PLANNING COMMISSION

VILLAGE OF ELK RAPIDS

Proposed Ordinance #502

An amendment to the Zoning Code of the Village of Elk Rapids regulating various aspects of short-term rental properties.

The people of the Village of Elk Rapids ordain:

Section 1: Purpose

The Village Council finds the rental of dwelling units in the Village of Elk Rapids provides value to our local economy but also brings with it externalities affecting the year-round quality of neighborhoods, housing supply, and health and safety. The Village of Elk Rapids has enacted this regulatory ordinance to strike a regulatory balance between the interests of community residents, business owners, visitors, and property owners.

The village has different expectations for noise, occupant loads, and transient activity in its residential neighborhoods than it does in commercial, and even mixed-used zones where hotels may be permitted. The renting of a home on a short-term basis is substantially more like a business than traditional residential use.

Section 2: Definitions

As used in this chapter, the following words and phrases shall have the meanings hereafter ascribed to them:

Basement: That portion of a building, which is more than 50% below finished grade. A basement shall not be counted as a story.

Bedroom: A room intended for sleeping or placement of a bed separated from other spaces in the dwelling unit by one or more functional doors. The following spaces, which must be included in every dwelling unit, do not qualify as bedrooms: Kitchens; dining areas; gathering spaces such as living rooms, dens, family rooms, and attics or basements without egress meeting standards in applicable building, residential, and fire codes.

Business Unit: A residential dwelling unit that may be rented for more than 28 interrupted days in a calendar year, including multiple properties operating as Personal Units under singular ownership. Month to month or yearly rentals are not classified as a business unit per this chapter.

Calendar year: January 1 to December 31.

Compensation: Money or other consideration given in return for occupancy, possession, or use of a property.

Dwelling Unit: A self-contained unit within a building that is designed for human occupancy and provides complete living facilities, including permanent provisions for sleeping, eating, cooking, and sanitation. "Dwelling Unit" does not include Bed and Breakfasts, timeshare/fractional ownership, hotels and motels, and boarding houses.

Enforcement Officer: The person appointed by the Village who shall carry out various functions of this chapter or cause other officials, inspectors, vendors, or relevant professionals to carry out various functions in order to implement and enforce the terms of this Ordinance.

Good Visitor Guide: Materials prepared by the Village's Planning and Zoning Department for display at all short-term rentals and adopted by Village Council by resolution.

Local Agent: An individual designated to oversee the short-term rental of a dwelling unit in accordance with this article and to respond to calls and complaints at any time or day from renters, citizens, and the Village's representatives within 60 minutes of such calls.

Occupant: Individual 24 months of age or older.

Personal Unit: A residential dwelling unit rented for **no more than six terms for** periods of not less than 7 days up to a total of 28 days per calendar year when the owner is not present or for an unlimited period of time when the property owner is present and living on the premises. A person or entity may only have one designated Personal Unit.

Short-term rental ("STR"): The rental of a dwelling unit for compensation for a term of 1 to 29 interrupted or uninterrupted nights per year in the R-1, R-2, and R-2A zoning districts [need to research and confirm]

***Term:* Any length of stay from 1-28 days.**

Section 3: Registration and licensing required

A. All dwelling units, except those which are duly registered as a principle residence exemption under Section 211.7cc of the General Property Tax Act, which are used for short-term rentals for more than 14 days per calendar year shall be registered and licensed with the village as stipulated in this chapter.

B. The advertisement or rental of an unregistered dwelling unit for a total 14 interrupted or uninterrupted days or more during a calendar year is prohibited.

C. Registration and licenses shall be issued by calendar year **after the initial registration period has been implemented.**

D. All short-term rental registrations and licenses shall expire at the end of the calendar year and must be renewed each December.

E. When a short-term rental property is sold, the registration(s) and license(s) will expire at sale and are not transferable; licenses will revert to the Village after expiration due to the passage of time, sale, revocation, or twelve (12) months of non-activity and will be redistributed according to this chapter.

F. The Enforcement Officer shall develop a form(s) to properly carry out this ordinance. The registration form shall collect not less than the following information and other items as the Enforcement Officer may deem necessary for implementation of this ordinance:

a. Name, address and telephone number of the property owner and/or local agent for the dwelling unit;

b. The street address of the dwelling unit, along with other identification if more than one dwelling unit has the same street address;

c. The number of bedrooms in each dwelling unit and in the dwelling as a whole;

d. The number of days the dwelling unit is available for short term rental each calendar year;

e. The identification of the number of parking on the actual property.

f. A statement certifying each bedroom has a working smoke alarm, there is a working carbon monoxide detector on each floor and the local agent will check those devices at least every 90 days.

g. A statement certifying that the property owner or a local agent will provide at least one copy of the Village's Good Visitor Guide materials to the renters each time the dwelling unit is rented;

h. A statement indicating which year the dwelling unit was first used as a short-term rental, and for how many days it was rented in the previous calendar year; and

i. A list of all websites and other media where unit is advertise.

G. Upon determination that a STR applicant has met all registration and regulation requirements, a license shall be issued by the Enforcement Officer.

H. There shall be a fee for registration collected at the time of registration. An additional fee shall be collected at time of licensing. Council shall set a fee(s) from time to time by resolution; such fee(s) may vary depending on the type of property, dwelling, or other distinction Council may deem advisable.

Section 4: Registration process and procedure

A. Upon adoption of this chapter, preference for registrations shall be determined as follows:
   i) First, properties duly registered prior to **the date of the first implemented registration deadline** and whose principle owner at the time of registration was and remains a person whose principle residence is in the Village of Elk Rapids and who can demonstrate the property has been rented as an STR within the past calendar year.
   ii) Second, properties duly registered **by the date of the first implemented registration deadline** but whose principle owner at the time of registration was not or is not currently a person whose principle residence is in the Village of Elk Rapids and who can demonstrate the property has been rented as an STR within the past calendar year.
   iii) Third, properties duly registered **by the date of the first implemented registration deadline** but which does not fall under either of the above categories.
   iv) Fourth, all other properties which might qualify for registration and licensing.

B. New applications will be placed on a waiting list in the order of when a complete application is received by the Village.
   a. Applicants whose principle residence exemption is for a property located in the Village of Elk Rapids will get preference and be moved to the top of the list of new applicants.
   b. If the applicant is contacted and offered to register and refuses, they will be moved to bottom of the waiting list.

C. A deposit will be required to be on the waiting list.
   a. The deposit will be used as partial payment for registration.
   b. The deposit is non-refundable when the applicant refuses registration or when the applicant voluntarily withdraws from the waiting list.
   c. Council shall, from time to time by resolution, set the deposit fee.

D. The Enforcement Officer is empowered to develop a method for registration in accordance with this provision.

E. Short-term rental shall follow applicable regulations found within **applicable chapters of the Village of Elk Rapids General Code of Ordinances.**

Section 5: Types of Short-Term Rentals

A. *Personal Units.* Personal Units may be rented for periods of not less than 7 days up to a total of 28 days per calendar year when the owner is not present or for an unlimited period of time when the property owner is present and living on-site **which shall not be capped in number across the Village. [discuss]**

i. An owner can register only one Personal Unit. Additional units under one ownership must be registered as a Business Unit.

B. *Business Units*. Business Units may be rented without restriction on days rented per year.

i. There shall be a cap of 50 business units across the R-1, R-2, and R-2A zones.

ii. No restriction is placed by the village on properties within a home owners association.

iii. The cap shall be reconsidered by Council on or before December 1, 2020.

Section 6: Regulations

A. *Local agent required.* All dwelling units used for short-term rentals shall have a designated local agent.

B. *Contact information posted.* A notice shall be posted in a prominent location within any dwelling unit used for short-term rentals stating (in at least 16-point type) the name of the local agent and, a 24-hour telephone number at which the agent can be reached. **This same information shall be prominently posted in a street-facing window, at the front of the house if possible, in at least 72-point, easily read font.**

C. *Compliance with codes.* The dwelling unit must meet all applicable Residential Building, Health Department, Nuisance and Safety Codes as necessary to protect the safety of occupants.

D. *Noise and nuisance.* Noise during quiet hours must be limited to that which does not disturb the quiet, comfort or repose of a reasonable person of normal sensitivities. Quiet hours shall be from 11:00 p.m. to 7:00 a.m. The village's Noise Control Ordinance shall apply.

E. *Fireworks.* Fireworks of any kind are not allowed on rental property, except in accordance with the village's Fireworks Ordinance, _____.

F. *Fire pits.* Open burning is not allowed.

a. Indoor and outdoor fireplaces with chimneys are permitted so long as they are not determined to be a nuisance in keeping with the Village's **nuisance** [check terminology] code.

b. Natural gas fire pits are permitted. **[check code]**

G. *Maximum occupancy.* Short-term rentals shall be permitted maximum occupancy of 2 persons per bedroom plus two persons per finished and legal floor for dwelling as described in the registration and as may be verified by inspections from time to time. An individual present in a dwelling unit during the term of a STR shall be presumed to be an occupant unless it is between the hours of 8am and 10pm, and circumstances clearly indicate the individual will not stay overnight.

a. No rental shall be permitted for more than 10 persons. [discuss]

b. Notwithstanding part a, those units in operation and registered with the Village prior to **the date of the first registration deadline** which may have clearly indicated occupancy ~~up to 16~~ **exceeding 10,** but not exceeding two per bedroom plus two persons per finished and legal floor for dwelling may continue with said occupancy limit until one of the following applies: the license expires; the property is sold, conveyed, or ownership otherwise changes; and, the registration and license is permanently revoked. Upon such condition, the occupancy limit shall be reduced to 10 persons in conformity with part a.

c. No dwelling unit used as a short-term rental may be built or modified hereafter to exceed the limitation of 10 persons as described above.

H. *Parking Restrictions.* Vehicle parking must be contained on the property in the garage, finished drive or improved parking area, such as gravel.

I. *Advertising.* No person shall advertise a short-term rental, unless the advertisement includes the license number and the maximum occupancy permitted in the unit.

J. *Fee.* Short-term rentals shall pay a fee as Village Council may, from time to time, establish by resolution, to account for costs related to the enforcement, community impact, and other customary fees and costs associated with short-term lodging which may already be allowed within the Village.

K. *Inspections and conditions.* Not less than once every three calendar years and/or upon written complaint, the Enforcement Officer may make periodic inspections of a short-term rental to ensure continuing compliance with the approval standards specified in this chapter. In addition, the Enforcement Officer may impose reasonable conditions on a registration issued under this

chapter which are reasonably necessary to ensure compliance with the approval standards provided in this chapter.

Section 7: Saturation.

A. Saturation is considered no more than two business units per linear block or segment of street.

Section 8: Revocations and Appeals

A. *Revocation procedure.* The written notice of the charges and the notice of the hearing shall be personally served on the owner or agent or served on the owner by certified mail, restricted delivery, not less than 14 days before the hearing before the Enforcement Officer.

i. Upon a finding by the Enforcement Officer of a first violation within any 12-month period, the short-term rental registration may be suspended for up to 15 days and during said time, the premises shall not be utilized for a short-term rental.

ii. Upon a finding by the Enforcement Officer of a second violation within any 12-month period, the short-term rental registration shall be suspended for 30 days and during said time, the premises shall not be utilized for a short-term rental.

iii. Upon a finding by the Enforcement Officer of a third violation within any 12-month period, the short-term rental registration shall be revoked and the owner or local agent who had been issued the short-term rental registration shall not again be issued a short-term rental license for a period of 12 months and during said time the premises shall not be utilized for a short-term rental.

iv. Upon a finding by the Enforcement Officer of a fourth violation within any 24-month period, the short-term rental registration and license shall be revoked and the owner who had been issued the short-term rental registration and license shall not again be issued a short-term rental registration or license under that ownership name and the premises shall not be utilized for a short-term rental.

B. A minimum of a 14 day notice will be given to owners and agents for any suspensions. Appeal from denial or suspension or revocation of a short-term rental registration is allowed.

C. *Appeal Procedure.* Upon a determination by the Enforcement Officer that the registration of a dwelling unit is subject to revocation pursuant to division (A)(iv) above, the Enforcement Officer

shall issue a notice to the owner, agent and all property owners within 100 feet of the registered STR stating that the village intends to revoke the rental registration.

a. The notice shall inform the owner and local agent of a right to a hearing to show cause as to why the registration should not be revoked. If a hearing is requested and the fee is paid within 14 days of the service of the notice, the village shall schedule the hearing before the Zoning Board of Appeals and notify the owner and agent in writing of a time and place for that hearing.

b. At the hearing, the owner and agent may present evidence that the requirements for revocation provided in division XX above are not satisfied, or that the property owner and agent should not be held responsible for one or more of the three requisite violations due to extenuating circumstances. Extenuating circumstances may include circumstances that the owner or the owner's agent could not reasonably anticipate and prevent, and could not reasonably control.

c. The Zoning Board of Appeals shall independently determine whether there is competent, material and substantial evidence establishing a violation of this division (X), and/or whether there is competent, material and substantial evidence establishing that extenuating circumstances exist.

Section 8: Violations

A person who violates any provision of this Chapter is responsible for a municipal civil infraction in the amount of [$x]. Each day on which any violation of the Chapter continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

Section 9: Supersede previous provisions

Section 10: Enactment

This chapter shall become effective 30 days after approval and publication by the Village Council pursuant to the General Law Village Act.

Section 11: Severability Clause