



August 3, 2022

Re: Press Release – Lawsuit Filed

Just as Uber, Lyft and Turo has lifted many struggling people out of poverty and created entrepreneurs overnight, high tech rental listing platforms like Airbnb and VRBO have given struggling homeowners the ability to supplement or even replace their income by renting their homes or rooms in their homes to travelers.

In Nevada, this has not only helped owners of these private rentals, but it has also helped many individuals and families economically through newly created jobs, brought newfound revenue to small businesses outside traditional city-center attraction areas who get to welcome these travelers into their establishments, and has also created thousands of individual ambassadors promoting this great State of Nevada and everything it has to offer to visitors from around the world. All this comes at relatively zero cost to the State, City, or County.

A surge in prices for gas, food and other goods have pushed U.S. inflation to the highest rates in the last 40 years, pressuring households and likely triggering further inflationary woes like higher interest rates and a looming recession resulting in even more hardship for individuals, families, senior citizens on a fixed income, retirees, and the working poor here in Nevada and across the United States while big corporations post record profits and executive pay reaches new heights.

Why are our public officials in Nevada insistent on depriving Nevadans from the benefits the sharing economy brings to individuals and their families and overall local and State economy?

Renting one's home to travelers is a practice that's older than the foundation of the United States. It has always been a way for property owners to earn a living. It has stimulated the local economy by employing locals and bringing extra business to other establishments in the area. The big difference today is that technology has made this activity easier, safer, and more accessible to people around the world. A large, lower income family group, for example, traditionally lacking funds for a hotel & restaurant vacation, can now experience the travels their higher-income counterparts have long enjoyed.

Despite all this, our local and state officials act like this is a new industry or activity. They have shown disregard, disdain, and a lack of understanding, essentially stigmatizing all rentals under 31 days as rager-party scenes.

The threat of punishment, with fines of up to \$10,000 and criminal prosecution, for the simple act of renting private property for less than 31 days is horrific and abhorrent.

This Orwellian regulatory action proposed by Assemblywoman Rochelle Nguyen and Assemblyman Tom Roberts, known as AB363, was ultimately cemented as law by our 81st Nevada Legislature in May 2021 and signed into State law by our Governor last year on June 4, 2021.

AB363 directed municipalities in Southern Nevada to adopt extreme State provisions and gave local officials broad powers to craft extreme rules and regulations and dispense exorbitantly priced licenses at random.

As a condition to getting licensed, homeowners will have to agree to unannounced government inspections of their private homes at any time and at the government's discretion. They must install costly noise monitoring devices and video cameras. Those who rent their homes only part-time, or who rent only a portion of their home, must now have their own activities, and their friends' and families' activities, surveilled and the recordings turned over for viewing by government officials.

Requiring private property owners and their guests to give up such large swaths of their fundamental Nevada and U.S. Constitutional rights, and thereby to live as second-class citizens in a government fishbowl, bodes ill for all citizens of Nevada. First, they come for the short-term rental host, and by the time they get to everyone else it will be too late, if we do not stop this now.

Our efforts to reason with State and local officials over the years have failed. These officials have ignored our pleas and input in favor of the resort hotels and the Culinary Union, two of the most powerful groups in our State. Under the new law, the resort hotels secured a 2,500-foot radius protection for each existing and future resort hotel, utterly depriving area homeowners of a safe and enjoyable economic opportunity.

Of all groups, the Culinary Union should understand and empathize with the plight of the laid-off, the cash-poor, and struggling working-class. This new legislation rips away a decent opportunity for people to decorate or remodel a spare room or a home, to invite vetted and identified travelers, and to see a growing bank account gradually increase the person's confidence, skills, and livelihood.

Prosperity opportunities for all, democratized comfortable travel for all, are worthy goals. Over-regulation, government intrusion into minutiae, heavy-handed enforcement, criminal penalties for benign behavior, and random lotteries of private property rights, should make every Nevada voter cringe and recoil.

The smear campaign by our public officials labeling all of these rentals as “party houses” has caused fear among residents despite the fact that over 90% of these homes operate with zero issues. For years, Clark County has been encouraging residents to turn-in their own neighbors if they SUSPECT them of renting their home for less than 31 days. A special hotline was set up by the County for this type of anonymous reports. Some residents have abused the hotline and have use it to settle scores with neighbors they don’t like or to report groups of people of a certain race, color, gender, sexual orientation, or creed who they feel “don’t belong” in the neighborhood.

It is very important to note that we have never opposed regulations or paying taxes. In fact, we proposed both, years ago, in return of being allowed to rent on a short-term basis. Unfortunately, we were shut out by the powerful resort hotels and the Culinary Union who came out in opposition of these rentals. It is also important to note that, all the nuisance laws for noise, trash, parking, traffic, and gatherings already exist in our Statues.

Regrettably, public officials have ignored our pleas and predicament. AB363 and the most recent Clark County ordinance passed by Clark County officials on June 21, 2022 have only exacerbated the struggle for folks trying to make ends meet, leaving us with no other alternative but to plead our case to and seek protection from the Courts.

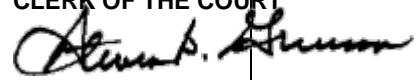
On behalf of private property owners of short-term rentals in Nevada, the Greater Las Vegas Short-Term Rental Association has filed a lawsuit against Clark County, the Clark County Commissioners, and the State of Nevada.

It is our hope, through this action, that our State and local officials finally recognize this centuries-old practice and work with us in crafting sensible and fair regulations, respect our civil rights and liberties, protect private property ownership, and end regulations that make criminals out of law-abiding citizens and further compound the economic hardship individuals and families are experiencing in Nevada.

Thank you,



Jacqueline A. Flores, Founder



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

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

14 Petitioners,

15 vs.

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

18 Defendants.
19

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

HEARING REQUESTED

AMENDED PETITION
FOR PRELIMINARY INJUNCTION
AND DECLARATORY RELIEF

(AMENDED AS TO TITLE ONLY)

20 The Greater Las Vegas Short Term Rental Association, a non-profit Nevada corporation,
21 and Jacqueline Flores, President and Director (Rental Association), by and through their legal
22 counsel, Joseph C. Reynolds, Esq., Ariel C. Johnson, Esq., and Alex R. Velto, Esq., of
23 HUTCHISON & STEFFEN, PLLC, hereby petition this Court for preliminary injunctive and
24

1 declaratory relief from newly enacted ordinances governing short-term rentals in unincorporated
2 Clark County, Nevada.

3 The laws were adopted by the County Commission as a new Chapter entitled “Short
4 Term Rental Units” and are set forth in Chapter 7.100 within Title 7 of the Clark County Code
5 (collectively “the Ordinance”) and was passed in a unanimous vote by the Board of Clark County
6 Commissioners at a public meeting held on June 21, 2022 (“Clark County”). Multiple sections
7 of the Clark County Ordinance violate bedrock Articles of the Nevada Constitution and
8 Amendments to the United States Constitution. The Ordinance is constitutionally infirm and
9 should not be permitted by this Court to be implemented as a matter of law. It is anticipated that
10 the application period for short-term rental licenses will be opened by Clark County on or about
11 September 1, 2022. The Rental Association respectfully requests that this Court declare that the
12 Ordinance is unconstitutional and GRANT the instant petition to enjoin its enforcement.

13 This Petition is supported by the accompanying Memorandum of Points and Authorities,
14 which is incorporated by reference herein.

15 DATED this 3rd day of August, 2022.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Joseph C. Reynolds

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23 *and Jacqueline Flores, President and Director*

MEMORANDUM OF POINTS AND AUTHORITIES

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

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1 I. STATEMENT OF THE PARTIES AND JURISDICTION

2 The Petitioner GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION
3 (“Rental Association”) is a non-profit Nevada domestic corporation. JACQUELINE FLORES
4 is a homeowner and resident of unincorporated Clark County, Nevada, and the President and
5 Director of the Rental Association.

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

11 These matters arise within Clark County, Nevada and are properly within the jurisdiction
12 of the Eighth Judicial District Court pursuant to NRS 3.010.

13 II. ABOUT THE RENTAL ASSOCIATION

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

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

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

8 The Rental Association respectfully requests this Court to grant its request for declaratory
9 and injunctive relief. Understandably, a difficult balancing of policy interests by the Board of
10 Clark County Commissioners, as well as the Nevada Legislature, exist on this issue. Yet, as
11 more fully set forth below, fundamental rights within the Nevada Constitution and United States
12 Constitution, as well as Nevada law, require that this matter be enjoined. Indeed, the United
13 States is founded upon the fundamental principle that all individuals have the unalienable right
14 of life, liberty and the pursuit of happiness.¹ To this end, local, state, and federal governments
15 are expressly prohibited by the United States Constitution from depriving any individual of life,
16 liberty, and property without due process.²

17 The Nevada Constitution similarly declares that all individuals have the inalienable right
18 of “enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and
19 pursuing and obtaining safety and happiness.”³ The United States Supreme Court has recognized
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22 ¹ *Declaration of Independence*, United States Congress, July 4, 1776.

23 ² See Art. 14, Sec. 5, United States Constitution.

24 ³ Art. 1, Sec. 1, Nevada Constitution.

1 that individuals have a right “to possess, use and dispose” of their property.⁴ There is no more
2 sacred property under the laws of Nevada and those of the United States than one’s home. This
3 is intrinsically rooted in our history.

4 III. BRIEF FACTUAL AND LEGAL BACKGROUND

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

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

10 While names have changed and modern technology platforms have facilitated the growth
11 and availability of short-term housing opportunities for both visitors and homeowners, such as
12 AirBnB or Vrbo,⁶ it is a practice and tradition that is not new. Rather, it is also part of a
13 developing ‘sharing economy’ within the United States that has grown to generate approximately
14 \$169 billion in global economic impact.⁷

15 Today, short-term home rentals employ an international business model that continues to
16 present a unique link and opportunity for visitors to enjoy and experience travel to a new town

18 ⁴ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982).

19 ⁵ See, e.g., <https://www.loveexploring.com> (noting the Groton Inn built in 1678 (Groton,
20 Massachusetts) and the 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 ⁶ See <https://www.vrbo.com> (stating that Vrbo, Inc. was founding in Colorado in Aurora,
22 Colorado in 1995) and <https://www.airbnb.com> (stating that AirBnB, Inc. was founding in San
23 Francisco, California in 2008). Of note, both of these companies were founded in the Western
United States. Neither are financing the instant litigation.

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

1 or city.⁸ The reasons why an individual may choose to rent a room, or entire house, for a short
2 stay vary from visitor-to-visitor. They include families with members who want to gather for a
3 reunion or those with young children looking for a living space with a kitchen, yard, or private
4 pool or business travelers needing a quiet space to work for a week or two.⁹

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

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

14 B. Clark County’s Original Prohibition (Year 1998)

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

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22 ⁸ See Exhibit 1 (Affidavit of Jacqueline Flores).

23 ⁹ *Id.*

24 ¹⁰ *Id.*

1 The new Code provision permitted a three (3)-year grace period before it became fully
2 effective.¹¹ Therefore, the ban became effective in 2001. No short-term rentals were legally
3 permitted to operate in unincorporated Clark County.

4 Yet, cities and other areas in Clark County enacted provisions through their zoning
5 authority that permitted short-term rentals to continue legally operating within distinct
6 incorporated areas. In 2012, the City of Mesquite enacted provisions that permitted short-term
7 rentals to operate.¹² In 2015, the City of Las Vegas, which encompasses the North portion of
8 ‘the Strip,’ enacted provisions that permitted short-term rentals to operate.¹³ In 2019, the City
9 of Henderson enacted provisions that permitted short-term rentals to operate.¹⁴ Confusion, and
10 a patchwork of time frames, laws, enforcement, and policies developed throughout Clark County
11 whereby some prospective short-term rental home owners were left to guess at when, or if, they
12 would be permitted to legally operate depending upon the specific geographic location of their
13 home within Clark County and their governing political body.

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

15 In 2021, the Nevada Legislature weighed into the fray during the 81st Regular Legislative
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21 ¹¹ See Clark County Code, Title 30, Chapter 30.44.010(b)(7)(C)(ii).

22 ¹² See Mesquite City Code, Title 2, Chapter 13.

23 ¹³ See City Las Vegas Uniform Development Code. Title 19, Chapter 19.18.070.

24 ¹⁴ See City of Henderson Development Code, Title 19, Chapter 19.10.

1 Session and enacted Assembly Bill (“AB”) 363. The new legislation mandated that Clark
2 County repeal its ban on short-term rentals and implement regulations to permit short-term
3 rentals to resume legally operating within unincorporated Clark County by July 1, 2022.¹⁵

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

5 At a public meeting held on June 21, 2022, the Board of Clark County Commissions
6 unanimously voted to adopt a new provision entitled “Short Term Rental Units” that is set forth
7 in Chapter 7.100 within Title 7 of the Clark County Code, *i.e.*, the Ordinance. It became effective
8 upon passage. Clark County’s website states that will begin accepting applications for short-
9 term rental licenses on September 1, 2022.¹⁶ The instant request for relief follows.

10 IV. STANDARDS OF LEGAL REVIEW

11 The standard of review for this Court to grant injunctive and declaratory relief are each
12 set forth below.¹⁷

13 A. Preliminary Injunctive Relief

14 It is well-settled law in Nevada that the issuance of a preliminary injunction is appropriate
15 where an individual or entity is doing, threatens to do, or is about to do an act that violates the
16 rights of another.¹⁸ This preliminary injunction standard applies to laws and regulations that
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19 ¹⁵ Notably, some limited provisions of AB 363 violate the Nevada and United States Constitutions
20 and will addressed further below.

21 ¹⁶ See <https://www.clark.legistar.com>.

22 ¹⁷ See, generally *Heller v. State of Nev. Legislature*, 120 Nev. 456, 472, 93 P.3d 746, 757 (2014)
(recognizing that a request for declaratory relief coupled with injunctive relief may be an
23 appropriate legal vehicle to challenge the constitutionality of government action).

24 ¹⁸ See NRS 33.010(3).

1 either have been or will be enacted by government entities and are challenged by individual
2 citizens or grass root organizations.¹⁹

3 When seeking a preliminary injunction, a movant is required to demonstrate two
4 elements. First, they must show a reasonable likelihood of success on the merits. Second, they
5 must show a reasonable probability that the non-moving party's conduct will cause irreparable
6 harm if it is allowed to continue and for which compensatory damages is an inadequate remedy.²⁰
7 In considering these factors, it is appropriate to weigh the potential hardships to the relative
8 parties and others, and the public interest.²¹

9 The decision whether to grant a preliminary injunction resides within the sound discretion
10 of this Court.²² The Nevada Supreme Court holds that “[a]n abuse of discretion can occur when
11 the district court bases its decision on a clearly erroneous factual determination or it disregards
12 controlling law.”²³ Questions of law are reviewed on appeal *de novo*.²⁴

14 ¹⁹ See, e.g., *Citizens for a Public Train Trench Vote v. City of Reno*, 118 Nev. 574, 53 P.3d 387
15 (2002), *overruled on other grounds by Nevadans for Protecting Private Property Rights v.*
16 *Heller*, 122 Nev. 894, 141 P.3d 1235 (2006); *Kuban v. McGimsey*, 96 Nev. 105, 605 P.2d 623
(1980); see also *Edgar v. MITE, Corp.*, 457 U.S. 624 (1982) (applying the preliminary injunction
standard pursuant to Federal Rule of Civil Procedure, Rule 65).

17 ²⁰ *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187
18 (2004).

19 ²¹ *Id.* (citing *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719
(1996)).

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

23 ²³ *Shores*, 134 Nev. at 505, 422 P.3d at 1241 (quoting *MB Am., Inc. v. Alaska Pac. Leasing Co.*,
23 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016)). On appeal, factual findings are reviewed by the
Nevada Supreme Court for clear error. *Mirage Casino-Hotel*, 117 Nev. at 407, 23 P.3d at 246.
24

1 B. Declaratory Relief

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

5 Any person interested under a deed, written contract or other
6 writings constituting a contract, or *whose rights, status or other*
7 *legal relations are affected by a statute, municipal ordinance,*
8 contract or franchise, may have determined any question of
 construction or validity arising under the instrument, statute,
 ordinance, contract or franchise and obtain a declaration of rights,
 status or other legal relations thereunder.

9 (Emphasis added). The Nevada Supreme Court has held that declaratory relief is appropriate
10 where (1) a justiciable controversy exists between persons with adverse interests, (2) the party
11 seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue
12 is ripe for judicial determination.²⁵

13 Whether an action for declaratory judgment is proper is a matter within a district court’s
14 discretion.²⁶ Standing exists in this case and it justiciable and ripe, and proper, for review.

15 V. THIS PETITION IS RIPE FOR ADJUDICATION

16 The Nevada Supreme Court has recognized that standing to raise a facial challenge to the
17 constitutionality of a statute or ordinance may be established in either one of two ways.²⁷ Here,
18 the Rental Association satisfies either or both standards.

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

21 ²⁵ *Clark County v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (2004) (citing *Knittle v.*
22 *Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

23 ²⁶ *Id.* (citing *El Capitan Club v. Fireman's Fund Ins.*, 89 Nev. 65, 68, 506 P.2d 426, 428 (1973)).

24 ²⁷ *See generally Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

1 A petitioner has a standing where they can show a personal injury, as opposed to a more
2 generalized interest that is common to all members of the public.²⁸ Or a petitioner may also
3 show that the matter raised involves an issue of public importance. Under the public importance
4 standard, a party has standing where a Nevada citizen raises a constitutional challenge where:
5 (1) the case involves an issue of public importance, (2) the case involves a government
6 expenditure, and (3) the party raising the challenge is in the best position to fully advocate for it.
7 Essentially, “the question of standing concerns whether the party seeking relief has a sufficient
8 interest in the litigation. The primary purpose of this standing inquiry is to ensure the litigant
9 will vigorously and effectively present his or her case against an adverse party.”²⁹

10 Here, the Rental Association is in the best position to raise the instant challenge to the
11 constitutionality of the Ordinance and advocate for the interests of short term-rental home
12 owners in Clark County. It satisfies both separate standing pathways. Real individuals, such as
13 Petitioner Jaqueline Flores,³⁰ and members of the Rental Association, as well as patrons of short-
14 term rentals in Clark County, have not only been harmed by Clark County’s prior prohibition
15 against the operation of short-term rentals in unincorporated Clark County, but, most relevantly,
16 by the recent enactment of the Ordinance.

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19 ²⁸ *Id.* (citing *Doe v. Bryan*, 102 Nev. 523, 525–26, 728 P.2d 443, 444–45 (1986) (requiring
20 plaintiffs, who sought to have criminal statute declared unconstitutional, to first demonstrate a
21 personal injury, *i.e.*, that they were arrested or threatened with prosecution under the statute))
and *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648 (1929) (requiring property
owner to show that he would suffer a special or peculiar injury different from that sustained by
the general public in order to maintain complaint for injunctive relief)).

22 ²⁹ *Morency v. Nev. Dep't of Educ.*, 137 Nev. Ad. Op. 63, ___,496 P.3d 584, 588 (2021) (citing
23 *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (internal citations omitted)).

24 ³⁰ See Exhibit 1 (Affidavit of Jacqueline Flores).

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

5 Notably, the very purpose of a *preliminary* injunction is to prevent reasonably anticipated
6 harm and injury to an individual before full adjudication of the underlying legal issue may occur.
7 Indeed, 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 To this end, 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.³¹
12 Over 7,700 short-term rental units are housed in Clark County.³² Clark County reported that it
13 received over 5,500 responses during a survey by Clark County to gage public interest.³³ For
14 two decades this matter has been a source of robust public debate and concern in Clark County—
15 Nevada’s most populous county. The Nevada Legislature has also addressed the issue. Certainly,
16 the Ordinance requires the expenditure of public funds through the collection and expenditure of
17 taxes and fees by Clark County to process license applications and engage in enforcement actions

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19 ³¹ See *Morency*, 137 Nev. Adv. Op. at ___, 496 P.3d at 589; *Consipio Holding, BV v. Carlberg*,
20 128 Nev. 454, 459, 282 P.3d 751, 755 (2012) (recognizing that “a corporation that is incorporated
in Nevada is a Nevada citizen”).

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

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

1 by the Clark County’s Department of Business and Licenses. It recognizes expenditures within
2 its own terms.³⁴ Moreover, the prospect of halting Clark County’s licensing application process
3 after it has commenced will invariably cause confusion and expense. This Petition is timely, and
4 prompt adjudication by this Court will prevent additional harm and injury.

5 Finally, the Rental Association respectfully submits that it is representative of short-term
6 rental owners and patrons. It is in the best position to raise this legal challenge. Accordingly,
7 standing exists for the Rental Association to bring this legal action of individual and important
8 public concern.

9 VI. ARBITRARY AND CAPRICIOUS LICENSING SCHEME

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

17 Licensing schemes cross the threshold of a permissible exercise of government authority
18 where the language of regulations permit arbitrary or capricious enforcement.³⁶ When this
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21 ³⁴ See, e.g., Section 7.100.010(c), Section 7.100.080(d), Section 7.100.170(k), and Section
22 7.100.200(c) of the Ordinance.

23 ³⁵ *City Council of Reno v. Irvine*, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (citing *Gragson*
24 *v. Toco*, 90 Nev. 131, 133, 520 P.2d 616, 616 (1974)).

³⁶ *Id.*

1 occurs, a facial challenge to the plain text of the rules may be raised for judicial review.³⁷ The
2 term ‘arbitrary’ is defined to mean “existing or coming about seemingly at random or by
3 chance.”³⁸ The term ‘capricious’ is defined to mean ‘optional’ or ‘open to choice’ or
4 ‘discretionary.’³⁹ Here, the Ordinance is arbitrary and capricious by the language in its own text.
5 It is riddled with instances of unfettered and random discretion. Examples are below.

6 A. Random Licensing Process (A License Lottery)

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

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

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

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

24 (Emphasis added). These two above Sections of the Ordinance read in conjunction with Section
7.100.080(f)(2) that prohibits a short-term rental unit from being “. . . within 1,000 feet of any
[other] short-term rental unit . . .” establishes a licensing system that it is entirely dependent upon

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

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

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

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

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

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

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

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

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

22 Each application must be accompanied by:

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

1 Section 7.100.100(a) of the Ordinance provides that Clark County itself ‘determines’
2 when licenses are available for issuance.⁴¹ Use of the term ‘determines’ is a grant of discretion
3 without objective criteria. Given that Clark County has tied the number of licenses that may be
4 issued to the population of unincorporated Clark County, as well as geography of home locations,
5 a moving target exists for available licenses. The Ordinance provides no algorithm or formula
6 on how this calculation will be determined.

7 Section 7.100.100(h) of the Ordinance provides:

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

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

16 Section 7.100.110(a)(3) of the Ordinance provides that an application for a license may
17 be denied “if the applicant fails or refuses to cooperate fully with any inspection.” Cooperation,
18 let alone ‘full’ cooperation, are ambiguous terms and leave the determination of whether an
19 applicant has ‘cooperated fully’ to Clark County’s unfettered discretion. Either an applicant
20 timely permits an inspection to occur or they do not. If an applicant asks questions or does not

21 ⁴¹ See Section 7.100.100(a) of the Ordinance:

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

1 move quickly enough or smile, it must be asked: Is that below a level of full cooperation? Will
2 a reviewer decide to deny an application because an applicant is not nice enough? What is the
3 line between ‘full’ verses ‘partial’ cooperation? These questions illustrate the ambiguity and
4 open-ended discretion within the Ordinance.

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

11 The Nevada Supreme Court has stated that “[a]n arbitrary or capricious exercise of
12 discretion is one ‘founded on prejudice or preference rather than on reason’ ... or ‘contrary to the
13 evidence or established rules of law.’”⁴² The Ordinance does just that—it sets forth a licensing
14 scheme based upon random chance and arbitrary discretion without clear standards. It should
15 fail on this basis alone.

16 VII. VOID FOR VAGUENESS

17 The Ordinance is unconstitutionally vague in violation of Article 1, Section 8 of the
18 Nevada Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.
19 It (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand
20 what conduct is prohibited, or (2) lacks specific standards and encourages, authorizes, or fails to
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23 ⁴² See *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780
24 (2011).

1 prevent arbitrary and discriminatory enforcement.⁴³ The United States Supreme Court has
2 recognized that “[v]agueness may invalidate a criminal law for either of [these] two reasons.”⁴⁴
3 The Nevada Supreme Court has explained that for a law to be constitutional it must “delineate
4 the boundaries of unlawful conduct . . . so individuals will know what is permissible behavior and
5 what is not.”⁴⁵ Laws, including Ordinances, are subject to a facial attack on vagueness grounds.
6 *Id.* Here, the Ordinance is unconstitutionally vague on several grounds.

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

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

14 Section 7.100.160(1)(c) of the Ordinance restricts rentals to individuals “within the same
15 family or group.” However, those terms are left undefined. Does the term ‘family’ only include
16 individuals who have the same last name? Are members of the ‘family’ defined by only blood or
17 marriage? Does it include unmarried couples? How far removed from each other in the family
18 tree can individuals be from one another? Does the term ‘group’ mean individuals who have a
19 prior relationship with one another? Or does a ‘group’ include individuals who traveled to Las
20

21 ⁴³ *State v. Casteneda*, 126 Nev. 478, 481, 245 P.2d 550, 552 (2010); *Sheriff v. Burd*, 118 Nev.
22 853, 857, 59 P.3d 484, 486-87 (2002).

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

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

1 Vegas on the same airplane or originated from the same state or country? Is it members of the
2 same sports team? Guessing incorrectly will be a crime.

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

4 Section 7.100.180(b) of the Ordinance prohibits “parties, weddings events or other
5 gatherings which exceed the maximum occupancy of the residential unit.” What do the terms
6 ‘event’ or ‘gathering’ mean? They are undefined by the Ordinance.⁴⁶ If eight people occupying
7 a four-bedroom house and three people come over for a dinner, it is a crime? Is an afternoon
8 birthday party for five children in a two-bedroom house truly illegal? Does this provision apply
9 to gatherings that are inside the residence or outside in a yard area? The consequence of not
10 knowing these answers could be an arrest.

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

12 Section 7.100.180(c) of the Ordinance provides:

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

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

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

1 The Nevada Supreme Court in the case *Scott v. First Judicial District Court*,⁴⁷ held that a
2 municipal ordinance that made it a crime to ‘annoy’ a law enforcement officer was
3 unconstitutionally vague. In *Scott*, the Court recognized that the United States Supreme Court
4 has “‘repeatedly invalidated laws that provide the police with unfettered discretion to arrest
5 individuals for words or conduct that annoy or offend them.’”⁴⁸ The Court reasoned that the term,
6 and the entire ordinance at issue, lacked specific standards and left enforcement entirely up to the
7 law enforcement officer’s personal discretion.⁴⁹

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

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

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18 ⁴⁷131 Nev. 1015, 1017-18, 363 P.3d 1159, 1161-62 (2015).

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

20 ⁴⁹ *Id.*

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

1 D. Discretionary Criminal Enforcement Provisions

2 Compounding the unconstitutional problems with the vagueness of the Ordinance are the
3 criminal enforcement provisions that are equally vague and arbitrary. Section 7.100.230(b) of
4 the Ordinance provides that penalties for violating any provision “shall be cumulative and may
5 be exercised in any order or combination at any time.” Additionally, Section 7.100.230(d)(1)(I)
6 of the Ordinance provides that “[t]he amount of the fine shall be determined only after taking into
7 account, without limitation, the severity of the violation, whether the person who committed the
8 violation acted in good faith, and any history of previous violations” Viewed in isolation,
9 or together, these enforcement provisions further exacerbate the unconstitutional vagueness of
10 the Ordinance. It must be stricken.

11 VIII. VIOLATION OF THE FIRST AMENDMENT

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

21 A. Prior Restraint on Speech

22 Section 7.100.090(b)(4) of the Ordinance requires short-term rental license applicants to
23 provide Clark County with the names of all “rental sites that will be used to advertise the short-
24

1 term rental unit” as a condition of the license application.⁵¹ This requirement is an
2 unconstitutional prior restraint on a short-term rental license applicant’s right to free speech. Here,
3 a unique blend of standards governing commercial speech, licensing, and prior restraint are at
4 issue. All three constitutional standards will be addressed. The Ordinance fails them all.

5 Undoubtedly, advertising is a form of commercial speech.⁵² While it has been held to a
6 lower level of judicial scrutiny than non-commercial speech, it still enjoys protections under the
7 First Amendment—a substantial basis for its prohibition must still exist.⁵³ Yet, the Nevada
8 Supreme Court has also held that “[t]o be constitutionally acceptable, an ordinance authorizing
9 officials to license activity that is presumptively protected by the First Amendment must establish
10 precise, narrowly-drawn standards to guide the officials.”⁵⁴ The United States Supreme Court
11 condemns “any system of prior restraint of First Amendment rights.”⁵⁵ “[A]ny system of prior
12 restraint is burdened with a heavy presumption against its constitutional validity.”⁵⁶ Thus, a prior
13 restraint on speech may be imposed only when “(1) the activity restrained poses either a clear and
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16 ⁵¹ See also Section 7.100.170(f)(8) of the Ordinance which requires a short-term rental license
17 applicant to provide Clark County with a list the names of all advertising platforms that are used
to list the rental home in a monthly report.

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

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

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

22 ⁵⁵ *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 ⁵⁶ *City of Las Vegas v. 1017 South Main Corp.*, 110 Nev. 1227, 1132, 885 P.2d 552, 555 (1994)
24 (citing *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546 (1975)).

1 present danger or a serious and imminent threat to a protected competing interest, (2) the order is
2 narrowly drawn, and (3) less restrictive alternatives are not available."⁵⁷

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

11 B. Restraint on Freedom to Associate and Assemble

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

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

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

23 ⁵⁸ *See Tectow v. City Council of North Las Vegas*, 105 Nev. 330, 334-35, 775 P.2d 227, 230-31
24 (1989).

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

5 The Texas Court of Appeals in the case *Zaatari v. City of Austin* held that provisions in
6 an ordinance enacted by the City of Austin that among other things, prohibited patrons of short-
7 term rentals to engage in a group activity or assemble between the hours of 10:00 p.m. and 7:00
8 a.m. and limited the number of individuals who could be at a short-term rental to ten (10)
9 individuals total or six (6) unrelated adults at any given time was unconstitutional.⁶⁰ The Texas
10 Court of Appeals held that the ordinance in that case “plainly restricts the right to assemble and
11 does so without regard to peaceableness or content of the assembly”⁶¹ It reasoned that “the
12 right to assemble is just as strong, if not stronger, when it is exercised on private property with
13 the permission of the owner, thereby creating a nexus with property and privacy rights.”⁶²

14 Here, the Ordinance enacted by Clark County contains similar, and in some instances
15 identical, provisions to those in the City of Austin ordinance that were held to be unconstitutional
16 by the Texas Court of Appeals. For example, the Ordinance at issue in this case similarly limits
17 the total number of individuals who can be on the property to ten (10) at any given time.⁶³ It also
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20 ⁵⁹ *Id.* (quoting *Thomas v. Collins*, 323 U.S. 516, 531 (1945)).

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

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

23 ⁶² *Id.* at 200.

24 ⁶³ *See* Section 7.100.160(a).

1 prohibits any gatherings from 10:00 p.m. to 7:00 a.m.⁶⁴ Like the City of Austin ordinance, no
2 standards for enforcement of these *per se* prohibitions were enacted by Clark County. Rather, the
3 Ordinance is a blanket prohibition against individuals from associating or assembling on private
4 property without regard to the content or purpose of the gathering. Neither the Nevada nor United
5 States Constitutions permit this type of law. It is unconstitutional.

6 IX. GOVERNMENT TAKING OF PRIVATE PROPERTY

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

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

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20 ⁶⁴ See Section 7.100.180(c)(II).

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

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

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

24 ⁶⁸ *Id.*

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

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

11 A. Invasion of Privacy

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

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

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

20 ⁷¹ *Cedar Point Nursery v. Hassid*, 591 U.S. ___, ___, 141 S.Ct. 2063, 2072 (2021); see *Home v.*
21 *Department of Agriculture*, 576 U.S. 350, 360 (2015); *Pennsylvania Coal Co. v. Mahon*, 260 U.S.
22 393, 415 (1922) (holding that “while property may be regulated to a certain extent, if regulation
23 goes too far it will be recognized as a taking”); see also *Yee v. Escondido*, 503 U.S. 519, 527
(1992).

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

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

8 Section 7.100.170(r) of the Ordinance requires that at least two (2) or more noise
9 monitoring devices must be installed on the short-term rental owner’s yard and pool. Section
10 7.100.170(r)(1)-(3) of the Ordinance provide that “data” on noise levels must be maintained for
11 sixty (60) days and provided to Clark County “[u]pon request.” Section 7.100.170(o)(1)-(3) of
12 the Ordinance requires that a video surveillance camera must be installed and recording footage
13 maintained for sixty (60) days and provided to Clark County, or a law enforcement agency,
14 “[u]pon request.” Section 7.100.170(i)(2) of the Ordinance provides that a short-term rental
15 owner “must” permit inspection of their home “with or without notice” and that they have a duty
16 “to provide access.” Section 7.100.170(p) of the Ordinance provides that a short-term rental
17 owner “must” provide all financial information involving the home for three (3) years upon
18 request of Clark County.

19 The sum effect of these provisions is that Clark County—a government entity—will have
20 unfettered access to view all individuals who enter and exit a home, what they do behind a fenced
21 front or back yard, *and*, even more egregious, may enter the home without cause or advanced
22 notice and demand that the homeowner provide all financial documents. What appears lost on
23 Clark County is that short-term rental units are people’s *homes*. They are not simply vacant
24

1 houses. The ability of the government to enter private property, *i.e.*, a home, at will and with
2 undefined standards and unchecked discretion amounts to a physical constructive invasion of
3 that property: the ability to freely enter a home equates to ownership.

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

9 B. Interference with Property Fixtures

10 The United States Supreme Court has stated that “[t]he right to exclude is ‘one of the
11 most treasured’ rights of property ownership.”⁷⁵ Here, as a condition of obtaining a license from
12 Clark County to operate a short-term rental, physical interference of a licensee’s property is
13 mandated by the Ordinance with the placement of multiple fixtures. One or even two could,
14 arguably, be rational. But multiple fixtures are not. Once again, the Ordinance goes too far.

15 Section 7.100.170(r) of the Ordinance requires that at least two (2) or more noise
16 monitoring devices must be installed on a short-term rental owner’s yard. An additional noise
17 monitoring device is required for a pool or spa. Section 7.100.170(o)(1)-(3) of the Ordinance

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19 ⁷³ 591 U.S. ___, 141 S.Ct. 2063 (2021).

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

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

1 requires that a video surveillance camera be installed. Section 7.100.170(h) of the Ordinance
2 requires that the address be illuminated at night. Section 7.100.170(q) of the ordinance requires
3 that an 8.5 x 11 ‘placard’ on the exterior of the residence and in plain public view.

4 The United States Supreme Court in 1982 in the case *Loretto v. Teleprompter Manhattan*
5 *CATV Corp.*, held that an unconstitutional taking occurred where cable plates, boxes, wires, and
6 screws were affixed to a building.⁷⁶ There, the Court held that a physical taking can also be an
7 intrusion on private property by requiring something to be permanently attached to it—no matter
8 how small the affixture.⁷⁷ In *Loretto*, the fixtures were a ½ inch cable wire and a 1 ½ foot box.⁷⁸
9 Similar to *Loretto*, here, multiple Ordinance requirements—attaching multiple government-
10 mandated physical fixtures to a home—removes, *i.e.*, takes away, the private nature of the
11 property and converts it into something else. This is unconstitutional.

12 C. Impaired Use and Enjoyment of Home

13 The United States Supreme Court has long guarded the sanctity of the home as being of
14 the “‘highest order in a free and civilized society.’”⁷⁹ The Court has recognized that the “home”
15 is different, and is conferred unique constitutional status, so that all citizens may use and enjoy
16 their home in privacy and without intrusion.⁸⁰ Here, the Ordinance strips that privacy away,
17 removing the ability of both a short-term rental owner, and patron, of the ability to use and enjoy
18 their property. The prohibitions are egregious.

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20 ⁷⁶ 458 U.S. 419 (1982).

21 ⁷⁷ *Id.* at 420.

22 ⁷⁸ *Id.*

23 ⁷⁹ *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)).

24 ⁸⁰ *Id.* at 484-85.

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

14 These restrictions bar any gatherings, light, noise, odor, or sound from a short-term rental
15 property between the hours of 10 p.m. and 7 a.m. every night. They are imposed by Clark County
16 without objective standards or regard for behavior. The slightest noise, even on New Year’s Eve
17 or the Fourth of July, by anyone (homeowner and guest alike) gives rise to a potential criminal
18 citation. The onerous effect of these prohibitions is to eliminate the ability of both a short-term
19 rental owner, as well as a patron, to use and enjoy their private property, *i.e.*, their home.

20 D. Loss of Economic Benefit

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

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

10 Second, and as previously discussed in a First Amendment context, *see supra* 30, Section
11 7.100.160(a) the Ordinance arbitrarily limits the maximum occupants to a maximum of ten (10)
12 individuals, irrespective of the number of bedrooms in the house. Thus, a six (6) or seven (7)
13 bedroom home is subject to the same maximum occupant limit of a five (5) bedroom home. This
14 arbitrary limitation will reduce the economic benefit and use of larger bedroom short-term rental
15 properties. No rational basis exists for these, or the other, arbitrary occupancy limitations. They
16 are unconstitutional government takings.

17 X. LACK OF DUE PROCESS

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

1 The Nevada Supreme Court has held that to establish a due process claim it must be
2 shown that an individual (1) had a liberty interest that was interfered with by the government
3 and (2) the established procedures to address it were constitutionally insufficient.⁸¹ In this case,
4 the Ordinance violates due process protections in three ways.

5 A. No Notice Provided for Incomplete License Application

6 Section 7.100.100(f) of the Ordinance provides that Clark County will “not be required to
7 notify any applicant of an incomplete application.” This lack of notice to an applicant is a *prima*
8 *facie* due process violation. It not only deprives a short-term rental license applicant of the
9 opportunity to be given notice and to be informed of a deficiency, but it also deprives a license
10 applicant of the opportunity to timely dispute a determination made by Clark County and/or to
11 cure any deficiency that may be in the application.⁸² Providing a license applicant notice of
12 missing or incomplete application information is not only required by due process principles, it
13 is also good public service.

14 B. Unpredictable and Cumulative Fines and Penalties

15 Section 7.100.230(b) of the Ordinance provides that an individual cited by Clark County,
16 or a law enforcement officer, for being in violation of the Ordinance may be subject to
17 “cumulative” fines and citations that may be “exercised in any order or combination at any time.”
18 Again, this provision also is a *prima facie* due process violation. As it is written, it subjects a
19 short-term rental owner, or patron, to layers of multiple violations at the subjective discretion of
20 government authorities. The broad authority conferred by the Ordinance that empower citations

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22 ⁸¹ *Malfitano v. County of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citing *Ky. Dep’t*
of Corr. v. Thompson, 490 U.S. 454 (1989)).

23 ⁸² *See Burgess v. Storey County Board of Commissioners*, 116 Nev. 121, 125, 992 P.2d 856, 858-
24 59 (2000).

1 to be issued in ‘any’ order and in ‘any’ combination and at ‘any’ time falls well short of due
2 process requirements.

3 C. Subjective Enforcement

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

13 D. Liability for the Acts of Others

14 Section 7.100.230(e)(2) of the Ordinance provides that when a citation is issued involving
15 a short-term rental property that “the property owner shall also be subject to receipt of an
16 administrative citation” Pursuant to this provision, a short-term rental owner may be cited
17 under the Ordinance for conduct he or she did not commit or of which he or she had no knowledge
18 or involvement. It makes a short-term rental owner legally responsible for the acts and behavior
19 of others. Given that the Ordinance carries not only civil, but criminal, penalties, this provision
20 violates bedrock constitutional principles of due process, as well as fundamental fairness.⁸³

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22 _____
23 ⁸³ It is well-settled jurisprudence that an individual must possess a level of *mens rea* before they
24 are held criminally responsible for the actions or behaviors of others. *See, generally Ford v. State*,
127 Nev. 608, 618, 262 P.3d 1123, 1130 (2011).

1 XI. EQUAL PROTECTION UNDER THE LAW

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

6 The United States Supreme Court has held that an equal protection claim may be
7 brought by a "class of one" if the appellant can demonstrate that he or "she has been intentionally
8 treated differently from others similarly situated and that there is no rational basis for the
9 difference in treatment."⁸⁴ When addressing an equal protection claim, the Nevada Supreme
10 Court has held that a court "must determine whether (1) the statute, either on its face or in the
11 manner of its enforcement, results in members of a certain group being treated differently from
12 other persons based on membership in that group; and (2) if it is demonstrated that a cognizable
13 class is being treated differently, the court must analyze under the appropriate level of scrutiny
14 whether the distinction made between groups is justified."⁸⁵ "[U]nder a rational basis test,
15 classifications must 'apply uniformly to all who are similarly situated, and the distinctions
16 which separate those who are included within a classification from those who are not must be
17 reasonable, not arbitrary."⁸⁶ In other words, an equal protection inquiry should focus on

20 ⁸⁴ *Vill. of Willowbrook v. Olech* , 528 U.S. 562, 564 (2000).

21 ⁸⁵ *Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (internal citations and quotations
22 omitted).

23 ⁸⁶ *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520-21, 217 P.3d 546, 558-59
24 (2011) (internal citations and quotations omitted).

1 whether ““there is a rational relationship between the disparity of treatment and some legitimate
2 government purpose.””⁸⁷

3 Here, short-term rental homeowners are similarly situated as a class to other licensed
4 businesses, including hotels and motels, and residents in Clark County. Yet, they are treated
5 extraordinarily different. No reasonable basis exists for this unfair treatment by Clark County.
6 As explained below, the Ordinance violates equal protection guarantees in four ways.

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

8 Section 7.100.080(f)(1) of the Ordinance prohibits a short-term rental home from being
9 licensed and operating within 2,500 feet of the property line of a resort hotel. This distance
10 requirement has no rational or evidentiary basis and, instead, is an arbitrary property limitation.
11 It advances no public health and safety policy for visitors to or residents of Clark County. Indeed,
12 Nevada law provides that an adult-use cannabis establishments can operate within 1,000 feet of a
13 public or private school (k-12) or within 1,500 feet of an establishment that holds a non-restricted
14 gaming license.⁸⁸ Yet, a short-term rental home has been banned by Clark County at nearly twice
15 the distance from resort properties than cannabis establishments. As required by the Ordinance,
16 short-term rental licensees are required to pay licensing fees and taxes, just like other businesses.
17 Why short-term rentals may not operate within 2,500 feet of resort hotels remains elusive and
18 disparately treats short-term rentals from other licensed Clark County businesses.

19 B. Unreasonable Local Representative Mandate

20 Section 7.100.170(d) of the Ordinance requires each short-term rental licensee to
21 designate a “local representative” who is able to respond to certain circumstances “within thirty
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23 ⁸⁷ *Doe*, 133 Nev. at 768, 406 P.3d at 486 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

24 ⁸⁸ *See* NRS 678B.250(3)(a)(2)(II); *see also* NRS 678B.210 (3)(a)(2)(II).

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

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

17 C. Excessive Fines and Punishments

18 Section 7.100.230(b) and (d)(1)(II) of the Ordinance provide that any violation may result
19 in fines that range from five-hundred dollars (\$500) (first offense) to one-thousand dollars
20 (\$1,000) (all subsequent offenses) and may be imposed cumulatively and “in any order or
21 combination” per offense. Meaning, for example, a short-term rental owner who has three patrons
22 who decide to go for an early morning swim in a backyard pool or who fail to turn on an outside
23
24

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 Such harsh fines and civil punishments for *de minimus* everyday acts of life are excessive
4 and unnecessary. Other business owners, or homeowners, in Clark County are not exposed to
5 these penalties. If any visitor or resident in Clark County violates noise ordinances or commits
6 criminal offenses, laws already exist to address that behavior. The Ordinance, however, singles
7 out short-term rental licensees and patrons by subjecting them to a layer of additional fines and
8 punishments that other individuals do not face.⁸⁹

9 D. Punitive and Unfairly Burdensome Provisions

10 As discussed above and throughout this Petition, provisions within the Ordinance stretch
11 and exceed the limits of lawful and reasonable prohibitions as established by the Nevada
12 Constitution and the United States Constitution. Every opportunity where obtaining a short-term
13 rental home license could be made difficult, onerous, and intimidating, it was done. Operating a
14 lawful business should not have to occur in an environment of uncertainty, financial exposure,
15 and ongoing criminal jeopardy. Numerous provisions within the Ordinance are unconstitutional
16 when viewed in isolation; they are even more so when viewed cumulatively. The Ordinance is
17 constitutionally infirm. It fails on this basis alone. However, it also contains provisions that
18 violate Nevada law.

19 XIII. THE ORDINANCE VIOLATES NEVADA LAW

20 AB 363 was enacted in 2021 by the Nevada Legislature during the 81st Regular
21 Legislative Session to compel Clark County to enact new regulations that would permit short-

22 _____
23 ⁸⁹ Notably, these Ordinance provisions may in certain factual scenarios implicate prohibitions
24 against excessive fines and fees as set forth in Article 1, Section 6 of the Nevada Constitution and
the Eighth Amendment of the United States Constitution.

1 term rentals to resume lawful operations. However, in addition to the constitutional violations
2 set forth above, the Ordinance as enacted by Clark County is also infirm because it violates
3 provisions of Nevada law, *i.e.*, AB 363. The following two sections of AB 363 are relevant.

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

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

14 660 feet [must exist] between any residential units offered for rent
15 for the purposes of transient lodging, except for residential units
16 in a multifamily dwelling, *and any other minimum separation
requirement the board determines is necessary . . .*

17 (Emphasis added). While Clark County may assert that it is authorized by AB 363 to disregard
18 the plain language of AB 363, this advances an absurd interpretation of the statute.⁹⁰ The 660
19 feet distance requirement set forth in AB 363 is very specific. Had the Nevada Legislature
20 intended for Clark County to disregard the 660 feet distance requirement, it would not have
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22 ⁹⁰ See *Young v. Nevada Gaming Control Board*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020)
23 (holding that statutes must be interpreted in a way that avoids an “absurd result”) (internal
24 citations and quotations omitted).

1 included it.⁹¹ Rather, reference in Section 7, Subsection 2(f)(1) of AB 363 to “any other
2 minimum separation requirement the board determines is necessary” authorizes Clark County to
3 set boundary distances between short-term rentals and other establishments. The Ordinance also
4 violates AB 363 on this basis.

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

9 Yet, Section 7.100.090(c)(2) of the Ordinance criminalizes the license application
10 process by compelling an applicant to affirm under penalty of perjury their intent to adhere to
11 the Ordinance,⁹² and Section 7.100.230(f)(1) of the Ordinance provides that violation of the
12 Ordinance is a misdemeanor crime. While Subsections in AB 363 state that civil penalties may
13 be enacted “in addition to any other penalty provided by law,” this language does not constitute
14 permissive authorization for Clark County to criminalize what the Nevada Legislature intended
15 to be a civil infraction. Certainly, Clark County has authority to criminalize conduct independent
16 of being a short-term rental license holder. But the Ordinance violates AB 363 by injecting
17 criminal penalties into the short-term rental market in Clark County that the Nevada Legislature
18 never intended to impose.

22 ⁹¹ See *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)
23 (holding that statutes must be interpreted “in a way that [does] not render words or phrases
24 superfluous or make a provision nugatory” (internal citations and quotations omitted)).

⁹² See NRS 199.120 (providing that perjury is a felony crime).

1 XIV. PROVISIONS WITHIN ASSEMBLY BILL 363 ARE UNCONSTITUTIONAL

2 While some provisions in the Ordinance depart from AB 363, other provisions within it
3 mirror language of AB 363. Those similar provisions of AB 363 violate the Nevada Constitution
4 and the United States Constitution for the same reasons that the Ordinance does. For example,
5 Section 20, Subsection (k) of AB 363 prohibits the use of short-term residential homes for
6 “parties, weddings, events or other large gatherings.” This prohibition is unconstitutional for
7 those reasons that the Ordinance is unconstitutional and are set forth in this pleading, *see supra*
8 30, 38.

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

18 XV. CONCLUSION

19 The Rental Association is not opposed to regulation of the short-term rental market by
20 Clark County or the Nevada Legislature. It is also not opposed to paying its fair share of
21 reasonable fees and taxes. Short-term rentals provide a valuable service to residents of and
22 visitors to Clark County and the greater Las Vegas area. The Rental Association is committed
23 to being a good neighbor and responsible members of the Clark County business community.

1 However, as discussed above, the Ordinance passed by Clark County on June 21, 2022, falls far
2 short of what may constitute lawful government regulation under the Nevada Constitution and
3 the United States Constitution, as well as Nevada law. It violates bedrock and fundamental
4 constitutional provisions. It cannot stand.

5 Accordingly, the Rental Association respectfully requests that this Court declare that the
6 Ordinance is unconstitutional and enjoin its enforcement.

7 DATED this 3rd day of August, 2022.

8 HUTCHISON & STEFFEN, PLLC

9 /s/ Joseph C. Reynolds

10 Joseph C. Reynolds (8630)

11 Ariel C. Johnson (13357)

Alex R. Velto (14961)

HUTCHISON & STEFFEN, PLLC

5371 Kietzke Lane

Reno, NV 89511

13 *Attorneys for Petitioners*

14 *Greater Las Vegas Short Term Rental Association*
15 *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 August, 2022, I caused the above and foregoing document, entitled **AMENDED PETITION FOR PRELIMINARY INJUNCTION AND DECLARATORY RELIEF** to be served as follows:

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

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

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

/s/ Bernadette Francis-Neimeyer
An Employee of Hutchison & Steffen, PLLC

EXHIBIT INDEX

Exhibit No.	Document Title	# of Pages*
1	Affidavit of Jacqueline Flores	3

***Includes cover page.**

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EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

AFFIDAVIT OF JACQUELINE FLORES

Jacqueline Flores, being first duly sworn testifies as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

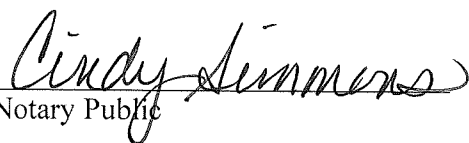
DATED this 1st day of August, 2022.



JACQUELINE FLORES

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

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



Notary Public

