



City of North Mankato

RENTAL DENSITY STUDY

September 2016

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Executive Summary

This document explores the effects of rental properties within the community and recommends policy resolutions to address the increasing conversion of single-family, owner-occupied, residential homes to renter-occupied homes in R-A, R-1, R1-S and R-2 residential zoning districts in the City of North Mankato.

The City undertook this study to gain an understanding of the issues associated with the increasing conversions of single-family homes to rentals in the community and to appropriately address those issues with a strong, informed rental density ordinance that will prevent the deterioration of neighborhood quality of life.

Rental restrictions have come to the forefront of municipal planning efforts in Minnesota as cities realize increased rates of conversion of single-family homes to rentals. Several studies have documented potential adverse effects associated with concentrations of rental properties and cities have found resolve with the establishment of ordinances regulating the number of rental licenses that can be issued on a given block. Research shows that rental concentrations are linked to increases in nuisances, City Code violations, and calls to the Police Department and data findings in North Mankato give merit to those claims.

The key findings of this study are outlined below:

- Annual rental license issuance is trending upward on average of 4.3% per year in North Mankato and, if left unregulated, will allow for the addition of roughly 70 new licenses in the next 5-year period.
- Rental density regulation is rooted in the North Mankato Comprehensive Plan which contains a policy to *“create a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods.”*
- The literature review demonstrates a relationship between homeownership and neighborhood stability suggesting that homeowners have more at stake with their properties and spend more time and resources on maintaining them. In doing so, property values are maintained and social conditions may improve.
- Four Minnesota cities, including Mankato, West St. Paul, Northfield, and Winona have established successful rental density ordinances.
- Research supports and data findings suggest that a clear problem exists with unregulated rental concentrations in urban environments. In North Mankato, data collection and analysis has revealed that the issues exist in the City.
- Lower North Mankato is almost fully developed and stands to be altered by increased rental license issuance without intervention. At 16% renter occupancy, Lower North currently exceeds the level determined by the City as a benchmark for neighborhood stability (10% per block). Without offsetting factors such as new development, Lower North could see the addition of 50 new licenses in a 5-year period raising the percentage to nearly 19%.
- North Mankato data suggests that increased crime, nuisances and complaints are linked to concentrations of rental properties in the community. Renter-occupied homes represent approximately 8% of the housing stock in relevant zoning districts as well as 22% of all police call occurrences.
- In Lower North, renter-occupied homes represent 16% of properties and are responsible for 31% of all police calls.
- City wide, there is one police call to every 4.15 owner-occupied homes and one to every 1.51 renter-occupied homes. In Upper North, there is one occurrence to every 5.55 owner-occupied homes and one to every 3.22 renter-occupied home. Finally, in Lower North, there is one to every 2.86 owner-occupied homes and one to every 1.28 renter-occupied homes.
- Rental strikes highlight areas of repeat offenders in the City and those areas are connected to the densest areas of rental concentrations in the community.

Policy Recommendations from this study are outlined below:

Policy 1: *The City should pursue the establishment of **\$151.18 Rental Density Ordinance** (Appendix B.1).*

A rental density ordinance limiting rental license issuance to 10% per block in the community will increase the potential for successful achievement of neighborhood stability in North Mankato. This ordinance may consider the differences within Upper and Lower North Mankato and address them separately with different limitations for each.

Policy 2: *The City should pursue the establishment of **\$ 151.19 Temporary Rental Licenses** (Appendix B.1).*

Other communities have suggested that the establishment of a temporary rental license ordinance alleviates some unforeseen circumstances that may occur in relation to homeowners who are unable to sell properties but cannot afford the property or do not reside there.

Policy 3: *The City should adopt increased parking requirements for rental properties (Appendix B.1).*

As illegal parking is an issue associated with rental concentrations, the City should pursue increased parking requirements that will assist with controlling offenders at rental properties.

Policy 4: *The City should increase efforts for documenting grass, weed, and nuisance complaints.*

The City should set up a spreadsheet database to enhance documentation and better monitor grass, weed, and nuisance complaints to increase understanding of the adverse effects of these complaints on the community.

Section 1: Purpose and Intent

1.1 Study Purpose

The purpose of this document is to document and recommend policy actions to address the increasing conversion of single-family and two-family, owner-occupied, residential homes to renter-occupied homes in R-A, R-1, R-1S, and R-2 residential zoning districts in the City of North Mankato. These trends were identified in a presentation to the City Council on September 2015. While the City values providing opportunities for renters, research shows that concentrations of rental properties may lead to undesirable conditions posing a threat to neighborhood quality of life. These conditions include increased nuisance complaints, City Code violations, and calls to the Police Department (**Appendix E**) that impact the public welfare of citizens who both own and rent homes. Data collected in North Mankato demonstrate a connection between concentrations of renter-occupied homes and increased incidents of these actions.

1.2 Study Intent

This study provides background information, supporting data, and policy recommendations that work toward a shared community vision as identified in the goals of the Comprehensive Plan and Strategic Plan aimed at maintaining quality of life in the City of North Mankato and its neighborhoods. In this context, the City approaches rental regulation in a nondiscriminatory manner, appropriately considering the rights of property owners, renters, and their neighbors similarly. Regulations such as this are naturally conflictual because of the effect such regulations have on individuals and property rights. With these values in mind this report recommends additional regulation based on peer reviewed empirical research, data collection and analysis specific to North Mankato and input from other Cities in Minnesota who have enacted similar regulations.

This study illustrates the role of rental restrictions in maintaining quality of life standards, provides scenarios of other cities and strategies they are using to control undesirable effects of rental concentrations, provides a description of the constitutional validity of a rental density ordinance, provides supporting recommendations from the North Mankato Comprehensive Plan and other policy documents, contains various data analyses that describe the implications of rental restrictions in communities, and provides policy recommendations for implementation of a rental density ordinance. The information described in the study supports the adoption of revisions to Chapter 151, Section 18 of the City Code by the North Mankato City Council.

Section 2: Background

2.1 North Mankato Rental Licensing Moratorium

On September 21st, 2015, the North Mankato City Council issued a one year moratorium on the granting of new rental licenses throughout the City in response to an upward trend of issued licenses that predicted densities of rentals in Lower North would exceed maximum densities set in other communities in Minnesota.

Local government action to regulate rental density has recently come to the forefront of planning in Minnesota as cities implement rental density caps to restrict the percentage of single-family residential conversions to rental properties to protect neighborhood quality of life. Cities such as Winona, Northfield, Mankato, and West St. Paul have all established similar ordinances (**Table 1**). While Winona, Mankato, and Northfield acted to regulate rentals in response to the concentration of students living off campus, West St. Paul acted in response to an increasing amount of foreclosed properties.

Winona	Limits allowable rental lots on a block to 30%
Mankato	Limits 25% of lots on a block to be eligible to obtain rental licenses
Northfield	Limits 20% of all lots on a block able to receive rental licenses
West St. Paul	Limits 10% of lots on a block to receive rental licenses

Table 1. Minnesota communities regulating rental density through city ordinance.

2.2 Policy Background

2.2.1 2015 Strategic Plan

The 2015 North Mankato Strategic Plan was developed as framework for a shared community vision of what the community wants to be and direction on how to get there.

A major goal of the North Mankato Strategic Plan is “Growing & Vibrant Residential Districts” in the community. By achieving the balance between owner-occupied and renter-occupied residential homes, the City will be closer to achieving and maintaining this goal.

2.2.2 City of North Mankato Comprehensive Plan

2.2.2.1 A Vision for North Mankato

The City of North Mankato strives to protect and enhance the quality of life for residents as the City grows. Through the Comprehensive Planning Process, the City has identified a vision (**Figure 1**) that “gives the community a stated goal of what their future will be and is paramount in managing



A VISION FOR NORTH MANKATO

“North Mankato is a growing and safe community with outstanding recreational assets, well maintained infrastructure, vibrant business districts and neighborhoods, and provides residents with an excellent quality of life.”

Values

Adaptability: The ability to adjust means and methods to resolve changing situations

Excellence: Going above and beyond expectations

Responsibility: Taking ownership and being accountable for performance

Integrity: Being honest, impartial and aligning actions with principles

Leadership: Achieving a common goal by motivating others

Figure 1. A Vision for North Mankato. (Source: North Mankato Comprehensive Plan, 2014)

the growth and development within the community.” The vision statement for the community captures the overarching, “Big Picture,” aspirations of the City.

The proposed rental density ordinance will assist in achieving this vision for the community.

2.2.2.2 Comprehensive Plan – Chapter 4: Housing

According to Chapter 4 from the North Mankato Comprehensive Plan, “The City is open to creatively seeking opportunities to meet our housing needs and responsibly providing our share of affordable housing. Housing in North Mankato continues to be a strength in attracting young families to the area.”

The City recognizes that areas like Lower North have high concentrations of rental properties. The majority of Lower North is also recognized as an ideal location for starter homes for young families, located in neighborhoods that have been well maintained and contribute to community character. As evidenced by the Comprehensive Plan, the City would like to preserve this neighborhood quality of life and continue to provide ideal housing options for starter families as well as additional members of the local workforce that will meet the workforce needs of the region in the future given the projected deficit of 2,800 workers by 2025. The following goal and policies were included in Chapter 4: Housing to guide housing to this end:

1. Goal—Provide attractive and desirable residential properties

- **Policy 2.1.2:** Monitor “at risk” or “blighted” properties or areas and connect property owners to housing improvement programs, loans and assistance opportunities for rehabilitation.
- **Policy 2.1.5:** Consider a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods.

This document and the proposed ordinance revision it recommends provides an implementation plan for these policies. As the Comprehensive Plan serves as the guiding document for the achievement of the shared vision for the community, adherence to the goals, objectives, and policies outlined in the plan is vital to that achievement.

Section 3: Studies Conclude Issues Exist When Rentals are Concentrated in Single-Family Neighborhoods

Studies give merit to the claim of adverse effects associated with increased concentrations of rental properties in neighborhoods. Adverse effects identified in the literature from a concentrated conversion of single-family homes to rentals include declining neighborhood stability, increased nuisances, property maintenance complaints, police calls, and declining property values. A discussion of this literature is presented in this section.

3.1 Homeownership and Neighborhood Stability are Affected

An article entitled “Homeownership and Neighborhood Stability”¹ gives merit to conventional thinking that increased homeownership leads to greater neighborhood stability. Authors focused research efforts on a conceptual model (**Figure 3**) outlining the effects of homeownership rates on various indicators of neighborhood stability and found support for that model within existing literature.

At least four aspects of neighborhoods might be stabilized by homeownership (**Figure 2**). These include:

1. Length of tenure of the current residents
2. Property values
3. Physical condition of properties
4. Social conditions in the neighborhood, such as school dropout or crime rates

At least four aspects of neighborhoods might be stabilized by homeownership:

- Length of tenure of the current residents
- Property values
- Physical condition of properties
- Social conditions in the neighborhood, such as school dropout or crime rates

Figure 2. Four Aspects of Neighborhoods Stabilized by Homeownership (Source: Rohe & Stewart, 1996).

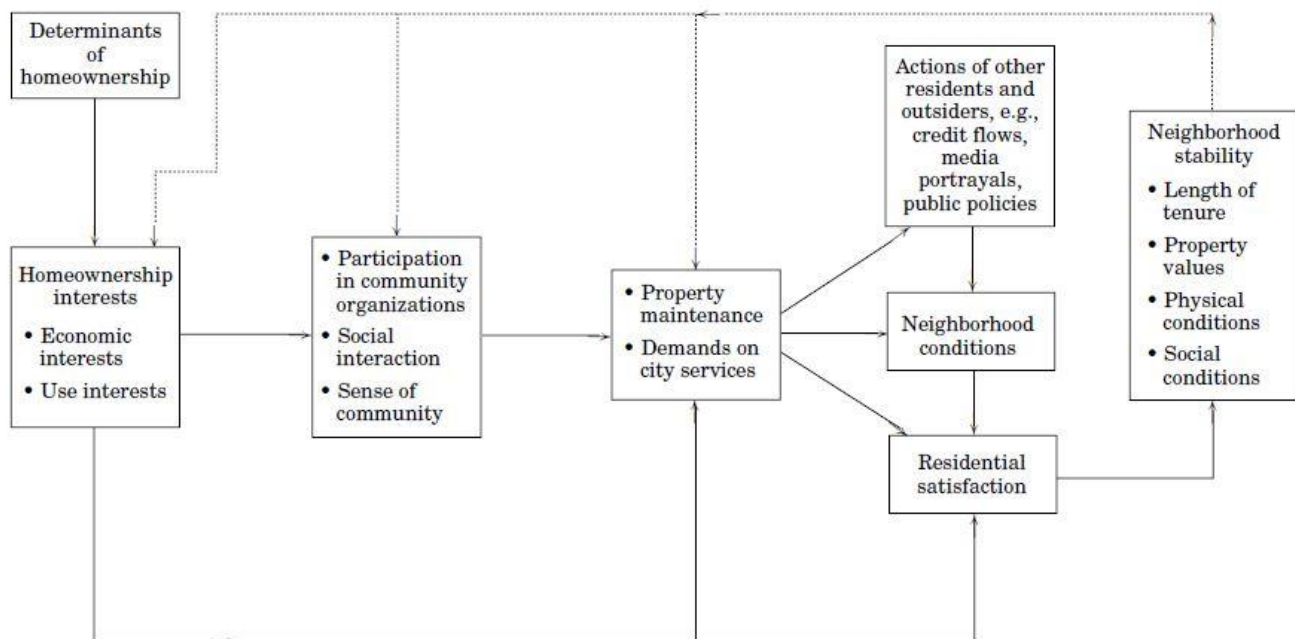


Figure 3. Conceptual Model: Effect of Homeownership on Neighborhood Stability. (Rohe & Stewart, 1996)

¹William M. Rohe and Leslie S. Stewart, “Homeownership and Neighborhood Stability,” Housing Policy Debate (Volume 7, Issue 1). 1996: 48.

Rohe and Stewart advance a model that provides evidence of a link between homeownership and neighborhood stability. Those opting for homeownership differ from those opting to rent in a number of social characteristics. Homeowners are more likely stable defined in terms of length of residence and property maintenance. Homeowners possess both economic and use interests in their properties which leads to increased support for increased property maintenance standards. These interests also lead to greater social interaction within, and psychological identification with, the neighborhood as a whole. With this, homeowners may be more likely to join area organizations that protect neighborhood interests. Research also suggests that “homeowners are more likely than landlords to undertake repairs and spend more on them.” It is these interests homeowners have in their property that fosters a vested interest in the quality of the neighborhood as a whole.²

The article further suggests that homeownership can be an indicator of a family’s status and offers great control over one’s living environment. These represent important social and psychological benefits that are closely guarded by individuals. The deterioration of surrounding homes within neighborhoods can affect their property and may be interpreted as threats to their status and security.²

Rohe & Stewart also developed a property value model and found this to suggest that changes in the homeownership rate have a positive association with property value changes; suggesting that even modest increases in homeownership rates may increase neighborhood property values over time.² Increases in nuisance and property maintenance complaints, City code violations and police calls associated with rental concentrations are discussed in the following sections.

3.2 Negative Impacts Associated with Rental Concentrations in Single-Family Neighborhoods

The Hoisington Koegler Group (HKGI) was solicited by the City of Winona in 2012 to conduct a literature review relating to rental housing concentrations and associated negative impacts on neighborhood quality and livability. This review found several studies containing empirical analyses linking higher concentrations of rental houses to negative impacts on surrounding neighborhoods. Findings concluded that over-concentrations of rental houses in single-family residential neighborhoods have the following negative impacts on surrounding residential properties and neighborhoods: noise, increased traffic, litter, illegal parking, inadequate property maintenance, and a general decrease in quality of life for permanent residents of the neighborhood (**Figure 4**).

Negative Impacts Associated with Rental Concentrations:

- *Noise*
- *Increased Traffic*
- *Litter*
- *Illegal Parking*
- *Inadequate Property Maintenance*
- *General Decrease in Quality of Life for Permanent Residents of the Neighborhood*

Figure 4. Negative Impacts Associated with Rental Concentrations (Source: HKGI Memorandum to Winona City Council, Planning Commission, and City Staff).

Nuisance complaints, code violations, and crime incidents are key indicators of a neighborhood’s livability and residents’ satisfaction with their neighborhood. The literature supports claims of increased occurrences of these in areas of rental concentrations. Likewise, data collected in the City of North Mankato provides evidence of this locally and is further explored in section four of this report.

3.3 Decreased Property Values

HKGI identified several studies through their research (**Wang, et al; Rohe and Stewart; Janmaat, Pindell**) containing empirical analyses linking higher concentrations of rentals to decreases in property values of nearby homes. One study

²William M. Rohe and Leslie S. Stewart, “Homeownership and Neighborhood Stability,” **Housing Policy Debate (Volume 7, Issue 1). 1996.**

in particular, “The Impact of Rental Properties on the Value of Single-Family Residences,”³ concluded that “an inverse relationship exists between the value of a house and the presence of rental properties in the study area.” Data used in this study included over 23,000 single-family residences and over 1,100 home sales in San Antonio, Texas. The other studies researched by HKGI supported these findings (**Rohe and Stewart**⁴; **Janmaat**⁵, **Pindell**⁶). A Memorandum from HKGI to the Winona City Council, Planning Commission, and City Staff outlining these findings was presented at the Minnesota Association of City Attorneys Educational Conference in February of 2014. The Conference Agenda can be seen in **Appendix A**. No such analysis was conducted assessing the impact of property values in single-family neighborhoods with a high concentration of rentals in North Mankato as part of this review.

SECTION 4: Peer Cities Review Offer Best Practices for Rental Density Ordinance Revision

4.1 Peer cities

Several Cities are considered comparable to North Mankato in population size, area, and existing amenities. When considering policy changes, the City observes these cities for insight on their efforts towards similar initiatives; observing the successes and challenges they may have encountered. These cities include:

- Albert Lea
- Belle Plaine
- Brainerd
- Faribault
- Hutchinson
- Jordan
- New Ulm
- Northfield
- Owatonna
- Red Wing
- Shakopee
- St. Peter
- West St. Paul
- Winona

These cities were contacted to gain an understanding of the effects of rentals on others and how they deal with issues. The following questions were sent to comparable cities:

1. If your City has considered a rental density ordinance, will you tell us why?
2. Has your City seen property values decrease in those neighborhoods where single-family conversion to rentals has increased?
3. Has your community experienced increases in police calls, nuisances and complaints in those neighborhoods associated with rental concentrations?
4. Can you provide information as to how your community monitors single-family conversion to rental properties?
5. If you have statistical information illustrating the single-family rental housing stock would you be willing to share?
6. Does your City have specific ordinances that regulate single-family rentals for the protection of neighborhood quality of life?

Several of the cities that responded don’t view increases in rental properties/concentrations as an issue in their community. Most have a type of rental ordinance in place such as a rental registration program or a rental inspection program but nothing that limits the amount of rental licenses that can be issued. However, several of the communities have also experienced increased police calls, nuisances and absentee/problem landlords among renter-occupied units.

³Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, “The Impact of Rental Properties on the Value of Single-Family Residences,” *Journal of Urban Economics*, Volume 30, Issue 2 (1991)

⁴William M. Rohe and Leslie S. Stewart, “Homeownership and Neighborhood Stability,” *Housing Policy Debate* (Volume 7, Issue 1), 1996.

⁵John Janmaat, “The Curse of Student Housing: Evidence from Wolfville, Nova Scotia,” 2010.

⁶Ngai Pindell, “Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability,” *Scholarly Works* (Paper 57), 2009.

Qualitatively, these responses confirm the findings of the literature associated with the consequences of a higher concentration of rentals in single-family neighborhoods.

Two communities that have established rental density ordinances, Northfield and West St. Paul, responded to questions regarding the success of their respective ordinances in the community. The City of Northfield stressed that there may be a perceived benefit provided by the ordinance but that the most measurable improvement related to improving neighborhood quality of life can be attributed to the City's Rental Licensing and Inspection Program as a whole. Northfield limits rentals to 20% of homes per block. City Staff mentioned that foreclosures increased following the recession as owners could not convert the property to rental; a problem in which temporary licensing has provided a solution.

West St. Paul found success since the implementation of their ordinance in 2006. The City limits rental licenses to 10% per block in order to keep diversity in housing stock in the community by allowing some rentals while maintaining a well-established owner-occupied presence. The City applies a tiered fee system to renter-occupied homes that receive police calls and nuisances. As a result, rentals with the more valid police calls and complaints on a property, pay more for their licenses renewal. Provisional licenses are assigned to those who pose excessive problems and licenses are revoked if issues persist. The City has adopted the International Property Maintenance Code (IPMC) as the guiding document for all rental inspections, they have implemented mandatory Phase I: Management/Owner Training and have changed the licensing term to a rolling calendar. Overall, the City is very happy with the outcome of the rental density regulation in the community. Staff suggests that property values have been stabilized and rental numbers are controlled. West St. Paul is a City of approximately 20,000 residents and the factors leading to the establishment of their successful ordinance fall in line with the desires of North Mankato. Cities like West St. Paul will serve as a model for North Mankato to follow to ensure the appropriate measures are taken to establish an appropriate ordinance. Comments received from Peer Cities can be reviewed in **Appendix C**.

Section 5: Legal Framework Enabling Rental Restrictions

Restrictions on the issuance of rental licenses in a municipality brings several constitutional issues into question regarding equal protection, procedural due process, and substantive due process rights under the Minnesota Constitution. Additionally, Appellants questioned the level of zoning power provided cities under **Minn. Stat. § 42.357**, Minnesota's zoning enabling statute, to regulate housing in a municipality. Recent proceedings involving property owners and the City of Winona, Minnesota have given new light to the constitutional validity of a municipality's efforts to control the quantity of rentals in the City.

As discussed before, a common reaction of many individuals when discussing regulating rental density in a municipality is that regulations such as this violate property rights of individuals. However, if a municipality has more to gain regarding the general welfare of its citizens, the Minnesota Constitution (according to the Court of Appeals of Minnesota) upholds this as a valid use of police power (**Figure 5**) that is not in violation of property rights.

5.1 Constitutional Validity: Case Study - Dean v. The City of Winona

In 2005, the City of Winona enacted an ordinance restricting rental units on a given block to 30-percent in certain zoning districts. This was prompted by increased parking demands in the neighborhood and concerns of rental concentrations leading to neighborhood blight. Ethan Dean, among others, sued the City after a request for a rental license was rejected. The group alleged the Winona City Council exceeded legislative authority with the 30% rental license per block rule claiming the ordinance was unconstitutional. The Minnesota Court of Appeals easily concluded against this, finding that the public's interest in regulating rental housing was sufficient to justify municipality's police power delegated by the State of Minnesota to regulate property.

POLICE POWER

"...the power to impose such restrictions upon private rights as are necessary for the general welfare."

Figure 5. Definition of Police Power (**Source:** Dean v. City of Winona, 843 NW 2d 249 – Minn. Court of Appeals 2014).

Dean and others also raised claims that equal protection, substantive due process, and procedural due process rights had been violated by the imposition of the ordinance. In the case of equal protection, "A party may raise an equal protection challenge to a statute based on the statute's express terms, that is, a 'facial' challenge, or based on the statute's application, that is, an 'as-applied' challenge." State v. Richmond. 730 N.W.2d 62.71 (Minn.App.2007) "A facial challenge to a statute on equal protection grounds asserts that at least two classes are created by the statute, that the classes are treated differently under the statute and that the treatment cannot be justified." In re McCannel, 301 N.W.2d 910, 916 (Minn.1980). Within this context, an equal-protection challenge requires an initial showing that "similarly situated persons have been treated differently." Based on this information, the Court of Appeals of Minnesota rejected equal protection challenges concluding the rule to be facially neutral and that no similarly situated groups were treated differently; the rule was not applied in an arbitrary manner, and in any event would not have resulted in "invidious" discrimination even if similarly situated persons were treated differently.⁷

Substantive due process rights require that "only that a statute not be arbitrary or capricious; the statute must provide a reasonable means to a permissible objective. Stat v. Behl. 564 N.W.2d 560, 567 (Minn. 1997)."³ The Court of Appeals of Minnesota found that substantive due process rights weren't violated because the ordinance promoted a valid public purpose of controlling rental density; was enacted after considerable deliberation and analysis, didn't unreasonably, arbitrarily, or capriciously interfere with private interests, and was rationally related to the purpose served.⁷

Appellants also contended that the 30% rule violates their "procedural due process right by unconstitutionally delegating legislative power to a property owner's neighbors." Arguments that the rule delegated legislative power to the neighboring property owner's was also rejected finding that neighbors don't vote on how the rule is applied nor do they make decisions regarding its application.⁷

This case became moot while on appeal to the Supreme Court of Minnesota. The appellants were found to "no longer have an interest in the outcome of the litigation" as the properties in which rental licenses were being sought for were sold. Appellants attempted to raise claims that this issue was of statewide significance and should be ruled on in anticipation of future events to others. Supreme Court Justices found no support for this determination and suggested that these claims would not be pursued. In light of this, the Supreme Court declined to reach the merits of the appellants' claims and dismissed the appeal.⁸

⁷Dean v. City of Winona, 843 NW 2d 249 – Minn. Court of Appeals 2014

⁸Dean v. City of Winona, 868 NW 2d 1 – Supreme Court of Minnesota 2015

The facts and rulings for the case of Dean v. The City of Winona can be seen in **Appendix D**. The breakdown of each Court's ruling (the Court of Appeals of Minnesota and the Minnesota Supreme Court) are located there.

Section 6: North Mankato Trends in Neighborhood Conversion to Rental Property

6.1 Zoning Districts Affected by Regulation

The residential properties being considered for further regulation in this study are those family dwellings containing 1 – 4 rental units located in the following residential zoning districts within the City of North Mankato (**Figure 6**):

1. **R-A:** Residential Agricultural District
2. **R-1:** One-Family Dwelling District
3. **R1-S:** One-Family Dwelling, Small Lot District
4. **R-2:** One- and Two-Family Dwelling District

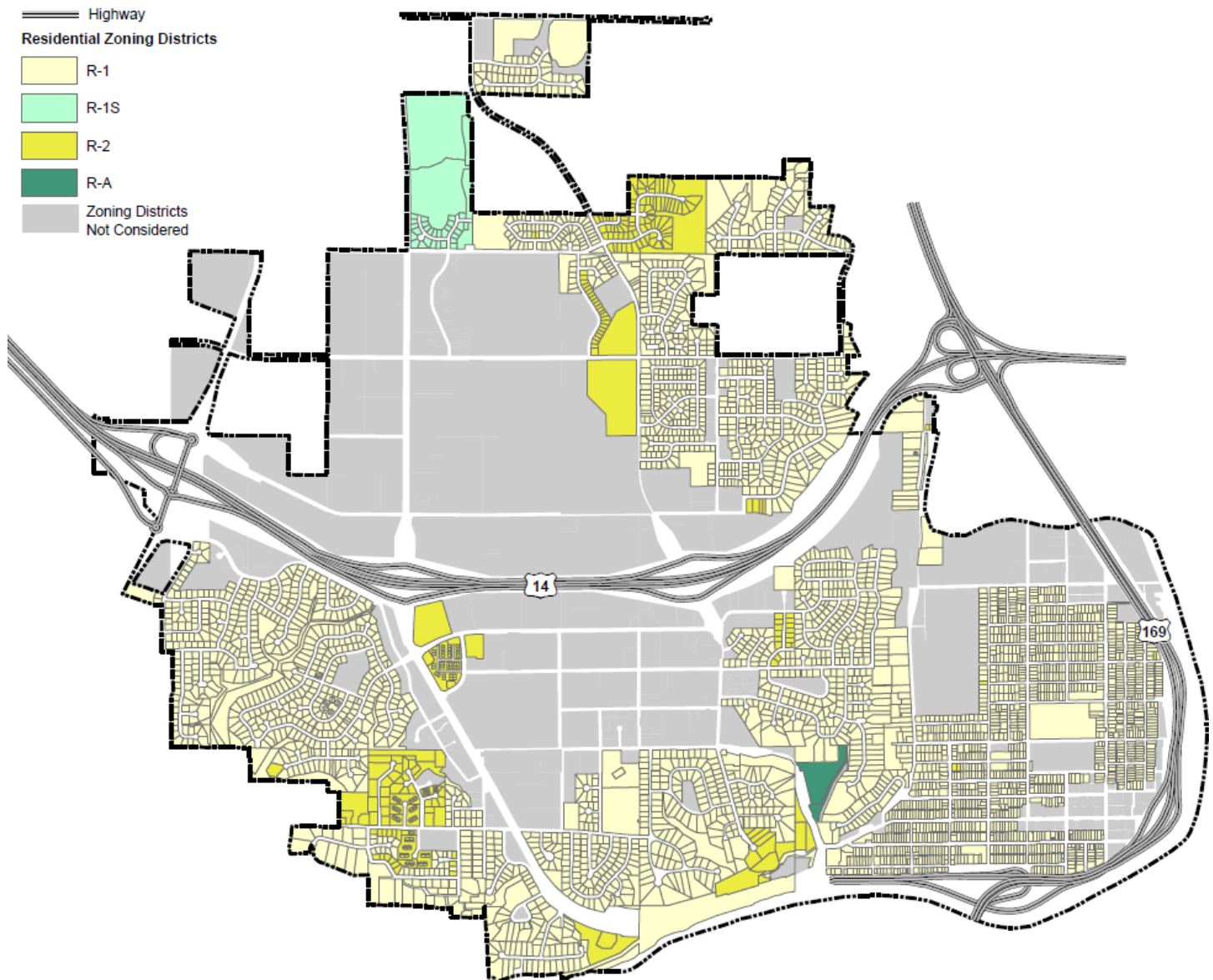


Figure 6. North Mankato Residential Zoning Districts Subject to Rental Density Regulation: R-A, R-1, R1-S, R-2

A Geographic Information System (GIS) was used for data analysis utilizing parcel data acquired through the City of North Mankato and the Nicollet County Assessor's Office. Only properties within those effected residential districts were taken into consideration.

Table 3 provides an assessment of properties containing one- and two-family dwellings in R-A, R-1, R1-S, and R-2 zoning districts in the City. The total number of properties within those districts increased steadily over the 5-year period between 2010 and 2014, adding 19 homes per year on average. In 2014, there were 3,757

CITY OF NORTH MANKATO Assessment of Relevant Properties in R-A, R-1, R-1S, and R-2 Zoning Districts (2010 - 2014)						
Properties	2010	2011	2012	2013	2014	5-year Average
Total # of Properties	3670	3689	3721	3753	3757	3718
# Owner-Occupied Homes	3363	3380	3412	3440	3444	3407.8
# Renter-Occupied Homes	307	309	309	313	313	310.2
% Owner-Occupied Homes	92%	92%	92%	92%	92%	92%
% Renter-Occupied Homes	8%	8%	8%	8%	8%	8%
# of Residences Built	8	19	32	32	4	19
# Built Owner-Occupied Homes	8	17	32	28	4	18
# Built Renter-Occupied Homes	0	2	0	4	0	1

Table 3. Assessment of Properties in R-A, R-1, R1-S, and R-2 Zoning Districts from 2010 – 2014 in North Mankato. (Source: City of North Mankato, Nicollet County Assessor)

properties within the designated districts. Properties that were vacant, contained more than 4 rental units, or were built in 2015 or later were removed from the analysis to ensure data integrity. The ratio of owner-occupied homes to renter-occupied homes in 2014 was approximately 34:3 with rental properties representing approximately 8% of properties in the residential districts.

In the City of North Mankato, there is a clear distinction between what is known as Lower North Mankato and Upper North Mankato. Lower North consists of the southeastern portion of the City at the bottom of a large bluff and containing the Central Business District, City Hall, and various residential neighborhoods, parks, and schools and some highway commercial and industrial. The opportunity to develop within this area is extremely limited as it contains the oldest housing stock in the City and is at full capacity. Upper North Mankato, on the other hand, represents a much larger area extending northwest at the top of the bluff and contains highway commercial, regional softball and soccer complexes, most of the industrial uses in the City, and some residential. Upper North contains most of the developable land in the City.

Along with the physical separation of Lower North Mankato and Upper North Mankato comes other distinctions as well. Trends in rental licensing, the proportion of renter-occupied single-family to owner-occupied single-family homes, and police calls and associated crime distribution all present differences that distinguish the two geographic areas. Data analysis considered both areas separately when accounting for these factors and based recommendations accordingly. **Section 3.1.2** outlines the distribution of properties in Upper and Lower North.

6.2 Rental Licensing Status

There are 4,166 total residential parcels in the City of North Mankato with 654 total rental licenses. The City has 1,576 total rental units representing almost 15% of total residential properties. As described in **Section 6.1**, the analysis in this study only takes into account those family dwellings containing 1 – 4 rental units within the R-A, R-1, R1-S, and R-2 residential zoning districts. Within those zones, there are 391 total rental licenses (2016) among 3,757 parcels (**Table 3**). Renter-occupied properties represent approximately 8% of the total within those zoning districts throughout the City. However, there is a distinction between Upper and Lower North when

observing how these numbers are distributed for each. **Figure 10** illustrates the distribution of rentals between Upper and Lower North Mankato.

Though Upper North contains a much larger area, there are only 104 total rental licenses present among the 2,312 parcels. This is a much lower distribution than that of Lower North which is subject to smaller lots and older housing stock. Renter-occupied homes represent just under 4% of homes within relevant zoning districts in Upper North. See **Table 5** for more information regarding rental licenses and properties in Upper North.

Lower North contains 287 total licenses (more than double that of Upper North) among 1,445 parcels (only 63% of Upper North parcels). Renter-occupied homes represent 16% of the housing stock within relevant zoning districts which is significantly greater than the level that the City desires. **Table 6** shows this distribution.

These numbers identify a clear distinction between Upper and Lower North Mankato. Lower North has a greater rental concentrations of rentals in single-family neighborhoods. *The immediate need for limitations on rental license issuance is clear in Lower North.* However, a closer look at the trends in rental licensing reveal increases in the issuance of licenses in Upper and Lower North that could lead to high percentages in the future.

6.3 Trends in Rental Licenses

The conversation of single-family homes to rental properties is trending upward and projections show that these trends will continue. Keeping in mind the purpose of this study is to find the appropriate balance for owner/renter-occupied single-family homes, upward trends in license issuance should be observed carefully for decision making purposes. If left unchanged, upward trends in rental licenses will lead to increased concentrations in renter-occupied properties.

Figures 7 – 9 show trends in rental licensing and an average annual growth rate for each. Overall, the amount of licenses is increasing annually at 4.2% representing an approximate increase of 14 licenses per year. If this trend persists, there will be 70 new licenses in the next five years raising the

Rental licenses in R-A, R-1, R1-S, and R-2 Zoning Districts City Wide	
Total # Licenses	391
Total # Parcels	3,757
Properties Containing More than One License	85
Total Owner-Occupied Parcels	3,444
Total Renter-Occupied Parcels	313
% Rental	8%

Table 4. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts. (Source: City of North Mankato).

Rental Licenses in R-A, R-1, R1-S, and R-2 Zoning Districts in Upper North Mankato	
Total # Licenses	104
Total # Parcels	2,312
Properties Containing More than One License	20
Total Owner-Occupied Homes	2,229
Total Renter-Occupied Homes	83
% Rental	3.6%

Table 5. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts in Upper North Mankato (Source: City of North Mankato).

Rental Licenses in R-A, R-1, R1-S, and R-2 Zoning Districts in Lower North Mankato	
Total # Licenses	287
Total # Parcels	1,445
Properties Containing More than One License	65
Total Owner-Occupied Parcels	1,215
Total Renter-Occupied Parcels	230
% Rental	16%

Table 6. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts in Lower North Mankato (Source: City of North Mankato).

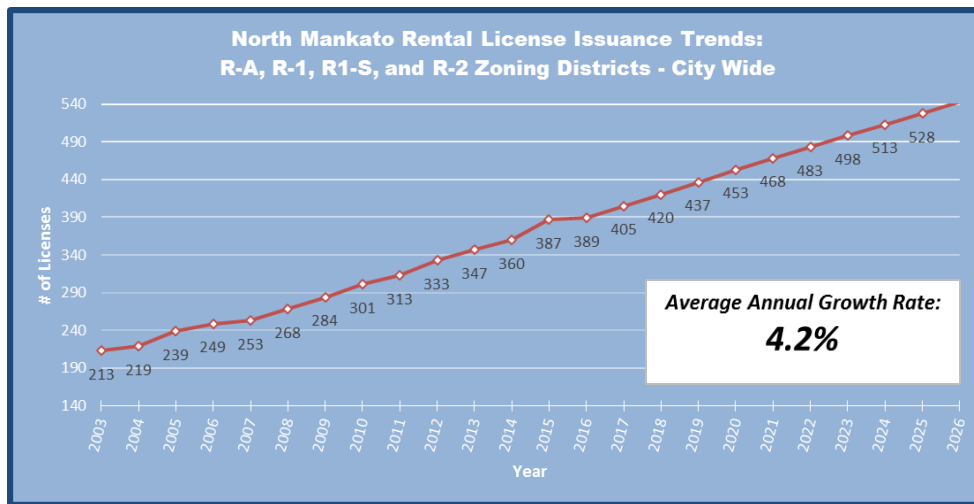


Figure 7. Trends in Rental License Issuance – City Wide (*Source: City of North Mankato*).

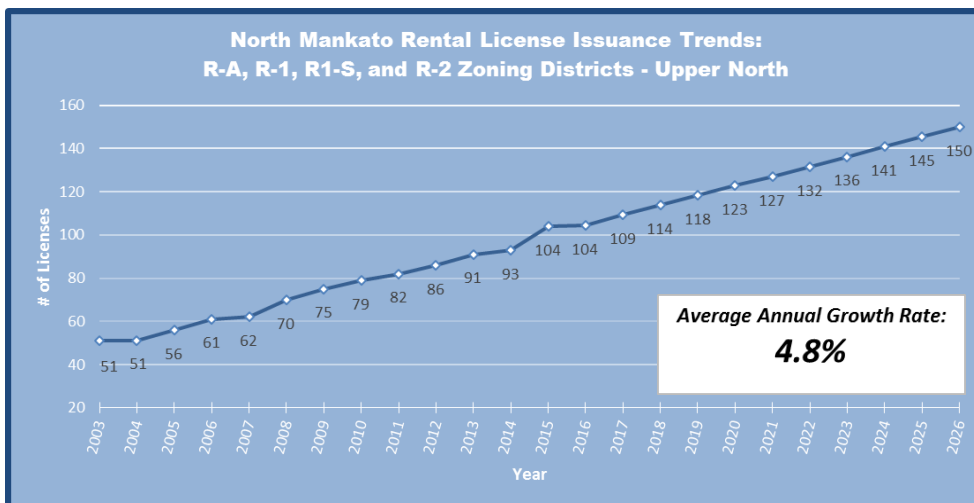


Figure 8. Trends in Rental License Issuance – Upper North (*Source: City of North Mankato*).

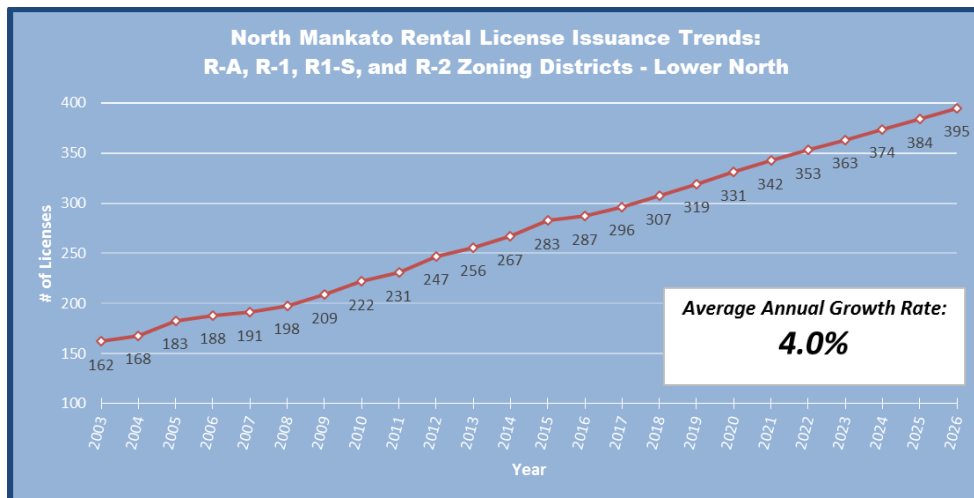


Figure 9. Trends in Rental License Issuance – Lower North (*Source: City of North Mankato*).

percentage of renter-occupied homes from 8% to nearly 10%. Within a 10 year period, these numbers will rise to a potential 150 new licenses raising the percentage to nearly 12% within the City.

Though Upper North has a smaller percentage of rental properties overall (approximately 4% for Upper North vs. 16% for Lower North), license issuance is increasing at a faster rate (4.8%) than Lower North (4.0%) annually. This growth is something that staff recommends be addressed in the ordinance revision to maintain a serviceable balance of renter-occupied homes in Upper North. With the current 4.8% average annual growth rate, Upper North adds on approximately 4.3 rental licenses per year, but the development of 19 new homes per year in the specified zoning districts offsets the proportion of renter-occupied homes in Upper North so rental concentrations have not approached levels like those exhibited in Lower North.

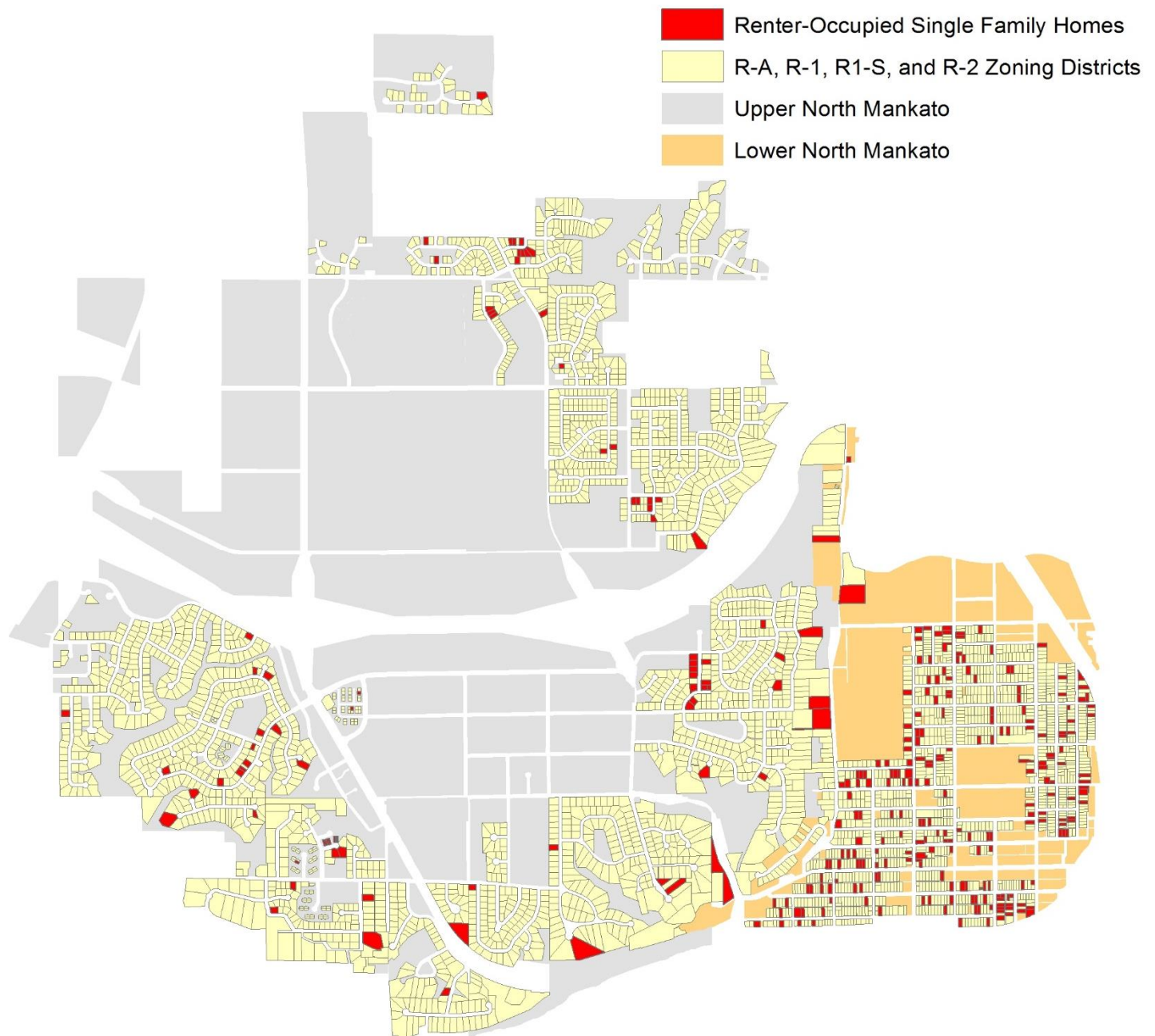


Figure 10. Distribution of Rental Properties in Upper and Lower North Mankato (Source: City of North Mankato, Nicollet County Assessor).

Rates of increases in Lower North present a different scenario that raises concerns. With existing trends, Lower North will acquire approximately 10 more licenses per year, leading to approximately 50 new licenses in five years. Though some properties contain more than one license, it is more likely that this will mean the conversion of 50 more homes to renter-occupied and will raise the amount of renter-occupied to approximately 280 properties or 19.4% from 16%.

Trends from 2010-2014 show that once a rental license is obtained, renter-occupied properties seldom convert back to owner-occupied. With the unlikelihood of properties converting back to owner-occupied and no new construction to add more housing stock, the threat of rental properties overtaking Lower North is real and the application of the rental density ordinance is a necessary measure to maintain neighborhood stability.

6.4 Police Calls and Associated Crime Distribution

Police call data was collected for the years 2010 through 2014 to remain consistent with property data. Through GIS analysis, only calls occurring at properties contained in the relevant zoning districts were used to determine police call significance. Police calls at renter-occupied homes were compared to those at owner-occupied homes and a ratio of occurrences to properties was developed to show the impacts of increased police activity with rental properties (See **Tables 11 – 14** for more information on ratios).

Tables 7 - 9 provide comparison of the number of properties in the residential zones susceptible to the rental density regulation. The number of homes in these districts has increased slowly but steadily over the past five years with percentages of police calls to owner- and renter-occupied homes growing similarly. While upward trends in police calls in the City are steady, *what is more significant is that renter-occupied homes represent approximately 8% of the housing stock in these zones while also representing 21% of police calls in the districts City wide. Of even more significance is that Lower North renter-occupied homes are responsible for approximately 31% of total police calls within relevant residential zoning districts.* This represents a much higher occurrence of police calls to rentals in

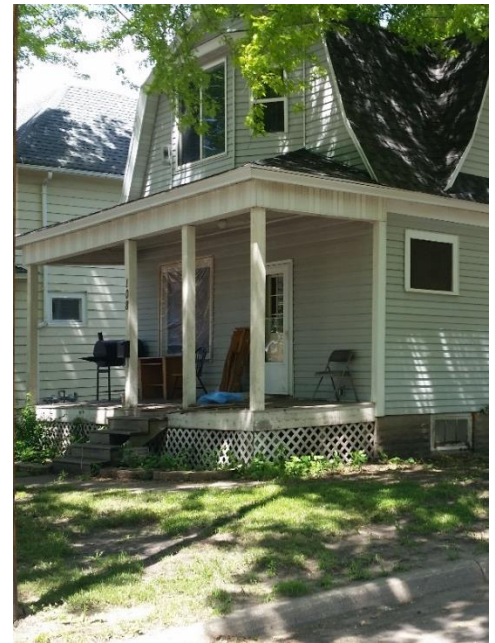


Figure 11. Renter-Occupied Home in Lower North Mankato. The stairs leading to the front entryway are broken and do not have a railing, paint is in poor condition, front window to home is in disrepair, and lawn is in poor condition among other things.

NORTH MANKATO: CITY WIDE					
% Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	3670	3689	3721	3753	3757
% Owner-Occupied Homes	92%	92%	92%	92%	92%
% Renter-Occupied Homes	8%	8%	8%	8%	8%
% PC at Owner-Occupied Homes	78%	83%	82%	79%	78%
% PC at Renter-Occupied Homes	22%	17%	18%	21%	22%

Table 7. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO: UPPER NORTH					
% Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	2229	2247	2277	2308	2312
% Owner-Occupied Homes	97%	96%	97%	96%	96%
% Renter-Occupied Homes	3%	4%	3%	4%	4%
% PC at Owner-Occupied Homes	94%	95%	96%	93%	93%
% PC at Renter-Occupied Homes	6%	5%	4%	7%	7%

Table 8. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in Upper North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO: LOWER NORTH					
% Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	1442	1444	1445	1445	1443.4
% Owner-Occupied Homes	84%	84%	84%	84%	84%
% Renter-Occupied Homes	16%	16%	16%	16%	16%
% PC at Owner-Occupied Homes	67%	73%	72%	70%	69%
% PC at Renter-Occupied Homes	33%	27%	28%	30%	31%

Table 9. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in Lower North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO POLICE CALL CATEGORIES	
Personal Crime	Juvenile Offenses
Homicide	Alcohol
Terroristic Threats	Runaways
Criminal Sexual Conduct	Curfew
Robbery	Tobacco
Assault	All Other Reports
Domestic Assault	
Harassment	Traffic Related
Harassing Communications	Accident Reports on Public Property
Child/Vulnerable Adult Protection	Accident Reports on Private Property
Domestic Disturbance	Bicycle Accidents (No Motor Vehicle)
Disorderly Conduct	Driving Under the Influence
All Other Reports	Parking Violations
	Violation Road & Driving Complaints
Property Crimes	Neighborhood Support
Residential Burglaries	Medicals
Non-Residential Burglaries	Animal Control
Theft from Building	Public Assists
Theft from Vehicle	Suspicious Activity
Motor Vehicle Theft	Assist Other Law Enforcement Agencies
Motor Vehicle Tampering	Gun Purchase Permits Applications
Financial Theft	Information Only
Shoplifting	Civil Complaints
Property Damage	Alarm Calls
Arson/Negligent Fires	Welfare Checks
Trespassing	Residence Checks
All Other Reports	Funeral Escorts
	All Other Reports
Other Crimes	
Narcotics	
Underage Consumption	
Weapons	
Liquor Violations	
All Other Reports	

Table 10. North Mankato Police Call Categories. (Source: North Mankato Police Department 2015 Year End Report).

Lower North than in Upper North which has only 7% of police calls occurring at renter-occupied properties. This further reinforces the need to regulate and monitor Lower North properties using a different approach to ensure these numbers do not increase.

Police call data in this study illustrates perhaps the most compelling evidence of the effects of rental concentrations on neighborhood quality of life. Police call categories considered in the analysis include personal crime, property crime, juvenile offenses, traffic related crimes, neighborhood support, and other crimes.

A breakdown of data categories and associated actions can be seen in **Table 10** and the distribution of occurrences City Wide, in Upper North, and in Lower North can be seen in **Figure 12**. Further detail on police calls can be seen in the North Mankato Police Department's 2015 Year End Report in **Appendix E**.

Not all police calls are associated with crime. Some are for assistance, funeral escorts and information. However, these represent a small portion of calls (See **Appendix E** for more detail). A deeper review of the distribution of types of police calls can be seen in **Figure 12** which addresses these occurrences as they happen City Wide as well as in Upper and Lower North Mankato.

NORTH MANKATO Ratio of Police Calls: 5-Year Averages			
	City Wide	Upper North	Lower North
Ratio of Police Calls to Owner-Occupied Homes	1 : 4.15	1 : 5.55	1 : 2.86
Ratio of Police Calls to Renter-Occupied Homes	1 : 1.51	1 : 3.22	1 : 1.28

Table 11. Ratio of Police Calls to Owner-Occupied and Renter-occupied properties in North Mankato (Source: City of North Mankato).

Figure 12 suggests that percentages of call occurrences are similar among Upper and Lower North, although, the amount of occurrences is significantly higher in Lower North in every category. How does this relate to levels of rental property concentrations? Ratios were developed, as discussed previously, to show a call occurrence per property relationship **Table 11**.

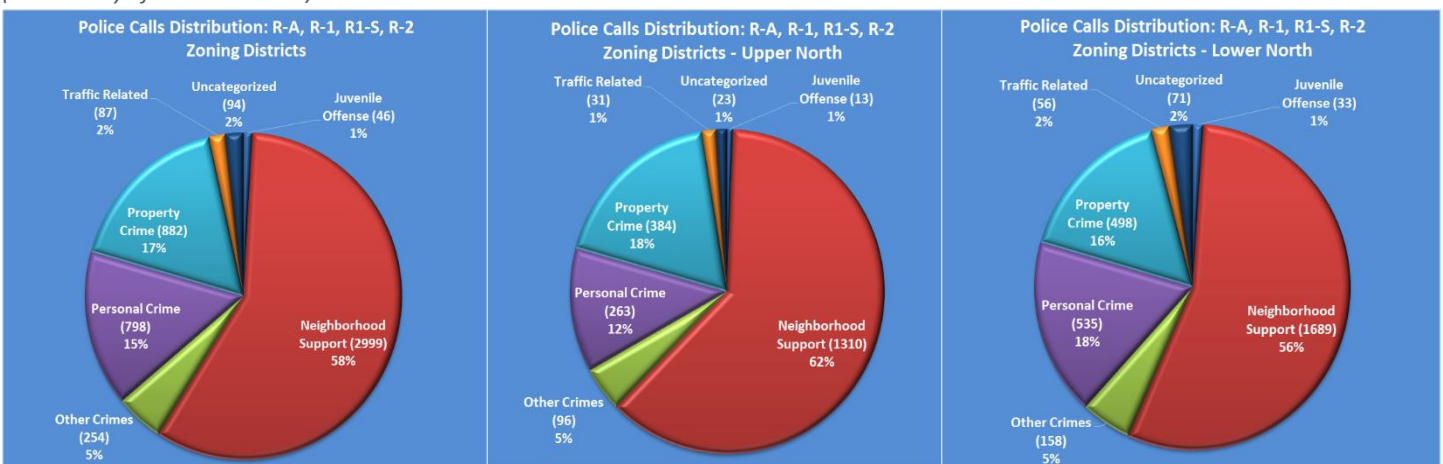


Figure 12. Distribution of Police Call Types in R-A, R-1, R1-S, and R-2 Residential Zoning Districts; City Wide (left), Upper North (middle), and Lower North (right) Mankato. (Source: City of North Mankato).

In **Tables 14 – 15**, the “Ratio of PC” rows represent the number of homes impacted by one call. For example, in Upper North in 2014, there was one police call per every 5.94 owner-occupied home and 1 police call per every 2.77 renter-occupied homes. This ratio provides evidence that rental properties in North Mankato, specifically in R-A, R-1, R1-S, and R-2 zoning districts, exhibit higher occurrences of crime. City wide, the data suggests that there is one occurrence for every 4.15 owner-occupied properties and one occurrence per ever 1.66 renter-occupied properties.

Upper and Lower North exhibit different ratios but succeed in maintaining higher occurrences of police calls to renter-occupied homes. Upper North exhibits one occurrence for every 5.55 owner-occupied homes and one occurrence for every 3.22 renter-occupied homes. Lower North exhibits one occurrence per every 2.86 owner-occupied and one per every 1.28 renter-occupied.

This evidence supporting increased police calls to renter-occupied homes is an important factor in neighborhood quality of life and the determination of regulating rental density in the City. It is clear that increased rental concentrations will lead to deterioration of neighborhoods if left unchecked and unregulated.

6.5 Rental Strikes

Rental Strikes are regulated under **City Code Section § 151.11**

Conduct on Licensed Premises

(Appendix B). Rental Strikes are

issued in response to occurrences of crimes and disturbances. If an occupant receives three strikes against them within 12 months after any two previous instances for which notices were sent, the license for the rental unit may be denied, revoked, suspended, or be subject to another penalty imposed by City Council.

NORTH MANKATO: City Wide Police Calls to Properties						
Police Call Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	945	1088	982	1086	1059	1032
PC at Owner-Occupied Homes	738	900	801	857	827	824.6
PC at Renter-Occupied Homes	207	188	181	229	232	207.4
% PC at Owner-Occupied Homes	78%	83%	82%	79%	78%	80%
% PC at Renter-Occupied Homes	22%	17%	18%	21%	22%	20%
# PC per Owner-Occupied Homes	0.3	0.3	0.3	0.3	0.3	0.3
# PC per Renter-Occupied Homes	0.7	0.6	0.6	0.7	0.7	0.7
Ratio of PC to Owner-Occupied Homes*	4.6	3.8	4.3	4.0	4.2	4.2
Ratio of PC to Renter-Occupied Homes*	1.5	1.6	1.7	1.4	1.3	1.5

Table 12. Police Calls to Properties City Wide (Source: City of North Mankato).

NORTH MANKATO: UPPER NORTH Police Calls to Properties						
Police Calls Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	384	490	409	432	405	424
PC at Owner-Occupied Homes	360	464	391	401	375	398.2
PC at Renter-Occupied Homes	24	26	18	31	30	25.8
% PC at Owner-Occupied Homes	94%	95%	96%	93%	93%	94%
% PC at Renter-Occupied Homes	6%	5%	4%	7%	7%	6%
# PC per Owner-Occupied Homes	0.2	0.2	0.2	0.2	0.2	0.2
# PC per Renter-Occupied Homes	0.3	0.3	0.2	0.4	0.4	0.3
Ratio of PC to Owner-Occupied Homes*	6.0	4.7	5.6	5.5	5.9	5.6
Ratio of PC to Renter-Occupied Homes*	3.2	3.0	4.4	2.7	2.8	3.2

Table 13. Police Calls to Properties in Upper North (Source: City of North Mankato).

NORTH MANKATO: LOWER NORTH Police Calls to Properties						
Police Call Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	561	598	573	654	654	608
PC at Owner-Occupied Homes	378	436	410	456	452	426.4
PC at Renter-Occupied Homes	183	162	163	198	202	181.6
% PC at Owner-Occupied Homes	67%	73%	72%	70%	69%	70%
% PC at Renter-Occupied Homes	33%	27%	28%	30%	31%	30%
# PC per Owner-Occupied Homes	0.3	0.4	0.3	0.4	0.4	0.4
# PC per Renter-Occupied Homes	0.8	0.7	0.7	0.9	0.9	0.8
Ratio of PC to Owner-Occupied Homes*	3.2	2.8	3.0	2.7	2.7	2.9
Ratio of PC to Renter-Occupied Homes*	1.3	1.4	1.4	1.2	1.1	1.3

Table 14. Police Calls to Properties in Lower North (Source: City of North Mankato).

⁹Sage Policy Group, “There is a Rational Basis for Rent Stabilization in College Park, Maryland,” April 2005.

¹⁰Terance J. Rephann, “Rental Housing and Crime: The Role of Property Ownership and Management,” *The Annals of Regional Science* (43), 2009.

¹¹Duncan Associates, “Analysis of Issues Regarding Student Housing Near the University of Florida,” April 2002.

¹²State College Burrough Staff. “Sustainable Neighborhoods in State College Borough.” June 8, 2009.

The City logs rental strikes specific to properties to monitor compliance. Figure 13 illustrates the areas of high occurrences of rental strikes in relationship to rental license concentrations within the City. This confirms North Mankato's experience with findings of the literature reviewed that suggests rental concentrations can lead to increases in nuisance complaints, City Code violations and crime incidents (Sage Policy Group⁹, Rephann¹⁰, Duncan Associates¹¹, State College Borough¹²). Many of the clusters represent repeat offenders and high concentrations of offenders. This provides further evidence of the correlation between rental concentrations and decreases to neighborhood stability. Specifically, this reinforces that the problems are greater in respect to Lower North Mankato lending to suggestions that a different approach be taken within that area.

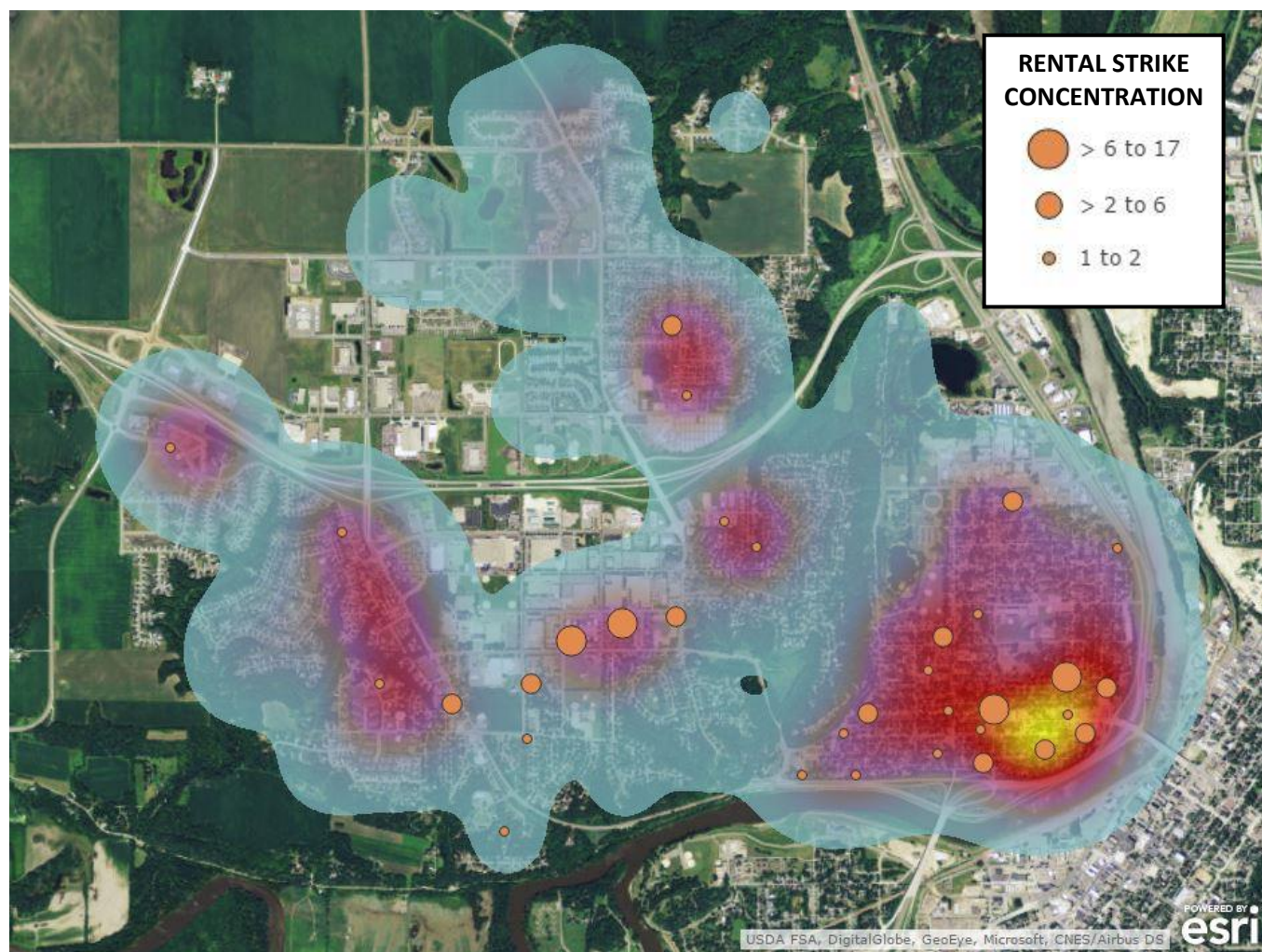


Figure 13. Clusters of Rental Strikes in Relation to Areas of High Concentrations of Rental Licenses (Source: City of North Mankato).

6.6 Nuisances and complaints in single-family residential neighborhoods

Over a five-year period, from 2011 to 2015, there were 77 nuisance violations reported to the City of North Mankato that required action from City Staff. Rental properties represent 8% of properties in relevant zoning districts in the City and over 10% of these were calls to rental properties in response to violations of City Code consisting of (but not limited to) improper storage of materials; illegal parking of vehicles, trailers, boats, etc.; lack of maintenance to buildings, fences, etc.; and storage of unlicensed or inoperable vehicles.

City Staff have expressed these numbers represent only events on record. In previous years, staff has not recorded nuisances. Instead, the City is in frequent, direct phone contact with landlords and property management

companies to resolve nuisance violations and complaints. Staff suggests increases

in numbers outlined in Table 15 would occur if all events were recorded. Discussion of these events, though not recorded, gives further indication of adverse impacts of rental properties within North Mankato neighborhoods.

Another adverse effect was analyzed considering the number of complaints for lack of grass and weed maintenance on properties (Table 16). Again, not all occurrences of grass and weed complaints are recorded unless they persist. The City's policy is to mow the property and charge the owner for the mowing in the event that requests for compliance are ignored.

Data supports claims of renter-occupied properties contributing to a higher percentage of nuisances and complaints in North Mankato. Renter-occupied homes represent 15% of properties sited for poor grass and weed maintenance.

Year	Total # of Nuisance Violations	Owner-Occupied Homes	Renter-Occupied Homes	Percentage Renter-Occupied Homes
2015	24	22	2	8%
2014	7	5	2	29%
2013	19	19	0	0%
2012	12	10	2	17%
2011	15	13	2	13%
Totals	77	69	8	10%

Table 15. City of North Mankato Nuisance Violations on Record: 2011 – 2015. (Source: City of North Mankato).

Year	Total # of Grass and Weed Complaints	Owner-Occupied (OO) Homes	Renter-Occupied (RO) Homes	Percentage Renter-Occupied Homes
2015	51	45	6	12%
2014	50	41	9	18%
2013	26	22	4	15%
2012	51	42	9	18%
2011	21	19	2	10%
Totals	199	169	30	15%

Table 16. City of North Mankato Grass and Weed Complaints on Record: 2011 – 2015. (Source: City of North Mankato)

Section 7: Seeking a Right Balance of Owner- and Renter-Occupied Homes

A healthy mix of owner- and renter-occupied units is important for a community and many communities strive to maintain 65 – 70% of their housing units owner-occupied.¹³ The North Mankato Comprehensive Plan identifies conditions in 2012 utilizing 2008 to 2012 estimates from the American Community Survey by the U.S. Census Bureau (Table 17). 2012 data suggests roughly 4,012, or 73.1%, of housing units in North Mankato were owner-occupied, generally meeting the 65 – 70% goal and giving greater cause to seek a policy that ensures this stability continues. More

Housing Tenure by Type - 2012								
Units per Structure	Owner Occupied Units	Percent Owner Occupied	Percent Owner Occupied County	Percent Owner Occupied State	Renter Occupied Units	Percent Renter Occupied	Percent Renter Occupied County	Percent Renter Occupied State
Single-Family Detached	3,350	83.5%	85.5%	85.0%	143	9.7%	19.0%	20.0%
Single-Family Attached	298	7.4%	5.3%	7.7%	148	10.0%	12.1%	7.9%
2-4 Unit Multi-Family	87	2.2%	1.4%	1.2%	332	22.4%	20.5%	12.8%
5+ Unit Multi-Family	37	0.9%	0.6%	2.6%	796	53.8%	45.4%	57.5%
Mobile Home	240	6.0%	7.2%	3.5%	60	4.1%	3.0%	1.8%
Total Units	4,012	100%	100%	100%	1,479	100%	100%	100%

Table 17. North Mankato Comprehensive Plan: Housing Tenure by Type (Source: U.S. Census Bureau, 2008-2012 American Community Survey 5-Year Estimates).

Housing Tenure by Type - 2014								
Units per Structure	Owner Occupied Units	Percent Owner Occupied	Percent Owner Occupied County	Percent Owner Occupied State	Renter Occupied Units	Percent Renter Occupied	Percent Renter Occupied County	Percent Renter Occupied State
Single-Family Detached	3433	84.4%	88.0%	85.1%	179	11.0%	19.9%	20.7%
Single-Family Attached	260	6.4%	4.9%	7.7%	167	10.3%	10.4%	8.3%
2-4 Unit Multi-Family	130	3.2%	1.5%	1.2%	349	21.5%	20.0%	12.6%
5+ Unit Multi-Family	16	0.4%	0.3%	2.6%	824	50.8%	45.0%	56.7%
Mobile Home	228	5.6%	5.2%	3.5%	102	6.3%	4.7%	1.6%
Total Units	4,068	100%	100%	100%	1,623	100%	100%	100%

Table 18. Housing Tenure by Type (Source: U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates).

recently, 2010 to 2014 American Community Survey 5-Year estimates suggest the City has increased its housing stock by approximately 56 owner-occupied and 144 renter-occupied units. This identifies an almost 10% increase in renter-occupied units in the community in comparison to a 1.3% increase in owner-occupied units (Table 18). During the two-year period between 2012 and 2014, the City issued 27 new rental licenses within the R-A, R-1, R1-S, and R-2 zoning districts alone issuing approximately 14 new licenses per year in these districts, as mentioned previously in Section 6.3.

While conversion of some owner-occupied homes to rental housing is necessary to accommodate market forces and provide housing choices, too much turnover within established neighborhoods can result in the adverse impacts described in Section 3. For these reasons and to prevent the effects of the potential problems discussed in Section 3, the North Mankato Comprehensive Plan recommends a policy that permits a limited number of rental units within a specified area be adopted.

7.1 Addressing Potential Concerns Raised by Citizens

The purpose of the ordinance is to ensure rental regulation allows a management balance among the mix of owner- and renter-occupied homes that will allow continued increase of rental opportunities while not forcing permanent residents out of neighborhoods as a result of rental concentrations. The draft rental density ordinance can be seen in **Appendix B**.

Though literature suggests that rental concentrations lead to increases in adverse effects, it should not be overlooked that many neighborhoods dominated by rental properties are stable and attractive places to live. Not everyone is capable of owning a home and others may not desire homeownership for a variety of reasons. Researchers caution against the perception that increased owner-occupied properties in a neighborhood will remedy all neighborhood problems. Factors contribute to neighborhood issues and, likewise, some owner-occupied properties are also responsible for increases in nuisance complaints and police call incidence. In regulating rental license issuance, the City desires to maintain and support what they feel to be a healthy mix of existing property tenure while considering the aforementioned factors.¹⁴

¹⁴William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996.

Section 8: Findings and Conclusion

The findings of this study support the City's decision to establish a moratorium on the issuance of rental licenses and to pursue the adoption of revisions to Chapter 151, Section 18 of the City Code by the North Mankato City Council. Annual licenses issued are trending upward and police calls, rental strikes, and nuisance violations are greater among rentals than owner-occupied housing. Further, the ability of a municipality to regulate rental density is engrained in the police powers delegated to that community through the State Constitution which is defined as: **"...the power to impose such restrictions upon private rights as are necessary for the general welfare."**

The key findings of this study are outlined below:

The rental density ordinance is rooted in the North Mankato Comprehensive Plan which contains a goal in Chapter 4 – Housing to "Provide attractive and desirable residential properties" with policy 2.1.5 to "Consider a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods."

The literature review demonstrates that there are relationships between homeownership and neighborhood stability. Homeowners have more at stake with their properties and, in turn, take better care maintaining them. In doing so, property values are maintained and may increase and social conditions may be improved as another result. Along with the maintenance of property values comes maintenance of property tax revenues collected by the City benefitting all in the community.

Other Minnesota cities have adopted similar ordinances for various reasons and have found success. Cities like Northfield and West St. Paul have found that the combination of the rental density ordinance along with a rental licensing and inspection program has led to improvements in their communities. Furthermore, the four cities identified, established their ordinances many years ago and continue to maintain them. This shows that they are indeed working in the community.

Research supports and data findings suggest that a clear problem exists with unregulated rental concentrations in urban environments. In North Mankato, data collection and analysis has revealed that the issues exist in the City.

Rental license issuance is trending upward on average of 4.3% per year City Wide with no signs of slowing down in the future. At this rate, the City would see increases the number of renter-occupied properties amounting to roughly 70 new rental licenses in the next 5-year period.

Upper North Mankato is positioned to better absorb additional rental licenses (currently exhibiting only 104 rental licenses; 4% rental properties) than Lower North as the rate of new development and currently low numbers of renter-occupancy assist to offset any effects. However, Upper North Mankato licenses are increasing at faster rate (4.8%) than Lower North (4.2%) annually and this growth may spur the need for enhanced monitoring in the future to maintain the desired balance of renter-occupied homes in Upper North.

Almost fully developed, Lower North stands to be altered by increased rental licenses without regulation. At 16% renter-occupancy, Lower North currently exceeds the level determined by the City as a benchmark for neighborhood stability (10% per block). If rental licensing trends continue in Lower North, the current rate of growth could add 50 new licenses in a 5-year period, raising that percentage to over 19%. That figure will only increase as offsetting factors of new development and low numbers of renter-occupied properties are not applicable to the area.

North Mankato data also suggests that increased crime, nuisances and complaints are linked to concentrations of rental properties in the community. Renter-occupied homes represent 8% of the housing stock in R-A, R-1, R1-S, and R-2 zoning districts throughout the community as well as 22% of all police call occurrences. In Lower North, renter-occupied

homes represent 16% of properties and are responsible for 31% of all police calls. When compared to Upper north (renter-occupied homes representing 3.6% and responsible for 7.2% of police calls), the disparity between the two areas increases and it becomes clear that there is a real issue surrounding detrimental effects of rental concentrations community wide, but more so in Lower North Mankato.

The ratios developed to show the relationship between the occurrence of police calls to owner-occupied and renter-occupied housing units helps to reinforce these findings. City wide, there is one police call to every 4.15 owner-occupied homes and one police call to every 1.51 renter-occupied homes. In Upper North, this relationship is one police call to every 5.55 owner-occupied homes and one to every 3.22 renter-occupied home. Finally, in Lower North, there is one police call to every 2.86 owner-occupied homes and one to every 1.28 renter-occupied homes.

Rental strikes highlight areas of repeat offenders in the City and those areas are connected to the densest areas of rental concentrations in the community. This provides yet another measure of the effects of rentals on the community as well.

These findings give merit to the literature that suggests there are adverse effects associated with rental property concentrations and provide further evidence of the presence of those effects in North Mankato. In light of these findings, efforts to establish an ordinance in the community that will limit the issuance of rental licensing to protect neighborhood stability seem to be warranted and should be pursued by the City of North Mankato.

Section 9: Policy Recommendations

In response to growing trends of residential conversion to rental, staff recommend the City Council consider amendments to the rental licensing ordinance to limit home rentals to 10% per block within R-A, R-1, R-1S, and R-2 residential zoning districts. The City believes this regulation will balance two goals of the Governing Body: First, it will continue achieve accessibility for all people of all incomes to reside in North Mankato because rental licenses will continue to be available. Second, it will apply a ceiling on the total amount of property that may be converted to rentals in the R-A, R-A, R-1S, and R-2 zoning districts so that increased cost of service associated with these properties does not accelerate at a faster rate than resources available to service the properties. Third, the increase in conversion of single and two family homes to rentals is especially active in Lower North Mankato. For several years the City and Community has invested in neighborhood and regional projects with the goal of maintaining the attractiveness of Lower North Mankato as a neighborhood for families and seniors of all ethnicities and income levels. The return on this investment may be more difficult to obtain as homes occupied by families and seniors increasingly become converted to rentals.

Based on the findings of this study the following recommendations are provided for the City of North Mankato for the establishment of a strong rental property licensing and Inspection Program:

Policy 1: *The City should pursue the establishment of §151.18 Rental Density Ordinance.*

A rental density ordinance limiting rental license issuance to 10% per block in the community will increase the potential for successful achievement of neighborhood stability in North Mankato. This ordinance may consider the differences within Upper and Lower North Mankato and address them separately with different limitations for each.

Policy 2: *The City should pursue the establishment of § 151.19 Temporary Rental Licenses.*

Other communities have suggested that the establishment of a temporary rental license ordinance alleviates some unforeseen circumstances that may occur in relation to homeowners who are unable to sell properties but cannot afford the property or do not reside there.

Policy 3: *The City should adopt increased parking requirements for rental properties.*

As illegal parking is an issue associated with rental concentrations, the City should pursue increased parking requirements that will assist with controlling offenders at rental properties.

Policy 4: *The City should increase efforts for documenting grass, weed, and nuisance complaints.*

The City should set up a spreadsheet database to enhance documentation and better monitor grass, weed, and nuisance complaints to increase understanding of the adverse effects of these complaints on the community.

Appendices

A. Minnesota Association of City Attorneys Educational Conference (2014) –
Conference Agenda



Minnesota Association of City Attorneys Educational Conference

February 7-8, 2014 Sheraton, Bloomington



Conference Agenda

Saturday, February 8, 2014

Moderator for the Day: Michael Couri, President, Minnesota Association of City Attorneys

8:00 AM Check-in and Refreshments

Grand Ballroom Foyer

8:30 **Ethical Issues Faced by Governmental Attorneys — What, me worried?**

Grand Ballroom

- ✦ Organization as client
- ✦ Representing multiple clients
- ✦ Client contact issues

Craig Klausing, Senior Assistant Director, Office of Lawyers Professional Responsibility

9:30 **Regulation of e-Cigarettes and Synthetic Drugs**

Grand Ballroom

- ✦ Prohibition on use, sale, etc.
- ✦ Are e-cigarettes bannable?
- ✦ Duluth example

Gunnar Johnson, City Attorney, City of Duluth

Nathan LaCoursiere, Assistant City Attorney, City of Duluth

Justin Templin, Attorney, Hoff, Barry & Kozar, P.A.

Eileen Wells, City Attorney, City of Mankato

10:30 Refreshment Break

Grand Ballroom Foyer

10:45 **Short Shots**

Grand Ballroom

Participating Moderator: Terry Adkins, City Attorney, City of Rochester

- ✦ "And you thought the 60-day rule only applied to zoning matters"

Erik Nilsson, Assistant City Attorney, City of Minneapolis

- ✦ "Sittin' On the Dock of the Bay (of delinquent water and sewer bills)"

Jeanette Behr, Research Manager, League of Minnesota Cities

- ✦ "Campgrounds to rental housing: Are there no limits?"

George Hoff, Attorney, Hoff, Barry and Kozar, P.A.

- ✦ "You Got A Warrant?"

Bridget McCauley Nason, Attorney, LeVander, Gillen & Miller, P.A.

- ✦ "Tim's favorites from the listserv"

Timothy Kuntz, Attorney, LeVander, Gillen & Miller, P.A.

12:00 NOON Wrap-up and Questions/Comments

Grand Ballroom Foyer

12:15 PM Adjournment

Mark your calendars now for the Legislative Update ...

Thursday, June 12, 2014 — Minneapolis Marriott Northwest, Brooklyn Park

GTS EDUCATIONAL EVENTS — KNOWLEDGE TO ACTION



GTS Educational Events is a non-profit organization dedicated to helping those who provide services to Minnesota citizens and communities meet current needs for knowledge and skills and prepare for the changes to come. Since 1976 we have been collaborating with policymakers, staff, appointed officials from all levels of government and all types of nonprofit agencies — and their collaborators in associations, business, higher education and community groups.

ANCIENT CAMPGROUNDS/RENTAL HOUSING – LIMITS

By George C. Hoff and Shelley M. Ryan
Hoff, Barry & Kozar, P.A.
775 Prairie Center Drive, Suite 160
Eden Prairie, MN 55344
(952) 941-9220

I. CAN THE DENSITY OF RENTAL HOUSING IN TRADITIONAL SINGLE FAMILY NEIGHBORHOODS BE CONTROLLED?

- A. Increasing interest by some communities in slowing the conversion of single family homes to rental
 - 1. Stability
 - 2. Improve quality of life for families
 - 3. Lessened nuisance complaints caused by concentration
 - 4. Improved property maintenance
- B. Methods of control
 - 1. Condition of rental license
 - 2. Zoning control
- C. Dean, et al. v. City of Winona, Third District Court File No. 85-CV-11-2329; currently pending before the Minnesota Court of Appeals as No. A13-1028¹
 - 1. Brought by the Institute for Justice in the name of three parties who, at least initially, did not have rental licenses based on the rental limitation
 - 2. City has wrestled with the problems caused by rental concentration since at least 2005; record before the City demonstrated various impacts by police and other calls, including nuisance
 - 3. When the case was initiated, the rental provision was in the zoning code; it was then moved to the licensing code
 - 4. Study done by Hoisington Koegler Group showing the effect of concentration of rental housing based on a national literature review and local data. Conclusion was that the concentration of rental “results in a negative impact to the quality and livability of residential neighborhoods”²
 - 5. Study used as findings to support the adoption of rental limitation in the licensing ordinance (however, the wording and impact were identical to that when in the zoning ordinance)
 - 6. Sued under the Minnesota Constitution only, with several theories:
 - a. Ultra Vires
 - 1) Zoning ordinance in disguise
 - 2) Under Minn. Stat. § 462.357, City is limited to regulating “use.” This ordinance controls the occupant, not use of residential property

¹ Several years ago, the City of Mankato rental limitation ordinance was challenged. The case was dismissed in its entirety, including the rental challenge (on some of the same theories as presented in Dean). Plaintiff lacked standing to challenge the rental ordinance because the building was hazardous and could not be rented. Mankato v. Dickie, 2011 WL 589613 (Feb. 22, 2011).

² The Study is attached.

- b. Procedural Due Process – the City unlawfully delegated its licensing authority to residents
 - c. Equal Protection – first come first serve issuance of licenses results in some getting licenses, others not, even though all are similarly situated
 - d. Substantive Due Process – regulation is arbitrary and capricious
7. Defenses and District Court³
- a. Ultra Vires
 - 1) Plaintiff argued that the City's only authority emanates from zoning and Minn. Stat. § 462.357, which does not allow the regulation of a class of occupant – i.e. rental as opposed to owner-occupied
 - 2) City argued that the use controlled is the “commercial use” of the premises, not the occupant, therefore within its zoning authority
 - 3) Alternatively, if it does not fall within authority given for zoning, it is a general police power regulation analyzed as to whether the object is a matter of promoting public welfare and whether the regulation is reasonably related to that end
 - 4) District Court dismissed claim finding a valid zoning ordinance, and even if not, authorized under broad police power
 - b. Equal Protection
 - 1) Plaintiff argued under State v. Russell that the state constitution imposes a 3 part test – distinctions drawn must be genuine and not “fanciful;” class must be relevant to purpose and there must be an “evident connection” between the class and the remedy; and purpose must be one state can legitimately seek to achieve
 - 2) City argued that similar situated persons are not treated differently and even so, the ordinance satisfies the Russell test
 - 3) District Court agreed with both of the City's arguments and dismissed the claim
 - c. Substantive Due Process
 - 1) Plaintiff conceded promoting livability is a legitimate object of government, argued the density control was not sufficiently related to a legitimate goal. They offered an affidavit which challenged the methodology for the first time in court (they were invited to the city council meetings at which the regulation and study were adopted)
 - 2) City argued that if the ordinance satisfies the heightened state equal protection test, then substantive due process is satisfied; disagreement over which expert to follow does not constitute a basis to find that no “substantial relationship” between goal and regulation can be found
 - 3) District Court agreed with the City and dismissed the claim
 - d. Procedural Due Process
 - 1) Plaintiff argued that by limiting the number of licenses and providing a first come first serve standard for issuance, a neighbor who chooses to apply gives the neighbor legislative control over who subsequently gets a license, and as such is an unlawful delegation of legislative authority

³ District Court Decision is attached.

- 2) City argued that the first come first serve standard is neutral and not a delegation; there must be some limitation; and any due process issues relate to the City action in the adoption of the regulation (no such challenge was made)
 - 3) District Court agreed with the City and dismissed the claim
8. Court of Appeals
- a. Argued on December 12, 2013. Decision by March 12, 2014.
 - b. Active panel
 - 1) Focused primarily on two issues and seemed to agree with the City
 - a. If not authorized under zoning, proper police power regulation
 - b. If neutral classification in legislation, uneven results of uniform application cannot give rise to equal protection claim

II. WAPITI V. ELK RIVER, 840 N.W.2D 43 (MINN. 2103)⁴

- A. Campground in the City of Elk River operating in some form back to the 1970's when in a township
- B. Annexed into the City in early 1980's
- C. Voluntarily applied for a CUP to allow continued operation as a campground; CUP issued in 1984
- D. CUP became non-conforming in 1988, but campground continued to operate
- E. Fire destroyed central store/bar and sanitary building in 1999
- F. Because use was non-conforming, City allowed the building to be rebuilt with a ten year IUP, which expired in 2010
- G. City imposed conditions on a new IUP, which were not met by the Campground, and the IUP expired
- H. City revoked the CUP following a hearing for violating permit conditions, including the allowance of permanent residents
- I. Plaintiff sued on the theory that once the CUP became non-conforming, it could not be revoked; the termination provisions of Minn. Stat. § 462.357 must be used (i.e. abandonment, etc.); and that they retained their alleged non-conforming use rights predating 1984
- J. Before both the District Court and the Court of Appeals, Plaintiff conceded that its nonconforming use rights emanated from the 1984 CUP; consequently, there was no need for discovery or litigation as to the claimed pre-1984 nonconforming use rights
- K. District Court, with no rationale, ruled against the City
- L. Court of Appeals reversed, holding that the CUP continued; the City had the authority to revoke the permit under Minn. Stat. § 462.3595; and that revocation was proper based on the record before the City. Because the CUP was no longer in existence, the accessory building could no longer be used
- M. Despite express concessions by Plaintiff in both the District Court and the Court of Appeals as to the basis of its nonconforming use rights and lack of discovery or litigation of those issues (i.e. Plaintiff had the burden of establishing the claimed rights), the Supreme Court reached the issue of whether pre-CUP nonconforming use

⁴ Copy of Court of Appeals' Decision and Supreme Court Opinion attached.

rights remained after a CUP is applied for an accepted. The Court held that absent a clear waiver of the claimed pre-existing nonconforming use rights, the right continues to exist. While not a holding in the case, the Court highlighted Minn. Stat. § 462.357, subd. 1e(b) allowing cities to impose "reasonable regulations" on nonconformities

- N. The Court held that the City could require the IUP for the building under the language of the City Code in effect in 2000 and that a new IUP must be issued before the building can be used
- O. Practical application of the case:
 - 1. If there is a nonconforming use that converts to a CUP, obtain an express waiver from the property owner and any other interested parties of any claimed nonconforming use rights
 - 2. Because the Court found no waiver, it did not reach the Court of Appeals' determination that a nonconforming CUP can be revoked, and that portion of the case is arguably good law



MEMORANDUM

To: Winona City Council, Planning Commission and City Staff
From: Mark Koegler and Jeff Miller (HKGI)
Date: February 21, 2012
Re: Winona Rental Housing Restriction Ordinance – Literature Review & Data Analysis Findings

Holsington Koegler Group Inc. (HKGI) has conducted a literature review relating to rental housing concentration and its negative impacts on neighborhood quality and livability. This literature review included rental housing's relationship with increased nuisance complaints, increased police incidents, decreased property maintenance levels, decreased homeownership levels, and decreased property values. Although there is a substantial amount of literature that addresses rental housing issues, much of the literature does not contain empirical analysis. Through our literature review, we were able to identify empirical studies of five cities that have faced rental housing issues that are relevant to Winona. Based upon our findings from the literature review, HKGI then compiled and analyzed detailed data related to Winona's rental housing concentration levels and its relationship to nuisance and police violations. Based on our findings from the literature review and city-level empirical studies that nuisance and police violations are key indicators of neighborhood quality and livability, we focused our data analysis on the relationships between concentrated rental housing and nuisance/police violations in Winona. This memo summarizes our literature review and data analysis findings.

I. Literature Reviewed

1. Craig Raborn, "Coping With Colleges: How Communities Address the Problems of Students Living Off-Campus," *Zoning News* (May 2002).
2. Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002.
3. Jack S. Frierson, "How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005).
4. John Janmaat, "The Curse of Student Housing: Evidence from Wolfville, Nova Scotia," 2010.
5. Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," *Journal of Urban Economics*, 1991.
6. Mayor's Commission on Housing & Home Ownership, "Promotion of Home Ownership in the City of Binghamton: A Report of the Mayor's Commission on Housing and Home Ownership," 2008.
7. Ngai Pindell, "Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability," *Scholarly Works* (Paper 57), 2009.
8. Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," *The Annals of Regional Science* (43), 2009.
9. Sage Policy Group, "There is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005.

10. Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," August 2009.
11. State College Borough Staff, "Sustainable Neighborhoods in State College Borough," June 8, 2009.
12. West Urbana Neighborhood Association, "What Other College Communities Have Done: Examples of Regulatory Actions to Preserve the Single-Family Residential Character of a Campus Neighborhood," January 2005.
13. William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996.
14. Farley v. Zoning Hearing Board of Lower Merion Township, 1994.
15. Lantos v. Zoning Hearing Board of Haverford Township, 1993.

II. Issues with Concentration/ Density of Rental Housing in Single-Family Neighborhoods

Regulating the concentration or density of rental housing in single-family residential neighborhoods is a particular issue that the City of Winona is addressing with its 30% limit of rental housing properties per block. Specifically, the City's low and medium density residential zoning districts allow rental units as a permitted use but limit the number of residentially-zoned lots on any block that can obtain rental housing certification to a maximum of 30%. According to City Planning Commission Meeting Minutes, the Parking Task Force concluded that housing density, property maintenance, off-street parking and deteriorating residential community character were major problems "resulting from the extensive number of homes which have been converted to rental purposes"¹ in some areas of the community. Based on this finding, the task force proposed to establish a limitation on the number of rental houses that could be concentrated within each block within all residential zoning districts, with the exception of the R-3 zoning district.

The literature review supports the City's concerns with an over-concentration of rental houses in single-family residential neighborhoods. Many university towns face the problem of large numbers of single-family houses being converted to rental houses in single-family residential neighborhoods, thereby, creating a high concentration of student rental houses within single-family residential neighborhoods. The literature reviewed supports the argument that over-concentrations of rental houses have negative impacts on surrounding residential properties and neighborhoods in general, including noise, increased traffic, litter, illegal parking, inadequate property maintenance, and a general decrease in the quality of life for permanent residents of the neighborhood.² The impacts typically fall into three primary categories:

- Increased nuisance and property maintenance complaints,
- Increased City Code violations and police citations,
- decreased property values.

Thus, the impacts are physical, economic and social, ultimately contributing to decreases in the quality and livability of neighborhoods.

¹ City of Winona Planning Commission Meeting Minutes, October 24, 2005: 5.

² Jack S. Frlerson, "How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005): 1.

In general, the studies found that rental residential properties, particularly, rental single-family houses, are generally maintained at a lower level than owner-occupied houses. Property maintenance issues often include building repairs, yard care, and snow removal. The "Homeownership and Neighborhood Stability" article cites several studies that show "that homeowners are more likely than landlords to undertake repairs and that they spend more on them."³ This same article also asserts that owner-occupied housing units are generally maintained at a higher level because homeowners, unlike landlords and renters, possess both an economic and use interest in their homes. "The Impact of Rental Properties on the Value of Single-Family Residences" article cites several studies that have empirically demonstrated this situation. Inadequate property maintenance issues often result in increased levels of nuisance complaints and City Code violations, as well as decreases in property values of nearby housing.

Several studies (Wang, et al; Rohe & Stewart, Janmaat, Pindell) contain empirical analyses that linked higher concentrations of rental houses to decreases in nearby property values. The most direct study of those reviewed relating to impacts on property values was "The Impact of Rental Properties on the Value of Single-Family Residences" study, which concluded that "an inverse relationship exists between the value of a house and the presence of rental properties in the study area."⁴ This study analyzed data from 23,119 single-family residences and 1,162 single-family sales in San Antonio (TX). Another study found that "after controlling for housing stock characteristics, household characteristics, and MSA-level economic factors, a 5-percentage-point change [increase] in the homeownership rate of a tract would be associated with about a \$4,000 increase in mean single-family property value over a 10-year period of time."⁵ A subsequent impact of decreased property values is the decrease in property tax revenues for the City, County and other taxing jurisdictions.

Several studies (Sage Policy Group, Rephann, Duncan Associates, State College Borough) contain empirical analyses that link the concentration of rental houses to increases in nuisance complaints, City Code violations, and crime incidents. Nuisances typically include yard care (e.g. weed control, grass cutting), snow removal, refuse, illegal parking, noise, disorderly conduct, liquor and over-occupancy. Section III of this memo describes the empirical analyses linking the concentration of rental houses with nuisance complaints and City Code violations in five cities. Nuisance complaints, code violations and crime incidents are key indicators of a neighborhood's livability and residents' satisfaction with their neighborhood. The literature reviewed indicates increased incidences of nuisances, code violations and crimes in renter-occupied houses versus owner-occupied houses. A subsequent impact of increased complaints, violations and crime incidents is the additional costs incurred by a city to observe, address and process them.

³ William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996: 48.

⁴ Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," *Journal of Urban Economics*, Volume 30, Issue 2 (1991): 164.

⁵ William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996: 71-72.

III. Empirical Studies of Rental Housing Impacts on Community Livability in Five Cities

Through the literature review, we were able to identify empirical studies in five cities that show a correlation between the concentration of rental housing and negative impacts on community livability. The five cities are Gainesville (FL), State College (PA), College Park (MD), Cumberland (MD), and Chapel Hill (NC). Specifically, these five empirical studies identify a link between the concentration of rental housing and increases in nuisance complaints, code violations and police incidents.

Gainesville, FL

In 2002, the City of Gainesville conducted an analysis of student housing issues in the neighborhoods around the University of Florida, which were identified as the study's University of Florida (UF) Context Area. The City's Comprehensive Plan specifically contains a policy calling for such a study in its Future Land Use chapter. Policy 5.1.7 states that "The City shall prepare a study of the impacts of rentals on single-family neighborhoods and shall implement additional programs as necessary and appropriate to stabilize and enhance these neighborhoods."⁶ Based on Census data for the Census tracts that make up the UF Context Area, the study estimated that approximately 75% of the residences in this area are used as rental housing. Using code and noise complaint data from the City's Code Enforcement Division, the study tabulated and compared the number of complaints from the UF Context Area with the overall city. Although the UF Context Area represents 23% of the households in the city, the study found that approximately 51% of the noise complaints came from this area, 46% of the over-occupancy complaints, 50% of the "vision triangle" (obstructed views at intersection corners) complaints, 43% of the sign violations, and 37% of the minor housing code violations.⁷

State College, PA

In 1994 and 2007, the Borough of State College compiled "Violations by Housing Type" reports. The housing types include apartments, duplexes, fraternities, single-family houses, rental houses, rooming houses and townhouses. This analysis showed that rental single-family houses had the highest average number of nuisance violations per unit, followed by duplexes and fraternities.⁸ The top four violations for rental single-family houses were snow, refuse, weeds and noise. The record does not show any evidence that the maximum of three unrelated persons rule, which was enacted in 1979, reduced the number of conversions of owner-occupied single-family houses to student rental houses. In 1997, State College Borough established a minimum spacing ordinance between student rental houses. The record suggests that the minimum distance between student rental single-family homes has resulted in a decrease in conversion of owner-occupied homes to rental homes.⁹

College Park, MD

In 2005, the City of College Park conducted a rental housing study that looked at declining homeownership, an increasing trend in conversions of owner-occupied single-family housing being to rental housing, and the

⁶ Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002: 1.

⁷ Ibid: 24.

⁸ Staff of State College Borough, "Sustainable Neighborhoods in State College Borough," June 8, 2009: 7.

⁹ Ibid: 8-9.

concentration of City Code violations occurring in rental single-family housing. In 2004, the study calculated that the average number of first notice code violations per residential rental unit was 0.78 compared to 0.21 first notice code violations for owner-occupied residential units, which equates to 3.7 times more violations for rental housing¹⁰. In 2008, there were 0.92 violations per rental housing unit compared to 0.38 for owner-occupied housing unit.¹¹ This study found an increasing trend in conversions of owner-occupied single-family homes to rental housing and a corresponding higher rate of City Code violations in rental single-family housing. In addition to the negative impact on neighborhood quality and livability, this significant higher level of nuisance violations also results in additional costs for the City to process code violations, including observation, recording, communicating and rectifying them.

Cumberland, MD

This paper analyzes the links between residential rental properties and crime incidents in the City of Cumberland, MD, which has a population of approximately 21,000 residents. Using police incident report data for privately owned rental properties, the type (disturbances, assaults and drug activity) and frequency of crime incidents were analyzed. The study selected these crimes because "they are frequently found in a residential setting and are considered important measures or indicators of neighborhood quality of life."¹² This study found that increases in crime were linked to residential rental properties, in particular rental properties where the landlord does not live on-site, properties that are part of larger rental property holdings, properties that use Section 8 vouchers, and properties in neighborhoods with a lower percentage of owner-occupied houses.

Chapel Hill, NC

Chapel Hill's 2000 Comprehensive Plan "is organized around twelve major themes, each growing out of the community values that have been identified and which, taken together, form a strategy for Chapel Hill's future."¹³ One of these major themes is to conserve and protect existing neighborhoods. The Comprehensive Plan contains an entire chapter devoted to community character, including goals, strategies and actions to conserve and protect the character of the community's neighborhoods. "The central purpose of the strategies and actions contained in the Comprehensive Plan is to manage growth and change so that Chapel Hill will continue to have a special community character and quality of life in the future."¹⁴

One of these strategies is to address the neighborhood impacts of the conversion of owner-occupied housing to rental housing, including nuisance complaints. The City has identified community indicators that are monitored annually as a means for tracking progress of the implementation of its Comprehensive Plan strategies. For the rental housing strategy, the corresponding community indicator is the percentage of loud noise complaints that occur in neighborhoods that touch and circle the downtown and central campus, which have been designated Residential Conservation Areas in the City's Land Use Plan. In 2004, 33% of loud noise complaints occurred in these neighborhoods, which have concentrations of residential

¹⁰ Sage Policy Group, "There is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005: 17.

¹¹ Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," April 2009: 11.

¹² Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," *The Annals of Regional Science* (43), 2009: 2.

¹³ Town of Chapel Hill (NC), "Planning for Chapel Hill's Future: The Comprehensive Plan," May 8, 2000: i.

¹⁴ *Ibid*: 11.

rental housing.¹⁵ Since these neighborhoods represent approximately 20% of the total housing units within Chapel Hill, they are responsible for a disproportionate share of the loud noise complaints in the community. The City of Chapel Hill clearly links and monitors rental housing nuisance incidents with neighborhood character and quality of life.

IV. Minnesota Examples of Cities with Rental Housing Concentration Regulations

At the state level, in addition to Winona's rental housing concentration ordinance, we are aware of three other Minnesota cities that have established ordinances to address the issue of concentrated rental housing – Northfield, Mankato and West St. Paul. While Winona's ordinance established a maximum of 30% rental housing properties per residential block, the other cities' maximums are all lower including 25%, 20% and 10%. These three ordinances were all established after Winona's ordinance was in place – Northfield (2007), Mankato (2008) and West St. Paul (2012).

- **Northfield, MN:** Located in Businesses Ordinance (not Zoning Ordinance), Rental Housing (Chapter 14, Article III). Limits the percentage of houses on a single block that can be granted rental housing licenses to 20% in low density neighborhoods (R-1 and R-2 zoning districts).
- **Mankato, MN:** Located in Business Regulations & Licensing Ordinance (not Zoning Ordinance), Dwelling Unit Rental (Section 5.42, Subdivision 20). Limits the number of lots on any block that are eligible to obtain a rental license or to be licensed as a rental property to 25%.
- **West St. Paul, MN:** Located in Building, Housing & Construction Regulations Ordinance (not Zoning Ordinance), Rental Dwellings (Section 435). Limits single-family rental properties to 10% per block in an R1 zoning district.

¹⁵ Town of Chapel Hill (NC), "2004 Chapel Hill Data Book," July 2004: S-8.

V. Analysis of Winona Nuisance and Police Violations Data

In order to compare Winona's rental housing situation with the findings from other cities' empirical studies related to rental housing concentration issues, which are described in Section III, an analysis was conducted of Winona's nuisance and police violations data. Since the City's "30% Rule" zoning ordinance was adopted at the end of 2005, this data analysis covers the time period of 2006-2011 for nuisance complaints. Police citation data was analyzed for the 2009-2010 time period. The Intent of this analysis is to calculate and compare violations data for rental housing vs. owner-occupied housing within non-multifamily residential areas, as well as concentrated rental residential blocks (blocks currently over the 30% maximum) vs. all other residential blocks.

This analysis of nuisance and police violations was limited to properties within the City's residential zoning districts, except for R-3, since the "30% Rule" is only applicable to these zoning districts. Properties in the following zoning districts are exempt from the "30% Rule": B-1, B-2, B-3, R-3, M-1, and M-2. Within the applicable residential zoning districts, there are currently 7,383 properties. Some of these residential properties have not been developed with a residential building yet, therefore, the more relevant total residential properties number that we used is 6,557 developed residential properties, not including R-3 properties. In 2011, 1,161 properties had rental housing certification, which means rental housing certified properties represented 17.7% of the non-multifamily residential properties within Winona.

In 2011, there were a significant number of blocks that exceeded the maximum level of 30% rental housing. These blocks contain 1,528 residential properties, including both rental and owner-occupied housing, and represent 23.3% of the non-multifamily residential properties within Winona. 676 of the 1,528 properties on the "over 30%" blocks had rental housing certification, which translates to an average of 44.2% rental housing properties on the "over 30%" blocks. Although many blocks exceed the maximum level of 30% rental housing, many blocks do not. Within the city's area of traditional square blocks, approximately 700 additional rental housing certifications are permitted on blocks that currently have less than 30% rental housing. Within the entire city, approximately 1,400 additional rental housing certifications could be permitted. In other words, less than half of the possible rental housing certifications are currently being used since 1,171 rental housing certifications currently exist compared to the possibility of an additional 1,400 that could be permitted.

The first type of analysis looks at nuisance complaints for the time period of 2006-2011 for all properties within residential zoning districts, except R-3. The types of nuisance complaints included the following: uncontrolled weeds, grass/lawn maintenance, garbage, junk, vehicles, vehicles parked in yard, furniture in yard, snow/ice, no building permit, building deterioration, fence deterioration, and other. Table 1 below summarizes total number of residential property complaints, number & percentage of rental property complaints, and number & percentage of non-rental property complaints. The major finding is that rental housing properties, which represent just 17.7% of all non-multifamily residential properties within Winona, were responsible for 51% of the residential nuisance complaints from 2006-2011.

Table 1: Nuisance Complaints – Rental Residential Properties vs. Non-Rental Properties (2006-2011)

Year	Total Number of Residential Property Complaints	Number of Rental Property Complaints	% Associated w/ Rental Properties	Number of Non-Rental Property Complaints	% Associated w/ Non-Rental Properties
2011	345	133	39%	212	61%
2010	414	194	47%	220	53%
2009	492	249	51%	243	49%
2008	413	232	56%	181	44%
2007	416	255	61%	161	39%
2006	236	108	46%	128	54%
2006-2011	2,316	1,171	51%	1,145	49%

Note: Rental housing properties represent 17.7% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The second type of analysis looks at nuisance complaints for the time period of 2006-2011 comparing blocks with over 30% rental housing to blocks with less than 30% rental housing. Table 2 below summarizes total number of residential property complaints, number & percentage of complaints associated with blocks having over 30% rental housing, and number & percentage of complaints associated with blocks having less than 30% rental housing. The major finding is that blocks with over 30% rental housing, which represent just 23.3% of all non-multifamily residential properties within Winona, were responsible for 47% of the residential nuisance complaints from 2006-2011.

Table 2: Nuisance Complaints – Concentrated Rental Blocks vs. Other Residential Blocks (2006-2011)

Year	Total Number of Residential Property Complaints	Number of Complaints In Blocks OVER 30% Rental Housing	% Associated w/ Blocks OVER 30% Rental Housing	Number of Complaints In Blocks LESS THAN 30% Rental Housing	% Associated w/ Blocks LESS THAN 30% Rental Housing
2011	345	131	38%	214	62%
2010	414	187	45%	227	55%
2009	492	233	47%	259	53%
2008	413	203	49%	210	51%
2007	416	228	55%	188	45%
2006	236	102	43%	134	57%
2006-2011	2,316	1,084	47%	1,232	53%

Note: Blocks with over 30% rental housing represent 23.3% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The third type of analysis delves deeper into nuisance complaints for the time period of 2006-2011 to compare rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". Table 3 below summarizes this data. The analysis in the upper half of Table 3 shows that rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 1.16 vs. 0.80 for rental housing properties on non-concentrated rental blocks. This difference translates to a 45% higher rate of nuisance complaints for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on concentrated rental blocks, which represent 10% of all residential properties, are responsible for 34% of residential nuisance complaints. Furthermore, the analysis in the lower half of Table 3 shows that non-rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 0.35 vs. 0.19 for non-rental housing properties on non-concentrated rental blocks. Thus, the concentration of rental housing creates a spillover effect on non-rental housing to increase its rate of average nuisance complaints per property more than 80%.

Table 3: Nuisance Complaints – Rental/Non-Rental Properties & Concentrated Rental Blocks (2006-2011)

<i>Type of Properties</i>	<i>Total Number of Properties</i>	<i>Number of Nuisance Complaints 2006-2011</i>	<i>Average Number of Nuisance Complaints per Property</i>	<i>% of Total Residential Properties</i>	<i>% of Nuisance Complaints</i>
Rental Housing Properties on Over 30% Rental Blocks	676	783	1.16	10%	34%
Rental Housing Properties on Less Than 30% Rental Blocks	485	388	0.80	8%	17%
Non-Rental Housing Properties on Over 30% Rental Blocks	852	301	0.35	13%	13%
Non-Rental Housing Properties on Less Than 30% Rental Blocks	4,544	844	0.19	69%	36%
Total	6,557	2,316	0.35	100%	100%

The fourth type of analysis looks at police citations for the 2009-2010 time period. The types of police citations analyzed included primarily loud party, minor consumption, social host ordinance, public urination, criminal damage to property, and theft/burglary. Table 4 below compares the number of police citations associated with rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". The analysis in the upper half of Table 4 shows that rental housing properties on concentrated rental blocks had an average number of police citations per property of 0.0533 vs. 0.0206 for rental housing properties on non-concentrated rental blocks. This difference translates to a 160% higher rate of police citations for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on

concentrated rental blocks, which represent 10% of all residential properties, are responsible for 55% of residential nuisance complaints.

Table 4: Police Citations – Comparison of Rental Properties & Blocks (2009-2010)

Type of Properties	Total Number of Properties	Number of Police Citations 2009-2010	Average Number of Police Citations per Property	% of Total Residential Properties	% of Police Citations
Rental Properties on Over 30% Rental Blocks	676	36	0.0533	10%	55%
Rental Properties on Less Than 30% Rental Blocks	485	10	0.0206	8%	15%
Non-Rental Properties on Over 30% Rental Blocks	852	3	0.0035	13%	4%
Non-Rental Properties on Less Than 30% Rental Blocks	4,544	17	0.0037	69%	26%
Total	6,557	66	.0100	100%	100%

Note: The police citations data for 2009-2010 above does not include nine (9) of the citations because no address was indicated on these citations for the actual location of the crime incident.

VI. Conclusion

Our literature review of rental housing concentration and its effects, including the empirical studies of five cities, supports the conclusion that the concentration of rental housing results in negative impacts to the quality and livability of residential neighborhoods. In addition, our compilation and analysis of the relationship between Winona's rental housing concentration and nuisance complaints/police violations data parallels the findings of the literature review. In particular, we find that concentrated rental housing in Winona has resulted in a much higher rate of nuisance complaints and police violations in concentrated rental housing blocks, impacting both rental and non-rental residential properties. Thus, based upon the literature review, including the empirical studies of five cities relevant to Winona's rental housing issues, and the detailed analysis of Winona data, we conclude that the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods. As these violations are indicators of increased nuisances and decreased property maintenance levels that negatively affect neighborhood quality and livability, we also conclude that the concentration of rental housing leads to decreased neighborhood quality and livability.

STATE OF MINNESOTA

COUNTY OF WINONA

FILED ^{MHC}
April 17, 2013
DISTRICT COURT
WINONA, MN 55987

DISTRICT COURT

THIRD JUDICIAL DISTRICT

Court File No.: 85-CV-11-2329

Ethan Dean, Holly Richard,
Ted Dzierzbicki, and Lauren Dzierzbicki,

Plaintiffs,

vs.

**SUMMARY
JUDGMENT ORDER
AND JUDGMENT**

City of Winona, a municipality,

Defendant.

This case was heard by District Judge Jeffrey D. Thompson on January 23, 2013, on cross motions for summary judgment. Plaintiffs (hereafter "Homeowners") were represented by Anthony B. Sanders and Katelynn K. McBride, 527 Marquette Ave., Ste. 1600, Minneapolis, MN 55402. Defendant (hereafter "the City") was represented by George C. Hoff, 160 Flagship Corporate Center, 775 Prairie Center Dr., Eden Prairie, MN 55344. All parties assert that there are no genuine issues of material fact and that this matter is appropriately decided as a matter of law. The Court allowed the City additional time to respond to Homeowners' affidavits and took this matter under advisement on January 31, 2013.

Upon the pleadings, affidavits, exhibits, and filed discovery, the Court having considered the arguments of counsel and being otherwise fully advised in the premises, finding no genuine issues of material fact,

It Is Ordered That:

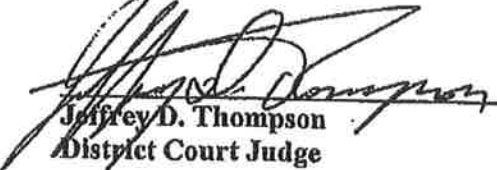
1. The City's motion to strike the Second Affidavit of David Phillips is **DENIED**.
2. Homeowners' motion for summary judgment is **DENIED**.

3. The City's motion for summary judgment is **GRANTED**.
4. The following Memorandum is herein incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: April 17, 2013

BY THE COURT:


Jeffrey D. Thompson
District Court Judge

JUDGMENT

I hereby certify that the foregoing Order constitutes the Judgment of the Court.

DATED: April 17, 2013
(Court SEAL)

SALLY A. CUMISKEY
COURT ADMINISTRATOR

by Mary K. Keller
Deputy Clerk

MEMORANDUM

Statement of Undisputed Facts

Winona City Rental Property Code § 33A.03(i) provides in relevant part: "In R-R, R-S, R-1, R-1.5 and R-2 districts of the city, no more than 30 percent (rounded up) of the lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family." There is an exemption for grandfathered-in lots and for certain zoning districts. There is also a temporary rental license available to a homeowner who is actively trying to sell his or her house for one year. This rule

("the 30% Rule") was adopted in 2005 in Chapter 43 of the city code, which deals with zoning. The 30% Rule was moved to the "Housing Rental Property" chapter in 2012, after this matter had commenced. There were some changes to the wording of the rule, but none relevant to this dispute.

History of the 30% Rule

In 2003, the Winona City Council requested that the Planning Commission consider the effectiveness of the City's off-street parking regulations, particularly regarding rental properties and most significantly around the Winona State University ("WSU") campus. Members of the Commission noted that the number of residential properties being converted from single-family to rental usage was increasing and that the parking demands for owner-occupied dwelling units is often different than rental dwellings. Suggested solutions to this growing problem included changing the definition of "family" as it pertains to single-family occupancy and limiting the number of rental properties per block in residential areas.

In December of 2004, the City Council adopted a resolution that put a moratorium on the certification of "new" rental housing units for a six-month period. During the moratorium, the Planning Commission initiated discussions and developed a tentative list of proposed code modifications pertaining to rental housing density and off-street parking issues. The Commission then held a series of public input meetings with rental landlords, homeowners, and others. In April of 2005, Mayor Jerry Miller, in conjunction with the Commission discussions, initiated a series of town meetings designed to deal with "density, parking, and aesthetic issues within the 'area' of the university." The meetings were attended by landlords, homeowners, students, and others. Following the last meeting, in late May of 2005, the Mayor created a core study group to identify issues and possible solutions pertaining to university neighborhoods to

forward to the Commission. The moratorium was extended another 6 months until December of 2005 to allow the study group and the Commission to complete their review, planning, and implementation.

A Parking Advisory Task Force was also formed in 2005 to consider these same issues and consider the Planning Commission's proposals. The Task Force noted that 39% of the City's dwelling units were rental, but 52% of the complaints received by the Community Development Department relate to rental occupancies. Due to this, it was suggested that the number of rentals in the City be restricted, perhaps on a "per block" basis. Concerning the Commission's proposals, the Task Force agreed that the definition of "family" should be modified so that only 3 unrelated persons can live in a single dwelling unit; it agreed that the number of roomers a resident family can keep be reduced from 4 to 2; and the Task Force agreed that the number of required off-street parking spaces per dwelling unit be increased from 1.5 to 2. In August of 2005, the Task Force began discussing the idea of restricting the number of rental units per block. Because rental housing units comprised approximately 39% of the total housing units in the City at the time, it was suggested that the number of rental units be restricted to 30% of the total properties on any given block.

At the August 2005 Task Force meeting, Committee Member Don Leaf emphasized that the ratio of rental properties to total properties represents community "character" and that such a restriction could protect inner city neighborhoods from heavy concentration of rental housing. After some debate, the Task Force adopted a motion to forward the 30% Rule to the Planning Commission for consideration, though it was discussed again at the September 1, 2005 meetings. There it was noted that the 30% Rule could prevent out-of-town people from purchasing residential property within the City and that it could hinder current residents' ability to sell their

property. These issues were noted and acknowledged, and the Task Force decided that it was in favor of the 30% Rule and would seek studies and findings on the effect of rental housing on the area.

On October 1, 2005, the Planning Commission discussed the 30% Rule. The Commission noted that the Parking Task Force believes that landlords and students often do not have any interest in how their properties appear and the effect they have on the community. Therefore, the Task Force believes that neighborhoods heavily populated with student rentals tend to become run-down and unattractive and a 30% per-block restriction on rental housing is appropriate. Some city staff were concerned that the rule might not be legal, but the City Attorney indicated that if the City Council finds that such a restriction will promote the public health, safety, morals and general welfare of the City's residents, it would be legal. It was also noted that some exceptions should be allowed for, such as a professor leaving the area for a year or two, for which a one-year exception or "special case clause" could be established. In an October 24, 2005 meeting, the Planning Commission noted that according to County data, in 2004, the Department of Community Development found that of the 99 addresses that had two or more calls for service that police responded to for noise and party complaints, 95 were rental units. The Commission also noted that 52% of the zoning violations that resulted in written violations during 2004 were for rental units while 39% of the City's housing units are rental. After further discussion, a public hearing was scheduled for November 14, 2005 on the issue. At the public hearing, the Commission voted 6 to 3 to recommend the 30% Rule to the City Council.

The City Council held a public meeting on November 21, 2005. At the meeting, the City Council discussed and adopted some of the other recommendations of the Task Force and the

Planning Commission, as well as opening a public hearing on the 30% Rule. Several members of the community spoke for and against the proposed rule. Most of the negative comments revolved around concerns that property values would suffer; most of the positive comments revolved around protecting neighborhoods and preventing areas from becoming completely dominated by rental units. The 30% Rule was passed at the November 21, 2005 meeting and adopted on December 5, 2005.

The 30% Rule was again raised at a February 23, 2009 Planning Commission meeting. The City Planner noted that since the rule was enacted, 142 dwelling units had been certified for rental and that they were dispersed throughout the City rather than concentrated. There was some disagreement among the Commission members as to whether the Rule was “working.” The City Planner also noted that the City Council was in the process of creating a new task force to examine the 30% Rule. This task force was created by the City Council in March of 2009 with the goal of focusing on potential ways for residents to rent their homes on blocks over 30% in extraordinary circumstances and potential ways to encourage the conversion of rental properties into owner occupied structures. The task force conducted a study of a particular area around the WSU campus and determined that 48% of the 775 dwelling units were certified as rental and that if the 30% Rule was lifted, that number would increase to 67%. Ultimately, in February of 2010, the task force recommended that the City retain the 30% Rule. It was noted that “[a]lthough the general consensus of the Task Force was that the Rule has, since adoption, had the intended affect [sic] of dispersing rental patterns away from core university neighborhoods, not all were supportive of the method.” The Program Development Director for the Department of Community Development characterized the 30% Rule as having “preserved affordable housing and reduced conversions as intended.”

In February of 2012, a few months after Plaintiffs filed their complaint in this matter, the Planning Commission met to discuss moving the 30% Rule from Chapter 43 to Chapter 33A. The stated purpose of moving the Rule is that “other cities have included similar provisions in their housing codes—not in their zoning codes” and “the move is also recommended because the City’s charter grants additional legal authority for ordinances such as the 30% rule.” A memorandum was also prepared by the consulting firm Hoisington Koegler Group, Inc. (“HKG”) in conjunction with this issue. In general, the memorandum supported the idea that there is a correlation between rental properties, particularly rentals to single family dwellings, and increased behaviors that lead to a decline in neighborhood livability. Specific to Winona, the HKG memorandum stated:

We conclude that the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods. As these violations are indicators of increased nuisance and decreased property maintenance levels that negatively affect neighborhood quality and livability, we also conclude that the concentration of rental housing leads to a decreased neighborhood quality and livability.

The 30% Rule was moved to Chapter 33A, where it is currently placed, in March of 2012.

Homeowners’ Situations

Homeowners Dean and Richard each own a residential property in the City of Winona and the Dzierzbickis, a married couple, jointly own a residential property. Dean purchased a house near WSU in 2006 with the intention of residing there with his girlfriend and her family. By 2009, however, that relationship had ended and Dean was preparing for another tour in Iraq with the US Department of Justice. Because the market at the time made selling the house undesirable, Dean hoped to rent it out, but the 30% Rule prevented him from obtaining a rental license. Dean has been able to obtain temporary rental licenses and has been renting the home since 2010, but asserts that attempts to sell the property are often hindered when the potential

buyer learns that a long-term rental license is not available. Dean's property also does not comply with the City's off-street parking requirements, but he has been allowed to provide a second parking space by leasing an adjacent space while attempting to sell the house.

Ted and Lauren Dzierbicki live in Illinois. They purchased a house near WSU in 2007, when their daughter was attending school, and made significant improvements to the property. They planned to have their daughter live in the house and rent it out to other students. The house, however, is on a block in which more than 30% of the houses have rental licenses, so this plan could not come to fruition. Their daughter lived there until she graduated in May of 2010. Other students lived in the house paying only utilities and not rent until the fall of 2010, when the City determined that arrangement was also a violation. The house has been empty since May of 2010 and on the market since December of 2009. The Dzierbickis assert that the value of the property is significantly lower than it would be if a rental license were possible.

Richard purchased a house in December of 2006 while she was working at St. Mary's University in Winona. In 2009, she accepted an offer from the University of South Dakota to pursue a Ph.D. and put her house up for sale. After receiving no offers, she decided to rent. When Richard inquired about getting a rental license, she was informed that she was on a block in which more than 30% of the properties had a rental license, so her house was ineligible. She entered rent-with-option-to-buy with a potential purchaser, but in February of 2010, the City discovered this arrangement and ordered the renter out. Richard obtained a temporary license in April of 2010 and has had it renewed. The house went unrented for March and April. She also believes the inability to obtain a long-term rental license hindered her attempts to sell. After this lawsuit was filed, however, Richard discovered that another rental license on her block had lapsed and that she was eligible for a standard rental license. She obtained a license and has

been renting her home since.

Legal Analysis and Conclusion

Here, both parties have moved for summary judgment. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The evidence must be viewed in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). “A moving party is entitled to summary judgment when there are no facts in the record giving rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party's case.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995).

Standing

The City argues that Homeowners Dean and Richard's claims should be dismissed for lack standing. “Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court.” *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). A plaintiff has standing if the plaintiff has suffered some “injury-in-fact.” *Id.*

The City argues that Dean lacks standing because his property does not have a second off-street parking space, thus, even without the 30% Rule, he would still be ineligible for a standard rental license. This argument fails. Dean may, as he has been doing while obtaining temporary rental licenses, lease an off-street parking space from someone else. Dean or a subsequent purchaser of his property could make a permanent or long-term arrangement for a

second space or possibly add another space to the property. Thus, there remains an issue of fact as to whether the 30% Rule has negatively affected the value of Dean's property and/or prevented him from selling it.

The City argues that Richard lacks standing because she was ultimately able to get a standard rental license when her block dropped below 30%, making her claims moot. This argument also fails. There is evidence that the 30% Rule caused Richard to lose at least two months of rental income. If Homeowners prevail and the 30% Rule is deemed unlawful, Richard will have a valid claim to at least the nominal damages requested in her prayer for relief. The Homeowners have standing in this matter.

In the interests of simplicity, the Court will refer to "Homeowners" hereafter as though they are each ineligible to obtain a standard rental license because of the 30% Rule.

Equal Protection and Substantive Due Process

"We presume statutes to be constitutional and exercise the power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 421 (Minn. 2005) (internal quotation marks omitted). The party challenging an ordinance or statute's constitutionality bears the burden of establishing that the statute is unconstitutional beyond a reasonable doubt. *Greene v. Comm'r of Minnesota Dept. of Human Services*, 755 N.W.2d 713, 724-25 (Minn. 2008) (citing *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007)). The Fourteenth Amendment to the United States Constitution guarantees that no state will "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Minnesota Constitution also guarantees that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of

the land or the judgment of his peers.” Minn. Const. art. 1, § 2. Minnesota courts have observed that “[b]oth clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive.” *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002) (internal quotation marks omitted).

Courts apply strict scrutiny to a legislatively-created classification that involves a suspect classification or a fundamental right. *Greene*, 755 N.W.2d at 725 (citing *Bituminous Cas. Corp. v. Swanson*, 341 N.W.2d 285, 289 (Minn.1983)). If strict scrutiny applies, the classification must be “narrowly tailored and reasonably necessary to further a compelling governmental interest.” *Hennepin County v. Perry*, 561 N.W.2d 889, 897 n. 7 (Minn. 1997). If a constitutional challenge does not involve either a suspect classification or a fundamental right, courts are to review the challenge using a rational-basis standard. *Gluba*, 735 N.W.2d at 719. The parties agree that a rational-basis standard is appropriate in this case.

Under the federal constitution, the same rational-basis standard of review applies to due process and equal protection challenges to a statute or ordinance:

The examining court must merely inquire whether (1) the act serves to promote a public purpose, (2) it is an unreasonable, arbitrary or capricious interference with a private interest, and (3) the means chosen bear a rational relation to the public purpose sought to be served.

Grussing v. Kvam Implement Co., 478 N.W.2d 200, 202 (Minn. App. 1991). In applying that test, a court need not agree with the legislative body's determination, rather “those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision-maker” and “they cannot prevail so long as it is evident from all the considerations presented to [the legislative body], and those of which we may take judicial

notice, that the question is at least debatable.” *Id.* (citing *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981)).

Minnesota courts, however, apply a less deferential rational-basis review for challenges to a statute or ordinance under the Minnesota Constitution’s equal protection clause. The Minnesota rational-basis test provides:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Studor, Inc. v. State, 781 N.W.2d 403, 408 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). “The distinction between the two tests is that under the Minnesota test we have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires . . . Instead, there must be a reasonable connection between the actual, as opposed to the theoretical, effect of the classification and the statutory goals.” *Id.* Thus, to determine if the 30% Rule violates the federal or state equal protection or substantive due process clauses, the Court need only analyze Plaintiffs’ claim under the Minnesota equal protection standard. If the 30% Rule does not pass the Minnesota rational-basis test, it is unlawful and the Court need go no further; if it does pass the less deferential Minnesota rational-basis test, it also passes the rational-basis test used to analyze federal equal protection claims, as well as state and federal substantive due process claims. *See Id.* at 410 (“[I]f legislation does not violate equal protection, it does not violate substantive due process.”) (quoting *Everything Etched, Inc. v. Shakopee Towing, Inc.*, 634 N.W.2d 450, 453 (Minn. App.2001), *review denied* (Minn. Dec. 11, 2001)).

Before getting to the rational-basis test, “the threshold question is whether the claimant is treated differently from others who are similarly situated, because the equal protection clause does not require the state to treat differently situated people the same.” *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 647 (Minn. 2012). The “Equal Protection Clause does not forbid classifications. It simply keeps governmental decision-makers from treating differently persons who are in all relevant aspects alike.” *State v. Johnson*, 813 N.W.2d 1, 12 (Minn. 2012) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). On its face, the 30% Rule treats all of those to whom it applies—private, residential property owners in low density residential zones—equally. Homeowners argue that they are similarly situated to all residential property owners in low density residential zones, but are treated differently because some can get rental licenses (or have licenses and may add another renter) and they cannot. The City argues that owners on blocks with less than 30% rental are not similarly situated to those on blocks over 30% as it pertains to a rental-density regulation. Homeowners counter that the City’s argument that people are not similarly situated because they are separated by the distinction created by the challenged legislation begs the question.

Homeowners slightly mischaracterize this argument. By creating the 30% Rule, the City set the line of demarcation at 30%, but the difference in the composition of city blocks exist with or without a legislatively defined trait. As noted above, the City is allowed to classify, but it may not treat “differently persons who are in all relevant aspects alike.” The relative number of rental licenses on a property’s block is relevant to whether or not that property should be issued a rental license. Thus, someone on a block with less than 30% rental and someone on a block with more than 30% rental are not alike in that relevant aspect. Fellow property owners on over 30% blocks that have rental licenses are similarly situated except that they were either grandfathered

in by having a rental license before 2005 or got a rental license before their block got up to 30%. In each case, that property owner obtained a rental license before the Rule was enacted or while his or her block had less than 30% rental. Those property owners are also not similarly situated.

Moreover, Homeowners cannot meet their burden of showing that the 30% Rule fails the Minnesota rational-basis test. Homeowners do not contest that the purposes of the Rule are legitimate; they argue it cannot meet the first two requirements of the Minnesota rational-basis test.

The distinctions are genuine and substantial. The City's purposes in enacting the 30% Rule include avoiding further concentration of rental properties and conversions from owner-occupied homes into rental properties. The goals are to serve the ultimate purpose of preserving the "character" of neighborhoods, maintaining affordable single-family housing, limiting deterioration of housing conditions, reducing on-street parking, and maintaining neighborhood "livability," which includes minimizing nuisance complaints and anti-social behavior.

Limiting the number of rental licenses per block is not an arbitrary or fanciful means of achieving these goals. Homeowners argue the "first-come, first-serve" nature of the Rule renders it inherently arbitrary, but that is just a symptom of genuine and substantial distinctions. There is a genuine distinction between someone on a block with over 30% rental and someone on a block with below 30% rental. When the person on the block below 30% applies for and receives a license, it could push that block to over 30%. This change in block composition may prevent an otherwise qualified renter from obtaining a license, but it is not arbitrary that the "first-comer" got the license. That person applied for a rental license on a block with less than 30% rental, so issuing that license conforms with the City's purpose of dispersing rentals to blocks at less than 30%. Regarding the actual number settled upon, which Homeowners

acknowledge is not a basis for their challenge, “numbers chosen as legal limitations are often arbitrary: e.g., speed limits, building ordinances, statutes of limitation . . . [t]he necessity of selecting some number arbitrarily does not render an ordinance itself arbitrary.” *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 446 (Minn. App. 1997).

The classification is also genuine and relevant to the purposes of the Rule. There is evidence to suggest that the 30% Rule has dispersed rentals throughout the City and there is no real question that it has slowed the conversion of owner-occupied homes to rentals; Homeowners inability to convert their single-family homes to rental housing caused them to bring this lawsuit. It is reasonable for the City to conclude that the 30% Rule will ultimately have a positive effect on the character and livability of neighborhoods, particularly those around the WSU campus.

Homeowners offer alternative suggestions toward livability and anti-social behavior and assert that the Rule is overbroad in some respects while under-inclusive in others. They note that allowing already-licensed properties to add rental units can increase population density and burden on-street parking as much as licensing another property for rental; they argue that when more rigorously analyzed, the crime statistics in higher rental areas are not significantly different; and they argue that nuisance complaints, anti-social behavior, and housing deterioration could be more directly addressed by more strict enforcement of law, rules, and codes related to those specific issues. These may be legitimate critiques of the City Council’s thought process and may weaken some of the Council’s conclusions in adopting the 30% Rule, but they do not meet Homeowners substantial burden of establishing that the 30% Rule’s classification is not genuine or relevant to the purpose of the Rule. Even if the Rule does not go as far as Homeowners suggest it could to reduce population density and on-street parking, it does curb rental-property density by preventing entire properties, such as those of the Homeowners,

from becoming full-time rentals. While there may be other ways to accomplish these goals, the City can articulate genuine reasons for maintaining a percentage of owner-occupied homes (or year-to-year rentals that are actively being sold) in an area can be expected to better discourage deterioration and preserve the character of the neighborhood. Homeowners may have created a fact issue on whether the 30% Rule is narrowly tailored to a compelling governmental interest, but that is not the applicable standard here.

Homeowners have not met their burden of showing that the 30% Rule is in violation of the Minnesota constitution's equal protection clause, nor have they raised a genuine issue of fact on that question. Consequently, Homeowners also cannot show that the 30% Rule violates the federal equal protection clause or the state and federal substantive due process clauses.

Equal Protection—As Applied

Homeowners' equal protection claims, as applied to them, are not substantially different than their facial equal protection claims addressed above. Essentially, Homeowners cannot get a rental license (or were delayed in getting it), but some lots on the same block with a rental license may expand to add additional rental units and lots on adjacent blocks that have less than 30% rental, sometimes just across a street, may obtain a rental license. As noted above, Homeowners are not similarly situated to property owners who already have a rental license or owners of properties on blocks with less than 30% rental. Even if they are considered similarly situated for these purposes, Homeowners cannot show that the 30% Rule lacks a rational basis for treating them differently for the same reasons articulated above.

Procedural Due Process

Homeowners argue that their state and federal procedural due process rights are infringed upon by the 30% Rule because it unconstitutionally delegates legislative authority to the other

property owners on their blocks. The argument is that fellow property owners have the power to prevent Homeowners from being able to rent by obtaining their own license, whether or not they intend to rent. Thus, the argument goes, the 30% of property owners that have obtained a standard rental license are given the authority to decide if any of the non-licensed properties on the block have any possibility of getting a rental license.

This argument relies on somewhat strained logic. The City has determined that to promote the public welfare, rental licenses should be a limited per block. As noted above, this is a reasonable determination. Because rental licenses are limited per block, as with anything limited to a finite amount, some people will necessarily have a rental license and others will not. It is a leap to view those who have obtained or retained licenses as operating in a legislative capacity simply by keeping their licenses. The incongruity of this view can be seen by the fact that on a block at or near 30%, it would only take one "vote" to allow a new renter, and the "voter," who votes by not renewing his or her license, has no input on which property may get the available license. This process is not analogous to 30% of the block being able to vote on how a neighbor uses his or her property, as Homeowners claim.

Regardless, even if one does view the 30% limit as providing that the rental license holders on a block must "consent" to a new rental license, Homeowners' claim fails. Homeowners rely heavily on *State ex rel. Foster v. City of Minneapolis*, 97 N.W.2d 273 (1959). There, the court held that a statute with a "consent" provision allowing a city to rezone property only after written consent of owners of two-thirds of the property within 100 feet of the property was invalid in the case where a property owner's right to use his property for commercial purposes was taken away upon application of his neighbors to rezone it to residential. If one were to view the 30% Rule as a "consent provision," it is more analogous to the one upheld in

Leighton v. City of Minneapolis, 16 F. Supp. 101 (D. Minn. 1936) and distinguished by the *Foster* court. There, the plaintiff was prevented from having her property rezoned from “multiple dwelling” to “commercial” because she could not obtain the required written consent of two-thirds of those within 100 feet of the property.

The *Leighton* court noted that the property would likely double in value if it were zoned commercial, but that the statute did not violate the plaintiff’s substantive due process rights. *Id.* at 102, 106. The court distinguished the facts in *Leighton* from violations of the due process clause in which similar statutes and ordinances were not enacted with the express purpose of furthering the public health, safety, morals or the general welfare. *Id.* at 104-05. The purposes of the 30% Rule include curbing nuisance complaints and property deterioration and preserving neighborhood character. These purposes fall under the general umbrella of “the public health, safety, morals or the general welfare.” The *Foster* court distinguished itself from *Leighton* because, while *Leighton* involved someone being unable to have her rights regarding use of the property expanded, *Foster* involved restricting a property’s use to less than what was legal when it was purchased. *Foster*, 97 N.W.2d at 276 (“a purchaser of real property is entitled to place some reliance upon zoning ordinances which have classified the property being purchased.”).

Here, Homeowners purchased homes without rental licenses on blocks with 30% or higher rental concentration after the 30% Rule was in place. Thus, each Homeowner would only need the “consent” of a neighbor to expand the legal uses of his or her property beyond what was available when the property was purchased. Homeowners purchased homes without rental licenses or the eligibility to obtain one. The 30% Rule, for reasons related to the general welfare of the City, is complete in and of itself and not dependent upon the vote or act of anyone. At most, the Rule provides for the removal or modification of its prohibition by the act of those

with rental licenses. See *Leighton*, 16 F.Supp. at 104. Even if the 30% Rule is somewhat awkwardly fit into the “consent provision” analysis, it does not violate Homeowners’ right to procedural due process.

Ultra Vires

Homeowners also argue that the 30% Rule is invalid because it exceeds the scope of the City’s authority. They argue that the Rule is an exercise of the City’s zoning power under Minn. Stat. § 462.357, but it is unlawful because it does not regulate the “use” of the property, it regulates who uses the property. The City argues that the 30% Rule was enacted under the City’s broad police powers, not its zoning authority or, in the alternative, the 30% Rule is a valid zoning regulation.

Ordinances are presumed to be valid, and are not to be set aside by the courts unless their invalidity is clear. *Bolen v. Glass*, 755 N.W.2d 1, 5 (Minn. 2008). Minn. Stat. § 462.357 provides in part:

For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, . . . the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, . . . The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district .

Homeowners argue that a rental regulation concerns who owns and occupies property, not the “use” of the property. If the 30% Rule regulates the “use” of property, it is authorized by Minn. Stat. § 462.357 and within the City’s authority, provided its purpose is promoting the public health, safety, morals, and general welfare. As noted above, the 30% Rule’s purposes qualify as promoting the public health, safety, morals, and general welfare.

Both parties appear to agree that Minnesota courts have not directly ruled on the issue of whether rental regulations concern “use” or “occupancy.” Homeowners cite to a number of cases from other jurisdictions to show that residential rental restrictions relate to occupancy and not to “use.” The City cites to other foreign cases in which rental restrictions are allowed under zoning authority. Homeowners characterize this as a “very minority rule.” Without an applicable “rule” on this question, the Court must look at the specific ordinance challenged here and make its own determination.

Again, Homeowners strain logic to fit the 30% Rule into a categorization that serves their purposes. The 30% Rule is not about occupancy or who occupies a property, it is about how the property is used for residence. The Rule does not address who can rent a house, who can buy a house, or even who can live in a house, provided that person is not paying rent to the owner. The issue addressed by the 30% Rule is whether or not a home is being rented, it is completely silent on who lives there as long as that person is not renting. This particular rental regulation is more reasonably viewed as regulating the “use” of property than the “occupancy” of it.

Homeowners contend the Rule still runs afoul of Minn. Stat. § 462.357’s requirement that the regulations be uniform because it allows some to rent and prohibits others from renting. The 30% Rule applies uniformly. If one is on a block with less than 30% rental, he or she is eligible for a rental license; if one is on a block with more than 30% rental, he or she is not eligible for a standard rental license. When there is a legitimate distinction, the fact that one person is eligible and another is ineligible does not mean the regulation is not uniform. As noted above, there is such a distinction in this case.

Further, if the 30% Rule falls under the City’s broad police powers, it is valid. For a home rule charter city, such as Winona, “[a] city exercises police power within its jurisdiction to

practically the same extent as the state itself. This power is not confined to the narrow limits of precedents based on conditions of a past era. Rather, it is a power which changes to meet changing conditions, which call for revised regulations to promote the health, safety, morals, or general welfare of the public.” *City of Duluth v. Cerveney*, 16 N.W.2d 779, 783 (Minn. 1944). “It is well established that an exercise of the ‘police power’ will be upheld where it has for its object the public health, safety, morality, or welfare, and where it is reasonably related to the attainment of those objectives.” *State ex rel. Gopher Sales Co. v. City of Austin*, 75 N.W.2d 780, 783 (Minn. 1956). Because the Court has already noted that it considers the 30% Rule a “use” restriction, the zoning analysis and the “police powers” analysis are quite similar. The 30% Rule is a restriction put in place to advance the general welfare, to put it broadly. Whether the 30% Rule is considered a zoning ordinance or a “police powers” ordinance, it is valid.

Conclusion

In a prior order in this matter, this Court quoted Chief Justice John Roberts in a recent opinion: “We do not consider whether the Act embodies sound policies. That judgment is entrusted to the Nation's elected leaders.” *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2576 (2012). A year earlier, Minnesota Supreme Court Justice Paul H. Anderson quoted Chief Justice John Marshall:

The question, whether a law be void for its repugnancy to the constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. The [C]ourt, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

Limmer v. Swanson, 806 N.W.2d 838, 841 (Minn. 2011) (quoting *Fletcher v. Peck*, 10 U.S. 87, 128, 3 L.Ed. 162 (1810)). The same considerations apply to this Court's review of an ordinance passed by the City's elected leaders. Homeowners must overcome a substantial burden to have the Court hold that an ordinance passed by the City Council is illegal or invalid.

There is no indication that the 30% Rule was enacted or conceived as an insidious means of keeping certain constitutionally protected classes of people out of certain neighborhoods or any other improper purpose. It is a good-faith attempt to address real problems. Homeowners articulate several ideas that they argue would better address the issues the 30% Rule is designed to address and note many reasons the Rule may not eliminate all of the ills the City hopes it will eliminate. The Court's role in this case is not to decide if the 30% Rule is a good idea, that decision belongs to the City Council. Some of the issues raised by Homeowners were also raised in the meetings and hearings in which the 30% Rule was considered. The City's elected leaders decided those issues did not outweigh the potential benefits of the 30% Rule. If Homeowners or some other interested party articulates the same ideas, issues, concerns, studies, and opinions regarding the 30% Rule to the City Council at some future meeting, perhaps with newly elected members, they may convince enough council members that the Rule does not serve the City well. That is the proper venue for arguing whether the 30% embodies sound policies.

The Court's role is to decide if Homeowners can meet their burden of showing that the 30% Rule is unconstitutional or otherwise invalid. Not only have Homeowners not shown they are entitled to summary judgment, they have not raised any genuine issues of material fact on the legality of the Rule. Separation-of-powers principles require that the ordinance be presumed constitutional and valid. Homeowners' attacks on the legality of the Rule are largely based on somewhat clever characterizations of the Rule and/or foreign case-law. These attacks are not

enough to overcome the presumption of legality and have this Court set aside the conclusions reached by the City's elected representatives.

For the above reasons, Homeowners' motion for summary judgment must be denied and the City's motion for summary judgment must be granted.

B. City of North Mankato Documents

B.1 – Draft Rental Density Ordinance

§151.18 RENTAL DENSITY

(A) In R-A, R-1, R-1S and R-2 zoning districts, no more than 10% of the single-family lots on any block shall be eligible to obtain a rental license, unless a temporary license is granted by the City Council as provided herein. Table 1 indicates how many single-family lots per block are able to be licensed as a rental property based on the number of lots that exist in a block.

<i>Table 1</i>	
<i>Lots/Block</i>	<i>Rental Units Allowed</i>
1-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-64	6
65-74	7
75-84	8
85-94	9

(B) The following guidelines shall apply to determine eligible blocks and lots.

(1) For the purposes of this subchapter, a **BLOCK** shall be defined as an area of land enclosed within the perimeter of streets, watercourses, public parks, municipally owned lots and city boundaries.

(2) This subchapter shall apply to legally conforming lots of record and legally nonconforming lots of record. For the purposes of this subchapter, lots of record may also be referred to as **PROPERTIES**, **PROPERTY** or **LOTS**.

(3) If a block contains more than one type of zoning district, only R-A, R-1, R-1S and R-2 zoning district lots shall be included in the calculation of the total number of lots per block.

(4) Legal nonconforming rental property shall be allowed to continue as long as the legal nonconforming use complies with § [151.13](#) and 156.052 of the Zoning Code.

(5) Commercial or industrial uses located in an R-A, R-1, R-1S and R-2 zoning districts shall not be included in the calculation of the total number of lots per block.

(6) Properties that are exempt pursuant to § 151.18 (A) shall not be included in the calculation of the total number of lots per block.

(C) If the number of rental properties meets or exceeds the permitted number of rental properties per defined block on the effective date of this subchapter, no

additional rental licenses shall be approved for the block, unless a temporary license is granted by the City Council as provided herein. Existing rental licenses may be renewed; however, should a rental license not be renewed, or if the rental license is revoked or lapses, the rental license shall not be reinstated unless it is in conformance with this subchapter and other applicable sections of the city code.

(D) *Exceptions*

- (1) *Parcels zoned CBD, R-3, R-4, OR-1, B-1, B-2, B-3, M-1, M-2, I-1, TUD, P-1*
- (2) Single-family homes or duplexes in which the owner resides within a portion of the building are exempt unless an unrelated person resides within the owner's dwelling unit. If the building is a duplex, only that portion of the building in which the owner resides alone or with related persons is exempt. The other portion of the duplex requires a rental license.
- (3) Rental licenses for State Licensed residences shall be exempt from this subdivision. If the property is no longer licensed by the State of Minnesota, a new rental license application shall be submitted and reviewed for compliance with this subdivision and other applicable City and Building Code sections.

(E) Properties eligible to receive a rental license in R-A, R-1, R-1S, and R-2 zoning districts will be determined as follows:

- (1) Any property zoned R-A, R-1, R-1S, RS, and R-2 is eligible to receive a rental license until the number of single-family and two-family dwellings issued rental licenses exceeds 10% of all the single-family and two-family dwellings in the City of North Mankato.
- (2) This Subdivision shall apply to legally conforming properties of record and legally nonconforming properties of record, as defined in Chapter 156, in existence at that time of the effective date of this ordinance or approved by new subdivision of unplatted and undeveloped property after the effective date of this ordinance.

(F) For the purposes of this Subdivision, the following shall apply:

- (1) Properties licensed for rental purposes on the effective date of this ordinance shall be included in the calculation of the number of permitted rental properties.
- (2) Existing rental licenses may be renewed or transferred per Subdivision 151.07, 151.08 and 151.09.

§ 151.19 TEMPORARY RENTAL LICENSES.

(A) A temporary rental license may be granted by the City for unlicensed properties to an

owner of a property for a period not to exceed (12) months for the following circumstance(s):

- (1) The property is listed for sale and the owner and the owner's family are not residing at the property.
- (2) The owner and the owner's family are not residing at the property and the occupants are providing a caretaking function for the property.
- (3) The City Administrator or his designee is granted authority to extend the temporary rental license for two consecutive six (6) month periods as long as the home is actively marketed for sale.
- (4) Twelve (12) months from the date of issuance, a temporary rental license shall expire and is not subject for renewal unless granted an extension by the City Administrator or his designee as outlined in chapter 151, section 19, subsection 3.

§ 151.20 GRANTING RENTAL LICENSES.

(A) Granting of additional rental licenses in R-A, R-1, R-1S, and R-2 shall be subject to the following:

- (1) On or by March 1st of each year, the City Administrator or his designee shall determine the number of rental licenses available in R-A, R-1, R-1S, and R-2 zoning districts based on the number of single-family and two-family dwellings that have not renewed or transferred a rental license and the number of newly constructed single-family and two-family dwellings in the city.
- (2) A waiting list for property owners seeking to obtain a rental license will be maintained by the City Administrator or his designee. All individuals on the waiting list will be notified by official mail of the process of bidding on newly available rental licenses.
- (3) Licenses will be issued for one year periods to property owners prioritized on the waiting list. After purchased, licenses may be renewed at the standard renewal rate.

§ 151.21 RENTAL PROPERTY PARKING REQUIREMENTS

A minimum of two (2) off-street parking spaces are required to accommodate all rental dwelling units containing one (1) or two (2) bedrooms. Each successive bedroom requires the addition of one (1) off-street parking space. The location of any off-street parking area shall be hard surfaced and meet all applicable setbacks.

§ 151.99 PENALTY.

- (A) Any violation of this chapter is a misdemeanor and is subject to all penalties provided for such violations.
- (B) It is a misdemeanor for any person to prevent, delay, or provide false information to any city official, or his or her representative, while they are engaged in the performance of their duties as set forth in this chapter.
- (C) In addition to bringing criminal charges for violation of this chapter, the city may seek a civil injunction against any licensee or occupant who violate any terms of this chapter.
- (D) All applicants must include in any lease (written or oral) a copy of this chapter and must further advise all tenants that a violation of this code by the applicant (landlord) or any occupant of the premises could result in termination or revocation of the rental license and immediate eviction of all tenants.

(Ord. 234, passed 12-1-2003; Am. Ord. 264, passed 11-21-2005)

B.2 – Moratorium Resolution

RESOLUTION ORDERING A MORATORIUM
ON THE GRANTING OF NEW RENTAL LICENSES
WITHIN THE CITY OF NORTH MANKATO, MINNESOTA

WHEREAS, The City of North Mankato is conducting a study relating to limiting the number of rental housing licenses within areas zoned RA, R1S, R1 or R2; and

WHEREAS, it will take approximately six to nine months to complete such study; and

WHEREAS, The City of North Mankato wishes to complete the study prior to issuing any new rental licenses in the above zoned areas;

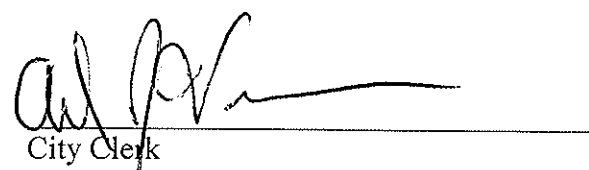
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA, as follows:

1. The City of North Mankato hereby adopts a Moratorium on accepting applications for rental housing licenses in areas zoned RA, R1S, R1 or R2 for a period of twelve (12) months unless earlier ended by action of the City Council.
2. The Moratorium includes single family dwellings in R3 and R4 districts.
3. The City Administrator, in consultation with the City Attorney, is allowed to waive the Moratorium for up to three licenses that may have been contemplated in a sale initiated by signing a purchase agreement prior to the date of this action.

Adopted by the City Council this 21st day of September, 2015.



Mayor



City Clerk

B.3 – City Code Section § 151.11 Conduct on Licensed Premises

§ 151.11 CONDUCT ON LICENSED PREMISES.

(A) It shall be the responsibility of the licensee to take appropriate action following conduct by occupant(s) or guest of the occupant(s) which is in violation of any of the following:

(1) Anytime, day or night, that the premises are involved in any of the following:

- (a) Unlicensed sale of intoxicating liquor or non-intoxicating malt beverages.
- (b) Furnishing intoxicating liquor or non-intoxicating malt beverages by persons under the age of 21 years.
- (c) Consumption of intoxicating liquor or non-intoxicating malt beverages by persons under the age of 21 years.
- (d) Vice crimes.
- (e) Sale or use of illegal drugs by any person on the premises.
- (f) Storage of unlicensed or inoperable vehicles, trailers, boats, RVs and campers.
- (g) Allowing grass or weeds to exceed 6 inches in height.
- (h) Failure to remove ice or snow on adjacent sidewalks within 48 hours after snow or ice has ceased to fall.
- (i) Parking of any vehicles in front yard areas, except permitted driveways.
- (j) Failure to pay monthly utility bill by the due date.

(2) Anytime, day or night, that the premises are involved in a manner affecting the neighborhood and a citation, arrest or letter of transmittal is made for any of the following:

- (a) Disorderly conduct.
- (b) Disturbing the peace.
- (c) Obstructing an officer.
- (d) Assault (including domestic assault).
- (e) Criminal damage to property.
- (f) Vice crimes.

(3) Between the hours of 7:00 a.m. and 10:00 p.m. for any of the following:

(a) Where the police respond initially and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like) and persons involved refusing to comply with police directive to curtail the behavior within 10 minutes.

(b) Where the police respond a second time and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like) on both occasions.

(c) Where the police respond on 3 separate dates and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like).

(4) Between the hours of 10:00 p.m. and 7:00 a.m. for any 1 or more of the following:

(a) Where police describe the noise level outside of the confines of the dwelling unit as "loud and intrusive." This description should give some indication of the distance that the noises are heard.

(b) Where people are using profanity that can be heard outside the confines of the dwelling unit.

(c) Where music, either from the confines of the dwelling unit, the yard area of the dwelling unit or any parking area defined for the dwelling unit, can be heard from the street, alley or neighboring yards.

(d) Where a gathering is going on either in and/or out of the dwelling unit in a manner that involves any of the following:

1. Disruption of the neighbors, such as, revving of cars, squealing of tires, loud shouting, and the like.

2. Littering.

3. Inappropriate behavior, such as, urinating in yards, persons passed out, and the like.

4. Damaging of property: and where after investigation the officer(s) can show that the inappropriate activity was directly related to the licensed premises. Proof may include, but is not limited to, direct observation by officers, admissions by persons present or testimony/statements by complainants and witnesses.

(e) Where officers are unable to personally verify the existence of any of the criteria listed in 1. through 4. above, but complainants/witnesses are willing to testify to 1 or more of those facts at a criminal or civil proceeding.

(B) The Chief of Police or his or her designee shall be responsible for enforcement and administration of this section.

(C) Upon determination by the Chief of Police that a licensed premises was involved in a violation of division (A) of this section, the Chief of Police shall notify the licensee by first class mail of the violation and direct the licensee to take steps to prevent further violations. A copy of said notice shall be sent by first class mail to the occupant in violation of division (A) of this section.

(D) Upon a second violation within 12 months of division (A) of this section involving a guest or an occupant of a licensed premises, the notice provided under division (C) of this section shall require the licensee to submit a written report of the action taken to prevent further violations on the premises. This written report shall be submitted to the Police Chief within 5 days of request of the report and shall detail all actions taken by the licensee in response to all notices regarding violations to division (A) of this section within the preceding 12 months. If the licensee fails to comply with the requirements of the subsection, the rental dwelling license for

the individual licensed premises may be denied, revoked, suspended, or such other penalty imposed by the City Council. An action to deny, revoke, suspend or renew a license under this section shall be initiated by the City Council at the request of the Police Chief.

(E) If a third or subsequent violation of division (A) of this section involving a guest of or an occupant of a licensed premises occurs within 12 months after any 2 previous instances for which notices were sent to the licensee regarding the same licensed premises, the rental dwelling license for the individual rental unit may be denied, revoked, suspended, or such other penalty not imposed by the City Council. An action to deny, revoke or suspend a license or impose any other penalty under this section shall be initiated by the City Council at the request of the Police Chief.

(F) No adverse license action shall be imposed if the violation to division (A) of this section occurred during the pendency of eviction proceedings (unlawful detainer) or within 30 days of notice given by the licensee to an occupant to vacate the premises, where the violation was related to conduct by that occupant, other occupants, or the occupant's guests. Eviction proceedings shall not be a bar to adverse license action, however, unless they are diligently pursued by the licensee. Further, an action to deny, revoke, suspend, or not renew a license based upon violations of this section may be postponed or discontinued at any time if it appears that the licensee has taken appropriate measures which will prevent further violations to division (A) of this section.

(G) A determination that the licensed premises has been used in violation of division (A) of this section shall be made by the Council upon substantial evidence to support such a determination. It shall not be necessary that criminal charges be brought to support a determination of violation to division (A) of this section, nor shall the facts of dismissal or acquittal of criminal charges operate as a bar to adverse license action under this section.

(Ord. 234, passed 12-1-2003; Am. Ord. 264, passed 11-21-2005; Am. Ord. 8, 4th series, passed 1-16-2007; Am. Ord. 17, 4th series, passed 1-17-2008; Am. Ord. 21, 4th series, passed 1-20-2009)

C. Peer City Survey Responses

City	Feedback	Ordinance Type
Belle Plaine	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations <p>Don't track single family conversion to rental; real change is from single family that is owned to single family rental</p>	Simple Rental Ordinance
Brainerd	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have data that suggests increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; Inspect single-family rental property on a three year basis 	Rental Inspection Program
Brooklyn Center	<ul style="list-style-type: none"> Ordinance was tabled by City Council; appears it isn't going to pass Higher number of code enforcement complaints and police calls at rental properties Rental license program and the initial license has a \$500 conversion fee. 	Rental License Program (Pending Density Ordinance)
Faribault	<ul style="list-style-type: none"> Faribault doesn't regulate conversion to rental other than through Rental Registration Program and Crime Free Rental Housing Program 	Rental Registration Program; Crime Free Rental Housing Program
Hutchinson	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Rental Registration Ordinance
Jordan	<ul style="list-style-type: none"> Recently adopted first rental ordinance Implemented to protect building values in downtown commercial district Rental units in downtown with many police calls Require registration of renters 	Rental Ordinance
New Ulm	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Rental Inspection Program for life-safety purposes
Northfield	<ul style="list-style-type: none"> May be perceived benefit Most improvement related to maintaining neighborhood quality of life can be attributed to Northfield's Rental Licensing and Inspection Program in its entirety Maximum density limitation on rentals has been controversial since its adoption in 2008. 20% of homes on block: Issue with small number of homes on some blocks not allowing for more than one rental 	Density Ordinance: 20% per block

	<ul style="list-style-type: none"> Increased number of foreclosures for property owners underwater on mortgage following the recession and could not obtain a rental license; Temporary licensing solution Rental properties have continued to increase since 	
Owatonna	<ul style="list-style-type: none"> Not many renters with lack of college. No issues Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Rental Registration Program
Shakopee	<ul style="list-style-type: none"> Has been successful and is managed by Police Department Rental Properties have not been a problem Have had issues dealing with absentee landlords and problem landlords 	Rental Registration Program
St. Peter	<ul style="list-style-type: none"> City Planning Commission considering establishing minimum density for residential construction in proximity to the City core. No effort to undertake analysis on property values in relation to rentals Any single-family home can be converted to a rental following inspection, licensure, and payment of the established fee. Life/safety inspections 	
West St. Paul	<ul style="list-style-type: none"> First established 2006/7 Higher demand for rentals and cheap housing toward urban core of Minneapolis/St. Paul General interest: home flippers rent leading to revitalization and preserves the affordable housing factor Annual inspections done by a City Official To control police/nuisance calls there is a tiered fee system; the more valid police calls received on the property, the more the renewal fees are for that license. If there is an exceptionally difficult property, City Council can choose to place that owner on a provisional license and review the progress as often as they see fit City department annual reports track progress Monthly meetings with property managers to maintain relationships. 2605 licenses issued since 2007; 143 expired or changed to ownership. Changes: <ol style="list-style-type: none"> 1) Adoption of the International Property Maintenance Code (IPMC) as the guiding document for all rental inspections; 2) Elimination of the third party inspection process and implementation of a new in-house city inspection process; 3) Elimination of the Alternative Inspection Reports, with the exception of the HUD, Housing Choice Voucher inspection reports; 4) Implementation of mandatory Phase I: Management/Owner Training; 5) Implementation of a Tiered Fee System; 6) Changing the license term to a rolling calendar. 	Density Ordinance:

D. Legal Framework – Dean vs. City of Winona, MN

D.1 – 843 N.W.2d 249 (2014) – Ethan DEAN, et al., Appellants, v. CITY OF WINONA, Respondent. – No. A13-1028 – Court of Appeals of Minnesota – February 24, 2014

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1028**

Ethan Dean, et al.,
Appellants,

vs.

City of Winona,
Respondent.

**Filed February 24, 2014
Affirmed
Larkin, Judge**

Winona County District Court
File No. 85-CV-11-2329

Lee U. McGrath, Anthony Sanders, Katelynn McBride, Institute for Justice, Minneapolis, Minnesota (for appellants)

George C. Hoff, Shelley M. Ryan, Hoff, Barry & Kozar, P.A., Eden Prairie, Minnesota (for respondent)

Susan L. Naughton, League of Minnesota Cities, St. Paul, Minnesota (for amicus curiae League of Minnesota Cities)

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, Minnesota; and

Daniel E. Frank, (pro hac vice), Sutherland Asbill & Brennan LLP, Washington, D.C. (for amicus curiae The Minnesota Free Market Institute at Center of the American Experiment)

Jarod M. Bona, Ann A. Parmley, Alvin Johnson Jr., DLA Piper LLP, Minneapolis, Minnesota (for amicus curiae Minnesota Vacation Rental Association)

Teresa J. Nelson, American Civil Liberties Union of Minnesota, St. Paul, Minnesota (for amicus curiae American Civil Liberties Union of Minnesota)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Larkin, Judge.

S Y L L A B U S

1. A municipality may use its police power to limit the number of lots on a block that are eligible to obtain certification as a rental property.
2. An ordinance that establishes a neutral, numerical limit on the number of lots on a block that are eligible to obtain certification as a rental property does not violate equal protection or due process under the Minnesota Constitution.

O P I N I O N

LARKIN, Judge

Appellants, owners of residential properties in respondent municipality, challenge the summary judgment upholding respondent's ordinance that limits, to 30%, the number of lots on a block that are eligible to obtain certification as a rental property. Because respondent's adoption of the ordinance was an authorized exercise of its police power and because appellants have not met their burden to show that the ordinance is unconstitutional, we affirm.

F A C T S

This case stems from respondent City of Winona's adoption of an ordinance that limits, in certain districts of the city, the number of lots on a block that are eligible to obtain certification as a rental property. In 2003, respondent's city council requested that its planning commission consider the effectiveness of respondent's off-street parking regulations, particularly regarding rental properties, and most significantly around the

Winona State University campus. Members of the planning commission noted that an increasing number of residential properties were being converted from single-family usage to rental usage, which resulted in increased parking demands. One of the suggested solutions to the problem was limiting the number of rental properties per block in residential areas.

In December 2004, respondent's city council issued a six-month moratorium on the certification of new rental housing. During the moratorium, the planning commission initiated discussions and developed a list of proposed code modifications pertaining to rental housing density and off-street parking issues. Later, the planning commission held a series of public-input meetings with landlords, homeowners, and others. In April 2005, in conjunction with the planning-commission discussions, respondent's mayor initiated a series of town meetings designed to address "density, parking, and aesthetic issues within the 'area' of the university." Landlords, homeowners, students, and others attended the meetings. After the last meeting, the mayor created a core study group to identify issues and possible solutions pertaining to university neighborhoods for the planning commission's consideration. The council extended the moratorium for an additional six months to allow the study group and planning commission to complete their work.

A Parking Advisory Task Force was also formed in 2005 to consider the same issues and the planning commission's proposals. The task force noted that at that time, rental-housing units comprised about 39% of respondent's total housing units, but 52% of the complaints received by the Community Development Department (CDD) related to rental properties. In August of 2005, the task force began discussing the idea of

restricting the number of rental properties per block. Because rental housing units comprised approximately 39% of the total housing units, it was suggested that the number of rental units be restricted to 30% of the total properties on any given block. The task force adopted a motion to forward a “30% rule” to the planning commission for its consideration. The task force acknowledged that such a rule could prevent out-of-town individuals from purchasing residential property in Winona and that it could hinder the ability of current residents to sell their properties. Nonetheless, the task force favored the 30% rule and decided to seek studies and findings on the effect of rental housing on the area.

The planning commission discussed the 30% rule at two meetings in October 2005. It noted that the task force believed that neighborhoods heavily populated with student rental housing tend to become run-down and unattractive. The planning commission noted that according to county data from 2004, the CDD found that 95 of the 99 addresses that had two or more calls for police service based on noise and party-related complaints were rental properties. The planning commission also noted that 52% of the zoning violations that resulted in written violations during 2004 were for rental properties. After holding a public hearing on the issue, the planning commission voted six to three to recommend the 30% rule to respondent’s city council.

The city council held a public meeting regarding the rule in November 2005. Several members of the community spoke for and against the rule. Opponents voiced concern that property values would suffer. Proponents voiced a desire to protect

neighborhoods and prevent areas from becoming dominated by rental units. The city council passed the 30% rule at the meeting and adopted the rule on December 5.

In February 2009, the planning commission once again considered the 30% rule. The city planner noted that 142 residential properties had been certified for rental since the rule was enacted and that those units were dispersed throughout Winona rather than concentrated. But planning-commission members disagreed regarding whether or not the rule was working.

In March, the city council created a new task force to examine the 30% rule. Its goal was to consider ways for residents to rent their homes in extraordinary circumstances despite the 30% cap, as well as ways to encourage the conversion of rental properties into owner-occupied properties. In February 2010, the task force recommended that respondent retain the 30% rule. The task force noted that “[a]lthough the general consensus of the Task Force was that the Rule has, since adoption, had the intended [effect] of dispersing rental patterns away from core university neighborhoods, not all were supportive of the method.” The CDD’s program development director described the 30% rule as having “preserved affordable housing and reduced conversions as intended.”

In October 2011, appellants Ethan Dean, et al., filed the underlying lawsuit. Appellants, collectively, were the owners of three houses purchased after adoption of the 30% rule. Appellant Ethan Dean purchased his house in 2006, planning to live in it. In 2009, Dean was preparing for a military tour in Iraq and wanted to rent the house out. He could not obtain rental certification because of the 30% rule. At the time of the

summary-judgment proceeding in district court, Dean had obtained temporary certification and had been renting his house out since 2010.

Appellant Holly Richard also purchased her house in 2006. In 2009, she accepted a job in another state. She tried to sell her house, but after receiving no offers, she decided to rent it out. She was unable to obtain rental certification because of the 30% rule. Richard entered into a rent-with-the-option-to-buy agreement with a tenant. In February 2010, respondent discovered the rental arrangement and ordered the tenant to vacate the property. At the time of the summary-judgment proceeding, Richard had been renting her house out since April 2010. She first obtained temporary certification. Later, she obtained standard rental certification after the license of another property on her block lapsed.¹

Appellants Ted and Lauren Dzierzbicki, Illinois residents at the time of the summary-judgment proceeding, purchased a house in Winona in 2007, where their daughter attended college. They made improvements to the house, intending that their daughter would live in it and rent space in the house to other students. The Dzierzbickis could not obtain rental certification because of the 30% rule. Their house has been empty since the spring of 2010, when their daughter graduated.

Appellants' lawsuit challenges the 30% rule as an *ultra vires* act exceeding respondent's zoning powers and as unconstitutional under the Minnesota Constitution. Appellants seek declaratory and injunctive relief, as well as nominal damages.

¹ Appellants Dean and Richard remain in this lawsuit with claims for nominal damages. Respondent moved to dismiss them from the suit for lack of standing. That motion was denied, and the denial is not challenged on appeal.

In February 2012, the planning commission received the report of a consulting firm, the Hoisington Koegler Group Inc. (HKG), which had been retained to review the literature on the impact of rental-housing concentration on neighborhood quality and liveability. The HKG report considered five other cities in addition to Winona and concluded that “the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods” and that “the concentration of rental housing leads to a decreased neighborhood quality and liveability.”

Also in February 2012, the planning commission discussed moving the 30% rule from chapter 43, the zoning chapter of respondent’s code, to chapter 33A, the rental-housing chapter, partly because respondent’s charter provided additional legal authority for the 30% rule and partly because other cities codified similar provisions in housing codes instead of in zoning codes. The 30% rule was moved to its present location in respondent’s rental-housing code in March 2012.

In 2012, all parties moved for summary judgment. They agreed that there were no genuine issues of material fact and that the matter would be appropriately decided as a matter of law. After a January 2013 hearing, the district court denied appellants’ motion and granted summary judgment to respondent.

ISSUES

- I. Is the 30% rule an *ultra vires* act that exceeds the powers delegated to respondent by the Minnesota legislature?
- II. Have appellants shown that the 30% rule is unconstitutional?

ANALYSIS

The case comes before us on appeal of the district court's award of summary judgment. The standard of review in an appeal from summary judgment is *de novo*. *Allen v. Burnet Realty, LLC*, 801 N.W.2d 153, 156 (Minn. 2011).

The ordinance giving rise to the underlying dispute provides in relevant part:

33A.03 – RENTAL HOUSING LICENSE

....

(i) Limitation of rental housing in low density neighborhoods. In [certain] districts of the city, no more than 30 percent (rounded up) of the lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family. . . . When determining the number of eligible properties on a block, the number shall be the lowest number that results in 30 percent or more of the residential lots being rental.

Winona, Minn., City Code ch. 33A.03(i) (2013).

There is an exception for rental properties that were certified when the 30% rule was adopted, but such properties are counted among the 30% of allowable rental properties for purposes of determining whether new properties may be certified. *Id.* The ordinance also allows for temporary certification under limited circumstances. *Id.*

Appellants argue that the 30% rule is an *ultra vires* act that exceeds the powers delegated to respondent by the Minnesota legislature. Appellants also argue that the 30% rule violates their rights, under the Minnesota Constitution, to equal protection, substantive due process, and procedural due process. We address each argument in turn.

I.

Appellants argue that respondent “lacks the power to enact the 30 percent rule.” Respondent counters that the 30% rule is a valid exercise of its broad police power under the “all powers” grant in the City of Winona Charter.

Respondent, a home rule charter city, has by virtue of its charter “all powers, rights, privileges and immunities granted to it by this Charter and by the constitution and laws of the State of Minnesota and all powers existing in a municipal corporation at common law.” Winona, Minn., City Charter ch. 1.02 (1983). “[A home rule charter city] may provide . . . for the regulation of all local municipal functions as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.” Minn. Stat. § 410.07 (2012). “[I]n matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.” *Bolen v. Glass*, 755 N.W.2d. 1, 4-5 (Minn. 2008) (quotation omitted).

Generally, police power “refers to the power of the state and its political subdivisions to impose such restraints upon private rights as are necessary for the general welfare. This government power is essential and difficult to limit, as it includes all matters of public welfare.” *In re 1994 and 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping, Inc.*, 546 N.W.2d 747, 750 (Minn. App. 1996) (quotations omitted), *review denied* (Minn. June 11, 1996).

The concept of police power has a long history in Minnesota. “The term ‘police power’ . . . means simply the power to impose such restrictions upon private rights as are

practically necessary for the general welfare of all.” *State ex rel. Beek v. Wagener*, 77 Minn. 483, 494, 80 N.W. 633, 635 (1899).

[I]n the exercise of its police powers a state is not confined to matters relating strictly to the public health, morals, and peace, but, as has been said, there may be interference whenever the public interests demand it; and in this particular a large discretion is necessarily vested in the legislature, to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests. If, then, any business becomes of such a character as to be sufficiently affected with public interest, there may be a legislative interference and regulation of it in order to secure the general comfort, health, and prosperity of the state, provided the measures adopted do not conflict with constitutional provisions, and have some relation to, and some tendency to accomplish, the desired end.

Id. at 495, 80 N.W. at 635 (citation omitted).

The breadth of police power is equally well established. “The development of the law relating to the proper exercise of the police power of the state clearly demonstrates that it is very broad and comprehensive, and is exercised to promote the general welfare of the state And the limit of this power cannot and never will be accurately defined” *Id.*, *see also City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955) (“Judicial concepts of what is a sufficient public interest to invoke the police power, and of whether a certain remedy is reasonably appropriate to accomplish its purpose without going beyond the reasonable demands of the occasion so as to be arbitrary, are not static but are geared to society’s changing conditions and views.”).

We easily conclude that the public has a sufficient interest in rental housing to justify a municipality’s use of police power as a means of regulating such housing. *See*

City of Morris v. Sax Investments, Inc., 749 N.W.2d 1, 13-14 n.7 (Minn. 2008) (recognizing that there are “many permissible areas” for “municipal regulation of rental housing”). In fact, the landlord-tenant relationship is currently subject to extensive government regulation. *See* Minn. Stat. §§ 504B.001-.471 (2012) (governing landlord-tenant relationships). In this case, the record establishes that respondent determined that the conversion of owner-occupied homes to rental properties and the concentration of such properties in some neighborhoods began to have a negative impact on the quality and liveability of those neighborhoods. That occurrence implicated the public interest and welfare. Because “there may be interference whenever the public interests demand it,” respondent was authorized to address the circumstances through its police power so long as, “the measures adopted [did] not conflict with constitutional provisions, and [had] some relation to, and some tendency to accomplish, the desired end.” *Wagener*, 77 Minn. at 495, 80 N.W. at 635.

Appellants do not persuasively dispute respondent’s authority to regulate rental housing within its borders through its police power. Instead, appellants contend that the ordinance was an exercise of respondent’s statutory zoning power and not an exercise of its police power. Appellants further contend that the ordinance was not a valid exercise of zoning authority. *See* Minn. Stat. § 462.357, subd. 1 (2012) (setting forth municipal zoning authority). Because we conclude that respondent’s adoption of the ordinance was an exercise of its police power, it is not necessary to determine whether it was also an exercise of its zoning authority. We therefore do not address appellants’ zoning arguments.

In sum, respondent's adoption of the 30% rule was an authorized exercise of police power, subject to constitutional limitations. *See Wagener*, 77 Minn. at 495, 80 N.W. at 635. Because the validity of respondent's exercise of police power is determined under the analysis applicable to appellants' constitutional claims, we turn our attention to those claims.

II.

Appellants argue that the 30% rule “conflict[s] with constitutional provisions.” *Id.* Specifically, they argue that it violates their rights to equal protection, substantive due process, and procedural due process under the Minnesota Constitution. *See* Minn. Const. art. I, §§ 2 (“No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”), 7 (stating that no person shall “be deprived of life, liberty or property without due process of law). Appellants state that their constitutional claims “are both facial and as applied.”

“The constitutionality of an ordinance is a question of law[,] which this court reviews de novo.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted). A municipal ordinance is presumed to be constitutional, and the burden of proving that it is unconstitutional is on the party challenging it. *Minnesota Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683, 688 (Minn. 2009); *see also Bodin v. City of St. Paul*, 305 Minn. 555, 558, 227 N.W.2d 794, 797 (1975) (“A successful challenge to . . . legislation [allegedly resulting in unequal treatment of persons similarly situated] requires proof of unconstitutionality beyond a

reasonable doubt. The burden to overcome this stringent presumption is upon the party alleging the unconstitutionality of the provision at issue.” (footnote omitted)). “If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion.” *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 445 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Apr. 24, 1997).

A. Equal Protection

“A party may raise an equal protection challenge to a statute based on the statute’s express terms, that is, a ‘facial’ challenge, or based on the statute’s application, that is, an ‘as-applied’ challenge.” *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). “By definition, a facial challenge to a statute on equal protection grounds asserts that at least two classes are created by the statute, that the classes are treated differently under the statute, and that the difference in treatment cannot be justified.” *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980). A facially neutral statute can violate equal protection if it is applied in a way that creates an impermissible classification or discriminates in practice. *See State v. Frazier*, 649 N.W.2d 828, 833-34 (Minn. 2002) (explaining that to prevail on an equal-protection challenge where the challenged statute did not, on its face, classify on the basis of race, the challenger had to “demonstrate that the statute create[d] a racial classification in practice”); *McCannel*, 301 N.W.2d at 916 (stating that “the equal protection clause provides protection against arbitrary discrimination resulting from the express terms of a statute as well as from a statute’s improper execution”); *State v. Stewart*, 529 N.W.2d 493, 497 (Minn. App. 1995) (holding that an ordinance violated due process and equal

protection rights based on the city's arbitrary application and enforcement of the ordinance).

An equal-protection challenge requires an initial showing that “similarly situated persons have been treated differently.” *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (quotation omitted). In determining whether two groups are similarly situated, the focus is on “whether they are alike in all relevant respects.” *Id.* at 522. Appellate courts “routinely reject equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently.” *Schatz v. Interface Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012) (quotation omitted).

The 30% rule is unlike laws that expressly identified groups that were to be treated differently and therefore violated equal protection under the Minnesota Constitution. *See State v. Russell*, 477 N.W.2d 886, 887, 889 (Minn. 1991) (holding that Minn. Stat. § 152.023, subd. 2 (1990), violated equal protection because it imposed disparate treatment on two similarly situated groups: possessors of three or more grams of crack cocaine were guilty of a third-degree offense and possessors of less than ten grams of cocaine powder were guilty of a fifth-degree offense); *see also Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470, 476 (Minn. App. 2013) (holding that Minn. Stat. § 268.035, subd. 20(20) (2012), violated equal protection because it provided that immediate-family-member caregivers were not covered under the unemployment statutes but non-immediate-family-member caregivers were covered); *Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444, 447, 449, 453 (Minn. App. 2012) (holding that a pay cut imposed on relative caregivers but not on caregivers who were not related to their

patients violated equal protection because both groups were “required to comply with the same statutes, rules and regulations” and therefore were similarly situated).

The 30% rule does not set forth any facial classification providing a basis for disparate treatment, and it does not describe any particular group of property owners for whom certification is or is not available. The ordinance is facially neutral and applies equally to all property owners in the regulated districts. The ordinance sets a 30% cap, but it does not define or predetermine which lots will be certified. That determination is made based on the changing facts and circumstances on each block, and not based on the ordinance or the characteristics of lot owners. The fact that the number of lots that may be certified might be less than the number of property owners who desire certification is not a class-based distinction between two groups of property owners. Because the 30% rule does not provide that certification will be available to one particular group of property owners instead of to another, appellants fail to meet the threshold requirement of a facial equal-protection challenge by showing that the 30% rule treats similarly situated groups differently. *See Cox*, 798 N.W.2d at 521.

Appellants also fail to present evidence of discrimination resulting from arbitrary application of the 30% rule. Appellants have not shown that respondent has done anything other than apply the mathematical formula on a first-come, first-served basis. Appellants’ real complaint is about the effect of an otherwise neutral ordinance on their particular circumstances, which does not give rise to an equal-protection claim. *See John Hancock Mut. Life Ins. Co. v. Comm’r of Revenue*, 497 N.W.2d 250, 254 (Minn. 1993) (stating that “any difference of effect” that is the result of the unique circumstances of

those affected by legislation does not give rise to an equal-protection claim). Appellants complain that the 30% rule unevenly affects owners who want to rent their properties. But any uneven effects are the result of the order in which property owners attempted to have their lots certified as rental properties and not the result of discriminatory treatment stemming from respondent's application of the ordinance. "The possibility that a law *may* actually fail to operate with equality is not enough to invalidate it." *Id.* (quotation omitted). Thus, appellants' as-applied equal-protection challenge is also unavailing.

Lastly, even if appellants did show that the 30% rule resulted in different treatment of similarly situated property owners, they would also have to show that the treatment was not merely different: only "invidious discrimination is deemed constitutionally offensive." *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000) (quotation omitted). Limiting the number of lots on a block that are eligible to obtain certification as a rental property does not rise to the level of invidious discrimination.

In sum, the 30% rule establishes a neutral, numerical limit on the number of lots that are eligible to obtain certification as a rental property and applies uniformly throughout the affected districts on a first-come, first-served basis. Because appellants did not make the necessary threshold showing that the 30% rule treats them differently than other similarly situated individuals, their equal-protection claim fails as a matter of law.

B. Substantive Due Process

Appellants assert that the 30% rule violates their right to rent their property, asserting that such a right is “guaranteed by the substantive component of the Due Process Clause of Article I, Section 7 of the Minnesota Constitution.” Appellants acknowledge that no published Minnesota case has “addressed the specific contours of how the clause protects that right.” For the purpose of our analysis we assume, without deciding, that the right to rent is protected by the Due Process Clause of the Minnesota Constitution.

Unless a fundamental right is at stake, judicial scrutiny is not exacting and substantive due process requires only that the statute not be arbitrary or capricious; the statute must provide a reasonable means to a permissible objective. *State v. Behl*, 564 N.W.2d 560, 567 (Minn. 1997). Appellants do not argue that a fundamental right is at stake, so the rational-basis standard applies. *See Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn. 1999) (stating that “even if a fundamental right is not implicated, in order to pass constitutional muster [a] registration statute must still meet the rational basis standard of review”). The rational-basis standard requires that: (1) “the act serve to promote a public purpose,” (2) the act “not be an unreasonable, arbitrary or capricious interference” with a private interest, and (3) “the means chosen bear a rational relation to the public purpose sought to be served.” *Contos v. Herbst*, 278 N.W.2d 732, 741 (Minn. 1979). For the reasons that follow, we conclude that the rational-basis standard is met.

First, the 30% rule serves to promote a public purpose. The purpose of the ordinance is to control the number of owner-occupied homes that are converted to rental

properties and to avoid heavy concentrations of such converted properties. As we concluded in section I of this opinion, that purpose serves the public interest.

Second, the ordinance is not an unreasonable, arbitrary, or capricious interference with private interests. The 30% cap² was adopted after a long, deliberate information-gathering process that considered public input, data, and expert review, including the HKG memorandum. Appellants attempted to refute the HKG memorandum by arguing that it was based on the number of rental properties and that it should have been based on the number of rental units. But respondent's concern was not the number of renters in an area; it was the number of properties that went from being owner-occupied to rental properties. Appellants' adverse expert provided data based only on the density of rental units, not the density of rental properties, which is not relevant to the 30% rule or to the purpose for which it was enacted.³

Third, the 30% rule bears a rational relation to the public purpose sought to be served. There is an evident connection between the imposition of a numerical cap on the number of lots that may convert from owner-occupied properties to rental properties and

² Appellants do not argue that respondent should have used some percentage other than 30%. They argue that not having certification available for every residential property violates equal protection. We therefore do not address the propriety of the 30% cap as opposed to some other percentage. *See Holt*, 559 N.W.2d at 445 (“If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion.” (quotation omitted)).

³ In any event, the decision regarding whether certification is granted to properties or to individual rental units belongs to respondent's city council, not to this court. *See Holt*, 559 N.W.2d at 445 (“If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion.” (quotation omitted)). For the same reason, we do not address appellants' arguments that the 30% rule is not an effective means of improving parking or controlling student behavior. These issues are not within our scope of review. *See id.*

the desire to control the number and concentrations of such converted properties. It is undisputed that the 30% rule has limited the number and location of converted properties, as it was intended to do.

In arguing their substantive-due-process claim, appellants primarily rely on two cases from other jurisdictions: *Gangemi v. Zoning Bd. of Appeals of Fairfield*, 763 A.2d 1011, 1017-18 (Conn. 2001) (invalidating a no-rental condition that applied to only one property and therefore served no purpose and unfairly restricted the owners' ability to sell) and *Kirsch Holding Co. v. Borough of Manasquan*, 281 A.2d 513, 519-20 (N.J. 1971) (invalidating ordinance prohibiting rental of seaside properties to groups of unrelated adults). Those cases are not binding on this court. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that opinions of courts of other states may be persuasive but are not binding on Minnesota courts). Moreover, *Gangemi* is distinguishable because the 30% rule applies to all properties in the district, not to only one. *Kirsch Holding* is distinguishable because the 30% rule is not a restriction on who rents properties but on how many properties can be rented.

The only Minnesota case that appellants cite, *City of St. Paul v. Dalsin*, is also distinguishable. In *Dalsin*, the supreme court held that

[t]he requirement that a roofer must qualify himself in warm air heating and ventilation has no reasonable relation to any justifiable regulation of the roofing trade. Since the ordinance embraces unnecessary, unreasonable, and oppressive requirements as a prerequisite to a license to install sheet metal flashings as an incidental part of the process of laying a roof, it must be held unconstitutional *insofar* as applies to the roofing trade.

245 Minn. at 330, 71 N.W.2d at 859. Unlike the requirement in *Dalsin*, the 30% cap on the number of lots that are eligible to obtain certification as a rental property has a reasonable relation to respondent's justifiable regulation of rental housing.

In sum, the ordinance provides a reasonable means to a permissible objective and appellants have not met their burden to show that the ordinance violates their substantive right to due process under the Minnesota Constitution.

C. Procedural Due Process

Lastly, we consider appellants' procedural-due-process claim. Appellants contend that the 30% rule violates their "procedural due process right by unconstitutionally delegating legislative power to a property owner's neighbors." They argue that "[l]egislatures cannot delegate their power to a group of citizens," and that "[t]his rule of law is over 100 years old and guaranteed by the Minnesota Constitution." They assert that the 30% rule unconstitutionally transforms city blocks "into mini-republics, delegating the power to ban additional licenses to the [license-holding] property owners on each block."

Appellants primarily rely on *State ex rel. Foster v. City of Minneapolis*, 255 Minn. 249, 97 N.W.2d 273 (1959). *Foster* involved a piece of land that was originally zoned as commercial. 255 Minn. at 250, 97 N.W.2d at 274. The property was rezoned as residential after satisfaction of a statutory requirement that the owners of two-thirds of the properties "within 100 feet of the real estate affected" give their written consent. *Id.* When the owners of the property applied for a permit to construct an office building on the property, their request was denied based on the new zoning classification. *Id.*, 97

N.W.2d at 273-74. *Foster* held that the statutory requirement of consent of the owners of two-thirds of the properties “within 100 feet of the real estate affected” was “an unlawful delegation of power to impose restrictions on real property” and noted that “[w]him or caprice may [have been] the sole motivating factor” in the rezoning decision that “divested [the] property of all substantial value without compensation to [the purchasers].” *Id.* at 252, 254, 97 N.W.2d at 275-76.

In holding that the ordinance violated due process under the federal constitution, the supreme court explained:

We are of the opinion that the consent clause of § 462.18, as a prerequisite to the exercise of the city council’s legislative authority to amend the comprehensive zoning ordinance, constitutes an unlawful delegation of power to impose restrictions on real property, and renders this provision of the statute invalid. It is well settled that a municipal corporation may not condition restricted uses of property upon the consent of private individuals such as the owners of adjoining property; and that it is an unreasonable exercise of police power to rest control of property uses in the hands of the owners of other property.

Id. at 252-53, 97 N.W.2d at 275.

Foster is readily distinguishable. Under the 30% rule, the owners of certified rental properties do not determine which other lots may be certified. The certified-property owners’ views regarding whether a particular lot should be certified as a rental property are irrelevant; they can neither grant certification by consenting to it nor prevent certification by denying consent. Thus, respondent’s limit on the number of lots on a block that are eligible to obtain rental certification is not a delegation of legislative power.

In sum, appellants have not shown that the 30% rule violates their right to procedural due process. Although we reject appellants' assertion that "the actions of [their] neighbors have denied them the right to rent," we in no way mean to diminish the impact of the 30% rule on appellants' ability to use their properties as they would like, and we are sympathetic to their circumstances. But appellants' dissatisfaction with the local majority's adoption of an ordinance limiting their ability to rent their residential properties is not a basis for the judiciary to strike down the ordinance as unconstitutional.

D E C I S I O N

Respondent was authorized, under its broad police power, to adopt an ordinance limiting by percentage the number of lots on a block that are eligible to obtain certification as a rental property. Because the ordinance does not discriminate against any class of property owners, either on its face or in its application, and there is a rational basis for the ordinance, the ordinance does not violate equal protection or substantive due process. And because the ordinance does not delegate legislative power to other property owners, it does not violate procedural due process. We therefore affirm the district court's award of summary judgment to respondent.

Affirmed.

D.2 – 868 N.W.2d 1 (2015) – Ethan DEAN, et al., Appellants, v. CITY OF WINONA, Respondent. – No. A13-1028 – Supreme Court of Minnesota – February 24, 2014

868 N.W.2d 1 (2015)

**Ethan DEAN, et al., Appellants,
v.
CITY OF WINONA, Respondent.**

No. A13-1028.

Supreme Court of Minnesota.

August 5, 2015.

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Susan L. Naughton, Saint Paul, MN, for amicus curiae League of Minnesota Cities.

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OPINION

WRIGHT, Justice.

Appellants Ethan Dean, Holly Richard, and Ted and Lauren Dzierzbicki brought this action, challenging a rental ordinance enacted by respondent City of Winona (the City). The ordinance, referred to as the "30-percent rule," limits the number of lots on a block in certain areas of the City that are eligible for certification as rental properties. Appellants assert that the 30-percent rule is a zoning law that exceeds the City's power authorized by Minn.Stat. § 462.357 (2014).

Appellants also contend that the 30-percent rule violates their rights to equal protection and substantive due process guaranteed by the Minnesota Constitution. On cross-motions for summary judgment, the district court granted summary judgment to the City. The court of appeals affirmed, concluding that the adoption of the ordinance was a valid exercise of the City's police power and that appellants did not meet their burden of establishing that the ordinance is unconstitutional. After we granted appellants' petition for review, the City moved to dismiss for lack of jurisdiction, asserting that the case had become moot while on appeal. We conclude that the challenge to the ordinance does not present a justiciable controversy because appellants no longer have an interest in the outcome of the litigation. We, therefore, decline to reach the merits of appellants' claims and dismiss the appeal.

I.

At the heart of this dispute is the City's policy limiting the number of rental licenses available to homeowners in Winona. The City requires its homeowners to obtain rental licenses before they are permitted to rent their properties to tenants. In 2005, the City enacted the 30-percent rule, currently codified as Winona, Minn., Code § 33A.03 (2014), to regulate the density of rental properties in certain residential zones. The purpose of the rule, when enacted, was to decrease conversions from owner-occupied properties to rental properties, which, the City reasoned, would decrease crime and nuisance complaints and improve the quality of life in Winona. In residential zones subject to the 30-percent rule, homeowners generally may not obtain rental licenses for their properties if more than 30 percent of the lots on that block already are licensed as rental properties. For example, on a 12-property block subject to the rule, only four lots may be licensed as rental properties.¹¹

^{4*4} Appellants sued the City in 2011 after each sought and was denied a standard rental license. Appellant Holly Richard purchased a house in Winona in December 2006. When

she attempted to obtain a rental license in 2009, the City erroneously told her that no licenses were available for her block. After Richard filed the lawsuit, the City issued a standard rental license to her. Appellant Ethan Dean bought a house near Winona State University in 2006. He rented his house without a license after his job required him to work in Iraq in 2009. The City granted Dean a temporary, nontransferable rental license in 2010, but declined to issue a standard rental license. In November 2012, after failing to sell the home, Dean transferred it to Wells Fargo Bank by warranty deed to avoid foreclosure. Appellants Ted and Lauren Dzierzbicki purchased a house in 2007 near the university for their daughter and student renters to live in while attending college. After the Dzierzbickis learned that they could not rent the home as planned because of the 30-percent rule, they put the house on the market in December 2009.

The parties filed cross-motions for summary judgment in January 2013. In their cross-motion, appellants sought a declaratory judgment that the 30-percent rule violates their equal-protection, procedural-due-process, and substantive-due-process rights under the Minnesota Constitution. Appellants also alleged that the ordinance exceeds the City's zoning power under Minn.Stat. § 462.357, Minnesota's zoning enabling statute. See *id.* (describing a municipality's authority for zoning and the limitations of that authority). Specifically, appellants claimed that the ordinance is unlawful under section 462.357 because it impermissibly regulates the ownership or occupancy of property, rather than the use of property. Appellants sought injunctive relief and nominal damages. The district court granted the City's motion for summary judgment in April 2013, concluding that the 30-percent rule is not unconstitutional and that the City had authority to enact it. The court of appeals affirmed. [Dean v. City of Winona, 843 N.W.2d 249, 263 \(Minn.App.2014\)](#).

The Dzierzbickis sold their house in March 2014, one month after the court of appeals issued its decision. At that time, the Dzierzbickis were the only appellants still seeking a rental license from the City. Appellants filed a petition for review, which we granted in May 2014. After we granted appellants' petition for review, the City moved to dismiss the appeal for lack of jurisdiction.

II.

We first consider the City's motion to dismiss. The City argues that dismissal is warranted because the case is not justiciable and nominal damages cannot be recovered under the Minnesota Constitution.

Justiciability is an issue of law, which we review de novo. [*McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 \(Minn.2011\)](#). In the context presented here, the jurisdictional question is one of mootness. See [*In re Schmidt*, 443 N.W.2d 824, 826 \(Minn.1989\)](#) (observing that when we are unable to grant relief, the issue raised is deemed moot). The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved. [*State v. Rud*, 359 N.W.2d 573, 576 \(Minn.1984\)](#). Rather, it is a "flexible discretionary doctrine." *Id.* Mootness has been described as "'the doctrine of standing set in a time frame: The requisite personal interest that must exist ^{5*5} at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" [*Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. \(TOC\), Inc.*, 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 \(2000\)](#) (citation omitted). An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible. [*In re Minnegasco*, 565 N.W.2d 706, 710 \(Minn.1997\)](#).

Appellants acknowledge that they do not have a current interest in the litigation beyond their claim for nominal damages under the Minnesota Constitution and that their claims for declaratory and injunctive relief are moot. Nonetheless, they argue that we should apply two discretionary exceptions to our mootness doctrine. First, appellants maintain that the issues raised are capable of repetition, yet likely to evade review. See [*Kahn v. Griffin*, 701 N.W.2d 815, 821 \(Minn.2005\)](#). Second, appellants contend that this case is "functionally justiciable" and of "statewide significance." See [*Rud*, 359 N.W.2d at 576](#). The City counters that neither exception applies. We address each argument in turn.

A.

We begin by considering the exception to the mootness doctrine for issues that are capable of repetition, yet evade review. This two-pronged exception applies to issues that are likely to reoccur, but also would continue to evade judicial review. [*Kahn*, 701 N.W.2d at 821](#). These circumstances exist when there is a reasonable expectation that a complaining party would be subjected to the same action again *and* the duration of the challenged action is too short to be fully litigated before it ceases or expires. *Id.*

This case does not meet the "evading-review" prong of the exception because the City's enforcement of the ordinance is ongoing. The constitutionality of the 30-percent rule is not an issue that, by its character, is "too short to be fully litigated prior to its cessation or expiration." *Id.* (citation omitted); see [*State v. Brooks*, 604 N.W.2d 345, 348 \(Minn.2000\)](#) (noting that future defendants might have "no remedy" if the case were not

decided because "[m]ost pretrial bail issues are, by definition, short-lived"). Traditionally, cases that have been found to evade review involve disputes of an inherently limited duration, such as prior restraints on speech, see [*Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 546-47, 96 S.Ct. 2791, 49 L.Ed.2d 683 \(1976\)](#) (holding that a judge's order limiting the press's reports about a trial would escape judicial scrutiny because such orders would always expire before appellate review), and short-term mental-health confinement orders, see [*In re Blilie*, 494 N.W.2d 877, 879-81 \(Minn.1993\)](#) (concluding that the issue of whether plaintiff's treatment by neuroleptic medication upon her guardian's consent was constitutional was capable of repetition yet evaded review because, although plaintiff had been discharged from state custody, she could again be subjected to 90 days of treatment with the medication if her guardian admitted her to a treatment center); [*State ex rel. Doe v. Madonna*, 295 N.W.2d 356, 361 \(Minn.1980\)](#) (reviewing the constitutionality of three-day-hold orders for mentally ill appellants who were no longer subject to confinement at the time of their challenge).

The time frame of this case makes clear that a challenge to the 30-percent rule is not, by definition, "short-lived." [*Brooks*, 604 N.W.2d at 348](#). The last of the property owners seeking a rental license here sold their property after the court of appeals' opinion was issued and shortly before we granted appellants' petition for further review. Appellants' case had been initiated three years earlier, a duration [6*6](#) that typically would provide ample time for judicial review. In fact, if appellants had pleaded additional claims or joined plaintiffs while their case was pending before the district court, this case may have reached us before becoming moot. Because there is nothing about this case that is of inherently limited duration, this dispute is not capable of repetition, yet evading review.

B.

We have the discretion to consider a case that is technically moot when the case is "functionally justiciable" and presents an important question of "statewide significance that should be decided immediately." [*Rud*, 359 N.W.2d at 576](#). "A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial [decision-making]." *Id.* Although the record here is well-developed, this case does not present an urgent question of statewide significance.

We apply this exception narrowly. In *Rud*, for example, the issue was whether defendants accused of sexual abuse of children should be allowed to call child witnesses and victims at a hearing on a motion to dismiss criminal charges. *Id.* at 575. The court of appeals held that

defendants had a limited right to call the children as witnesses, depending on several factors. *Id.* at 577. After we granted the State's petition for further review, the State dismissed the charges. *Id.* at 576. We proceeded with the case, however, because "a failure to decide [the issues when presented] could have a continuing adverse impact in other criminal trials." *Id.* Had we not decided the substantive issue in *Rud* immediately, the court of appeals' holding, which was erroneous in light of our decision in [State v. Florence, 306 Minn. 442, 239 N.W.2d 892 \(1976\)](#), could have resulted in the broad use of probable cause hearings as "a substitute for disclosure and discovery." [Rud, 359 N.W.2d at 578](#) (quoting [Florence, 306 Minn. at 450, 239 N.W.2d at 898](#)).

Other instances in which we have found cases to be functionally justiciable also involved matters of statewide significance. In *Jasper v. Commissioner of Public Safety*, for example, we concluded that the proper approval by the Commissioner of Public Safety of a breath-testing instrument for suspected impaired drivers was an issue of statewide significance because the model was "the only breath-testing instrument currently in use in this state and there [had] been substantial litigation in the district courts as to whether the instrument was properly approved." 642 N.W.2d 435, 439 (Minn.2002); see also [Kahn, 701 N.W.2d at 823](#) (reaching the merits on a challenge to election procedures in Minneapolis because the procedures were similar to those used in other Minnesota cities, impacting almost 14 percent of the state's population). Similarly in *Brooks*, the issue of cash-only bail orders reached our court a second time within one year after we dismissed [State v. Arens, 586 N.W.2d 131 \(Minn.1998\)](#), as moot. See [604 N.W.2d at 348](#). We reached the merits in *Brooks* because the failure to do so posed the risk of creating "a class of defendants with constitutional claims but no remedy." *Id.*

Most recently, in *In re Guardianship of Tschumy*, we addressed whether a court-appointed guardian may consent to removing a ward from life support, even though the issue was technically moot because the ward's life-support systems had been disconnected as authorized by a district court order. 853 N.W.2d 728, 741 (Minn.2014) (plurality opinion). We reached the merits in part because the central issue, whether [7*7](#) a guardian needs prior court approval to consent to the removal of life-sustaining treatment, implicated the State's *parens patriae* power "to protect `infants and other persons lacking the physical and mental capacity to protect themselves,'" *id.* at 740 (quoting [In re Pratt, 219 Minn. 414, 422, 18 N.W.2d 147, 152 \(1945\)](#)), and because more than 12,000 Minnesotans were wards under State supervision and a decision was needed to "clarify for the guardians and their wards the scope of the guardians' authority to make one of life's most fundamental decisions," *id.*

This case does not present the urgency or significance that underpinned *Jasper*, *Rud*, and *Tschumy*. The decision of the court of appeals does not affect the efficiency and validity of criminal proceedings across the state, for example, nor do the issues presented involve a special area of law or vital "issues of life and natural death." *Tschumy*, 853 N.W.2d at 740 (plurality opinion). Moreover, there is no inherent limitation on the time available for appeal as there was for cash-only bail orders in [Brooks](#), 604 N.W.2d at 348. In sum, this case does not present an issue that must "be decided immediately." [Rud](#), 359 N.W.2d at 576.

The right to rent one's property is an important property interest. But this case does not present the urgency and broad impact that were present in cases determined to be functionally justiciable and of statewide significance that required an immediate decision. Other municipalities impose rental limitations. However, they do not operate in an identical fashion.^[2] When, as here, the issues presented are limited to the homeowners of one municipality, the case does not present the urgency and impact that were present in other cases that we have found functionally justiciable and of statewide significance. Accordingly, we decline to apply this limited exception here.

III.

Appellants also maintain that this case is not moot because they seek nominal damages based on an implied cause of action under the Remedies Clause of the Minnesota Constitution.^[3] See Minn. Const. art. I, § 8. Under this theory, appellants contend that the Remedies Clause provides an independent cause of action for constitutional violations.^[4] Arguing that they seek 8*8 nominal damages under this cause of action, appellants contend that this case remains a live controversy.

However, appellants raised their "implied cause of action" theory for the first time only after their appeal had reached our court. Appellants referenced the Remedies Clause in their second amended complaint as a jurisdictional basis for declaratory and injunctive relief, but they never advanced a claim or an argument for nominal damages at the district court founded on the Remedies Clause. Appellants' jurisdictional allegations tied *only* their claims for declaratory and injunctive relief to the Remedies Clause. "It is well established that where a plaintiff litigates his case on one theory only, he is precluded from asserting new theories on appeal." [John W. Thomas Co. v. Carlson-LaVine, Inc.](#), 291 Minn. 29, 33, 189 N.W.2d 197, 200 (1971). In particular, the appellants did not plead a cause of action for nominal damages under the Remedies Clause in their complaint. The Minnesota Rules of Civil Procedure require that a civil complaint "contain a short and plain statement of the

claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. A complaint should put a "defendant on notice of the claims against him." [Mumm v. Mornson, 708 N.W.2d 475, 481 \(Minn.2006\)](#). Here, appellants pleaded constitutional claims of equal protection, substantive due process, and procedural due process, and made a statutory claim that the City exceeded its zoning authority. While appellants' prayer for relief included a generalized request for "nominal damages of \$1.00 for violations of their constitutional rights," that request, untethered to a specific claim or constitutional provision, was not enough to implicate the Remedies Clause. In other words, it did not put respondents on notice of the cause of action for nominal damages under the Remedies Clause, which appellants now present to our court.

Only on June 26, 2014, in response to respondent's motion to dismiss on mootness grounds before our court, did appellants advance the argument that their request for nominal damages presented an implied cause of action under the Remedies Clause of the Minnesota Constitution. That argument came too late. Amendments to pleadings, which "range from a simple clarification to a whole new theory of the case," [Nw. Nat'l Bank of Minneapolis v. Shuster, 388 N.W.2d 370, 372 \(Minn.1986\)](#), generally must occur before the action has been placed on the trial calendar, unless the amending party is given leave to amend by the district court or the adverse party, see Minn. R. Civ. P. 15.01 (stating that a party may amend a pleading by leave of court, and amendments should be freely granted when justice so requires); see also [Shuster, 388 N.W.2d at 372](#) ("[F]airness demands recognition of the right to respond and to raise any defense to the newly pleaded material without seeking the court's permission.").

Therefore, we decline to consider appellants' Remedies Clause theory at this juncture. We do not reach constitutional claims unless required to do so. See [Brayton v. Pawlenty, 781 N.W.2d 357, 363 \(Minn.2010\)](#). Under the facts and circumstances of this case, the alleged harm to appellants' interests has ceased. There is no live case or controversy regarding the 9*9 claims that appellants actually pleaded in their complaint. In short, this case is moot. We will not consider issues of constitutional interpretation in a case that we have no power to decide.

IV.

In conclusion, appellants' claims are moot. Because no exception to our mootness doctrine applies, we grant the City's motion to dismiss.

Appeal dismissed.

Concurring, ANDERSON and STRAS, JJ.

Concurring, LILLEHAUG, J.

ANDERSON, Justice (concurring).

I concur in the result.

STRAS, Justice (concurring).

I join in the concurrence of Justice Anderson.

LILLEHAUG, Justice (concurring).

I agree that the case must be dismissed as moot. I join Parts I and II and the result of the opinion of the court, departing only from the analysis in Part III.

Part III is premised on the majority's understanding that appellants now seek nominal damages based on an implied cause of action under the Remedies Clause. Based on this understanding, and because the Remedies Clause was not pleaded as a cause of action, the majority avoids the question of whether the prayer for nominal damages saves the case from mootness.

As I understand appellants' position, they do not allege, and have never alleged, that their *injury or wrong*—their cause of action—is based on the Remedies Clause. Instead, I understand appellants to seek nominal damages as a *remedy* for alleged injury or wrong to their Minnesota constitutional rights of equal protection, substantive due process, and procedural due process.

Analytically, then, we cannot avoid appellants' argument that, even if their three constitutional claims otherwise have been mooted—making equitable and declaratory relief unavailable—the case lives on because they prayed for "nominal damages of \$1.00."^[1] Their novel theory is that the Remedies Clause requires the availability of a nominal damages remedy. I disagree.

Appellants have not drawn to our attention any Remedies Clause precedent that resuscitates an otherwise moot case, and I am aware of none. And I see nothing in the Remedies Clause as commanding (at least in the absence of implementing legislation) that the judicial remedy of purely nominal damages be available against a municipality.

This is not a situation where appellants had no remedy whatsoever. Equitable and declaratory relief, which appellants sought in their prayer for relief, were available. Such relief became unavailable because of appellants' own strategic litigation choices. At no point did appellants seek to amend their complaint to add plaintiffs with live claims. Nor did appellants seek expedited relief. Minnesota procedure provides for temporary remedies such as restraining orders and injunctions, see Minn. R. Civ. P. 65, and declaratory relief, which, "liberally construed and administered" under Minn.Stat. § 555.12 (2014), may be secured by "speedy hearing," Minn. R. Civ. P. 57.

^{10*10} Nor did appellants invoke Minnesota's constitutional and statutory remedies for the municipal taking, destruction, or damage of private property. See Minn. Const., art. I, § 13 ("Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured."); Minn. Stat. ch. 117 (2014) (governing eminent domain); [*Wegner v. Milwaukee Mut. Ins. Co.*, 479 N.W.2d 38, 42 \(Minn.1991\)](#) ("Once a 'taking' is found, compensation is required by operation of law"). Nor did appellants seek compensation for actual damages; rather, they sued only the municipality. See [*Thiede v. Town of Scandia Valley*, 217 Minn. 218, 231-33, 14 N.W.2d 400, 408-09 \(1944\)](#) (damages awarded against individual defendants for eviction in violation of Minnesota Constitution, but, "in the absence of statute," township had no liability for damages). Nor did appellants plead any federal constitutional claim, whether under 42 U.S.C. § 1983 (2012) or otherwise. See [*Carey v. Piphus*, 435 U.S. 247, 266-67, 98 S.Ct. 1042, 55 L.Ed.2d 252 \(1978\)](#) (nominal damages available under section 1983).

As Part III notes, we do not reach the merits of constitutional claims unless we are required to do so. See [*Brayton v. Pawlenty*, 781 N.W.2d 357, 363 \(Minn. 2010\)](#). In the circumstances of this case, the Remedies Clause does not require that we reach the merits.

[1] An exception exists for blocks in which more than 30 percent of the properties were licensed as rental properties before the rule took effect in 2005. Winona, Minn., Code § 33A.03(i)(i). Homeowners who had rental licenses before the 30-percent rule was enacted may continue to renew those licenses, even if the percentage of rental property on their blocks is above 30 percent. *Id.*

[2] At least three other municipalities have enacted similar percentage-based rental ordinances with varying limitations on rental property. See, e.g., Mankato, Minn., Code § 5.42, subd. 20 (2014) (requiring additional procedures for new owners of an already licensed property to maintain a rental license and imposing a 25-percent rental cap); Northfield, Minn., Code § 14-97 (2015) (requiring additional procedures for a new owner of an already licensed property to obtain a new license and imposing a 20-percent rental cap); W. Saint Paul, Minn., Code, § 435.05, subd. 11 (2014) (disallowing the transfer of licenses to new owners and imposing a 10-percent rental cap). Additionally, the circumstances under which these ordinances were enacted vary and, when challenged, require independent consideration by a district court.

[3] The text of the Remedies Clause provides:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

Minn. Const. art. I, § 8.

[4] In two section headings of their response to the City's motion to dismiss, appellants explicitly state that they seek a private cause of action under the Remedies Clause. Appellants also argue that "the Minnesota Constitution, through its Remedies Clause, provides a cause of action for constitutional torts by which [appellants] are entitled to nominal damages," and state that the "Remedies Clause protects rights ... by providing an independent basis for seeking relief, i.e., a private cause of action." Clearly, appellants are requesting that we recognize a private cause of action under the Remedies Clause. Contrary to the concurrence's characterization, this is not merely our "understanding" of appellants' position—rather, it is the express argument that appellants make multiple times in their response to the City's motion to dismiss.

[1] Nominal damages are "[a] trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated." *Black's Law Dictionary* 473 (10th ed.2014).

E. North Mankato Police Department's 2015 Year End Report



Pictured: Officer Vonberge

North Mankato Police Department

2015 Year End Report

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General Information

North Mankato Police Department

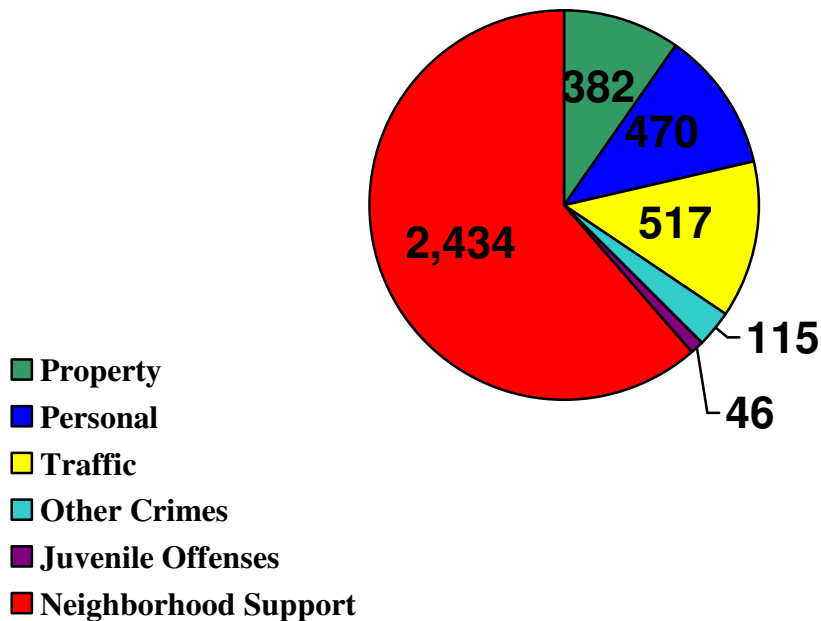
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Email: nmpd@nmpd.org
Tip Information Email: tips@nmpd.org

The City of North Mankato Code of Ordinances Access: http://www.amlegal.com/northmankato_mn/
Court Records Access: <http://pa.courts.state.mn.us/default.aspx>.

2015 Police Reports





2015 Statistics at a Glance



Personal Crimes	2015	2014	2013
Homicide (includes attempts)	0	0	0
Terroristic Threats	8	16	12
Criminal Sexual Conduct	11	14	8
Robbery	1	3	2
Assault	17	31	40
Domestic Assault	38	48	41
Harassment	17	35	27
Harassing Communications	35	48	36
Child/Vulnerable Adult Protection	197	239	247
Domestic Disturbance	92	82	80
Disorderly Conduct	31	32	17
All other reports	40	41	31
Total Personal Crime Reports	470	589	541
Property Crimes	2015	2014	2013
Residential Burglaries	22	28	42
Non-Residential Burglaries	13	16	23
Theft from Building	53	43	54
Theft from Vehicle	45	66	53
Motor Vehicle Theft	6	14	15
Motor Vehicle Tampering	12	19	7
Financial Theft	40	47	28
Shoplifting	2	7	4
Property Damage	86	86	97
Arson / Negligent Fires	8	3	5
Trespassing	24	12	11
All other reports	71	103	81
Total Property Crime Reports	382	444	420
Other Crimes	2015	2014	2013
Narcotics	43	33	34
Underage Consumption	6	3	9
Weapons	11	7	8
Liquor Violations	7	8	2
All other reports	48	41	25
Total Other Crime Reports	115	92	78

Juvenile Offenses	2015	2014	2013
Alcohol	4	3	1
Runaways	28	15	16
Curfew	9	4	1
Tobacco	3	1	0
All Other reports	2	5	3
Total Juvenile Offense Reports	46	28	21
Traffic Related	2015	2014	2013
Accident Reports on Public Property	173	167	138
Accident Reports on Private Property	47	53	58
Bicycle Accidents (No Motor Vehicle)	3	4	1
Driving Under the Influence	48	36	25
Parking Violations	88	37	28
Violation Road & Driving Complaints	158	53	59
Total Traffic Related Reports	517	350	309
Neighborhood Support	2015	2014	2013
Medicals	401	382	383
Animal Control	220	153	155
Public Assists	186	93	97
Suspicious Activity	177	66	121
Assist Other Law Enforcement Agencies	281	105	123
Gun Purchase Permits Applications	151	123	168
Information Only	75	42	45
Civil Complaints	129	86	86
Alarm Calls	119	89	81
Welfare Checks	100	78	58
Residence Checks	102	45	54
Funeral Escorts	12	16	23
All other reports	482	347	342
Total Neighborhood Support Reports	2,435	1,625	1,736

The North Mankato Police Department takes all reports very seriously and diligently investigates each report.

TOTAL REPORTS	4,600	3,128	3,105
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Personal Crime Statistics

Type of Complaint	2015	2014	2013
Homicide	0	0	0
Attempted Homicide	0	0	0
Robbery	1	3	2
Criminal Sexual Conduct	11	14	8
Terroristic Threats	8	16	12
Assault	16	30	37
Assault/Domestic Assault with a Deadly Weapon	3	3	6
Domestic Assault	36	46	38
Bomb Threat	0	1	0
Child Protection	183	221	231
Vulnerable Adult Protection	14	18	16
Domestic Disturbance	92	82	80
Obscenity	2	4	1
Indecent Exposure	0	3	3
Peeping Tom	1	2	0
Kidnapping/Abduction/False Imprisonment	0	1	0
Disorderly Conduct	31	32	17
Harassment	17	35	27
Harassing Communications	35	48	36
Violation Court Order / Order for Protection	20	30	27
TOTAL PERSONAL CRIME CALLS:	470	589	541

*The title obscenity replaces the title of pornography from the 2014 and 2013 year-end reports.



Property Crime Statistics

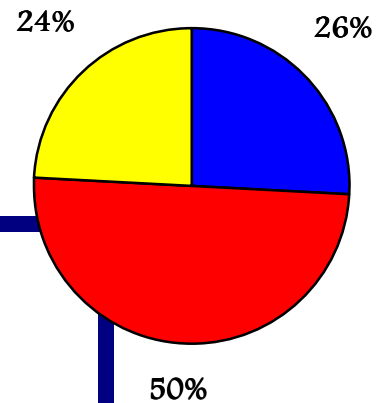
Type of Complaint	2015	2014	2013
Arson / Negligent Fires	8	3	5
Burglary Residence	22	28	42
Burglary Non-residence	13	16	23
Financial Theft			
Fraud/Identity Theft	16	9	8
Forgery/Counterfeiting	4	12	1
Theft by Check	1	0	1
Credit Card Fraud	18	25	16
Fraud/NSF Checks	1	1	2
Property Damage			
Business Damage	4	8	6
Private Damage	65	71	83
Public Damage	17	7	8
Property Theft			
Theft of Motor Vehicle	6	14	15
Theft of ATV/MC/Moped	1	1	1
Theft of Trailers/Snowmobile/Boat	0	1	1
Tamper with Motor Vehicle	12	19	7
Theft from Building	53	43	54
Theft from Yard	19	21	21
Theft from Motor Vehicle	45	66	53
Theft from Boat	1	5	2
Theft from Coin Machine	0	3	0
Theft of Self-Serve Gas	9	20	16
Shoplifting	2	7	4
Bicycle Theft	16	23	31
Theft of Mail	1	1	0
Theft of Services	6	4	3
Theft by Swindle/Scam	17	21	5
Possession of Stolen Property	1	4	1
Trespassing/Prowlers	24	12	11
TOTAL PROPERTY CRIME CALLS:	382	444	420



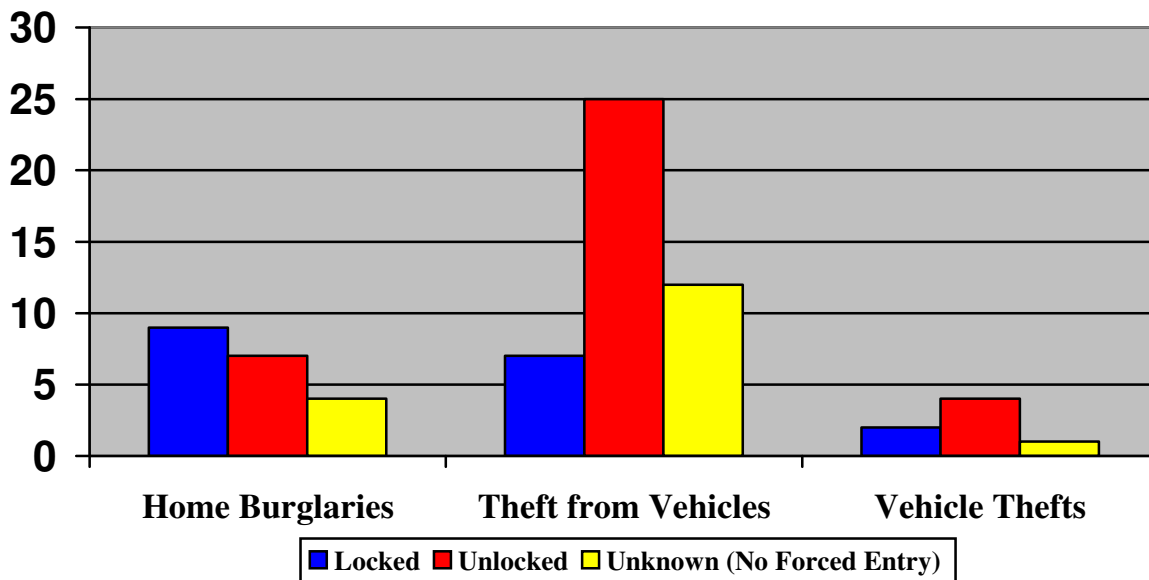
The North Mankato Police Department had 6 vehicles stolen in 2015. After investigation, two vehicles still remain missing; one was unlocked with the keys inside and one was stolen during a test drive. Four vehicles were recovered. One vehicle was parked on private property and towed by the property owner, one was stolen by a family member, two were recovered in another jurisdiction.

The Police Department encourages residents to keep valuables out of sight and secure their homes, garages, and motor vehicles at all times.

Any suspicious activity should be reported immediately by calling 9-1-1 or the non-emergency dispatch number (507) 931-1570.



Theft/Burglary Report Comparison



Other Crime Statistics

Type of Complaint	2015	2014	2013
Fleeing Police	3	7	2
False Information to Police	3	4	3
Illegal Kennel	0	0	1
Impersonating a Police Officer	0	0	1
Narcotics	43	33	34
Obstructing Legal Process	0	3	1
Public Nuisance	26	16	11
Underage Consumption of Alcohol (18 – 21 years)	6	3	9
Liquor Hours of Sale	5	4	2
Liquor Furnishing to Minors	0	1	0
Liquor Possession	2	3	0
Littering	10	8	3
Fireworks Discharge/Possession	6	3	3
Weapons Violations	11	7	8
TOTAL OTHER CRIME CALLS:	115	92	78

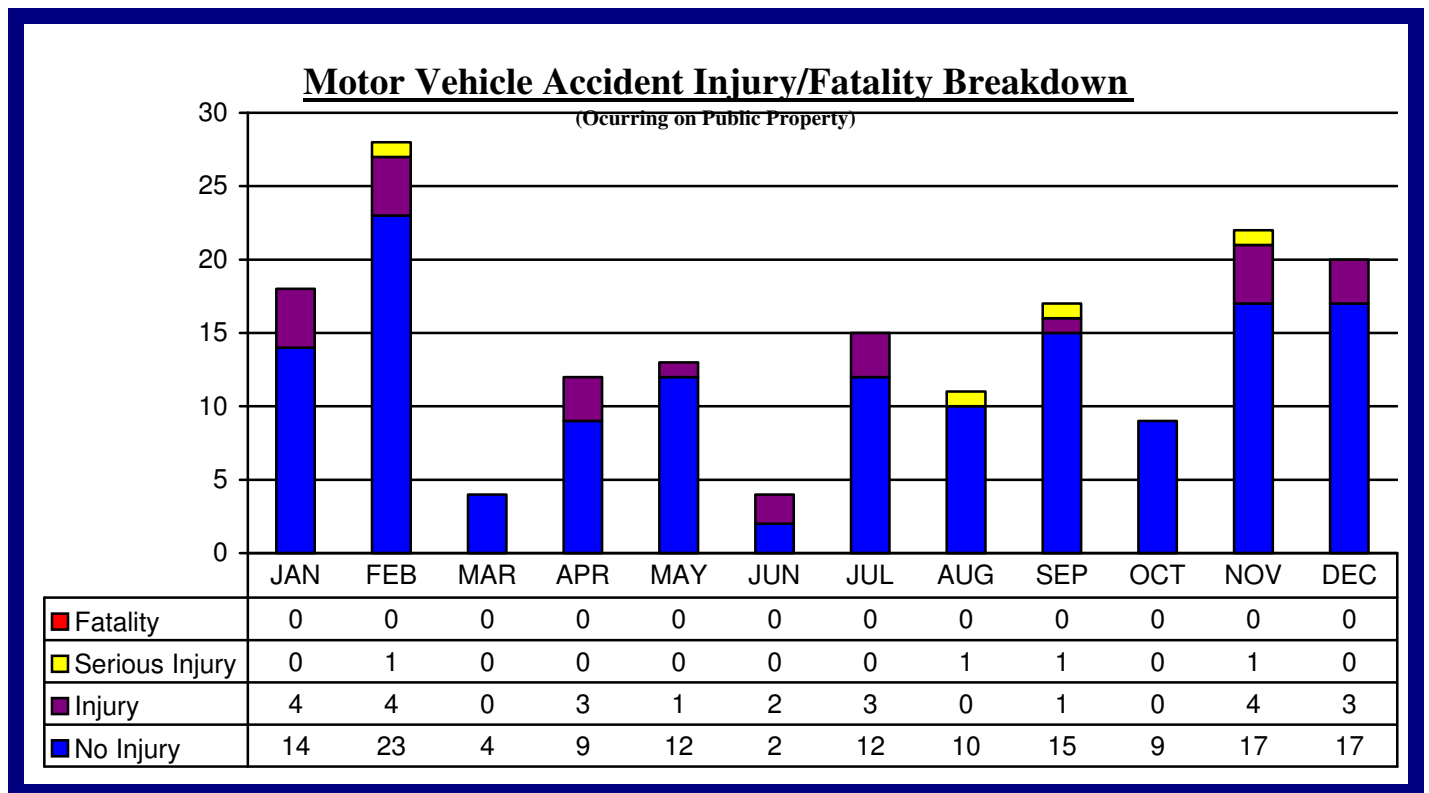


Juvenile Status Statistics

Type of Complaint	2015	2014	2013
Curfew Violations	9	4	1
Incorrigible Juvenile	1	3	3
Runaways	28	15	16
Truancy Reports	1	2	0
Underage Consumption of Alcohol (Under 18)	4	3	1
Underage Tobacco Possession/Use	3	1	0
TOTAL JUVENILE STATUS OFFENSES:	46	28	21

Traffic Related Statistics

Traffic Related Statistics	2015	2014	2013
Motor Vehicle Accident Reports	220	220	196
Occurring on Public Property	173	167	138
Occurring on Private Property	47	53	58
Bicycle Accidents (No Motor Vehicle Involvement)	3	4	1
Driving While Under the Influence	48	36	25
Violations Road & Driving Complaints	158	53	59
Parking Violations/Complaints	88	37	28
TOTAL TRAFFIC RELATED CALLS:	517	350	309

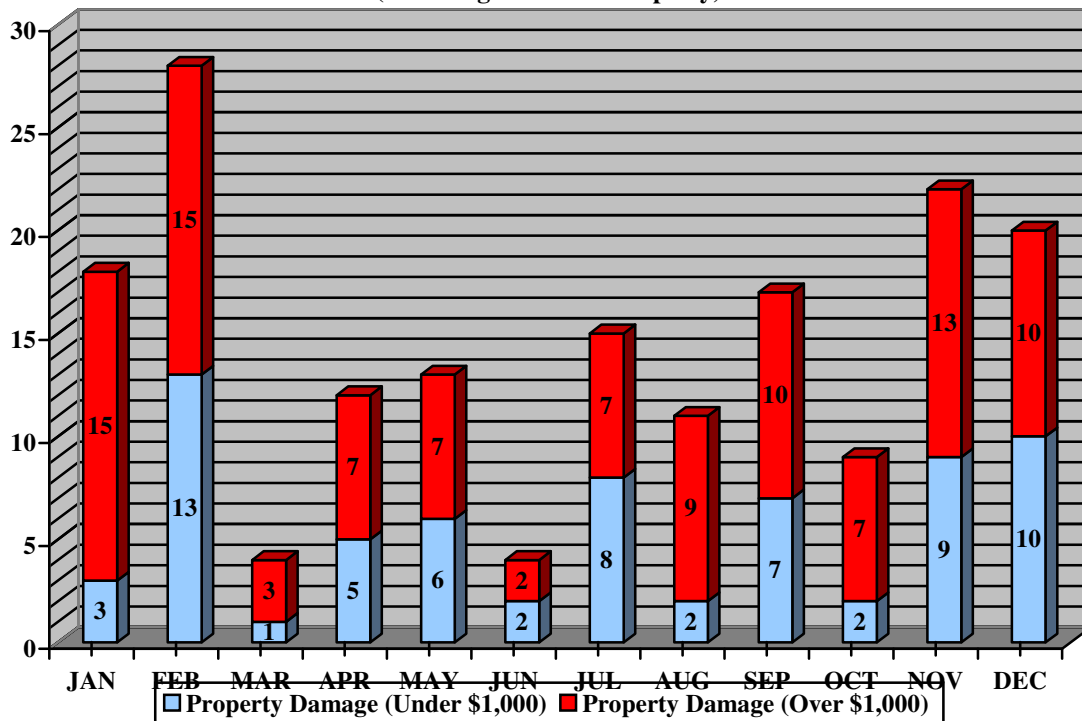


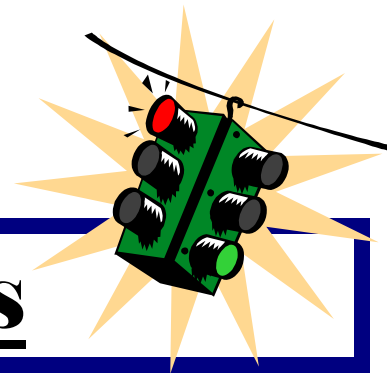
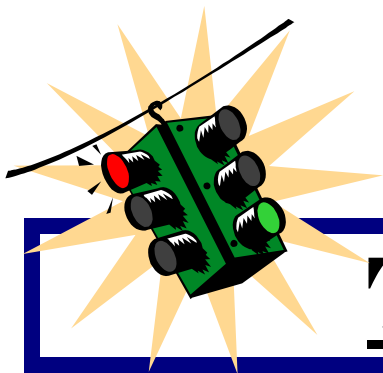
Total Public Motor Vehicle Accidents	173
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Accidents involving an Under the Influence Driver	5
Involving a Pedestrian	2
Involving Bicycle	1

Motor Vehicle Accidents Breakdown

(Ocurring on Public Property)





Traffic Citations

<u>Violation</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
Careless/Exhibition/Reckless Driving	12	11	4
Child Restraint	1	1	0
Driver's License Violation	32	19	23
Driving After Revocation/Cancellation/Suspension of License	91	42	38
Driving While Intoxicated	63	49	31
Equipment Violation	1	8	1
Failure to Yield Right of Way	6	12	13
Fail to Use Due Care	14	12	5
Improper Registration	17	26	8
Leaving the Scene of Accident	5	6	2
No Insurance/No Proof of Insurance	99	52	62
Open Bottle/Allow Open Bottle	5	4	2
Parking Tickets	74	90	47
Seatbelt	81	93	121
Speeding	98	108	90
Semaphore/Stop Sign Violation	33	24	21
All Other Violations	3	4	16
Total:	635	561	484



Neighborhood Support Statistics

Type of Complaint	2015	2014	2013
911 Verifications	65	11	20
Alarm Calls	119	89	81
Animal Control			
Animal Complaints	209	144	140
Animal Bites	11	9	15
Assist Other Law Enforcement Agencies	281	105	123
Civil Complaints	129	86	86
Fire Calls	67	54	43
Found Property	67	69	60
Funeral Escorts	12	16	23
Gun Purchase Permits Applications	151	123	168
Information Only	75	42	45
Lost Property	33	12	10
Medicals			
Sick Cared For	287	252	267
Home Accidents	50	72	60
Occupational Accidents	4	3	7
Public Accidents	6	8	3
Intoxicated Individuals	54	47	46
Mentally Ill Persons	26	28	22
Missing Persons	14	8	7
Neighborhood Problems	12	15	25
Noise Complaints	70	72	48
Open Door/Window	19	5	4
Public Assists			
Motorist Assist	52	14	16
Public Education	24	16	18
All Other Public Assists	109	63	63
Residence Checks/Extra Patrol Requests	102	45	54
Predatory Offender Notification/Total Predatory Offenders	23	22/16	23/34
Solicitors/Scam Complaints	23	2	2
Sudden Death	14	15	13
Suicides	1	1	1
Suicides Attempts	16	12	11
Suicide Threats	33	27	42
Suspicious Activity	177	66	121
Welfare Checks	100	78	58
TOTAL NEIGHBORHOOD SUPPORT CALLS:	2,435	1,625	1,736

***The speed trailer was retired in 2014. Speed trailer reports from the 2013 year-end reports have been added to the all other public assist category.

The North Mankato Police Department prides itself in providing superior law enforcement services to the community. Some of the ways that this is done is through neighborhood support activities such as but not limited to mediation collection, animal control and public education.

Medication Collection

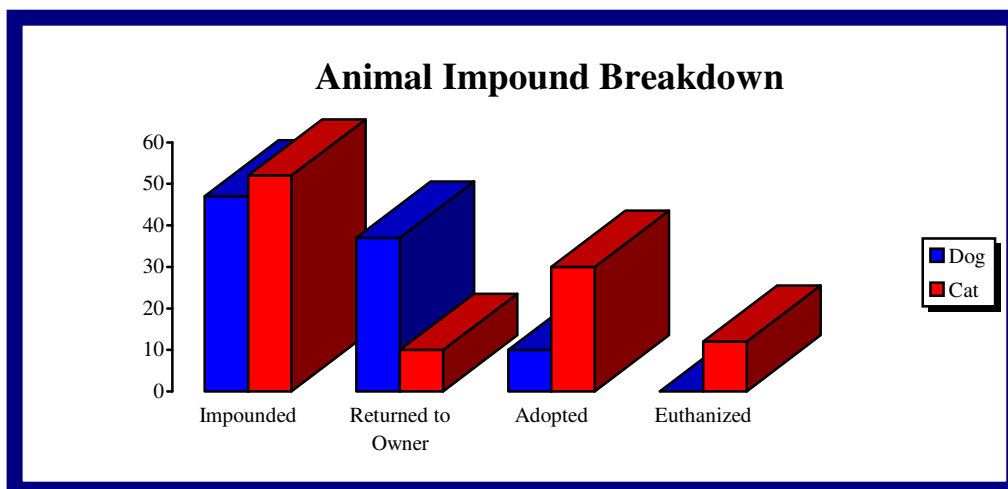
In 2015, the North Mankato Police Department installed a medication disposal box in the lobby of the Police Department and properly disposed of 349 pounds of medicine to protect human health and the environment.



Animal Control

The North Mankato Patrol Officers are responsible for responding to all animal control issues. This includes animals at-large, animal abuse/neglect, and animals disturbing the peace.

In 2015, the North Mankato Police Department responded to 209 animal related reports and impounded 99 animals compared to 83 impoundments in 2014 for a cost of \$3,813.40 compared to \$2,761.84 in 2014.



The City of North Mankato maintains an Impound Agreement with Premier Veterinary Center of Mankato.

Public Education

The North Mankato Police Department conducted the following public education in 2015:

DATE	LOCATION	TOPIC	OFFICER	ATTENDANCE
1/19	Good Shepherd Church	Race Relations	701	30
1/20	Mankato Clinic	Sexual Assault Training for Nurses	710	20
2/10	Belgrade Methodist Church	Law Enforcement for Cub Scouts	704	6
2/27	Garfield Elementary	Making Positive Decisions	710	275
4/17	Crossview Covenant Church	Public Safety for Tapestry	710/711	30
4/23	Hoover Elementary	Severe Weather	715	77
4/23	Monroe Elementary	Severe Weather	715	80
5/7	Children's Museum	Bike Safety	801/802/820	100
5/12	Mankato Civic Center	Emergency Management and Senior Safety for Senior Expo	701	200
5/15	Crossview Covenant Church	Tapestry Graduation	701/710/711	20
6/15	Taylor Library	Read with a Hero	706	15
6/22	Safety Camp at Fire Station	Personal Safety	706	25
7/8	Police Department	Daycare Police Department Tour	700/712	15
8/4	North Mankato Neighborhoods	Night to Unite	706/703/701	100
10/25	Nicollet County	ATV Safety	704	12
10/30	South Central College	Domestic Violence	716	40
11/3	Best Western	Human Trafficking	710	60
11/10	Mayo Clinic Health System	Sexual Assault Training for Nurses	710	13
11/12	Monroe Elementary	Winter Safety	715	100
11/12	Hoover Elementary	Winter Safety	715	95
11/19	Girl Scouts/Nicollet	Female Police Officer	709	7
12/18	Police Department	Boy Scouts Police Department Tour	704	30
12/18	Lincoln School	Tapestry Graduation	701	24
12/30	Mayo Clinic Health System	Sexual Assault Training for Nurses	710	10
2015 Total Public Education: 24		2014 Total Public Education: 16		



North Mankato Police Reserves

FOR THE YEAR ENDING DECEMBER 31, 2015



Photo Taken 1965

The North Mankato Police Department has a long history of having a reserve program. The Special Police Reserve Unit was established during the Minnesota River Floods of April of 1965. The Special Police were formed to patrol the City to secure the homes and businesses. The dikes were patrolled and inspected and assistance was given to many volunteers who helped build and maintain the dikes. First aid, meals, and transportation were also provided by the Reserves.

The Reserve unit was made permanent in the fall of 1965 and training was established for traffic control along with crowd control. North Mankato Fun Days and other events were provided with policing to supplement the regular police force.

Today, our reserve officers are still a volunteer position with the City of North Mankato. Reserve officers provide the City with traffic and crowd control during the many parades and races held throughout the year. All of our reserve officers have other employment and we are very grateful for the time and service they provide us.

We currently have 15 Reserve Officers dedicated to the community. These Reserve Officers collectively volunteered over 1,200 hours this past year.

In 2015, The North Mankato Police Reserves assisted the community with a variety of events including but not limited to the following; North Mankato Fun Days, Fun Days Triathlon, Kiwanis Holiday Lights, MCHS Bike

Safety Rally, Taylor Library Fun Run, Gorilla Run, A.B.A.T.E Parade, Movies in the Park, Bier of Belgrade, Girls State Softball Tournament, Mankato Marathon, Blues of Belgrade and YMCA Fun Run.

E. 1 North Mankato Police Department: Distribution of Police Calls

CITY OF NORTH MANKATO DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	Single-Family: Owner Occupied	One to Two Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	6	2	560.50	153.50
Neighborhood Support	468	118	7.19	2.60
Other Crimes	28	7	120.11	43.86
Personal Crime	102	43	32.97	7.14
Property Crime	112	31	30.03	9.90
Traffic Related	12	3	280.25	102.33
Uncategorized	10	3	336.30	102.33
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	6	2	563.33	154.5
Neighborhood Support	512	98	6.60	3.15
Other Crimes	50	7	67.60	44.14
Personal Crime	105	46	32.19	6.72
Property Crime	197	32	17.16	9.66
Traffic Related	17	0	198.82	0.00
Uncategorized	13	3	260.00	103.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	6	3	568.67	103.00
Neighborhood Support	505	101	6.76	3.06
Other Crimes	20	10	170.60	30.90
Personal Crime	121	31	28.20	9.97
Property Crime	126	28	27.08	11.04
Traffic Related	11	6	310.18	51.50
Uncategorized	12	2	284.33	154.50
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	9	3	382.22	104.33
Neighborhood Support	518	113	6.64	2.77
Other Crimes	49	14	70.20	22.36
Personal Crime	114	62	30.18	5.05
Property Crime	130	31	26.46	10.10
Traffic Related	14	4	245.71	78.25
Uncategorized	23	2	149.57	156.50
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	6	3	574.00	104.33
Neighborhood Support	454	112	7.59	2.79
Other Crimes	44	25	78.27	12.52
Personal Crime	121	53	28.46	5.91
Property Crime	159	36	21.66	8.69
Traffic Related	18	2	191.33	156.50
Uncategorized	25	1	137.76	313.00
*Ratio of Police Call occurrences per property. In 2010, for example, there were six Juvenile Offenses that occurred among 3,656 properties. This is a ratio of 6:3,656 or 1:558.8. There was one occurrence for every 558.8 properties in Single-Family:Owner Occupied vs. one occurrence for every 151.5 Renter Occupied Units.				

CITY OF NORTH MANKATO: UPPER NORTH DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	One- to Two- Family: Owner Occupied	One- to Two- Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	4	0	538.00	0.00
Neighborhood Support	233	15	9.24	5.13
Other Crimes	12	0	179.33	0.00
Personal Crime	50	4	43.04	19.25
Property Crime	56	5	38.43	15.40
Traffic Related	4	0	538.00	0.00
Uncategorized	1	0	2152.00	0.00
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	4	0	542.00	0.00
Neighborhood Support	254	10	8.54	7.90
Other Crimes	28	1	77.43	79.00
Personal Crime	46	6	47.13	13.17
Property Crime	116	8	18.69	9.88
Traffic Related	10	0	216.80	0.00
Uncategorized	6	1	361.33	79.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	0	1	0.00	79.00
Neighborhood Support	271	8	8.11	9.88
Other Crimes	7	3	314.00	26.33
Personal Crime	47	3	46.77	26.33
Property Crime	58	3	37.90	26.33
Traffic Related	6	0	366.33	0.00
Uncategorized	2	0	1099.00	0.00
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	2	1	1112.50	83.00
Neighborhood Support	270	19	8.24	4.37
Other Crimes	20	2	111.25	41.50
Personal Crime	45	4	49.44	20.75
Property Crime	52	4	42.79	20.75
Traffic Related	4	1	556.25	83.00
Uncategorized	8	0	278.13	0.00
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	1	0	2229.00	0.00
Neighborhood Support	216	14	10.32	5.93
Other Crimes	18	5	123.83	16.60
Personal Crime	51	7	43.71	11.86
Property Crime	78	4	28.58	20.75
Traffic Related	6	0	371.50	0.00
Uncategorized	5	0	445.80	0.00

CITY OF NORTH MANKATO: LOWER NORTH DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	One- to Two- Family: Owner Occupied	One- to Two- Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	2	2	605.50	115.00
Neighborhood Support	235	103	5.15	2.23
Other Crimes	16	7	75.69	32.86
Personal Crime	52	39	23.29	5.90
Property Crime	56	26	21.63	8.85
Traffic Related	8	3	151.38	76.67
Uncategorized	9	3	134.56	76.67
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	2	2	606.00	115.00
Neighborhood Support	258	88	4.70	2.61
Other Crimes	22	6	55.09	38.33
Personal Crime	59	40	20.54	5.75
Property Crime	81	24	14.96	9.58
Traffic Related	7	0	173.14	0.00
Uncategorized	7	2	173.14	115.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	6	2	202.33	115.00
Neighborhood Support	234	93	5.19	2.47
Other Crimes	13	7	93.38	32.86
Personal Crime	74	28	16.41	8.21
Property Crime	68	25	17.85	9.20
Traffic Related	5	6	242.80	38.33
Uncategorized	10	2	121.40	115.00
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	7	2	173.57	115.00
Neighborhood Support	248	94	4.90	2.45
Other Crimes	29	12	41.90	19.17
Personal Crime	69	58	17.61	3.97
Property Crime	78	27	15.58	8.52
Traffic Related	10	3	121.50	76.67
Uncategorized	15	2	81.00	115.00
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	5	3	243.00	76.67
Neighborhood Support	238	98	5.11	2.35
Other Crimes	26	20	46.73	11.50
Personal Crime	70	46	17.36	5.00
Property Crime	81	32	15.00	7.19
Traffic Related	12	2	101.25	115.00
Uncategorized	20	1	60.75	230.00