

Stephanie Hanson

From: Frederic Knaak <fknaak@klaw.us>
Sent: Thursday, August 15, 2024 4:32 PM
To: Chelsee Howell; Stephanie Hanson
Cc: Brian Hagen
Subject: RE: Follow up to Prior Legal Advice

Councilmember Howell:

I did respond on this point late yesterday to staff.

The Kari Koskinen Manager Background Check Act requires background checks on all property managers before hiring them. These are defined as third parties (not owners) employed or applying for employment for such a position. "Manager" is specifically defined as any employee who has the ability to enter a tenant's dwelling unit as part of their job duties.

The ordinance discussed expands that to include owners.

There is nothing in the law that would preclude the City from requesting this information. To obtain it would require a consent under the statute.

If an owner were to refuse to give that consent, the question would be whether the City has a sufficient separate basis for refusing to grant a rental permit to an owner that would not voluntarily submit to a background check.

This is an area where there is no judicial or other authority to guide us.

The basis for the City's authority would come from the broad grant of authority given under Minnesota law to cities to legislate for the protection of the health, safety and welfare of its citizens and the public at large. In this instance, the same underlying reasons for the passage of the Koskinen Act related to managers would also relate to the protection of renters from owners who would have the same kind of unfettered access to rental premises.

There is no constitutional right to a rental license any more than to a car license or one to fly. Certain prior conditions can be reasonably required to be applied before any such license of any kind be issued.

Here, the City's position is that, in the interest of public safety, the requirement is reasonably necessary for public safety.

That said, given the absence, as noted, of express authority, pushback from an owner could be expected to argue that rental of private property is a right incident to property ownership and that the City's requirement is an unnecessary intrusion and burden on that right.

While there is no guarantee of the outcome if the provision were to be challenged in court, I am comfortable that the City's position is very defensible.

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