



301 East Main Street
Lowell, Michigan 49331
Phone (616) 897-8457
Fax (616) 897-4085

CITY COUNCIL COMMITTEE OF THE WHOLE AGENDA
SEPTEMBER 18, 2017 @ 5:30 PM

1. CALL TO ORDER; ROLL CALL
2. APPROVAL OF THE AGENDA
3. CITIZEN DISCUSSION FOR ITEMS NOT ON THE AGENDA

IF YOU WISH TO ADDRESS AN AGENDA ITEM, PUBLIC COMMENT FOR EACH ITEM WILL OCCUR AFTER THE INITIAL INFORMATION IS SHARED ON THE MATTER AND INITIAL DELIBERATIONS BY THE PUBLIC BODY. PUBLIC COMMENT WILL OCCUR BEFORE A VOTE ON THE AGENDA ITEM OCCURS

4. SHORT TERM RENTALS
5. BROWNFIELD REDEVELOPMENT AUTHORITY
5. COUNCIL AND BOARDMEMBER COMMENTS
6. ADJOURNMENT

NOTE: Any person who wishes to speak on an item included on the printed meeting agenda may do so. Speakers will be recognized by the Chair, at which time they will be required to state their name and will be allowed five (5) minutes maximum to address the Council. A speaker representing a subdivision association or group will be allowed ten (10) minutes to address the Council.

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MEMORANDUM

To: City of Lowell Planning Commission
Date: September 8, 2017
From: Andy Moore, AICP
RE: Short Term Rentals

The purpose of this memo is to outline the various issues and concerns surrounding the short-term rental of residential properties located in the City of Lowell. This issue is viewed from the perspective of both the residents and the rental property owner. A range of proposed options to address the issue are offered for the consideration of the Planning Commission and City Council.

The Issue

Owners living in single-family residences in a neighborhood environment normally expect that the other homes in the area will be occupied by other long-term residents with similar standards of housekeeping, behavior, and a general good-neighbor's concern for the other residents. On the other hand, within the limits of the law and local ordinances, a property owner is entitled to capitalize on the value of his home and land. Where there is a market for short-term rentals, the high earnings potential of the property can be enticing, especially in communities that tend to attract a number of tourists. With the increasing popularity of companies like Airbnb and VRBO, this is a significant issue in numerous communities throughout the region.

As a result of this tension, many communities have implemented some form of regulation of short-term rental housing. The following summarizes the reasons most often cited for short-term rental regulation, although all may not apply to the City of Lowell.¹

1. **Protecting a Single-Family Environment.** As outlined in the quote above, a frequent basis for regulating short-term rentals is a perceived need to protect the character of existing residential neighborhoods. These efforts are often driven by complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic and parking, too many strangers coming and going, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor.

¹ Much of the discussion on the reasons for short-term rental regulation is drawn from an issue paper prepared for the National Association of Realtors, by Robinson & Cole, LLP, 2011, and made available on www.realtor.org along with previous research and experiences of Williams & Works staff planners.

2. **Protection of Physical Characteristics and Property Values.** The need to protect the physical characteristics of their residential neighborhoods is often cited. The underlying rationale here is that short-term rentals are generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. The presumption is that absentee property owners are less diligent about the types of regular and routine maintenance tasks that owner occupants would provide. The result, would be a deteriorating community and declining property values, especially as more owners opt to make their properties available as short-term rentals and the perceived stability of permanent residents diminishes.
3. **Fairer Competition with Licensed Lodging.** Restrictions on short-term rentals can also be intended as a means of leveling the playing field between the short-term rental industry and conventional overnight lodging facilities, such as hotels and bed and breakfasts, which may be specifically regulated under state or local law. It is not uncommon for the hospitality industry to urge passage of regulations governing short-term rentals on the grounds that they are functionally the same as hotel units. The argument is that successful hotel operators devote large sums to maintenance and to comply with state and local requirements that should also apply to competing short-term rentals.
4. **Protection of Renter and Tourist Safety.** Occasionally, another reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity or fire code compliance) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units who may not be aware if these limitations.
5. **Revenue.** Many resort communities around the country levy some form of Hotel Occupancy Tax, which may apply to short-term rentals. In Michigan, an occupancy tax of up to 5% of the room fee is allowed in properties that have 10 or more units. This tax requires local approval to implement and the funds raised must be largely used for tourism marketing, not basic municipal services. An alternative approach to revenue generation might be licensing and inspection fees, although typically such revenues must be limited to the amount needed to offset operating costs. And, of course, any such regulatory structure will also necessitate an administrative structure to implement it.

Alternative Approaches

There are a number of responses to these issues or challenges that the City may consider, ranging from doing nothing to an outright ban on short-term rentals. Several of those alternatives are discussed below. In many cases, these alternatives are not mutually exclusive and aspects of one approach may be combined with another in devising an approach that is appropriate to the City.

1. **Do Nothing.** Currently the City's Zoning Ordinance defines the terms "single-family dwelling" and "family" quite broadly and an argument may be made that the use of one's home as a short-term rental is included as a permitted use anywhere single-family

dwellings are permitted, although we would disagree with such an interpretation. (Note: these has been legislation proposed in the Michigan Legislature that would do make consider a short term rental a residential use.) This is especially true where the practice has been a part of the local environment for a long time. In essence, this can be interpreted as an acknowledgement that a short-term rental has been considered a legitimate use of a residence and the Zoning Ordinance is written accordingly. Certainly, a property owner ought to be able to capitalize on a legitimate use of his/her property, so long as it does not unreasonably impact the neighbors. Such a perspective does not mean neighboring residents must tolerate unruly, messy or dangerous behavior by guests staying in the short-term rentals. When such behavior borders on criminal activity, Lowell's Police Department is empowered to evaluate the situation intervene by taking whatever action is needed.

Pros and Cons. The advantage of the "do-nothing" response is that no additional regulatory structure is needed and property owners are free to continue this use of their homes without additional oversight. To the extent particular guests or property owners create problems in the neighborhood, existing criminal statutes may be used to address those problems. The disadvantage of taking no action is the perceived problems associated with short-term rentals may get worse as the practice of renting out homes becomes more prevalent. Furthermore, has been the approach thusfar taken by the City, and with one complaint having arisen from a short-term rental, the City is justified in feeling compelled to take action.

2. **Public Information and Peer Pressure.** The City might take action either independently or in conjunction with other local or regional organizations to mount a public information effort to encourage "good neighbor" property maintenance and visitor behavior. This could take the form of brochures sent to known short-term rental owners and asking them to post a few house rules intended to protect the neighborhood. Local volunteers could approach owners of problem properties to seek their cooperation to assure that a short-term rental in an otherwise single-family neighborhood is not disruptive. In most cases, people want to get along and will cooperate. Where such an approach is resisted or met with hostility, the Police Department can always be called in to address specific cases.

Pros and Cons. This response has most of the same advantages and disadvantages of the "do-nothing" response in that it requires no additional regulatory structure and may be only marginally effective. However, it does have the added advantage of proactively enlisting the involvement of neighborhoods to inform their leadership to the need to keep tabs of short-term rental activity and it provides some simple tools to use in response to emerging problems. Of course, the major disadvantage of this approach is the "lack of teeth" should someone simply flaunt the agreed-upon "good neighbor" standards.

3. **Limits on Rental Duration.** One of the objections often expressed concerning short-term rentals in residential neighborhoods is the frequent influx of strangers into the area. Some communities adopt standards that prohibit very short-term rental leases, such as

nightly or only two or three nights. On the other end, some communities require that short-term rentals be rented for at least 7 days at a time. Then there are communities requiring minimum stays of two weeks or more, even up to 30 days. The rationale for this approach is the longer the term of the lease, the greater the likelihood that the guests will respect the rights of neighbors.

Pros and Cons. This approach is relatively simple to implement, although it may be difficult to police, as discussed below. Nevertheless, assuming that the majority of guests staying for several days are better behaved, many of the problems associated with short-term rentals could be addressed by this approach. Furthermore, visitors that want to come to the area for shorter periods would be directed toward conventional hotels and bed & breakfasts so that this approach works more cooperatively with those uses. Implementing this approach would require an amendment of the Zoning Ordinance and/or a new general law ordinance governing short-term rentals. In discussing this with other communities, it seems that the vast majority of the property owners either cooperate, or they advise their guests to not “make waves” in the neighborhood that would call attention to a rapid turnover or other problems with their occupancy.

4. **Special Land Use.** Short-term rentals could be treated as special land uses under the Zoning Ordinance subject to a set of review and approval standards and a public hearing prior to receiving a zoning permit. Short-term rentals might be allowed as special land uses in some residential districts-but not necessarily in all. The standards could also include an established maximum occupancy, property maintenance and management standards and even isolation between short-term rentals to prevent a concentration of them in a particular neighborhood.

Pros and Cons. A primary advantage of this approach, once it is implemented, is that all the surrounding property owners would be advised that a short-term rental was being considered in their area. The input at a public hearing often influences the conditions that are applied to special land uses and can be a useful governor on otherwise objectionable features of a proposed use. The fees and escrow requirements for special land uses should support the cost of administering this approach. A special land use regulatory approach has “teeth” in that failure to operate a short-term rental in compliance with the special land use approval can result in suspension or revocation of the approval. Of course, the steps necessary to rescind a special land use can be cumbersome and could result in expensive litigation. A structural weakness in regulating short-term rentals as special land uses through the Zoning Ordinance is that all short-term rentals previously in existence are “grandfathered” as legal nonconforming uses. Applicants for new special land uses may see themselves as unfairly singled out if their “grandfathered” neighbor is able to conduct his business in an unregulated manner.

A further difficulty with this (and other) approaches is finding the illegal short-term rentals in the City to bring them into compliance. Many advertise on VRBO.com, or Airbnb.com or other sites and could be identified with some diligent research. Others may be

identified by neighbor complaint, but still others could exist illegally without the knowledge of the neighborhood or the City. Critics of this approach might argue that if the use has not made itself known by its operation or the guests' behavior, there is no purpose in regulating it.

- 5. Licensing and Inspection.** Through a general law ordinance, the City could establish licensing standards for short-term rentals. Those standards could regulate the entire spectrum of short-term rental operations from number of occupants, duration of stays, property maintenance and management procedures (even including a required minimum operating reserve fund to assure property maintenance), among others. The ordinance could also establish a maximum number of licenses that might be issued at any time. It would also require periodic inspections of the units to assure continued compliance. Licenses would be of limited duration and would only be renewed with continued compliance with all requirements. For greatest effect, a licensing and inspection approach would be coupled with special land use permitting under the Zoning Ordinance. In this way, only licensed units would be eligible for consideration as a special land use and in order to be licensed, a unit must be an approved special land use. This overcomes the "grandfathering" issue outlined above.

Pros and Cons. With a properly prepared and administered licensing approach, the City should be well-equipped to address virtually all of the perceived problems surrounding short-term rentals. Clearly, this approach is far more extensive than most other land use techniques currently employed in the City. In addition, as the City of Lowell is one of dozens of communities in the area where there is some demand for short-term rentals, implementing such an approach while other communities do not will likely be seen as unfair to local property owners.

Most frequently, a licensing approach is undertaken in larger, urban jurisdictions that encompass most of the local marketplace. It should also be apparent that this approach would necessitate a fairly robust administrative structure to implement. Licensing fees could help to offset administrative expense, but if fees are too excessive, City property owners will certainly object to the inequity if other communities do not implement a similar approach.

- 6. Prohibit short-term rentals.** As indicated above, under the current Zoning Ordinance there is an argument that a short-term rental use is allowed as part of owning a single-family dwelling, particularly if there are short-term rentals being utilized currently. Whether the City is (or could be) susceptible to an exclusionary zoning claim remains to be seen, but if the City were inclined to permit short-term rentals in some capacity the Ordinance could be coupled with a short-term rental definition as either a permitted or special land use (see #4 above), to avoid such a claim. For example, it might be that short-term rentals would be permitted only in one particular zoning district. Alternatively, a short term rental of less than 30 days could be prohibited in residential districts.

Pros and Cons. If the use were effectively eliminated from the City, the perceived problems associated with short-term rentals would be eliminated as well. If they were

not eliminated, but were confined to a certain area or zoning district, any problems associated with them would be contained. However, as outlined above, any existing short-term rental must be treated as a legal nonconforming use and might continue for years despite an outright ban. Furthermore, enforcing a ban will could be difficult, costly, and may open the City to an exclusionary zoning claim.

Most communities find that enforcement of its restrictions is only feasible in response to complaints. Finally, a ban or stringent restrictions will certainly be seen as an intrusion onto the rights of property owners who might need to generate some income from their properties and take advantage of the emerging draw to the City as a destination, or see the ability to use the property as a short-term rental as a selling feature which enhances its value.

Recommendation. There is no obvious correct approach to this issue. First, the City must determine whether short-term rentals represent a problem in the community today or whether they may become a problem in the future as the nature of residential development in the community evolves. If the problem is seen as relatively isolated and generally a matter of guest behavior rather than land use, then alternatives 1 or 2 may be appropriate. On the other hand, if there is a sense that short-term rentals and the behavior of guests are threatening the character of the City in a fundamental way, then a more extensive approach should be considered.

Regardless of the approach taken, there should be a solid community consensus to support it. Our experience suggests that implementing a comprehensive and effective approach to short-term rentals will require a broad effort to form a community consensus and involve interested and/or affected property owners and community stakeholders on the scope and nature of the issue and the most appropriate response to deal with it.

As always, please let me know if there are further questions. When the City agrees upon a recommended approach, we would be happy to work with its legal counsel in drafting regulatory language, if desired.

property used as the principal residence of that owner.

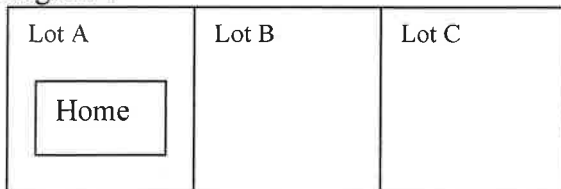
20. An owner owns property in a resort/lake area. The owner occupies the home the majority of the year but rents it out during the summer and takes an apartment in town. Is the owner entitled to a 100% principal residence exemption, a reduced exemption, or no exemption?

Michigan law does not make any provision for granting a partial exemption based on the percentage of the year that the owner occupied the home as a principal residence. Federal law allows an owner to rent their principal residence for less than 15 days during a calendar year without declaring it as a rental property on their tax return. An owner that would be required to declare rental income on their home is not entitled to a principal residence exemption on that property. Therefore, if an owner rents his property for more than 14 days a year, the property is not entitled to a principal residence exemption.

21. Does contiguous mean that there must be a common boundary, or can contiguous touch contiguous?

A. Contiguous may touch contiguous. In the diagram below, if the owner of Lot A owns both Lot B and Lot C, and Lot A is qualified for a principal residence exemption, and both lots B and C are classified residential or timber cutover and unoccupied (unoccupied means no habitable dwelling) then Lot C is contiguous to Lot A through Lot B.

Diagram I

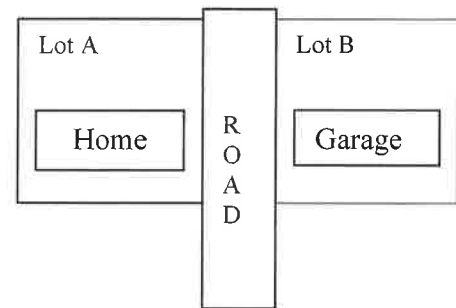


B. If Lot B is not classified as residential or timber cutover, or if B has a habitable dwelling, then Lot B does not qualify and Lot C would no longer be contiguous and would not qualify.

22. In the diagram below, Lot A is a qualified principal residence exemption property. Lot B is owned by the owner of Lot A and is classified residential, and the building is assessed as a garage. Is Lot B eligible for an exemption under the rules of contiguity?

Yes. Contiguity is not broken by a road, a right of way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the two parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. See example below.

Diagram II



23. In Diagram II, Lot B be is contiguous to Lot A. Would the owner qualify for exemption if there were an apartment in the garage?

No. The property would not be considered unoccupied.

24. Is a contiguous parcel considered eligible for a principal residence exemption if it has a residence on it that is only being used for storage?

If the only use of the structure on the property is for storage purposes and the structure is not habitable, the taxpayer may qualify for a principal residence exemption. The taxpayer has the burden to show that the property is unoccupied.

25. My wife and I own two homes in Michigan; our main home in southeastern Michigan and a cottage up north. In March 2004, we decided to put the southeastern Michigan home up for sale and live at our cottage up north. We listed the house with a realtor, rescinded the principal residence exemption on the house, and moved to



**LOWELL CITY COUNCIL
MEMORANDUM**

DATE: September 14, 2017

TO: Mayor DeVore and the City Council

FROM: Michael T. Burns, City Manager *MB*

RE: Brownfield Redevelopment Authority

The City has been approached by interested developers regarding the possibility of considering a Brownfield Redevelopment Authority (BRDA). The establishment of this district would be to allow reimbursement for abatement costs to contaminated, functionally obsolete, blighted or historic properties through tax increment financing (similar to the Downtown Development Authority). The advantage to this is in addition to local tax capture, under state statute; school operating taxes can also be added to this capture. In addition, the Michigan Economic Development Corporation through the Michigan Strategic Fund can also approve the 6% State Education Tax from approved developments to be captured for Brownfield remediation.

I have attached information regarding the state Brownfield Program. I would like the City Council to consider establishing an authority. In my former community, we had a BRDA established approximately 15 years ago and we designated the entire community as the district for the authority. The reason for this is to avoid site specific authorities. During my tenure, we approved one Brownfield Work Plan and it has been the only one in the existence for the authority. So I am familiar with this process.

The state statute currently allows the Downtown Development Authority to serve as the Brownfield Redevelopment Authority, which may be a good idea since this would not require the creation of another separate authority.

The City Attorney will also be present to answer any questions. He has put together over a hundred Brownfield Work Plans. I would like to have discussion with the Council on this as I think this would be a beneficial development tool for our City.

COMMUNITY DEVELOPMENT BROWNFIELD PROGRAM OVERVIEW

The Brownfield Program uses tax increment financing (TIF) to reimburse brownfield related costs incurred while redeveloping contaminated, functionally obsolete, blighted or historic properties. It is also responsible for managing the Single Business Tax and Michigan Business Tax Brownfield Credit legacy programs (SBT/MBT Brownfield Credits).

The Michigan Strategic Fund (MSF) with assistance from the Michigan Economic Development Corporation (MEDC), administers the reimbursement of costs using state school taxes (School Operating and State Education Tax) for non-environmental eligible activities that support redevelopment, revitalization and reuse of eligible property. The MEDC also manages amendments to SBT/MBT Brownfield Credit projects approved by MSF. The Michigan Department of Environmental Quality (MDEQ) administers the reimbursement of environmental response costs using state school taxes for environmental activities, and local units of government sometimes use only local taxes to reimburse for eligible activities (i.e., "local-only" plans). The state statutory authority for the Brownfield Redevelopment Financing Act program is Act 381 of 1996, as amended (Act 381).

Two categories of eligible activities under TIF are available across the state; demolition and lead and asbestos abatement. Two additional eligible activities are available in any qualified local government unit¹ (QLGU) or on property owned by a land bank; site preparation and infrastructure improvements. Land banks may also be reimbursed for costs related to conveying and managing property that is in their possession. The non-environmental program generally targets industrial site reuse, and urban development with mixed-use components.

The Brownfield Redevelopment Authority (BRA) is the local jurisdiction entity that manages the development of brownfield plans. After approval of a brownfield plan by the local governing body, the BRA may request capture of state school taxes via a work plan submitted to the MEDC and/or MDEQ. There are 295 BRAs in Michigan, and approximately 467 brownfield plans that are active or have been completed across the state (as reported to the MEDC in September 2015). These

authorities vary in terms of their participation with MSF and/or MDEQ to request state school taxes for TIF reimbursement.

MEDC staff recommends policy documents, school tax capture work plans, school tax capture amendments and amendments to SBT/MBT brownfield credits to the MSF for consideration. The MEDC manages all work plans and SBT/MBT brownfield credits approved by the board, including assuring reporting obligations and compliance.

Eligible program uses under TIF include:

- Demolition
- Lead and asbestos abatement
- Site preparation
- Infrastructure improvements
- Assistance to land banks and local government units

Eligible program uses under legacy SBT/MBT Brownfield Credits include:

- Demolition
- Lead and asbestos abatement
- Building renovation
- New construction
- Purchased or leased equipment

TAX INCREMENT FINANCING PROCESS

The work plan submission and approval is a multiple step process. Work plans are received on an ongoing basis and eligible activities must be in accordance with the Act 381 guidance issued by MEDC. Once a project is identified, the BRA or local government representative works with MEDC staff to perform the following steps:

I. Initial evaluation

- a. Project scoping and submittal of a draft work plan and other supporting documentation provided to MEDC community assistance team or business development manager to determine initial support.
- b. MEDC leadership consideration of initial support and if supported, letter of interest provided.

¹As defined in PA 146 of 2000, MCL 125.2781 to 125.2797

II. Work plan submission, review and MSF consideration

- a. BRA or local government representative submits a work plan or amended work plan, brownfield plan, approving resolutions, transmittal letter, and executed reimbursement agreement to MEDC after project is approved by local governing body.
- b. Due diligence performed to verify that BRA is compliant with Act 381 reporting requirements. MEDC staff reviews proposed eligible activities for compliance with MSF guidance, and makes a recommendation to the MSF board or delegated representative.
- c. MSF board or delegated representative determines support for the project.
- d. Local government unit administers TIF capture and is subject to reporting requirements.

III. Reporting requirements (TIF work plans only)

- a. BRA submits information annually to MEDC via online portal for each project currently collecting tax increment revenue
- b. MEDC and MDEQ compiles information and provides report to legislature.

SBT/MBT BROWNFIELD CREDITS

I. Amendments

- a. Amendment application is submitted and amendment request is vetted by brownfield program staff and brownfield program leadership.
- b. If amendment is supported, remaining amendment request forms and any other materials required for review is submitted to brownfield program staff.
- c. MSF board or delegated representative determines support for the project.

II. Project completion

- a. Qualified taxpayer sends certificate of completion request to MEDC brownfield staff.
- b. Certificate of completion request is reviewed and sent to MEDC compliance for review.
- c. If certificate of completion request fulfills statutory requirements, certificate of completion is issued. Qualified taxpayer may then submit the certificate of completion to Department of Treasury for refund, or tax abatement

CONTACT INFORMATION

For more information, contact the MEDC customer contact center at 517.373.9808.

**STEPSHEET FOR ESTABLISHING
CITY OF LOWELL BROWNFIELD
REDEVELOPMENT AUTHORITY**

1. City Council adopts resolution declaring intent to establish Brownfield Authority and to designate the boundaries of a Brownfield Redevelopment Zone and sets time and date for public hearing thereon.
2. City Clerk publishes notice of public hearing in the *Lowell Ledger* not less than 10 days before the public hearing.
3. City Council holds public hearing on establishment of Brownfield Authority and designation of Brownfield Redevelopment Zone.
4. City Council adopts resolution establishing Brownfield Authority, designating Brownfield Redevelopment Zone and designating the members of the Board of the DDA as the Board of the Brownfield Authority.
5. City Clerk files copy of resolution establishing Brownfield Authority with her office and with the Michigan Secretary of State.
6. Brownfield Authority holds its initial meeting adopting Bylaws, electing officers, appointing an executive director, administering the oath of office, establishing meeting dates and related matters.
7. City Council approves the Bylaws of the Brownfield Authority Board.