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and Jacqueline Flores, President and Director*

9 **EIGHTH JUDICIAL DISTRICT COURT**  
10 **STATE OF NEVADA**

11 GREATER LAS VEGAS SHORT TERM  
RENTAL ASSOCIATION, a non-profit  
Nevada corporation; JACQUELINE FLORES,  
12 President and Director,

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No. A-22-856311-P

Dept. No. 8

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**EXEMPT FROM ARBITRATION:  
ACTION FOR DECLARATORY RELIEF  
PURSUANT TO NAR 3(A), 5(A)**

19 Plaintiffs GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, a non-  
20 profit Nevada corporation, and JACQUELINE FLORES, President and Director (collectively  
21 the “Rental Association”), by and through their legal counsel, Joseph C. Reynolds, Esq., and  
22 Ariel C. Johnson, Esq., and Alex R. Velto, Esq. of HUTCHISON & STEFFEN, PLLC, hereby  
23 file this Second Amended Complaint against Defendants CLARK COUNTY and the BOARD  
24 OF CLARK COUNTY COMMISSIONERS (“Clark County”) and the STATE OF NEVADA

1 (the “State”) seeking declaratory and injunctive relief as follows:

2 **PARTIES**

3 1. Plaintiff GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION  
4 (“Rental Association”) is a non-profit Nevada corporation, with its principal place of business in  
5 and registered agent in Clark County, Nevada.

6 2. Plaintiff JACQUELINE FLORES (“Jacqueline”) is the President and Director of  
7 the Rental Association and is an individual residing in Clark County, Nevada.

8 3. Defendant CLARK COUNTY is a political subdivision of the State of Nevada  
9 as set forth in NRS Chapter 244 and is overseen by the BOARD OF CLARK COUNTY  
10 COMMISSIONERS as set forth in NRS Chapter 12.

11 4. Defendant STATE OF NEVADA is established and organized under the  
12 Nevada Constitution. The Office of the Nevada Attorney General is being provided notice  
13 and service of this matter pursuant to NRS 30.130.

14 **JURISDICTION AND VENUE**

15 5. Plaintiff GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION  
16 (“Rental Association”) is a non-profit Nevada domestic corporation, with its principal place of  
17 business in and registered agent in Clark County Nevada. Plaintiff JACQUELINE FLORES is a  
18 homeowner and resident of unincorporated Clark County, Nevada, and the President and Director  
19 of the Rental Association.

20 6. Defendant CLARK COUNTY is a political subdivision of the State of Nevada as  
21 set forth in NRS Chapter 244 and is overseen by the BOARD OF CLARK COUNTY  
22 COMMISSIONERS as set forth in NRS Chapter 12. The STATE OF NEVADA is established  
23 and organized under the Nevada Constitution. The Office of the Nevada Attorney General is  
24 being provided notice and service of this matter pursuant to NRS 30.130.



1           14.    No resident of Nevada or interstate or international traveler can be compelled  
2 under the law to live, do business, and have visitors in their own home under the arbitrary and  
3 oppressive licensing scheme set forth in the Ordinance. It is unconstitutional.

4           15.    Fundamental rights within the Nevada Constitution and United States Constitution,  
5 as well as Nevada law, require that further implementation of the Ordinance be enjoined. Indeed,  
6 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.<sup>1</sup> To this end, local, state, and federal  
8 governments are expressly prohibited by the United States Constitution from depriving any  
9 individual of life, liberty, and property without due process.<sup>2</sup>

10          16.    The Nevada Constitution similarly declares that all individuals have the  
11 inalienable right of “enjoying and defending life and liberty; Acquiring, Possessing and Protecting  
12 property and pursuing and obtaining safety and happiness.”<sup>3</sup> The United States Supreme Court  
13 has recognized that individuals have a right “to possess, use and dispose” of their property.<sup>4</sup>  
14 There is no more sacred property under the laws of Nevada and those of the United States than  
15 one’s home.

16          17.    Multiple sections of the Clark County Ordinance violate bedrock Articles of the  
17 Nevada Constitution and Amendments to the United States Constitution.

18          18.    The Ordinance is constitutionally infirm and should not be permitted by this Court  
19 to be further implemented as a matter of law.

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21 <sup>1</sup> *Declaration of Independence*, United States Congress, July 4, 1776.

22 <sup>2</sup> *See* Art. 14, Sec. 5, United States Constitution.

23 <sup>3</sup> Art. 1, Sec. 1, Nevada Constitution.

24 <sup>4</sup> *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982).

1           19.     The application period for short-term rental licenses was opened by Clark County  
2 on or about September 1, 2022.

3 **II.     HISTORY AND ECONOMIC IMPACT OF SHORT-TERM HOME RENTALS**

4           20.     Since the early 1600’s and 1700’s early travelers throughout the United States  
5 have been using short-term home rentals when needing a room or place to stay while visiting a  
6 new town or city and hotels or motels did not exist. Bed and breakfast inns and boarding houses  
7 date back hundreds of years to early American and European traditions.<sup>5</sup>

8           21.     While names have changed and modern technology platforms have facilitated the  
9 growth and availability of short-term housing opportunities for both visitors and homeowners,  
10 such as AirBnB or Vrbo,<sup>6</sup> it is a practice and tradition that is not new. Rather, it is also part of a  
11 developing ‘sharing economy’ within the United States that has grown to generate approximately  
12 \$169 billion in global economic impact.<sup>7</sup>

13           22.     Today, short-term home rentals employ an international business model that  
14 continues to present a unique link and opportunity for visitors to enjoy and experience travel to  
15 a new town or city.<sup>8</sup> The reasons why an individual may choose to rent a room, or entire house,  
16 for a short stay vary from visitor-to-visitor. They include families with members who want to  
17  
18

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19 <sup>5</sup> 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  
City, Nevada)); <https://www.rentalsunited.com>.

21 <sup>6</sup> See <https://www.vrbo.com> (stating that Vrbo, Inc. was founding in Colorado in Aurora, Colorado in 1995) and  
22 <https://www.airbnb.com> (stating that AirBnB, Inc. was founding in San Francisco, California in 2008). Of note,  
both of these companies were founded in the Western United States. Neither are financing the instant litigation.

23 <sup>7</sup> See <https://www.leg.state.nv.us>, *Short Term Rentals In Nevada*, Research Division, Legislative Counsel Bureau,  
Nevada Legislature (March 2021).

24 <sup>8</sup> See Exhibit 1 (Affidavit of Jacqueline Flores).

1 gather for a reunion or those with young children looking for a living space with a kitchen, yard,  
2 or private pool or business travelers needing a quiet space to work for a week or two.<sup>9</sup>

3 23. The reasons why an individual may offer their home as a short-term rental also  
4 varies. Many Clark County residents use it as a means of providing primary or supplemental  
5 income for their households. The backgrounds and life circumstances of these homeowners  
6 range from retirees or those who do not want to work in a traditional workplace or those who  
7 need to work from home to provide care for an ill loved one.<sup>10</sup>

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

12 **III. CLARK COUNTY’S ORIGINAL PROHIBITION (YEAR 1998)**

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

18 26. The new Code provision permitted a three (3)-year grace period before it became  
19 fully effective.<sup>11</sup> Therefore, the ban became effective in 2001. No short-term rentals were  
20 legally permitted to operate in unincorporated Clark County.

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21  
22 <sup>9</sup> *Id.*

23 <sup>10</sup> *Id.*

24 <sup>11</sup> See Clark County Code, Title 30, Chapter 30.44.010(b)(7)(C)(ii).

1           27.     Yet, cities and other areas in Clark County enacted provisions through their  
2 zoning authority that permitted short-term rentals to continue legally operating within distinct  
3 incorporated areas. In 2012, the City of Mesquite enacted provisions that permitted short-term  
4 rentals to operate.<sup>12</sup> In 2015, the City of Las Vegas, which encompasses the North portion of  
5 ‘the Strip,’ enacted provisions that permitted short-term rentals to operate.<sup>13</sup> In 2019, the City  
6 of Henderson enacted provisions that permitted short-term rentals to operate.<sup>14</sup>

7           28.     Confusion, and a patchwork of time frames, laws, enforcement, and policies  
8 developed throughout Clark County whereby some prospective short-term rental home owners  
9 were left to guess at when, or if, they would be permitted to legally operate depending on the  
10 geographic location of their home within Clark County and their governing political body.

11 **IV.    NEVADA LEGISLATURE PASSED ASSEMBLY BILL 363 (YEAR 2021)**

12           29.     In 2021, the Nevada Legislature weighed into the fray during the 81st Regular  
13 Legislative Session and enacted Assembly Bill (“AB”) 363. The new legislation mandated that  
14 Clark County repeal its ban on short-term rentals and implement regulations to permit short-term  
15 rentals to resume legally operating within unincorporated Clark County by July 1, 2022.<sup>15</sup>

16 **V.     CLARK COUNTY’S PASSAGE OF THE ORDINANCE (YEAR 2022)**

17           30.     At a public meeting held on June 21, 2022, the Board of Clark County  
18 Commissions unanimously voted to adopt a new provision entitled “Short Term Rental Units”  
19 that is set forth in Chapter 7.100 within Title 7 of the Clark County Code, *i.e.*, the Ordinance. It  
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21 <sup>12</sup> See Mesquite City Code, Title 2, Chapter 13.

22 <sup>13</sup> See City Las Vegas Uniform Development Code. Title 19, Chapter 19.18.070.

23 <sup>14</sup> See City of Henderson Development Code, Title 19, Chapter 19.10.

24 <sup>15</sup> Notably, some limited provisions of AB 363 violate the Nevada and United States Constitutions and will addressed further below.

1 became effective upon passage. Clark County began accepting applications for short-term rental  
2 licenses on September 13, 2022.<sup>16</sup> The instant request for relief now follows.

3 **VI. STANDARDS OF REVIEW**

4 **A. DECLARATORY RELIEF**

5 31. Contemporaneous with its request that this Court enjoin the implementation and  
6 enforcement of the Ordinance, the Rental Association seeks a declaration that its provisions are  
7 unconstitutional as drafted. NRS 30.040(1) provides that:

8 Any person interested under a deed, written contract or other writings constituting  
9 a contract, or *whose rights, status or other legal relations are affected by a statute,*  
10 *municipal ordinance,* contract or franchise, may have determined any question of  
11 construction or validity arising under the instrument, statute, ordinance, contract  
12 or franchise and obtain a declaration of rights, status or other legal relations  
13 thereunder. (Emphasis added).

14 32. The Nevada Supreme Court has held that declaratory relief is appropriate where  
15 (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking  
16 declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for  
17 judicial determination.<sup>17</sup> Whether an action for declaratory judgment is proper is a matter within  
18 a district court's discretion.<sup>18</sup>

19 **B. INJUNCTIVE RELIEF**

20 33. It is well-settled law in Nevada that the issuance of an injunction is appropriate  
21 where an individual or entity is doing, threatens to do, or is about to do an act that violates the  
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23 <sup>16</sup> See <https://www.clark.legistar.com>.

24 <sup>17</sup> *Clark County v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (2004) (citing *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996)).

<sup>18</sup> *Id.* (citing *El Capitan Club v. Fireman's Fund Ins.*, 89 Nev. 65, 68, 506 P.2d 426, 428 (1973)).



1 rights of another.<sup>19</sup> This injunction standard applies to laws and regulations that either have been  
2 or will be enacted by a government entity.

3 34. A permanent injunction may appropriately issue when there is no adequate  
4 remedy at law, the balance of equities favor the complainant, and success is demonstrated on the  
5 merits.<sup>20</sup>

6 35. The decision whether to grant an injunction resides within the sound discretion  
7 of this Court.<sup>21</sup> The Nevada Supreme Court holds that “[a]n abuse of discretion can occur when  
8 the district court bases its decision on a clearly erroneous factual determination or it disregards  
9 controlling law.”<sup>22</sup> Questions of law are reviewed on appeal *de novo*.<sup>23</sup>

## 10 **VII. STANDING AND RIPENESS**

11 36. The Nevada Supreme Court has recognized that standing to raise a facial  
12 challenge to the constitutionality of a statute or ordinance may be established in either one of  
13 two ways.<sup>24</sup> The Rental Association satisfies either or both standards.

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18 <sup>19</sup> See NRS 33.010(3).

19 <sup>20</sup> See *State Farm Mut. Auto. Ins. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993).

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

22 <sup>22</sup> *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.  
24 *Mirage Casino-Hotel*, 117 Nev. at 407, 23 P.3d at 246.

23 <sup>23</sup> *Boulder Oaks Community Assoc.*, 125 Nev. at 403, 215 P.3d at 31.

24 <sup>24</sup> See generally *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

1           37.     A plaintiff has a standing where they can show a personal injury, as opposed to a  
2 more generalized interest that is common to all members of the public.<sup>25</sup> Or a plaintiff may also  
3 show that the matter raised involves an issue of public importance.

4           38.     Under the public importance standard, a party has standing where a Nevada  
5 citizen raises a constitutional challenge where: (1) the case involves an issue of public  
6 importance, (2) the case involves a government expenditure, and (3) the party raising the  
7 challenge is in the best position to fully advocate for it. Essentially, “the question of standing  
8 concerns whether the party seeking relief has a sufficient interest in the litigation. The primary  
9 purpose of this standing inquiry is to ensure the litigant will vigorously and effectively present  
10 his or her case against an adverse party.”<sup>26</sup>

11           39.     Here, the Rental Association is in the best position to raise the instant challenge  
12 to the constitutionality of the Ordinance and advocate for the interests of short term-rental home  
13 owners in Clark County. It satisfies both separate standing pathways. Real individuals, such as  
14 Plaintiff Jaqueline Flores,<sup>27</sup> and members of the Rental Association, as well as patrons of short-  
15 term rentals in Clark County, have not only been harmed by Clark County’s prior prohibition  
16 against the operation of short-term rentals in unincorporated Clark County, but, most relevantly,  
17 by the enactment of the Ordinance.

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20 <sup>25</sup> *Id.* (citing *Doe v. Bryan*, 102 Nev. 523, 525–26, 728 P.2d 443, 444–45 (1986) (requiring plaintiffs, who sought  
21 to have criminal statute declared unconstitutional, to first demonstrate a personal injury, *i.e.*, that they were arrested  
22 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  
sustained by the general public in order to maintain complaint for injunctive relief)).

23 <sup>26</sup> *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)).

24 <sup>27</sup> See Exhibit 1 (Affidavit of Jacqueline Flores).

1           40.     The act of submitting an application for a license in itself requires acquiescence  
2 to terms and conditions that facially violate constitutional proscriptions and zoning and distance  
3 requirements within the Ordinance that *per se* exclude categories of prospective applicants from  
4 applying.

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

10          42.     The Rental Association is an entity incorporated with the Office of the Nevada  
11 Secretary of State. It is a legal entity and, therefore, it is a ‘citizen’ for standing purposes.<sup>28</sup>

12          43.     Over 7,700 short-term rental units are housed in Clark County.<sup>29</sup>

13          44.     Clark County reported that it received over 5,500 responses during a survey to  
14 gage public interest regarding short-term rental regulations.<sup>30</sup>

15          45.     For two decades this matter has been a source of robust public debate and concern  
16 in Clark County—Nevada’s most populous county.

17          46.     The Nevada Legislature has also addressed the issue of short-term rentals with  
18 the passage of Assembly Bill 363 during the 2021 Legislative Session.

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21 <sup>28</sup> See *Morency*, 137 Nev. Adv. Op. at \_\_\_\_, 496 P.3d at 589; *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 459,  
22 282 P.3d 751, 755 (2012) (recognizing that “a corporation that is incorporated in Nevada is a Nevada citizen”).

23 <sup>29</sup> See <https://www.leg.state.nv.us>, entitled “Short Term Rentals In Nevada,” Research Division, Legislative  
24 Counsel Bureau, Nevada Legislature (March 2021).

<sup>30</sup> 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           52.     The licensing scheme enacted by Clark County is facially arbitrary and capricious  
2 and violates the Due Process Clauses set forth in Article 1, Section 8 of the Nevada Constitution  
3 and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

4           53.     Licensing schemes cross the threshold of being a permissible exercise of  
5 government authority where the language of regulations permit arbitrary or capricious  
6 enforcement.<sup>33</sup> When this occurs, a facial challenge to the plain text of the rules may be raised  
7 for judicial review.<sup>34</sup>

8           54.     The term ‘arbitrary’ is defined to mean “existing or coming about seemingly at  
9 random or by chance.”<sup>35</sup>

10          55.     The term ‘capricious’ is defined to mean ‘optional’ or ‘open to choice’ or  
11 ‘discretionary.’<sup>36</sup>

12          56.     Here, the Ordinance is arbitrary and capricious by the language within its own text.  
13 It is riddled with instances of unfettered and random discretion.

14          57.     The Ordinance provides that after an individual submits a timely and fully  
15 completed application to Clark County, whether or not they receive a license depends on chance.

16          58.     Specifically, **Section 7.100.050** of the Ordinance provides:  
17  
18               there shall be a minimum of one (1) Short-Term Rental License available for each  
19               established unincorporated area within Clark 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 . . .

20          59.     Later, **Section 7.100.100(g)** of the Ordinance provides:

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21 <sup>33</sup> *Id.*

22 <sup>34</sup> *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292-93, 129 P.3d 682, 684-85 (2006).

23 <sup>35</sup> Merriam-Webster Dictionary <https://www.merriam-webster.com>.

24 <sup>36</sup> Collins Dictionary <https://www.collinsdictionary.com>.

1 After the application period is closed, the Department shall enter the unique  
2 identification number into a random number generation program that will list the  
3 timely-submitted applications into a *random order to determine the order in which*  
4 *the applications will 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. (Emphasis added).

5 60. These two above Sections of the Ordinance—Section 7.100.050 and Section  
6 7.100.100(g)— read in conjunction with **Section 7.100.080(f)(2)** that prohibits a short-term rental  
7 unit from being “. . . within 1,000 feet of any [other] short-term rental unit . . .” establishes a  
8 licensing system that it is entirely dependent upon chance. Not qualifications. Not a timely  
9 application. Not a complete application. Not compliance history. Not paying fees. Those could  
10 be stellar, yet an applicant could be randomly denied the opportunity to earn income or use their  
11 own property. This is arbitrary.

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

17 62. In addition to the structural infirmities in the haphazard and random licensing  
18 process, Clark County’s review of applications submitted during that process is based upon  
19 ambiguous protocols and subjective standards in the Ordinance that leave the fate of an applicant  
20 to the personal discretion of any given reviewer.

21 63. **Section 7.100.090(c)(8)** of the Ordinance provides that Clark County may require  
22 an applicant to furnish ‘any document or information’ that it requests.<sup>37</sup>

23 \_\_\_\_\_  
24 <sup>37</sup> See Section 7.100.090(c)(8) of the Ordinance:

1           64.     Based on this language, Clark County may require one applicant to provide  
2 documents or information and not require another applicant to do so. No standards are set forth  
3 in the Ordinance on what or when additional documentation may be required. It is left undefined.

4           65.     **Section 7.100.100(a)** of the Ordinance provides that Clark County itself  
5 ‘determines’ when licenses are available for issuance.<sup>38</sup>

6           66.     Use of the term ‘determines’ is a grant of discretion without objective criteria.

7           67.     Given that Clark County has tied the number of licenses that may be issued to the  
8 population of unincorporated Clark County, as well as geography of home locations, a moving  
9 target exists for available licenses.

10          68.     The Ordinance provides no algorithm or formula on how this calculation or  
11 criteria will be determined.

12          69.     **Section 7.100.100(h)** of the Ordinance provides:

13                 At the *discretion* of the Department [Clark County], the residential unit shall be  
14 subject to inspection or code compliance review by any county agency or  
department. (Emphasis added).

15          70.     The plain text of Section 7.100.100(h) means that Clark County, through its  
16 employees, may subject an applicant to an inspection of their proposed short term rental unit, *i.e.*,  
17 their home, without any basis whatsoever. Again, no standards or objective criteria are set forth  
18 in the Ordinance to delineate who will be subjected to an inspection and who will not. It is left  
19 to unmitigated and subjective discretion.

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21                 Each application must be accompanied by:

22                     . . . Any other documentation or information as the director of the Department may require.

23 <sup>38</sup> See Section 7.100.100(a) of the Ordinance:

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           71.     **Section 7.100.110(a)(3)** of the Ordinance provides that an application for a  
2 license may be denied “if the applicant fails or refuses to cooperate fully with any inspection.”  
3 Cooperation, let alone ‘full’ cooperation, are ambiguous terms and leave the determination of  
4 whether an applicant has ‘cooperated fully’ to Clark County’s unfettered discretion.

5           72.     Either an applicant consent to timely permit an inspection to occur, regardless of  
6 whether cause exists or not, or they do not obtain a license. Under the language of the Ordinance,  
7 whether an applicant asks too many questions or does not move quickly enough or smile enough  
8 demonstrate the problematic ambiguity and open-ended discretion within the Ordinance.

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

15           74.     The Nevada Supreme Court has stated that “[a]n arbitrary or capricious exercise  
16 of discretion is one ‘founded on prejudice or preference rather than on reason’ ... or ‘contrary to  
17 the evidence or established rules of law.’”<sup>39</sup> The Ordinance does just that—it sets forth a licensing  
18 scheme based upon random chance and arbitrary discretion without clear standards. It should  
19 fail on this basis alone.

20           75.     For the reasons set forth, Section 7.100.050, Section 7.100.100(g), Section  
21 7.100.080(f)(2), Section 7.100.090(c)(8), Section 7.100.100(a), Section 7.100.100(h), Section  
22 7.100.(a)(3), and Section 7.100.100(c)(2) of the Ordinance either individually or collectively

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23  
24 <sup>39</sup> See *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011).



1 when read in conjunction with other Sections causes or will cause a short-term rental license  
2 applicant and/or licensee and/or patron to suffer an arbitrary and capricious licensing scheme in  
3 violation of the Due Process Clause of the Nevada Constitution and/or the United States  
4 Constitution.

5 **SECOND CAUSE OF ACTION:**

6 **VOID FOR VAGUENESS AND OVERBREADTH**  
7 **Declaratory and Injunctive Relief**

8 Violation of Article 1, Section 8 of the Nevada Constitution  
9 Violation of the Fifth and Fourteenth Amendments of the United States Constitution

10 76. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
11 with the same force and effect as if set forth here in full.

12 77. The Ordinance is unconstitutionally vague and overbroad in violation of Article  
13 1, Section 8 of the Nevada Constitution and the Fifth and Fourteenth Amendments to the United  
14 States Constitution.

15 78. The Ordinance (1) fails to provide notice sufficient to enable persons of ordinary  
16 intelligence to understand what conduct is prohibited, or (2) lacks specific standards and  
17 encourages, authorizes, or fails to prevent arbitrary and discriminatory enforcement.<sup>40</sup> The  
18 United States Supreme Court has recognized that “[v]agueness may invalidate a criminal law for  
19 either of [these] two reasons.”<sup>41</sup>

20 79. The Ordinance is also unconstitutionally overbroad. “The overbreadth doctrine  
21 invalidates laws . . . that infringe upon First Amendment rights.”<sup>42</sup> In other words, the

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22 <sup>40</sup> *State v. Casteneda*, 126 Nev. 478, 481, 245 P.2d 550, 552 (2010); *Sheriff v. Burdg*, 118 Nev. 853, 857, 59 P.3d  
23 484, 486-87 (2002).

24 <sup>41</sup> *Chicago v. Morales*, 527 U.S. 41, 56 (1999).

<sup>42</sup> *Silvar*, 122 Nev. at 297, 129 P.3d at 687.

1 overbreadth doctrine applies to statutes that have a seemingly legitimate purpose but are worded  
2 so broadly that they also apply to protected speech.<sup>43</sup>

3 80. The Nevada Supreme Court has held that “[e]ven minor intrusions on First  
4 Amendment rights will trigger the overbreadth doctrine.”<sup>44</sup> For the same reasons the Ordinance  
5 is unconstitutionally vague, it is also overbroad and must be stricken for this reason.

6 81. The Nevada Supreme Court has explained that for a law to be constitutional it  
7 must “delineate the boundaries of unlawful conduct . . . so individuals will know what is  
8 permissible behavior and what is not.”<sup>45</sup> Laws, including Ordinances, are subject to a facial  
9 attack on vagueness and overbreadth grounds.

10 82. As a threshold matter, the Ordinance is a penal, *i.e.*, a criminal law. Indeed,  
11 **Section 7.100.230(f)(a)** of the Ordinance provides that a violation of its provisions could subject  
12 either an occupant or owner to the “issuance of a misdemeanor citation.”

13 83. **Section 7.100.160(1)(c)** of the Ordinance restricts rentals to individuals “within  
14 the same family or group.” However, those terms are left undefined.<sup>46</sup> Guessing incorrectly as  
15 to their meaning will be a crime.

16 84. **Section 7.100.180(b)** of the Ordinance prohibits “parties, weddings events or  
17 other gatherings which exceed the maximum occupancy of the residential unit.” The terms  
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20 <sup>43</sup> *See id.*

21 <sup>44</sup> *Id.* at 297–98, 129 P.3d at 688.

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

23 <sup>46</sup> Does the term ‘family’ only include individuals who have the same last name? Are members of the ‘family’  
24 defined by only blood or marriage? Does it include unmarried couples? How far removed from each other in the  
family tree can individuals be from one another? Does the term ‘group’ mean individuals who have a prior  
relationship with one another? Or does a ‘group’ include individuals who traveled to Las Vegas on the same airplane  
or originated from the same state or country? Is it members of the same sports team?

1 ‘event’ or ‘gathering’ are undefined by the Ordinance.<sup>47</sup> Under this section of the Ordinance  
2 (Section 7.100.180(b)), if eight people are occupying a four-bedroom short-term rental house  
3 and three people come over for a dinner, it could be a crime. Similarly, an afternoon birthday  
4 party for five children in a two-bedroom short-term rental house could be illegal. The question  
5 of whether this Section applies to gatherings that are inside the residence or outside in a yard  
6 area remains unanswered. The consequence of not knowing the answer could be an arrest.

7 85. **Section 7.100.180(c)** of the Ordinance provides:

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

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

14 86. The Nevada Supreme Court in the case *Scott v. First Judicial District Court*,<sup>48</sup>  
15 held that a municipal ordinance that made it a crime to ‘annoy’ a law enforcement officer was  
16 unconstitutionally vague. In *Scott*, the Court recognized that the United States Supreme Court  
17 has “‘repeatedly invalidated laws that provide the police with unfettered discretion to arrest  
18 individuals for words or conduct that annoy or offend them.’”<sup>49</sup> The Court reasoned that the  
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22 <sup>47</sup> While unhelpful and equally vague, the term ‘party’ is in the definition section of the Ordinance. See Section 7.100.020(n).

23 <sup>48</sup>131 Nev. 1015, 1017-18, 363 P.3d 1159, 1161-62 (2015).

24 <sup>49</sup> *Id.* (quoting *City of Houston, Texas v. Hill*, 482 U.S. 451, 465 (1987)).

1 term, and the entire ordinance at issue, lacked specific standards and left enforcement entirely  
2 up to the law enforcement officer’s personal discretion.<sup>50</sup>

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

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

12 89. **Section 7.100.230(b)** of the Ordinance provides that penalties for violating any  
13 provision “shall be cumulative and may be exercised in any order or combination at any time.”

14 90. Additionally, **Section 7.100.230(d)(1)(I)** of the Ordinance provides that “[t]he  
15 amount of the fine shall be determined only after taking into account, without limitation, the  
16 severity of the violation, whether the person who committed the violation acted in good faith,  
17 and any history of previous violations . . . .”

18 91. For the reasons set forth, Section 7.100.160(1)(c), Section 7.100.180(b), Section  
19 7.100.180(c), Section 7.100.230(b), and Section 7.100.230(d)(1)(I) of the Ordinance either  
20 individually or when read in conjunction with other Sections causes or will cause a short-term  
21 rental license applicant and/or licensee and/or patron to suffer a vague and overbroad restrictions  
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23  
24 <sup>50</sup> *Id.*

1 and penalties for otherwise lawful acts in violation of the Due Process Clause of the Nevada  
2 Constitution and/or the United States Constitution.

3 **THIRD CAUSE OF ACTION:**

4 **FIRST AMENDMENT PRIOR RESTRAINT**  
5 **Declaratory and Injunctive Relief**

6 Violation of Article 1, Sections 9 and 10 of the Nevada Constitution  
7 Violation of First Amendment of the United States Constitution

8 92. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
9 with the same force and effect as if set forth here in full.

10 93. The Ordinance violates Article 1, Section 9 of the Nevada Constitution which  
11 provides that “no law shall be passed to restrain or abridge the liberty of speech” and Article 1,  
12 Section 10 of the Nevada Constitution which provides that “[t]he people shall have the right to  
13 freely assemble together to consult for the common good.”

14 94. The First Amendment of the United States Constitution provides that “no law”  
15 may be passed that abridges “the freedom of speech . . . or the right of the people peaceably to  
16 assemble.”

17 95. The Ordinance places an unconstitutional prior restraint on speech.

18 96. **Section 7.100.090(b)(4)** of the Ordinance requires short-term rental license  
19 applicants to provide Clark County with the names of all “rental sites that will be used to  
20 advertise the short-term rental unit” as a condition of the license application.<sup>51</sup> This requirement  
21 is an unconstitutional prior restraint on a short-term rental license applicant’s right to free speech.

22 \_\_\_\_\_  
23 <sup>51</sup> 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.

1 Here, a unique blend of standards governing commercial speech, licensing, and prior restraint  
2 are at issue. All three constitutional standards will be addressed. The Ordinance fails them all.

3 97. Undoubtedly, advertising is a form of commercial speech.<sup>52</sup> While it has been  
4 held to a lower level of judicial scrutiny than non-commercial speech, it still enjoys protections  
5 under the First Amendment—a substantial basis for its prohibition must still exist.<sup>53</sup>

6 98. Yet, the Nevada Supreme Court has also held that “[t]o be constitutionally  
7 acceptable, an ordinance authorizing officials to license activity that is presumptively protected  
8 by the First Amendment must establish precise, narrowly-drawn standards to guide the  
9 officials.”<sup>54</sup>

10 99. The United States Supreme Court condemns “any system of prior restraint of First  
11 Amendment rights.”<sup>55</sup> “[A]ny system of prior restraint is burdened with a heavy presumption  
12 against its constitutional validity.”<sup>56</sup>

13 107. A prior restraint on speech may be imposed only when “(1) the activity restrained  
14 poses either a clear and present danger or a serious and imminent threat to a protected competing  
15 interest, (2) the order is narrowly drawn, and (3) less restrictive alternatives are not available.”<sup>57</sup>

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

20 <sup>53</sup> *Id.* (internal citations and quotations omitted).

21 <sup>54</sup> *Northern Nevada Copy v. Menicucci*, 96 Nev. 533, 536, 611 P.2d 1068, 1069 (1980).

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

23 <sup>56</sup> *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 <sup>57</sup> *Guinion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).



1           113. The First Amendment of the United States Constitution provides that “no law”  
2 may be passed that abridges “the freedom of speech . . . or the right of the people peaceably to  
3 assemble.”

4           114. The Ordinance constitutes an impermissible prohibition on the freedom of  
5 association and assembly.

6           115. **Section 7.100.160(a)** of the Ordinance restricts the right of individuals to two (2)  
7 individuals per bedroom of the rental unit or a maxim of ten (10) individuals at the house.

8           116. **Section 7.100.180(b)** of the Ordinance is vague in its prohibition against ‘parties’  
9 or ‘events’ or ‘gatherings.’

10           117. Construed individually or jointly, these provisions (Section 7.100.160(a) and  
11 Section 7.100.180(b)) violate the right to associate and assemble.

12           118. It is bedrock law that individuals within the United States have the right to  
13 associate and assemble with each other.<sup>58</sup> Both the Nevada Supreme Court and the United States  
14 Supreme Court have held that the right of individuals to associate is “in no way diminished  
15 because the issue arises in an economic matter.”

16           119. Indeed, “the United States Supreme Court has ‘recognized the vital relationship  
17 between freedom to associate and privacy in one's association.’ Because of the importance of  
18 these tightly intertwined rights that Court has refused to draw a line excluding those ‘engaged in  
19 business activities’ from the reach of the First Amendment.”<sup>59</sup>

20           120. The Texas Court of Appeals in the case *Zaatari v. City of Austin* held that  
21 provisions in an ordinance enacted by the City of Austin that among other things, prohibited  
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23 <sup>58</sup> See *Tectow v. City Council of North Las Vegas*, 105 Nev. 330, 334-35, 775 P.2d 227, 230-31 (1989).

24 <sup>59</sup> *Id.* (quoting *Thomas v. Collins*, 323 U.S. 516, 531 (1945)).



1 patrons of short-term rentals to engage in a group activity or assemble between the hours of  
2 10:00 p.m. and 7:00 a.m. and limited the number of individuals who could be at a short-term  
3 rental to ten (10) individuals total or six (6) unrelated adults at any given time was  
4 unconstitutional.<sup>60</sup> The Texas Court of Appeals held that the ordinance in that case “plainly  
5 restricts the right to assemble and does so without regard to peace ableness or content of the  
6 assembly . . . .”<sup>61</sup> It reasoned that “the right to assemble is just as strong, if not stronger, when  
7 it is exercised on private property with the permission of the owner, thereby creating a nexus  
8 with property and privacy rights.”<sup>62</sup>

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

17       122. Neither the Nevada nor United States Constitutions permit this type of law. It is  
18 unconstitutional.

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21 <sup>60</sup> 613 S.W.3d 172, 199-200 (Tex. App. 2019).

22 <sup>61</sup> *Id.* (analyzing Chapter 25-2, Section 25-2-795 of the Austin City Code).

23 <sup>62</sup> *Id.* at 200.

24 <sup>63</sup> *See* Section 7.100.160(a).

<sup>64</sup> *See* Section 7.100.180(c)(II).



1           129. There are two types of unconstitutional taking: physical and regulatory.<sup>65</sup>

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

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

11           132. Here, the Ordinance constitutes a hybrid mix of both a physical and a regulatory  
12 unconstitutional taking of private property by Clark County. The United States Supreme Court  
13 has recognized that an unconstitutional government taking may occur when a regulation simply  
14 goes “too far.”<sup>71</sup>

15           133. The Ordinance’s unreasonable invasion of home privacy is an unconstitutional  
16 government taking.

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18 <sup>65</sup> *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006).

19 <sup>66</sup> *See id.* at 662, 137 P.3d at 1122.

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

21 <sup>68</sup> *Id.*

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

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

24 <sup>71</sup> *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”); *see also Yee v. Escondido*, 503 U.S. 519, 527 (1992).

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

5           135. An individual chooses to engage in business or economic activity within their  
6 own home and property should not per se dilute all constitutional protections of their privacy.

7           136. Indeed, as evident throughout the COVID-19 pandemic, many Nevadans were  
8 confined and obligated to work and conduct daily business and economic transactions from their  
9 own home. While some short-term rental owners do not live in the homes they rent to patrons,  
10 others, who may only rent a room or portion of a house, certainly do. Yet, the Ordinance as  
11 written unreasonably takes away their rights to privacy without a showing of probable cause or  
12 necessity.

13           137. **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.”

17           138. **Section 7.100.170(o)(1)-(3)** of the Ordinance requires that a video surveillance  
18 camera must be installed and recording footage maintained for sixty (60) days and provided to  
19 Clark County, or a law enforcement agency, “[u]pon request.”

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24 <sup>72</sup> *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           139.   **Section 7.100.170(i)(2)** of the Ordinance provides that a short-term rental owner  
2 “must” permit inspection of their home “with or without notice” and that they have a duty “to  
3 provide access.”

4           140.   **Section 7.100.170(p)** of the Ordinance provides that a short-term rental owner  
5 “must” provide all financial information involving the home for three (3) years upon request of  
6 Clark County.

7           141.   The sum effect of these provisions is that Clark County—a government entity—  
8 will have unfettered access to view all individuals who enter and exit a home, what they do  
9 behind a fenced front or back yard, *and*, even more egregious, may enter the home without cause  
10 or advanced notice and demand that the homeowner provide all financial documents.

11           142.   Short-term rental units include people’s *homes*. They are not all simply vacant  
12 houses. The ability of the government to enter private property, *i.e.*, a home, at will and with  
13 undefined standards and unchecked discretion amounts to a physical constructive invasion of  
14 that property: the ability to freely enter a home equates to ownership.

15           143.   Recently, in the 2021 opinion *Cedar Point Nursery v. Hassid*, the United States  
16 Supreme Court held that a California regulation that permitted access to private property by  
17 union organizers was an unconstitutional taking of private property.<sup>73</sup> These requirements are  
18 not tailored and serve no compelling interest. They impose a cost of doing business that is too  
19 high. They go too far. The Ordinance constitutes a taking.

20           144.   For the reasons set forth, Section 7.100.170(r), Section 7.100.170(o)(1)-(3),  
21 Section 7.100.170(i)(2), and Section 7.100.170(p) of the Ordinance either individually or when  
22 read in conjunction with other Sections causes or will cause a short-term rental applicant and/or

23 \_\_\_\_\_  
24 <sup>73</sup> 591 U.S. \_\_\_\_, 141 S.Ct. 2063 (2021).

1 licensee and/or patron to suffer an invasion of privacy of their property and/or home in violation  
2 of the Takings Clause of the Nevada Constitution and/or the United States Constitution.

3 **SIXTH CAUSE OF ACTION:**

4 **GOVERNMENT TAKING OF PROPERTY: INTERFERENCE WITH FIXTURES**  
5 **Declaratory and Injunctive Relief**

6 Violation of Article 1, Section 8, Subsection 3 of the Nevada Constitution  
7 Violation of the Fifth Amendment of the United States Constitution

8 145. Plaintiffs reallege and incorporate herein all other paragraphs of this complaint  
9 with the same force and effect as if set forth here in full.

10 146. The Ordinance violates the Takings Clause as set forth in the Nevada Constitution  
11 and the United States Constitution. Article 1, Section 8, Subsection 3 of the Nevada Constitution  
12 provides that “[p]rivate property shall not be taken for public use without just compensation  
13 having first been made.”

14 147. The Fifth Amendment of the United States Constitution provides that “private  
15 property [cannot] be taken for public use . . . without just compensation.”

16 148. There are two types of unconstitutional taking: physical and regulatory.<sup>74</sup>

17 149. A physical taking occurs when the government occupies or appropriates a portion  
18 of private property.<sup>75</sup> The Nevada Supreme Court has held that a “[p]hysical appropriation exists  
19 when the government seizes or occupies private property or ousts owners from their private  
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23 <sup>74</sup> *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006).

24 <sup>75</sup> *See id.* at 662, 137 P.3d at 1122.

1 property.”<sup>76</sup> In other words, it occurs when a “regulation forces the property owner to acquiesce  
2 to a permanent physical occupation.”<sup>77</sup>

3 150. In contrast, a regulatory taking occurs when the government enacts a regulation  
4 that deprives an owner of economic benefit of the property.<sup>78</sup> To determine if a regulatory taking  
5 has occurred, a balancing test is applied to examine the economic impact of the regulation, its  
6 interference with investment expectations, and the character of the government action.<sup>79</sup>

7 151. Here, the Ordinance constitutes a hybrid mix of both a physical and a regulatory  
8 unconstitutional taking of private property by Clark County. The United States Supreme Court  
9 has recognized that an unconstitutional government taking may occur when a regulation simply  
10 goes “too far.”<sup>80</sup>

11 152. The Ordinance’s interference with property fixtures is an unconstitutional  
12 government taking.

13 153. The United States Supreme Court has stated that “[t]he right to exclude is ‘one of  
14 the most treasured’ rights of property ownership.”<sup>81</sup>

15 154. Here, as a condition of obtaining a license from Clark County to operate a short-  
16 term rental, physical interference of a licensee’s property is mandated by the Ordinance with the  
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18 <sup>76</sup> *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647, 173 P.3d 734, 740 (2007).

19 <sup>77</sup> *Id.*

20 <sup>78</sup> *McCarran Int’l Airport*, 122 Nev. At 659, 137 P.3d at 1120.

21 <sup>79</sup> *Penn. Central Transp. Co. v. New York*, 438 U.S. 104, 124 (1978).

22 <sup>80</sup> *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  
23 “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking”); *see*  
*also Yee v. Escondido*, 503 U.S. 519, 527 (1992).

24 <sup>81</sup> *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 placement of multiple fixtures. One or even two might, arguably, be rational. But multiple  
2 fixtures are not. Once again, the Ordinance goes too far.

3 155. **Section 7.100.170(r)** of the Ordinance requires that at least two (2) or more noise  
4 monitoring devices must be installed on a short-term rental owner’s yard. An additional noise  
5 monitoring device is required for a pool or spa.

6 156. **Section 7.100.170(o)(1)-(3)** of the Ordinance requires that a video surveillance  
7 camera be installed.

8 157. **Section 7.100.170(h)** of the Ordinance requires that the address be illuminated at  
9 night.

10 158. **Section 7.100.170(q)** of the ordinance requires that an 8.5 x 11 ‘placard’ on the  
11 exterior of the residence and in plain public view.

12 159. The United States Supreme Court in 1982 in the case *Loretto v. Teleprompter*  
13 *Manhattan CATV Corp.*, held that an unconstitutional taking occurred where cable plates, boxes,  
14 wires, and screws were affixed to a building.<sup>82</sup> There, the Court held that a physical taking can  
15 also be an intrusion on private property by requiring something to be permanently attached to  
16 it—no matter how small the affixture.<sup>83</sup> In *Loretto*, the fixtures were a ½ inch cable wire and a  
17 1 ½ foot box.<sup>84</sup>

18 160. Similar to *Loretto*, here, multiple Ordinance requirements—attaching multiple  
19 government-mandated physical fixtures to a home—removes, *i.e.*, takes away, the private nature  
20 of the property and converts it into something else. This is unconstitutional.

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22 <sup>82</sup> 458 U.S. 419 (1982).

23 <sup>83</sup> *Id.* at 420.

24 <sup>84</sup> *Id.*





1 property.”<sup>87</sup> In other words, it occurs when a “regulation forces the property owner to acquiesce  
2 to a permanent physical occupation.”<sup>88</sup>

3 167. In contrast, a regulatory taking occurs when the government enacts a regulation  
4 that deprives an owner of economic benefit of the property.<sup>89</sup> To determine if a regulatory taking  
5 has occurred, a balancing test is applied to examine the economic impact of the regulation, its  
6 interference with investment expectations, and the character of the government action.<sup>90</sup>

7 168. Here, the Ordinance constitutes a hybrid mix of both a physical and a regulatory  
8 unconstitutional taking of private property by Clark County. The United States Supreme Court  
9 has recognized that an unconstitutional government taking may occur when a regulation simply  
10 goes “too far.”<sup>91</sup>

11 169. The Ordinance’s impaired use an enjoyment of the home is an unconstitutional  
12 government taking.

13 170. The United States Supreme Court has long guarded the sanctity of the home as  
14 being of the ““highest order in a free and civilized society.””<sup>92</sup> The Court has recognized that  
15 the “home” is different, and is conferred unique constitutional status, so that all citizens may use  
16 and enjoy their home in privacy and without intrusion.<sup>93</sup>

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18 <sup>87</sup> *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647, 173 P.3d 734, 740 (2007).

19 <sup>88</sup> *Id.*

20 <sup>89</sup> *McCarran Int’l Airport*, 122 Nev. At 659, 137 P.3d at 1120.

21 <sup>90</sup> *Penn. Central Transp. Co. v. New York*, 438 U.S. 104, 124 (1978).

22 <sup>91</sup> *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”); *see also Yee v. Escondido*, 503 U.S. 519, 527 (1992).

23 <sup>92</sup> *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)).

24 <sup>93</sup> *Id.* at 484-85.

1           170. Here, the Ordinance strips that privacy away, removing the ability of both a short-  
2 term rental owner, and patron, of the ability to use and enjoy their property. The prohibitions  
3 are egregious.

4           171. **Section 7.100.180(c)(2)** of the Ordinance prohibits a short-term rental property  
5 owner from using “all rear and side yard outdoor lighting between the hours of 10:00 p.m. and  
6 7:00 a.m.”

7           172. **Section 7.100.180(c)(1)(I)** of the Ordinance prohibits the outdoor use of “any  
8 radio, receiver, stereo, musical instrument, sound amplifier or similar device” irrespective of the  
9 noise level.

10           173. **Section 7.100.180(c)(1)(II)** of the Ordinance prohibits the outdoor use of  
11 “amenities, such as pools, spas, barbecues, and firepits” between the hours of 10:00 p.m. and  
12 7:00 a.m.

13           174. **Section 7.100.180(a)** of the Ordinance prohibits the residence from being used  
14 for “any purpose other than for dwelling, lodging, or sleeping and for activities that are incidental  
15 to its use for dwelling, lodging or sleeping.”

16           175. **Section 7.100.180(b)** of the Ordinance prohibits the residence from being used  
17 for “[p]arties, weddings, and events” and “gatherings” that exceed 10 individuals.

18           176. **Section 7.100.180(c)** of the Ordinance prohibits all “noise, light, smoke,  
19 particulate matter, odors, and hazardous materials” from the residence that may annoy or disturb  
20 the quiet, comfort, or repose of an ordinary person with reasonable sensibilities.

21           177. These restrictions bar any gatherings, light, noise, odor, or sound from a short-  
22 term rental property between the hours of 10:00 p.m. and 7:00 a.m. every night.

23           178. They are imposed by Clark County without objective standards or regard for  
24 behavior.



1 185. There are two types of unconstitutional taking: physical and regulatory.<sup>94</sup>

2 186. A physical taking occurs when the government occupies or appropriates a portion  
3 of private property.<sup>95</sup> The Nevada Supreme Court has held that a “[p]hysical appropriation exists  
4 when the government seizes or occupies private property or ousts owners from their private  
5 property.”<sup>96</sup> In other words, it occurs when a “regulation forces the property owner to acquiesce  
6 to a permanent physical occupation.”<sup>97</sup>

7 187. In contrast, a regulatory taking occurs when the government enacts a regulation  
8 that deprives an owner of economic benefit of the property.<sup>98</sup> To determine if a regulatory taking  
9 has occurred, a balancing test is applied to examine the economic impact of the regulation, its  
10 interference with investment expectations, and the character of the government action.<sup>99</sup>

11 188. Here, the Ordinance constitutes a hybrid mix of both a physical and a regulatory  
12 unconstitutional taking of private property by Clark County. The United States Supreme Court  
13 has recognized that an unconstitutional government taking may occur when a regulation simply  
14 goes “too far.”<sup>100</sup>

15 189. The Ordinance causes licensees to suffer economic loss and benefit of their home.

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18 <sup>94</sup> *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 659, 137 P.3d 1110, 1120 (2006).

19 <sup>95</sup> *See id.* at 662, 137 P.3d at 1122.

20 <sup>96</sup> *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647, 173 P.3d 734, 740 (2007).

21 <sup>97</sup> *Id.*

22 <sup>98</sup> *McCarran Int'l Airport*, 122 Nev. At 659, 137 P.3d at 1120.

23 <sup>99</sup> *Penn. Central Transp. Co. v. New York*, 438 U.S. 104, 124 (1978).

24 <sup>100</sup> *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”); *see also Yee v. Escondido*, 503 U.S. 519, 527 (1992).

1           190.   **Section 7.100.080(f)(II)** provides that homeowners in Clark County who happen  
2 to live within 1,000 feet of another short-term rental owner are automatically ineligible for a  
3 short-term rental license. This restriction is arbitrary.

4           191.   The determining factor as to whether one individual may be able to earn income  
5 from their home and another may not, is dependent upon chance and luck—whether a neighbor  
6 who lives within 1,000 feet of them decides to seek a license and randomly get approved by  
7 Construed individually or jointly, these provisions (Section 7.100.160(a) and Section  
8 7.100.180(b)) violate the right to associate and assemble.

9           192.   Whether a particular home is within 1,000 feet of another short-term rental  
10 property will logically impact its potential economic uses and, therefore, its economic value.

11           193.   Clark County has failed to establish any factual record or rational basis to support  
12 this restriction.

13           194.   **Section 7.100.160(a)** the Ordinance arbitrarily limits the maximum occupants to  
14 a maximum of ten (10) individuals, irrespective of the number of bedrooms in the house. Thus,  
15 a six (6) or seven (7) bedroom home is subject to the same maximum occupant limit of a five (5)  
16 bedroom home.

17           195.   This arbitrary limitation will reduce the economic benefit and use of larger  
18 bedroom short-term rental properties.

19           196.   No rational basis exists for these, or the other, arbitrary occupancy limitations.  
20 They are unconstitutional government takings.

21           197.   For the reasons set forth, Section 7.100.080(f)(II) and Section 7.100.160(a) of the  
22 Ordinance either individually or when read in conjunction with other Sections causes or will  
23 cause a short-term rental applicant and/or licensee to suffer a loss of economic benefit of their  
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1 property and/or home in violation of the Takings Clause of the Nevada Constitution and/or the  
2 United States Constitution.

3 **NINTH CAUSE OF ACTION:**

4 **LACK OF DUE PROCESS:**  
5 **FAILURE TO PROVIDE NOTICE OF INCOMPLETE APPLICATION**  
6 Declaratory and Injunctive Relief

7 Violation of Article 1, Section 8, Subsection 2 of the Nevada Constitution  
8 Violation of Fourteenth Amendment of United States Constitution

9 198. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
10 with the same force and effect as if set forth here in full.

11 199. The Ordinance violates the Due Process Clause of the Nevada Constitution and  
12 the United States Constitution. Specifically, Article 1, Section 8, Subsection 2 of the Nevada  
13 Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property,  
14 without due process of law.” It also violates the Due Process Clause as set forth in the Fourteenth  
15 Amendment of the United States Constitution.

16 200. The Nevada Supreme Court has held that to establish a due process claim it must  
17 be shown that an individual (1) had a liberty interest that was interfered with by the government  
18 and (2) the established procedures to address it were constitutionally insufficient.<sup>101</sup>

19 201. Here, the Ordinance violates due process by failing to clear and adequate notice  
20 to an applicant when their license application contains incomplete or missing information.

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<sup>101</sup> *Malfitano v. County of Story*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t of Corr. v. Thompson*,  
24 490 U.S. 454 (1989)).





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

6           208. The Nevada Supreme Court has held that to establish a due process claim it must  
7 be shown that an individual (1) had a liberty interest that was interfered with by the government  
8 and (2) the established procedures to address it were constitutionally insufficient.<sup>103</sup>

9           209. Here, the Ordinance violates due process by imposing unpredictable and  
10 cumulative fines against alleged violators.

11           210. **Section 7.100.230(b)** of the Ordinance provides that an individual cited by Clark  
12 County, or a law enforcement officer, for being in violation of the Ordinance may be subject to  
13 “cumulative” fines and citations that may be “exercised in any order or combination at any time.”  
14 Again, this provision also is a *prima facie* due process violation.

15           211. As it is written, Section 7.100.230(b) subjects a short-term rental owner, or patron,  
16 to layers of multiple violations at the subjective discretion of government authorities. The broad  
17 authority conferred by the Ordinance that empower citations to be issued in ‘any’ order and in  
18 ‘any’ combination and at ‘any’ time falls well short of due process requirements.

19           212. For the reasons set forth, Section 7.100.230(b) of the Ordinance either  
20 individually or when read in conjunction with other Sections causes or will cause unpredictable  
21 and cumulative fines to be imposed upon a short-term rental applicant and/or licensee and/or

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23 <sup>103</sup> *Malfitano v. County of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t of Corr. v. Thompson*,  
24 490 U.S. 454 (1989)).

1 patron in violation of the Due Process Clause of the Nevada Constitution and/or the United States  
2 Constitution.

3 **ELEVENTH CAUSE OF ACTION:**

4 **VIOLATION OF DUE PROCESS: SUBJECTIVE ENFORCEMENT**  
5 Declaratory and Injunctive Relief

6 Violation of Article 1, Section 8, Subsection 2 of the Nevada Constitution  
7 Violation of Fourteenth Amendment of United States Constitution

8 213. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
9 with the same force and effect as if set forth here in full.

10 214. The Ordinance violates the Due Process Clause of the Nevada Constitution and  
11 the United States Constitution. Specifically, Article 1, Section 8, Subsection 2 of the Nevada  
12 Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property,  
13 without due process of law.” It also violates the Due Process Clause as set forth in the Fourteenth  
14 Amendment of the United States Constitution.

15 215. The Nevada Supreme Court has held that to establish a due process claim it must  
16 be shown that an individual (1) had a liberty interest that was interfered with by the government  
17 and (2) the established procedures to address it were constitutionally insufficient.<sup>104</sup>

18 216. Here, the Ordinance violates due process by permitting Clark County officials to  
19 engage in subjective enforcement.

20 217. **Section 7.100.230(d)(1)(I)** of the Ordinance provides that “[t]he amount of the  
21 fine shall be determined only after taking into account, without limitation, the severity of the  
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23 <sup>104</sup> *Malfitano v. County of Story*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t of Corr. v. Thompson*,  
24 490 U.S. 454 (1989)).

1 violation, whether the person who committed the violation acted in good faith, and any history  
2 of previous violations . . . .”

3 218. This Section also improperly authorizes government authorities to issue a citation  
4 to a short-term rental owner, or patron, based upon subjective discretion of what constitutes  
5 ‘good faith’ or an egregious violation history that may differ from one Clark County or law  
6 enforcement official to another.

7 219. No standards to ensure fair and equal treatment under the law are provided. Who  
8 is cited. How they are cited. What they are cited for should not depend upon the personal  
9 judgments or personalities of the individuals involved.

10 220. For the reasons set forth, Section 7.100.230(d)(1)(I) of the Ordinance either  
11 individually or when read in conjunction with other Sections causes or will cause a short-term  
12 rental license applicant and/or licensee and/or patrol to suffer subjective enforcement of the  
13 Ordinance in violation of the Due Process Clause of the Nevada Constitution and/or the United  
14 States Constitution.

15 **TWELFTH CAUSE OF ACTION:**

16 **VIOLATION OF DUE PROCESS: LIABILITY FOR ACTS OF OTHERS**  
17 **Declaratory and Injunctive Relief**

18 Violation of Article 1, Section 8, Subsection 2 of the Nevada Constitution  
19 Violation of Fourteenth Amendment of United States Constitution

20 221. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
21 with the same force and effect as if set forth here in full.

22 222. The Ordinance violates the Due Process Clause of the Nevada Constitution and  
23 the United States Constitution. Specifically, Article 1, Section 8, Subsection 2 of the Nevada  
24 Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property,

1 without due process of law.” It also violates the Due Process Clause as set forth in the Fourteenth  
2 Amendment of the United States Constitution.

3 223. The Nevada Supreme Court has held that to establish a due process claim it must  
4 be shown that an individual (1) had a liberty interest that was interfered with by the government  
5 and (2) the established procedures to address it were constitutionally insufficient.<sup>105</sup>

6 224. Here, the Ordinance violates due process by placing liability for civil and criminal  
7 infractions upon a licensee for the conduct of another individual over whom they have no agency  
8 or control.

9 225. **Section 7.100.230(e)(2)** of the Ordinance provides that when a citation is issued  
10 involving a short-term rental property that “the property owner shall also be subject to receipt of  
11 an administrative citation . . .” Pursuant to this provision, a short-term rental owner may be cited  
12 under the Ordinance for conduct he or she did not commit or of which he or she had no  
13 knowledge or involvement. It makes a short-term rental owner legally responsible for the acts  
14 and behavior of others.

15 226. Given that the Ordinance carries not only civil, but criminal, penalties, this  
16 provision violates bedrock constitutional principles of due process, as well as fundamental  
17 fairness.<sup>106</sup>

18 227. For reasons set forth, Section 7.100.230(e)(2) of the Ordinance either individually  
19 or when read in conjunction with other Sections causes or will cause a short-term rental applicant  
20 and/or licensee and/or patron to incur civil and/or criminal liability for the acts of others in

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22 <sup>105</sup> *Malfitano v. County of Story*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t of Corr. v. Thompson*,  
490 U.S. 454 (1989)).

23 <sup>106</sup> It is well-settled jurisprudence that an individual must possess a level of *mens rea* before they are held criminally  
24 responsible for the actions or behaviors of others. *See, generally Ford v. State*, 127 Nev. 608, 618, 262 P.3d 1123,  
1130 (2011).

1 violation of the Due Process Clause of the Nevada Constitution and/or the United States  
2 Constitution.

3 **THIRTEENTH CAUSE OF ACTION:**

4 **VIOLATION OF EQUAL PROTECTION: ARBITRARY 2,500 FOOT LIMITATION**  
5 **Declaratory and Injunctive Relief**

6 Violation of Article 4, Section 21 of Nevada Constitution  
7 Violation of Fourteenth Amendment of United States Constitution

8 228. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
9 with the same force and effect as if set forth here in full.

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

14 230. The United States Supreme Court has held that an equal protection claim may be  
15 brought by a “class of one” if the appellant can demonstrate that he or “she has been intentionally  
16 treated differently from others similarly situated and that there is no rational basis for the  
17 difference in treatment.”<sup>107</sup>

18 231. When addressing an equal protection claim, the Nevada Supreme Court has held  
19 that a court “must determine whether (1) the statute, either on its face or in the manner of its  
20 enforcement, results in members of a certain group being treated differently from other persons  
21 based on membership in that group; and (2) if it is demonstrated that a cognizable class is being

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<sup>107</sup> *Vill. of Willowbrook v. Olech* , 528 U.S. 562, 564 (2000).

1 treated differently, the court must analyze under the appropriate level of scrutiny whether the  
2 distinction made between groups is justified.”<sup>108</sup>

3 232. “[U]nder a rational basis test, classifications must ‘apply uniformly to all who are  
4 similarly situated, and the distinctions which separate those who are included within a  
5 classification from those who are not must be reasonable, not arbitrary.”<sup>109</sup> In other words, an  
6 equal protection inquiry should focus on whether ““there is a rational relationship between the  
7 disparity of treatment and some legitimate government purpose.””<sup>110</sup>

8 233. Short-term rental homeowners are similarly situated as a class to other licensed  
9 businesses, including hotels and motels, and residents in Clark County. Yet, they are treated  
10 extraordinarily different. No reasonable basis exists for this unfair treatment by Clark County.

11 234. Here, the Ordinance violates equal protection by mandating an arbitrary 2,500  
12 foot distance limitation between short-term rental homes and resort properties.

13 235. **Section 7.100.080(f)(1)** of the Ordinance prohibits a short-term rental home from  
14 being licensed and operating within 2,500 feet of the property line of a resort hotel.

15 236. This distance requirement has no rational or evidentiary basis and, instead, is an  
16 arbitrary property limitation. It advances no public health and safety policy for visitors to or  
17 residents of Clark County.

18 237. Indeed, Nevada law provides that an adult-use cannabis establishments can  
19 operate within 1,000 feet of a public or private school (k-12) or within 1,500 feet of an  
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22 <sup>108</sup> *Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (internal citations and quotations omitted).

23 <sup>109</sup> *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520-21, 217 P.3d 546, 558-59 (2011) (internal  
24 citations and quotations omitted).

<sup>110</sup> *Doe*, 133 Nev. at 768, 406 P.3d at 486 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

1 establishment that holds a non-restricted gaming license.<sup>111</sup> Yet, a short-term rental home has  
2 been banned by Clark County at nearly twice the distance from resort properties than cannabis  
3 establishments.

4 238. As required by the Ordinance, short-term rental licensees are required to pay  
5 licensing fees and taxes, just like other businesses. Why short-term rentals may not operate  
6 within 2,500 feet of resort hotels remains elusive and disparately treats short-term rentals from  
7 other licensed Clark County businesses.

8 239. For reasons set forth, Section 7.100.080(f)(1) of the Ordinance either individually  
9 or when read in conjunction with other Sections causes or will cause a short-term rental license  
10 applicant and/or licensee and/or patron to suffer an arbitrary 2,500 distance limitation in violation  
11 of the Equal Protection Clause of the Nevada Constitution and/or the United States Constitution.

12 **FOURTEENTH CAUSE OF ACTION:**

13 **VIOLATION OF EQUAL PROTECTION: LOCAL REPRESENTATIVE MANDATE**  
14 **Declaratory and Injunctive Relief**

15 Violation of Article 4, Section 21 of Nevada Constitution  
16 Violation of Fourteenth Amendment of United States Constitution

17 240. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
18 with the same force and effect as if set forth here in full.

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

23 \_\_\_\_\_  
24 <sup>111</sup> See NRS 678B.250(3)(a)(2)(II); *see also* NRS 678B.210 (3)(a)(2)(II).

1           242. The United States Supreme Court has held that an equal protection claim may be  
2 brought by a “class of one” if the appellant can demonstrate that he or “she has been intentionally  
3 treated differently from others similarly situated and that there is no rational basis for the  
4 difference in treatment.”<sup>112</sup>

5           243. When addressing an equal protection claim, the Nevada Supreme Court has held  
6 that a court “must determine whether (1) the statute, either on its face or in the manner of its  
7 enforcement, results in members of a certain group being treated differently from other persons  
8 based on membership in that group; and (2) if it is demonstrated that a cognizable class is being  
9 treated differently, the court must analyze under the appropriate level of scrutiny whether the  
10 distinction made between groups is justified.”<sup>113</sup>

11           244. “[U]nder a rational basis test, classifications must ‘apply uniformly to all who are  
12 similarly situated, and the distinctions which separate those who are included within a  
13 classification from those who are not must be reasonable, not arbitrary.’”<sup>114</sup> In other words, an  
14 equal protection inquiry should focus on whether ““there is a rational relationship between the  
15 disparity of treatment and some legitimate government purpose.””<sup>115</sup>

16           245. Short-term rental homeowners are similarly situated as a class to other licensed  
17 businesses, including hotels and motels, and residents in Clark County. Yet, they are treated  
18 extraordinarily different. No reasonable basis exists for this unfair treatment by Clark County.  
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21 <sup>112</sup> *Vill. of Willowbrook v. Olech* , 528 U.S. 562, 564 (2000).

22 <sup>113</sup> *Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (internal citations and quotations omitted).

23 <sup>114</sup> *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520-21, 217 P.3d 546, 558-59 (2011) (internal  
24 citations and quotations omitted).

<sup>115</sup> *Doe*, 133 Nev. at 768, 406 P.3d at 486 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).



1           246. Here, the Ordinance violates equal protection by mandating that short-term rental  
2 licensees either employ or otherwise have available a local representative at all times of day or  
3 night every day of the year to respond to the actual short-term rental property address.

4           247. **Section 7.100.170(d)** of the Ordinance requires each short-term rental licensee to  
5 designate a “local representative” who is able to respond to certain circumstances “within thirty  
6 (30) minutes during all times that the property is rented or used.”

7           248. While requiring a short-term rental licensee to designate a local representative to  
8 be available to respond to certain circumstances is reasonable, mandating they achieve a thirty  
9 (30) minute on-site response time at the property is unreasonable.

10          249. Other licensed businesses in Clark County are not obligated to have a manager or  
11 responsible individual be available to arrive at their business within thirty (30) minutes’ notice  
12 at all times.

13          250. Depending upon the time of day (or night), it is difficult, if not impossible, to  
14 drive across Las Vegas within thirty (30) minutes due to traffic.

15          251. Few matters, if any, would ever require an on-site presence by a local  
16 representative, let alone one that must be responded to within thirty (30) minutes.

17          252. With availability of the internet, wi-fi, and cellphones, issues arising at the home  
18 can be timely responded to by a local representative remotely.

19          253. Fire, water, and utility emergencies do not require an on-site representative and  
20 would be responded to by professional experts in these fields. Public health and safety  
21 emergencies would also be responded to by local law enforcement or paramedics like any other  
22 business or homeowner.

23          254. Short-term rental owners should not be singled out for this thirty (30) minute  
24 representative requirement. It is an increased burden. It is unfair. It lacks a rational basis.



1 based on membership in that group; and (2) if it is demonstrated that a cognizable class is being  
2 treated differently, the court must analyze under the appropriate level of scrutiny whether the  
3 distinction made between groups is justified.”<sup>117</sup>

4 260. “[U]nder a rational basis test, classifications must ‘apply uniformly to all who are  
5 similarly situated, and the distinctions which separate those who are included within a  
6 classification from those who are not must be reasonable, not arbitrary.”<sup>118</sup> In other words, an  
7 equal protection inquiry should focus on whether ““there is a rational relationship between the  
8 disparity of treatment and some legitimate government purpose.””<sup>119</sup>

9 261. Short-term rental homeowners are similarly situated as a class to other licensed  
10 businesses, including hotels and motels, and residents in Clark County. Yet, they are treated  
11 extraordinarily different. No reasonable basis exists for this unfair treatment by Clark County.

12 262. Here, the Ordinance violates equal protection by imposing excessive fines and  
13 punishment on licensees who are accused of violations.

14 263. **Section 7.100.230(b) and Section 7.100.230(d)(1)(II)** of the Ordinance provide  
15 that any violation may result in fines that range from five-hundred dollars (\$500) (first offense)  
16 to one-thousand dollars (\$1,000) (all subsequent offenses) and may be imposed cumulatively  
17 and “in any order or combination” per offense.

18 264. Meaning, for example, a short-term rental owner who has three (3) patrons who  
19 decide to go for an early morning swim in a backyard pool or who fail to turn on an outside  
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21 \_\_\_\_\_  
22 <sup>117</sup> *Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (internal citations and quotations omitted).

23 <sup>118</sup> *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520-21, 217 P.3d 546, 558-59 (2011) (internal  
24 citations and quotations omitted).

<sup>119</sup> *Doe*, 133 Nev. at 768, 406 P.3d at 486 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

1 address light for three (3) nights in a row will be subject to a two-thousand and five-hundred  
2 dollar (\$2,500) fine from Clark County.

3 265. Such harsh fines and civil punishments for *de minimus* everyday acts of life are  
4 excessive and unnecessary and lack rational basis. Other business owners, homeowners, or  
5 individuals in Clark County are not exposed to these penalties. If any visitor or resident in Clark  
6 County violates noise ordinances or commits criminal offenses, laws already exist to address  
7 that behavior.

8 266. The Ordinance, however, singles out short-term rental licensees and patrons by  
9 subjecting them to a layer of additional fines and punishments that other individuals or  
10 homeowners do not face for doing the same or similar activities.

11 267. For reasons set forth, Section 7.100.230(b) and Section 7.100.230(d)(1)(II) of the  
12 Ordinance either individually or when read in conjunction with other Sections causes or will  
13 cause a short-term rental license applicant and/or licensee and/or patron to secure a local  
14 representative to suffer excessive fines and punishments for an alleged violation of the Ordinance  
15 in violation of the Equal Protection Clause of the Nevada Constitution and/or the United States  
16 Constitution.

17 **SIXTEENTH CAUSE OF ACTION**

18 **VIOLATION OF DORMANT COMMERCE CLAUSE**  
19 **Declaratory and Injunctive Relief**

20 Violation of Article 1, Section 8, Subsection 3 of the United States Constitution

21 268. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
22 with the same force and effect as if set forth here in full.

23 269. The Ordinance violates the Dormant Commerce Clause as set forth in Article 1,  
24 Section 8, Clause 3 of the United States Constitution.

1           270. Under the Dormant Commerce Clause (also known as ‘the Negative Commerce  
2 Clause’), state and local government entities are constitutionally prohibited from enacting laws  
3 that unjustifiably discriminate against or burden the flow or interstate commerce.<sup>120</sup> In other  
4 words, the Dormant Commerce Clause prohibits states and local government entities “‘from  
5 advancing their own commercial interests by curtailing the movement of articles of commerce,  
6 either into or out of the state.’”<sup>121</sup>

7           271. The United States Supreme Court has held that a law is discriminatory and violates  
8 the Dormant Commerce Clause when it produces “‘differential treatment of in-state and out-of-  
9 state economic interests that benefits the former and burdens the later.’”<sup>122</sup>

10           272. A statute or ordinance may be deemed to violate the Dormant Commerce Clause  
11 if it discriminates on its face or imposes an undue burden on commerce through its purpose.<sup>123</sup>

12           273. If a statute or ordinance advances a legitimate local interest and applies equally to  
13 in-state and out-of-state citizens, it may survive a challenge if the burdens it imposes on interstate  
14 commerce are not “‘clearly excessive in relation to the putative local benefits.’”<sup>124</sup>

15           274. The United States Supreme Court set forth the following three criteria in the  
16 opinion *Pike v. Bruce Church, Inc.* for courts to consider: (1) the nature of the local interest, (2)

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19 <sup>120</sup> *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 560, 170 P.3d 508, 514-15 (2007).

20 <sup>121</sup> *Id.* (quoting *Fort Gratiot Sanitary Landfill v. Michigan Dept. of Natural Resources*, 504 U.S. 353, 359 (1992)  
21 (other internal citations and quotations omitted)).

22 <sup>122</sup> *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) (internal citations  
and quotations omitted).

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

24 <sup>124</sup> *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

1 the extent of the burden placed upon interstate commerce, and (3) whether the local interest could  
2 have been served by other legislation that does not impact interstate commerce.<sup>125</sup>

3 275. Recently, on August 22, 2022, the United State Court of Appeals for the Fifth  
4 Circuit issued a published opinion in the case *Hignell-Stark v. City of New Orleans* where it  
5 reversed a lower court and held that a short-term rental licensing scheme enacted by the City of  
6 New Orleans violated the Dormant Commerce Clause on its face because it required short-term  
7 rental properties to be the primary residence of a licensee and, therefore, discriminated against  
8 out-of-state residents.<sup>126</sup>

9 276. In reaching its decision, the Fifth Circuit rejected arguments by the City of New  
10 Orleans that the residency requirement and the scheme’s burdens on interstate commerce were  
11 necessary to achieve the local interests of reducing nuisances, increasing housing, and  
12 maintaining residential neighborhood characteristics.<sup>127</sup> The Firth Circuit stated: “The City has  
13 many options to address the problems caused by [short-term rentals] in residential neighborhoods.  
14 But it chose the one the Constitution forbids.”<sup>128</sup>

15 277. Here, while the Ordinance enacted by Clark County does not contain an identical  
16 residency requirement for short-term rental licensees as the ordinance at issue and enacted by the  
17 City of New Orleans, the Fifth Circuit’s holding in *Hignell-Stark* is still instructive and applicable.

18 278. **Section 7.100.010(a)** provides that a purpose of the Ordinance’s limitations on  
19 short-term rentals is to promote “permanent, affordable housing for the residents of the County.”  
20

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21 <sup>125</sup> See *Pike*, 397 U.S. at 142.

22 <sup>126</sup> No. 21-30643, 2022 WL 3584037 \*5-9 (5th Cir. August 22, 2022).

23 <sup>127</sup> *Id.* at \*8.

24 <sup>128</sup> *Id.* at \*9.

1           279. In doing so, however, the Ordinance discriminates against the investment in and  
2 purchase of residential properties in Nevada by out-of-state individuals who may not own or  
3 occupy a home in Clark County as their primary or full-time home, but who may still wish to use  
4 and maintain that property as a short-term rental. It does so in two ways.

5           280. **Section 7.100.050** of the Ordinance sets forth an arbitrary one percent (1%) cap  
6 on available short-term rental licenses in Clark County, which limits supply.

7           281. **Section 7.100.170(d)** of the Ordinance also mandates that a short-term rental  
8 licensee designate a Clark County resident as a local representative who can be available and  
9 physically present at the property within thirty (30) minutes notice, day or night.

10          282. This local representative requirement is a *de facto* residency requirement for a  
11 licensee holder and akin to the requirement held violative of the Dormant Commerce Clause by  
12 the Fifth Circuit in *Hignell-Stark*.

13          283. Given these restrictive provisions, the Ordinance favors and protects in-state  
14 residents to the detriment of out-of-state homeowners, potential investors, and visitors.

15          284. The consequence of the Ordinance is to limit the marketplace of available short-  
16 term rental options and opportunities in Nevada for out-of-state individuals.

17          285. By doing so, the Ordinance places an undue and discriminatory burden on the flow  
18 of interstate commerce and economic activity that violates the Dormant Commerce Clause.

19          286. While the availability of affordable housing may well be a valid public policy  
20 concern, placing unnecessary limitations on short-term rental licensees that burden interstate  
21 commerce and the availability of options in the short-term rental marketplace in Clark County is  
22 not a constitutional mechanism to achieve this policy objective.









1           304. AB 363 was enacted in 2021 by the Nevada Legislature during the 81st Regular  
2 Legislative Session to compel Clark County to enact new regulations that would permit short-  
3 term rentals to resume lawful operations.

4           305. In addition to the constitutional violations set forth in all prior Paragraphs of this  
5 Complaint, the Ordinance as enacted by Clark County is also infirm because it violates  
6 provisions of Nevada law, *i.e.*, AB 363.

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

11           307. Yet, **Section 7.100.090(c)(2) of the Ordinance** criminalizes the license  
12 application process by compelling an applicant to affirm under penalty of perjury their intent to  
13 adhere to the Ordinance,<sup>131</sup> and **Section 7.100.230(f)(1) of the Ordinance** provides that  
14 violation of the Ordinance is a misdemeanor crime. While Subsections in AB 363 state that civil  
15 penalties may be enacted “in addition to any other penalty provided by law,” this language does  
16 not constitute permissive authorization for Clark County to criminalize what the Nevada  
17 Legislature intended to be a civil infraction. Clark County has authority to criminalize conduct  
18 independent of being a short-term rental license holder. But the Ordinance violates AB 363 by  
19 injecting criminal penalties into the short-term rental market in Clark County that the Nevada  
20 Legislature never intended to impose.

21           308. Section 7.100.090(c)(2) and Section 7.100.230(f)(1) of the Ordinance improperly  
22 subject short-term rental license applicants and/or licensees and/or patrons to criminal penalties

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23  
24 <sup>131</sup> See NRS 199.120 (providing that perjury is a felony crime).

1 that were not authorized by AB 363. Accordingly, these Sections of the Ordinance violates  
2 Nevada law.

3 **TWENTY-FIRST CAUSE OF ACTION:**

4 **PROVISIONS OF ASSEMBLY BILL 363 ARE UNCONSTITUTIONAL**  
5 **Declaratory and Injunctive Relief**

6 309. Plaintiffs reallege and incorporate herein all other paragraphs of this Complaint  
7 with the same force and effect as if set forth here in full.

8 310. While some provisions of the Ordinance depart from AB 363, other provisions  
9 within it mirror language of AB 363. The provisions of AB 363 that are identical to the  
10 provisions of the Ordinance violate the Nevada Constitution and/or the United States  
11 Constitution for the reasons already set forth in this Complaint.

12 311. **Section 20, Subsection (k) of AB 363** prohibits the use of short-term residential  
13 homes for “parties, weddings, events or other large gatherings.”<sup>132</sup> This prohibition in AB 363  
14 mirrors Section 7.100.180(b) of the Ordinance. For the reasons set forth in the Second Cause of  
15 Action in Paragraphs 76 through 91 of this Complaint and the Seventh Cause of Action in  
16 Paragraphs 162 through 181 of this Complaint, Section 20, Subsection (k) of AB 363 is similarly  
17 unconstitutional.

18 312. **Section 7, Subsection (f)(1) of AB 363** prohibits a short-term rental property  
19 from operating within 2,500 feet of a resort hotel. This prohibition in AB 363 mirrors Section  
20 7.100.080(f)(1) of the Ordinance. For the reasons sent forth in the Thirteenth Cause of Action  
21 in Paragraphs 228 through 239 of this Complaint, Section 7, Subsections (f)(1) of AB 363 is  
22 similarly unconstitutional.

23 \_\_\_\_\_  
24 <sup>132</sup> See Second Cause of Action, Section I, at Paragraph 80.



1 **PRAYER FOR RELIEF**

2 Wherefore, the Rental Association respectfully requests that this Court:

- 3 1. Issue an Order declaring that the Ordinance violates the Nevada Constitution and  
4 the United States Constitution;
- 5 2. Issue an Order declaring that the Ordinance violates the above cited provisions of  
6 AB 363;
- 7 3. Issue an Order declaring that the above cited provisions of AB 363 violate the  
8 Nevada Constitution and the United States Constitution;
- 9 4. Issue an Injunction permanently enjoining Clark County from implementing and  
10 enforcing the Ordinance;
- 11 5. Award compensatory damages in an amount in excess of \$15,000.00;
- 12 6. Award punitive damages in excess of \$15,000.00;
- 13 7. Award all reasonable attorney’s fees, interest, and costs; and
- 14 8. Award any other and further relief the Court considers just and equitable.

15 DATED this 3rd day of October, 2022.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Joseph C. Reynolds

18 Joseph C. Reynolds (8630)

19 Ariel C. Johnson (13357)

Alex R. Velto (14961)

5371 Kietzke Lane

Reno, NV 89511

20 *Attorneys for Plaintiffs*

21 *Greater Las Vegas Short Term Rental Association*

22 *and Jacqueline Flores, President and Director*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 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 **SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** 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 <sup>th</sup> Floor Las Vegas, NV 89155 <a href="mailto:DistrictG@clarkcountynv.gov">DistrictG@clarkcountynv.gov</a>	Yolanda T. King, County Manager Clark County 500 S. Grand Central Parkway 6 <sup>th</sup> Floor Las Vegas, NV 89155
Aaron D. Ford, Attorney General Office of the Nevada Attorney General 100 N. Carson St Carson City, NV 89701	Steve B. Wolfson, District Attorney Office of the Clark County District Attorney <a href="mailto:steven.wolfson@clarkcountyda.com">steven.wolfson@clarkcountyda.com</a> (courtesy copy)
Jeffrey Rogan, Deputy District Attorney Civil Division, Clark County District Attorney <a href="mailto:Jeffrey.Rogan@clarkcountyda.com">Jeffrey.Rogan@clarkcountyda.com</a>	

/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.

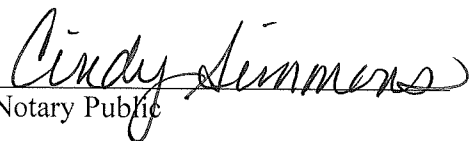
I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.

DATED this 1<sup>st</sup> day of August, 2022.

  
\_\_\_\_\_  
JACQUELINE FLORES

STATE OF NEVADA        )  
  )ss.  
COUNTY OF CLARK     )

SUBSCRIBED and SWORN to  
before me this 1<sup>st</sup> day of August, 2022

  
\_\_\_\_\_  
Notary Public

