



**Michigan Association of Planning**  
A Chapter of the American Planning Association

April 29, 2019

Representative Jason Sheppard  
Anderson House Office Bldg.  
N-990 House Office Building  
Lansing, MI 48933

Honorable Representative Sheppard,

I am writing to oppose HB 4046, which seeks to eliminate local government's ability to regulate short-term rentals (STRs). The Michigan Association of Planning, is a 501 c 3 nonprofit that serves professional planners and local elected and appointed officials. Communities across Michigan have been experiencing the impacts of short-term rentals (usually Airbnb and VRBO's) for several years. Short Term Rentals can have a huge and detrimental impact on the quality of life in a neighborhood, and local government should be able to address the issues locally.

Many municipalities, either in response to or in anticipation of the advent of STR's, have enacted regulations to address the impacts of STR's on their communities, in various ways. These attempts should not be undermined; this is a local control issue.

Airbnb's and VRBO's are appealing as a less expensive alternative to hotels, and can provide additional commercial accommodations in a community that may not have an adequate supply of commercial lodging opportunities. STR's can also supplement a homeowners income who can rent out a room in their owner occupied home.

However, if allowed to locate unchecked in residential neighborhoods, SRT's can have a deleterious effect on neighbors already living in the area. Residents have purchased homes in residential areas with an expectation of "quiet enjoyment" of their property. Quiet enjoyment is a legal term, and refers to the right to the undisturbed use and enjoyment of real property by a tenant or landowner. Single Family and low density zoning requirements have always prohibited commercial uses that diminish quiet enjoyment. Airbnb's ARE a commercial use (see legal defense in attached MAP Analysis).

Negative impacts and unanticipated consequences to consider with completely opening up the short-term rental industry include:

1. Eliminating local government's ability to regulate short term rentals undermines local control. Local control has been foundational to governance in Michigan.
2. Quality of life for neighbors near STR's can be deleteriously affected, especially if STR's are concentrated. Increased light, noise, trash, public safety, reduced water pressure and other impacts on residential properties must be considered and prevented.

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3. STR's can remove housing units from the market when many communities are facing big challenges with providing enough housing, particularly affordable housing. STR's can drive up the cost of housing for existing residents, and prevent new year round residents from moving in due to property value increases.
4. In addition, concentrations of airbnb's on single blocks in desirable tourist areas can completely change the environment of a residential neighborhood and replace tax paying, locally employed residents who contribute socially and economically to THEIR community with transient tourists. STR's can destroy the social and physical fabric of a neighborhood, and detract from the overall desirability of a communities stable neighborhoods.
5. Where rooms are individually rented, or worse 2 to 3 to a room, neighborhood on-street parking is impacted, and this is particularly relevant in denser cities and towns, but impacts our smaller towns too. The noise of slamming car doors late at night, and jovial tourists returning to STR's at all hours also adversely affects quality of life.
6. Property owners should be able to rent out rooms in their homes to supplement income, but when a neighborhood home or apartment complex shifts completely to STR, it becomes a commercial enterprise, which if located in a residential area, should be regulated.
7. Building code requirements that apply to multi-family or rental housing are sidestepped, creating health and safety issues.
8. Regulations should be made at the local level, and every municipality is different. Detroit would need a different set of standards than Traverse City or Adrien or Ann Arbor.
9. There is a risk of units effectively being used as illegal hotels. We have State fire, building and safety codes for hotels for good reason, and to at least some degree, they should be applied to STR's as well.

Certainly, a homeowner renting out a room in their owner occupied home would be within the spirit of a single family zoning use regulation. Renting a second home for seasonal tourism purposes, so long as the owner also spent personal recreational time at the home would also be within the spirit of what is traditionally allowable in a single-family district. But when a commercial interest purchases multiple homes with the explicit purpose of renting them on a short term basis, with an owner occupant never occupying the structure, it becomes a commercial use and should be regulated as such. We are eager to work and recommend the establishment of a work group to bring together stakeholders to identify solutions that allow for tourism and economic development while protecting our local communities, schools, and businesses.

Please add my comments and concerns into the official committee record.

Sincerely,



Andrea Brown, AICP  
Executive Director, Michigan Association of Planning

CC: Angie Lake, Committee Clerk

Attachment: MAP Analysis of HB 4046



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**HB 4046, Substitute H-1, April 26, 2019  
Analysis by the Michigan Association of Planning**

HB 4046 appears to be an attempt to establish two new property guarantees that would be applicable to dwellings in the Michigan Zoning Enabling Act (MZEA) in section 206B. First, that all dwellings may be rented, and second, that a sub-category of dwelling rental is recognized in state law for the first time as a short-term rental. Short-term rentals would be defined in HB 4046 as dwellings rented for terms of 28 days or less at a time.

Rental of a dwelling is proposed to be a residential use of property permitted in all residential zones, but the term “*dwelling*” is not defined in HB 4046, or elsewhere in the MZEA. In contrast, most local zoning ordinances define “*dwelling*” and the definitions are not at all consistent between jurisdictions, as the term is a fundamental one linked to many other local zoning regulations – especially those related to lot and building characteristics which vary dramatically between communities, because existing lot sizes and shapes, as well as dwelling and nonresidential building types, vary significantly. These differences may be for historical, or cultural, or other reasons. Plus, many local governments place short-term rentals into commercial zones, because of the commercial use of the property, and some local governments prohibit short-term rentals in traditional single-family zoning districts in order to protect the integrity of those zones. The language in this bill would upset these locally established regulatory schemes in many local governments, especially those in tourist areas.

The rental of a dwelling would not be permitted under HB 4046 to be “*subject to a special use or conditional use permit or procedure different from those required for other dwellings in the same zone.*” It is unclear whether this means that local governments could regulate rental of a dwelling for more than 28 days one way, and short-term dwellings a different way, as long as the regulations were consistent across each type (long- and short-term rental of dwellings). Presently many local governments regulate short-term rental of dwellings differently than long-term rental of dwellings (for more than 28 days), because while the building and land may look the same, the actual land uses are often very different, as is the degree of impacts on abutting residents and property owners, as explained further below.

HB 4046 declares that rental of a dwelling is “*not a commercial use of property.*” Most, if not all local governments in Michigan would agree with that statement when applied to long-term rentals because these rentals most commonly occur when homeowners are unable to sell a

home (e.g. in a “down market,” or a “glutted market,” or at a price necessary to protect their equity in it and they want to sit on it for a while in hopes the market price rises over time).

But that statement is patently false when applied to the short-term rental of a dwelling. Most local regulation of short-term rentals recognizes that short-term rentals are commercial uses of property, as has all the Michigan Court of Appeals decisions where that issue has been adjudicated. [11 appellate cases have looked at short-term rentals from a deed restriction, commercial use or single-family zoning perspective. The only decisions allowing short-term rentals in violation of local ordinances, are those where the rental began before local zoning was in place, and then because it was a prior nonconforming use. See summary of cases in August 2018 *Planning & Zoning News*, pages 7 & 8.] The Court of Appeals has consistently ruled that the short-term rental of property is a commercial use, because of the income it provides to the owner and the commercial characteristics of the use. The more often the property is rented for a short-term, the more commercial characteristics the use exhibits—particularly in places (like waterfront and scenic areas) where single family residences are rented back-to-back to groups much larger than the size of most single-family residences, and often in violation of local single-family definitions. In such situations, excessive parking, trash, noise and activity late into the night have become common occurrences, and problems for abutting property owners, which led to the use of local zoning to curb those excesses in the first place.

Sections 203-206 of the MZEA deal with land uses that have characteristics that may create nuisances depending on where they are located and how they are used, and for which the legislature has placed specific restrictions on local regulations of those land uses. Most of these land uses however, are subject to local special land use regulations under MCL 125.3504 also known as special use or conditional use regulations.

Section 2 of HB 4046 appears to allow local regulation of rental and owner-occupied regulations in five areas, but also suggests that such regulation of short-term rentals could not be different in each of these areas from regulations on long-term rentals or owner-occupied residences. As stated above, the short-term rental of property is a commercial use that often has different characteristics from long-term rental or owner-occupied dwellings, which is why short-term rentals are regulated differently locally. If the intent is to prohibit such local restrictions on short-term rentals, then this language needs to be much clearer, because in its present form it will only stimulate unnecessary litigation. But, the more logical revision is to clarify that such regulation can be differentiated between short- and long-term dwellings in local zoning.

The period of 28 days for a short-term rental is arbitrary, but not substantially different than in many local ordinances. On the other hand, it is the repeated rental to different parties for under 28 days at a time that creates the principal problems with short-term rentals, not the once in a year rental.

**The Michigan Association of Planning believes HB 4046 is overreaching:**

1. This bill is unnecessary. Local zoning and general police power ordinances already adequately enable local governments to regulate short-term rentals that recognize a need locally to do so (by no means do all local governments already regulate short-term rentals).
2. This bill is duplicative of other existing law. The right to rent residential (and all other) property for the long-term is probably well established in existing common law and property law, outside of zoning and there is no need to address this issue in the MZEA. There is also need to establish a guarantee in the MZEA to rent residential property for the short-term. How land may be used is a privilege that can be, and daily is, subject to local zoning to prevent harm on adjacent land owners from thoughtless and reckless use by owners or renters. This regulation occurs where the citizens of local governments urge their elected officials to enact such regulations. Such regulations are rarely enacted without substantial local debate, and are often modified over time to “get it right” by balancing a variety of interests in light of local circumstances. Whether or not to regulate and how, is a decision that should be left up to local regulation because one size does not fit all situations. HB 4046 attempts to create a one size fits all result.
3. This bill is contrary to existing Michigan Court of Appeals decisions. Declaring that short-term rentals are not a commercial use of land flies in the face of common sense, and existing case law. Such a declaration is a dangerous precedent for the Legislature to pursue.
4. This bill fails to protect the property interests of owners nearby short-term rentals. HB 4046 fails to adequately consider the negative impacts on and real property interests of existing nearby landowners, who are effectively being left unprotected if local governments cannot use conditional use or special use permits to regulate short-term rentals.
5. This bill would only prevent local governments from regulating short-term rentals under local zoning, and they would still be permitted to regulate them under general police power ordinances. Thus, to the degree there is inconsistency that is not appropriate under the existing local regulatory scheme – which has not been demonstrated, it would only be made worse by the enactment of HB 4046, as many local governments would quickly shift their regulatory approach to licensing, instead of land use regulation through zoning.
6. HB 4046 would give special rights to short-term rentals that are unfair, compared to other accommodation businesses. Short-term rentals are often not playing by the same rules as other accommodation businesses. They often do not pay state sales/use taxes and local visitor and convention bureau fees/use. They often are not required to abide by stricter building codes related to safe emergency fire access and egress, deck

standards, and waste disposal. They often do not effectively ensure 24/7 access to someone who is onsite or quickly available to handle any issues like noise, parking, garbage, late hours of partying that arise. A regular hotel, motel or other accommodation business has to conform with these regulations and provide these services and are at a price disadvantage to short-term rentals in private dwellings. Yet these businesses have been paying local taxes for years. How fair is it to put them at a further disadvantage, as HB 4046 would do?

There are amendments that could be made to make HB 4046 acceptable, but they would demonstrate why this is an issue that should be left up to local governments. For example:

- First, make it applicable only to short-term rentals.
- Second, indicate that if a local government chooses to regulate short-term rentals, each local government must indicate which districts they are permitted in (and those districts do not have to include all residential districts).
- Third, indicate that short-term rentals may be subject to special land use or conditional use permits, or procedures different from those required for other dwellings in the same or different zones.
- Fourth, state that short-term rentals are a commercial use of property.
- Fifth, state the provisions in Section 2, would be available for application to any short-term rental property.
- Sixth, that the local government must define what constitutes a short-term rental, and that it could not extend beyond terms of 28 or more days at a time.
- And seventh, that short-term rentals must ensure 24/7 access to someone to address issues that arise by short-term renters. This could be by means of a private firm or the owner being on-site or nearby. In short, establish that short-term rentals of land are lawful activities and could not be prohibited by a community, but could be locally regulated in ways that fairly balance the interests of existing residents, lodging businesses and transient renters.

As written the Michigan Association of Planning strongly opposed House Bill 4046, and recommends that the committee vote no.

There are many organizations and industries ready and willing to coalesce in a work group to develop a Short Term Rental approach that allows for this use while protecting residents and communities. We recommend that such a workgroup be convened.