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16 **EIGHTH JUDICIAL DISTRICT COURT**
17 **STATE OF NEVADA**

18 GREATER LAS VEGAS SHORT TERM
19 RENTAL ASSOCIATION, a non-profit
20 Nevada corporation; JACQUELINE FLORES,
21 President and Director,

22 Plaintiffs,

23 vs.

24 CLARK COUNTY and the BOARD OF
CLARK COUNTY COMMISSIONERS, a
political subdivision of the State of Nevada;
and the STATE OF NEVADA,

Defendants.

Case No. A-22-856311-P
Dept. No. 8

[HEARING REQUESTED]

**MOTION FOR PRELIMINARY
INJUNCTION**

25 The GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, a non-profit
26 Nevada corporation, and JACQUELINE FLORES, President and Director (Rental Association),
27 by and through their legal counsel, Joseph C. Reynolds, Esq., Ariel C. Johnson, Esq., and Alex
28 R. Velto, Esq., of HUTCHISON & STEFFEN, PLLC, file the instant Motion for Preliminary
29 Injunction and respectfully move this Court to immediately enjoin Clark County, as overseen by

1 its Board of County Commissioners, from further implementing the current scheme governing
2 the issuance of short-term rental licenses as set forth in Chapter 7.100 within Title 7 of the Clark
3 County Code in a new Chapter entitled “Short Term Rental Units” and are set forth in Chapter
4 7.100 within Title 7 of the Clark County Code (collectively “the Ordinance”).

5 This Ordinance was passed in a unanimous vote by the Board of Clark County
6 Commissioners at a public meeting held on June 21, 2022 (“Clark County”) and Clark County
7 began accepting applications for licenses to operate short-term rental properties in
8 unincorporated Clark County on September 13, 2022,¹ and will be accepting applications during
9 a 6-month period. The actual issuance of the licenses will commence thereafter.

10 As set forth in the Second Amended Complaint for Declaratory and Injunctive Relief that
11 is being filed contemporaneously with this Motion, multiple sections of the Clark County
12 Ordinance violate bedrock Articles of the Nevada Constitution and Amendments to the United
13 States Constitution. The Ordinance is constitutionally infirm and should not be permitted by this
14 Court to be implemented as a matter of law. The Rental Association respectfully requests that
15 this Court declare that the Ordinance is unconstitutional and GRANT the instant motion to enjoin
16 its enforcement. Harm will result to prospective licensees, as well as legal uncertainty, piecemeal
17 litigation, and government inefficiency and waste, if the application process is permitted to
18 continue and licenses are issued under the Ordinance. It is axiomatic and a fundamental principle
19 of our democracy that harm always results when unconstitutional laws are permitted to stand
20 without prompt redress. A significant number of residents and homeowners in unincorporated
21 Clark County, and from outside of Nevada, are reasonably likely to be disenfranchised.

22
23
24 ¹ See https://www.clarkcountynv.gov/news_detail_T28_R753.php

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Eighth Judicial District Court Rule 2.20(a), a Table of Contents and a Table of Authorities are provided below.

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1 I. INTRODUCTION

2 The Rental Association hereby incorporates by reference to the statement of jurisdiction
3 and facts set forth in its Second Amended Complaint for Declaratory and Injunctive Relief (“the
4 Complaint”). Those facts and legal citations set forth in the Complaint will only be repeated
5 where relevant and necessary to support arguments raised in this Motion.

6 II. ABOUT THE RENTAL ASSOCIATION

7 The Rental Association is a grassroots non-profit organization established by concerned
8 residents of Clark County, Nevada in 2020. They are hard-working Nevadans who come from
9 diverse backgrounds and love the greater Las Vegas area. It is home.

10 Over 700 individuals are official members of the Rental Association. They are
11 stakeholders in this legal action. To be clear, the Rental Association through this Petition is not
12 opposed to regulation of the short-term rental home industry by Clark County or the State of
13 Nevada. Neither is it opposed to the assessment and imposition of all fees and taxes upon
14 licensees and patrons of short-term rentals. It is also not inviting the judiciary to engage in a
15 policy debate.

16 What this Petition does assert is that the Ordinance as enacted by Clark County facially
17 exceeds the boundaries and fundamental tenets of what both the Nevada Supreme Court and the
18 United States Supreme Court hold to be both reasonable and permissible government regulation
19 under the Nevada and United States Constitutions. No resident of Nevada or interstate or
20 international traveler can be compelled under the law to live, do business, and have visitors in
21 their own home under the arbitrary and oppressive licensing scheme set forth in the Ordinance.
22 It goes too far. It is unconstitutional. It fails.

1 The Rental Association respectfully requests this Court to grant its request for declaratory
2 and injunctive relief. Understandably, a difficult balancing of policy interests by the Board of
3 Clark County Commissioners, as well as the Nevada Legislature, exist on this issue.

4 Yet, as more fully set forth below, fundamental rights within the Nevada Constitution
5 and United States Constitution, as well as Nevada law, require that this matter be enjoined.
6 Indeed, the United States is founded upon the fundamental principle that all individuals have the
7 unalienable right of life, liberty and the pursuit of happiness.² To this end, local, state, and
8 federal governments are expressly prohibited by the United States Constitution from depriving
9 any individual of life, liberty, and property without due process.³

10 The Nevada Constitution similarly declares that all individuals have the inalienable right
11 of “enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and
12 pursuing and obtaining safety and happiness.”⁴ The United States Supreme Court has recognized
13 that individuals have a right “to possess, use and dispose” of their property.⁵ There is no more
14 sacred property under the laws of Nevada and those of the United States than one’s home. This
15 is intrinsically rooted in our history.

16 **III. BRIEF FACTUAL AND LEGAL BACKGROUND**

17 **A. History and Economic Impact of Short-Term Home Rentals**

18 Since the early 1600’s and 1700’s early travelers throughout the United States have been
19 using short-term home rentals when needing a room or place to stay while visiting a new town

21 ² *Declaration of Independence*, United States Congress, July 4, 1776.

22 ³ *See* Art. 14, Sec. 5, United States Constitution.

23 ⁴ Art. 1, Sec. 1, Nevada Constitution.

24 ⁵ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982).

1 or city and hotels or motels did not exist. Bed and breakfast inns and boarding houses date back
2 hundreds of years to early American and European traditions.⁶

3 While names have changed and modern technology platforms have facilitated the growth
4 and availability of short-term housing opportunities for both visitors and homeowners, such as
5 AirBnB or Vrbo,⁷ it is a practice and tradition that is not new. Rather, it is also part of a
6 developing ‘sharing economy’ within the United States that has grown to generate approximately
7 \$169 billion in global economic impact.⁸

8 Today, short-term home rentals employ an international business model that continues to
9 present a unique link and opportunity for visitors to enjoy and experience travel to a new town
10 or city.⁹ The reasons why an individual may choose to rent a room, or entire house, for a short
11 stay vary from visitor-to-visitor. They include families with members who want to gather for a
12 reunion or those with young children looking for a living space with a kitchen, yard, or private
13 pool or business travelers needing a quiet space to work for a week or two.¹⁰

14 The reasons why an individual may offer their home as a short-term rental also varies.
15 Many Clark County residents use it as a means of providing primary or supplemental income for
16 their households. The backgrounds and life circumstances of these homeowners range from
17

18
19 ⁶ See, e.g., <https://www.loveexploring.com> (noting the Groton Inn built in 1678 (Groton, Massachusetts) and the
20 Causey Mansion built in 1763 (Milford, Delaware) and the Cobb Mansion Bed and Breakfast built in 1875 (Virginia
21 City, Nevada)); <https://www.rentalsunited.com>.

22 ⁷ See <https://www.vrbo.com> (stating that Vrbo, Inc. was founded in Colorado in Aurora, Colorado in 1995) and
23 <https://www.airbnb.com> (stating that AirBnB, Inc. was founded in San Francisco, California in 2008). Of note,
24 both of these companies were founded in the Western United States. Neither are financing the instant litigation.

⁸ See <https://www.leg.state.nv.us>, *Short Term Rentals In Nevada*, Research Division, Legislative Counsel Bureau,
Nevada Legislature (March 2021).

⁹ See Exhibit 1 (Affidavit of Jacqueline Flores).

¹⁰ *Id.*

1 retirees or those who do not want to work in a traditional workplace or those who need to work
2 from home to provide care for an ill loved one.¹¹

3 The short-term rental market undoubtedly is a hybrid and unique business model whereby
4 home ownership intersects with an ability to earn a living that creates jobs and stimulates the
5 local, state, national, and international economies. It is against this historical and economic
6 backdrop that the instant action and request for relief is being commenced.

7 B. Clark County's Original Prohibition (Year 1998)

8 In 1998, Clark County passed amendments to the Chapter entitled "Uses Allowed in
9 Zoning Districts" in Title 30, Chapter 30.44.010(b)(7)(C) of the Clark County Code. This new
10 law mandated a blanket zoning prohibition on all short-term rentals located in unincorporated
11 Clark County, which includes many of the resort properties located along the South portion of
12 Las Vegas Boulevard, *i.e.*, "the Strip."

13 The new Code provision permitted a three (3)-year grace period before it became fully
14 effective.¹² Therefore, the ban became effective in 2001. No short-term rentals were legally
15 permitted to operate in unincorporated Clark County.

16 Yet, cities and other areas in Clark County enacted provisions through their zoning
17 authority that permitted short-term rentals to continue legally operating within distinct
18 incorporated areas. In 2012, the City of Mesquite enacted provisions that permitted short-term
19 rentals to operate.¹³ In 2015, the City of Las Vegas, which encompasses the North portion of
20

21
22 ¹¹ *Id.*

23 ¹² See Clark County Code, Title 30, Chapter 30.44.010(b)(7)(C)(ii).

24 ¹³ See Mesquite City Code, Title 2, Chapter 13.

1 ‘the Strip,’ enacted provisions that permitted short-term rentals to operate.¹⁴ In 2019, the City
2 of Henderson enacted provisions that permitted short-term rentals to operate.¹⁵ Confusion, and
3 a patchwork of time frames, laws, enforcement, and policies developed throughout Clark County
4 whereby some prospective short-term rental home owners were left to guess at when, or if, they
5 would be permitted to legally operate depending upon the specific geographic location of their
6 home within Clark County and their governing political body.

7 C. Nevada Legislature’s Passage of Assembly Bill 363 (Year 2021)

8 In 2021, the Nevada Legislature weighed into the fray during the 81st Regular Legislative
9 Session and enacted Assembly Bill (“AB”) 363. The new legislation mandated that Clark
10 County repeal its ban on short-term rentals and implement regulations to permit short-term
11 rentals to resume legally operating within unincorporated Clark County by July 1, 2022.¹⁶

12 D. Clark County’s Passage of the Ordinance (Year 2022)

13 At a public meeting held on June 21, 2022, the Board of Clark County Commissions
14 unanimously voted to adopt a new provision entitled “Short Term Rental Units” that is set forth
15 in Chapter 7.100 within Title 7 of the Clark County Code, *i.e.*, the Ordinance. It became effective
16 upon passage.

17 E. Implementation of the Ordinance (September 13, 2022)

18 As previously discussed, Clark County began implementing the Ordinance and accepting
19 applications to obtain licenses to operate short-term rentals on September 13, 2022.¹⁷ However,

20 _____
21 ¹⁴ See City Las Vegas Uniform Development Code. Title 19, Chapter 19.18.070.

22 ¹⁵ See City of Henderson Development Code, Title 19, Chapter 19.10.

23 ¹⁶ Notably, some limited provisions of AB 363 violate the Nevada and United States Constitutions and will addressed
further below.

24 ¹⁷ See <https://www.clarkcountynv.gov/news>

1 pursuant to the Ordinance,¹⁸ the application period is to remain open for six (6) months. It is
2 estimated that Clark County will cease accepting applications on or about March 13, 2023.

3 The instant request for relief follows. The standard of review for this Court to grant
4 preliminary injunctive relief is set forth below.¹⁹

5 IV. STANDARDS OF LEGAL REVIEW

6 Nevada Rule of Civil Procedure (NRCP) 65 provides that this Court may issue a
7 preliminary injunction upon notice to opposing counsel.²⁰ It is well-settled law in Nevada that
8 the issuance of a preliminary injunction is appropriate where an individual or entity is doing,
9 threatens to do, or is about to do an act that violates the rights of another.²¹ This preliminary
10 injunction standard applies to laws and regulations that either have been or will be enacted by
11 government entities and are challenged by individual citizens or grass root organizations.²²

12 When seeking a preliminary injunction, a movant is required to demonstrate two
13 elements. First, they must show a reasonable likelihood of success on the merits. Second, they
14 must show a reasonable probability that the non-moving party's conduct will cause irreparable
15 harm if it is allowed to continue and for which compensatory damages is an inadequate remedy.²³

17
18 ¹⁸ See Section 7.100.100(b) of the Ordinance.

19 ¹⁹ See, generally *Heller v. State of Nev. Legislature*, 120 Nev. 456, 472, 93 P.3d 746, 757 (2014) (recognizing that a
20 request for declaratory relief coupled with injunctive relief may be an appropriate legal vehicle to challenge the
21 constitutionality of government action).

22 ²⁰ See also EDCR 2.10 and EDCR 5.520.

23 ²¹ See NRS 33.010(3).

24 ²² See, e.g., *Citizens for a Public Train Trench Vote v. City of Reno*, 118 Nev. 574, 53 P.3d 387 (2002), *overruled*
on other grounds by *Nevadans for Protecting Private Property Rights v. Heller*, 122 Nev. 894, 141 P.3d 1235
(2006); *Kuban v. McGimsey*, 96 Nev. 105, 605 P.2d 623 (1980); see also *Edgar v. MITE, Corp.*, 457 U.S. 624
(1982) (applying the preliminary injunction standard pursuant to Federal Rule of Civil Procedure, Rule 65).

²³ *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

1 In considering these factors, it is appropriate to weigh the potential hardships to the relative
2 parties and others, and the public interest.²⁴

3 The decision whether to grant a preliminary injunction resides within the sound discretion
4 of this Court.²⁵ The Nevada Supreme Court holds that “[a]n abuse of discretion can occur when
5 the district court bases its decision on a clearly erroneous factual determinations or it disregards
6 controlling law.”²⁶ Questions of law are reviewed on appeal *de novo*.²⁷

7 V. THIS PETITION IS RIPE FOR ADJUDICATION

8 It is foreseeable that Clark County *may* attempt to dismiss this legal action pursuant to
9 NRCP Rule 12, contending that it is either not ripe and/or the Rental Association lacks standing.
10 Their attempt to do so would be misplaced under the unique facts of this case and the
11 constitutional issues before this Court. Yet, relatively recent Nevada Supreme Court precedent
12 was intended to permit this very type of action. The Rental Association hereby provides relevant
13 law and analysis upfront in an effort to expedite consideration of this matter on the substance of
14 its arguments, as opposed to debating procedural posture.

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19 ²⁴ *Id.* (citing *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996)).

20 ²⁵ See *Shores v. Global Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018); *Boulder Oaks*
21 *Cnty. Ass’n v. B & J Andrews Entp.*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2010); *SOC, Inc. v. Mirage Casino-*
Hotel, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001) (internal citations omitted).

22 ²⁶ *Shores*, 134 Nev. at 505, 422 P.3d at 1241 (quoting *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88,
23 367 P.3d 1286, 1292 (2016)). On appeal, factual findings are reviewed by the Nevada Supreme Court for clear
error. *Mirage Casino-Hotel*, 117 Nev. at 407, 23 P.3d at 246.

24 ²⁷ *Boulder Oaks Community Assoc.*, 125 Nev. at 403, 215 P.3d at 31.

1 The Nevada Supreme Court has recognized that standing to raise a facial challenge to the
2 constitutionality of a statute or ordinance may be established in either one of two ways.²⁸ Here,
3 the Rental Association satisfies either or both standards.

4 A party has a standing where they can show a personal injury, as opposed to a more
5 generalized interest that is common to all members of the public.²⁹ Or a petitioner may also
6 show that the matter raised involves an issue of public importance. Under the public importance
7 standard, a party has standing where a Nevada citizen raises a constitutional challenge where:
8 (1) the case involves an issue of public importance, (2) the case involves a government
9 expenditure, and (3) the party raising the challenge is in the best position to fully advocate for it.
10 Essentially, “the question of standing concerns whether the party seeking relief has a sufficient
11 interest in the litigation. The primary purpose of this standing inquiry is to ensure the litigant
12 will vigorously and effectively present his or her case against an adverse party.”³⁰ Here, the
13 Rental Association is in the best position to raise the instant challenge to the constitutionality of
14 the Ordinance and advocate for the interests of short term-rental home owners in Clark County.
15 It satisfies both separate standing pathways.

16 Real individuals, such as Plaintiff Jaqueline Flores and the approximately 700 members
17 of the Rental Association, *see Exhibit 1* (Affidavit of Jaqueline Flores) are being or will be
18 harmed by the Ordinance. Each of these individuals are representative of a larger group of
19

20 ²⁸ See generally *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

21 ²⁹ *Id.* (citing *Doe v. Bryan*, 102 Nev. 523, 525–26, 728 P.2d 443, 444–45 (1986) (requiring plaintiffs, who sought
22 to have criminal statute declared unconstitutional, to first demonstrate a personal injury, *i.e.*, that they were arrested
or threatened with prosecution under the statute)) and *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644,
648 (1929) (requiring property owner to show that he would suffer a special or peculiar injury different from that
23 sustained by the general public in order to maintain complaint for injunctive relief)).

24 ³⁰ *Morency v. Nev. Dep't of Educ.*, 137 Nev. Ad. Op. 63, ___,496 P.3d 584, 588 (2021) (citing *Schwartz*, 132 Nev. at
743, 382 P.3d at 894 (internal citations omitted)).

1 prospective short-term rental licensees and patrons. These individuals have not only been
2 harmed by Clark County’s prior prohibition against the operation of short-term rentals in
3 unincorporated Clark County, but, most relevantly, by the recent enactment of the Ordinance.

4 Additionally, the act of submitting an application for a license in itself requires
5 acquiescence to terms and conditions that facially violate constitutional proscriptions and zoning
6 and distance requirements within the Ordinance that *per se* exclude categories of prospective
7 applicants from applying.

8 Notably, the very purpose of a *preliminary* injunction is to prevent reasonably anticipated
9 harm and injury to an individual before full adjudication of the underlying legal issue may occur.
10 Indeed, the Nevada Supreme Court through the adoption of the public importance standard has
11 recognized that standing is not meant to be a shield to prevent timely redress of unconstitutional
12 government action by Nevada residents.

13 To this end, the Rental Association is an entity incorporated with the Office of the Nevada
14 Secretary of State. It is a legal entity and, therefore, it is a ‘citizen’ for standing purposes.³¹
15 Over 7,700 short-term rental units are housed in Clark County.³² Clark County reported that it
16 received over 5,500 responses during a survey by Clark County to gage public interest.³³ For
17 two decades this matter has been a source of robust public debate and concern in Clark County—
18 Nevada’s most populous county. The Nevada Legislature has also addressed the issue. Certainly,
19 the Ordinance requires the expenditure of public funds through the collection and expenditure of

21 ³¹ See *Morency*, 137 Nev. Adv. Op. at ____, 496 P.3d at 589; *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 459,
282 P.3d 751, 755 (2012) (recognizing that “a corporation that is incorporated in Nevada is a Nevada citizen”).

22 ³² See <https://www.leg.state.nv.us>, entitled “Short Term Rentals In Nevada,” Research Division, Legislative
23 Counsel Bureau, Nevada Legislature (March 2021).

24 ³³ See <http://www.clark.legistar.com>, entitled “Clark County Short Term Rental Survey” (March 15, 2022)
(providing that 5,511 people responded to a survey and obtain public views on short term rentals).

1 taxes and fees by Clark County to process license applications and engage in enforcement actions
2 by the Clark County’s Department of Business and Licenses.³⁴

3 Moreover, the prospect of halting Clark County’s licensing application process after it
4 has commenced will invariably cause confusion and expense. This Petition is timely, and prompt
5 adjudication by this Court will prevent additional harm and injury. Finally, the Rental
6 Association respectfully submits that it is representative of short-term rental owners and patrons.
7 It is in the best position to raise this legal challenge. Accordingly, standing exists for the Rental
8 Association to bring this legal action of individual and important public concern.

9 **VI. CLARK COUNTY MUST BE ENJOINED**

10 A preliminary injunction is both appropriate and necessary in this matter to protect the
11 liberty, rights, and economic interest of short-term rental applicants and prospective licensees,
12 as well as patrons, in unincorporated Clark County. As set forth below, this matter satisfies the
13 criteria for this Court to issue a preliminary injunction. The Ordinance is constitutionally flawed
14 and misdirected pieces of legislation possible that infringes upon core rights of one’s speech,
15 home, liberty and security from random government action. As such, the Rental Association
16 respectfully submits that it has shown (1) a reasonable likelihood of success on the merits, (2)
17 that irreparable harm will ensue if an injunction does not issue, and (3) a balancing of hardships,
18 including economy, favors enjoining Clark County. Each element is discussed below.

19 **VII. REASONABLE LIKELIHOOD OF SUCCESS**

20 The Complaint files in this matter sets forth Twenty-Two Causes of Action whereby the
21 Ordinance violates the First Amendment, the Due Process Clause, the Takings Clause, the Equal
22

23 ³⁴ See, e.g., Section 7.100.010(c), Section 7.100.080(d), Section 7.100.170(k), and Section 7.100.200(c) of the
24 Ordinance.

1 Protection Clause, and the Dormant Commerce Clause of the United States Constitution, as well
2 as their corresponding provisions within the Nevada Constitution (except the Dormant
3 Commerce Clause).

4 The Complaint also sets forth causes of action whereby the Ordinance independently
5 violations provisions of Nevada law as set forth in Assembly Bill (AB) 363, which was enacted
6 by the Nevada Legislature during the 81st Legislative Session in 2021. It further sets forth causes
7 of action that certain provisions within AB 363 also violate the Nevada Constitution and the
8 United States Constitution. The merits of these claims are set forth below.

9 VIII. ARBITRARY AND CAPRICIOUS LICENSING SCHEME

10 Clark County, like most city or county policy making bodies, has general discretion to
11 develop and administer licensing schemes.³⁵ However, the Ordinance fails constitutional review.
12 Under the Due Process Clauses set forth in Article 1, Section 8 of the Nevada Constitution and
13 the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, the licensing
14 scheme enacted by Clark County is unconstitutional on its face by establishing both an
15 application process that is arbitrary and capricious *and* by an enforcement scheme that is
16 undeniably vague. The Ordinance is infirm under either or both analyses.

17 Licensing schemes cross the threshold of a permissible exercise of government authority
18 where the language of regulations permit arbitrary or capricious enforcement.³⁶ When this
19 occurs, a facial challenge to the plain text of the rules may be raised for judicial review.³⁷ The
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21
22 ³⁵ *City Council of Reno v. Irvine*, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (citing *Gragson v. Toco*, 90 Nev. 131, 133, 520 P.2d 616, 616 (1974)).

23 ³⁶ *Id.*

24 ³⁷ *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292-93, 129 P.3d 682, 684-85 (2006).

1 term ‘arbitrary’ is defined to mean “existing or coming about seemingly at random or by
2 chance.”³⁸ The term ‘capricious’ is defined to mean ‘optional’ or ‘open to choice’ or
3 ‘discretionary.’³⁹ Here, the Ordinance is arbitrary and capricious by the language in its own text.
4 It is riddled with instances of unfettered and random discretion. Examples follow.

5 A. Random Licensing Process (A License Lottery)

6 The Ordinance provides that after an individual submits a timely and fully completed
7 application to Clark County, whether or not they receive a license depends on chance.
8 Specifically, Section 7.100.050 of the Ordinance provides:

9 there shall be a minimum of one (1) Short-Term Rental License
10 available for each established unincorporated area within Clark
11 County, Nevada. The maximum number of Short-Term Rental
Licenses that may be issued in any unincorporated area shall not
exceed one percent (1%) of the total number of housing units
located in the unincorporated area . . .

12 Later, Section 7.100.100(g) of the Ordinance provides:

13 After the application period is closed, the Department shall enter
14 the unique identification number into a random number generation
15 program that will list the timely-submitted applications into a
random order to determine the order in which the applications will
16 *be considered* for a Short-Term Rental License. The inclusion of
an application on the list does not guarantee that an application will
receive a Short-Term Rental License.

17 (Emphasis added). These two above Sections of the Ordinance read in conjunction with Section
18 7.100.080(f)(2) that prohibits a short-term rental unit from being “. . . within 1,000 feet of any
19 [other] short-term rental unit . . .” establishes a licensing system that it is entirely dependent upon
20 chance. Not qualifications. Not a timely application. Not a complete application. Not
21

22
23 ³⁸ Merriam-Webster Dictionary <https://www.merriam-webster.com>.

24 ³⁹ Collins Dictionary <https://www.collinsdictionary.com>.

1 compliance history. Not paying fees. Those could be stellar, yet an applicant could be randomly
2 denied the opportunity to earn income or use their own property. This is arbitrary.

3 Even if fortune favors an applicant and their number is drawn, they would nevertheless
4 be denied an application if by happenstance a neighbor who lived within 1,000 feet from their
5 home also received a license. This is also arbitrary. It has no evidentiary rational basis in zoning
6 or community planning by Clark County or with ensuring public health and safety. Rather, it is
7 governance by chance. Luck is the deciding factor.

8 B. Application Review Subject to Personal Discretion of County Officials

9 In addition to the structural infirmities in the haphazard and random licensing process,
10 Clark County’s review of applications submitted during that process is based upon ambiguous
11 protocols and subjective standards in the Ordinance that leave the fate of an applicant to the
12 personal discretion of any given reviewer. Examples are below.

13 Section 7.100.090(c)(8) of the Ordinance provides that Clark County may require an
14 applicant to furnish ‘any document or information’ that it requests.⁴⁰ Based on this language,
15 Clark County may require one applicant to provide documents or information and not require
16 another applicant to do so. No standards are set forth in the Ordinance on what or when
17 additional documentation may be required. It is left undefined.

18 Section 7.100.100(a) of the Ordinance provides that Clark County itself ‘determines’
19 when licenses are available for issuance.⁴¹ Use of the term ‘determines’ is a grant of discretion

20 _____
21 ⁴⁰ See Section 7.100.090(c)(8) of the Ordinance:

22 Each application must be accompanied by:
23 . . .
24 Any other documentation or information as the director of the Department
may require.

⁴¹ See Section 7.100.100(a) of the Ordinance:

1 without objective criteria. Given that Clark County has tied the number of licenses that may be
2 issued to the population of unincorporated Clark County, as well as geography of home locations,
3 a moving target exists for available licenses. The Ordinance provides no algorithm or formula
4 on how this calculation will be determined.

5 Section 7.100.100(h) of the Ordinance provides:

6 At the *discretion* of the Department [Clark County], the
7 residential unit shall be subject to inspection or code
8 compliance review by any county agency or department.

8 (Emphasis added). The plain text of this Section means that Clark County, through its employees,
9 may subject an applicant to an inspection of their proposed short term rental unit, *i.e.*, their home,
10 without any basis whatsoever. Again, no standards or objective criteria are set forth in the
11 Ordinance to delineate who will be subjected to an inspection and who will not. It is left to
12 unmitigated and subjective discretion.

13 Section 7.100.110(a)(3) of the Ordinance provides that an application for a license may
14 be denied “if the applicant fails or refuses to cooperate fully with any inspection.” Cooperation,
15 let alone ‘full’ cooperation, are ambiguous terms and leave the determination of whether an
16 applicant has ‘cooperated fully’ to Clark County’s unfettered discretion. Either an applicant
17 timely permits an inspection to occur or they do not. If an applicant asks questions or does not
18 move quickly enough or smile, it must be asked: Is that below a level of full cooperation? Will
19 a reviewer decide to deny an application because an applicant is not nice enough? What is the
20 line between ‘full’ verses ‘partial’ cooperation? These questions illustrate the ambiguity and
21 open-ended discretion within the Ordinance.

22
23 _____
24 The Department shall commence an application period for the issuance of
Short-Term Rental Licenses at least one (1) time annually unless the
Department determines that no licenses are available for issuance.

1 Section 7.110.110(c)(2) of the Ordinance provides that as a condition of approval an
2 application must “agree to all such terms and conditions that the Department deems necessary for
3 health and safety of residents.” While no objection is being made to Clark County imposing
4 reasonable health and safety measures, no standards or criteria are set forth in the Ordinance
5 defining what circumstances or conditions may trigger these additional licensure requirements.
6 Applicants are left to guess.

7 The Nevada Supreme Court has stated that “[a]n arbitrary or capricious exercise of
8 discretion is one ‘founded on prejudice or preference rather than on reason’ ... or ‘contrary to the
9 evidence or established rules of law.’”⁴² The Ordinance does just that—it sets forth a licensing
10 scheme based upon random chance and arbitrary discretion without clear standards.

11 IX. VOID FOR VAGUENESS AND OVERBREADTH

12 The Ordinance is unconstitutionally vague and overbroad in violation of Article 1, Section
13 8 of the Nevada Constitution and the Fifth and Fourteenth Amendments to the United States
14 Constitution. It (1) fails to provide notice sufficient to enable persons of ordinary intelligence to
15 understand what conduct is prohibited, or (2) lacks specific standards and encourages, authorizes,
16 or fails to prevent arbitrary and discriminatory enforcement.⁴³ The United States Supreme Court
17 has recognized that “[v]agueness may invalidate a criminal law for either of [these] two
18 reasons.”⁴⁴ The Nevada Supreme Court has explained that for a law to be constitutional it must
19 “delineate the boundaries of unlawful conduct . . . so individuals will know what is permissible
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21
22 ⁴² See *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011).

23 ⁴³ *State v. Casteneda*, 126 Nev. 478, 481, 245 P.2d 550, 552 (2010); *Sheriff v. Burdg*, 118 Nev. 853, 857, 59 P.3d
24 484, 486-87 (2002).

⁴⁴ *Chicago v. Morales*, 527 U.S. 41, 56 (1999).

1 behavior and what is not.”⁴⁵ Laws, including Ordinances, are subject to a facial attack on
2 vagueness grounds. *Id.* Here, the Ordinance is unconstitutionally vague and overbroad on several
3 grounds.

4 As a threshold matter, it must be recognized that the Ordinance is a penal, *i.e.*, a criminal
5 law. Indeed, Section 7.100.230(f)(a) of the Ordinance provides that a violation of its provisions
6 could subject either an occupant or owner to the “issuance of a misdemeanor citation.” However,
7 as discussed further below, several provisions are unconstitutionally vague. Several constitute
8 *prima facie* examples of vagueness. They leave an ordinary reasonable person to simply guess
9 at their meaning and what conduct is illegal.

10 A. Ambiguity of Terms ‘Family’ or ‘Group’

11 Section 7.100.160(1)(c) of the Ordinance restricts rentals to individuals “within the same
12 family or group.” However, those terms are left undefined. Does the term ‘family’ only include
13 individuals who have the same last name? Are members of the ‘family’ defined by only blood or
14 marriage? Does it include unmarried couples? How far removed from each other in the family
15 tree can individuals be from one another? Does the term ‘group’ mean individuals who have a
16 prior relationship with one another? Or does a ‘group’ include individuals who traveled to Las
17 Vegas on the same airplane or originated from the same state or country? Is it members of the
18 same sports team? Guessing incorrectly will be a crime.

19 B. Ambiguity of Terms ‘Event’ or ‘Gathering’

20 Section 7.100.180(b) of the Ordinance prohibits “parties, weddings events or other
21 gatherings which exceed the maximum occupancy of the residential unit.” What do the terms
22
23

24 ⁴⁵ *City of Las Vegas v. Dist. Ct.*, 118 Nev. 859, 864, 59 P.3d 477, 481 (2002).

1 ‘event’ or ‘gathering’ mean? They are undefined by the Ordinance.⁴⁶ If eight people occupying
2 a four-bedroom house and three people come over for a dinner, it is a crime? Is an afternoon
3 birthday party for five children in a two-bedroom house truly illegal? Does this provision apply
4 to gatherings that are inside the residence or outside in a yard area? The consequence of not
5 knowing these answers could be an arrest.

6 C. Ambiguity of Terms ‘Annoy’ or ‘Disturb’

7 Section 7.100.180(c) of the Ordinance provides:

8 [t]he emission of noise, light, smoke, particulate matter, odors, and
9 hazardous materials from the short-term rental unit which
10 unreasonably annoys or disturbs the quiet, comfort, or repose of any
11 persons of ordinary sensibilities, is prohibited.

11 What it may mean to ‘annoy’ or to ‘disturb the quiet, comfort, or repose’ of a person is
12 unconstitutionally vague. These are subjective terms without clear meaning. To be ‘annoyed’
13 differs from person to person based upon such varying traits in personality, background, and age.
14 Use of the term ‘annoy’ in the Ordinance is particularly problematic.

15 The Nevada Supreme Court in the case *Scott v. First Judicial District Court*,⁴⁷ held that a
16 municipal ordinance that made it a crime to ‘annoy’ a law enforcement officer was
17 unconstitutionally vague. In *Scott*, the Court recognized that the United States Supreme Court
18 has “‘repeatedly invalidated laws that provide the police with unfettered discretion to arrest
19 individuals for words or conduct that annoy or offend them.’”⁴⁸ The Court reasoned that the term,

22 ⁴⁶ While unhelpful and equally vague, the term ‘party’ is in the definition section of the Ordinance. See Section
23 7.100.020(n).

24 ⁴⁷ 131 Nev. 1015, 1017-18, 363 P.3d 1159, 1161-62 (2015).

⁴⁸ *Id.* (quoting *City of Houston, Texas v. Hill*, 482 U.S. 451, 465 (1987)).

1 and the entire ordinance at issue, lacked specific standards and left enforcement entirely up to the
2 law enforcement officer’s personal discretion.⁴⁹

3 Similar to the municipal ordinance invalidated by the Nevada Supreme Court in *Scott*, the
4 Ordinance at issue here criminalize any action or behavior that may ‘annoy’ a Clark County Code
5 enforcement officer or law enforcement officer. For the same reasons as set forth by the Court in
6 *Scott*, the Ordinance is infirm.

7 Given these considerations, a short-term rental owner or patron should not be forced to
8 guess at the meaning of terms in the Ordinance, such as ‘group or family,’ ‘an event or gathering,’
9 or to ‘annoy’ one neighbor from the next. These terms are undefined and unconstitutionally vague.
10 Guessing wrong at their meaning should not be a crime.⁵⁰

11 D. Discretionary Criminal Enforcement Provisions

12 Compounding the unconstitutional problems with the vagueness of the Ordinance are the
13 criminal enforcement provisions that are equally vague and arbitrary. Section 7.100.230(b) of
14 the Ordinance provides that penalties for violating any provision “shall be cumulative and may
15 be exercised in any order or combination at any time.” Additionally, Section 7.100.230(d)(1)(I)
16 of the Ordinance provides that “[t]he amount of the fine shall be determined only after taking into
17 account, without limitation, the severity of the violation, whether the person who committed the
18 violation acted in good faith, and any history of previous violations” Viewed in isolation,

21 ⁴⁹ *Id.*

22 ⁵⁰ The Ordinance is also unconstitutionally overbroad. “The overbreadth doctrine invalidates laws . . . that infringe
23 upon First Amendment rights.” *Silvar*, 122 Nev. at 297, 129 P.3d at 687. In other words, the overbreadth doctrine
24 applies to statutes that have a seemingly legitimate purpose but are worded so broadly that they also apply to protected
speech. *See id.* The Nevada Supreme Court has held that “[e]ven minor intrusions on First Amendment rights will
trigger the overbreadth doctrine.” *Id.* at 297–98, 129 P.3d at 688. For the same reasons the Ordinance is
unconstitutionally vague, it is also overbroad and must be stricken for this reason.

1 or together, these enforcement provisions further exacerbate the unconstitutional vagueness of
2 the Ordinance. It must be stricken.

3 X. VIOLATION OF THE FIRST AMENDMENT

4 The Ordinance violates Article 1, Section 9 of the Nevada Constitution which provides
5 that “no law shall be passed to restrain or abridge the liberty of speech” and Article 1, Section 10
6 of the Nevada Constitution which provides that “[t]he people shall have the right to freely
7 assemble together to consult for the common good.” The First Amendment of the United States
8 Constitution provides that “no law” may be passed that abridges “the freedom of speech . . . or
9 the right of the people peaceably to assemble.” The Ordinance is unconstitutional in two
10 fundamental ways. First, the Ordinance places an unconstitutional prior restraint on speech.
11 Second, the Ordinance constitutes an impermissible prohibition on the freedom of association and
12 assembly. Each violation is addressed below.

13 A. Prior Restraint on Speech

14 Section 7.100.090(b)(4) of the Ordinance requires short-term rental license applicants to
15 provide Clark County with the names of all “rental sites that will be used to advertise the short-
16 term rental unit” as a condition of the license application⁵¹ This requirement is an
17 unconstitutional prior restraint on a short-term rental license applicant’s right to free speech. Here,
18 a unique blend of standards governing commercial speech, licensing, and prior restraint are at
19 issue. All three constitutional standards will be addressed. The Ordinance fails them all.

20 Undoubtedly, advertising is a form of commercial speech.⁵² While it has been held to a
21 lower level of judicial scrutiny than non-commercial speech, it still enjoys protections under the

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23 ⁵¹ See also Section 7.100.170(f)(8) of the Ordinance which requires a short-term rental license applicant to provide
24 Clark County with a list the names of all advertising platforms that are used to list the rental home in a monthly
report.

⁵² *Republic Entertainment v. Clark County Gaming and Licensing Board*, 99 Nev. 811, 816, 672 P.2d 634, 638 (1983).

1 First Amendment—a substantial basis for its prohibition must still exist.⁵³ Yet, the Nevada
2 Supreme Court has also held that “[t]o be constitutionally acceptable, an ordinance authorizing
3 officials to license activity that is presumptively protected by the First Amendment must establish
4 precise, narrowly-drawn standards to guide the officials.”⁵⁴ The United States Supreme Court
5 condemns “any system of prior restraint of First Amendment rights.”⁵⁵ “[A]ny system of prior
6 restraint is burdened with a heavy presumption against its constitutional validity.”⁵⁶ Thus, a prior
7 restraint on speech may be imposed only when “(1) the activity restrained poses either a clear and
8 present danger or a serious and imminent threat to a protected competing interest, (2) the order is
9 narrowly drawn, and (3) less restrictive alternatives are not available.”⁵⁷

10 Requiring short-term rental license applicants to prospectively list all advertising sites,
11 including internet sites, they may use at a future time as a condition of their application process
12 is a *per se* prior restraint on speech. This restraint unfairly limits the ability of short-term rental
13 licensees to conduct business activity and to change sites at a future date when market conditions
14 change, or more preferable sites become available. No rational, let alone compelling, basis exists
15 for Clark County to impose this upfront condition in order to obtain a license. Other motels or
16 hotels or businesses in Clark County do not have this type of advertising restraint. It is
17 burdensome. It restrains commercial activity and speech. It is unconstitutional.

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19 ⁵³ *Id.* (internal citations and quotations omitted).

20 ⁵⁴ *Northern Nevada Copy v. Menicucci*, 96 Nev. 533, 536, 611 P.2d 1068, 1069 (1980).

21 ⁵⁵ *Talk of the Town Bookstore v. City of Las Vegas*, 92 Nev. 466, 470, 553 P.2d 959, 961 (1976) (citing *Near v.*
22 *Minnesota*, 283 U.S. 697 (1931)).

23 ⁵⁶ *City of Las Vegas v. 1017 South Main Corp.*, 110 Nev. 1227, 1132, 885 P.2d 552, 555 (1994) (citing *Southeastern*
Promotions Ltd. v. Conrad, 420 U.S. 546 (1975)).

24 ⁵⁷ *Guinion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).

1 B. Restraint on Freedom to Associate and Assemble

2 Section 7.100.160(a) of the Ordinance restricts the right of individuals to two (2)
3 individuals per bedroom of the rental unit or a maximum of ten (10) individuals at the house.
4 Additionally, and as previously discussed, *see supra* 26, Section 7.100.180(b) of the Ordinance
5 is vague in its prohibition against ‘parties’ or ‘events’ or ‘gatherings.’ Construed individually or
6 jointly, these provisions violate the right to associate and assemble.

7 It is bedrock law that individuals within the United States have the right to associate and
8 assemble with each other.⁵⁸ Both the Nevada Supreme Court and the United States Supreme
9 Court have held that the right of individuals to associate is “in no way diminished because the
10 issue arises in an economic matter.”

11 Indeed, “the United States Supreme Court has ‘recognized the vital relationship between
12 freedom to associate and privacy in one’s association.’ Because of the importance of these tightly
13 intertwined rights that Court has refused to draw a line excluding those ‘engaged in business
14 activities’ from the reach of the First Amendment.”⁵⁹

15 The Texas Court of Appeals in the case *Zaatari v. City of Austin* held that provisions in
16 an ordinance enacted by the City of Austin that among other things, prohibited patrons of short-
17 term rentals to engage in a group activity or assemble between the hours of 10:00 p.m. and 7:00
18 a.m. and limited the number of individuals who could be at a short-term rental to ten (10)
19 individuals total or six (6) unrelated adults at any given time was unconstitutional.⁶⁰ The Texas
20 Court of Appeals held that the ordinance in that case “plainly restricts the right to assemble and

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22 ⁵⁸ *See Tectow v. City Council of North Las Vegas*, 105 Nev. 330, 334-35, 775 P.2d 227, 230-31 (1989).

23 ⁵⁹ *Id.* (quoting *Thomas v. Collins*, 323 U.S. 516, 531 (1945)).

24 ⁶⁰ 613 S.W.3d 172, 199-200 (Tex. App. 2019).

1 does so without regard to peaceableness or content of the assembly”⁶¹ It reasoned that “the
2 right to assemble is just as strong, if not stronger, when it is exercised on private property with
3 the permission of the owner, thereby creating a nexus with property and privacy rights.”⁶²

4 Here, the Ordinance enacted by Clark County contains similar, and in some instances
5 identical, provisions to those in the City of Austin ordinance that were held to be unconstitutional
6 by the Texas Court of Appeals. For example, the Ordinance similarly limits the total number of
7 individuals who can be on the property to ten (10) at any given time.⁶³ It also prohibits any
8 gatherings from 10:00 p.m. to 7:00 a.m.⁶⁴ Like the City of Austin ordinance, no standards for
9 enforcement of these *per se* prohibitions were enacted by Clark County. Rather, the Ordinance
10 is a blanket prohibition against individuals from associating or assembling on private property
11 without regard to the content or purpose of the gathering. It is unconstitutional.

12 XI. GOVERNMENT TAKING OF PRIVATE PROPERTY

13 The Ordinance violates the Takings Clause set forth in the Nevada Constitution and the
14 United States Constitution. Article 1, Section 8, Subsection 3 of the Nevada Constitution provides
15 that “[p]rivate property shall not be taken for public use without just compensation having first
16 been made.” The Fifth Amendment of the United States Constitution provides that “private
17 property [cannot] be taken for public use . . . without just compensation.” There are two types
18 of unconstitutional taking: physical and regulatory.⁶⁵

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20 ⁶¹ *Id.* (analyzing Chapter 25-2, Section 25-2-795 of the Austin City Code).

21 ⁶² *Id.* at 200.

22 ⁶³ *See* Section 7.100.160(a).

23 ⁶⁴ *See* Section 7.100.180(c)(II).

24 ⁶⁵ *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006).

1 A physical taking occurs when the government occupies or appropriates a portion of
2 private property.⁶⁶ The Nevada Supreme Court has held that a “[p]hysical appropriation exists
3 when the government seizes or occupies private property or ousts owners from their private
4 property.”⁶⁷ In other words, it occurs when a “regulation forces the property owner to acquiesce
5 to a permanent physical occupation.”⁶⁸

6 In contrast, a regulatory taking occurs when the government enacts a regulation that
7 deprives an owner of economic benefit of the property.⁶⁹ To determine if a regulatory taking has
8 occurred, a balancing test is applied to examine the economic impact of the regulation, its
9 interference with investment expectations, and the character of the government action.⁷⁰

10 Here, the Ordinance constitutes a hybrid mix of elements that constitute both physical and
11 regulatory unconstitutional takings of private property by Clark County. The United States
12 Supreme Court has recognized that an unconstitutional government taking may occur when a
13 regulation simply goes “too far.”⁷¹ It’s unconstitutional taking may be grouped into the following
14 four areas: unreasonable invasion of home privacy, interference with property fixtures, loss of
15 use and enjoyment of home, and loss of economic benefit of home. Each will be discussed below.

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19 ⁶⁶ See *id.* at 662, 137 P.3d at 1122.

20 ⁶⁷ *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647, 173 P.3d 734, 740 (2007).

21 ⁶⁸ *Id.*

22 ⁶⁹ *McCarran Int’l Airport*, 122 Nev. At 659, 137 P.3d at 1120.

23 ⁷⁰ *Penn. Central Transp. Co. v. New York*, 438 U.S. 104, 124 (1978).

24 ⁷¹ *Cedar Point Nursery v. Hassid*, 591 U.S. ___, ___, 141 S.Ct. 2063, 2072 (2021); see *Home v. Department of Agriculture*, 576 U.S. 350, 360 (2015); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (holding that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking”).

1 A. Invasion of Privacy

2 Both the United States Supreme Court and the Nevada Supreme Court have recognized
3 that a person’s right to have privacy in their own home is a core and fundamental tenet of our
4 constitutional democracy: “[N]one is the zone of privacy more clearly defined than when
5 bounded by the unambiguous physical dimensions of an individual’s home.”⁷²

6 The fact that an individual chooses to engage in business or economic activity within
7 their own home and property should not per se dilute all constitutional protections of their
8 privacy. Indeed, as evident throughout the COVID-19 pandemic, many Nevadans were confined
9 and obligated to work and conduct daily business and economic transactions from their own
10 home. While some short-term rental owners do not live in the homes they rent to patrons, others,
11 who may only rent a room or portion of a house, certainly do. Yet, the Ordinance as written
12 unreasonably takes away their rights to privacy without a showing of probable cause or necessity.

13 Section 7.100.170(r) of the Ordinance requires that at least two (2) or more noise
14 monitoring devices must be installed on the short-term rental owner’s yard and pool. Section
15 7.100.170(r)(1)-(3) of the Ordinance provide that “data” on noise levels must be maintained for
16 sixty (60) days and provided to Clark County “[u]pon request.” Section 7.100.170(o)(1)-(3) of
17 the Ordinance requires that a video surveillance camera must be installed and recording footage
18 maintained for sixty (60) days and provided to Clark County, or a law enforcement agency,
19 “[u]pon request.” Section 7.100.170(i)(2) of the Ordinance provides that a short-term rental
20 owner “must” permit inspection of their home “with or without notice” and that they have a duty
21 “to provide access.” Section 7.100.170(p) of the Ordinance provides that a short-term rental

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24 ⁷² *Howe v. State*, 112 Nev. 458, 465-66, 916 P.2d 153, 159 (1996) (quoting *Payton v. New York*, 445 U.S. 573, 589-90 (1980)).

1 owner “must” provide all financial information involving the home for three (3) years upon
2 request of Clark County.

3 The sum effect of these provisions is that Clark County—a government entity—will have
4 unfettered access to view all individuals who enter and exit a home, what they do behind a fenced
5 front or back yard, *and*, even more egregious, may enter the home without cause or advanced
6 notice and demand that the homeowner provide all financial documents. What appears lost on
7 Clark County is that short-term rental units are people’s *homes*. They are not simply vacant
8 houses. The ability of the government to enter private property, *i.e.*, a home, at will and with
9 undefined standards and unchecked discretion amounts to a physical constructive invasion of
10 that property: the ability to freely enter a home equates to ownership.

11 Recently, in the 2021 opinion *Cedar Point Nursery v. Hassid*, the United States Supreme
12 Court held that a California regulation that permitted access to private property by union
13 organizers was an unconstitutional taking of private property.⁷³ These requirements are not
14 tailored and serve no compelling interest. They impose a cost of doing business that is too high.⁷⁴
15 They go too far. It is a taking.

16 B. Interference with Property Fixtures

17 The United States Supreme Court has stated that “[t]he right to exclude is ‘one of the
18 most treasured’ rights of property ownership.”⁷⁵ Here, as a condition of obtaining a license from
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20 ⁷³ 591 U.S. ___, 141 S.Ct. 2063 (2021).

21 ⁷⁴ The provisions cited above may also violate the right against unreasonable searches and seizures set forth in Article
22 1, Section 18 of the Nevada Constitution and the Fourth Amendment of the United States Constitution. Similarly,
23 the provisions may also violate the right against self-incrimination set forth in Article 1, Section 8, Subsection 2 of
24 the Nevada Constitution and the Fifth Amendment of the United States Constitution.

⁷⁵ *Cedar Point Nursery*, 591 U.S. at ___, 141 S.Ct. at 2074 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982)).

1 Clark County to operate a short-term rental, physical interference of a licensee’s property is
2 mandated by the Ordinance with the placement of multiple fixtures. One or even two could,
3 arguably, be rational. But multiple fixtures are not. Once again, the Ordinance goes too far.

4 Section 7.100.170(r) of the Ordinance requires that at least two (2) or more noise
5 monitoring devices must be installed on a short-term rental owner’s yard. An additional noise
6 monitoring device is required for a pool or spa. Section 7.100.170(o)(1)-(3) of the Ordinance
7 requires that a video surveillance camera be installed. Section 7.100.170(h) of the Ordinance
8 requires that the address be illuminated at night. Section 7.100.170(q) of the ordinance requires
9 that an 8.5 x 11 ‘placard’ on the exterior of the residence and in plain public view.

10 The United States Supreme Court in 1982 in the case *Loretto v. Teleprompter Manhattan*
11 *CATV Corp.*, held that an unconstitutional taking occurred where cable plates, boxes, wires, and
12 screws were affixed to a building.⁷⁶ There, the Court held that a physical taking can also be an
13 intrusion on private property by requiring something to be permanently attached to it—no matter
14 how small the affixture. In *Loretto*, the fixtures were a ½ inch cable wire and a 1 ½ foot box.⁷⁷
15 Similar to *Loretto*, here, multiple Ordinance requirements—attaching multiple government-
16 mandated physical fixtures to a home—removes, *i.e.*, takes away, the private nature of the
17 property and converts it into something else. This is unconstitutional.

18 C. Impaired Use and Enjoyment of Home

19 The United States Supreme Court has long guarded the sanctity of the home as being of
20 the ““highest order in a free and civilized society.””⁷⁸ The Court has recognized that the “home”

22 ⁷⁶ 458 U.S. 419 (1982).

23 ⁷⁷ *Id.* at 420.

24 ⁷⁸ *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)).

1 is different, and is conferred unique constitutional status, so that all citizens may use and enjoy
2 their home in privacy and without intrusion.⁷⁹ Here, the Ordinance strips that privacy away,
3 removing the ability of both a short-term rental owner, and patron, of the ability to use and enjoy
4 their property. The prohibitions are egregious.

5 Section 7.100.180(c)(2) of the Ordinance prohibits a short-term rental property owner
6 from using “all rear and side yard outdoor lighting between the hours of 10:00 p.m. and 7:00
7 a.m.” Section 7.100.180(c)(1)(I) of the Ordinance prohibits the outdoor use of “any radio,
8 receiver, stereo, musical instrument, sound amplifier or similar device” irrespective of the noise
9 level. Section 7.100.180(c)(1)(II) of the Ordinance prohibits the outdoor use of “amenities, such
10 as pools, spas, barbecues, and firepits” between the hours of 10:00 p.m. and 7 a.m. Section
11 7.100.180(a) of the Ordinance prohibits the residence from being used for “any purpose other
12 than for dwelling, lodging, or sleeping and for activities that are incidental to its use for dwelling,
13 lodging or sleeping.” Section 7.100.180(b) of the Ordinance prohibits the residence from being
14 used for “[p]arties, weddings, and events” and “gatherings” that exceed 10 individuals. Section
15 7.100.180(c) of the Ordinance prohibits all “noise, light, smoke, particulate matter, odors, and
16 hazardous materials” from the residence that may annoy or disturb the quiet, comfort, or repose
17 of an ordinary person with reasonable sensibilities.

18 These restrictions bar any gatherings, light, noise, odor, or sound from a short-term rental
19 property between the hours of 10 p.m. and 7 a.m. every night. They are imposed by Clark County
20 without objective standards or regard for behavior. The slightest noise, even on New Year’s Eve
21 or the Fourth of July, by anyone (homeowner and guest alike) gives rise to a potential criminal
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24 ⁷⁹ *Id.* at 484-85.

1 citation. The onerous effect of these prohibitions is to eliminate the ability of both a short-term
2 rental owner, as well as a patron, to use and enjoy their private property, *i.e.*, their home.

3 D. Loss of Economic Benefit

4 Not only do the above restrictions impair the ability of short-term rental owners to use
5 and enjoy their home, they also cause short-term rental owners to suffer a loss in economic
6 benefit of their home. The Ordinance does this in two ways.

7 First, Section 7.100.080(f)(II) provides that homeowners in Clark County who happen to
8 live within 1,000 feet of another short-term rental owner are automatically ineligible for a short-
9 term rental license. This restriction is arbitrary. The determining factor as to whether one
10 individual may be able to earn income from their home and another may not, is dependent upon
11 chance and luck—whether a neighbor who lives within 1,000 feet of them decides to seek a
12 license and randomly get approved by Clark County first. Whether a particular home is within
13 1,000 feet of another short-term rental property will logically impact its potential economic uses
14 and, therefore, its economic value. Clark County has failed to establish any factual record or
15 rational basis to support this restriction.

16 Second, and as previously discussed in a First Amendment context, *see supra* 30, Section
17 7.100.160(a) the Ordinance arbitrarily limits the maximum occupants to a maximum of ten (10)
18 individuals, irrespective of the number of bedrooms in the house. Thus, a six (6) or seven (7)
19 bedroom home is subject to the same maximum occupant limit of a five (5) bedroom home. This
20 arbitrary limitation will reduce the economic benefit and use of larger bedroom short-term rental
21 properties. No rational basis exists for these, or the other, arbitrary occupancy limitations. They
22 are unconstitutional government takings.

1 XII. LACK OF DUE PROCESS

2 The Ordinance violates the Due Process Clause of the Nevada Constitution and the
3 United States Constitution. More specifically, Article 1, Section 8, Subsection 2 of the Nevada
4 Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property,
5 without due process of law.” It also violates the Due Process Clause as set forth in the Fourteenth
6 Amendment of the United States Constitution.

7 The Nevada Supreme Court has held that to establish a due process claim it must be
8 shown that an individual (1) had a liberty interest that was interfered with by the government
9 and (2) the established procedures to address it were constitutionally insufficient.⁸⁰ In this case,
10 the Ordinance violates due process protections in three ways.

11 A. No Notice Provided for Incomplete License Application

12 Section 7.100.100(f) of the Ordinance provides that Clark County will “not be required to
13 notify any applicant of an incomplete application.” This lack of notice to an applicant is a *prima*
14 *facie* due process violation. It not only deprives a short-term rental license applicant of the
15 opportunity to be given notice and to be informed of a deficiency, but it also deprives a license
16 applicant of the opportunity to timely dispute a determination made by Clark County and/or to
17 cure any deficiency that may be in the application.⁸¹ Providing a license applicant notice of
18 missing or incomplete application information is not only required by due process principles, it
19 is also good public service.

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23 ⁸⁰ *Malfitano v. County of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t of Corr. v. Thompson*,
490 U.S. 454 (1989)).

24 ⁸¹ See *Burgess v. Storey County Board of Commissioners*, 116 Nev. 121, 125, 992 P.2d 856, 858-59 (2000).

1 B. Unpredictable and Cumulative Fines and Penalties

2 Section 7.100.230(b) of the Ordinance provides that an individual cited by Clark County,
3 or a law enforcement officer, for being in violation of the Ordinance may be subject to
4 “cumulative” fines and citations that may be “exercised in any order or combination at any time.”
5 Again, this provision also is a *prima facie* due process violation. As it is written, it subjects a
6 short-term rental owner, or patron, to layers of multiple violations at the subjective discretion of
7 government authorities. The broad authority conferred by the Ordinance that empower citations
8 to be issued in ‘any’ order and in ‘any’ combination and at ‘any’ time falls well short of due
9 process requirements.

10 C. Subjective Enforcement

11 Section 7.100.230(d)(1)(I) of the Ordinance provides that “[t]he amount of the fine shall
12 be determined only after taking into account, without limitation, the severity of the violation,
13 whether the person who committed the violation acted in good faith, and any history of previous
14 violations” This provision also improperly authorizes government authorities to issue a
15 citation to a short-term rental owner, or patron, based upon subjective discretion of what
16 constitutes ‘good faith’ or an egregious violation history that may differ from one Clark County
17 or law enforcement official to another. No standards to ensure fair and equal treatment under
18 the law are provided. Who is cited. How they are cited. What they are cited for should not
19 depend upon the personal judgments or personalities of the individuals involved.

20 D. Liability for the Acts of Others

21 Section 7.100.230(e)(2) of the Ordinance provides that when a citation is issued involving
22 a short-term rental property that “the property owner shall also be subject to receipt of an
23 administrative citation” Pursuant to this provision, a short-term rental owner may be cited
24 under the Ordinance for conduct he or she did not commit or of which he or she had no knowledge

1 or involvement. It makes a short-term rental owner legally responsible for the acts and behavior
2 of others. Given that the Ordinance carries not only civil, but criminal, penalties, this provision
3 violates bedrock constitutional principles of due process, as well as fundamental fairness.⁸²

4 XIII. EQUAL PROTECTION UNDER THE LAW

5 The Ordinance violates the Equal Protection Clause, as set forth in Article 4, Section 21
6 of the Nevada Constitution and the Fourteenth Amendment of the United States Constitution
7 because it treats short-term rental owners, and patrons, disparately from other similarly situated
8 Clark County businesses and customers.

9 The United States Supreme Court has held that an equal protection claim may be brought
10 by a "class of one" if the appellant can demonstrate that he or "she has been intentionally treated
11 differently from others similarly situated and that there is no rational basis for the difference in
12 treatment."⁸³ When addressing an equal protection claim, the Nevada Supreme Court has held
13 that a court "must determine whether (1) the statute, either on its face or in the manner of its
14 enforcement, results in members of a certain group being treated differently from other persons
15 based on membership in that group; and (2) if it is demonstrated that a cognizable class is being
16 treated differently, the court must analyze under the appropriate level of scrutiny whether the
17 distinction made between groups is justified."⁸⁴ "[U]nder a rational basis test, classifications
18 must 'apply uniformly to all who are similarly situated, and the distinctions which separate
19 those who are included within a classification from those who are not must be reasonable, not

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22 ⁸² It is well-settled jurisprudence that an individual must possess a level of *mens rea* before they are held criminally
responsible for the actions or behaviors of others. *See, generally Ford v. State*, 127 Nev. 608, 618, 262 P.3d 1123,
1130 (2011).

23 ⁸³ *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

24 ⁸⁴ *Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (internal citations and quotations omitted).

1 arbitrary.”⁸⁵ In other words, an equal protection inquiry should focus on whether ““there is a
2 rational relationship between the disparity of treatment and some legitimate government
3 purpose.””⁸⁶

4 Here, short-term rental homeowners are similarly situated as a class to other licensed
5 businesses, including hotels and motels, and residents in Clark County. Yet, they are treated
6 extraordinarily different. No reasonable basis exists for this unfair treatment by Clark County.

7 As explained below, the Ordinance violates equal protection guarantees in four ways.

8 A. Arbitrary 2,500 Foot Distance Limitation from Resort Properties

9 Section 7.100.080(f)(1) of the Ordinance prohibits a short-term rental home from being
10 licensed and operating within 2,500 feet of the property line of a resort hotel. This distance
11 requirement has no rational or evidentiary basis and, instead, is an arbitrary property limitation.
12 It advances no public health and safety policy for visitors to or residents of Clark County. Indeed,
13 Nevada law provides that an adult-use cannabis establishments can operate within 1,000 feet of a
14 public or private school (k-12) or within 1,500 feet of an establishment that holds a non-restricted
15 gaming license.⁸⁷ Yet, a short-term rental home has been banned by Clark County at nearly twice
16 the distance from resort properties than cannabis establishments. As required by the Ordinance,
17 short-term rental licensees are required to pay licensing fees and taxes, just like other businesses.
18 Why short-term rentals may not operate within 2,500 feet of resort hotels remains elusive and
19 disparately treats short-term rentals from other licensed Clark County businesses.

22 ⁸⁵ *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520-21, 217 P.3d 546, 558-59 (2011) (internal citations
and quotations omitted).

23 ⁸⁶ *Doe*, 133 Nev. at 768, 406 P.3d at 486 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

24 ⁸⁷ See NRS 678B.250(3)(a)(2)(II); see also NRS 678B.210 (3)(a)(2)(II).

1 B. Unreasonable Local Representative Mandate

2 Section 7.100.170(d) of the Ordinance requires each short-term rental licensee to
3 designate a “local representative” who is able to respond to certain circumstances “within thirty
4 (30) minutes during all times that the property is rented or used.” While requiring a short-term
5 rental licensee to designate a local representative to be available to respond to certain
6 circumstances is reasonable, mandating they achieve a thirty (30) minute on-site response time at
7 the property is unreasonable. Other licensed businesses in Clark County are not obligated to have
8 a manager or responsible individual be available to arrive at their business within thirty (30)
9 minutes’ notice at all times.

10 Depending upon the time of day (or night), it is difficult, if not impossible, to drive across
11 Las Vegas within thirty (30) minutes due to traffic. Few matters, if any, would ever require an
12 on-site presence by a local representative, let alone one that must be responded to within thirty
13 (30) minutes. With availability of the internet, wi-fi, and cellphones, issues arising at the home
14 can be timely responded to by a local representative remotely. Fire, water, and utility emergencies
15 do not require an on-site representative and would be responded to by professional experts in
16 these fields. Public health and safety emergencies would also be responded to by local law
17 enforcement or paramedics like any other business or homeowner. Short-term rental owners
18 should not be singled out for this thirty (30) minute representative requirement. It is an increased
19 burden. It is unfair. It lacks a rational basis.

20 C. Excessive Fines and Punishments

21 Section 7.100.230(b) and (d)(1)(II) of the Ordinance provide that any violation may result
22 in fines that range from five-hundred dollars (\$500) (first offense) to one-thousand dollars
23 (\$1,000) (all subsequent offenses) and may be imposed cumulatively and “in any order or
24 combination” per offense. Meaning, for example, a short-term rental owner who has three patrons

1 who decide to go for an early morning swim in a backyard pool or who fail to turn on an outside
2 address light for three (3) nights in a row will be subject to a two-thousand and five-hundred
3 dollar (\$2,500) fine from Clark County.

4 Such harsh fines and civil punishments for *de minimus* everyday acts of life are excessive
5 and unnecessary. Other business owners, or homeowners, in Clark County are not exposed to
6 these penalties. If any visitor or resident in Clark County violates noise ordinances or commits
7 criminal offenses, laws already exist to address that behavior. The Ordinance, however, singles
8 out short-term rental licensees and patrons by subjecting them to a layer of additional fines and
9 punishments that other individuals do not face.⁸⁸

10 D. Punitive and Unfairly Burdensome Provisions

11 As discussed above and throughout this Petition, provisions within the Ordinance stretch
12 and exceed the limits of lawful and reasonable prohibitions as established by the Nevada
13 Constitution and the United States Constitution. Every opportunity where obtaining a short-term
14 rental home license could be made difficult, onerous, and intimidating, it was done. Operating a
15 lawful business should not have to occur in an environment of uncertainty, financial exposure,
16 and ongoing criminal jeopardy.

17 Numerous provisions within the Ordinance are unconstitutional when viewed in isolation;
18 they are even more so when viewed cumulatively.

19 XIV. DORMANT COMMERCE CLAUSE

20 The Ordinance violates the Dormant Commerce Clause as set forth in Article 1, Section
21 8, Clause 3 of the United States Constitution. Under the Dormant Commerce Clause (also known
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23 ⁸⁸ Notably, these Ordinance provisions may in certain factual scenarios implicate prohibitions against excessive fines
24 and fees as set forth in Article 1, Section 6 of the Nevada Constitution and the Eighth Amendment of the United
States Constitution.

1 as ‘the Negative Commerce Clause’), states and local government entities are constitutionally
2 prohibited from enacting laws that unjustifiably discriminate against or burden the flow or
3 interstate commerce.⁸⁹ In other words, the Dormant Commerce Clause prohibits states and local
4 government entities “‘from advancing their own commercial interests by curtailing the
5 movement of articles of commerce, either into or out of the state.’”⁹⁰

6 The United States Supreme Court has held that a law is discriminatory and violates the
7 Dormant Commerce Clause when it produces “‘differential treatment of in-state and out-of-state
8 economic interests that benefits the former and burdens the later.’”⁹¹ A statute or ordinance may
9 violate the Dormant Commerce Clause if it discriminates on its face or imposes an undue burden
10 on commerce through its purpose.⁹² If a statute or ordinance advances a legitimate local interest
11 and applies equally to in-state and out-of-state citizens, it may survive a constitutional challenge
12 if the burdens it imposes on interstate commerce are not “‘clearly excessive in relation to the
13 putative local benefits.’”⁹³ In making this evaluation, the United States Supreme Court set forth
14 the following three criteria in the opinion *Pike v. Bruce Church, Inc.* for courts to consider: (1)
15 the nature of the local interest, (2) the extent of the burden placed upon interstate commerce, and
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19 ⁸⁹ *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 560, 170 P.3d 508, 514-15 (2007).

20 ⁹⁰ *Id.* (quoting *Fort Gratiot Sanitary Landfill v. Michigan Dept. of Natural Resources*, 504 U.S. 353, 359 (1992)
(other internal citations and quotations omitted)).

21 ⁹¹ *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) (internal citations
22 and quotations omitted).

23 ⁹² *Douglas Disposal, Inc.*, 123 Nev. at 552, 170 P.3d at 514-15 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336
(1979)).

24 ⁹³ *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

1 (3) whether the local interest could have been served by other legislation that does not impact
2 interstate commerce.⁹⁴

3 Recently, on August 22, 2022, the United State Court of Appeals for the Fifth Circuit
4 issued a published opinion in the case *Hignell-Stark v. City of New Orleans* where it reversed a
5 lower court and held that a short-term rental licensing scheme enacted by the City of New
6 Orleans violated the Dormant Commerce Clause on its face because it required short-term rental
7 properties to be the primary residence of a licensee and, therefore, discriminated against out-of-
8 state residents.⁹⁵ In reaching its decision, the Fifth Circuit rejected arguments by the City of
9 New Orleans that the residency requirement and the scheme’s burdens on interstate commerce
10 were necessary to achieve the local interests of reducing nuisances, increasing housing, and
11 maintaining residential neighborhood characteristics.⁹⁶ The Firth Circuit stated: “The City has
12 many options to address the problems caused by [short-term rentals] in residential neighborhoods.
13 But it chose the one the Constitution forbids.”⁹⁷

14 Here, while the Ordinance enacted by Clark County does not contain an identical
15 residency requirement for short-term rental licensees as the ordinance at issue and enacted by
16 the City of New Orleans, the Fifth Circuit’s holding in *Hignell-Stark* is still instructive and
17 applicable. One of Clark County’s stated purposes for short-term rental limitations is to promote
18 “permanent, affordable housing for the residents of the County.”⁹⁸ In doing so, however, the
19 Ordinance discriminates against the investment in and purchase of residential properties in

21 ⁹⁴ See *Pike*, 397 U.S. at 142.

22 ⁹⁵ No. 21-30643, 2022 WL 3584037 *5-9 (5th Cir. August 22, 2022).

23 ⁹⁶ *Id.* at *8.

23 ⁹⁷ *Id.* at *9.

24 ⁹⁸ See Section 7.100.010(a).

1 Nevada by out-of-state individuals who may not own or occupy a home in Clark County as their
2 primary or full-time home, but who may still wish to use and maintain that property as a short-
3 term rental. It does so in two ways. First, the Ordinance sets forth an arbitrary one percent (1%)
4 cap on available short-term rental licenses in Clark County, which limits supply. *See supra* 21.
5 Second, it mandates that a short-term rental licensee designate a Clark County resident as a local
6 representative who can be available and physically present at the property within thirty (30)
7 minutes notice, day or night.⁹⁹ *See supra* 42. This local representative requirement is a *de facto*
8 residency requirement for a licensee holder and akin to the requirement held violative of the
9 Dormant Commerce Clause by the Fifth Circuit in *Hignell-Stark*.

10 Given these restrictive provisions, the Ordinance favors and protects in-state residents to
11 the detriment of out-of-state homeowners, potential investors, and visitors. The consequence of
12 the Ordinance is it will limit the marketplace of available short-term rental options and
13 opportunities in Nevada for out-of-state individuals. By doing so, the Ordinance places an undue
14 and discriminatory burden on the flow of interstate commerce and economic activity that violates
15 the Dormant Commerce Clause.

16 Certainly, the availability of affordable housing is a valid public policy concern.
17 However, placing unnecessary limitations on short-term rental licensees that burden interstate
18 commerce and the availability of options in the short-term rental marketplace in Clark County is
19 not a constitutional mechanism to achieve this policy objective. Rather, Clark County has the
20 ability to increase housing affordability and availability for Nevada residents by incentivizing
21 construction and using its zoning, permitting, and other governmental powers. It does not,
22 however, have authority to unduly limit and burden the flow of interstate commerce. Once again,
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24 ⁹⁹ *See* Section 7.100.170(d).

1 the Ordinance goes too far. It violates the Dormant Commerce Clause. It should be stricken.
2 As stated below, it also violates Nevada law.

3 XV. VIOLATION OF NEVADA LAW

4 AB 363 was enacted in 2021 by the Nevada Legislature during the 81st Regular Session
5 to compel Clark County to enact new regulations that would permit short-term rentals to resume
6 lawful operations. However, in addition to the constitutional violations set forth above, the
7 Ordinance as enacted by Clark County is also infirm because it violates provisions of Nevada
8 law, *i.e.*, AB 363. The following two sections of AB 363 are relevant.

9 Section 7, Subsection 2(e)(1) of AB 363 provides that a short-term rental home may be
10 rented for a minimum of “1 night” if the home is owner-occupied. Yet, Section 7.100.160(b) of
11 the Ordinance prohibits all “bookings of fewer than two (2) nights” The Ordinance fails to
12 distinguish between owner-occupied and non-owner-occupied bookings and, therefore, violates
13 AB 363 on this basis.

14 Section 7, Subsection 2(f)(1) of AB 363 provides that a minimum of 660 feet must be
15 maintained between houses that are offered as short-term rentals. Yet, Section 7.100.080(f)(2)
16 of the Ordinance disregards the distance requirement between homes set forth in AB 363 and
17 increases the minimum distance to 1,000 feet that must be maintained. At issue is the language
18 of Section 7, Subsection 2(f)(1) of AB 363 which provides that:

19 660 feet [must exist] between any residential units offered for rent
20 for the purposes of transient lodging, except for residential units
21 in a multifamily dwelling, *and any other minimum separation*
22 *requirement the board determines is necessary . . .*
23
24

1 (Emphasis added). While Clark County may assert that it is authorized by AB 363 to disregard
2 the plain language of AB 363, this advances an absurd interpretation of the statute.¹⁰⁰ The 660
3 feet distance requirement set forth in AB 363 is very specific. Had the Nevada Legislature
4 intended for Clark County to disregard the 660 feet distance requirement, it would not have
5 included it.¹⁰¹ Rather, reference in Section 7, Subsection 2(f)(1) of AB 363 to “any other
6 minimum separation requirement the board determines is necessary” authorizes Clark County to
7 set boundary distances between short-term rentals and other establishments. The Ordinance also
8 violates AB 363 on this basis.

9 Section 7, Subsections 2(n) and 3 of AB 363 provide that a framework of “civil” penalties
10 may be established by Clark County for individuals who violate a short-term rental ordinance.
11 AB 363 does not authorize Clark County to impose criminal penalties for a violation. Indeed,
12 nowhere in AB 363 are criminal penalties authorized or mentioned.

13 Yet, Section 7.100.090(c)(2) of the Ordinance criminalizes the license application
14 process by compelling an applicant to affirm under penalty of perjury their intent to adhere to
15 the Ordinance,¹⁰² and Section 7.100.230(f)(1) of the Ordinance provides that violation of the
16 Ordinance is a misdemeanor crime. While Subsections in AB 363 state that civil penalties may
17 be enacted “in addition to any other penalty provided by law,” this language does not constitute
18 permissive authorization for Clark County to criminalize what the Nevada Legislature intended
19 to be a civil infraction. Certainly, Clark County has authority to criminalize conduct independent
20

21 ¹⁰⁰ See *Young v. Nevada Gaming Control Board*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020) (holding that
22 statutes must be interpreted in a way that avoids an “absurd result”) (internal citations and quotations omitted).

23 ¹⁰¹ See *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (holding that
24 statutes must be interpreted “in a way that [does] not render words or phrases superfluous or make a provision
nugatory” (internal citations and quotations omitted)).

¹⁰² See NRS 199.120 (providing that perjury is a felony crime).

1 of being a short-term rental license holder. But the Ordinance violates AB 363 by injecting
2 criminal penalties into the short-term rental market in Clark County that the Nevada Legislature
3 never intended to impose.

4 XVI. PROVISIONS WITHIN AB 363 ARE UNCONSTITUTIONAL

5 While some provisions in the Ordinance depart from AB 363, other provisions within it
6 mirror language of AB 363. Those similar provisions of AB 363 violate the Nevada Constitution
7 and the United States Constitution for the same reasons that the Ordinance does. For example,
8 Section 20, Subsection (k) of AB 363 prohibits the use of short-term residential homes for
9 “parties, weddings, events or other large gatherings.” This prohibition is unconstitutional for
10 those reasons that the Ordinance is unconstitutional and are set forth in this motion.

11 Section 7, Subsections (f)(1) and (2) of AB 363 prohibit a short-term rental property from
12 operating within 2,500 feet of a resort hotel or within 660 feet of another short-term rental home.
13 Again, for the reasons already discussed above with respect to the Ordinance, *see supra* at 42,
14 45, these prohibitions in AB 363 are similarly unconstitutional. Additionally, Section 7,
15 Subsection (g) arbitrarily limits the maximum occupancy of a short-term rental to sixteen (16)
16 individuals, irrespective of the number of bedrooms of the home. This limitation remains
17 unconstitutional for the reason the Ordinance’s occupancy limit is unconstitutional, *see supra* 26,
18 38. Accordingly, as the Ordinance is unconstitutional, language that is in AB 363 is equally
19 unconstitutional and these infirm provisions must be enjoined for the same reasons.

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1 **XVII. IRREPARABLE HARM**

2 The existence of a constitutional violation in itself has been held not only by the Nevada
3 Supreme Court,¹⁰³ but federal courts as well,¹⁰⁴ to constitute sufficient irreparable harm to
4 support a preliminary injunction. After-the-fact monetary damages, unlike in other civil cases,
5 is an inadequate remedy.¹⁰⁵

6 Approximately two weeks ago, Clark County began accepting applications for short-term
7 rental licenses. Individuals are already applying. As set forth in the Complaint, as well as this
8 motion, the application process and licensing scheme set forth in the Ordinance is arbitrary and
9 capricious, lending itself to a random process that depends upon the personal discretion and
10 subjective judgment of Clark County officials, and luck. Once licenses are actually issued by
11 Clark County, it will be difficult and chaotic to unwind the ‘winners and losers’ in this process
12 and remedy inequities.

13 Once an individual is improperly cited under the unconstitutional civil or criminal
14 provisions of the Ordinance, the trauma, expense, and harm to their reputation and quality of life
15 cannot be undone. Perhaps more importantly, the harm individuals, who are each members of
16 the Rental Association, are currently experiencing due to the uncertainty to their future
17 livelihoods and liberty is also real.

18 Many of the Rental Association’s 700 members are retirees who are relying upon the
19 ability and expectation of obtaining a short-term rental license to supplement their income.
20 Others will be relying upon a short-term rental license to allow them the financial flexibility to

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22 _____
23 ¹⁰³ See *City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013).

24 ¹⁰⁴ See *Preston v. Thompson*, 589 F.2d 300, 306 n. 3 (7th Cir. 1978).

¹⁰⁵ See *City of Sparks*, 129 Nev. at 357, 302 P.3d at 1124.

1 continue working from home to care for an ill loved one. Plaintiff Jacqueline Flores, for example,
2 is representative of the Rental Association members.

3 Applying for a license requires a waiver of fundamental constitutional rights. If denied
4 a license, Ms. Flores will be denied an opportunity to use her home as a short-term rental property.
5 If granted a license, she will be denied constitutional rights within her own home and live under
6 a threat of unfair, arbitrary, and punitive enforcement of the Ordinance. *See* Exhibit 1 (Affidavit
7 of Jacqueline Flores). Under the Ordinance as it is currently drafted, it is a losing proposition
8 either way. Action by this Court is necessary.

9 Obtaining a short-term rental license for these individuals is not simply an aspiration or
10 past time hobby, it is a difference between financially surviving during retirement and caring for
11 ill family members. Causing families to move from, or even lose, their homes is irreparable.
12 While Clark County may not be willing to guarantee every applicant receives a short-term rental
13 license, they have a responsibility to ensure that the process is just and fair and complies with all
14 constitutional proscriptions. As currently drafted, it does not.

15 Additionally, and as set forth in the Complaint and in this Motion, *see supra* 30, the
16 application process in the Ordinance itself violates the First Amendment by constituting a *prima*
17 *facie* example of a prior restraint on commercial speech and activity by requiring license
18 applicants to provide Clark County with all locations where the short-term rental unit will be
19 advertised.¹⁰⁶ Failure to do so may cause the application to be rejected. Of all First Amendment
20 violations, the Nevada Supreme Court has remarked that prior restraints “are the most serious
21 and least tolerable.”¹⁰⁷ Violations of free speech, including commercial speech, are irreparable.

22 _____
23 ¹⁰⁶ *See* Section 7.100.090(b)(4) of the Ordinance.

24 ¹⁰⁷ *See Las Vegas Review-Journal v. Eighth Judicial Dist. Ct.*, 134 Nev. 40, 43, 412 P.3d 23, 26 (2018); *see also* EJDRCR 2.17 (providing that prior restraint causes of action warrant expedited treatment).

1 Short-term rental owners do not simply rent out their homes. Many live in them too. As
2 set forth in this the Complaint and this Motion, *see supra* _____, the Ordinance invades the
3 sanctity of the home as a condition of obtaining a license. The United States Supreme Court
4 held that the “home” is different and is conferred unique constitutional status against invasion of
5 privacy. The Ordinance, as drafted, violates and intrudes upon that status and sacred privacy.¹⁰⁸

6 Given the totality of the above considerations, if a preliminary injunction does not
7 promptly issue by this Court and the short-term rental licensing process allowed to continue,
8 irreparable harm will result. This prong of the analysis is satisfied.

9 **XVIII. BALANCING OF HARDSHIPS**

10 Clark County will suffer no meaningful hardship if a preliminary injunction issues in this
11 matter. Clark County—a government entity—has significant financial and legal resources.
12 Individuals who seek or may later obtain a short-term rental license under the Ordinance do not.
13 As set forth in the Exhibits by resident of Clark County accompanying this Motion, a
14 fundamental motivation for individuals wanting to operate a short-term rental property is to
15 supplement their income due to financial hardship. Expecting these individuals to engage in
16 piecemeal litigation once they are denied a license or issued a citation is unreasonable and
17 contrary to the interests of public policy and economy.

18 The Rental Association is not opposed to reasonable regulation of the short-term rental
19 market in unincorporated Clark County. Yet as previously stated, the Ordinance goes to far and
20 offends both the Nevada Constitution and the United States Constitution. If an injunction issues,
21 Clark County will hopefully take the opportunity to revisit and redraft the Ordinance and remedy
22 this matter to benefit all. They could also appeal. Either way, they will not suffer hardship.

23
24 ¹⁰⁸ *Carey v. Brown*, 447 U.S. 455, 471 (1980).

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 3rd day of October, 2022, I caused the above and foregoing document, entitled **MOTION FOR PRELIMINARY INJUNCTION** to be served as follows:

- by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent electronically via the Court’s electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail; and/or
- to be served through Formal Service of Process (Proof of Service to follow)

to the parties or attorney(s) listed below at the address and/or facsimile number indicated below:

James B. Gibson, Chair Board of Clark County Commissioners 500 S. Grand Central Pkwy, 6 th Floor Las Vegas, NV 89155 DistrictG@clarkcountynv.gov	Yolanda T. King, County Manager Clark County 500 S. Grand Central Parkway, 6 th Floor Las Vegas, NV 89155
Aaron D. Ford, Attorney General Office of the Nevada Attorney General 100 N. Carson St Carson City, NV 89701 AFord@ag.nv.gov	Steve B. Wolfson, District Attorney Office of the Clark County District Attorney steven.wolfson@clarkcountynv.com (courtesy copy)
Jeff Rogan, Deputy District Attorney Civil Division, Clark County District Attorney Jeffrey.Rogan@clarkcountynv.com	

/s/ Madelyn B. Carnate-Peralta
An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

AFFIDAVIT OF JACQUELINE FLORES

Jacqueline Flores, being first duly sworn testifies as follows:

1. I am a resident of unincorporated Clark County, Nevada, and I have lived in Nevada since 2006.

2. I am the President and the Director of the Greater Las Vegas Short Term Rental Association (GLVSTRA), which is a grassroots non-profit organization that is incorporated with the Nevada Secretary of State. The GLVSTRA is an advocacy group that represents the interests of owners and patrons of short-term rental homes in Clark County.

3. Members of the GLVSTRA are from a variety of diverse educational, economic, and career backgrounds, and their interest as to why they desire to offer their property as a short-term rental home vary widely.

4. The GLVSTRA has approximately 700 official members, each of whom are interested stakeholders in the development and implementation of short-term rental home policies and laws in Clark County.

5. Members of the GLVSTRA have expressed to me they are interested in offering their home as a short-term rental in Clark County for reasons that include the need to supplement income during such life events as retirement, job loss/economic downturn, or to care for a young or sick family member.

6. Members of the GLVSTRA have also expressed to me they would find joy and satisfaction in the ability to offer their home to visitors from across the United States and throughout world who come to the greater Las Vegas area. It would be a source of meaningful cultural and social interaction in their lives.

7. As the President and the Director of the GLVSTRA, I have spoken at proceedings before the Board of Clark County Commissioners and the Nevada Legislature regarding the development of the short-term rental home policies and laws in Clark County.

8. In addition to being the President and the Director of the GLVSTRA, I am also a homeowner in unincorporated Clark County.

9. I find the language of the new Ordinance governing short-term rental homes in unincorporated Clark County, which was enacted by the Board of Clark County Commissioners on June 21, 2022, to be unclear and confusing.

10. I intend to submit an application with Clark County to obtain a short-term rental license when the application period opens. But I am intimidated to do so.

11. Under the language of the new Ordinance, applying for a license will require me to consent to the waiver of my rights in my own home.

12. If I obtain a license from Clark County, I will be required to endure an ongoing threat of unfair liability, economic exposure, and intrusion of privacy for using my home, interacting with others, and earning income.

13. If I am denied a license by the County, I will be deprived of the ability to provide for my future economic stability and to use my property to its fullest potential.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.

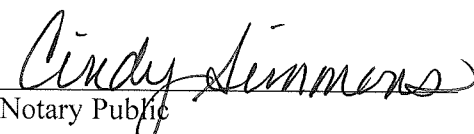
DATED this 1st day of August, 2022.



JACQUELINE FLORES

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to
before me this 1st day of August, 2022



Notary Public

