

CITY OF BIWABIK

PLANNING AND ZONING COMMISSION

AGENDA

**THURSDAY, AUGUST 3, 2023
6:00 P.M. REGULAR MEETING**

**3RD FLR, COUNCIL CHAMBERS
321 N. MAIN ST., BIWABIK, MN**

- 1. Call to Order/Roll Call/Approve Agenda**
- 2. Approval of Minutes – July 6, 2023, July 24, 2023 (Workshop)**
- 3. Discussion of Long-Term Rental Regulation Ordinance**
- 4. Board Questions/Comments**
- 5. Adjourn**

**CITY OF BIWABIK
PLANNING & ZONING COMMISSION
THURSDAY, JULY 6, 2023
6:00 PM COUNCIL CHAMBERS**

Roll call:

Present: Commissioners Kris Weikum, Sally Henderson, Peter Senarighi, Dave Setnicker, Derrek VanKlein

Absent:

Others present: Administrator Jacobson, Deputy Clerk S. Mackey

Audience: Mayor Weikum

Meeting was called to order at 6:00 PM

Moved by Commissioner Henderson, supported by Commissioner Senarighi to approve the agenda as presented. Motion carried.

Moved by Commissioner Setnicker, supported by Commissioner Henderson to approve the minutes from June 1, 2023. Motion carried.

Commission discussed the long term rental regulation ordinance. Do we refer to things as “chapters”? It’s in the sample ordinance, seemed odd.

Commissioner Senarighi asked if we want something that gives the City power to get rid of problem tenants. Commissioner Setnicker stated that he isn’t sure we want to open that up, could become more of a legal battle. How do we make sure that the conditions are right for them to rent out? Maybe look at doing more of a work session on this. Look at doing this on the 24th at 5:00 PM.

Administrator Jacobson can send out a google docs form – suggestion mode – could remove, edit and submit changes. Need to make sure that renters rights are protected.

Commission discussed the Bavarian theme ordinance, look at ordinances from towns that are pretty significant. Look at the senior center, going to be meeting about the ordinance. Look at when a building is purchased can it be included in the purchase. Bavarian theme committee, will do renditions to see what it looks like. Be more proactive with business owners, could maybe approach the IRRRB and ask for the program to start back up. maybe wait to see what the subcommittee that will be discussing this comes up with.

Commissioner Setnicker will bring back more on the Bavarian theme for the next time we meet.

Moved by Commissioner Senarighi, supported by Commissioner Henderson to adjourn the meeting at 6:45 PM

**CITY OF BIWABIK
PLANNING & ZONING COMMISSION
MONDAY, JULY 24, 2023
5:00PM COUNCIL CHAMBERS**

Roll call:

Present: Commissioners Kris Weikum, Peter Senarighi, Dave Setnicker

Absent: Sally Henderson, Derrek VanKlein

Others present: Administrator Jacobson,

Audience: Paula Mackey, David Wain

Meeting was called to order at 5:00PM

Moved by Commissioner Senarighi, supported by Commissioner Setnicker to approve the agenda as presented.

The Planning Commission reviewed the questions that were raised on the Short-Term Rental Ordinance at the July City Council meeting. The Commissioners agreed that it makes sense to remove the definitions of: Bedroom, Primary Residence, and Weekend as they are not used elsewhere in the ordinance.

The Commissioners agreed that it makes sense to remove the last sentence in Section 4(C), which would make a property owner ineligible for license renewal if they did not offer the property for rent at least twice in a year.

The Commissioners agreed that it makes sense to add “for a fee” to the definition of Short-Term Rental so it reads: A dwelling that is offered to short-term guests, for a fee, for a period of less than 30 consecutive days.

Commissioner VanKlein joined the meeting at 5:10PM.

Paula Mackey questioned the permit fees. Commissioners and City staff stated that the permit fees would help cover the cost of regulation but would not be a revenue generator for the City.

The Planning Commission reviewed State Statutes, MN Rules, and the example checklist from the City of Ely.

The Planning Commission then discussed the proposed Long-Term Rental Ordinance.

Chair Weikum asked if Section 153.01 was needed. Commissioners decided it was best to keep 153.01, but remove item “B”.

Commissioners agreed to minor wording changes:

- Remove “residing within 30 miles of the City of Biwabik” from 152.02: Local Property Manager.
- Change 152.02 “Dwelling” to the same definition used in the Short-Term Ordinance.
- The definition of “Administrator” can be shortened.
- Remove “Occupy” references from 152.03(A).
- Remove “Local” references from 153.03(B).
- Remove all references to “Local”.
- Change 153.04 to remove “campus” and “hospital” references.
- Remove last sentence of 135.05.
- Remove last sentence of 135.07.
- Add “provide and/or” to 135.07.

- Change 153.10 to replace building code references to “classified as a habitable structure”, and cut off after State of Minnesota.
- Change 153.11(A) to remove “City Zoning Officer, City Rental Inspector” and “reasonably necessary to enforce this chapter”.
- Remove 153.11(C) Commission wanted better language regarding “re-inspection”
- Commissioners requested some other examples of 153.12

Moved by Commissioner Senarighi, supported by Commissioner Setnicker to adjourn the meeting at 6:53PM

Ordinance 153: LONG-TERM RENTALS

Section

- 153.01 Purpose and findings
- 153.02 Definitions
- 153.03 Registration requirements
- 153.04 Exemptions
- 153.05 Manner of registration renewal
- 153.06 Transfer of property
- 153.07 Posting of registration
- 153.08 Fees
- 153.09 Maintenance of records
- 153.10 Maintenance of standards
- 153.11 Inspections and investigations
- 153.12 Conduct on registered premises
- 153.13 Failure to grant registration, revocation, suspension or failure to renew registration
- 153.14 Summary action
- 153.15 Applicable laws
- 153.16 Violations, injunctive relief
- 153.17 Written notices
- 153.18 Effective date

§ 153.01 PURPOSE AND FINDINGS.

(A) The City Council of the City of Biwabik finds that there is a need for periodic municipal inspection of residential rental units in the city to ensure that such units meet city and state safety, health, fire, and zoning codes and to promote public health, safety and welfare of the community at large and the residents of rental units within this city.

~~(B) The City Council of the City of Biwabik finds that a municipal registration program is appropriate to effectively enforce residential rental unit maintenance standards and correct or prevent law violations, nuisances, and other disturbances and disorders involving residential rental units within this city.~~

~~(C)~~(B) The City Council of the City of Biwabik finds that an effective means of implementing the previous findings is the registration of all residential rental units within the city and inspection of such units from time to time as determined appropriate in the exercise of discretion by staff and personnel of the city and in response to complaints involving such units.

§ 153.02 DEFINITIONS.

For this ordinance, the following definitions shall apply unless the context indicates or requires a different meaning.

ADMINISTRATOR OR CITY ADMINISTRATOR. The Biwabik City Administrator ~~or Biwabik Deputy Clerk, or the Deputy Biwabik City Clerk in the absence of the City Administrator, or such person as the City Administrator, designates, in writing, to carry out the responsibilities of the City Administrator as provided by this ordinance.~~

DWELLING. A building or portion thereof, designated exclusively for residential occupancy.

~~Any building or other permanent or temporary structure, including a manufactured or mobile home which is wholly or partly used, or intended to be used, for living or sleeping by human occupants.~~

LOCAL PROPERTY MANAGER. A natural person ~~residing within 30 miles of the City of Biwabik~~ whom the rental unit owner authorizes to make decisions for the owner about rental, occupancy, and maintenance of the rental unit.

REGISTRATION HOLDER. A person or entity to whom registration for a rental unit is issued under this ordinance.

RENT, LEASE, LET, or SUBLET. The leasing of a rental unit to a non-owner for a fixed or non-fixed period of more than 30 days shall include lease to buy, contract for deed, installment sales, purchases, and other similar arrangements whereby nonpayment of a periodic payment means the occupants may be evicted without the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of the contract for deed procedure, or a statutory repossession procedure.

RENTAL UNIT/RESIDENTIAL RENTAL UNIT. Any house, apartment, condominium, townhouse, room, or group of rooms constituting or located within a dwelling and forming a single habitable unit.

SHALL and **MUST.** As used in this ordinance are each mandatory.

SHOULD and **MAY.** As used in this ordinance, are each permissive or directory.

§ 153.03 REGISTRATION REQUIREMENTS.

(A) No person or entity may hereafter ~~occupy, allow to be occupied, or~~ rent, lease, let or sub-let a rental unit to another person or entity for occupancy unless that rental unit is registered for occupancy according to a valid and current rental unit registration issued by the Biwabik City Administrator.

(B) Each rental unit must have an owner or ~~local~~ property manager designated by the owner. Any person or entity desiring to rent, let, lease or sub-let any rental unit shall apply for registration by using forms furnished by the city for that purpose. The forms must provide the information required by the City Administrator, including, but not limited to, the following:

- (1) Name, address, and phone number of the property owner.
- (2) Name, address, and phone number of a designated ~~local~~ property manager.
- (3) The street address of the rental property.
- (4) The number and types of units within the rental property (dwelling units or sleeping rooms).
- (5) The maximum number of occupants permitted for each dwelling unit or sleeping room.
- (6) The name, phone number, and address of the person authorized to make or order repairs or services for the property if in violation of city or state codes if the person differs from the owner or ~~local~~ property manager.

§ 153.04 EXEMPTIONS.

~~"This ordinance does not apply to residence units owned, operated, or managed by a governmental entity or agency, nursing homes, retirement homes, or other similar rental space which is otherwise registered by the State of Minnesota or the City of Biwabik."~~

~~This ordinance does not apply to campus dormitory and campus residence units owned, operated, or managed by a governmental entity or agency, hospital units or rooms, nursing homes, retirement homes, or other similar rental space which is otherwise registered by the State of Minnesota or the City of Biwabik.~~

§ 153.05 MANNER OF REGISTRATION RENEWAL.

Registration shall be required each calendar year and may be issued on a calendar year basis before January 1 of each successive year. The city will mail registration renewal forms annually to rental unit owners or their designated ~~local~~ property managers on or about October 1 of each year. Registration renewal forms must be delivered to the City Administrator by the fifteenth day of November each year. ~~Failure of the city to mail renewal forms and failure of an owner or local property manager to receive a renewal form does not excuse or waive the registration required by this ordinance.~~

§ 153.06 TRANSFER OF PROPERTY.

Every new owner of a rental unit, whether fee owner or contract purchaser, shall furnish to the City Administrator the new owner's name, address, and phone number, and the name, address, and phone number of the new owner's designated ~~local~~ property manager before taking possession of the rental property upon closing of the transaction. No new registration fee is required of the new owner during the year in which such possession takes place, provided that the previous owner has paid all registration fees and has complied with all requirements of this ordinance and any violations of health, zoning, fire, or safety codes of the city and county. A new registration application will be required if the new owner contemplates any change in the occupancy type as originally registered.

§ 153.07 POSTING OF REGISTRATION.

Each rental unit registration holder must ~~provide and/or~~ post the registration in a conspicuous spot near the front entrance to the rental unit in a public corridor, hallway, or lobby. ~~Failure to post the registration and keep the registration posted is a misdemeanor but is not grounds for termination of registration.~~

§ 153.08 FEES.

The fees for rental unit registration, registration renewal, late fees, and inspection may be set by ordinance or resolution of the City Council adopted from time to time.

§ 153.09 MAINTENANCE OF RECORDS.

All records, files, and documents about rental unit registration and rental unit inspections may be maintained by the City Administrator. They will be available to the public as allowed, permitted, or required by state law or city ordinance.

§ 153.10 MAINTENANCE OF STANDARDS.

Every rental unit must be ~~maintained in compliance with the building code, dwelling maintenance standards, nuisance ordinance, and noise ordinance of classified as a habitable structure by~~ the City of Biwabik, St. Louis County, and State of Minnesota, ~~respectively, as now in force and hereafter amended, revised, or replaced, and in compliance with all other standards, ordinances, laws, and regulations governing use, occupancy, construction, and maintenance of property and conduct of persons in or on that property.~~

§ 153.11 INSPECTIONS AND INVESTIGATIONS.

(A) Fire Department personnel, ~~East Range~~ Police Department officers, the ~~City Zoning Officer, City Rental Inspector,~~ City Administrator, and their respective designees and representatives are ~~with this~~ authorized to make inspections ~~reasonably necessary to enforce this~~ ordinance.

~~(B) All persons authorized herein to inspect shall have the authority to enter, at all reasonable times, any rental unit or structure containing a rental unit, registered or required to be registered, to enforce this~~ ordinance.

~~(C)~~(B) Written notice of a violation of this ordinance may be given to the registration holder by certified mail directed to the address of the registration holder as shown by the Administrator's registration application file. Said notice may contain a compliance order stating that compliance with this ordinance shall be made immediately, and ~~the property owner must provide verification of compliance within 15 days, in that case, the notice shall advise the registration holder that the property may be re-inspected in not less than 15 days unless extended by the Administrator, based on good cause.~~

~~(D)~~(C) A registration holder may appeal to the City Administrator the requirements of any compliance order by filing a written appeal with the office of the City Administrator no later than ten days after the compliance order issuance date. The City Administrator should schedule a hearing within ten days after filing the notice of appeal. Enforcement of the compliance order shall be stayed pending the decision of the City Administrator on the appeal. The City Administrator may reschedule the hearing as the Administrator determines necessary.

§ 153.12 CONDUCT ON REGISTERED PREMISES.

While looking for other examples of this, I found that this wording appears to be the norm. It most likely comes from a common template that was used.

(A) It is the responsibility of the registration holder to require and ensure that occupants of the registered premises conduct themselves in such a manner as not to cause the premises to be disorderly or to be used, occupied, or maintained in violation of law or ordinance. For purposes of this section, a rental unit is disorderly and in violation of law or ordinance when any of the following activities occur in, on, or at the registered premises:

- (1) Conduct that constitutes a violation of the Biwabik City Code relating to nuisances as it now exists or as hereafter amended.
- (2) Conduct that violates Biwabik City Code 130, the noise ordinances as it now exists or as hereafter amended.
- (3) Conduct that constitutes disorderly conduct in violation of M.S. § 609.72 as it now exists or as hereafter amended.
- (4) Conduct that constitutes a violation of laws relating to the possession of controlled substances under M.S. Ordinance 152 as it now exists or as hereafter amended.
- (5) Conduct that constitutes a violation of any city ordinance or state law relating to minors possessing or consuming alcohol, or relating to providing, furnishing, or serving alcohol to minors, or selling alcoholic beverages.
- (6) Conduct that constitutes a violation of state laws or city ordinances relating to prostitution, indecent exposure, or acts related to prostitution as defined by state law.
- (7) Conduct that violates city ordinances and state laws relating to weapons or firearms.
- (8) Conduct that constitutes a violation of city ordinances or state laws relating to assault, specifically including domestic assaults and criminal sexual conduct.
- (9) Conduct that constitutes a violation of ordinances or laws relating to contributing to a minor's need for protection, services, or delinquency as defined in M.S. § 260.315 as it now exists or as hereafter amended.

(10) Conduct that constitutes a violation of any other federal, state, or ~~local~~ ordinance or regulation and is reasonably likely to threaten, annoy or harass tenants or visitors to rental units or residents, visitors, or occupants of neighboring properties.

(B) The City Administrator shall administer this section of the ordinance and may delegate administration to a designee authorized in writing by the City Administrator.

(C) If the Administrator determines that a violation of this section has occurred, then the Administrator will notify the registration holder and the renters of the rental unit, if known, and will direct that the registration holder take steps to prevent further violations.

(D) If another violation of this section occurs within 90 days of the incident for which notice was given as provided in division (C) above, then the City Administrator will give notice of the violation to the registration holder and the renters of the rental unit, if known, and will direct that the registration holder take steps to prevent further violations. The City Administrator will also, at that time, request that the registration holder submit to the City Administrator, within ten days of the City Administrator's mailing of the notice of violation provided in this section, a report itemizing all actions taken by the registration holder in response to all notices of violations as to the rental unit within the preceding 90 days.

(E) If a third violation of this section occurs within 90 days after the last of any two or more previous violations for which notices were given according to this section, and the registration holder has not sufficiently taken action to prevent further violations, then the rental unit registration for the premises may be denied, revoked, suspended or not renewed.

(1) Action to deny, revoke, suspend, or not renew a rental unit registration may be initiated by the City Administrator, who shall give the registration holder a written notice of hearing before the City Administrator to consider such denial, revocation, suspension, or non-renewal.

(2) A notice of intent to deny, revoke, suspend, or not renew a registration shall specify all violations of this section and state the date, time, place, and purpose of the hearing provided by this division.

(3) The hearing held according to this division shall occur no later than 30 days after notice.

(4) Following the hearing, the City Administrator may deny, revoke, suspend, or not renew registration for all or any part of the registered premises or grant conditional registration upon such terms and conditions as the Administrator finds necessary to accomplish the purpose of this ordinance.

(F) No adverse registration action may be imposed where the violation of this section occurred during the pendency of unlawful detainer eviction proceedings brought under M.S. Ordinance 566, as it may be amended from time to time or within 30 days of notice given by the registration holder to a tenant to vacate the premises at which the violation occurred. Unlawful detainer eviction proceedings or a notice to vacate the premises will not bar adverse registration action unless diligently pursued by the registration holder. Action to deny, revoke, suspend, or not renew registration for violation of this section may be postponed or dismissed by the City Administrator at any time if it appears to the Administrator that the registration holder has taken appropriate remedial action.

(G) The standard of proof to be used in determinations by the City Administrator as to conduct constituting violations under this section is a fair preponderance of evidence in support of such a determination. Criminal charges don't need to be brought to support a determination of a violation of this section or that conduct constituting a violation of this section has occurred redetermining a violation of this section. It is necessary that law enforcement officers be called to the rental unit in response to a complaint and that a police report and investigation of the same be prepared.

(H) For this ordinance, a violation under this section includes violations by the rental unit renters or occupants, or by their visitors or guests, in or at the rental unit of the renters or tenants, or in, at, or upon its curtilage, including anywhere on the property grounds and premises of an apartment building, home or mobile home park at which the rental unit is situated.

(I) Failure of a registration holder to respond to notices provided in this section is not a violation of this ordinance alone.

§ 153.13 FAILURE TO GRANT REGISTRATION, REVOCATION, SUSPENSION, OR FAILURE TO RENEW REGISTRATION.

(A) The city reserves the right not to register a rental unit unless it complies with the requirements of this ordinance.

(B) Any registration issued under this ordinance is subject to the right, which is expressly reserved by the city, to deny, suspend, revoke, or not renew the same should the registration holder or their agents, employees, representatives, or lessees directly or indirectly operate or maintain the rental dwellings contrary to the provisions of this ordinance or any other ordinance of the city or any special permit issued by the city, or the laws of the State of Minnesota. However, registration shall not be denied, suspended, revoked, or not renewed if the registration holder complies with a compliance order or orders in a reasonably timely manner as determined by the City Administrator.

(C) The City Administrator shall notify the applicant that registration has been denied or that the holder is suspended, revoked, or not renewed. The suspension, revocation, or non-renewal shall occur 35 days after the date of the notification order or at such later date as set out in the notification.

(D) A determination by the City Administrator to deny, suspend, revoke, or not renew the registration of a rental unit may be appealed to the City Council by filing with the City Administrator a written notice of appeal within 15 days of the date on which the City Administrator mails such determination to the applicant or registration holder. In that event, the City Council will hear the appeal at its next meeting, occurring at least 15 days after filing the notice of appeal.

(E) At any appeal of a determination by the City Administrator under this ordinance, the registration holder or applicant, the ~~local~~ property manager for the registration holder or applicant, or an attorney representing them, may appear and present to the City Council. The City Administrator shall present the basis for the determination being appealed to the City Council. After the hearing, the Council may uphold, reverse or modify the decision of the City Administrator based upon this ordinance's provisions and the protection of the public health, sanitation, safety, or general welfare of the community at large or the residents of rental units within the city. The City Council shall issue written findings and determination within 31 days of the hearing unless the Council extends that time for good cause.

(F) A decision of the City Council made as provided in this section may be appealed by the Writ of Certiorari to the Court of Appeals of the State of Minnesota under its Rules of Civil Appellate Procedure.

§ 153.14 SUMMARY ACTION.

(A) As a condition of receiving rental unit registration, each registration holder is presumed to agree and consent that when the conduct of any registration holder or registration holder's agent, representative, employee, or lessee, or the condition of their rental unit, or the property in or on which it is located, is detrimental to the public health, sanitation, safety, and general welfare of the community at large, or residents of the rental units to constitute a nuisance, fire hazard, or other unsafe or dangerous condition and thus give rise to an emergency, the City Administrator shall have the authority to summarily condemn or close individual rental units or such areas of the rental dwelling as the Administrator deems necessary. Notice of summary condemnation shall be posted at the units or areas affected and shall describe the units or areas affected. No person shall remove the posted notice other than the Fire Chief, Police Chief, City Administrator, or their designated representative. Any person aggrieved by the decision or the action of the City Administrator or Fire Marshall set out in this division may appeal the decision following the procedures set out in this ordinance. The hearing shall be conducted in the same manner as provided in this ordinance. However, the hearing date may be expedited with the consent of the registration holder.

(B) The decision of the City Administrator outlined in this division is not voided by the filing of such appeal. Only after the hearing by the City Council has been held will the decision or action of the City Administrator be affected.

§ 153.15 APPLICABLE LAWS.

Registration holders are subject to all of the ordinances of the city and State of Minnesota relating to rental dwellings, and this ordinance shall not be construed or interpreted to supersede or limit any other applicable ordinance or law.

§ 153.16 VIOLATIONS, INJUNCTIVE RELIEF.

(A) Nothing in this ordinance prevents the city from taking enforcement action under any of its fire, housing, zoning, health safety, or other codes, ordinances, and state laws for violations thereof or seeking injunctive relief and criminal prosecution for violations of any ordinance, code or law. Nothing contained in this ordinance prevents the city from seeking injunctive relief against a property owner or designated property manager who fails to comply with the terms and conditions of this ordinance or to obtain an order closing such rental units until violations of this particular ordinance have been remedied by the property owner or designated property manager.

(B) Violation of this ordinance is a misdemeanor. Each particular day on which a continuing violation occurs is a separate violation.

§ 153.17 WRITTEN NOTICES.

Notices from the city required by this ordinance shall be effective if personally delivered or mailed to the addressee by first-class mail to the address shown in the city file on the rental unit involved in the notice.

§ 153.18 EFFECTIVE DATE.

The initial registration provisions of this ordinance do not become effective until MM/DD/YYYY allows rental unit owners to complete the registration process. The initial registration covers a period from the issue date through December 31, YYYY.