

ORDINANCE #502

Adopted: August 17, 2020
Published: August 27, 2020
Effective Date: September 12, 2020

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

The Village of Elk Rapids ordains:

Section 1: Purpose.

The Village Council finds that short term rentals of dwelling units in the Village provide value to our resort economy. Our Master Plan, amended in 2018, recognizes the increase in housing units (by 11.6% in the previous decade) as well as an increase in seasonal units (by 15.8% in the previous decade) with a corresponding decrease in population by 3.4%. These statistics reinforce the fact that Elk Rapids is increasingly a tourist destination and a seasonal community. These facts affect our housing supply for year-round residents, our school enrollment, our labor force, the residential character of our neighborhoods, and the health, safety, and welfare of our community.

To remain and grow as a year-round community, the Village has enacted this Ordinance to monitor short-term rental business and strike a balance in our multi-sector economy recognizing the interests of our Village residents, business owners, visitors, and property owners.

Section 2: Definitions.

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

Accessory Dwelling Unit (ADU): A second residential dwelling unit that may be contained within an existing single-family home, detached garage, or carriage house, and that meets all of the requirements of Section 431., of the Village of Elk Rapids Zoning Code of Ordinances.

Attrition: The reduction of concentration or total number of Short-Term Rental Business Units within a designated area, through a process such as, but not limited to, non-renewal of license, sale or transfer of property to non-immediate family member, or revocation of license.

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

As adopted on 8-17-20 by Village of Elk Rapids Council

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 14 non-consecutive days in a calendar year. Monthly or yearly rentals are not classified as a Business Unit under this chapter.

Calendar year: January 1st to December 31st.

Cap: Maximum number of Short-Term Rental Business Units allowed within the Village limits.

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

Concentration: The number of Short-Term Rental Business Units allowed per designated area.

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, hotels and motels, and boarding houses.

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

Good Visitor Guide: Information prepared by the Village's Planning and Zoning Department for display at all Short-Term Rental Business Units.

Grandfathered: A Short Term Rental Business unit operating as such in 2018 through March 2, 2020. Properties used for a Short Term Rental Business prior to 2018 may be given "grandfathered" status through an appeal to the Village Manager as provided in Section 9 of this Ordinance. The appeal must establish that the use of the property for short term rentals was a prior existing lawful non-conforming use and that the use has not been abandoned due to lack of use as a short term rental in the time period of 2018 through March 2, 2020.

Occupant: Individual 24 months of age or older.

Personal Unit: A principal residential dwelling unit rented for no more than 14 days per calendar year. A person or entity may only have one Personal Unit.

Short-term rental business: The rental of a dwelling unit for compensation for more than 14 days total per calendar year for terms no greater than 28 consecutive nights in all residentially zoned districts.

Short-term rental business Representative: An individual designated to oversee the operations of the short-term rental of a dwelling unit in accordance with this Ordinance, and to respond to calls and complaints from renters, citizens, and the Village's representatives within 60 minutes either in person or by telephone. If necessary, a representative must be able to be on site within 60 minutes.

Transfer: The transferal of a short-term rental business property via deed.

Section 3: Registration and licensing required.

- A. All Short-Term Rental units shall be registered annually with the Village as stipulated in this Ordinance.
 - 1. All Short-Term Rental Business Units shall be licensed annually.
- B. All Short-Term Rental Business Units operating as such in 2018 through March 2, 2020 will be considered "grandfathered" and are able to continue operating as such with registration and licensing provided the operation of the Short-Term Rental Business Unit adheres to all sections of this Ordinance. Registration of "grandfathered" Short-Term Rental Business Units must be completed by Dec. 1, 2020.
- C. The advertisement or rental of an unregistered or unlicensed Short-Term Rental Business Unit is prohibited.
- D. Registration and licenses shall be issued by calendar year after the initial registration period has been implemented.
- E. Initial registration period begins at the time of the adoption of this Ordinance and runs until December 1, 2021.
- F. All short-term rental licenses shall expire at the end of each calendar year beginning in 2021 and must be renewed on or before the end of the current calendar year.
- G. The Enforcement Officer shall develop a form(s) to properly carry out this Ordinance. The registration form(s) 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, permanent address, email, and telephone number of the property owner and Short-Term Rental Business representative for the dwelling unit;
 - b. The street address of the dwelling unit, along with other identification if more than one dwelling unit shares the same street address;
 - c. The number of bedrooms in each dwelling unit, a current floor plan, and total number of allowable occupants per this Ordinance;
 - d. The number of days the dwelling unit is available for short term rental each calendar year;
 - e. The identification of the number of available parking spaces in accordance with village parking ordinance and a diagram of parking available for guests of the Short-Term Rental Business Unit. Overflow parking locations outlined in Good Visitor Guide;
 - f. A signed statement certifying the following:
 - i. Each bedroom has a working smoke alarm, each floor has a working carbon monoxide detector, and that the Short-Term Rental Business Units representative will check those devices no less than every 6 months;
 - ii. The property has all necessary insurance paperwork for the rental unit;
 - iii. The property owner or Short-Term Rental Business representative will provide at least one copy of the required information provided in the Village's Good Visitor Guide materials to the renters each time the dwelling unit is rented;
 - iv. How many days it was rented in the previous calendar year, and documented proof of operation as a short-term rental. Documentation may be provided in the form of proof of listing or a signed affidavit of the property owner;
 - g. A list of all websites and other media where unit is advertised.
- H. Upon determination that a Short-Term Rental applicant has met all registration and regulation requirements, a license shall be issued by the Village;
- I. There shall be a fee for registration collected at the time of registration. An additional fee shall be collected at time of licensing. Village Council shall set fee(s) from time to time by resolution.

Section 4: Registration process and procedure.

- A. Upon adoption of this Ordinance, registrations for new Short-Term Rental Businesses shall be determined as follows:
 - a. First, properties whose principal owner at the time of registration was and remains a person whose principal residence is in the Village of Elk Rapids.
 - b. Second, properties whose principal owner at the time of registration was not or is not currently a person whose principal residence is in the Village of Elk Rapids.
- B. New applications will be placed on a waiting list when the current cap and/or concentration has been reached. New applications will be placed on the waiting list in order when a complete application is received by the Village.
 - a. An applicant whose principal residence exemption, as determined on the tax roll, is for a property located in the Village of Elk Rapids will receive priority.
 - b. If the applicant is contacted and offered to register and refuses, they will be removed from the waiting list.
- C. A non-refundable deposit, to be set by the Village Council from time to time, is required in order to be placed on the waiting list.
- D. All “grandfathered” units (as defined in Section 3.B) may apply for a license upon transfer of ownership and shall not be required to be on the wait list for new applications so long as the application for a license is received by the Village no later than forty-five (45) days from the date of the transfer of property.

Section 5: Types of Short-Term Rentals.

- A. *Personal Units.* Personal Units may be rented for up to 14 days per calendar year in all residential zones and may not count toward the cap of units for purposes of determining Concentration.
 - a. An owner may 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 the number of days rented per year in all residential zones.
 - a. No restriction is placed by the Village on properties within a homeowner’s association; however, Short-Term Rental Units within a homeowner’s association must go through the registration process and procedure outlined in Sections 3 and 4 of this Ordinance.

- b. The initial cap shall be set at zero new STR licenses to be issued prior to December of 2020. Subsequently a cap shall be considered and set on total units by resolution of the Village Council on or before the first Village Council meeting of December 2020, and any changes shall be made on or before the first Village Council meeting of December in subsequent years.

Section 6: Regulations.

- A. *Short-Term Rental Business Unit representation required.* All dwelling units used for short-term rental businesses shall have a designated representative, as defined by this Ordinance.
- B. *Contact information posted.* A notice shall be posted in a prominent location within any dwelling unit used for short-term rentals stating in easily readable font the name of the Short-Term Rental Business representative, a 24-hour telephone number at which the representative can be reached, and a copy of the Short-Term Rental Business License.
- 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. All Short-Term Rental owners and tenants are subject to the Village of Elk Rapids General Code of Ordinances.
- E. *Maximum occupancy.* Short-Term Rental Business Units shall be permitted maximum occupancy of 2 persons per bedroom plus two persons per finished and legal floor for dwelling as described in this Chapter and as may be verified by inspections from time to time.
 - a. No Short-Term Rental Business Unit shall be permitted for occupancy by more than 10 persons.
 - b. Notwithstanding part a, those units in validated operation and registered with the Village prior to the date of the first registration deadline which may have clearly indicated occupancy exceeding 10, but not exceeding two per bedroom plus two persons per finished and legal floor for dwelling may continue with said occupancy limit, assuming all other conditions in this Ordinance and other applicable Village Ordinances, such as parking, are met.
 - 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.

- d. No overnight lodging outside of dwelling allowed, including but not limited to travel trailers, pickup campers, motorized homes, tents, folding tent trailers, private buses, boats and boat trailers, utility trailers, recreational vehicles.
- e. *Accessory Dwelling Units.* An Accessory Dwelling Unit shall not be rented either separately or as part of the principle residence's short term rental booking.
 - i. Bedrooms and living space in an Accessory Dwelling Unit shall not be included in the principle residence's available rental space for occupancy limits.
- F. *Parking Restrictions.* Vehicle parking must comply with the Village Code of Ordinances and as outlined in Good Visitor Guide for overflow parking.
- G. *Advertising.* No person shall advertise a short-term rental business unit, unless the advertisement includes the license number and the maximum occupancy permitted in the unit.
- H. *Fees.* Short-Term Rental Business units shall pay registration and licensing fees, and waiting list deposit fee, if applicable. Village Council may, from time to time, establish by resolution, to account for costs related to enforcement, community impact, and other customary fees and costs associated with short-term lodging which may already be allowed within the Village.
- I. *Inspections and conditions.* The Enforcement Officer may make coordinated and scheduled inspections of a short-term rental to ensure continuing compliance with the standards specified in this Ordinance.

Section 7: Concentration.

- A. Concentration will be determined through the collection of data during the initial registration period.
- B. Council may set area concentration limits based on the data on or before the first Village Council meeting of December.
- C. Any area exceeding concentration, as defined herein, will be reduced through attrition.

Section 8: Violations and Penalties.

- A. A person who violates any provision of this Chapter is responsible for a municipal civil infraction. Each day on which any violation of the Chapter continues constitutes a separate offense and shall be subject to penalties as a separate offense.
- B. Tenants are responsible for Village of Elk Rapids General Code of Ordinance violations, such as but not limited to noise, fireworks, trash, pets, and parking.

- C. Property owners are responsible for violations relating to false or misleading statements in the registration process, and such items as, but not limited to, Short-Term Rental Business representative not responding to complaint/call within specified time period; and advertising and/or hosting greater occupancy than permissible. Additionally, an owner will receive one violation anytime tenant(s) receive three total violations within one calendar year. Any of the following conduct is also a violation of this Ordinance:
- i. Any advertising or renting of a short-term rental unit without first having registered and/or obtained a short-term rental license.
 - ii. The property owner or tenant has failed to comply with any of the provisions within this Ordinance, specifically Section 6: Regulations.
 - iii. Provision of false or misleading information in the registration process.
- D. The penalties for violations specified in subsection (A) above, are as follows:
- i. A first owner violation within any calendar year, shall result in a written warning.
 - ii. A second owner violation within the same calendar year, shall result in a municipal fine as set by resolution of the Village Council from time to time.
 - iii. A third owner violation within the same calendar year shall result in revocation of the license until the end of the calendar year. A minimum 14-day notice will be given to an owner for any revocation. As of one day following the notice of the third violation, no additional bookings may be made of the rental through the year-end. If there is a short-term rental license waiting list, revocation of a license will cause the property owner to be placed at the bottom of the waiting list.
 - iv. If a property owner receives one or more violations each year during any three consecutive years, the license may be revoked permanently.
 - v. An owner may appeal any owner violation or decision to revoke a permit as listed in Section 9.
- E. If a complainant files a false report, they are subject to the applicable municipal civil infraction for filing a false report. For all complaints not requiring immediate police response, complainants are encouraged to document the violation, with photographs and/or recorded video, without encroaching on people or property and to report the violation, including any documentation, during the same or following business day, and to utilize the 24/7 Hotline, as outlined in the Good Visitor Guide.

Section 9: Appeals.

As adopted on 8-17-20 by Village of Elk Rapids Council

- A. Appellant may appeal any decision made by the Enforcement Officer to the Village Manager who will conduct, review, and dispose of the appeal accordingly on the basis of competent, material, and substantial evidence.
- B. The Village shall adopt by resolution the procedural rules and standards for the Village Manager's review of the decision made by the Enforcement Officer.

Section 10: Conflict and Severability Clause.

All ordinances, resolutions and orders or part thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and each section of this Ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

Section 11: Enactment.

This Ordinance is hereby determined by the village council to be immediately necessary for the interest of the village and shall be in full force and effect from and after its passage and 15 days after publication.

Ordinance #502 – Short-term Rental Businesses

I do hereby certify that the above ordinance to amend the Village of Elk Rapids General Code of Ordinances is a true and correct copy of that recorded in the official minutes of the August 17, 2020 Elk Rapids Village Council Meeting.

 9/7/2020

James Janisse,
Village President



Caroline Kennedy,
Assistant Village Manager/Clerk



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