

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT  
Case Type: Declaratory Judgment

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John P. Norusis,

Court File No. 82-CV-20-3974

Judge Douglas B. Meslow

Plaintiff,

vs.

City of Marine on Saint Croix,

Defendant.

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### **DEFENDANT'S COUNTERCLAIM**

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Defendant City of Marine on Saint Croix ("City"), for its Counterclaim against Plaintiff, states and alleges as follows:

1. Plaintiff is an individual resident of the City of St. Paul, County of Ramsey and State of Minnesota.
2. Plaintiff is the owner of the property located at 801 Pine Cone Trail, City of Marine on Saint Croix, Minnesota.
3. Defendant is a Minnesota municipality in the County of Washington and State of Minnesota.
4. Jurisdiction and venue are proper in this Court.
5. On August 13, 2020, the City lawfully and properly adopted Ordinance No. 2020-156 "AN ORDINANCE REGULATING SHORT-TERM RENTALS AND PROHIBITING UNPERMITTED SHORT TERM RENTALS" ("Ordinance"). A true and correct copy of the Ordinance is attached as Exhibit A.

6. Plaintiff operates the property primarily as a short-term rental, and has alleged his ability to rent the property for short-term rentals is “vital” to his ability to pay the mortgage against the property. Plaintiff has also alleged since purchasing the property on May 17, 2018 (for \$1,130,000.00) through the date of the Amended Complaint (November 11, 2020), he has received “at least” \$95,272.78 in short-term rental income for 40 different rentals.

7. Plaintiff brought a Motion for Preliminary Injunction to enjoin the City’s application of the Ordinance, as applied to Plaintiff, which the Court denied on December 22, 2020.

8. Plaintiff has not appealed or sought reconsideration of this decision.

9. Nonetheless, Plaintiff has continued to rent out his property, without a license, in clear violation of the Ordinance.

10. The City has received citizen complaints concerning Plaintiff’s ongoing violations of the Ordinance.

11. In a letter dated March 16, 2021, City Attorney David Snyder advised Plaintiff’s counsel of the ongoing violations and requested compliance. A true and correct copy of this letter is attached as Exhibit B.

12. The City has provided Plaintiff’s counsel copies of the citizen complaints, which have been redacted as required by the Minnesota Government Data Practices Act.

13. The City has not received any assurance of Plaintiff’s compliance with the Ordinance.

14. Plaintiff has continued to rent out his property in violation of the Ordinance.

15. Upon information and belief, Plaintiff has hosted events at the property in violation of the Ordinance.

16. The Ordinance provides it is a misdemeanor to operate a short-term rental without a license, and also provides in “the event of a violation or threatened violation of this Ordinance, the City, in addition to other remedies, is entitled to seek injunctive relief or proceedings.” Ordinance § 6.

**COUNT I: Declaratory Judgment**

17. The City re-alleges the allegations contained in the previous paragraphs.

18. An actual controversy exists between the parties concerning their respective rights and interests in the enforcement of the Ordinance as applied to the property pursuant to Minn. Stat. § 555.01, et seq., the Uniform Declaratory Judgments Act.

19. The City seeks a declaratory judgment from the Court identifying and confirming all violations of the Ordinance on the property.

**COUNT II: Injunctive Relief**

20. The City re-alleges the allegations contained in the previous paragraphs.

21. The ongoing violations of the Ordinance constitute clear and irreparable harm to the City’s governing authority.

22. The City does not have an adequate remedy at law to correct or eliminate the ongoing violations of the Ordinance by Plaintiff.

23. The City requests the issuance of a permanent injunction from the Court ordering Plaintiff to eradicate all violations of the Ordinance on the property and cease any and all uses of the property in violation of the Ordinance. In addition, the City seeks an order from the Court prohibiting the Plaintiff from allowing the same or similar violations or uses to exist or occur on the property in the future.

**WHEREFORE**, the City requests the following relief:

1. Plaintiff's claims be dismissed with prejudice;
2. The City's claims for declaratory and injunctive relief be granted;
3. The City be awarded its reasonable costs and disbursements; and
4. Such other relief as the Court deems just and equitable.

Dated: July 20, 2021

s/Paul D. Reuvers  
Paul D. Reuvers, #217700  
Andrew A. Wolf, #398589  
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And

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*Attorneys for Defendant*

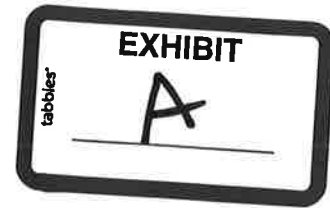
## ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211.

s/Paul D. Reuvers  
Paul D. Reuvers, #217700

CITY OF MARINE ON ST. CROIX  
WASHINGTON COUNTY, MINNESOTA

ORDINANCE NO. 2020-156



AN ORDINANCE REGULATING SHORT-TERM RENTALS AND PROHIBITING UNPERMITTED SHORT TERM RENTALS.

THE CITY COUNCIL OF THE CITY OF MARINE ON ST. CROIX DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1. Findings and Intent.**

The City of Marine is a largely residential city which has several unique local amenities including the St. Croix River, the William O'Brien State Park and a historic Downtown. This makes it a natural and likely tourist destination. Historically, transient overnight stays were largely limited to hotels and motels and the occasional owner bed and breakfast. However, the advent of certain internet-driven short term residential/housing rental forums such as VRBO have caused some homeowners to make their properties available for short term rentals. These so-called "short term rentals" often last a day or two, are often during the weekend and are recreationally focused occupancies, different in kind than a typical house rental which involve more connection with the neighborhood and property over time and because of the length of the occupancy. Accordingly, this has led many cities to consider and adopt regulations governing, and in some cases prohibiting, short term rentals. Though Marine is a tourist destination, the City and its residents value the need to preserve its essentially residential character while, at the same time, permitting short term rentals on terms which make them unintrusive, not disruptive, not excessive in number and which does not lead to the proliferation of absentee-held properties offered only for rent and not materially owner-occupied. Such things would not be conducive to the stability and building of neighborhoods and commercial uses in the Old Village area of the City, all of which are objectives of the City under its comprehensive plan.

In considering these matters, the City has concluded that short term rentals are in the nature of providing housing, principally recreational housing, for transient, often vacationing short term guests who do not maintain an ongoing relationship with the property or its neighbors or its neighborhoods. By its nature, it involves the introduction of a commercial use into existing residential areas this alone creates a potential for conflict between varying land uses. Furthermore, there are features which are unique to short term rentals-those typically involving stays of less than a 30 day period or 365 day period like those found in conventional leasing arrangements. Specifically, in cases of short term rental, the turnover of occupants is more frequent, stays are, by definition short and recreation focused. Significant damage deposits are often not comparable to those secured by long term rental tenancies and tenant likely has no maintenance obligations such as lawn mowing, exterior tidiness, building maintenance or corresponding interest in maintaining ongoing relationships with long-term neighbors. Accordingly, it is believed that there is more potential for nuisances to arise from such uses including increased noise, inappropriate parking, parties, late hours, multiple invitees, intensive uses over short periods and other features of transient stays as the users come to the property for a short period, recreate and then leave. The City concludes that an ordinance is

necessary to regulate, limit and control short term rentals to eliminate potential nuisances, to ensure that they are compatible with the neighborhoods in which they are located and to maintain their activities in a way that avoids the disruption that can occur because of transient stays among otherwise permanent residential and other occupancies.

**Section 2. Purpose.** The purpose of this section is to allow Short-Term Rentals, where appropriate, within dwellings that are a primary residence, while mitigating impacts upon surrounding properties by implementing balanced regulations to protect the integrity of the Community as well as protecting the public health, safety and general welfare of the long term residents by regulating the time period a transient guest is allowed.

**Section 3. Definitions.**

**Bedroom.** A habitable room which is used, or intended to be used, primarily for the purpose of sleeping.

**Dwelling.** A building or portion thereof, designated exclusively for residential occupancy. Refer to Section 202 of the Zoning Code definitions.

**Owner.** The person or people or entity which owns the dwelling offered for Short-Term Rental. Any person who, alone or with others, has title or interest in any building, property, dwelling, dwelling unit or portion thereof, with or without accompanying actual possession thereof, including any person who as tenant, agent, executor, administrator, trustee, or guardian of an estate has charge, care, control of any dwelling or dwelling unit.

**Person.** Any individual, firm, corporation, association, governmental entity, or partnership and its agents or assigns.

**Primary Residence.** A dwelling within which a person having a bona fide ownership interest demonstrably occupies and resides in for more days annually than it is rented for a minimum of six months during a calendar year. No dedicated vacation rentals are allowed in the City of Marine on St. Croix (see Section 4E(a)(vi)) herein. A dedicated vacation rental is one which does not actually demonstrate owner occupancy and residence in excess of rental days as required herein.

**Transient Guest.** A person or persons renting, using, or occupying a room or rooms for fewer than 30 consecutive days.

**Day.** A 24-hour period from midnight to the next.

**Weekend.** Any consecutive three (3) day period, two of which are Saturday and Sunday.

**Short-Term Rental.** A dwelling that is offered to transient guests for a period of less than 30 consecutive days at a time.

Short-Term Rental, Type A (hosted short-term rental). A dwelling, or portion thereof, ~~unit~~ that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the property is primarily present (i.e., from 10:00 p.m. to 7:00 a.m. during overnight stays) during the period of occupancy by the transient guest.

Short-Term Rental, Type B (unhosted short-term rental). A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the property is not present while the transient guests are present.

Short-Term Rental, Type C (dedicated short-term rental). A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where the primary property use ("use" is a typical term) is a short-term rental.

**Section 4. General Requirements and License Issuance.**

- A. License required. No property, structure or dwelling may be used as a Short-Term Rental (Type A, B or C) unless an application is submitted and a license is first granted by the City provided, however, that Short-Term Rentals located exclusively within the Central Business District shall not be subject to the restrictions of this Ordinance. The License shall be entered on a short-term rental registry. Type C Short Term Rentals are not permitted in the City.
- B. Issuance. All Short-Term Rental Licenses shall be issued administratively by the City Clerk pursuant to the terms contained herein.
- C. License application. Any property owner offering, using or desiring to offer or use a Dwelling as a Short-Term Rental within the City must apply for a Short-Term Rental License from the City. A license must be approved prior to operating within the City. The license application request must be submitted on the form prescribed by the City and must include all the information requested on the application form. Any use or offering for use of a Short-Term Rental which is not licensed is a violation of this Section.
- D. License fee. The license application form must be accompanied by payment in full of the required license application fee. The license application fee amount will be as determined by the City Council and set forth in the City fee schedule. Fees for new licenses obtained for less than the annual license term will be determined on a monthly pro-rated basis until the next full term.
- E. Criteria for Issuance. Prior to issuance of a Short-Term Rental License hereunder, the



applicant shall ensure and the City Clerk, or if requested by the Clerk, City Council, that the following criteria are met:

- a. The licensee accurately certifies on the application form that all applicable items found in this Section are satisfied. In addition, the certification shall constitute an ongoing assurance of compliance herewith. Such items shall include, but not be limited to, the following:
  - i. Short Term Rentals are a permitted use in the zoning district of the subject property;
  - ii. The Proposed Short-Term Rental complies with all of the performance standards, purpose section and definitional requirements found in this Ordinance;
  - iii. A policy number for a valid, in-force liability insurance policy is provided to the City;
  - iv. Compliance with all applicable provisions of the City Code;
  - v. Compliance with any special conditions established in the license.
  - vi. The Dwelling must be materially used for its owner's enjoyment-which shall mean to state the owner shall accurately certify and document to the City annually that the Dwelling has been physically inhabited by the owner for more days and nights than it has been rented. This provision shall not apply to that portion of a lawfully preexisting multi-family residence offered for Short Term Rental (e.g., school house apartments).

#### **Section 5. General Performance Standards.**

The following shall be the general standards for all Short-Term Rental licenses issued hereunder. Violations of them, together with violations of this Ordinance, shall alone be grounds for revocation of permits. All properties seeking or holding a Short Term Rental permit are subject to inspection and verification.

- A. **No Physical Alterations.** No physical alterations of a dwelling shall be permitted in conjunction with the establishment or operation of a Short-Term Rental, except that additional on-site parking may be provided, to the extent that such parking is otherwise permitted by the applicable provisions of the City's Code.
- B. **Non-Transferable.** Licenses issued under this Section are non-assignable, non-transferable. Each license shall automatically terminate upon the sale or other conveyance of the property to an unlicensed person or entity.
- C. **No Vested Right.** Licenses granted hereunder constitute a revocable, limited right. Nothing herein shall be construed as granting a vested property right. No party shall have any

expectancy of reissuance of any license after its annual expiration.

- D. Term. Licenses granted under this Section are valid for up to one year (365 days), expiring on December 31<sup>st</sup> of each year. Any renewal shall require City Council approval. A renewal application must be submitted annually, in advance, at least 60 days of the expiration on December 31<sup>st</sup> but not more than 120 days. If the license holder does not offer the property for short term rental at least twice in a calendar year, then they are not eligible for renewal.
- E. Number of Bedrooms. Each license shall indicate the number of bedrooms which are contained in the dwelling. No license shall advertise the dwelling as containing any more than the identified number of bedrooms. The number of bedrooms, as indicated on the license, shall be used for all calculations required herein.
- F. Use for Events Prohibited. The Short Term Rental shall not be used by the renter nor any rental occupant for nonresidential purposes such as commercial or social events. The Short-Term Rental host shall expressly prohibit and prevent the use of their property for events in any advertisement as well as on-site informational material. Examples of events include, but are not limited to: sponsored events, conference gatherings, retreats, concerts, banquets, receptions, weddings, reunions, dances, parties, or similar uses.
- G. All residential properties offering Short Term Rentals must be owner-occupied (meaning the owner demonstrably occupies and resides in the property for more days annually than it is rented), except for multi-dwelling properties. Lawful multi-family properties existing at the date of adoption of this Ordinance cannot have any more than fifty percent (50%) of the total units in short term rental use.
- H. A Short-Term Rental may only be operated in a principal structure (i.e., not in recreational vehicle, trailer, Accessory building or vehicle).
- I. The applicant/owner shall supply to the City, upon request, true and accurate affidavit of use in form approved by the City. It shall, to the degree specified by the City, detail occupancy by its owner compared to use as Short Term Rental. Failure to submit the affidavit, or inaccuracies in it, shall be grounds for revocation or denial of the permit. The property shall be made available on request for a limited compliance inspection by the City.

- J. Location / Allowances / Considerations. Short-Term Rentals are allowed in all Residential and Village Center zoning districts.

A maximum of three (3) Short-Term Rental licenses shall be allowed in each of the zoning districts within the City. The creation of an additional zoning district shall not give rise to three (3) additional licenses unless this Ordinance is specifically amended to so state. Note: the Schoolhouse units are excluded from the count of three (3) per district.

- K. Use. Short-Term Rental operations must conform to all existing City Ordinances.

Signage indicating the Short-Term Rental is not permitted on or off the premises.

The maximum number of guests allowed is two (2) persons per bedroom, plus an additional two (2) guests. For example, a three-bedroom home could have a maximum of eight (8) guests.

One (1) vehicle per bedroom shall be allowed, with a maximum of four (4) vehicles. The owner of the Short-Term Rental must provide one (1) approved off-street parking spot per bedroom (that is not on a public or private road, right of way or easement), with a maximum of four (4).

Each Short-Term Rental may be rented a maximum of two weekends per calendar month, with additional maximums of 14 days per calendar month and 72 days per calendar year.

- L. The Applicant must confirm upon their application form that there are functioning smoke and carbon monoxide detectors in each bedroom or sleeping area, and a functioning fire extinguisher in the living space.
- M. At the time of permit application and prior to making their property available as a Short-Term Rental, property owner(s) must provide and maintain current, effective contact and emergency contact information for the owner and any designated management representative to all neighbors abutting the side, rear, and across the street from their property. The Applicant shall also maintain accurate emergency contact information with the City sufficient to allow it to be in contact with the Owner immediately.
- N. If the property owner is not on premises, owner or an owner-designee is required to respond to emergencies, and must stay within thirty (30) minutes traveling distance of the property and be available by cellphone during Short-Term Rental use.
- O. 24-hour "Who to contact" information page shall be posted on the premises, and a "Who to contact" page shall be on the City website for residences concerned with the activity at any Short-Term Rental.
- P. The property owner must pay any applicable Federal, State and local taxes.
- Q. Any complaints may be filed with the City via an approved complaint form.
- R. The Licensee shall maintain true and correct records (for a period of 3 years) for annual

reporting to the City. The records shall be sufficient to permit the City to determine the number of guests, and the rental dates.

- S. Noise. While occupying or visiting a Short Term Rental, no person shall make, cause, or permit unreasonable noise to be emitted from the Short Term Rental.
- T. The property owner acknowledges that it assumes all responsibility for operation of the rental and that the City is not responsible for the condition of the rental.

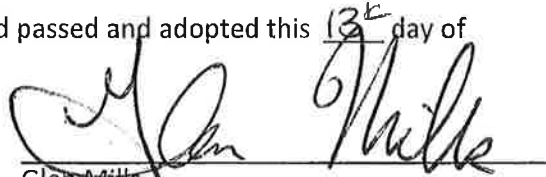
**Section 6. Enforcement and License Revocation.**

- A. Enforcement and License Revocation. Upon a finding that a licensee or other person or firm has violated the terms of this Ordinance, or any other applicable ordinance, law, or regulation, including being determined to have submitted false or misleading information to the City, on two occasions within the license period, the City may revoke the license. Prior to such revocation, the City Clerk shall mail written notice of the license violations to the licensee. The licensee shall have ten (10) days to request a hearing, in writing, upon such revocation before the City Council. Failure to request such a hearing, in writing, shall constitute waiver of the right to be heard on such revocation. However, upon Council discretion a license may be immediately revoked in the event of violation of the terms of this Section.
  - 1. Effect of Revocation. Upon revocation of a license under this Section, such licensee shall be ineligible for applying for a new Short-Term Rental license for a period of 12 months from the date of revocation. Such prohibition shall apply not only to the property for which the license was revoked, but also any other property held or owned by the licensee.
  - 2. Violation a Misdemeanor. Operating a Short-Term Rental without a license shall constitute a misdemeanor and shall constitute a fine of \$1,000.
  - 3. Remedies not Exclusive. In the event of a violation or threatened violation of this Ordinance, the City, in addition to other remedies, is entitled to seek injunctive relief or proceedings to prevent, restrain, correct, or abate such violations or threatened violations.

**Section 7. Effective Date.** This Ordinance shall be effective immediately upon its passage and publication according to law.

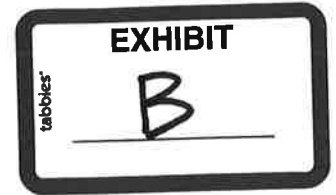
WHEREUPON, said Ordinance was declared passed and adopted this 13<sup>th</sup> day of August, 2020.

  
Attest: Lynette Peterson,  
City Clerk/Administrator

  
Glen Mills,  
Mayor

# JOHNSON / TURNER

— L E G A L —



March 16, 2021

Brandon M. Schwartz  
SCHWARTZ LAW FIRM  
600 Inwood Avenue North, Suite 130  
Oakdale, MN 55128

**Via Email: [brandon@mdspalaw.com](mailto:brandon@mdspalaw.com)**

Re: *801 Pine Cone Trail, Marine on St. Croix, MN 55047*

Dear Mr. Schwartz:

I write to you as the City Attorney for the City of Marine on St. Croix, concerning your client's ongoing violations of the City's Short Term Rental ("STR") Ordinance.

This Ordinance, apart from providing a general requirement that STR facilities first be licensed by the City, also contains specific prohibitions on activities of the STR. Among other things, the Ordinance:

- 1.) Prohibits the use of a STR facility for events (see Section 5, Subd. F). These include sponsored events, conference gatherings, weddings, parties or other similar uses.
- 2.) Additionally, the Ordinance limits the amount of vehicular parking that can occur with STR (see Section 5, Subd. K).

It has come to the City's attention that your client is continuing to operate a STR facility in the City in violation of this Ordinance in several respects. Without limitation, this includes: 1.) using 801 Pine Cone Trail as a STR without first securing a license for it; 2.) the use of 801 Pine Cone Trail as a STR for events, including weddings and bachelorette parties; and 3.) use of 801 Pine Cone Trail as a STR and exceeding parking limitations.

I am sure your client is familiar with the particular uses and activities that have gone on in recent weeks at this facility. It is our understanding that during the weekend of March 12 through March 14, 2021, the property was used for a bachelorette party (while unlicensed) and furnished parking for 8-9 vehicles. Additionally, it is the City's understanding that on or about December 18 through December 20, 2020, the STR was used for an onsite wedding with approximately 11 vehicles present for the wedding.

*Brandon M. Schwartz*  
*March 16, 2021*  
*Page 2*

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These uses are impermissible in the first place because the facility is required to have sought, and been issued, a STR permit before any operation. Further, the specifics of the Ordinance are not being complied with in any event. Since the Court denied your motion for a temporary injunction, the City fully expected your client would comply with the STR Ordinance.

I respectfully request that you confirm in writing within 10 days of your receipt of this correspondence that your client will cease and desist use of the above-referenced property as a Short Term Rental. The City requests your client's voluntary cooperation in this regard; however, I must note that if cooperation is not furnished and the violations eliminated, then it will be necessary for the City to address the matter formally. Please advise.

Sincerely,

JOHNSON/TURNER LEGAL

/s/David K. Snyder

David K. Snyder  
DKS/mah

cc: Lynette Peterson, City of Marine on St. Croix  
Paul D. Reuvers, Esq.