

1 **ORDR**

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3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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6 **GREATER LAS VEGAS SHORT TERM**
7 **RENTAL ASSOCIATION, a non-profit**
8 **Nevada corporation; JACQUELINE**
9 **FLORES, President and Director,**

10 **Plaintiffs,**

11 **vs.**

12 **CLARK COUNTY and the BOARD OF**
13 **CLARK COUNTY COMMISSIONERS, a**
14 **political subdivision of the State of**
15 **Nevada; and the STATE OF NEVADA,**

16 **Defendants.**

CASE NO: A-22-856311-P

DEPT NO: VIII

17 **ORDER GRANTING PRELIMINARY INJUNCTION IN PART**

18 This matter comes before the Court on a Motion for Preliminary Injunction filed by the
19 **GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, a non-profit Nevada**
20 **corporation, and JACQUELINE FLORES, President and Director (“the Rental Association”), on**
21 **October 3, 2022, against CLARK COUNTY and the BOARD OF CLARK COUNTY**
22 **COMMISSIONERS and the STATE OF NEVADA (“Clark County”). The Rental Association**
23 **sought to enjoin Chapter 7.100 within Title 7 of the Clark County Code in a new Chapter entitled**
24 **“Short Term Rental Units” that was adopted on June 21, 2022 (“the Ordinance”).**

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26 Extensive briefing as well as supplemental briefing have occurred. Following hearings
27 that were held on December 13, 2022 and December 19, 2022, whereby counsel for the Rental
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1 Association and Clark County appeared and made arguments, and having reviewed all pleadings
2 and exhibits, the Court hereby orders the Rental Association’s Motion for a Preliminary
3 Injunction is GRANTED in part.
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5 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

6 **FINDINGS OF FACT**

7 1. The Rental Association is a grassroots non-profit organization established by
8 members of the public who are interested stakeholders in the short-term rental policies in Clark
9 County, its greater surrounding area, and throughout Nevada. It consists of approximately seven
10 hundred (700) members and was incorporated in 2020 with the Office of the Nevada Secretary of
11 State. Jacqueline Flores is its Director and President. Ms. Flores is an unpaid volunteer.
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13 2. In 1998, Clark County passed amendments to a Chapter of the Clark County Code
14 entitled “Uses Allowed in Zoning Districts” set forth in Title 30, Chapter 30.44.010(b)(7)(C). The
15 new Code provisions purportedly mandated zoning prohibitions on all short-term rentals located
16 in unincorporated Clark County, which includes many of the resort properties located along the
17 South portion of Las Vegas Boulevard, *i.e.*, “the Strip.” The new Code provisions allotted a three
18 (3)-year grace period before it became fully effective. *See* Clark County Code, Title 30, Chapter
19 30, Section 30.44.010(b)(7)(C)(ii). The ban became fully effective in 2001. No short-term rentals
20 were permitted to operate in unincorporated Clark County.
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22 3. In 2021, the Research Division of the Legislative Counsel Bureau of the Nevada
23 Legislature estimated that approximately 7,700 short-term rentals were located in the greater
24 Clark County area.
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26 4. During the 81st Regular Legislative Session of the Nevada Legislature, Assembly
27 Bill (“AB”) 363 was enacted and signed into law. AB 363 mandated that Clark County repeal its
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1 ban on short-term rentals and adopt regulations to permit short-term rentals to resume legally
2 operating within unincorporated Clark County by July 1, 2022.

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4 5. On March 15, 2022, Clark County published a survey that gauged public interest
5 in short-term rentals and received approximately 5,500 responses from members of the public.

6 6. On June 21, 2022, Clark County, through the Clark County Board of
7 Commissioners, unanimously adopted a new Chapter entitled “Short Term Rental Units” set forth
8 in Chapter 7.100 within Title 7 of the Clark County Code (“the Ordinance”). The Ordinance was
9 passed by Clark County in response to the Nevada Legislature’s mandate in AB 363. The
10 Ordinance set forth twenty-six sections and multiple subsections regarding subjects such as: Clark
11 County findings, short-term rental licensing eligibility, application processes, fees, prohibited
12 conduct of short-term rental operators and patrons, and civil administrative and criminal penalties
13 for violations. *See* Clark County Code, Title 7, Chapter 7.100, Sections 7.100.110-.260, inclusive.

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15 7. On September 13, 2022, Clark County began accepting applications for interested
16 persons to submit an application to receive a short-term rental license. The application period is
17 scheduled to remain open for a six-month period until March 13, 2023. After that time,
18 applications will not be accepted for the initial licensing period. Currently, no licenses to operate
19 a short-term rental in Clark County pursuant to the Ordinance have been issued.

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21 8. On October 3, 2022, the Rental Association filed a Second Amended Complaint
22 for Declaratory and Injunctive Relief and a Motion for a Preliminary Injunction. In its Complaint
23 and Motion, the Rental Association contended that the Ordinance violated multiple provisions of
24 the Nevada Constitution and the United States Constitution and should be declared
25 unconstitutional and fully enjoined from enforcement and further implementation. Specifically,
26 the Rental Association raised the following claims: (1) the Ordinance sets forth an arbitrary and
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1 capricious licensing scheme in violation of the Due Process Clauses set forth in Article 1, Section
2 8 of the Nevada Constitution and the Fifth, Sixth, and Fourteenth Amendments of the United
3 States Constitution; (2) the Ordinance is unconstitutionally vague and overbroad in violation of
4 Article 1, Section 8 of the Nevada Constitution and the First, Fifth and Fourteenth Amendments
5 to the United States Constitution; (3) the Ordinance prohibits the right to associate and assemble,
6 and imposed a prior restraint on speech in violation Article 1, Section 9 of the Nevada Constitution
7 and the First Amendment to the United States Constitution; (4) the Ordinance violates the Takings
8 Clause set forth in Article 1, Section 8, Subsection 3 of the Nevada Constitution and the Fifth
9 Amendment to the United States Constitution; (5) the Ordinance violates the Equal Protection
10 Clause, as set forth in Article 4, Section 21 of the Nevada Constitution and the Fourteenth
11 Amendment of the United States Constitution; (6) the Ordinance violates the Dormant Commerce
12 Clause as set forth in Article 1, Section 8, Clause 3 of the United States Constitution; and (7) the
13 Ordinance violates provisions of Nevada law set forth in AB 363.
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17 9. Within each of the Rental Association’s claims, specific provisions of the
18 Ordinance were challenged. The Rental Association contended that the Ordinance failed
19 constitutional review and must be enjoined. Clark County opposed the Rental Association’s
20 claims, contending that the Ordinance’s provisions were consistent with constitutional limits and
21 AB 363. Clark County asserted that the Rental Association lacked standing to bring this action.
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23 10. The issues raised by the Rental Association largely involve issues of constitutional
24 law and first impression in Nevada.

25 11. The above facts are matters of public record or undisputed, and no evidentiary
26 hearing is necessary to establish or dispute them.
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2 12. Any finding of fact stated above that is more properly framed as a conclusion of
3 law shall be duly incorporated into this Court’s conclusions of law section of this Order.

4 **CONCLUSIONS OF LAW**

5 1. Standing is a threshold determination in every legal action. The question of
6 standing concerns whether the party seeking relief has a sufficient interest in the litigation. The
7 primary purpose of this standing inquiry is to ensure the litigant will vigorously and effectively
8 present his or her case against an adverse party. Morency v. Nev. Dep't of Educ., 137 Nev. Ad.
9 Op. 63, 496 P.3d 584, 588 (2021) (citing Schwartz v. Lopez, 132 Nev. 732, 743, 382 P.3d 886,
10 894 (2016).

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12 2. Standing to raise a facial challenge to the constitutionality of a statute or ordinance
13 may be established in either one of two ways: (1) showing that the parties have suffered a personal
14 injury, or (2) under the public importance exception doctrine. *See generally* Schwartz, 132 Nev.
15 at 743, 382 P.3d at 894 (2016).

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17 3. Under the public importance exception doctrine, a party may show standing where
18 the matter raised involves an issue of public importance. *See* Morency, 137 Nev., Adv. Op. 63,
19 496 P.3d at 589. Specifically, under the doctrine, a party has standing where a Nevada citizen
20 raises a challenge and (1) the case involves an issue of public importance, (2) the case involves a
21 government expenditure on the basis that it violates a specific provision of the Nevada
22 Constitution, and (3) the party raising the challenge is in the best position to fully advocate for it.
23 The public-importance exception was recently expanded to cases involving a public expenditure
24 or where a plaintiff seeks vindication of the Nevada Constitution’s separation-of-powers clause.
25 Nevada Policy Research. Inst., Inc. v. Cannizzaro, 138 Nev. Adv. Op. 28, 507 P.3d 1203, 1208
26 (2022).
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1 4. The public-importance doctrine applies where a party seeks to enforce a public
2 official’s compliance with a public duty pursuant to the separation-of-powers clause, but only
3 where an appropriate party seeks enforcement of that right, the issue is likely to recur, and it
4 requires judicial resolution for future guidance. Id.
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6 5. Licensing of short-term rentals in unincorporated Clark County and the
7 constitutionality of the Ordinance are matters of public importance. Implementation and
8 enforcement of the Ordinance involves the expenditure of taxpayer and public funds. Moreover,
9 Clark County’s authority on short-term rentals is limited by the Nevada Constitution and the
10 United States Constitution, and AB 363, which was enacted by the Nevada Legislature.
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12 6. The Rental Association—a grassroots Nevada non-profit organization comprised
13 of approximately 700 members—is in the best position to raise the instant challenge to the
14 constitutionality of the Ordinance and advocate for the interests of short-term rental owners,
15 patrons, and members of the public.
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17 7. The Rental Association is a legal entity and, therefore, it is a ‘citizen’ for standing
18 purposes. *See* Morency, 137 Nev. Adv. Op. 63, 496 P.3d at 589; Consipio Holding, BV v.
19 Carlberg, 128 Nev. 454, 459, 282 P.3d 751, 755 (2012) (recognizing that “a corporation that is
20 incorporated in Nevada is a Nevada citizen”).
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22 8. Even though this case does not involve a separation of powers issue like
23 Cannizzaro, the facts of this case and the legal precedent cited in Cannizzaro leads the Court to
24 believe that the Supreme Court of Nevada would expand the public importance exception to
25 provide standing in this case.
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1 9. Therefore, applying Schwartz, Morency, and Cannizzaro to this matter, the Court
2 holds that while Plaintiffs in this case claimed no personal injury, the Plaintiffs have standing
3 under the public importance exception to the general standing requirement.
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5 10. Nevada Rule of Civil Procedure (NRCP) 65 provides that this Court may issue a
6 preliminary injunction upon notice to opposing counsel. *See also* EDCR 2.10 and EDCR 5.520.

7 11. NRS 33.010(3) provides that the issuance of a preliminary injunction is
8 appropriate where an individual or entity is doing, threatens to do, or is about to do an act that
9 violates the rights of another. This preliminary injunction standard applies to laws and regulations
10 that either have been or will be enacted by government entities and are challenged by individual
11 citizens or grass root organizations. *See, e.g.,* Citizens for a Public Train Trench Vote v. City of
12 Reno, 118 Nev. 574, 53 P.3d 387 (2002), *overruled on other grounds by* Nevadans for Protecting
13 Private Property Rights v. Heller, 122 Nev. 894, 141 P.3d 1235 (2006); Kuban v. McGimsey, 96
14 Nev. 105, 605 P.2d 623 (1980); *see also* Edgar v. MITE, Corp., 457 U.S. 624 (1982) (applying
15 the preliminary injunction standard pursuant to Federal Rule of Civil Procedure, Rule 65).
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17 12. When seeking a preliminary injunction, a movant is required to demonstrate two
18 elements. First, they must show a reasonable likelihood of success on the merits. Second, they
19 must show a reasonable probability that the non-moving party's conduct will cause irreparable
20 harm if it is allowed to continue and for which compensatory damages is an inadequate remedy.
21 *See* Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179,
22 187 (2004). In considering these factors, it is appropriate to weigh the potential hardships to the
23 relative parties and others, and the public interest. *Id.* (citing Clark County School Dist. v.
24 Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996)).
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2 13. The decision whether to grant a preliminary injunction resides within the sound
3 discretion of this Court. *See Shores v. Global Experience Specialists, Inc.*, 134 Nev. 503, 505,
4 422 P.3d 1238, 1241 (2018); *Boulder Oaks Cmty. Ass'n. v. B & J Andrews Entp.*, 125 Nev. 397,
5 403, 215 P.3d 27, 31 (2010); *SOC, Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 407, 23 P.3d 243,
6 246 (2001).

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8 14. In this matter, the Rental Association has shown a reasonable likelihood of success
9 of prevailing on its facial challenges to the Ordinance being vague and/or overbroad in violation
10 of Article 1, Section 8 of the Nevada Constitution and the First, Fifth and Fourteenth Amendments
11 to the United States Constitution.

12 15. Violation of a constitutional right is appropriate for injunctive relief. *See Elrod v.*
13 *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673 (1976) (“The loss of First Amendment freedoms, for
14 even minimal periods of time, unquestionably constitutes irreparable injury.”) [I]t is always in the
15 public interest to prevent the violation of a party's constitutional rights. *Am. Beverage Ass'n v.*
16 *City & Cnty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019)(internal citations omitted).
17 When an alleged deprivation of a constitutional right is involved, such as the right to free speech
18 or freedom of religion, most courts hold that no further showing of irreparable injury is necessary.
19 Citing this premise, the Ninth Circuit has held that “a party seeking preliminary injunctive relief
20 in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief
21 by demonstrating the existence of a colorable First Amendment claim.” *Pasaye v. Dzurenda*, 375
22 F. Supp. 3d 1159, 1170–71 (D. Nev. 2019), *on reconsideration in part*, No.
23 217CV02574JADVCF, 2019 WL 2905044 (D. Nev. July 5, 2019).

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26 16. Courts asked to issue preliminary injunctions based on First Amendment grounds
27 face an inherent tension: the moving party bears the burden of showing likely success on the
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1 merits . . . and yet within that merits determination the government bears the burden of justifying
2 its speech-restrictive law.” California Chamber of Com., 29 F.4th at 477 (9th Cir. 2022). [I]n the
3 First Amendment context, the moving party bears the initial burden of making a colorable claim
4 that its First Amendment rights have been infringed, or are threatened with infringement, at which
5 point the burden shifts to the government to justify the restriction” on speech. California Chamber
6 of Com., 29 F.4th at 478 (9th Cir. 2022).

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9 17. In this case, the Rental Association has established irreparable injury sufficient to
10 merit this Court granting relief in its pleadings in which it demonstrated a valid First Amendment
11 claim. The burden is not on Clark County to justify the restriction.

12 18. Article 1, Section 8 of the Nevada Constitution and the Fifth and Fourteenth
13 Amendments of the United States Constitution prohibit a government entity from enacting a
14 licensing scheme that is arbitrary and capricious or sets forth enforcement mechanisms that are
15 vague.

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17 19. A law is unconstitutionally vague if it fails to provide notice sufficient to enable
18 persons of ordinary intelligence to understand what conduct is prohibited, or lacks specific
19 standards and encourages, authorizes, or fails to prevent arbitrary and discriminatory
20 enforcement. State v. Casteneda, 126 Nev. 478, 481, 245 P.2d 550, 552 (2010); Sheriff v. Burdg,
21 118 Nev. 853, 857, 59 P.3d 484, 486-87 (2002). In order for a law to be constitutional it must
22 delineate the boundaries of unlawful conduct . . . so individuals will know what is permissible
23 behavior and what is not. City of Las Vegas v. Dist. Ct., 118 Nev. 859, 864, 59 P.3d 477, 481
24 (2002). Criminal laws, including ordinances, are subject to a facial attack on vagueness grounds.
25 Id. Licensing schemes cross the threshold of permissible regulation when their language permits
26 arbitrary or capricious enforcement. City Council of Reno v. Irvine, 102 Nev. 277, 279, 721 P.2.d
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2 371, 372 (1986) (citing Gragson v. Toco, 90 Nev. 131, 133, 520 P.2d 616, 616 (1974)). When
3 [language permitting arbitrary or capricious enforcement] occurs, a facial challenge to the plain
4 text may be raised for judicial review. Silvar v. Eighth Judicial Dist. Court, 122 Nev. 289, 292-
5 93, 129 P.3d 682, 684-85 (2006).

6 20. The question of whether an ordinance is unconstitutionally vague must be
7 determined by the terms of the ordinance at issue. However, particular words or phrases in an
8 ordinance need not be read in a vacuum. The meaning of an ordinance's terms may be given
9 context by the statutory scheme of which the ordinance is a part. City of Las Vegas v. Eighth Jud.
10 Dist. Ct. of State ex rel. Cnty. of Clark, 122 Nev. 1041, 1048–49, 146 P.3d 240, 245 (2006).

11 21. The vagueness doctrine's second requirement aims to avoid “arbitrary and
12 discriminatory enforcement,” and demands that laws “provide explicit standards for those who
13 apply them.” Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S. Ct. 2294, 2299 (1972). A
14 law that relies on a subjective standard—such as whether conduct amounts to an “annoyance”—
15 is constitutionally suspect. Edge v. City of Everett, 929 F.3d 657, 665 (9th Cir. 2019).

16 22. An ordinance can be unconstitutionally vague if the language in the ordinance
17 criminalizes behavior that may “annoy” others. See Coates v. Cincinnati, 402 U.S. 611, 614, 91
18 S.Ct. 1686 (1971), (holding that an ordinance was unconstitutionally vague because it
19 criminalized the assembly of three or more persons on city sidewalks if they conducted
20 themselves in a manner “annoying” to passers by).

21 23. Where “men of common intelligence must necessarily guess at the meaning of an
22 ordinance it is unconstitutionally vague and cannot be upheld its meaning. Edge v. City of Everett,
23 929 F.3d 657, 665 (9th Cir. 2019) citing Coates, *supra*.

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2 24. “The overbreadth doctrine invalidates laws . . . that infringe upon First
3 Amendment rights.” Silvar, 122 Nev. at 297, 129 P.3d at 687. In other words, the overbreadth
4 doctrine applies to statutes that have a seemingly legitimate purpose but are worded so broadly
5 that they also apply to protected speech. *See Id.* Even minor intrusions on First Amendment rights
6 will trigger the overbreadth doctrine.” Id. at 297–98, 129 P.3d at 688.

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8 25. Here, the Ordinance contains possible criminal liability, for violations and
9 implicates constitutionally protected conduct. While a violation of the terms of the Ordinance
10 may carry civil administrative penalties, as it is currently drafted, any violation of the Ordinance,
11 whether intended or not, subjects a short-term rental license applicant, licensee, or patron to the
12 possibility of criminal penalties. Section 7.100.090(c)(2) of the Ordinance criminalizes the short-
13 term rental license application process by compelling an applicant to affirm under penalty of
14 perjury their intent to adhere to all terms and conditions of the Ordinance. Perjury is a felony
15 crime under Nevada law. *See* NRS 199.120. Section 7.100.230(f)(1) of the Ordinance provides
16 that violation of the Ordinance may also be a misdemeanor crime. Accordingly, a facial challenge
17 to the Ordinance may be properly raised by the Rental Association.
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19 26. Here, the Ordinance contains provisions that fail to provide notice sufficient to
20 enable a person of ordinary intelligence to understand what conduct is prohibited. It also lacks
21 specific standards and encourages, authorizes, or fails to prevent arbitrary and capricious
22 enforcement. On this basis, certain provisions within the Ordinance are unconstitutionally vague
23 and overbroad as written and drafted on their face. Specifically, the following provisions within
24 the Ordinance are either unconstitutionally vague and/or overbroad, or both, and may lead to
25 arbitrary and capricious enforcement:
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Section 7.100.090(c)(2)

Requiring that Application be Signed under Penalty of Perjury

27. Section 7.100.090(c)(2)(I) of the Ordinance provides that each short-term rental license application must sign a declaration under penalty of perjury that they “shall abide by all requirements” set forth in Chapter 7.100. This mandate exposes a license applicant to the possibility of criminal liability for not only a current, but a *future*, violation of the Ordinance. As currently drafted, it is not merely an attestation that information provided on the license application is true. It is also an affirmation that may potentially govern and bind future conduct of the applicant, either known or unknown. Accordingly, this Section of the Ordinance is unconstitutionally vague and/or overbroad, and may lead to arbitrary and capricious enforcement.

Section 7.100.090(c)(7)

Authorizing Clark County to Request Any Document or Information for a License

28. Section 7.100.090(c)(7) of the Ordinance provides that Clark County may require an applicant to furnish “any” document or information that it requests. Based on this language, Clark County may require one applicant to provide documents or information and not require another applicant to do so. No standards are set forth in the Ordinance on what or when additional documentation may be required, and it is left undefined. Accordingly, this Section of the Ordinance is unconstitutionally vague and/or overbroad, and may lead to arbitrary and capricious enforcement.

Sections 7.100.100(h) and 7.100.170(i)(2)

Authorizing Clark County to Enter and Inspect a Premises Without Notice or Cause

29. Section 7.100.100(h) of the Ordinance provides that Clark Count may enter and inspect a short-term rental at its “discretion.” Section 7.100.170(i)(2) of the Ordinance provides

1 that a short-term rental owner “must” permit inspection of their home “with or without notice”
2 and that they have a duty “to provide access.” The plain text of these Sections means that Clark
3 County, through its employees, may subject an applicant to an inspection of their proposed short
4 term rental unit, *i.e.*, their home, without any basis whatsoever. Again, no standards or objective
5 criteria are set forth in the Ordinance to delineate who will be subjected to an inspection and who
6 will not. It is left to subjective discretion.
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9 30. Short-term rentals involve a hybrid mix of business and residential uses. This
10 Section of the Ordinance also implicates the right against unreasonable searches and seizures set
11 forth in Article 1, Section 18 of the Nevada Constitution and the Fourth Amendment of the United
12 States Constitution. Properties that may be used as short-term rentals also may simultaneously
13 serve as the residence and home of the owner. The United States Supreme Court and the Nevada
14 Supreme Court have recognized that a person’s right to have privacy in their own home is a core
15 and fundamental tenet of our democracy: “[N]one is the zone of privacy more clearly defined
16 than when bounded by the unambiguous physical dimensions of an individual’s home.” Howe
17 v. State, 112 Nev. 458, 465-66, 916 P.2d 153, 159 (1996) (quoting Payton v. New York, 445 U.S.
18 573, 589-90 (1980)).
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20 31. The Ordinance fails to provide a short-term rental owner, patron or guest on the
21 premises any standard, criteria or independent review of when or why Clark County may attempt
22 to enter. As written, the Ordinance authorizes Clark County, a government entity, to enter a short-
23 term rental at its discretion at any time, day or night, and for any reason. Similar to Section
24 7.100.100(h) discussed above, this Section of the Ordinance also implicates the right against
25 unreasonable searches and seizures set forth in Article 1, Section 18 of the Nevada Constitution
26 and the Fourth Amendment of the United States Constitution. *See* City of Los Angeles v. Patel,
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2 576 U.S. 409, 420 (2015) (holding that “absent consent, exigent circumstances, or the like, in
3 order for an administrative search to be constitutional, the subject of the search must be afforded
4 an opportunity to obtain precompliance review before a neutral decisionmaker”).

5 32. The fact that an individual chooses to engage in business or economic activity
6 within their own home and property should not per se dilute all constitutional protections of their
7 privacy. Accordingly, these Sections of the Ordinance are unconstitutionally vague and/or
8 overbroad and may lead to arbitrary and capricious enforcement.
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10 **Section 7.100.110(a)**

11 **Authorizing Clark County to Deny a License for Failure to Fully Cooperate**

12 33. Section 7.100.110(a)(3) of the Ordinance provides that an application for a license
13 may be denied “if the applicant fails or refuses to cooperate fully with any inspection.”
14 Cooperation, let alone ‘full’ cooperation, are ambiguous terms and leave the determination of
15 whether an applicant has ‘cooperated fully’ to Clark County’s subjective and unfettered
16 discretion. Accordingly, this Section of the Ordinance is unconstitutionally vague and/or
17 overbroad, and may lead to arbitrary and capricious enforcement
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19 **Section 7.110.110(c)**

20 **Authorizing Clark County to Mandate any Terms and Conditions it Deems Necessary**

21 34. Section 7.110.110(c)(2) of the Ordinance provides that as a condition of approval
22 an application must “agree to all such terms and conditions that the Department deems necessary
23 for health and safety of residents.” While the Rental Association does not object to Clark County
24 imposing reasonable health and safety measures, no standards or criteria are set forth in the
25 Ordinance defining what circumstances or conditions may trigger additional license requirements.
26 They are left to the broad discretion of Clark County. Applicants are left to guess. Accordingly,
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1 the discretion granted in this Section of the Ordinance is unconstitutionally vague and/or
2 overbroad and may lead to arbitrary and capricious enforcement.
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4 **Section 7.100.160(1)(c)**

5 **Prohibiting Short-Term Renters Outside of the Same Family or Group**

6 35. Section 7.100.160(1)(c) of the Ordinance restricts rentals to individuals “within
7 the same family or group.” NRS 678.130 defines the phrase ‘immediate family.’ However, the
8 Ordinance fails to define whether it is intended for the limitation to apply to only immediate
9 family members nor does it define what is meant by the term “group.” Prohibitions on associating
10 with an individual’s family or group implicates constitutionally protected activity under Article
11 1, Section 9 of the Nevada Constitution and the First Amendment to the United States
12 Constitution. Accordingly, and left undefined, this Section of the Ordinance is unconstitutionally
13 vague and/or overbroad and may lead to arbitrary and capricious enforcement.
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15 **Section 7.100.180(b)**

16 **Prohibiting Parties, Weddings, Events, and Other Gatherings**

17 36. Section 7.100.160(a) of the Ordinance restricts the right of individuals to two (2)
18 individuals per bedroom of the rental unit or a maximum of ten (10) individuals on the property.
19 Section 7.100.180(b) of the Ordinance prohibits “parties, weddings, events or other gatherings
20 which exceed the maximum occupancy of the residential unit.” What qualifies as a ‘party’ or
21 ‘wedding’ or ‘event’ or ‘gathering’ is vague and ambiguous. While the term ‘party’ is in the
22 definition section of the Ordinance, it fails to provide any meaningful guidance. *See* Section
23 7.100.020(n).
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25 37. Gatherings, parties, events, and especially weddings, also implicate religious
26 activity or the assembly of persons that are constitutionally protected activities under Article 1,
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1 Section 9 of the Nevada Constitution and the First Amendment to the United States Constitution.
2 Certainly, individuals within the United States have the right to associate and assemble with each
3 other. *See Tectow v. City Council of North Las Vegas*, 105 Nev. 330, 334-35, 775 P.2d 227, 230-
4 31 (1989). Both the Nevada Supreme Court and the United States Supreme Court have held that
5 the right of individuals to associate is “in no way diminished because the issue arises in an
6 economic matter.” To this end, “the United States Supreme Court has ‘recognized the vital
7 relationship between freedom to associate and privacy in one’s association.’ Because of the
8 importance of these tightly intertwined rights that Court has refused to draw a line excluding those
9 ‘engaged in business activities’ from the reach of the First Amendment.” *Id.* (quoting *Thomas v.*
10 *Collins*, 323 U.S. 516, 531 (1945)). The Nevada Supreme Court has also held that “[t]o be
11 constitutionally acceptable, an ordinance authorizing officials to license activity that is
12 presumptively protected by the First Amendment must establish precise, narrowly-drawn
13 standards to guide the officials.” *Northern Nevada Copy v. Menicucci*, 96 Nev. 533, 536, 611
14 P.2d 1068, 1069 (1980). Accordingly, and left undefined, this Section of the Ordinance is
15 unconstitutionally vague and/or overbroad and may lead to arbitrary and capricious enforcement.
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19 **Section 7.100.180(c)**

20 **Prohibiting Activities that Annoy or Disturb Another Person**

21 38. Section 7.100.180(c) of the Ordinance prohibits “[t]he emission of noise, light,
22 smoke, particulate matter, odors, and hazardous materials from the short-term rental unit which
23 unreasonably annoys or disturbs the quiet, comfort, or repose of any persons of ordinary
24 sensibilities.” What it may mean to ‘annoy’ or to ‘disturb the quiet, comfort, or repose’ of a person
25 is unconstitutionally vague. These are subjective terms without clear meaning. To be ‘annoyed’
26 or ‘disturbed’ differs from person to person based upon such varying traits in personality,
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1 background, and age. Section 7.100.180(c) of the Ordinance criminalizes any action or behavior
2 that may ‘annoy’ a Clark County Code enforcement officer, a law enforcement officer, or another
3 person. Accordingly, and left undefined, this Section of the Ordinance is unconstitutionally vague
4 and/or overbroad, and ambiguous and may lead to arbitrary and capricious enforcement. *See Scott*
5 *v. First Judicial District Court*, 131 Nev. 1015, 1017-18, 363 P.3d 1159, 1161-62 (2015).
6

7 **Sections 7.100.230(b) and 7.230(d)(1)(i)**

8 **Authorizing Clark County to Impose Cumulative and Discretionary Fines and Penalties**

9
10 39. Section 7.100.230(b) of the Ordinance provides that penalties for violating any
11 provision “shall be cumulative and may be exercised in any order or combination at any time.”
12 Additionally, Section 7.100.230(d)(1)(I) of the Ordinance provides that “[t]he amount of the fine
13 shall be determined only after taking into account, without limitation, the severity of the violation,
14 whether the person who committed the violation acted in good faith, and any history of previous
15 violations” These provisions authorize Clark County to issue a citation to a short-term rental
16 owner, or patron, based upon subjective discretion of what constitutes ‘good faith’ or an egregious
17 violation history that may differ from one Clark County or law enforcement official to another.
18 No standards to ensure fair and equal treatment under the law are provided. The broad grant of
19 discretion and authority to Clark County also implicates the Due Process Clauses set forth in
20 Article 1, Section 8 of the Nevada Constitution and the Fifth, Sixth, and Fourteenth Amendments
21 of the United States Constitution. Accordingly, these Sections of the Ordinance are
22 unconstitutionally vague and/or overbroad and may lead to arbitrary and capricious enforcement.
23

24
25 40. The existence of a constitutional violation may constitute irreparable harm to
26 support a preliminary injunction. *See City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357,
27 302 P.3d 1118, 1124 (2013); *see also Preston v. Thompson*, 589 F.2d 300, 306 n. 3 (7th Cir.
28

1
2 1978). After-the-fact monetary damages, unlike in other civil cases, is an inadequate remedy. *See*
3 City of Sparks, 129 Nev. at 357, 302 P.3d at 1124. Left undisturbed, the unconstitutionally vague
4 and/or overbroad Sections of the Ordinance will constitute sufficient harm to support an
5 injunction. Members of the public who may apply for a short-term rental license or may be cited
6 for conduct pursuant to the above-listed unconstitutional Sections will likely suffer irreparable
7 harm if those provisions are not enjoined.

8
9 41. The Court does not find that there is a fundamental constitutional right to operate
10 a short-term rental on residential property. However, AB 363 has now provided an avenue for
11 people to legally operate short-term rentals.

12 42. Further, there is a substantial rational basis for the short-term rental ordinance and
13 the Court declines to enjoin the other provisions of the ordinance, not specifically enjoined herein.

14 43. A balancing of hardships favors the Rental Association, its members, short-term
15 rental license applicants, licensees, and future patrons. It weighs against Clark County. Facially
16 unconstitutional provisions that impose criminal liability cannot stand. An award of damages is
17 an inadequate remedy.

18
19 44. Clark County will suffer no identifiable hardship if an injunction issues in this
20 matter. Clark County—a government entity—has significant legal resources. If an injunction does
21 not issue, piecemeal litigation and a patchwork of judicial decisions may ensue. Public policy and
22 judicial economy favor enjoining the constitutionally infirm provisions at this time.

23
24 45. The Court specifically finds that certain provisions within the Ordinance are
25 unconstitutionally vague and overbroad and fail to provide notice sufficient to enable a person of
26 ordinary intelligence to understand what conduct is prohibited.

1
2 46. Moreover, the provisions lack specific standards and encourage, authorize, or fail
3 to prevent arbitrary and capricious enforcement.

4 47. The Rental Association has demonstrated that it has standing under the limited
5 public importance doctrine to bring this challenge, and it has shown a reasonable likelihood of
6 success on the merits of its claims, that it will suffer harm if left unaddressed, and a balancing of
7 hardships is in its favor.

8 48. Accordingly, the provisions of the Ordinance identified in this Order shall
9 hereinafter be enjoined from enforcement and implementation. All other constitutional claims
10 raised by the Rental Association challenging the Ordinance are hereby denied at this time without
11 prejudice.
12

13 **ORDER**

14 Having reviewed all the pleadings, including attachments and exhibits, and considered the
15 arguments of the Rental Association and Clark County, this Court hereby orders the Rental
16 Association's Motion for a Preliminary Injunction GRANTED in Part.
17

18 1. This Court finds as a matter of fact and conclusion of law that the following
19 Sections of the Ordinance are facially unconstitutionally vague and/or overbroad: **Section**
20 **7.100.090(c)(2)** Requiring that Application be Signed under Penalty of Perjury; **Section**
21 **7.100.090(c)(7)** Authorizing Clark County to Request Any Document or Information for a
22 License; **Sections 7.100.100(h)** and **7.100.170(i)(2)** Authorizing Clark County to Inspect a
23 Premises Without Notice or Cause; **Section 7.100.110(a)** Authorizing Clark County to Deny a
24 License for Failure to Fully Cooperate; **Section 7.110.110(c)** Authorizing Clark County to
25 Mandate Any Terms and Conditions it Deems Necessary; **Section 7.100.160(1)(c)** Prohibiting
26 Short-Term Renters Outside of the Same Family or Group; **Section 7.100.180(b)** Prohibiting
27
28

1 Parties, Weddings, Events, and Other Gatherings; **Section 7.100.180(c)** Prohibiting Activities that
2 Annoy or Disturb Another Person; and **Sections 7.100.230(b)** and **7.100.230(d)(1)(i)** Authorizing
3 Clark County to Impose Cumulative and Discretionary Fines and Penalties.
4

5 2. Clark County shall hereinafter be enjoined from implementing and enforcing the
6 above-listed Sections of the Ordinance as they are currently drafted and until such time as this
7 injunction may be lifted and/or amended by this Court. Only those Sections of the Ordinance that
8 have been identified by this Order shall be enjoined.
9

10 3. All other grounds for an injunction raised by the Rental Association pursuant to the
11 Nevada Constitution and the United States Constitution, including its argument that the Ordinance
12 imposed an unconstitutional prior restraint, are hereby denied without prejudice.
13

14 4. The Rental Association shall post a bond in the amount of \$1.00, which the Court
15 finds to be proper security for Clark County in this matter pursuant to NRCP 65.
16

Dated this 16th day of February, 2023



41B 415 BE41 5363
Jessica K. Peterson
District Court Judge

Judge Jessica K. Peterson

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the
preceding Order filed in District Court case number
A818973 **DOES NOT** contain the social security
number of any person.
 /s/ Jessica K Peterson

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In the Matter of the Petition of | CASE NO: A-22-856311-P
7 Greater Las Vegas Short Term | DEPT. NO. Department 8
8 Rental Association

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/16/2023

15 Maddy Carnate-Peralta	mcarnate@hutchlegal.com
16 Alex Velto	avelto@hutchlegal.com
17 Reno Paralegals Reno Paralegals	paralegals-reno@hutchlegal.com
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