other employees shall be prohibited.~~
9. ~~The home based business shall comply with all applicable regulations of the Division of Code Enforcement, Police Department and Fire Department, including the right of inspection.~~
10. ~~The home based business shall comply with all State and Local laws.~~

~~Uses deemed to be unacceptable as home occupations include, but are not limited to: clinics, doctors' offices, hospitals, barber shops, beauty parlors, clothing shops, real estate offices, tea rooms, tourist homes, animal hospitals, kennels, livery services, the repair and/or servicing of automobiles or other vehicles, as occupations not deemed to be home occupations.~~

(...)

Short Term Rental: The rental of a dwelling unit, portion thereof, or accessory structure (whether permanent or temporary) on the same lot as a dwelling unit, for a period of less than thirty (30) nights, for which the guest compensates an owner or lessee of the unit in return for the right to occupy or use the property. Such a use is prohibited within the Village of Hoffman Estates.

(...)