Honorable Roger Rogoff
Noted for argument September 30, 2019, 1:00 PM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SEATTLE VACATION HOME, LLC, et al., Plaintiffs, v. CITY OF SEATTLE, et al., Defendants.	No. 18-2-15979-2 SEA CITY OF SEATTLE'S SUPPLEMENT TO ITS MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND RELIEF REQUESTED

Because the City of Seattle's short-term rental ("STR") licensing ordinance ("Ordinance") is rationally related to legitimate governmental interests, it survives the "rational basis" test this Court has ruled controls Plaintiffs' claims. And particularly because this Court must assume any necessary state of facts it can reasonably conceive to find that rational relationship, the City respectfully asks this Court for summary judgment without regard to Plaintiffs' contentions about the Ordinance's motives or efficacy.

Through is July 11, 2019 order, this Court denied Plaintiffs' cross-motion for partial summary judgment by ruling "rational basis" controls. This Court continued the City's cross-motion for summary judgment on the merits; this Court allowed Plaintiffs to conduct further

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discovery and invited the City to re-note its motion after the close of discovery. Through this filing, the City re-notes its motion, which is attached as **Appendix A**.

Although largely relying on its briefing on its initial motion, the City submits this brief supplement to restate the issue remaining before this Court; provide additional authority holding that fact-finding and expert opinion is unnecessary in a "rational basis" dispute; and enable Plaintiffs' to respond after their opportunity for discovery. The City respectfully renews its request for summary judgment because there is no need for a trial on the merits.

II. FACTS

For the STR Ordinance's history and the approaches other jurisdictions have taken to STRs, the City relies on its April 26 Summary Judgment Motion ("Original Motion," attached as **Appendix A**), Appendices to that Motion, and Declaration of Aly Pennucci.

The City filed its Original Motion asking this Court to rule Plaintiffs' claims are controlled by the "rational basis" analysis and grant judgment to the City because the Ordinance is rationally related to legitimate governmental interests.

Plaintiffs filed a cross-motion asking only for a ruling on the appropriate standards of review.

On July 11, this Court entered an order denying Plaintiffs' cross-motion, agreeing with the City that "rational basis" controls. This Court continued the City's merits motion to allow Plaintiffs further discovery. This Court invited the City to re-note its motion within one week of the close of discovery.

This discovery cut-off date is September 23. Trial is set for November 4.

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III. EVIDENCE RELIED UPON

The City relies on the Ordinance, the Declaration of Aly Pennucci, the Appendices to its Original Motion, and the other pleadings and papers on file with the Court for this action.

IV. ISSUE

> Under the "rational basis" analysis, a court must assume any necessary state of facts it can reasonably conceive to find a challenged law is rationally related to a legitimate governmental interest. The Court has ruled that rational basis review governs all claims in this case. Does the Ordinance—which balances the benefits of STRs for property owners and visitors against STRs' impacts on housing affordability and the risk of increased displacement for the City's vulnerable communities—satisfy "rational basis" review?

V. ARGUMENT

"Rational basis" review is "restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support" for the challenged law." *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938). *Accord Elster v. City of Seattle*, __ Wn.2d __, 444 P.3d 590, 593 (2019) (an ordinance "need only rationally relate to a legitimate government interest"). "[A] court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest." *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 222, 143 P.3d 571 (2006). Any plausible footing suffices, even if it did not underlay the legislative action and even if no party raised that footing. *Powers v. Harris*, 379 F.3d 1208, 1217 (10th Cir. 2004); *Beatie v. City of New York*, 123 F.3d 707, 712 (2d Cir. 1997). That footing need not be supported by evidence; rational speculation suffices. *Powers*, 379 F.3d at 1217; *Beatie*, 123 F.3d at 712; *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 147–49, 960 P.2d 919 (1998).

As long as the question is debatable, a court may not weigh evidence or engage in fact-finding. *Federal Communications Comm'n ("FCC") v. Beach Communications, Inc.*, 508 U.S.

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307, 315 (1993); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981); *Carolene Products*, 304 U.S. at 154; *In re Detention of Thorell*, 149 Wn.2d 724, 749, 72 P.3d 708 (2003); *DeYoung*, 136 Wn.2d at 147–48. Evidence of motive is irrelevant because "the court has no occasion to inquire into the subjective motives of the decisionmakers." *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 237 (3d Cir. 1987). *Accord FCC*, 508 U.S. at 315; *U.S. v. Osburn*, 955 F.2d 1500, 1505 (11th Cir. 1992). A court should also turn away evidence of the law's efficacy because the "rational basis" analysis provides no opportunity to weigh whether the law will achieve its objective or a different approach would be better. *Powers*, 379 F.3d at 1217; *Beatie*, 123 F.3d at 712; *Osburn*, 955 F.2d at 1505.

The City anticipates Plaintiffs will attempt to rely on expert testimony, rather than additional discovery, to meet their burden.[1] But the U.S. Supreme Court flags the particular danger of entertaining expert testimony on a law's efficacy when applying the deferential "rational basis" analysis. In *Clover Leaf Creamery*, the Court rejected a challenge to a law banning the retail sale of milk in plastic nonreturnable, nonrefillable containers, but allowing such other containers as paperboard milk cartons. *Clover Leaf*, 449 U.S. at 458–60. The Minnesota Supreme Court struck down the law by crediting plaintiffs' expert testimony to conclude plastic containers, more so than paper, better advance the legislative goal of energy conservation. *Id*. at 469. The U.S. Supreme Court reversed and upheld the law, criticizing the state court for using expert testimony to inject itself into a debatable issue: "The Minnesota Supreme Court may be correct that the Act is not a sensible means of conserving energy. But we

[1] The City has not yet received a disclosure of expert testimony, although Plaintiffs have indicated they intend to provide a report. The City reserves its objections to such testimony should Plaintiffs introduce it.

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reiterate that 'it is up to legislatures, not courts, to decide on the wisdom and utility of legislation.'" *Id*. (quoting *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963)).

Lingle also mooted expert testimony on efficacy. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005). *Lingle* involved a law limiting the rent an oil company could charge its dealers. *Id*. at 531–34. Lower federal courts struck down the law under the "fails to substantially advance a legitimate government interest" prong of the federal takings analysis. *Id*. at 534–36. The U.S. Supreme Court reversed, extirpating the "substantially advances" prong from the takings analysis. *Id*. at 536–48. The Court reasoned judges are not well suited to scrutinize the efficacy of laws or substitute their predictive judgment for legislators'. *Id*. at 544. The Court was especially alarmed by expert testimony, which the Court had long ago rejected in substantive due process challenges under the "rational basis" analysis:

> Although the instant case is only the tip of the proverbial iceberg, it foreshadows the hazards of placing courts in this role. To resolve [plaintiff's] takings claim, the District Court was required to choose between the views of two opposing economists as to whether Hawaii's rent control statute would help to [achieve the law's goals]. **We find the proceedings below remarkable, to say the least, given that we have long eschewed such heightened scrutiny when addressing substantive due process challenges to government regulation.** See, *e.g., Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124–125 . . . (1978); *Ferguson v. Skrupa*, 372 U.S. 726, 730–732 . . . (1963). The reasons for deference to legislative judgments about the need for, and likely effectiveness of, regulatory actions are by now well established, and we think they are no less applicable here.

Id. at 544–45 (emphasis added).[2]

By design, "it is very difficult to overcome the strong presumption of rationality that attaches to a statute." *Beatie*, 123 F.3d at 712. *See Osburn*, 955 F.2d at 1505 ("The burden of reasonableness is not a particularly onerous burden . . . ."). The plaintiff must negate every

[2] The cited decisions applied the "rational basis" analysis to substantive due process claims. *Exxon*, 437 U.S. at 124–25; *Ferguson*, 372 U.S. at 730–32.

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conceivable basis that might support the law. *FCC*, 508 U.S. at 315. That burden is especially weighty where the plaintiff challenges line-drawing—deciding who is subject to a regulation is an inherently legislative, not judicial, exercise. *Id*. at 315–16. This judicial deference is rooted in the faith that voters have the final say: "The Constitutional presumption in this area of the law is that the democratic process will, in time, remedy improvident legislative choices and that judicial intervention is therefore generally unwarranted. We will intervene in the extraordinary circumstance where it can only be concluded that the legislature's actions were irrational." *Beatie*, 123 F.3d at 712.

In a recent decision upholding the City's Democracy Vouchers program, the Washington Supreme Court succinctly demonstrated the proper application of rational basis:

> The Democracy Voucher Program's purpose is to, among other things, "giv[e] more people an opportunity to have their voices heard in democracy." Seattle Municipal Code 2.04.600. The government has a legitimate interest in its public financing of elections, as *Buckley* [*v. Valeo*, 424 U.S. 1 (1976)] held. *See* 424 U.S. at 92–93 . . . . The program's tax directly supports this interest. The program, therefore, survives rational basis scrutiny.

Elster, 444 P.3d at 595.

In contrast, Courts strike a law under the "rational basis" analysis only where the court cannot conceive how the challenged law is rationally related to a legitimate governmental interest. For example, the U.S. Supreme Court struck an amendment to the Colorado Constitution prohibiting legislative, executive, or judicial action designed to protect homosexuals from discrimination. *Romer v. Evans*, 517 U.S. 620, 623–24 (1996). The Court could not conceive of a legitimate state interest to which the amendment could be directed; it was directed to the illegitimate purpose of making a class of persons unequal to everyone else. *Id*. at 635–36. The Washington Supreme Court struck a law barring industrial insurance benefits to prisoners

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who have no beneficiaries and are unlikely to be released from prison, while allowing those benefits for other prisoners, *Willoughby v. Department of Labor & Indust.*, 147 Wn.2d 725, 728–30, 57 P.3d 611 (2002), and a law setting a more restrictive limitations period for medical malpractice claims for only a narrow set of claimants. *DeYoung v. Providence Med. Cntr.*, 136 Wn.2d 136, 139–40, 960 P.2d 919 (1998). In both cases, the Court could not rationally square the challenged law with what were otherwise legitimate governmental purposes. *Willoughby*, 147 Wn.2d at 741–42; *DeYoung*, 136 Wn.2d at 144–50.

This is not one of those "rare cases" where a law fails "rational basis" review. *See id*. at 144. Unlike the anti-homosexual constitutional amendment in *Romer*, the STR Ordinance is directed at several legitimate goals, principally the preservation of housing units for longer-term use. *See* Original Motion at 17–22. And unlike the laws struck in *Willoughby* and *DeYoung*, the STR Ordinance is rationally related to those goals—it fits within a range of laws across the country addressing the same problems. *See id.* This is discernable from the face of the Ordinance. This Court should grant summary judgment.

VI. CONCLUSION

The City reinstates its earlier request for summary judgment and respectfully asks this Court to uphold the STR Ordinance under the deferential "rational basis" analysis by ruling—

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without fact-finding or weighing competing evidence—that the Ordinance is rationally related to a legitimate governmental interest.

I certify that MS Word 2016 calculates all portions of this memorandum required by the Local Civil Rules to be counted contain 1,970 words, which complies with the Local Civil Rules.

Respectfully submitted August 30, 2019.

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CERTIFICATE OF SERVICE

This certifies that I filed a copy of this document and the [Proposed 8/30/19] Order Granting City of Seattle's Motion for Summary Judgment with the Clerk of the Court using the ECR system, which will send notification of the filing to:

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This also certifies that I also emailed courtesy copies of the same documents to those individuals at the email addresses shown above.

DATED August 30, 2019, at Seattle, Washington.

s/ Alicia Reise

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APPENDIX 1

Honorable Roger Rogoff
Noted for argument June 21, 2019, 10:00 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SEATTLE VACATION HOME, LLC, et al., Plaintiffs, v. CITY OF SEATTLE, et al., Defendants.	No. 18-2-15979-2 SEA CITY OF SEATTLE'S MOTION FOR SUMMARY JUDGMENT

CONTENTS

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Appendices:

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4. San Francisco Office of Short-Term Rentals, ABOUT SHORT-TERM RENTALS.

5. City of Philadelphia License & Inspections, SHORT TERM HOME RENTAL (2015) (downloaded from https://www.phila.gov/li/PDF/Limited%20Lodging%20Information%20Flyer.pdf).

6. San José Municipal Code §§ 20.80.150 – 20.80.170.

7. Austin, Texas Code Department, SHORT-TERM RENTAL FREQUENTLY ASKED QUESTIONS (downloaded from https://austintexas.gov/sites/default/files/files/Code_Compliance/STR_FAQ_print.pdf).

8. Code of the City of Portland, Oregon ch. 33.207.

9. New York City Comptroller Scott M. Stringer, THE IMPACT OF AIRBNB ON NYC RENTS (April 2018) (downloaded from https://comptroller.nyc.gov/wp-content/uploads/documents/AirBnB_050318.pdf).

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I. INTRODUCTION AND RELIEF REQUESTED

For nearly two years, the Seattle City Council considered the need to regulate short-term rentals (STRs), which are essentially rooms or dwelling units to rent for fewer than 30 days. Cognizant of the need to pass measures governing this burgeoning industry—whose growth is spurred by such internet platforms as Airbnb and VRBO—the Council passed a slate of measures governing STR licensing, taxation, and land use. The licensing legislation (Ordinance) strikes a particular balance: it allows STRs, while preserving housing for critical, long-term rental uses and limiting displacement of at-risk communities, in part by preventing any one licensee from amassing a large-scale STR enterprise. Plaintiffs challenge the Ordinance on constitutional grounds.

The City respectfully asks this Court for summary judgment because Plaintiffs cannot meet their substantial burden of proving the Ordinance unconstitutional. The Ordinance survives scrutiny under the deferential "rational basis" analysis controlling Plaintiffs' Washington and federal substantive due process claims and their claim under the Washington privileges and immunities clause.

II. FACTS

A. The City Council, including two of its committees, considered the Ordinance for nearly two years.

The City Council crafted its approach to STRs in a multi-year process. In April 2017, after over a year of evaluation and drafting, the Seattle Department of Construction and Inspections issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA) for a legislative package addressing STRs. Declaration of Aly Pennucci (AP)

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83–91.[1] In May 2017, the Seattle Short Term Rental Alliance and several STR owners appealed the DNS to the Seattle Hearing Examiner. Pennucci Decl. ¶ 11.

In September 2017, the Council formally introduced three STR bills that separately addressed licensing, taxation, and development regulations. Pennucci Decl. ¶ 13. *See* AP 221 (Legislative Summary). Only the licensing bill is at issue in this litigation.[2]

On September 21, 2017, after reviewing the Committee-recommended version of the licensing bill, the appellants withdrew their SEPA appeal, noting that version would no longer adversely affect them. AP 109–112 (pleadings).

The Council referred the licensing bill to its Affordable Housing, Neighborhoods and Finance Committee, which recommended the Council adopt it with amendments. AP 221–222 (Legislative Summary).

In November and early December 2017, the Council passed STR tax and development regulation ordinances, but referred the licensing bill to the Planning, Land Use, and Zoning Committee for additional work. Pennucci Decl. ¶¶ 20, 23; AP 222 (Legislative Summary). That Committee ultimately recommended Council passage of an amended licensing bill. AP 222 (Legislative Summary).

On December 11, 2017, the Council voted to further amend the licensing bill and pass it as amended. AP 216–217 (Council meeting minutes).

[1] The exhibits and cover pages to the Pennucci Declaration have been consecutively numbered with the prefix "AP_." For convenience, this motion refers to the Pennucci exhibits by their "AP" numbers.

[2] This motion refers to the final licensing legislation as the "Ordinance," and attaches a copy as **Appendix 1**.

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B. The Council weighed the benefits and challenges STRs pose.

The Council considered STRs' advantages and drawbacks. STRs offer many benefits. *See generally* AP 48 (policy brief); AP 94 (staff memo). Property owners who might struggle to afford their homes can monetize extra space by renting out a basement unit, a spare room, or an entire home when they are out of town. The rentals offer tourists and other visitors affordable options, helping to stimulate the local economy.

STRs also present significant challenges. Absent regulation, they represent what is essentially untaxed commercial activity, creating a competitive advantage over traditional commercial lodgings and depriving local government of a source of revenue. *See* Erich Eiselt, *Airbnb: Innovation and Its Externalities*, 55(6) MUNICIPAL LAWYER 6, 7 (Nov./Dec. 2014). When STRs are in noncommercial neighborhoods unaccustomed to transient residents, permanent residents often complain of noise, trash, traffic, crime, and a shortage of respect. *See, e.g.*, Patricia E. Salkin, *Vacation Rentals*, 3 AM. LAW. ZONING § 18:72.50 (5th ed. 2018); Eiselt at 7; Norman Williams, Jr. and John M. Taylor, 2 AMERICAN LAND PLANNING LAW § 57A:1 (rev. ed. 2018).

Crucially, STRs exacerbate affordable housing shortages by removing full-time dwelling units from the market and reducing the housing supply. *See, e.g.*, Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARV. L. & P. REV. 229, 230 (2016); Salkin, § 18:72.50; James A. Allen, *Disrupting Affordable Housing: Regulating Airbnb and Other Short-Term Rental Hosting in New York City*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 151, 154, 165–66 (2017). Focusing on the impact of one major STR platform, Airbnb, a recent report by the New York City Comptroller found that "[f]or each one percent of all residential units in a neighborhood

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listed on Airbnb, rental rates in that neighborhood went up by 1.58 percent," and "[b]etween 2009 and 2016, approximately 9.2 percent of the citywide increase in rental rates can be attributed to Airbnb." New York City Comptroller Scott M. Stringer, THE IMPACT OF AIRBNB ON NYC RENTS, 2–3 (April 2018). **App. 9**.

STRs' affordable housing impact is a particular concern for Seattle, which has witnessed significant STR growth while struggling with a shortage of long-term housing. AP 49 (policy brief); AP 94 (staff memo). For the two years ending in February 2017, STR listings for entire homes grew by an average of 80 percent per year. *Id*. Analyses in 2016 and 2017 of Airbnb listings in the City echoed this conclusion, finding:

- ❒ Airbnb has enjoyed tremendous growth in Seattle—an annual growth rate of nearly 63 percent over one 17-month period.
- ❒ As of August 2017, Airbnb listed 4,829 whole units (ones that could be used for long-term housing), accounting for 69 percent of its Seattle listings.
- ❒ Hosts managing multiple units are growing more quickly than those managing only one unit, with multiple-unit hosts operating 56 percent of all units.
- ❒ Based on those trends, one analysis predicted at least 1,000 – 1,600 long-term housing units in Seattle could be converted or built as short-term rentals from 2016 through 2019.
- ❒ Areas where households are at high risk of displacement have high or steady growth in STR whole-unit Airbnb listings, raising the prospect of speculative STR investment in gentrifying neighborhoods and threatening the stability of immigrant, refugee, and minority communities at risk of displacement.

AP 11–12 (third-party policy brief); AP 115–116 (third-party letter).

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C. The Council pursued consistent goals for regulating STRs.

The Council pursued a consistent set of policy objectives through its STR regulations. The Council's primary goal was to balance the benefits of STRs for property owners and visitors against the challenges STRs pose to the affordability of housing and the risk of increased displacement for vulnerable communities. AP 35 (staff memo); AP 47–48 (policy brief); AP 93–94 (staff memo); AP 97 (bill summary); AP 148 (staff memo); AP 203–04 (Summary and Fiscal Note). The availability of affordable long-term rental options is particularly important to the City, which anticipates 120,000 new residents by 2035. AP 148 (staff memo). Council staff memoranda indicated the balance would favor long-term rentals, casting the proposed legislation as "seek[ing] to balance the benefit of allowing owners to capture some income from short-term rentals while preserving the bulk of longer-term rentals to provide housing for permanent residents." *Id*. *Accord* AP 94 (staff memo).

The Council also pursued two secondary goals. *See generally* AP 50, 52, 54 (policy brief). *Accord* AP 35 (staff memo); AP 93 (staff memo); AP 97 (bill summary). One was to provide a level playing field for individuals and companies in the short-term rental market. This entailed making STR operators obtain licenses and pay taxes just like operators of bed and breakfasts, and reducing the regulatory burdens on bed and breakfasts to bring them in line with the new STR regulations. The other secondary goal was to protect the rights of owners, guests, and neighbors.

As evidenced by the suite of City STR ordinances, the Council's multi-faceted approach to STRs tied together licensing, development regulation, and taxing strategies. There was no one solution, only alternatives to weigh and balance. This was especially true for the licensing strategy, for which Councilmembers considered a range of issues. For example:

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- ❑ License on-line STR platforms or only STR operators? AP 35 (staff memo).
- ❑ Limit the number of nights a unit may be used as an STR? *Id*.
- ❑ Cap the number of STRs allowed in any one neighborhood or building? AP 37–38 (staff memo).
- ❑ Limit the number of STRs any one owner may operate? Allow a person to operate an STR only in their primary residence? AP 36–37 (staff memo). Limit STRs only beyond the owner's permanent residence? AP 36 (staff memo); AP 114 (third-party letter). Loosen those limits for owners who operate existing STRs? AP 124 (staff memo).
- ❑ Exempt all units in any area designated by the City as an Urban Center? AP 99 (staff memo).
- ❑ "Grandfather" existing units? All of them? AP 36–37 (staff memo); AP 124 (staff memo). Only those STRs the owner can prove cannot be returned to long-term market use? AP 114, 120 (third-party letter). Only in the Urban Centers in and around downtown? AP 54 (policy brief); AP 93 (staff memo). Only in a portion of downtown? AP 216 (Council meeting minutes).

The Council passed the Ordinance—adding chapter 6.600 to the Seattle Municipal Code (SMC)—after sifting through these options. *See* **App. 1** (Ordinance)**.** At its core, the Ordinance imposes a two-STR limit. It requires every STR operator to obtain a license, which entitles the licensee to offer one unit as an STR in addition to offering the licensee's primary residence as an STR. SMC 6.600.040.B (**App. 1** at 6–8). The Ordinance limits each STR operator to one license. SMC 6.600.070.A.1 (**App. 1** at 10). The Ordinance defines "operator" broadly to encompass an individual, business entity, and any principal or governing member of any business entity.

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SMC 6.600.030 (**App. 1** at 5, under "short-term rental operator"). It bars a person from being a principal or spouse of a principal in more than one license. SMC 6.600.070.A.2 (**App. 1** at 10).[3]

The Council considered a range of "grandfathering" proposals to allow existing operators to continue operating more than two STRs. For example, one proposal would have allowed all existing STRs anywhere in Seattle to continue operating. AP 176, 185–186, 192, 194 (staff memo describing "Amendment 3"). Another would have focused "grandfathering" in the Downtown, Uptown, and South Lake Union Urban Centers. *See generally* AP 123–145 (staff memo). The Ordinance ultimately included two "grandfathering" provisions:

1. a licensee with existing STR units may continue to operate two of them in addition to (after a year of operation) a third STR if the additional unit is the licensee's primary residence; and

2. a licensee with existing STR units in a portion of the Downtown Urban Center (south of Olive Way and north of Cherry Street) or in a certain type of building in the First Hill/Capitol Hill Urban Center may continue to operate all of those existing units, plus: one additional unit; or up to two additional units if one is the licensee's primary residence.

SMC 6.600.040.B.1 – B.3 (**App. 1** at 6–7).

"Urban Centers" are a creature of the City's Comprehensive Plan, which is required by the Growth Management Act. *See* RCW 36.70A.040; AP 2–4 (Comprehensive Plan).[4] The "grandfathered" portion of the Downtown Urban Center generally corresponds to what the Plan

[3] This is the Ordinance's sole reference to marital status.

[4] The Ordinance refers to the 2016 version of the Comprehensive Plan to establish the "grandfathered" areas. SMC 6.600.040.B.2 – B.3. **App. 1** at 6–7. The entire 2016 version is available at https://www.seattle.gov/opcd/ongoing-initiatives/comprehensive-plan (under "Project Documents").

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designates as the City's Commercial Core, which serves as a "tourist and convention attraction" and "regional hub of cultural and entertainment activities." AP 5, 7 (Comprehensive Plan).

D. Plaintiffs challenged the Ordinance.

Plaintiffs are Andrew Morris, a married individual who claims to own portions of twelve properties that could be used as STRs, and a management company incorporated by Mr. Morris and his wife that claims to list and manage STRs. Complaint at 9, 10, 22–23, and 25. Plaintiffs seek declaratory and injunctive relief, claiming the Ordinance violates: the due process clauses of the U.S. and Washington Constitutions by limiting the number of STRs a licensee may operate; and the privileges and immunities clause of the Washington Constitution by "grandfathering" existing STRs only in certain areas and including spouses in the STR operator license. *Id.* at 8–10.

III. EVIDENCE RELIED UPON

The City relies on the Ordinance, the Declaration of Aly Pennucci, the Appendices to this motion, and the other pleadings and papers on file with the Court for this action.

IV. ISSUES

1. A law not implicating a federally recognized fundamental right is subject to deferential "rational basis" review under the Washington and federal due process clauses. The Ordinance implicates no fundamental right. Does the Ordinance—which balances the benefits of STRs for property owners and visitors against STRs' impacts on housing affordability and the risk of increased displacement for the City's vulnerable communities—satisfy "rational basis" review?

2. Unless a law implicates a fundamental right of state citizenship, it is also subject to "rational basis" review under the privileges and immunities clause of the Washington Constitution. The Ordinance implicates no fundamental right of state citizenship as defined by the Washington Supreme Court. Does the Ordinance also satisfy rational "basis review" for privileges and immunities purposes?

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V. ARGUMENT

A legislative enactment is "presumed constitutional, and the party challenging it bears the burden of proving it is unconstitutional beyond a reasonable doubt." *In re Det. of Herrick*, 190 Wn.2d 236, 241, 412 P.3d 293 (2018). "Legislative bodies have extensive authority to make classifications for purposes of legislation" and a "city council has the same powers of classification as the Legislature." *KMS Fin. Servs., Inc. v. City of Seattle*, 135 Wn. App. 489, 498, 146 P.3d 1195 (2006).

Summary judgment is appropriate where the moving party demonstrates there is no material fact and they are entitled to judgment as a matter of law. CR 56(c). Once a moving party meets its burden to show there is no genuine issue as to any material fact, the nonmoving party must set forth specific facts rebutting the moving party's contentions and disclosing the existence of a genuine issue as to a material fact. *Id*. Conclusory statements and speculation will not preclude a grant of summary judgment. *Elcon Const., Inc. v. Eastern Wash. Univ.*, 174 Wn.2d 157, 169, 273 P.3d 965 (2012).

This Court should grant the City's motion because Plaintiffs cannot meet their burden under the deferential "rational basis" analysis, and the City is entitled to judgment as a matter of law.

A. Plaintiffs' due process and privileges and immunities claims are subject only to the "rational basis" analysis.

Because the Ordinance implicates no fundamental right under federal or state law, this Court must assess Plaintiffs' claims—that the Ordinance violates federal and Washington substantive due process guarantees and Washington's privileges and immunities clause—under the "rational basis" analysis.

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1. Where a challenged law implicates no fundamental right, the U.S. and Washington Supreme Courts apply the "rational basis" analysis to substantive due process claims.

a. Courts evaluate due process claims involving economic and property interests under the "rational basis" analysis.

When evaluating a substantive due process claim under the U.S. Constitution, federal courts first ask whether the challenged law implicates a federally recognized fundamental right. A law like the Ordinance, which affects only economic interests, implicates no fundamental right under federal substantive due process law. *E.g.*, *Yagman v. Garcetti*, 852 F.3d 859, 867 (9th Cir. 2017); *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012).

Where no fundamental right is involved, federal courts have long applied a "rational basis" analysis to federal substantive due process claims. *E.g.*, *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 540–42, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005); *Williamson v. Lee Optical of Okla., Inc*., 348 U.S. 483, 487–88, 75 S. Ct. 461, 99 L. Ed. 563 (1955); *U.S. v. Carolene Products Co.*, 304 U.S. 144, 152–54, 58 S. Ct. 778, 82 L. Ed. 1234 (1938); *Nectow v. City of Cambridge*, 277 U.S. 183, 187–88, 48 S. Ct. 447, 72 L. Ed. 842 (1928); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114, 71 L. Ed. 303 (1926); *Yagman*, 852 F.3d at 867.

The Washington Supreme Court applies the same analysis as federal courts, *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 223, 143 P.3d 571 (2006), because the due process clauses of the Washington and U.S. Constitutions are identical. *Compare* Const. art. I, § 3 *with* U.S. Const. amend. V and U.S. Const. amend. XIV. The Washington Supreme Court "has repeatedly iterated that the state due process clause is coextensive with and does not provide greater protection than the federal due process clause." *Nielsen v. Washington State Department of Licensing*, 177 Wn. App. 45, 52 n.5, 309 P.3d 1221 (2013). The Court reviewed the two clauses under the *Gunwall*

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factors and concluded the Washington Constitution provides no greater protection than the federal due process clause. *State v. Manussier*, 129 Wn.2d 652, 679, 921 P.2d 473 (1996).[5] *Accord State v. Shelton*, 194 Wn. App. 660, 666, 378 P.3d 230 (2016). Because the Washington due process clause imposes no greater restrictions on government action than does the federal clause, Plaintiffs' Washington due process claim must be evaluated under the federal "rational basis" analysis.

b. Plaintiffs invoke the discredited "undue oppression" analysis.

In their complaint, Plaintiffs invoke a discredited, 19th-century "undue oppression" substantive due process analysis. Complaint at 8–9. *See, e.g.*, *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990) (relying on *Lawton v. Steele*, 152 U.S. 133, 14 S. Ct. 499, 38 L. Ed. 385 (1894), for the "undue oppression" analysis). Although the Court applied the "undue oppression" analysis for over two decades (*see Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 130–31, 118 P.3d 322 (2005); *Cougar Business Owners Ass'n v. State*, 97 Wn.2d 466, 477, 647 P.2d 481 (1982)), "undue oppression" was never an expression of a unique Washington constitutional provision—it was a misstatement of the federal analysis. Again, Washington has always maintained that the due process clauses of the U.S. and Washington Constitutions are coextensive. *See Manussier*, 129 Wn.2d at 679; *Shelton*, 194 Wn. App. at 666; *Nielsen*, 177 Wn. App. at 52 n.5. "Undue oppression" was not a declaration of state constitutional independence. It was an error.

[5] *Gunwall* established the multi-factor framework through which Washington courts address whether to apply an independent analysis because a clause of the Washington Constitution provides more protection than an analogous clause in the U.S. Constitution. *See State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

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The death knell of Washington's mistaken "undue oppression" analysis came in *Amunrud* in 2006. To resolve a due process claim under the U.S. and Washington Constitutions, *Amunrud* signaled a return to the "rational basis" analysis:

> The dissent erroneously claims this court must *also* evaluate whether the challenged law is "unduly oppressive on individuals," citing as primary authority, *Lawton v. Steele* . . . (1894) . . . . However, as explained above, the appropriate test for the court to apply under a rational basis inquiry is whether the law bears a reasonable relationship to a legitimate state interest.

Amunrud, 158 Wn.2d at 226 (footnote omitted). *See also id.* at 211 (explaining the claim was under both constitutions). *Amunrud* ruled that imposing an "undue oppression" analysis "would require us to overturn nearly 100 years of case law in Washington" and return Washington law to the long-rejected *Lochner* era "in which elected legislatures were viewed as having limited power (police power) to enact laws providing for health, safety, and welfare of their citizens." *Id.* at 227–28 (citing *Lochner v. New York*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905)). Stressing the need for deference, *Amunrud* warned: "A return to the *Lochner* era would . . . strip individuals of the many rights and protections that have been achieved through the political process." *Id*. at 230.

Although *Amunrud* did not expressly overrule Washington's "undue oppression" case law, the Washington Supreme Court has employed only "rational basis" since *Amunrud*. *E.g.*, *Dot Foods, Inc. v. State, Dept. of Revenue*, 185 Wn.2d 239, 372 P.3d 747 (2016); *In re Detention of Morgan*, 180 Wn.2d 312, 324, 330 P.3d 774 (2014). The Washington Court of Appeals has also used the "rational basis" analysis since *Amunrud*. *E.g.*, *Haines-Marchel v. Washington State Liquor & Cannabis Bd.*, 1 Wn. App. 2d 712, 741–42, 406 P.3d 1199 (2017), *rev. denied*, 191 Wn.2d 1001, 422 P.3d 913 (2018), *cert. denied*, __ S. Ct. __, 2019 WL 1318639 (2019); *Shelton*, 194 Wn. App. at 666–67; *Nielsen*, 177 Wn. App. at 53. But it has also mistakenly invoked the

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"undue oppression" analysis. *E.g.*, *Greenhalgh v. Department of Corrections*, 180 Wn. App. 876, 892, 324 P.3d 771 (2014); *Cradduck v. Yakima County*, 166 Wn. App. 435, 446–451, 271 P.3d 289 (2012); *Bayfield Resources Co. v. Western Wash. Growth Mgmt. Hearings Bd.*, 158 Wn. App. 866, 881–888, 244 P.3d 412 (2010).

The Washington Supreme Court recently took review of two cases on this issue. The Court accepted direct review of a case challenging a different City ordinance under the Washington due process clause, and the U.S. District Court for the Western District of Washington, in a separate case challenging yet another City ordinance, certified to the Washington Supreme Court the question of what analysis to apply to a Washington substantive due process claim. *Yim v. City of Seattle*, Wash. Supreme Ct. No. 95813-1; *Yim v. City of Seattle*, Wash. Supreme Ct. No. 96817-9 (certification from the U.S. District Court for the Western District of Washington). The Court will hold argument on both cases on June 11, 2019. Nonetheless, this Court should apply the "rational basis" analysis, as the Washington Supreme Court has since 2006.

2. Where, as here, a challenged law implicates no fundamental right, the Washington Supreme Court applies the "rational basis" analysis to privileges and immunities claims.

Article I, section 12 of the Washington Constitution provides: "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." This is the Washington analogue of the federal equal protection clause of the 14th Amendment to the U.S. Constitution.

Washington courts apply the Washington and federal clauses in the same way in some cases, but differently in others. Article I, section 12 provides greater protection than the 14th

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Amendment only if the challenged law involves a privilege or immunity. *Ockletree v. Franciscan Health Sys*., 179 Wn.2d 769, 776, 317 P.3d 1009 (2014) (applying the analysis established in *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d. 791, 812, 83 P.3d 419 (2004) (*Grant County* II)). "If there is no privilege or immunity involved, this leaves only the question of whether the challenged statute violates the equal protection clause of the federal constitution." *Ockletree*, 179 Wn.2d at 776 n.4 (citing *American Legion Post No. 149 v. Department of Health*, 164 Wn.2d 570, 608, 192 P.3d 306 (2008)).

The Ordinance implicates no fundamental right under article I, section 12. Plaintiffs complain of two aspects in the Ordinance: (1) its STR limits and "grandfathering"; and (2) its requirement that an individual be a principal or a *spouse of a principal* in only one operator license. Statutes may authorize a class to do or obtain something without implicating a "privilege" or "immunity" within the meaning of article I, section 12; "privileges and immunities" include only those fundamental rights that belong to the citizens of Washington by reason of such citizenship. *Id*. The rights under article 1, section 12 are derived from the concept of "fundamental rights" under the Privileges and Immunities Clause of Article IV of the U.S. Constitution:

> the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from.

Grant County II, 150 Wn.2d at 813 (quoting *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)).[6] The Complaint identifies no privilege or immunity. The Ordinance implicates none.

[6] See *Saenz v. Roe*, 526 U.S. 489, 524 (1999) (Rehnquist, J., dissenting) (discussing the applicable privileges under U.S. Const. Art. IV, § 2, cl. 1). The privileges and immunities clause in Article IV of the U.S. Constitution provides:

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The Washington Supreme Court has "rejected the notion that the privileges and immunities clause is violated anytime the legislature treats similarly situated businesses differently." *Ockletree*, 179 Wn.2d at 781; *See also Association of Wash. Spirits and Wine Distributors v. Washington State Liquor Control Bd*, 182 Wn.2d 342, 361–62, 340 P.3d 849 (2015) (the Court has "rejected attempts to assert the right to carry on business when a narrower, nonfundamental right is truly at issue"); *Am. Legion Post #149*, 164 Wn.2d at 608 (a law that does not "prevent any entity from engaging in business" implicates no privilege). This is in contrast to a law that expressly or functionally prevents one from engaging in business *at all*. *E.g.*, *Ralph v. City of Wenatchee*, 34 Wn.2d 638, 642–43, 209 P.2d 270 (1949) (restrictions on nonresident photographers, rendering them functionally unable to do business).

The Ordinance does not prohibit Plaintiffs from doing business; it simply subjects them to business regulations of the sort routinely upheld by Washington courts. There is no fundamental right to operate an unlimited number of STRs regardless of their geographic location or to put one's property to its most profitable use free of regulation.

The Ordinance's requirement that an individual be a principal or a *spouse of a principal* in only one operator license also implicates no fundamental right under article I, section 12. The right to marry Plaintiffs invoke has never been recognized as a fundamental right under this provision. Indeed, much of the Supreme Court's article I, section 12 jurisprudence has narrowed the classification of the rights asserted. *Assoc. of Wash. Spirits*, 182 Wn.2d at 362 (citing *Grant County* II, 150 Wn.2d at 815).

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The clause essentially prevents one state from denying certain fundamental rights to citizens of a different state, based on their status as a nonresident. *See Saenz*, 526 U.S. at 501.

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Regardless, the right to marry is not implicated here. Rejecting a similar substantive due argument, the Court of Appeals recently held the statutory inclusion of one's spouse in an individual's business license (as a true party in interest for a retail marijuana distribution) did not violate the fundamental right to marry. *Haines-Marchel*, 1 Wn. App. 2d at 737–38. *See also City of Bremerton v. Widell*, 146 Wn.2d 561, 579, 51 P.3d 733 (2002) (the fundamental right to marry was not implicated by such government action as the IRS marriage penalty, loss or reduction of governmental benefits based on marital status, and transferring employees under an antinepotism policy). *Haines-Marchel* concluded that requiring the inclusion of a spouse on the license application did "not interfere with the right of [the plaintiff] to marry or remain married to the person of her choosing," so it did "not place a 'direct and substantial' burden on the right of marriage . . . ." 1 Wn. App. 2d at 738. The same is true here. Unless a regulation constitutes "a direct or substantial interference with the right of marriage," the regulation implicates no fundamental right to marry. *Widell*, 146 Wn.2d at 579 (quoting other case law).

Because the Ordinance implicates no article I, section 12 fundamental right, review is limited to "rational basis," as under the federal equal protection clause. *Ockletree*, 179 Wn.2d at 776 n.4. And because "rational basis" review is essentially identical under the due process and equal protection clauses, this Court should dismiss both of Plaintiffs' claims if it finds a rational basis for the Ordinance. *See A.J. California Mini Bus, Inc. v. Airport Comm'n of the City & Cty. of San Francisco*, 148 F. Supp. 3d 904, 914 (N.D. Cal. 2015) ("Functionally, the rational-basis test is the same for due-process and equal-protection claims.") (citing *Munoz v. Sullivan*, 930 F.2d 1400, 1404–05 & n.10 (9th Cir. 1991)).

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B. Because the Ordinance is rationally related to legitimate governmental interests, it survives the "rational basis" analysis.

1. Plaintiffs cannot meet their significant burden of proof under the deferential "rational basis" analysis.

Plaintiffs cannot meet their burden of proving beyond a reasonable doubt that the Ordinance fails under the "rational basis" analysis, which is the "most relaxed form of judicial scrutiny." *Amunrud*, 158 Wn.2d at 223. That analysis defers "to legislative judgments about the need for, and likely effectiveness of, regulatory actions." *Lingle*, 544 U.S. at 545. The analysis stems from the long-held belief that, unless a plaintiff can show a law lacks a rational foundation, "the people must resort to the polls not the courts." *Williamson*, 348 U.S. at 488 (quoting *Munn v. State of Illinois*, 94 U.S. 113, 134 (1876)). A court must presume a law is valid unless a plaintiff meets the exceedingly high burden of proving it advances no governmental purpose. *Samson*, 683 F.3d at 1058; *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 484 (9th Cir. 2008). Plaintiffs cannot carry that substantial burden, especially given that "a court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest." *Amunrud*, 158 Wn.2d at 222.

2. Limiting the number of an operator's STRs is rationally related to preserving housing units for longer-term use.

The City Council established a rational set of goals: primarily to balance the opportunities and challenges STRs pose (especially STRs' impact on long-term housing affordability and availability) and secondarily to level the playing field with bed and breakfast operators and protect owners, guests, and neighbors. The Council considered a range of alternatives to advance those goals before ultimately settling on the Ordinance, which allows a homeowner to share their home and one additional property as STRs and "grandfathers" some

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existing units. This approach does not allow what Plaintiffs prefer—to amass an unlimited number of dwelling units, removing them from the housing market and converting them into STRs. But a law is not irrational simply because it manifests policy choices a plaintiff disfavors.

Nor is there a singular rational answer to regulating STRs. Cities and states around the nation have adopted a range of approaches:

- ❒ In New York City, STR operators may not rent their entire home for fewer than 30 days, but may have two guests stay in their home for fewer than 30 days if the operator is present and every guest has access to every room and exit. New York City Office of Special Enforcement, ILLEGAL SHORT-TERM RENTALS. **App. 2.**
- ❒ Fort Myers Beach, Florida allows the STR of a unit in its single-family residential zone only once in any calendar month and for not less than one week at a time, exempting certain areas and properties that demonstrated STR use before 2003. Fort Myers Beach, Florida, Code of Ords. Div. 32-A. **App. 3**.
- ❒ San Francisco requires anyone operating a dwelling unit as an STR to be a permanent city resident in that unit and rent for no more than 90 nights each year when not also present in the unit. San Francisco Office of Short-Term Rentals, ABOUT SHORT-TERM RENTALS. **App. 4**.
- ❒ Philadelphia allows the STR of a unit for up to 90 days each year without a permit, requires a permit and owner occupancy of the unit for STR from 90–180 days each year, and prohibits STR of the unit for more than 180 days each year. City of Philadelphia License & Inspections, SHORT TERM HOME RENTAL (2015). **App. 5**.

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- ❒ San José, California allows STR of a unit for up to 180 days each year without a host present, and year-round with a host present. San José Mun. Code §§ 20.80.150 – 20.80.170. **App. 6**.
- ❒ Austin, Texas imposes advertising requirements, sets occupancy limits, limits the distance between STRs, limits noise and music, prohibits certain types of gatherings, and will eventually eliminate STRs in residential areas. Austin, TX Code Department, SHORT-TERM RENTAL FREQUENTLY ASKED QUESTIONS. **App. 7**.
- ❒ Santa Monica, California bans the STR of an entire residential property, but allows the STR of a private room within a host's home if the host is present. *Rosenblatt v. City of Santa Monica*, 2017 WL 1205997 at *1 (C.D. Cal. 2017).
- ❒ Jackson, Wyoming allows STRs only in certain districts. James Stumpf, *Striking the Balance: How States Can Protect Both STR Advocates and Opponents*, 28 DEPAUL J. ART, TECH. & INTELL. PROP. L. 194, 202 (2018).
- ❒ Portland, Oregon allows STRs as an accessory to a "Household Living" use, with regulations depending on the number of bedrooms rented. It generally requires the resident to occupy the dwelling unit for at least 270 days each calendar year. Code of the City of Portland, Oregon ch. 33.207. **App. 8**.
- ❒ Some states have adopted STR laws. Arizona and Idaho impose limits on local STR regulations. Salkin, § 18:72.50. The Washington Legislature recently passed (although the Governor has yet to act on) SHB 1798, which would require STR operators to collect and remit taxes, comply with safety requirements, and maintain insurance and would require each STR platform to register with the Department of Revenue and provide certain information to operators who use that platform.

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Seattle's answer to the issues STRs pose falls in the middle of this spectrum. The City eschews a limit on the number of nights a unit may serve as an STR, does not require operators to live in all of their STRs all or part of time, and permits the rental of an entire unit. But the City requires STR operators to obtain a license and limits the number of STRs licensees may operate. Given the diversity of answers other jurisdictions provide for the complex policy issues STRs pose, Plaintiffs cannot carry their burden of proving the City's approach is irrational.

3. The Ordinance's "grandfathering" provisions are rationally related to other City Council goals.

Plaintiffs also cannot prove the Ordinance's "grandfathering" provisions fail the "rational basis" analysis. Again, the Council considered a range of approaches, none of which was irrational. Plaintiffs' ultimate gripe with the "grandfathering" provisions is that they did not go far enough to include all of Plaintiffs' STRs. But "[i]t is well established that legislative bodies have very broad discretion in establishing classifications for economic and social legislation." *Forbes v. City of Seattle*, 113 Wn.2d 929, 944, 785 P.2d 431 (1990). A classification does not fail "rational basis" review because it is not made with "mathematical nicety" or because in practice it may "result in some inequality." *Am. Legion Post #149*, 164 Wn.2d at 609 (internal quotes omitted). Without this discretion, zoning itself would not be possible.

The downtown "grandfathered" area is consistent with legitimate City interests. Relaxing limits on STRs roughly within the Commercial Core is consistent with the Comprehensive Plan's goals of having that area serve as a tourist and convention attraction and a regional hub of cultural and entertainment activities. *See* AP 5 (Comprehensive Plan). It is also compatible with the Council's goals of limiting STRs' external impacts on neighbors—amid the hubbub of the Commercial Core, those impacts are less acute. *See, e.g.*, AP 93, 94 (staff memo); AP 97 (bill summary).

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The First Hill "grandfathering" is also rational. It was not part of the original bill subject to the Hearing Examiner SEPA appeal. *See* AP 59–81 (SEPA bill). It initially appeared in the version introduced in September 2017. *See* AP 97 (summary of the introduced bill). The appellants withdrew their appeal shortly after that version was introduced, noting the bill would no longer adversely affect them. AP 109–110. Given that the Council may not act on legislation pending an Examiner SEPA appeal, SMC 23.76.062.D,[7] and particularly given that this Court may assume any necessary, reasonably conceivable fact when applying the "rational basis" analysis, *Amunrud*, 158 Wn.2d at 222, the First Hill "grandfathering" provision served a legitimate interest in removing an obstacle to enacting the Ordinance. Courts have found it rational for a legislative body to shape legislation to resolve or avoid litigation from particular parties. *See, e.g.*, *Lundeen v. Canadian Pacific R. Co.*, 532 F.3d 682, 690–91 (8th Cir. 2009) ("even assuming Congress meant to target one particular event or specific pending litigation, it could do so without violating the constitution so long as it had a rational basis for doing so"); *Continental Coal, Inc. v. Cunningham*, 553 F. Supp. 2d 1273, 1279 n.2 (D. Kan. 2008) (local board of commissioners was not irrational when it treated one party in one way to settle a lawsuit, but did not accord that same treatment to the plaintiff); *Miles v. Idaho Power Co.*, 116 Idaho 635, 637–46, 778 P.2d 757 (1989) (passing legislation to settle disputes is rational and does not violate equal protection guarantees).

4. Including a spouse on an operator license is rationally related to preserving housing units for longer-term use.

The Ordinance also helps preserve housing for critical, long-term rental uses and limit displacement of at-risk communities, in part by preventing any one licensee from amassing a

[7] The SMC is available on-line: https://library.municode.com/wa/seattle/codes/municipal_code.

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large-scale STR enterprise. Including a spouse on an operator license serves that goal by reducing the number of potential licensees and preventing a marital community—who often own property as such—from essentially double-dipping.

Tying spouses together for a business license is rational. The Court of Appeals upheld under the "rational basis" analysis a state regulation of marijuana businesses that resulted in the denial of a license based on the criminal history of a spouse of a member of the limited license company that sought the license. *Haines-Marchel,* 1 Wn. App. 2d at 716–17, 737–38. *Haines-Marchel* compels the same result here.

5. The Ordinance would also satisfy "reasonable grounds" review.

Finally, even if the Ordinance granted a privilege or immunity within the meaning of article I, section 12, it would still be constitutional. In such a case, the second step of the analysis under article I, section 12 is whether a "reasonable ground" exists for granting a privilege or immunity. *Assoc. of Wash. Spirits*, 182 Wn.2d at 359–60. This remains a modest level of scrutiny. To meet the reasonable ground test, a distinction in a law need only be based on "real and substantial differences bearing a natural, reasonable, and just relation to the subject matter of the act." *Ockletree*, 179 Wn.2d at 783.

The Ordinance satisfies this test for the same reasons it satisfies "rational basis" review. Any distinctions in the Ordinance are reasonable. The classifications advance the stated goal of preserving long-term housing stock by limiting the number of STRs a licensee may operate and expanding the license to include other parties of interest to the license. This includes spouses—a reasonable component of the Ordinance, given the primary-residence aspect of the two-property limit and the reasonable likelihood spouses would share a primary residence. *See* SMC 6.600.040.B (**App. 1** at 6–8). The licensing requirements will also protect the livability of

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residential neighborhoods, a secondary goal of the Ordinance, while allowing exemptions to the two-STR limit, primarily for existing STRs in confined areas, including the downtown commercial core. *Id.*

Where, as here, a city studies competing policy considerations and draws distinctions to advance legitimate regulatory objectives, the resulting regulation passes the "reasonable grounds" test. *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 105, 178 P.3d 960 (2008) (finding reasonable grounds under article I, section 12, where the City decided "to limit the number of contractors so that it could establish uniform delivery standards, while at the same time promoting competition"); *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 411 (9th Cir. 2015) (finding reasonable grounds under article I, section 12, where the City "determined that franchisees have material advantages over non-franchisees that affect their ability to absorb increases in the minimum wage—a distinction related to the ordinance's subject matter").

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VI. CONCLUSION

Plaintiffs' challenges to the Ordinance are subject to "rational basis" review, and easily satisfy that standard. The City respectfully asks this Court to uphold the Ordinance as constitutional and dismiss Plaintiffs' claims with prejudice.

I certify that MS Word 2016 calculates all portions of this memorandum required by the Local Civil Rules to be counted contain 6,872 words, which complies with the Local Civil Rules and the parties' stipulation approved by the Court.

Respectfully submitted April 26, 2019.

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Noted for argument September 30, 2019, 1:00 PM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SEATTLE VACATION HOME, LLC, et al., Plaintiffs, v. CITY OF SEATTLE, et al., Defendants.	No. 18-2-15979-2 SEA ORDER GRANTING CITY OF SEATTLE'S MOTION FOR SUMMARY JUDGMENT **[Clerk's Action Required]** **[PROPOSED 8/30/19]**

THIS MATTER came before the undersigned judge on Defendant City of Seattle's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Partial Summary Judgment. The Court considered the oral arguments of counsel and the following documents:

1. Defendant City of Seattle's Motion for Summary Judgment;
2. Declaration of Aly Pennucci in Support of the City's Motion for Summary Judgment;
3. Plaintiffs' Cross-Motion for Partial Summary Judgment and Response to the City's Motion for Summary Judgment;
4. Declaration of Andrew Morris in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment and Response to the City's Motion for Summary Judgment;
5. The City's Reply in Support of its Motion and Response to Plaintiffs' Cross-Motion;
6. Plaintiffs' Reply in Support of its Cross-Motion;
7. The City's Supplement to its Motion for Summary Judgment;
8. Plaintiffs' response, if any, to the City's Supplement;

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9. The City's reply, if any, regarding its Supplement; and

10. the other pleadings and papers related to this matter on file with the Court.

By Order of July 11, 2019, this Court has already denied Plaintiffs' Cross-Motion.

Based on the foregoing, the Court FINDS as follows:

1. There is no genuine issue as to any material fact; and

2. Pursuant to CR 56(c), the City is entitled to judgment as a matter of law.

NOW, therefore, this Court hereby ORDERS as follows:

1. The City's Motion for Summary Judgment is GRANTED;

2. Judgment is entered in favor of the City;

3. Plaintiffs' action is DISMISSED with prejudice; and

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4. Each party shall sustain its own fees and costs.

DATED this _____ day of _____, 2019.

_____

Hon. Roger Rogoff

Presented by:
PETER S. HOLMES
SEATTLE CITY ATTORNEY

By: s/Roger D. Wynne, WSBA #23399
Assistant City Attorney for Defendant/Respondent City of Seattle

and
PACIFICA LAW GROUP LLP

By: s/Matthew J. Segal, WSBA #29797
s/Alanna E. Peterson, WSBA #46502
Attorneys for Defendant/Respondent City of Seattle

Entry approved; Notice of presentation waived:
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION AT THE GOLDWATER INSTITUTE

By: _____

Matthew R. Miller
Attorney for Plaintiffs/Petitioners

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By: _____

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