ATTACHMENT #5

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Tuesday, September 28, 2021 9:14:37 PM

City Council Contact Form

Step 1

Note
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Contact Information

First Name	Kyle
Last Name	Leto
Email Address	leto.kyle@gmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Hello Steamboat Springs Council, My name is Kyle Leto and I am a new property owner in Steamboat Springs. My wife and I bought a condo in the Walton Creek Condominium complex on Walton Creek Road back in May and we take occupancy of our condo at the end of October. We started looking for property in Steamboat in January of this year and after 5 months of searching we were lucky enough to find a place that we thought might work for us. When we bought our condo it was already zoned as a multi-family unit and there was no concern about being able to use it as a short term rental. However, now based on the current proposals and the current map for STR zones, we would be unable to rent out our condo. My wife Lauren and I live in Fort Collins and we love going to Steamboat. We are currently starting a family and our dream has been to have a place in Steamboat so that we can bring our family there. Our longtime goals for our condo are to be able to

	use it as much as possible with our family, possibly even retire there, and rent it some along the way to help cover some of our costs when we aren't using it. Although if the current proposals are accepted we will be a few feet away from being able to rent out our condo as we anticipated. This wasn't even a consideration when we were looking at buying a condo and we absolutely would have directed our location of purchase based on a zoning map if that was something we needed to consider, even if it meant taking longer to find a property. I would encourage you to consider the Walton Creek Condominiums in a zone to allow for short term rentals so that families like ours can live out our dream of owning property in Steamboat Springs. Thank you for your time and consideration. Kyle Leto1335 Walton Creek Road Unit 31408-212-1344
Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Tuesday, September 28, 2021 10:05:53 AM

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Contact Information

First Name	Kelly
Last Name	Bastone
Email Address	bellynken@hotmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Hello council members, I saw that some representatives of the accommodations industry petitioned council to have base area neighborhoods removed from the moratorium on vacation home rentals. Please do NOT approve these boundaries as suggested. The proposed boundaries include many residential neighborhoods that do NOT have a history of hosting vacation rentals and are not located at the base of the resort. In these residential neighborhoods, vacation rentals are not a benefit to the community, because they operate as commercial enterprises that the neighborhoods are not zoned for. If the council chooses to approve an exemption to the moratorium based on proximity to the resort, please confine it to the immediate base area, which truly has a history of operating as a commercial zone. Meadow Drive, Apres Ski way, Bear Drive--none of these streets fits that description. Thank you for your service.

Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Tuesday, September 28, 2021 3:07:47 PM

City Council Contact Form

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Contact Information

First Name	John Pitchford
Last Name	Pitchford
Email Address	johnrpitchford@gmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	I would appreciate the City Council including Spring Valley Drive when they consider extending the moratorium on short term vacation home rental applications on Bear Creek Drive and Hunters Drive. We are residents of The Enclave at the corner of Village Drive and Meadow Lane, near Bear Creek Drive and Hunters Drive. 40% of the units on Spring Valley Drive are owned by full time local residents. Do you need further information to consider our request? We would be glad to provide whatever you require from us or other full time residents in our complex. Thank you for considering our request. Sincerely, John and Pam Pitchford 3453 Spring Valley Drive

	970 875-4826
Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Friday, September 24, 2021 9:18:55 PM

City Council Contact Form

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Contact Information

First Name	Heidi
Last Name	Childs
Email Address	hechilds2@yahoo.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	To whom it may concern: I am an owner of a unit in Timber Run. This is my husband and I's dream to own a place here. We one day soon to retire here. This is our 2nd home and we bought and where we bought due to short term rental. We bought because it has a front desk. It is the way we can afford to keep our place. If you take away my ability to rent my place out with overnight rentals. I will be forced to sell my place and look elsewhere to fulfill my dream. Tourism is what funds this town. We pay our property taxes and pay taxes on our unit when we do nightly rentals. WE come here and spend out money in town which provides jobs for the people that work here. The people who rent from us bring money to this town and spend their money here. Our nightly rental provides jobs for other people such as maintenance workers and service jobs . As well as brings money into town with the restaurants bus drivers and the list goes on.

	If you wanting to provide opportunities for people to live and work here maybe you should look at what Vail is doing to provide affordable housing. But do not take our dream away. We love Steamboat. We plan to make it our home town very soon. Where I live there is actual apartment buildings where people who cannot afford to purchase a place have corporations to build apartments that are designed for workers. I do not feel you should be allowed to change the rules of my place and especially a place designed to have overnight rentals. We appreciate your consideration in this matter. Sincerely, Heidi and Joel Childs
Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Friday, September 24, 2021 1:13:52 PM

City Council Contact Form

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Contact Information

First Name	Robin
Last Name	Stone
Email Address	robin@zirkel.us

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Hello City Council Members, I am concerned about the mountain development planned by Alterra. No one would disagree that the mountain base has been undeveloped for many years. However, people choose to come to Steamboat and choose to live in Steamboat to get away from the commerciality and over development of so many other mountain towns. Is Alterra base plan really the development that is best for the town? Or is it best for Alterra? Please review the court decision below and see that Steamboat is not alone. Alterra is trying to bring the "theme park" concept to its other mountain properties as well. Luckily, the Sierra Club put up a fight at Palisades Tahoe (formerly Squaw Valley) and the courts agreed that more is not necessarily better. I would like much more public approval before the mountain roller coaster is

joined by an ice rink, water park, etc..

Thank you,
Robin

Tahoe Truckee True Campaign Tahoe Conservationists Win This Round Over Palisades Tahoe (formerly Squaw Valley) Development Plans

On August 24th, California's Third District Court of Appeals sided with Sierra Watch to halt approval for development plans in Palisades Tahoe, formerly known as Squaw Valley. This is part of an ongoing effort since 2010 through the Tahoe Truckee True campaign organized by the Sierra Watch. Sierra Watch is a conservation nonprofit group that engages thousands of citizen volunteers in a long-term strategic effort to secure shared Sierra values.

The battle began when KSL Capital Partners purchased Palisades Tahoe in 2010 as a real estate growth potential. Later they partnered with Henry Crown Company in 2017 to create private equity conglomerate Alterra Mountain Company.

“Alterra was hell-bent on bringing a Vegas-style excess to the mountains of Tahoe”, says Tom Mooers, Executive Director of the plaintiff group, Sierra Watch. The 2015 proposed project comprised of a series of high-rise condo hotels, a roller coaster, and a 90,000 square-foot indoor water park which would be as wide as a Walmart and nearly three times as tall. The approximate timeline for this project would be 25 years.

A panel of three Justices based their decision on the project’s impact on Lake Tahoe, fire danger, noise, and traffic.

Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Monday, September 27, 2021 3:27:10 PM

City Council Contact Form

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Contact Information

First Name	hay
Last Name	stack
Email Address	haystack277@gmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Regarding nightly rentals in the Viilas, Shadow Run and other Condos off Whistler it was remarked that no one is buying these condos to make money with nightly rentals. UNTRUE, I am aware of at least 10 recent purchases wherein the buyers have little intention of living here. These condos are being used as commercial enterprises and, as such, should be treated as commercial enterprises by the city. OR nightly rentals could be denied in these areas and allowed to be rented as long term rentals.
Please add attachments here.	*Field not completed.*

From:	Rebecca Bessey
To:	Anjelica Nordloh
Subject:	FW: Gear up for Lawsuit - Overlay DOWNzone - Weekly Facts and Litigation
Date:	Friday, September 24, 2021 11:35:49 AM
Attachments:	STR-Opinion.pdf Pages from EPASS_DECLARATIONS (1).pdf

Rebecca Bessey, AICP
Planning & Community Development Director
City of Steamboat Springs
970.871.8202

From: Kevin Bronski <k[redacted]>
Sent: Friday, September 24, 2021 11:26 AM
To: Jason Lacy <jlacy@steamboatsprings.net>; Kathi Meyer <kmeyer@steamboatsprings.net>; Robin Crossan <rcrossan@steamboatsprings.net>; Lisel Petis <lpetis@steamboatsprings.net>; Michael Buccino <MBuccino@steamboatsprings.net>; Sonja Macys <SMacys@steamboatsprings.net>; Heather Sloop <hsloop@steamboatsprings.net>; Dan Foote <dfoote@steamboatsprings.net>; Jennifer Bock <jbock@steamboatsprings.net>; Lynn Donaldson <ldonaldson@steamboatsprings.net>; Rebecca Bessey <rbessey@steamboatsprings.net>; Toby Stauffer <tstauffer@steamboatsprings.net>
Subject: Gear up for Lawsuit - Overlay DOWNzone - Weekly Facts and Litigation

Councilmembers and Staff,

As the days go by and this unjustifiable legislation is making its rounds, it is clearer every day that this will inevitably end up in court. **In order to limit the city's liability for damages, I suggest you enact the restrictive piece of this overlay with an effective date 1 year from adoption.**

I will be travelling next week so here is this weeks brief facts/litigation:

Facts

1) "Aliens, who are or may hereafter become bona fide residents of this state, may acquire, inherit, possess, **enjoy** and dispose of property, real and personal, as native born citizens" -*Colo. Const. Art. II, Section 27*. Determining the zoning and in turn the rights a property owner may enjoy based on residency statistics may be **unconstitutional criteria to justify a downzoning**. Further, "**disliking your neighbor"** is not a legitimate cause for public intervention.
2) My subdivision (Eaglepointe) has explicitly allowed short term rentals since it was built 23 years ago. I bought my unit with preexisting bookings. Please get your hands out of our hair.

Litigation

1) Attached is the Texas Court of Appeals' opinion that found Austin's imposition of a short term rental ban, similar to Steamboat's proposed ordinance, was unconstitutional because the right to rent for all durations is a fundamental property right. **Another ban bites the dust.**

--

Kevin P. Bronski

[redacted]

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00812-CV

Appellants, Ahmad Zaatari, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch// Cross-Appellants, City of Austin, Texas; and Steve Adler, Mayor of The City of Austin, and the State of Texas
v.

Appellees, City of Austin, Texas; and Steve Adler, Mayor of The City of Austin// Cross-Appellees, Ahmad Zaatari, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch

FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-16-002620, THE HONORABLE TIM SULAK, JUDGE PRESIDING

O P I N I O N

These cross-appeals arise from challenges to a municipal ordinance amending the City of Austin's regulation of short-term rental properties. *See* Austin, Tex., Ordinance No. 20160223-A.1 (Feb. 23, 2016) (codified in Austin City Code chapters 25-2 and 25-12). Appellants Ahmad Zaatari, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch (collectively, "Property Owners") own homes in the Austin area and sued the City and its mayor (collectively, "the City"), asserting that certain provisions in the ordinance are unconstitutional. Specifically, the Property Owners challenged the ordinance provision that bans short-term rentals of non-homestead properties, *see id.* § 25-2-950, and the ordinance provision that controls conduct and types of assembly at short-

term rental properties, *see id.* § 25-2-795. The State intervened in the Property Owners' suit to contend that the ordinance's ban on short-term rentals of non-homestead properties is unconstitutional as a retroactive law and as an uncompensated taking of private property. The Property Owners and the State appeal from the district court's order granting the City's no-evidence motion for summary judgment and denying the Property Owners' and the State's traditional motions for summary judgment. The City and the State also challenge the district court's orders excluding certain evidence from the summary-judgment record. On cross-appeal, the City challenges the district court's order overruling the City's plea to the jurisdiction.

The ordinance provision banning non-homestead short-term rentals significantly affects property owners' substantial interests in well-recognized property rights while, on the record before us, serving a minimal, if any, public interest. Therefore, the provision is unconstitutionally retroactive, and we will reverse the district court's judgment on this issue and render judgment declaring the provision void. The ordinance provision restricting assembly infringes on Texans' fundamental right to assemble because it limits peaceable assembly on private property. Therefore, because the City has not demonstrated that the provision is narrowly tailored to serve a compelling state interest, the provision violates the Texas Constitution's guarantee to due course of law, and we will reverse the district court's judgment on this issue and render judgment declaring the provision void. We will affirm the remainder of the judgment and remand the case to the district court for further proceedings consistent with this opinion.

Background

In the last decade, individuals have increasingly turned to short-term rentals—typically, privately owned homes or apartments that are leased for a few days or weeks at a

time—for lodging while traveling. *See, e.g.*, Donald J. Kochan, *The Sharing Stick in the Property Rights Bundle*, 86 U. Cin. L. Rev. 893, 894–95 (2018) (collecting sources). As short-term rentals have become more common, local governments have looked for ways to balance the rights of short-term rental property owners and tenants against the concerns of neighboring properties. In 2012, the City adopted an ordinance to regulate Austinites' ability to rent their properties through amendments to the zoning and land-development chapters of its municipal code. *See* Austin, Tex., Ordinance 20120802-122 (Aug. 2, 2012) (codified at Austin, Tex., Code Chs. 25-2 and 25-12). That ordinance defined short-term rental use as "the rental of a residential dwelling unit or accessory building, other than a unit or building associated with a group residential use, on a temporary or transient basis." *Id.* § 25-2-3(10). The 2012 ordinance also required property owners to satisfy eligibility criteria and obtain a license before being allowed to rent their property on a short-term basis. *Id*. §§ 25-2-788(B), 25-2-789(B).

In 2016, after conducting several studies and holding hearings regarding short-term rentals and their role in the community, the City adopted an ordinance amending its regulations of short-term rentals. *See* Austin, Tex., Ordinance 20160223-A.1. As amended by the 2016 ordinance, the City Code created three classes of short-term rentals:

- Type 1—single-family residence that is "owner-occupied or is associated with an owner-occupied principal residential unit," Austin, Tex., Code § 25-2-788(A);
- Type 2—single-family residence that "is not owner-occupied and is not associated with an owner-occupied principal residential unit," *id.* § 25-2-789(A); and
- Type 3—residence that is "part of a multi-family residential use," *id.* § 25-2-790(A).[1]

[1] The parties agree that, as a practical matter, type-1 status is determined based on whether the owner claims the property as a homestead for tax purposes. *See* Austin, Tex., Code § 25-2-788.

The ordinance immediately suspended the licensing of any new type-2 short-term rentals and established April 1, 2022, as the termination date for all type-2 rentals. *See id*. § 25-2-950.

The 2016 ordinance also imposed several restrictions on properties operated as short-term rentals, including:

- banning all assemblies, including "a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping," whether inside or outside, after 10:00 p.m.;
- banning outdoor assemblies of more than six adults at any time;
- prohibiting more than six unrelated adults or ten related adults from using the property at any time; and
- giving City officials authority to "enter, examine, and survey" the short-term rentals to ensure compliance with applicable provisions of Code.

See id. §§ 25-2-795(D)–(G), 25-12-213-1301. Failure to comply with these provisions is punishable by a fine of up to $2,000 and possible revocation of the operating license. *See id*. § 25-1-462.

In response to the ordinance, the Property Owners sued the City for declaratory and injunctive relief, alleging that section 25-2-795's assembly and occupancy restrictions and section 25-2-950's ban on type-2 short-term rentals violate, facially and as applied, constitutional rights to privacy, freedom of assembly and association, due course of law, equal protection, and freedom from unwarranted searches. *See* Tex. Const. art. I, §§ 3 (equal protection), 9 (searches), 19 (due course of law), 27 (assembly); *Texas State Emps. Union v. Texas Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203, 205 (Tex. 1987) (individual privacy).[2] The Property Owners also sought attorney fees. *See* Tex. Civ. Prac. & Rem. Code § 37.009. The State of

[2] The Property Owners bring their privacy, assembly, and association claims within the framework of the due-course-of-law and equal-protection clauses of the Texas Constitution.

Texas intervened in the Property Owners' case, arguing that section 25-2-950's termination of type-2 operating licenses by 2022 is unconstitutional as a retroactive law and an uncompensated taking of private property. *See* Tex. Const. art. I, §§ 16 (retroactive laws), 17 (takings).

The Property Owners and the State moved for summary judgment on their constitutional challenges to the ordinance, providing evidentiary exhibits in support of those motions.[3] The City filed a plea to the jurisdiction and a no-evidence motion for summary judgment. The State and the City each filed objections to certain aspects of the evidentiary record. The district court denied the traditional motions for summary judgment, overruled the City's plea to the jurisdiction, granted the City's motion for no-evidence summary judgment, and sustained in part the State's and the City's respective evidentiary objections. The Property Owners and the State appeal from the district court's order denying their motions for summary judgment and granting the City's motion for summary judgment. The State also appeals from the district court's order sustaining the City's evidentiary objections. The City cross-appeals from the district court's order overruling its plea to the jurisdiction and from the order sustaining the State's evidentiary challenges.

Jurisdiction

Because it implicates our authority to reach the merits of this dispute, we begin by addressing the district court's order overruling the City's plea to the jurisdiction. *See Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009) (noting that jurisdictional questions must be addressed before merits). A trial court's jurisdiction is a question of law we review de novo. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "[I]f a plea to the jurisdiction

[3] The Property Owners' motion for summary judgment did not include their request for attorney fees.

challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do." *Id*. at 227 (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000)). "[I]n a case in which the jurisdictional challenge implicates the merits of the plaintiffs' cause of action"—as is the case here—"and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists." *Id*. "If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder." *Id*. at 227–28.

The City's plea to the jurisdiction challenges the State's standing to intervene in this dispute, the Property Owners' standing to bring claims on behalf of tenants, and the ripeness of the underlying claims. The plea also invokes governmental immunity, arguing that the Property Owners and the State have not pleaded any claim for which the City's immunity is waived or otherwise inapplicable. We address these arguments in turn.

A. Standing

The City contests the State's standing to intervene in this matter and the Property Owners' standing to bring claims on behalf of their tenants. "Standing is implicit in the concept of subject matter jurisdiction," and is therefore properly challenged in a plea to the jurisdiction. *Texas Ass'n of Bus. v. Texas Air Control Bd*., 852 S.W.2d 440, 444 (Tex. 1993). In general, to establish standing to seek redress for injury, "a plaintiff must be personally aggrieved." *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008) (citing *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist*., 925 S.W.2d 659, 661 (Tex. 1996)). In addition, "his alleged injury must be concrete and particularized, actual or imminent, not hypothetical." *Id*. at 304–05 (citing *Raines v. Byrd*, 521 U.S. 811, 819 (1997)); *see Lujan v. Defenders of Wildlife*, 504 U.S.

555, 560–561 (1992); *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001); *Texas Ass'n of Bus.*, 852 S.W.2d at 444. "A plaintiff does not lack standing simply because he cannot prevail on the merits of his claim; he lacks standing because his claim of injury is too slight for a court to afford redress." *Inman*, 252 S.W.3d at 305. These common-law standards, however, are not dispositive if the Legislature has conferred standing by statute. *See In re Sullivan*, 157 S.W.3d 911, 915 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding) (considering standing under certain provisions of Texas Family Code); *but see Grossman v. Wolfe*, 578 S.W.3d 250, 257 n.4 (Tex. App.—Austin 2019, pet. denied) (noting that U.S. Supreme Court has rejected statutorily created standing).

The State's standing to intervene in this matter is unambiguously conferred by the Uniform Declaratory Judgment Act, which provides:

> In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.

Tex. Civ. Prac. & Rem. Code § 37.006(b). The Property Owners filed suit in 2016, raising a constitutional challenge to the amendments enacted by ordinance 20160223-A.1. If they prevail, the unconstitutional provisions will be declared void. The suit therefore "involves the validity of a municipal ordinance" such that the State is "entitled to be heard" in this proceeding. *Id.*; *see Texas Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425, 433–34 (Tex. App.—Austin 2018, pet. filed) (explaining State's right to intervene in constitutional challenge to municipal ordinance).

The City also contests the Property Owners' right to raise constitutional claims on behalf of their tenants. "Generally, courts must analyze the standing of each individual plaintiff to bring each individual claim he or she alleges." *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015) (citing *Heckman v. Williamson County*, 369 S.W.3d 137, 152 (Tex. 2012)). "However, 'where there are multiple plaintiffs in a case who seek injunctive or declaratory relief . . . the court need not analyze the standing of more than one plaintiff—so long as [one] plaintiff has standing to pursue as much or more relief than any of the other plaintiffs.'" *Id*. (quoting *Heckman*, 369 S.W.3d at 152 n.64). "The reasoning is fairly simple: if one plaintiff prevails on the merits, the same prospective relief will issue regardless of the standing of the other plaintiffs." *Id*. (citations omitted). Here, at least one of the Property Owners is both an operating licensee and a tenant of short-term rentals. That property owner asks the court to enjoin enforcement of the ordinance and to declare it void in part due to allegedly unconstitutional provisions restricting short-term tenants' rights to association, assembly, freedom of movement, and privacy. As a tenant, she herself "ha[s] suffered some actual restriction" under the challenged provisions, and she seeks the greatest possible prospective relief the court might afford. *See id*. She therefore has standing to pursue these claims, and "we need not analyze the standing" of the remaining Property Owners with respect to claims brought on behalf of short-term tenants. *See id*.

B. Ripeness

The City contends that because parts of the ordinance do not take effect until 2022 and because—in the City's view—the Property Owners have not yet suffered any concrete injury, any challenge to the ordinance is not yet ripe. We disagree.

Ripeness is a jurisdictional prerequisite to suit. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442–43 (Tex. 1998). A claim ripens upon the existence of "a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) (quoting *Bexar–Medina–Atascosa Ctys. Water Control & Improvement Dist. No. 1 v. Medina Lake Prot. Ass'n*, 640 S.W.2d 778, 779–80 (Tex. App.—San Antonio 1982, writ ref'd n.r.e)). Ripeness requires "a live, non-abstract question of law that, if decided, would have a binding effect on the parties." *Heckman*, 369 S.W.3d at 147 (citing *Brown*, 53 S.W.3d at 305). Ripeness is "peculiarly a question of timing." *Perry v. Del Rio*, 66 S.W.3d 239, 249–51 (Tex. 2001) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974)). A case is not ripe if it involves "uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Patterson*, 971 S.W.2d at 442 (quoting 13A Charles A. Wright et al., *Federal Practice & Procedure* § 3532, at 112 (2d ed. 1984)).

This controversy is ripe for adjudication. The Property Owners raise a facial challenge to an ordinance adopted in February of 2016. Some provisions took effect immediately, others were retroactively applied to certain license applications filed in 2015, and others will take effect beginning April 1, 2022. It is undisputed that these provisions limit the Property Owners' rights with respect to their properties, including restricting the number of tenants, the term of tenancy, and the permissible uses of the property during short-term rental

tenancy. The ordinance is already in effect, so there is no risk that its impact "may not occur at all." *Id.* at 442. Facial challenges to ordinances are "ripe upon enactment because at that moment the 'permissible uses of the property [were] known to a reasonable degree of certainty.'" *Hallco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 60 (Tex. 2006) (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001)) (alteration in original).

And while the City argues the Property Owners have not yet "suffered economic harm" from the provision terminating type-2 operation in 2022, that fact would not forestall adjudication of this dispute even assuming, for the sake of argument, it is an accurate characterization of the circumstances. As a general matter, courts have long recognized that an aggrieved plaintiff may seek redress "when a wrongful act causes some legal injury . . . even if all resulting damages have not yet occurred." *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996) (citing *Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 262 (Tex. 1994); *Quinn v. Press*, 140 S.W.2d 438, 440 (Tex. 1940)). But more specifically, because the plaintiffs and intervenors allege a facial abridgment of their most fundamental rights under the United States and Texas Constitutions, the City's alleged constitutional overreach itself is an injury from which the Property Owners and the State seek relief. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392–93 (1988) (finding jurisdiction over facial challenge where statute had not yet been enforced and no injury in fact had yet occurred); *City of Laredo v. Laredo Merchants Assoc.*, 550 S.W.3d 586, 590 (Tex. 2018) (allowing constitutional challenge to ordinance where suit filed before effective date); *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626–27 (Tex. 1996) (rejecting State's argument that plaintiffs "must actually be deprived of their property before they can maintain a [facial] challenge to this statute"). The district court did not err in rejecting the City's ripeness arguments.

C. Jurisdiction over the Subject Matter

In its final challenge to jurisdiction, the City invokes its immunity from suit. To overcome governmental immunity from suit and thereby establish jurisdiction over this case, the Property Owners must plead a viable claim for which governmental immunity is waived or otherwise inapplicable. *See Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 475 (Tex. 2012). Governmental immunity does not shield the City from viable claims for relief from unconstitutional acts. *See General Servs. Comm'n v. Little-Tex Insulation Co*., 39 S.W.3d 591, 598 (Tex. 2001) ("[T]he doctrine does not shield the State from an action for compensation under the takings clause." (citations omitted)); *Board of Trustees v. O'Rourke*, 405 S.W.3d 228, 237 (Tex. App.—Houston [1st Dist.] 2013, no pet.) ("Generally, governmental immunity does not shield a governmental entity from a suit for declaratory relief based on alleged constitutional violations." (citations omitted)). Here, both the Property Owners and the State have raised constitutional challenges to the City's ordinance. As discussed in further detail in our analysis of summary judgment, two of these claims are meritorious—and thus viable—challenges to the constitutionality of the ordinance. Accordingly, the parties have successfully established the district court's jurisdiction over the controversy, and the court did not err in overruling the City's plea to the jurisdiction.

We overrule the City's jurisdictional issues.

Evidentiary Rulings

Before turning to the district court's orders granting the City's no-evidence motion for summary judgment and denying the two traditional motions, we must determine which evidence is properly before the court. *See Fort Brown Villas III Condo. Ass'n, Inc. v.*

Gillenwater, 285 S.W.3d 879, 882 (Tex. 2009) (explaining importance of evidentiary rulings in context of no-evidence summary judgment). The State and the City filed objections to evidence offered on the cross-motions. The district court sustained these objections in part, and two evidentiary exhibits remain at issue on appeal. The State appeals from the district court's order excluding sworn declarations obtained from several owners of short-term rentals in the Austin area, and the City challenges the exclusion of thousands of pages documenting the legislative history of the ordinance, which the district court excluded as unnecessarily voluminous. A district court's decision to exclude evidence is reviewed for abuse of discretion. *Capital Metro. Transp. Auth v. Central of Tenn. Ry. & Nav. Co*., 114 S.W.3d 573, 583 (Tex. App.—Austin 2003, pet. denied). "A trial court abuses its discretion if it acts without reference to any guiding rules and principles." *Id*. (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)).

A. Exclusion of State's Affidavits

The district court excluded several sworn declarations the State had obtained from owners of short-term rentals, accepting the City's argument that the declarations are irrelevant and that the names of the declarants were not timely disclosed by the State. We agree with the State that the district court abused its discretion in sustaining the objection.

To begin with, this evidence is relevant. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Tex. R. Evid. 401. Relevant evidence must be admitted unless admission is otherwise prohibited by state or federal law. *Id*. R. 402. The disputed declarations include, for example, evidence of how long short-term rentals have existed in Austin, what makes them profitable, where they are located, how often they are occupied, and

the financial impact the owners anticipate from the ordinance. This information is critical to "determining the action"—that is, determining whether the ordinance violates any constitutional rights—and is therefore relevant.

This relevant evidence was not rendered inadmissible by the State's allegedly untimely disclosure of the names of the declarants. "A party must respond to written discovery in writing within the time provided by court order or these rules." Tex. R. Civ. P. 193.1. "When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made." *Id*. "If a party learns that the party's response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct, the party must amend or supplement the response . . . ." *Id*. R. 193.5. "A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed . . . unless the court finds that: (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties." *Id*. R. 193.6.

Under the circumstances of this case, the State timely disclosed its intent to rely on testimony from these owners. In mid-March 2017, before the close of discovery, the State explained in its response to the City's request for disclosure that "individuals who currently hold, or were previously granted, Short-Term Rental (STR) permits by [the City], and the individuals who testified at any public hearing on short-term rental regulations" were persons who had knowledge of facts relevant to its case. *See id.* R. 194.2(e) (authorizing party to request disclosure of names "of persons having knowledge of relevant facts"). When the State made this

general disclosure, the City had recently—mid-February—provided discovery responses listing the names of all the short-term rental licensees, but the State had not yet had time to identify from that list the specific witnesses that it intended to rely on and the evidence those witnesses would provide. The State's response to the City's request was therefore complete "based on all information reasonably available to [the State] or its attorney at the time the response [wa]s made." *Id*. R. 193.1.

Once the State identified its witnesses and the evidence those witnesses would provide, it disclosed that information to the City in a supplemental disclosure. *See id.* R. 193.5(a) (requiring responding party to amend or supplement incomplete or incorrect discovery responses "reasonably promptly"). This supplementation occurred in mid-May 2017; three months after the State had received the evidentiary information from the City and approximately six months before the hearing at which the declarations were offered as evidence. As such, the State's supplementation was reasonably prompt. *See id.*; *see also id.* R. 193.5(b) (amended or supplemental responses made less than 30 days before trial are presumed to not be reasonably prompt). Thus, the district court abused its discretion in sustaining the City's objection and excluding the declarations of Carole Price, Cary Reynolds, Pete Gilcrease, Gregory Cribbs, Rachel Nation, and Travis Sommerville. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (noting that failure to analyze or apply law correctly constitutes abuse of discretion).

We sustain the State's evidentiary issue.

B. Exclusion of City's Legislative History

The City complains of the district court's exclusion of its proffered legislative history, which the State had argued was "too voluminous" to be useful. We find it unnecessary to decide whether the exclusion was erroneous, as we may take judicial notice of this history.

"The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be question." Tex. R. Evid. 201. The City offers this history primarily as evidence of its need to address public concerns regarding the presence of short-term rentals in certain parts of Austin. Setting aside the question of whether the hearing testimony and other legislative history accurately characterize the impact of short-term rentals, the fact that these concerns were previously raised by residents and other stakeholders is a matter of municipal record and "is not subject to reasonable dispute." *Id.* We therefore will incorporate the aspects of this history that the City relies on in our analysis of the merits of this dispute.

Summary Judgment

The district court granted the City's no-evidence motion for summary judgment and denied the traditional motions filed by the Property Owners and the State. "When . . . parties move for summary judgment on overlapping issues and the trial court grants one motion and denies the other[s], we consider the summary-judgment evidence presented by both sides and determine all questions presented." *Texas Ass'n of Acupuncture & Oriental Med. v. Texas Bd. of Chiropractic Exam'rs*, 524 S.W.3d 734, 738 (citing *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)). "If we determine that the trial court erred, we render the judgment the trial court should have rendered." *Id*. We make this determination de novo. *Id*.

The State and the Property Owners filed traditional motions for summary judgment on their claims regarding the constitutionality of the ordinance. The City filed a cross-motion for summary judgment challenging those constitutionality claims on no-evidence

grounds. "Summary judgment is proper when the summary-judgment evidence shows that there are no disputed issues of material fact and that the movant is entitled to judgment as a matter of law." *Texas Ass'n of Acupuncture*, 524 S.W.3d at 738 (citing Tex. R. Civ. P. 166a(c)). "A movant seeking traditional summary judgment on its own cause of action has the initial burden of establishing its entitlement to judgment as a matter of law by conclusively establishing each element of its cause of action." *Id*. (citing *Trudy's Tex. Star, Inc. v. City of Austin*, 307 S.W.3d 894, 905 (Tex. App.—Austin 2010, no pet.)). "To obtain traditional summary judgment on an opposing party's claims, the movant must conclusively negate at least one element of each of the claims or conclusively establish each element of an affirmative defense." *Id*. (citing *Lakey v. Taylor*, 435 S.W.3d 309, 316 (Tex. App.—Austin 2014, no pet.)).

A party may move for no-evidence summary judgment when, "[a]fter adequate time for discovery[,] . . . there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial." Tex. R. Civ. P. 166a(i). "The motion must state the elements as to which there is no evidence." *Id*. "The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact." *Id*. When reviewing a no-evidence summary judgment, we "review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (citing *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581–82 (Tex. 2006)).

A. The State's Retroactivity Claim

The State argues that section 25-2-950 of the Austin City Code, which terminates all type-2 rentals by 2022, is unconstitutionally retroactive. We agree.

The Texas Constitution prohibits the creation of retroactive laws. *See* Tex. Const., art. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made."). The prohibition against retroactive laws has two fundamental objectives: "[I]t protects the people's reasonable, settled expectations"—i.e., "the rules should not change after the game has been played"—and it "protects against abuses of legislative power." *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 139 (Tex. 2010) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265–266 (1994)).

A retroactive law is one that extends to matters that occurred in the past. *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 707 (Tex. 2014) (citing *Robinson*, 335 S.W.3d at 138). "A retroactive statute is one which gives preenactment conduct a different legal effect from that which it would have had without the passage of the statute." *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 60 (Tex. 2014) (quoting Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 692 (1960)). The State contends that the ordinance provision terminating all type-2 operating licenses is retroactive because it "tak[es] away th[e] fundamental and settled property right" to lease one's real estate under the most desirable terms. The City disagrees with the State's characterization of the ordinance's effect, but it does not dispute that the ordinance is retroactive. We agree that section 25-2-950 operates to eliminate well-established and settled property rights that existed before the ordinance's adoption. *See Robinson*, 335 S.W.3d at 139 (noting that "[m]ost statutes operate to change existing conditions"); Hochman, 73 Harv. L. Rev. at 692.

But not all retroactive laws are unconstitutional. *Robinson*, 335 S.W.3d at 139. ("Mere retroactivity is not sufficient to invalidate a statute."). To determine whether a retroactive law violates the Texas Constitution's prohibition against retroactive laws, we must consider three factors in light of the prohibition's objectives of protecting settled expectations and of preventing legislative abuses: (1) "the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings;" (2) "the nature of the prior right impaired by the statute;" and (3) "the extent of the impairment." *Id.* at 145. This three-part test acknowledges the heavy presumption against retroactive laws by requiring a compelling public interest to overcome the presumption. *Tenet*, 445 S.W.3d at 707 (citing *Robinson*, 335 S.W.3d at 145). But it also appropriately encompasses the notion that "statutes are not to be set aside lightly." *Id*.

We begin by considering the first *Robinson* factor, "the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings," to determine if there is a compelling public interest. *Robinson*, 335 S.W.3d at 145; *see Tenet*, 445 S.W.3d at 707. Here, as was the case regarding the statute deemed unconstitutionally retroactive in *Robinson*, the City made no findings to justify the ordinance's ban on type-2 rentals. Based on the legislative record before us and the other facts relevant to determining the reasons for the City's actions, *see Robinson*, 335 S.W.3d at 145 (considering entire legislative record and additional related information in applying its three-prong test), the City's purported public interest for banning type-2 rentals is slight. The City contends that it enacted short-term rental regulations to address the following public-interest issues relating to short-term rentals:

- Public-health concerns about over-occupancy affecting the sewage system and creating fire hazards and about "bad actor" tenants who dump trash in the neighborhood and urinate in public;

- public-safety concerns regarding strangers to neighborhoods, public intoxication, and open drug use;

- general-welfare concerns about noise, loud music, vulgarity, and illegal parking; and

- the negative impact on historic Austin neighborhoods, specifically concerns of residents that that short-term rentals alter a neighborhood's quality of life and affect housing affordability.

The City does not explain which of these public-interest issues supports a ban on type-2 short-term rentals, and notably, there is nothing in the record before us to show that any of these stated concerns is specific or limited to type-2 short-term rentals. Type-2 short-term rentals are simply single-family residences that are not owner-occupied or associated with an owner-occupied principal residential unit—i.e., they are not designated as the owner's homestead for tax purposes. *See* Austin, Tex., Code § 25-2-789(A).

More importantly, nothing in the record supports a conclusion that a ban on type-2 rentals would resolve or prevent the stated concerns. In fact, many of the concerns cited by the City are the types of problems that can be and already are prohibited by state law or by City ordinances banning such practices. *See* Tex. Penal Code §§ 42.01 (disorderly conduct), 49.02 (public intoxication); Austin, Tex., Code §§ 9-2-1–9-2-65 (noise ordinance), 9-4-15 (prohibiting public urination and defecation), 10-5-42–10-5-45 (littering ordinance), 12-5-1–12-2-44 (parking ordinance). Relatedly, nothing in the record shows that these issues have been problems with or specific to short-term rentals in the past. To the contrary, the record shows that, in the four years preceding the adoption of the ordinance, the City did not issue a single citation to a licensed short-term rental owner or guest for violating the City's noise, trash, or parking ordinances. And

during this same four-year period, the City issued notices of violations—not citations—to licensed short-term rentals only ten times: seven for alleged overoccupancy, two for failure to remove trash receptacles from the curb in a timely manner, one for debris in the yard, and none for noise or parking issues. And the City has not initiated a single proceeding to remove a property owner's short-term rental license in response to complaints about parties. Further, the record shows that short-term rentals do not receive a disproportionate number of complaints from neighbors. In fact, as the City acknowledges, "short-term rental properties have significantly fewer 311 calls and significantly fewer 911 calls than other single-family properties."

We also note that a ban on type-2 short-term rentals does not advance a zoning interest because both short-term rentals and owner-occupied homes are residential in nature. *See Tarr v. Timberwood Park Owners Ass'n, Inc.*, 556 S.W.3d 274, 291 (Tex. 2018) (declining to interpret "residential" as prohibiting short-term rentals). And, in fact, the City treats short-term rentals as residential for purposes of its own laws. *See* Austin, Tex., Code § 25-2-4(B).

In sum, based on the record before us, we conclude that the purported public interest served by the ordinance's ban on type-2 short-term rentals cannot be considered compelling. The City did not make express findings as to the ordinance. Nothing in the record before us suggests that the City's reasons for banning type-2 rentals address concerns that are particular to type-2 rentals or that the ban itself would actually resolve any purported concerns. *See Tenet*, 445 S.W.3d at 707 (holding that retroactive provision of legislation that "was a comprehensive overhaul of Texas medical malpractice law" served compelling public interest); *Synatzske*, 438 S.W.3d at 58 (holding that retroactive legislation aimed at resolving asbestos-related litigation crisis and supported by legislative fact findings served compelling public

interest); *Robinson*, 335 S.W.3d at 143–44 (holding that retroactive legislation ostensibly enacted for sole benefit of one entity and not supported by legislative fact findings did not serve compelling public interest).

But even if we were to determine that the City's ban on type-2 rentals advances a compelling interest, our consideration of the remaining *Robinson* factors, which require that we balance the purpose against the nature of the prior right and the extent to which the statute impairs that right, would still require us to conclude that the ban is unconstitutionally retroactive. *See Robinson*, 335 S.W.3d at 147–48. Regarding the nature of the prior right, we consider not whether the impaired right was "vested," but the extent to which that right was "settled." [4] *Id.* at 142–43, 147, 149. In *Robinson*, for example, the Court held that the plaintiffs had a settled expectation that the Legislature would not extinguish their already filed common-law personal injury suit. *Id*. at 147–49. By contrast, the supreme court held in *Synatzke* that plaintiffs asserting a statutory cause of action after the Legislature altered certain aspects of that statute had no settled expectation in the previous version of the statute because "the Legislature may repeal a statute and immediately eliminate any right or remedy that the statute previously granted." .

Private property ownership is a fundamental right. *Hearts Bluff*, 381 S.W.3d at 476 (citing *Severance v. Patterson*, 370 S.W.3d 705 (Tex. 2012)). "The right of property is the right to use and enjoy, or dispose of the same, in a lawful manner and for a lawful purpose." *Id.*; *see Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435–36 (1982) (noting that

[4] Ignoring recent precedent from our high court, the City incorrectly engages in a vested-rights analysis to determine whether the ordinance is unconstitutionally retroactive. *See Robinson*, 335 S.W.3d at 143 ("What constitutes an impairment of vested rights is too much in the eye of the beholder to serve as a test for unconstitutional retroactivity.").

property owners have "rights to possess, use and dispose of" their property). The ability to lease property is a fundamental privilege of property ownership. *See Terrace v. Thompson*, 263 U.S. 197, 17–18 (1923) (noting that "essential attributes of property" include "the right to use, lease and dispose of it for lawful purposes"); *Calcasieu Lumber Co. v. Harris*, 13 S.W. 453, 454 (Tex. 1890) ("The ownership of land, when the estate is a fee, carries with it the right to use the land in any manner not hurtful to others; and the right to lease it to others, and therefore derive profit, is an incident of such ownership."); *see also* Ross, Thomas, *Metaphor and Paradox*, 23 Ga. L. Rev. 1053, 1056 (1989) (noting that "rights to sell, lease, give, and possess" property "are the sticks which together constitute" the metaphorical bundle). Granted, the right to lease property for a profit can be subject to restriction or regulation under certain circumstances, *see Loretto*, 458 U.S. at 436 (noting in physical-takings case that "deprivation of the right to use and obtain a profit from company is not, in every case, independently sufficient to establish a taking"); *Severance*, 370 S.W.3d at 709–10 (noting few limitations on property rights), but the right to lease is nevertheless plainly an established one, *see Tenet*, 445 S.W.3d at 708 (analyzing whether claim was established).

And as for the specific right at issue here—i.e., to lease one's property on a short-term basis—the City acknowledges that Austinites have long exercised their right to lease their property by housing short-term tenants. In fact, the City admits, and the record establishes, that short-term rentals are an "established practice" and a "historically . . . allowable use." The record also shows that property owners, including some of the appellants here, who rented their individual properties as type-2 short-term rentals before the City's adoption of the provision eliminating those types of rentals did so after investing significant time and money into the

property for that purpose. The record also shows that the City's ban on type-2 short-term rentals will result in a loss of income for the property owners.

Accordingly, based on the record before us and the nature of real property rights, we conclude that owners of type-2 rental properties have a settled interest in their right to lease their property short term.

The City emphasizes that the ban does not go into effect until 2022, suggesting that the grace period would allow property owners to adjust their investment strategy to prepare for the discontinuance of type-2 short-term rentals. *See Tenet*, 445 S.W.3d at 708–09 (discussing grace period afforded by retroactive legislation); *City of Tyler v. Likes*, 962 S.W.2d 489, 502 (Tex. 1997) (determining that applying immunity provisions of Texas Tort Claims Act was not unconstitutionally retroactive when the plaintiff had two months to sue before it became effective). But the issue here is not about property owners' right to use their property in a certain way—it is about owners of type-2 short-term rentals retaining their well-settled right to lease their property.

We now turn to the third *Robinson* factor, which directs us to consider the extent of the ordinance's impairment to these settled rights. *See Robinson*, 335 S.W.3d at 145. The effect of the ordinance on the property right at issue here is clear—the City's ordinance eliminates the right to rent property short term if the property owner does not occupy the property. The elimination of a right plainly has a significant impact on that right. *See id.* at 148 (concluding that statute that extinguished plaintiff's claim in Texas had a "significant[] impact[]").

Because the record before us shows that the ordinance serves a minimal, if any, public interest while having a significant impact on property owners' substantial interest in a

well-recognized property right, we hold that section 25-2-950's elimination of type-2 short-term rentals is unconstitutionally retroactive. *See id.* at 150; *see also Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 363 S.W.3d 192, 204 (Tex. 2012) (noting that preservation of property rights is "one of the most important purposes"—in fact, "[t]he great and chief end"—of government). Accordingly, we affirm the State's first issue on appeal. And having determined that section 25-2-950 is unconstitutionally retroactive, we need not address the State's and the Property Owners' remaining constitutional challenges to that same section. *See* Tex. R. App. P. 47.1 (requiring appellate court to hand down "opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal").

B. Property Owner's Assembly Clause Claim

The Property Owners assert that section 25-2-795 of the Austin City Code, which bans types of conduct and assembly at short-term rental properties, violates the Texas Constitution's due-course-of-law provision. *See* Tex. Const. art. I, § 19 (due course of law); Austin, Tex., Code § 25-2-795 (forbidding property owner or tenant from using short-term rental for assemblies of any kind between 10pm and 7am and for outside assemblies of more than six adults between 7am and 10pm; and banning more than six unrelated adults (or ten related adults) from being present on the property at any time). The Texas Constitution provides: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. Similarly, the federal due-process clause provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S.

Const. amend. XIV, § 1. While the Texas Constitution is textually different in that it refers to "due course" rather than "due process," Texas courts regard these terms as without substantive distinction unless and until a party demonstrates otherwise. *See University of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995) (citing *Mellinger v. City of Houston*, 3 S.W. 249, 252–53 (Tex. 1887)). Under federal and state guarantees of due process, the government may not infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301–02 (1993). The Property Owners contend that section 25-2-795 is subject to this strict-scrutiny review because it infringes on and limits short-term rental tenants' fundamental, constitutionally secured rights to freedom of assembly, association, movement, and privacy. *See id.* We conclude that section 25-2-795 fails to pass muster under strict-scrutiny review for violation of the Property Owners' freedom of assembly.[5]

1. The "Assembly" Clause

Both the U.S. and Texas constitutions contain assembly clauses as follows, respectively:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

[5] We therefore do not address the Property Owners' remaining challenges to this provision.

> The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Tex. Const. art. 1, § 27. The Texas assembly clause differs from its federal counterpart in that it includes a "common good" requirement. The First Congress of 1789 considered including a requirement that the assembly be for "the" or "their" "common good"—e.g., James Madison offered "The people shall not be restrained from peaceably assembling and consulting for their common good."—but it ultimately rejected such text. *See* John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 22 (2012) (citing *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* 140 (Neil H. Cogan ed., 1997)).

2. History of the Federal Assembly Clause

In the nineteenth century, the United States Supreme Court concluded that the First Amendment did not protect the right to assemble unless "the purpose of the assembly was to petition the government for a redress of grievances." *Presser v. Illinois*, 116 U.S. 252, 267 (1886) (relying on dicta in *United States v. Cruikshank*, 92 U.S. 542 (1875)). *Presser* is the only Supreme Court opinion that has limited the right of assembly in this way, and commentators suggest that the limitation was the result of a judicial misreading of the text of the First Amendment's assembly language. *See* Inazu, at 22. Otherwise, the right to assemble featured prominently in the Supreme Court's First Amendment jurisprudence. For example, in his concurrence in *Whitney v. California*, Justice Brandeis treated free speech and assembly rights as coequal for the purposes of First Amendment analysis:

> Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means

> indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

274 U.S. 357, 375 (1927) (Brandeis, J., concurring). Soon thereafter, the Assembly Clause was incorporated against the states via the Due Process Clause of the Fourteenth Amendment. *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937). And in more than one hundred subsequent opinions, the Court continued to recognize the assembly clause as a right related to, but nonetheless independent from, free speech. *See* Inazu, 26, 50 ("The Court had linked these two freedoms [speech and assembly] only once before; after *Whitney*, the nexus occurs in more than one hundred of its opinions."); *see, e.g.*, *Thomas v. Collins*, 323 U.S. 516, 530 (1945) ("It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, and therefore are united in the First Article's assurance." (citation omitted)).

Commentators have indicated that the federal right to assemble has since fallen to the wayside. In the 1950s, the Supreme Court introduced an atextual right of the First Amendment, the "freedom of association." Nicholas S. Brod, *Rethinking a Reinvigorated Right to Assemble* 63 Duke L. J. 155, 159 (2013) (citing *e.g.*, *American Commc'ns Ass'n v. Douds*, 339 U.S. 382, 409 (1950)). At first, the "freedom of association" only sporadically replaced the right to assemble. *See id*. at 159 (*comparing Douds*, 339 U.S. at 400 ("In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech

and assembly . . . ."), with *Douds*, 339 U.S. at 409 ("[T]he effect of the statute in proscribing beliefs—like its effect in restraining speech or freedom of association—must be carefully weighed by the courts . . . .")). But eventually the right to association generally displaced the right to assemble. *Id.* (noting that Supreme Court has identified as "indispensable liberties" the rights of "speech, press, [[and] association") (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461 (1958)). And, for better or worse, both assembly and association came to be treated by the Supreme Court as secondary rights enabling speech rather than coequal rights independent of speech. *See id*. (citing *NAACP*, 357 U.S. at 460 ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.")).

Nevertheless, the United States Supreme Court case law continued to affirm the independence and importance of the federal right to assemble. In *Coates v. City of Cincinnati*, the high court considered an ordinance making it a criminal offense for "three or more persons to assemble" on sidewalks "in a manner annoying to persons passing by." 402 U.S. 611 (1971). The Supreme Court held that the word "annoying" is unconstitutionally vague and that "[t]he ordinance also violates the constitutional right of free assembly and association" because "[o]ur decisions establish that mere public intolerance or animosity cannot be the basis for abridgement of these constitutional freedoms." *Id.* at 615. In support of its holding, the Supreme Court quoted a municipal court decision striking down a similar ordinance:

> "Under the [ordinance provisions], arrests and prosecutions, as in the present instance, would have been effective as against Edmund Pendleton, Peyton Randolph, Richard Henry Lee, George Wythe, Patrick Henry, Thomas Jefferson, George Washington and others

> for loitering and congregating in front of Raleigh Tavern on Duke of Gloucester Street in Williamsburg, Virginia, at any time during the summer of 1774 to the great annoyance of Governor Dunsmore and his colonial constables."

Id. (quoting *City of Toledo v. Sims*, 169 N.E.2d 516, 520 (Toledo Mun. Ct. 1960)).

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court noted that "[f]rom the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment Rights with which it was deliberately linked by the draftsmen." 448 U.S. 555, 577 (1980). The Court also noted that the First Congress debated whether there was a "need separately to assert the right of assembly because it was subsumed in freedom of speech," but that the motion to strike "assembly" was defeated. *Id.* at n.13. The Supreme Court quoted Mr. Page of Virginia as asserting during the debate:

> [A]t times "such rights have been opposed," and that "people have . . . been prevented from assembling together on their lawful occasions":
>
> "[T]herefore it is well to guard against such stretches of authority, by inserting the privilege in the declaration of rights. If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause."

Id. (quoting 1 Annals of Cong. 731 (1789)). Thus, notwithstanding some outside commentary, the U.S. Supreme Court's case law supports a vibrant and historically grounded constitutional right to assemble.

3. Texas's Right to Assemble

In Texas, so far, the right to assemble has received little attention. The few cases that involve assembly claims under Texas's constitution recognize the existence and importance of the right; however, as far as we have found, none address the scope of the right to assemble. *See, e.g.*, *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 147 (Tex. 1995) (holding that there is no private right of action for damages arising under free speech and assembly sections of Texas Constitution because "anything done in violation of [Texas's bill of rights] is void"); *Bell v. Hill*, 74 S.W.2d 113, 119–20 (Tex. 1934) (recognizing that citizens' right to form political associations is protected by the U.S. Constitution's First Amendment and by Texas Constitution's assembly clause); *Faulk v. State*, 608 S.W.2d 625, 630–31 (Tex. Crim. App. 1980) (holding that Texas's riot statute did not violate right to assemble because it prohibited participation in "unlawful" assembly); *Ferguson v. State*, 610 S.W.2d 468, 470 (Tex. Crim. App. 1979) (holding that Texas riot statute did not violate right to assemble because right is limited to "peaceable assembly"); *Young v. State*, 776 S.W.2d 673, 679 (Tex. App.—Amarillo 1989, no pet.) (noting that state's ability to prohibit assemblies "must be limited in nature, be strictly construed, and must concern only assemblies . . . which, beyond cavil, threaten public peace and well being," and holding that Texas's organized-crime statute did not violate right to assemble because that right protects "the right of association for peaceful purpose" and organized-crime statute prohibits conduct that harms or disrupts the common good).

Possibly accounting for the lack of assembly-clause cases in Texas, the Texas Supreme Court has adopted the judicially created "right of association" as a right that is "instrumental to the First Amendment's free speech, assembly, and petition guarantees." *Osterberg v. Peca*, 12 S.W.3d 31, 46 (Tex. 2000). But, in contrast to the U.S. Supreme Court,

the Texas Supreme Court has never limited the application of Texas's assembly clause to situations where the purpose of the assembly was to petition the government for a redress of grievances. *See Presser*, 116 U.S. at 267. Nor has the Texas Supreme Court expressly held, or even considered whether, the judicially created "right of association" has subsumed the text of Texas's assembly clause, as some commentators have indicated has occurred with the federal assembly clause. We therefore rely on the plain text of the Texas Constitution to conclude that its assembly clause is not limited to protecting only petition-related assemblies and the judicially created "right of association" does not subsume the Texas Constitution's assembly clause in its entirety.

Our conclusion is also supported by significant textual differences in the two assembly clauses. First, the Texas Constitution grants an affirmative right to its citizens: "The citizens shall have the right . . . ." Tex. Const. art. I, § 27. The federal constitution, on the other hand, is prohibitive: "Congress shall make no law . . . ." U.S. Const. amend. I. Further, unlike the First Amendment's grouping of rights regarding religion, speech, the press, assembly, and petition, *see id.*, the Texas Constitution separates these and other rights across several sections in its Bill of Rights. *See* Tex. Const. art. I, §§ 1–34 ("Bill of Rights"). And while the grammatical structure of the First Amendment arguably tethers the right to assemble to the right to petition, Texas's assembly clause plainly creates two distinct rights by using a semicolon to separate the right to assemble from the right to petition: "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance." Tex. Const. art. I, § 27; *see* U.S. Const. amend. I (prohibiting the abridgment of "the right of the people peaceably to assemble, and to petition the Government for a redress of

grievances"); *Cruikshank*, 92 U.S. at 552 (concluding that First Amendment protected "'the right of the people to assemble and to petition the government for a redress of grievances'" (misquoting U.S. Const. amend. I)); Jason Mazzone, *Freedom's Associations*, 77 Wash. L. Rev. 639, 713 (2002) (arguing that grammatical structure of First Amendment means that assembly right can be exercised only insofar as it is used to petition the government); *cf.* Inazu, at 23 (criticizing Mazzone and arguing "the comma preceding the phrase 'and to petition' is residual from the earlier text that had described the 'right of the people peaceably to assemble and consult for their common good, and to petition the government for a redress of grievances'").

But what rights does the Texas assembly clause grant? Using the common and ordinary meaning of the text of the clause, it affirmatively grants the right to "meet together" or "to congregate" for "their" "shared or joint" "welfare or benefit." *American Heritage Dictionary of the English Language* 107, 372, 757 (5th ed. 2011) (defining "assemble," "common," and "good" respectively); *Assemble*, *The Compact Edition of the Oxford English Dictionary* (1994) (establishing that since at least the fourteenth century, "assemble" has meant "to come together into one place or company, to gather together, congregate, meet"); *see Assembly*, *The Compact Edition of the Oxford English Dictionary* (establishing that since at least the sixteenth century, "assembly" has included "gathering of persons for purposes of social entertainment"); *see also Bouillion*, 896 S.W.2d at 148 ("To interpret [the Texas] Constitution, we give effect to its plain language. We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood."). The use of "their" versus "the" to modify "common good" implies that the assembly must be for the common good of the citizens who assemble rather than the common good of the state. *See American Heritage Dictionary* at 1803–04

(defining "the" and "their" respectively); Inazu, at 22–23.[6] In other words, under the plain language of the Texas Constitution, citizens have the right to physically congregate, in a peaceable manner, for their shared welfare or benefit.

We must also determine whether the right granted in the Texas assembly clause is fundamental. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (noting that due-process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests"); *Reno*, 507 U.S. at 301–02 (noting that U.S. Constitution's substantive due-process guarantee "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). The Due Process Clause "specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,'" *Washington*, 521 U.S. 720–21 (citing *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977), and *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937); *Spring Branch I.S.D. v. Stamos*, 695 S.W.3d 556, 560 (Tex. 1985) ("Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions.").

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[6] The dissent argues that the Assembly Clause's use of the word "citizen" limits the right to matters of public discourse. *See post* at 11. But the word "citizen," as it is used in this clause and in thirteen other clauses of the Texas Constitution, simply describes the class of persons to whom the right applies; it does not delineate the substantive scope of the right itself. *See* Tex. Const. art I, §§ 19 (due course of law), 20 (outlawry), 23 (right to bear arms), 25 (quartering of soldiers), 27 (assembly and petition); art. 3, §§ 6–7 (qualifications for senators and representatives), 49-b (veterans' land board); art. 4, § 4 (qualifications for governor); art. 5, §§ 1-a (state commission on judicial conduct), 2, 7 (qualifications for judiciary); art. 5, § 2 (voter qualification); art. 9, § 9 (hospital districts); *American Heritage Dictionary* at 339 (defining "citizen" as "person owing loyalty to and entitled . . . to the protection of a state or nation").

The Texas Constitution's Bill of Rights, as discussed above, expressly recognizes and protects the right of assembly. It also provides, "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto . . . shall be void." Tex. Const. art. I, § 29. Relying on section 29, the Texas Supreme Court has held:

> The privileges guaranteed by the Bill of Rights, however, cannot be destroyed by legislation under the guise of police control. Wherever the Constitution makes a declaration of political privileges or rights or powers to be exercised by the people or the individual, it is placed beyond legislative control or interference, as much so as if the instrument had expressly declared that the individual citizen should not be deprived of those powers, privileges, and rights: and the Legislature is powerless to deprive him of those powers and privileges.

Bell, 74 S.W.2d at 120 (holding that First Amendment and Texas's assembly clause protect right to form political associations); *cf. Douds*, 339 U.S. at 399 ("The high place in which the right to speak, think, and assemble as you will was held by the Framers of the Bill of Rights and is held today by those who value liberty both as a means and an end indicates the solicitude with which we must view any assertion of personal freedoms."). Similarly, the Texas Supreme court has held that other rights found in the Texas Bill of Rights are fundamental rights for purposes of constitutional analysis. *See In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375 (Tex. 1998) (orig. proceeding) ("Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment.") (citing *NAACP*, 357 U.S. at 460); *Stamos*, 695 S.W.2d at 560 (noting that "right to free speech [and] free exercise of religion . . . have long been recognized as fundamental rights under our state and

federal constitutions"). And the United States Supreme Court has explicitly described the peaceable right to assemble, along with other First Amendment rights, as a fundamental right:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and *assembly, and other fundamental rights* may not be submitted to vote; they depend on the outcome of no elections.

West Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) (emphasis added); *see De Jonge*, 299 U.S. at 364 ("The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."); *Whitney*, 274 U.S. at 375–76 (J. Brandeis, concurring) ("But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the state from destruction or from serious injury, political, economic or moral.").

Based on its prominence in the Texas Bill of Rights, its history in the founding of our country, and its early, and still valid, treatment by the U.S. Supreme Court, we hold that the right to assemble granted by the Texas Constitution is a fundamental right.[7]

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[7] The dissent suggests that we have overstepped our role as an intermediate court "by declaring a fundamental right to congregate without fully analyzing peaceableness or the advocacy of a matter of public welfare." *See post* at 16. But the fact that we have rejected the dissent's view that the Texas Assembly Clause is limited to advocacy of a matter of public welfare does not mean that we have not taken that argument into account—to the contrary, we address the matter at length. And we note that even if Texas' assembly clause is so limited, the City's ordinance bans assemblies without regard to their content or purpose. We likewise acknowledge that non-peaceable assemblies are not protected by the Assembly Clause, but the City's short-term rental ordinance forbids assemblies whether peaceable or not. Finally, the dissent states that we should leave the determination of fundamental rights to Texas's high courts

4. *Texas's Right to Assemble and the City of Austin's Ordinances*

What is at stake, then, is the authority of the City, through its ordinances, to prohibit or restrict the peaceable assembly of citizens on private property with respect to the purpose, time, and number of people. The Property Owners here argue that review of the alleged violation of their fundamental right to assemble by Austin's City Code must be examined under strict scrutiny. We agree.

Section 25-2-795 of Austin's short-term rental regulations provides that:

> (B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.
>
> (C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.
>
> (D) A licensee or guest may not use or allow another to use a short-term rental for an **assembly** between 10:00 p.m. and 7:00 a.m.
>
> (E) A licensee or guest may not use or allow another to use a short-term rental for an outside **assembly** of more than six adults between 7:00 a.m. and 10:00 p.m.
>
> (F) For purposes of this section, an **assembly** includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.[8]

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because doing so is "a novel and big step into [a] weighty area." *Post* at 16. But our duty as a court requires us to address those matters that are properly before us, including the identification and protection of fundamental constitutional rights. *See* Tex. R. App. P. 47.1 (requiring appellate courts to "hand down a written opinion that . . . addresses every issue raised and necessary to final disposition"); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015) ("The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.").

[8] Because the word "including" is a term of enlargement and not of limitation or exclusive enumeration, the ordinance applies to assemblies other than "wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity." *See Republic Ins.*

(G) A short-term rental use may not be used by more than:

(1) ten adults at one time, unless a stricter limit applies; or
(2) six unrelated adults.

Austin, Tex., Code, § 25-2-795 (emphases added). This section plainly restricts the right to assemble and does so without regard to the peaceableness or content of the assembly—as emphasized above, the word "assembly" is used to describe what is being banned or severely restricted temporally, quantitatively, and qualitatively. Even if it the ordinance did not expressly use the word "assembly," section 25-2-795 represents a significant abridgment of the fundamental right to peaceably assemble—i.e., to get together or congregate peacefully. It forbids owners (i.e., "licensees" in the ordinance) and tenants from gathering outdoors with more than six persons, at any time of day, even if the property is licensed for occupancy of six or more. And it prohibits use by two or more persons for any activity "other than sleeping" after 10:00 p.m. *Id*.

Moreover, in contrast to traditional cases that invoke the right to assemble on *public* property, here the right concerns the freedom to assemble with the permission of the owner on *private* property, implicating both property and privacy rights.[9] *Cf. Members of City*

Co. v. Silverton Elevators Inc., 493 S.W.2d 748, 752 (Tex. 1973) (reasoning that it is a "well settled rule that the words 'include,' 'including,' and 'shall include' are generally employed as terms of enlargement rather than limitation or restriction").

[9] Because we conclude that section 25-2-795 violates the constitutional right to assemble, we do not reach the challenges based on the constitutional rights of association, movement, and privacy. But here privacy rights are implicated in our right-of-assembly analysis. The Texas Constitution "guarantee[s] the sanctity of the individual's home and person against unreasonable intrusion." *Texas State Emps. Union*, 746 S.W.2d at 205; *see* Tex. Const., art. I. §§ 9 (prohibiting unreasonable searches and seizures), 25 (prohibiting quartering of soldiers in houses). State and federal courts have consistently held that the right to privacy within the home extends to temporary lodging, including hotels, motels, and boarding houses. *See, e.g.*,

Council of City of L.A. v. Taxpayers for Vincent, 466 U.S. 789, 811 (1984) ("So here, the validity of the esthetic interest in the elimination of signs on public property is not compromised by failing to extend the ban to private property. The private citizen's interest in controlling the use of his own property justifies the disparate treatment."); *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."); *Texas State Emps. Union*, 746 S.W.2d at 205 ("While the Texas Constitution contains no express guarantee of a right of privacy, it contains several provisions similar to those in the United States Constitution that have been recognized as implicitly creating protected 'zones of privacy.'"); *Koppolow Dev. Inc. v. City of San Antonio*, 399 S.W.3d 532, 535 (Tex. 2013) ("One of the most important purposes of our government is to protect private property rights."); *Spann v. City of Dallas*, 235 S.W. 513, 515 (Tex. 1921) ("To secure their property was one of the great ends for which men entered into society. The right to

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Minnesota v. Olson, 495 U.S. 91, 96–97 (l990) (holding that overnight guest had expectation of privacy); *Stoner v. California*, 376 U.S. 483, 490 (1964) (concluding that "a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures"); *State v. Rendon*, 477 S.W.3d 805. 810–11 (Tex. Crim. App. 2015) (noting that Fourth Amendment protections against warrantless searches extend to "other dwelling place, including apartment"); *Luna v. State*, 268 S. W.3d 594, 603 (Tex. Crim. App. 2008) ("An 'overnight guest' has a legitimate expectation of privacy in his host's home."). Included in the right to privacy is the right to be free from "government action that is intrusive or invasive." *City of Sherman v. Henry*, 928 S. W.2d 464. 468 (Tex. 1996). A violation of this privacy interest turns not on the conduct undertaken by the individual, but on whether the "government impermissibly intruded on [his] right to be let alone," as the Property Owners allege here. *Id*. As the city concedes, enforcement of section 25-2-795 requires visual monitoring by the City or its agents of private activities to detect whether the property owners or tenants are violating the restrictions on how many people are in a bedroom or whether there is a prohibited assembly. *See* Austin. Tex., Code § 25-2-792 (requiring City to notify neighbors in writing of short-term rental's operation and to provide contact information to report any violations).

acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural right. It does not owe its origin to constitutions. It existed before them. It is a part of the citizen's natural liberty—an expression of his freedom, guaranteed as inviolate by every American Bill of Rights.").

Surely the right to assemble is just as strong, if not stronger, when it is exercised on private property with the permission of the owner, thereby creating a nexus with property and privacy rights. *Cf. Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) ("First Amendment protections, furthermore, are especially strong where an individual engages in speech activity from his or her own private property." (citing *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994)). But if Thomas Jefferson, Patrick Henry, and other revolutionary patriots had lived in this modern day and chosen a short-term rental instead of the Raleigh Tavern—as they may well have given the nature of modern society—to assemble and discuss concepts of freedom and liberty, the City of Austin's ordinance would impose burdensome and significant restrictions on their abilities to do so. The City of Austin's restriction of this fundamental right to physically congregate on private property, in a peaceable manner, for the citizens' shared welfare or benefit requires strict scrutiny. *See Washington*, 521 U.S. at 720 (explaining that due-process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests"); *Reno*, 507 U.S. at 301–02 (same); *cf. Barnette*, 319 U.S. at 639 ("The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds."); *De Jonge*, 299 U.S. at 365 ("If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the

public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.").

We do not suggest that the City of Austin is powerless to regulate short-term rentals or to address the possible negative effects of short-term rentals—in fact, it already does so with various nuisance ordinances. *See, e.g.*, Austin, Tex., Code §§ 9-2-1–9-2-65 (noise ordinance), 9-4-15 (prohibiting public urination and defecation), 10-5-42–10-5-45 (littering ordinance), 12-5-1–12-2-44 (parking ordinance); *see also* Tex. Penal Code §§ 42.01 (disorderly conduct), 49.02 (public intoxication). But here the City has not identified a compelling interest that might justify section 25-2-795's restrictions on the right to peaceably assemble on private property. *See Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 71 (1981) ("[W]hen the government intrudes on one of the liberties protected by the Due Process Clause of the Fourteenth Amendment, 'this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.'" (quoting *Moore*, 431 U.S. at 499)). The City's stated concerns in enacting this section were to reduce the likelihood that short-term rentals would serve as raucous "party houses" in otherwise quiet neighborhoods and to reduce possible strain on neighborhood infrastructure. These are certainly valid concerns, but compelling interests in the constitutional sense are limited to "'interests of the highest order.'" *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). These interests may include, for example, reduction of crime, protection of the physical and psychological well-being of minors, parental rights, protection of elections,

and tax collection. *See, e.g.*, *Madsen v. Women's Health Center, Inc*., 512 U.S. 753, 763–64 (1994) (public safety and order); *Burson v. Freeman*, 504 U.S. 191, 198–99 (1992) (integrity of elections); *Ginsberg v. New York*, 390 U.S. 629, 639–640 (1968) (protecting minors). Further, the City must show a compelling interest in imposing the burden on the right to assemble in the particular case at hand, not a compelling interest in general. *See Westchester Day Sch.*, 504 F.3d at 353 (citing *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432 (2006)).

The regulation of property use is not, in and of itself, a compelling interest. *See Barr v. City of Sinton*, 295 S.W.3d 287, 305 (Tex. 2009). As the Texas Supreme Court has explained, "Although the government's interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed . . . courts and litigants must focus on real and serious burdens to neighboring properties" when determining whether a compelling interest is at issue. *Id*. at 305–07; *see Bell*, 74 S.W.2d at 545 (noting that "police or governmental powers may be exerted where the object of legislation is within the police power," but "the privileges guaranteed by the Bill of Rights . . . cannot be destroyed by legislation under the guise of police control"). We must "not assume that zoning codes inherently serve a compelling interest, or that every incremental gain to city revenue (in commercial zones), or incremental reduction of traffic (in residential zones), is compelling." *Barr*, 295 S.W.3d at 307. Here, the City has not provided any evidence of a serious burden on neighboring properties sufficient to justify section 25-2-795's encroachment on owners' and their tenants' fundamental right to assemble on private property.

Additionally, the City's restrictions on the right to assemble would still fail strict scrutiny because the ordinance is not narrowly tailored and can be achieved by less intrusive, more reasonable means, such as enforcement of the already-existing ordinances regulating noise, parking, building codes, and disorderly conduct that we discuss above in our analysis of the State's retroactivity claim. *See Reno*, 507 U.S. at 302 (substantive due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

In sum, we hold that section 25-2-795 infringes on short-term rental owners' and their tenants' constitutionally secured right to assembly because it limits assembly on private property without regard to the peacefulness of or reasons for the assembly. And because the infringement of the fundamental right to assemble is not narrowly tailored to serve a compelling government interest, it violates the Texas Constitution's guarantee to due course of law. *See id.* Accordingly, it was error for the district court to grant the City's no-evidence motion for summary judgment and to deny the Property Owners' motion for summary judgment on the Property Owners' constitutional challenge to this provision.

C. Unreasonable Search and Seizure

The Property Owners contend that another provision of the short-term rental ordinance place owners and tenants of short-term rentals at risk of unconstitutional search and seizure. Specifically, they challenge the provision that added short-term rentals to the enumerated list of types of property that officials must inspect "to ensure compliance with this chapter and other applicable laws." Austin, Tex., Code § 25-12-213(1301). That provision, however, was modified to allow the licensee or occupant to deny the inspector's entry and to seek pre-search administrative review. *See* Austin, Tex., Ordinance No. 20171012-SPEC001

(Oct. 12, 2017). Thus, although the parties have not briefed this Court on the repeal of the more onerous inspection provisions, we take judicial notice of the ordinance repealing this section and conclude this claim is now moot. *See* Tex. R. Evid. 204 (allowing judicial notice of municipal law); *Trulock v. City of Duncanville*, 277 S.W.3d 920, 929 (Tex. App.—Dallas 2009, no pet.) (dismissing case as moot where challenged provisions of ordinance had been repealed).

Conclusion

Because Austin City Code sections 25-2-795 (restricting assembly) and 25-2-950 (banning type-2 rentals) are unconstitutional, we reverse that part of the district court's judgment granting the City's no-evidence motion for summary judgment and denying the Property Owners' and the State's motions for summary judgment. We render judgment declaring sections 25-2-795 and 25-2-950 of the City Code void. We affirm the remainder of the judgment and remand the case to the district court for further proceedings consistent with this opinion.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Kelly
Concurring and Dissenting Opinion by Justice Kelly

Affirmed in Part; Reversed and Rendered in Part; Remanded

Filed: November 27, 2019

q. **Antennas.** No exterior television or radio antennae or any other antennae of any type, including satellite TV dishes, shall be erected or maintained upon the Property.

r. **Resubdivision Restriction.** No Townhome Lot shall ever be resubdivided in any manner whatsoever or conveyed or encumbered in any manner different than the Plat legal descriptions and dimensions. No Owner shall have any right to request any partitioning of any Townhome Lot or any of the Common Elements.

s. **Restrictions on the Sale of a Townhome Lot or Townhome.** The right of an Owner to sell, transfer or otherwise convey his or her Townhome Lot and Townhome shall not be subject to any right of first refusal or similar restriction and such Townhome Lot and Townhome may be sold free of any such restrictions.

t. **Restrictions on Mortgaging a Townhome Lot or Townhome.** There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Townhome Lot and Townhome. There is no requirement for the use of a specific lending institution or particular type lender.

u. **Temporary Use by the Declarant.** Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant and/or its agents to maintain upon the Property, without charge, such facilities as may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business/construction office in a model house or trailer, storage areas, nursery, construction yard, signs (including "for sale" or "for lease" signs), model townhomes for demonstration purposes and sales offices.

v. **Exemptions for the Declarant.** The Declarant shall be exempt from any restrictions in this Article to the extent that it impedes Declarant's development, marketing, sales, or leasing activities.

w. **Leasing and Renting.** Owners, including Declarant, shall have the right to lease or rent a Townhome under the following conditions:

(i). no Owner may lease or rent less than his entire Townhome;

(ii). short term and nightly rentals are permitted;

(iii). all leases and rentals shall provide that the terms of the lease or rental and lessee's or renter's occupancy of the Townhome shall be subject in all respects to the provisions of this Declaration and any and all Rules and Regulations enacted by the Association. Any failure by a lessee or renter to comply therewith shall be a default under the lease or rental agreement and shall cause the Owner to be in violation of the Rules and Regulations of the Association and subject to penalty therefor;

(iv). any Owner who rents or leases a Townhome, for a period in excess of thirty (30) days, shall due so according to a written lease and forward a copy of each such lease or rental agreement to the Association within ten (10) days of its execution; and

(v). any Owner who rents a Townhome subject to a rental management agreement, for a period in excess of thirty (30) days, shall forward a copy of such management agreement to the Association within ten (10) days of its execution.

Nothing herein shall preclude an Owner from short-term or nightly rentals of his or her Townhome, provided they are made pursuant to the terms and conditions of this Section and other provisions of this Declaration and the Rules and Regulations of the Association.

6. ARCHITECTURAL CONTROL AND APPROVAL

a. **Approval of Improvements Required.** Approval by the Association, or by a design review committee established by the Association, shall be required prior to the commencement of the construction, alteration, modification, or rebuilding of any improvement on any portion of the Property, except original first-built improvements to the Property constructed by Declarant. In addition, approval may be required by the EaglePointe Property Owners' Executive Association and/or the City of Steamboat Springs. A purchase of any Townhome Lot within the Property does not grant any implied guarantee of approval by the Association of any future improvements to be located thereon.

b. **Improvement to Property Defined.** Improvement shall mean and include, without limitation: (i) the construction, installation, erection or expansion of any building, structure or other improvements, including, but not limited to, utility facilities, T.V. or radio antennas, and satellite dishes; (ii) the demolition or destruction, by voluntary action, of any building, structure or other improvements; (iii) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, change of driveway; (iv) the construction, installation, erection, expansion or removal of any landscaping, planting, trees, shrubs, grass or perennial plants; (v) the construction, installation, erection, expansion or demolition of any decks, patios, hot tubs, mailboxes, property identification, fences, berms, walls, or other barriers of any kind; (vi) the installation of any exterior lighting or wiring of any kind; and, (vii) any change, alteration, modification, expansion, or addition to any previously approved improvement to Property, including, but not limited to: the addition of storm doors or windows; the addition of any heating or cooling equipment; or any change of exterior appearance, finish material, paint, stain, color, or texture.

From: Rebecca Bessey
To: Anjel ca Nordloh
Subject: FW: Thank you for your work on VHRs!
Date: Friday, September 24, 2021 11:18:21 AM
Attachments: image.png

Rebecca Bessey, AICP
Planning & Community Development Director
City of Steamboat Springs
970.871.8202

From: Margaret Tait Routt <[redacted]
Sent: Thursday September 23 2021 9 30 PM
To: Rebecca Bessey <rbessey@steamboatsprings.net>
Cc: Schuyler Routt[redacted]
Subject: Thank you for your work on VHRs!

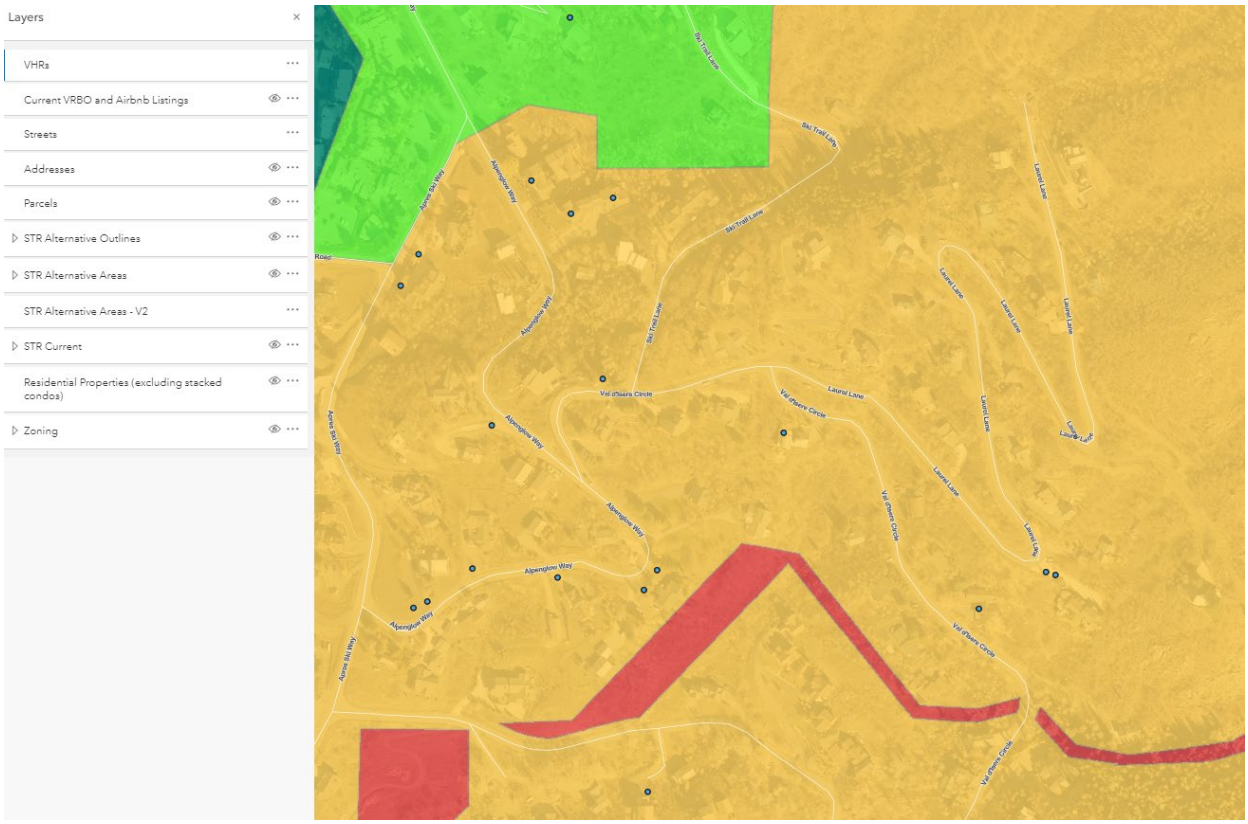
Hi Rebecca

I want to start by saying thank you for taking on such a large thorny project. It's a thankless job and you've brought the conversation along lightyears. My husband and myself (who live on Laurel Lane) and my in-laws (who live on Hunters Drive) are looking forward to continuing following along and are all thankful to have you leading on this.

As a side note we were surprised to hear Laurel come up at the end of the conversation tonight as a possible area to move to the green section. Someone mentioned that it's been a traditional VHR area since the 1970s but looking at the current map of VHRs (screenshot below) there are only two on Laurel Lane one for our duplex unit (which we let lapse as soon as we purchased our home) and one for our neighbor's duplex unit. They are no longer using their permit due to all of the headaches that came along with VHR management and instead are spending much more time up here themselves which has been fantastic. So there are actually no VHRs on Laurel. If Laurel were to become green I worry it would encourage property investors and managers to buy up homes on Laurel explicitly for VRH use similar to Ski Trail lane. This would be a huge blow to the family-centric fiber of our little Laurel community.

Please let me know if there's any info about Laurel Lane that my husband and I can help collect as you're adjusting the overlay. We are more than happy to get involved if we can be helpful.

Again thank you (and your team) for moving us all collectively forward here!



Karen Lewer

From: noreply@civicplus.com
Sent: Friday, September 24, 2021 5:36 AM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Bill
Last Name	Pass
Mailing Address	[redacted]
Physical Address	[redacted]
City	Steamboat Springs
State	CO
Zip	80487
Email Address	[redacted]
Phone Number	[redacted]
Question	Subject: Short Term Rental Engagement Dear Board, I spoke at last nights meeting, but was unable to get all my thoughts out for discussion. I thought Rebecca did a fantastic job of putting together a thoughtful packet of information to elicit thoughtful feedback from the community and the commission. I was less impressed with some of the members of the commission who clearly did not take the time to read or understand the material. It seemed like it was a complete surprise what you were being asked to do by council. I respectfully submit it is past time to get engaged. 1). Who are you going to listen to? There were many realtors and property managers who felt that we just needed to leave things "as is" and perhaps step up

enforcement of some bad actors because the problem is not that bad. Just because there is not 100 calls per night to the police does not mean the issue is not existent. It just means that after numerous calls to the police you have learned that nothing happens. They show up tell them to be quiet and problem is solved until next time. After a while you just give up calling because it does not solve the problem and sometimes invites retaliation. My advice is quit listening to the out of towners complaining that they can't afford the place they bought without unlimited nightly rentals. They would not have been able to get the loan to purchase the property if they had not been able to afford it. Likewise you should turn a deaf ear to the realtors and property managers as they obviously have a conflict of interest. You do however need to listen to the people who vote in Steamboat Springs. I suspect if you do that you will find that the overwhelming majority want something done to address this issue. If the survey could have been restricted to just voters in Steamboat I suspect you would have had even stronger numbers demanding something be done.

2). Green, Yellow and Red
Green = Own or rent long term or short with no limitations (except perhaps some rules enforcement TBD). My opinion is leave it "as is" without expanding.
Yellow = Own or rent long term without limitation, or rent short term with some strict limitations (i.e. 4x or 30 days whichever is lesser per year). Difference between yellow and green is that yellow restricts how often and for how long you can rent per year. Seemed like a number of council members did not understand this.
Red = No short term rentals of any length. Kinda was a grab bag of open space, commercial, and mobile homes (ownership + long term rental?). I would like to see more red (especially in my bear creek neighborood). However I could go along with the yellow as envisioned as long as there were going to be actual enforcement.

Instead of trying to factor covenants in by filing for re-zoning I would build it into the zoning by simply stating that the zoning would not be more restrictive than any existing covenant as long as the covenant explicitly permitted short term rentals. The court of appeals case cited by one person does have some meaning on covenants that only restrict based on "residential use". Residential use does not preclude short term rental. However if the zoning was careful to state that the covenant must explicitly permit short term rental that should get around that interpretation of law.

3). Rules / Fines
We need some strong rules with escalating fines and license revocation after a 3 strikes policy over a trailing X month period (don't just reset the clock every year). We do need some very heavy fines for those who operate without a license.

4). Enforcement
If there are is going to be actual enforcement besides the police showing up and saying quiet down with draconian fines and a 3 strikes and you forfeit your license policy then I am all for it. What I have seen to date is NOTHING. Even though there is a provision to revoke a license currently I have never heard of this being done. So I am very skeptical about enforcement in this community. If there is not going to be enforcement with some actual teeth and the city actually taking some responsibility and enforcing these rules then all the yellow should be red. You have to enforce the rules otherwise this is just a waste of time.

5). Primary Residence
What is a primary residence. In my opinion it is where your cars are registered, you are registered to vote, where you pay income taxes, you reside in your home at least 50% of the time, and your mailing address is within the same township as your residence (many of us have PO boxes for mail). When granting a license under the primary residence provision the requestor should be able to demonstrate that they are really primary residence owners.

6). Exceptions in Yellow Zone
If we can't get a larger red zone to completely exclude short term rentals, then the exceptions (i.e. limitations) as presented by Rebecca seem an adequate compromise when coupled with strong rules and enforcement. I believe the zones/rules as stated be the exceptions and that no addition planning commission "variances" should be permissible.

7). Not Covered
In our neighborhood we have an owner who rents out multiple rooms of his house. In essence he is operating an unlicensed B&B. The police have been to this property numerous times. This is a situation not covered by this envisioned policy, but I believe is covered by current zoning which precludes this type of use in a residential zone. Given this I have little faith that any rules, fines or enforcement will actually occur since such an egregious violation has been permitted for so long with zero consequence.

Thank You and I look forward to the formulation of a strong and enduring policy with regards to STR.

Bill Pass

Karen Lewer

From: noreply@civicplus.com
Sent: Friday, September 24, 2021 6:38 AM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Sarah
Last Name	Bradford
Mailing Address	[redacted]
Physical Address	[redacted].
City	steamboat springs
State	co
Zip	[redacted]
Email Address	[redacted]
Phone Number	[redacted]
Question	Dear Planning Commission, Thank you for reading the below information which sums up a lot of data we have collected this summer since the Council put the Moratorium into affect. First, I want to say that I'm proud of what my family does in this community - we provide many jobs for locals at very high wages. We also work tirelessly to give guests a safe and enjoyable vacation while ensuring our guests know about quiet hours, trash, parking, and how to be good citizens while they stay in the homes we manage. These guests eat in our restaurants, buy our retail, and spend a lot of their money here. .My staff is also proud of what they do all the way to the housekeepers who day in and day out show up to clean and provide for their families as well.

I was encouraged by the reasonable conversation last night, but was a little disappointed no one questioned the idea of the overlay in general. There was no specific criteria shown to prove it's even needed, just a speculation that somehow it's affecting neighborhood character and housing stock. I would ask the Commission to use data instead of conjecture of public opinion. Gather the complaints, look at growth/shrinkage of STRs and the subset of VHRs before you take away thousands of property rights and have to require each HOA or property owner to come before the Commission for an exception to the overlay.

I also barely heard any mention of the fact we are a town built on tourism, and that those guests who visit here prefer vacation rentals over hotels these days - that's why the industry has grown across the US. Families like to gather in homes with kitchens and large living rooms for a ski trip vs. a hotel room. Please consider the economic impact of your decisions and back those up with criteria that allows you defend why one street is in the green and another is out.

Many of us agree there should be regulation. And many of us agree there are probably some areas of Steamboat that should be left to locals whether it’s long term renting or local homeownership.

Clarifications:
- GOAL decided by Council: retain genuine neighborhood character
- STRs is a big circle with 3600+ homes, townhomes, and condo/multi family in it. VHRs are a 5% subset.
- VHRs are only homes and duplexes outside of the RR and G zones
- The Moratorium was only placed on NEW vhr permits, all existing 214 continue to operate, with no changes nad no additional regulation or enforcement. This means about 7-10 homeowners couldn't get permits - that's it. All others proceeded as normal with no additional enforcement or data gathering done all summer.

Moratorium and Overlay work was premature
First, Regulate, Register & Attempt to Enforce vs. jump to Prohibited Zones. The reason this would have been ideal is MOST multi-family have HOAs which prohibit or allow STRs. The idea of the City overruling those HOA laws is what is viewed is “overreaching” whereas getting them to register and license them with basic safety, noice, trash and parking standards would have gone a long way to attack the problems

that are apparently out there.
When we say enforcement, we are referring to a 24/7 hotline (by Granicus, already signed on) and having a 24/7 local contact for all 3600+
So what this has become is just a discussion of where the City wants to prohibit any new VHRs b/c existing permits are land use permits and can't be removed and condos have HOAs so those that allow STRs will apply for an exception.

Moratorium was due to an "emergency" based on emails/comments to Council about noise and trash in citizen's neighborhoods, and the only lever that could be pulled but SINCE THEN...

We've dug deep into the data and public opinion and found:
- 1,000 Petition signers (called "Reasonable Short Term Regulations in Steamboat Springs" on change.org) asking to "Regulate, Register, and Enforce" not jump to an overlay and to remove the Moratorium

- Data shows that the number of all total STRs (includes 214 VHRs) has decreased since 2020 (Source: KeyData)

- Direct Economic impact of STRs in STeamboat per year - $250M. That doesn't include indirect of all of the employee spend. Depending on an overlay, we can determine the economic impact and sales tax impact of prohibiting (in the latest overlay proposal, a rough estimate is $25M loss annually) - full study can be seen in attachment turned into Council in August.

- In the past 5 years, the % of local buyers each year is 50% and out of state buyers the other 50%. Of out of state buyers, Front Range buyers has grown significantly vs outside of Colorado. What does this mean?
This stayed true in August (Land Title) - Of the 162 transactions, 86 were local buyers, 38 were front range and 38 were from out of state. None were international.

- Data shows that the number of new VHR permits is barely keeping up with the rate of growth/new builds (net 6 per year)
Data to back that up: Over the last 14 years since the city started permitting Vacation Home Rentals, there have been a total of 314 homes that have applied. Over that same period of time, 100 permits have expired or have been turned in as no longer being used. That means on average, 15 expire each year. On average, 21 new ones apply each year. This means 6 net per year. If you even took the average over the last 5 years

which would be 25 new ones per year, it's still only 10 new ones per year. We also know of active permit holders who no longer rent, but are holding them as “placeholders”.

- Of 272 VHR qualified properties that were purchased in last 18 months, only 12 applied for a VHR permit (I would argue that's NOT an emergency)

- The VHR permit process is arduous. Unless you really want to rent your home, you’re probably not going to get one - floor plan, site plan, snow plan, trash plan, parking plan and sending letters to your neighbors

- Zoomers and Super Rich non-STR owners are most likely the reason for property values skyrocketing not investors wanting to cash in on STRs

- Brown Ranch has been purchased and moving forward. This creates choice vs. forcing a property owner to give up their rights for affordable housing causes.

- Enforcement has not been done on STRs or VHRs but Granicus is signed on and ready to go. Let's focus Rebecca and her team on that positive effort.

- When STRs are prohibited, the homes usually “go dark” - that’s less spending, less tax.
There has been much public comment asking to defer to HOAs to allow or not allow STRs in those areas

Moratorium
- Some areas included in the Moratorium are near the Mountain, were built with the intention of being for visitors, and have low local density (aka under 25% and often under 10%). We have researched every street and turned in that data and a map to Planning and Council that shows local density per street. We believe these areas should be removed from the Moratorium asap. Please let these few owners who cannot get a permit move on and rent their home for the ski season if they so choose.

I think we all agree that the past four months has brought us to the table, let us all look at valid data regarding this issue, yet we still have made no progress to enforcement. No “bad actors” have been contacted, fined, or shut down. Let’s reduce the scope of the Moratorium, hit pause on a complicated overlay and get moving with Granicus to register all STRs, and start real enforcement.

Karen Lewer

From: noreply@civicplus.com
Sent: Thursday, September 23, 2021 8:20 PM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	SCOTT
Last Name	WAPPES
Mailing Address	[redacted]
Physical Address	[redacted]
City	STEAMBOAT SPRINGS
State	Colorado
Zip	[redacted]
Email Address	[redacted]
Phone Number	[redacted]
Question	Hello, I have a passion for mapping and from the sounds of today's meeting you have a daunting challenge ahead with mapping. I work daily with ArcGIS and am more than happy to donate some of my time to assist if ever needed. This extends to about any topic beyond short term rentals as well. Thank you Scott Wappes

From: noreply@civicplus.com
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form
Date: Thursday, September 23, 2021 3:55:20 PM

Planning Commission Comment Form

First Name	Scott
Last Name	Wedel
Mailing Address	[redacted]
Physical Address	*Field not completed.*
City	STEAMBOAT SPRINGS
State	CO
Zip	[redacted]
Email Address	
Phone Number	
Question	Hello, I think there are two major areas of public concern with regards to nightly rentals. First is where they are allowed which the overlays deals with. Second is that they are allowed to be such an extreme use of a residential property. That the single family neighborhood is defined as having no more than 3 adults unless all related, but VHR in the middle of a single family neighborhood is allowed to advertise it can house 11 adults such as a VHR near Tamarack and Fish Creek Falls road. If 11 adults in a house is considered acceptable then we could vastly increase the supply of workforce housing by allowing 11 adults to share a house. That VHR with 11 adults is not an ongoing "problem", but there is definitely more evening noise when they are BBQing, etc than from other houses. I suggest that many VHR conflicts would be reduced if VHRs operated by the same rules as long term single family housing.

Also, as for VHR rules on parking - the current rules on having a certain number of parking spaces is unenforceable as there is no requirement that the parking spots are clearly marked. So guests can arrive with more vehicles that fit, but code enforcement can't cite them for parking outside of their marked parking spots.

sdw

Karen Lewer

From: noreply@civicplus.com
Sent: Wednesday, September 22, 2021 8:06 PM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Alan
Last Name	Frohbieter
Mailing Address	[redacted]
Physical Address	*Field not completed.*
City	Superior
State	CO
Zip	[redacted]
Email Address	
Phone Number	
Question	We feel that no STR overlay restricted zone should be put in place at all, but if it is, then Shadow Run should not be included in the restricted area. The Shadow Run Declarations filed in 1980 specifically allow "nightly and transient rentals". The condominium complex character has always had a high percentage of short-term rentals in the 23 years that we have owned a unit. It even at one time included a check-in office and key drop and has a sign "Managed by Mountain Resorts". It is just over a half mile from the mountain and is located on the bus stop serviced by both orange and green lines to help move more visitors. Based on tax records, only 17% of owners live in their unit and use that as their home address. Depending on how you count post office box addresses, 71 - 83% of the units are second homes. This is not a high local density area. It is unclear what problem the council is looking to solve with an STR ban:

If there are noise issues, then enforce noise ordinances. The HOAs have, or should have, policies to fine owners that have violators. From my personal experience, the seasonal workers are often the worst violators of noise policies coming home after a 2am work shift.
If is about local character at the condos, then let the owners and the HOAs manage that rather than have the planning commission and council decide for them. The owners have a strong vested interest to do so with the appropriate balance.
If it is about affordable housing so that the mountain can hire seasonal workers, then let Ski Corp build or subsidize housing or pay the wage required to attract them.
If it is about revenue, STR already pay property taxes, sales tax, accommodations tax, and bring in visitors that spend money in town. On average, including vacant time, the burden on services is likely no more than full time locals.
If it is about suppressing property values to make them more affordable, then that borders on a regulatory taking of property rights. Council comments like “The condos in the area should be reserved for local renters and those looking for an affordable option to buy their first property” indicates a desire to do this. Families that have recently bought in these areas are going to be hurt when they lose property value.
If it is about driving visitors into the hotels. Not everyone wants to stay in the hotels and constraining rental properties will drive up rental rates and discourage visitors.

The concept stated by one council member, that people can just go to full time rent and get the same revenue is just not true. But more importantly, many want to use a vacation home part time and rent part time to defray the high cost of ownership in Steamboat. A full-time renter requirement prevents this. Our personal situation is that we have 2 units in Shadow Run next each other. We plan to retire into the one that we are currently refurbishing and rent the other part time to help offset costs and bring in a little retirement income. Except when our family that includes 5 adult skiing/boarding children come to visit—a full time renter would preclude that.

In conclusion, how is it remotely fair for the city council to pick winners and losers based on their opinions of who should be able to do what with their property? The proposed overlay has condominium units on one side of the street restricted and the other side not restricted. I dialed into the last council meeting but was not at the one reported by The Steamboat Pilot. The arbitrary tone of the conversation as reported was concerning. I did appreciate the comments at the last meeting to shift the

decision to more data driven, but even the conversation around the criteria such as percentage local density still seems arbitrary. Please stop all consideration of an STR overlay zone.

Thank you,
Alan & Laura Frohbieter
[redacted]

Email not displaying correctly? View it in your browser.

From: Rebecca Bessey
To: Anjelica Nordloh
Subject: FW: Short Term Rental - Whistler Townhomes
Date: Thursday, September 23, 2021 12:28:01 PM

Rebecca Bessey, AICP
Planning & Community Development Director
City of Steamboat Springs
970.871.8202

From: Molly Lucas <[redacted]>
Sent: Thursday, September 23, 2021 12:25 PM
To: Toby Stauffer <tstauffer@steamboatsprings.net>; Rebecca Bessey <rbessey@steamboatsprings.net>; chris lucas <[redacted]>
Subject: Short Term Rental - Whistler Townhomes

Hello -

My husband and I own 3 Hemlock Ct in Whistler townhomes. We have owned since July 2020. We use it personally for our family roughly a week a month and periodically rent it out via airbnb when we are not using it or allow friends and family to stay. We saw that the counsel seems to be in favor of excluding short term rentals in the community via the overlay map based on "historic make-up of the community." I would like to point out that the governing documents recorded at the start of the community and not amended since, specifically allow for nightly "transient" rentals. I believe that when the council is considering the "historic" use of the community, it is in error when failing to also take into consideration the actual, written, recorded and never amended governing documents. If a community is truly fed up with short term rentals, the solution is to amend the governing documents for that community, not for the City to decree what is best for the individual community.

We are happy to comply with regulations with respect to a permit, license or limitation on number of nightly rentals or minimum owner use, however outright restriction is not in fact in line with the "historic" intent of the community. We employ a local property manager as well as a local housekeeper both of which would be negatively impacted if short term rentals were prohibited in this area. Additionally, in a year of renting, we have had two complaints from neighbors due to noise. Each time the neighbors contacted us and we dealt with the situation swiftly and the neighbors were happy with the resolution. I believe noise complaints could just as easily occur with longer term tenants.

Finally, if the intent is to force long term rentals of these properties, this goal will not be obtained by prohibiting short term. It is my understanding that the majority of the short term properties in this community are also used by the owners as second homes and therefore are unlikely to go into the

long term rental pool or else be sold.

We would appreciate consideration of these items when the council is considering how to address short term rentals in this area. Going from a rental by right to no short term rentals allowed is a large impact on property rights and should not be implemented by a simple majority among the few members on the council.

Thank you,

Molly Lucas
[redacted]

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Thursday, September 23, 2021 11:12:02 AM

City Council Contact Form

Step 1

Note
All communications to City Council through this website shall be deemed public documents and are subject to the Colorado Open Records Act. This includes email addresses and any personal information that you included in your email. A notation of "Confidential" on the communication does not protect the document from public review. The City Manager, City Attorney and City Clerk are copied on all emails.

Contact Information

First Name	Lisa
Last Name	Harner
Email Address	laharner@hotmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Dear City Council Members: I am forwarding my letter of August 16, 2021 (see attached) to you once again, in hopes that you will consider our plea to include our community in restrictions you may choose to place upon rental properties in residential communities in Steamboat Springs. I have not recently read any new information in this regard in the newspaper, however, my recollection of the last information I read is that our community of The Landings at Steamboat was overlooked. We have owned our home and lived there since 1999 and can attest to the degradation of our ability to enjoy our home and neighborhood as being directly related to the increase in rental properties in the community over time.

We look forward to your kind assistance and reply in this regard. Thank you for all the you do in acting as stewards of our beloved mountain town!

Sincerely,

Lisa & Warren Harner
2630 Windward Way
Steamboat Springs, CO 80487
laharner@hotmail.com
970-846-3273

Please add attachments here.	Letter to City Council Rental Properties.docx

August 16, 2021

Dear Steamboat Springs City Council Members:

We appreciate the attention and time you have dedicated to the impact of short-term rental properties upon our cherished home town. When we purchased our family home here in 1999, we were relocating to Steamboat Springs so that I might accept a position as a family physician, while my husband's career required that he be able to commute by air. Our children were looking forward to going to elementary and middle school with friends and neighbors, and we were all excited to be part of a community with shared common sense values. There were few affordable single home properties for sale in town at that time and we were fortunate to find one in a small single home community within close proximity to the hospital and ski mountain. At that time, the homes in our neighborhood were occupied by the homeowners. However, over the past 22 years, many of them have been purchased by second or third homeowners, and several of them are vacation home rental properties. Occasionally, a rental property will be occupied by long-term tenants who are invested in maintaining a respectful community. However, the majority of the vacation home rental properties are leased to short-term tenants whose priorities differ greatly from those of us who have made this neighborhood our home. The negative impacts of short-term rentals which we have experienced in our community include disrespectful speech and behavior, lack of respect for private property within our fee simple community, noise which often exceeds city ordinance parameters, leaving garbage unsecured outdoors, increased traffic and uncertainty about personal security.

Where might a Steamboat Springs resident live and how much might they expect to spend in order to expect that they can live in a neighborhood which is a community rather than a business commodity? Are we all to be expected to live outside of town in order to access quiet enjoyment in our own neighborhoods while tourists enjoy access to the amenities of the town of Steamboat Springs that we have all worked so hard to foster?

The article in today's newspaper detailing the issue and concerns to be addressed at the City Council meeting tomorrow evening references a map of vacation home rental permits dispersed by neighborhood wherein the majority (35.55%) were located in the area south of Steamboat Resort which was defined as **south** of Walton Creek Road and east of Whistler Road. Our home is indeed south of the resort, but is **north** of Walton Creek Road and east of Whistler. As you attend to the residential communities that are directly and adversely affected by short-term rental properties, we respectfully request that you include our community as well (The Landing in Steamboat).

We strongly endorse an accurate accounting of vacation home rental permits and requiring permits for short-term rentals of any kind, as well as setting definitions and policy parameters for all rental properties within the city. Additionally, as was suggested in a recent newspaper editorial, given that vacation home rental properties are managed as a business rather than a residence, it seems reasonable that they be accountable for business licensing and taxes.

Thanks to each of you as City Council Members, for your diligence and dedication as well as for your kind attention to preserving the integrity of our Steamboat Springs residential communities, the citizens of which have nurtured our home town and share common values as stewards of our neighborhoods and city.

Respectfully,

Lisa & Warren Harner

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Wednesday, September 22, 2021 2:55:48 PM

City Council Contact Form

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Contact Information

First Name	Denise
Last Name	McCutchan
Email Address	mccutchdb@gmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Good Afternoon City Council, It has come to my attention that our Bear Creek Neighborhood has been misrepresented by Sarah Bradford, et al., who do not live in our neighborhood. At present, full time residents are at least 65% of the neighborhood. This is a very important piece of information to have when considering overlays regarding the moratorium on VHR. The majority of the neighborhood is not in favor of VHR/STR, because we do have this full time residential community. Please make sure all of the information that has been presented is correct. The info for the Bear Creek neighborhood was way off. Respectfully submitted, John and Denise McCutchan 1885 Hunters Drive

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Wednesday, September 22, 2021 2:45:00 PM

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Contact Information

First Name	William
Last Name	Routt
Email Address	wroutt@hotmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	It was interesting reading this morning in Steamboat Pilot & Today about the benefits of professionally managed vacation home rentals, with their "lower level of complaints". The proponents for extending vacation home rentals into neighborhoods like Bear Creek Drive and Hunters Drive evidently chose to gloss-over the experience of full-time residents nearby or adjacent to professionally managed properties. It's nonsensical to claim lower levels of complaints, in the opinion of this full-time resident, when noise levels and vulgar language from professionally managed properties during the late evening make peaceful enjoyment in my community nearly impossible. Additionally, tax revenue and guest spending becomes a moot point when renters are trespassing on residential property or when renter's parked vehicles make safely navigating our streets and accessing our driveways difficult.

	What makes sense is to continue with a moratorium on vacation home rentals on Bear Creek Drive and Hunters Drive, where nearly seven in ten households are full-time residents.
Please add attachments here.	*Field not completed.*

From: Rebecca Bessey
To: Anjelica Nordloh
Subject: FW: Apres Ski Way/ short term rentals
Date: Wednesday, September 22, 2021 12:19:43 PM

Rebecca Bessey, AICP
Planning & Community Development Director
City of Steamboat Springs
970.871.8202

From: Jennifer Summers <[redacted]>
Sent: Wednesday, September 22, 2021 12:15 PM
To: Rebecca Bessey <rbessey@steamboatsprings.net>
Subject: Apres Ski Way/ short term rentals

Hi Rebecca,

I wanted to write a quick e-mail regarding the recent newspaper article, “Steamboat opts to remove certain areas from vacation home rental moratorium.” We would like to say that the Mount Werner Meadows Subdivision portion of Apres Ski Way still has locals but we are being pushed out by the short term rentals. It is true that Apres Ski Way, north of Val D'Isere, has a lot of short term rentals and second home owners, some of which may have been there a long time. The rest of Apres Ski Way is abutting subdivisions that have Steamboat locals living there.

When we bought our house on Apres Ski Way, we had year round neighbors. They cashed out, and we could do the same. I’m sure our house too, would make an awesome air bnb and make someone a chunk of money every month without much work. You could cram a lot of people into it, we have a big deck great for sunset selfies, and you could put up a wall and rent it as two units. But we are still holding onto the possibility that we can still raise our kids in this house even though the chance of them having any local kids near them or as neighbors is now slim to none because of the short term rental lobby that appears to be the only voice worth hearing on this issue. We hope that you will consider us locals living on Apres Ski Way that would like to remain living in the house we purchased, just like everyone in Old Town..Fairview…Bear Drive etc. without dealing with the inconveniences and unpleasantries of short term rentals.

Thanks-
Jen

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Wednesday, September 22, 2021 10:12:49 AM

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Contact Information

First Name	Scott
Last Name	Singer
Email Address	castlescooter@aol.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Good afternoon Council I am writing in regards to the submitted map option on rescinding the moratorium on VHR that is included in the packet for this evening. I understand that Sarah Bradford has gone to a great deal of work to present options to you and that city staff is stretched as thin as the rest of the town and it may be a bit of relief that someone has put in the time to do this. But please consider the following before you deliberate on the proposed map to ease the moratorium. The map has been presented with suggestions based on owner occupancy percentages in neighborhoods but with no indication of where these numbers came from. My own neighborhood is listed as 25-50% residents when, by my count, in reality 30 of our 48 homes

	are full time residents. If we are working with data, let's make sure that the data is accurate. I have a lot of respect for Sarah, she is a past client and by no doubt, a very smart and savvy business woman. However, I would ask that council look with a cautious eye, these recommendations made about the VHR industry as clearly being presented by an industry insider, not a unbiased observer. Thank you Scott Singer
Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Wednesday, September 22, 2021 9:46:41 AM

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Contact Information

First Name	Bill
Last Name	Pass
Email Address	wbpass@yahoo.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Dear Council, I could not disagree more with the approach being proposed of using anything proposed by the "Steamboat Lodging Company" as a starting point for carve outs for easing the moratorium on short term rentals. The optics of this are terrible. In particular including Bear Creek (our neighborhood) in this map is beyond me. Just because someones physical address and mailing address are not identical does not mean they support STR. Nor does it mean that they are not a voting resident of Steamboat. Feel free to look up my physical/mailing address on the assessor website. The approach adopted should not be based on industry insider information or even where someones mailing address is. The

only approach that should be considered should be a constituent based approach. As a voters in District III we cannot support the current carve outs as presented by "Steamboat Lodging Company".

SIncerely,
Bill Pass

Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Tuesday, September 21, 2021 2:59:00 PM

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Contact Information

First Name	Amy
Last Name	Swartz
Email Address	ablswartz@hotmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Good afternoon City Council members, After reviewing the map that Sarah from Steamboat Lodging provided you, there is a glaring error. Our community, Bear Creek, stands at 65% full time residency. We don't have many who are here part time. I would encourage you to review the numbers, think hard about what an overlay or complete rentals will do to our neighborhood. It is a quiet peaceful neighborhood, we have social gatherings and take care of one another. Cars drive slowly as there are children playing in the street, riding bikes or scooters. Please please think about quality of life in residential neighborhoods and not let ours become ridden with rentals. Thank you..

	Amy Swartz
Please add attachments here.	*Field not completed.*

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Wednesday, September 22, 2021 7:20:02 AM

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Contact Information

First Name	Deborah
Last Name	Routt
Email Address	dcroutt@hotmail.com

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Sadly, Robin Craigen, Sarah Bradford and Suzie Spiro, owners of Steamboat Lodging Co., Moving Mountains and Steamboat Lodging Properties presented factually DEFICIENT data to the Council about the Bear Creek subdivision: the percentage of full time residents actually increased yesterday, as an owner/VHR renter placed his property up for sale. Full time residents now represent 67% of the neighborhood, nearly seven out of ten owners. I should know: I am the current HOA board of directors president. We don't count "mailboxes" -- we actually know and communicate regularly with all those who live in Bear Creek. Thank you.
Please add attachments here.	*Field not completed.*

Karen Lewer

From: noreply@civicplus.com
Sent: Tuesday, September 21, 2021 2:47 PM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Lisa
Last Name	Olson
Mailing Address	[redacted]
Physical Address	*Field not completed.*
City	Steamboat Springs
State	CO
Zip	80487
Email Address	[redacted]
Phone Number	[redacted]
Question	Dear Planning Commission, I wanted to express my dismay at consideration that is being given to ban short term rentals using an overlay in condos/townhomes and neighborhoods that have Homeowner's Associations in place that govern this type of thing. I work with many clients who chose their properties very carefully because they either allowed or did not allow nightly rentals. I think you should continue to allow nightly rentals in areas that have HOA's and let the HOAs govern themselves if they want to change their rules to ban nightly rentals. I am in support of registering these rentals and creating mechanisms for complaints for bad actors. The mountain area especially has mostly allowed nightly rentals in most condos/townhomes except where they have purposely been prohibited. To change this rule now will no doubt cause a lot of economic strife for many. And to arbitrarily choose one side of a street over another to allow rentals is simply not fair. If you want to

encourage those who rent nightly to put in long term rentals at reasonable rates, why not incentivize them in some way? I am all for preserving the character of our town. I have lived here for almost 30 years and have seen a lot of growth and change but one thing always stays the same, the friendliness of our community. Let's not pit neighbors against each other. Let's find a way to make it work for all parties, without limiting property rights for those who purchased believing they could use their property a certain way and while maintaining the friendly character of our town. Limiting property rights in areas where nightly rentals have traditionally been allowed will only open the city up to lawsuits and unintended financial consequences for many. Purposefull planning for future projects such as the Brown property can put into place new regulations such as the ones you are considering with an overlay where every party knows what they are buying into.

Thank you for your time and consideration.

Lisa

Karen Lewer

From: noreply@civicplus.com
Sent: Tuesday, September 21, 2021 3:23 PM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Rob
Last Name	Ammon
Mailing Address	[redacted]
Physical Address	[redacted]
City	Steamboat Springs
State	CO
Zip	*Field not completed.*
Email Address	[redacted]
Phone Number	[redacted]
Question	I'd ask the Planning Commission to thoroughly review and obtain data before taking any STR overlay actions. The communities have HOAs that either allow or deny the owner the ability to rent their property on a short term basis or not. When purchasing a 2nd home this was a significant factor in where we purchased. For communities that do not have an HOA, they should form one instead of asking the city to perform this task. Steamboat Springs is a resort community and short term rentals are vital to the vitality of the mountain/resort. We chose to use a management company that monitors the noise level in our property in an attempt to be courteous to fellow neighbors. Again, please obtain data to make tactical steps to make STRs more amenable to neighbors and not allow emotions to drive change. Lastly, this issue should not be used as a mechanism for the community to provide affordable housing as that is a totally unrelated issue. I

appreciate the Planning Commission taking a thoughtful and diligent process to address concerns.

Email not displaying correctly? View it in your browser.

From: Rebecca Bessey
To: Anjelica Nordloh
Subject: FW: Short term rentals at the Ski Ranches neighborhood
Date: Tuesday, September 21, 2021 11:53:24 AM

Rebecca Bessey, AICP
Planning & Community Development Director
City of Steamboat Springs
970.871.8202

From: blatoza.wz@gmail.com [redacted]>
Sent: Tuesday, September 21, 2021 11:44 AM
To: Rebecca Bessey <rbessey@steamboatsprings.net>
Subject: Short term rentals at the Ski Ranches neighborhood

Rebecca

I listened intently to the Council meeting last night, and attempted to raise my hand during the public comment portion of the meeting, but was unable to be seen waving my hand. My comments that I wanted to make are as follows:

We are full time residents and live at 2170 Val dIsere Circle and built our house almost 5 years ago. Before we moved, we lived at Waterstone. While at Waterstone, we had a PO Box, and continued using the PO Box for 18 months after we moved to Val dIsere because the post office didn't have room for us in the cluster mailbox on Laurel Lane. I don't believe this is uncommon for many folks who are full time residents of Steamboat. To further that point, I went and looked up addresses on the Engage Steamboat page and learned that many of my full time resident neighbors who live in our Ski Ranches neighborhood have PO Boxes. Just checking a few, I discovered that Lynne Miller 2720 Alpenglow Glow Way (lot 36), Marion Kahn 2755 Alpenglow Glow Way (lot47), Ron + Lois Pollard 2800 Alpenglow Glow Way (lot 28) and Billy Kidd 2927 Laurel Lane all have PO Boxes and would not be counted as full time residents of Steamboat. This is a problem if you only include full time residents as having a 'real' address and don't include those full time residents with PO Boxes.

My second point, is relaying on HOA's to define rules for STR's. I've retained Sarah Claassen to look into the original Ski Ranches HOA. When our neighborhood was established, a set of by-lays was created that stated no businesses were allowed. This was filed with the original plat, but to the best of my knowledge was never registered as a HOA with the state. We have requested a freedom of information act in looking for a formal filing and meeting minutes with the State. However, with Covid, they are working remotely and have a large back log of requests. To that end, we are at a loss until we hear from them, and have no formal HOA to rule on the STR situation. I'm sure we aren't the only neighborhood who has that issue.

Thirdly, I've owned property in Steamboat since 2000, and have lived at Eagle Ridge Estates, Waterstone and owned 35 acres at Elk River Mountain Estates on Diamond Back Way, before building our home on Val dIsere Circle. We knew that we were moving to a resort town, and understood the pluses and minuses of our move. After living at the Terraces, and Waterstone, we loved being close to the mountain, but got tired of having to put up with vacationers so we bought a vacant lot on Val dIsere and built the home of our dreams, in what we thought was a quiet neighborhood close to the mountain. We did our due diligence and reviewed the HOA by-laws, and were influenced by the rule of no business especially STR. We see our home as a refuge from the minuses of living in a resort town, but having the pluses of a 'real' neighborhood. With the advent of STR's in our neighborhood, our refuge is quickly leaving.

You have previously defined the Ski Ranches as a neighborhood close to the mountain that will not allow any further STR's during the moratorium- and I would ask that you continue the moratorium for our neighborhood until we are able to resolve our HOA issue.

Thank you so much for your time and consideration in this matter!

Bill Latoza - architect
[redacted]

Sent from the ski hill
"Kindness is like snow - it beautifies everything it covers." Kahlil Gibran

Sent from the ski hill
"Kindness is like snow - it beautifies everything it covers." Kahlil Gibran

From: noreply@civicplus.com
To: City Council
Subject: Online Form Submittal: City Council Contact Form
Date: Tuesday, September 21, 2021 7:58:19 AM

City Council Contact Form

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Contact Information

First Name	Mike
Last Name	Koponen
Email Address	mkoponen@comcast.net

Questions or Comments

Please select the department(s) you want to contact:	City Council
Please leave your comments or questions below.	Good Morning City Council I was out of town and wasn't able to make the meeting yesterday. I saw where there was a submission on rescinding the moratorium on VHRs in the packet with some data attached to support the case. The data submitted by Sarah Bradford is not at all accurate for the neighborhood I live in. The map states owner occupancy percentages in neighborhoods without stating where these numbers came from also. My neighborhood is listed as 25-50% residents when in reality 30 of our 48 homes are full time residents and another 11 are part time residents who DO NOT do VHR with their homes. I encourage you to validate any data presented to you by a STR/VHR industry insider with a clear agenda and a disregard for preservation of our residential

	neighborhoods. The notion some people advance of there being no residential neighborhoods within 1 to 1.75 miles from the base of the mountain is just not true. People who state this are either uniformed or being disingenuous and I encourage City Council to ensure data being used to make decisions is accurate. Thank you Mike
Please add attachments here.	*Field not completed.*

Karen Lewer

From: noreply@civicplus.com
Sent: Friday, September 24, 2021 6:38 AM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Sarah
Last Name	Bradford
Mailing Address	[redacted]
Physical Address	[redacted]
City	steamboat springs
State	co
Zip	[redacted]
Email Address	
Phone Number	
Question	Dear Planning Commission, Thank you for reading the below information which sums up a lot of data we have collected this summer since the Council put the Moratorium into affect. First, I want to say that I'm proud of what my family does in this community - we provide many jobs for locals at very high wages. We also work tirelessly to give guests a safe and enjoyable vacation while ensuring our guests know about quiet hours, trash, parking, and how to be good citizens while they stay in the homes we manage. These guests eat in our restaurants, buy our retail, and spend a lot of their money here. .My staff is also proud of what they do all the way to the housekeepers who day in and day out show up to clean and provide for their families as well.

I was encouraged by the reasonable conversation last night, but was a little disappointed no one questioned the idea of the overlay in general. There was no specific criteria shown to prove it's even needed, just a speculation that somehow it's affecting neighborhood character and housing stock. I would ask the Commission to use data instead of conjecture of public opinion. Gather the complaints, look at growth/shrinkage of STRs and the subset of VHRs before you take away thousands of property rights and have to require each HOA or property owner to come before the Commission for an exception to the overlay.

I also barely heard any mention of the fact we are a town built on tourism, and that those guests who visit here prefer vacation rentals over hotels these days - that's why the industry has grown across the US. Families like to gather in homes with kitchens and large living rooms for a ski trip vs. a hotel room. Please consider the economic impact of your decisions and back those up with criteria that allows you defend why one street is in the green and another is out.

Many of us agree there should be regulation. And many of us agree there are probably some areas of Steamboat that should be left to locals whether it’s long term renting or local homeownership.

Clarifications:
- GOAL decided by Council: retain genuine neighborhood character
- STRs is a big circle with 3600+ homes, townhomes, and condo/multi family in it. VHRs are a 5% subset.
- VHRs are only homes and duplexes outside of the RR and G zones
- The Moratorium was only placed on NEW vhr permits, all existing 214 continue to operate, with no changes nad no additional regulation or enforcement. This means about 7-10 homeowners couldn't get permits - that's it. All others proceeded as normal with no additional enforcement or data gathering done all summer.

Moratorium and Overlay work was premature
First, Regulate, Register & Attempt to Enforce vs. jump to Prohibited Zones. The reason this would have been ideal is MOST multi-family have HOAs which prohibit or allow STRs. The idea of the City overruling those HOA laws is what is viewed is “overreaching” whereas getting them to register and license them with basic safety, noice, trash and parking standards would have gone a long way to attack the problems

that are apparently out there.
When we say enforcement, we are referring to a 24/7 hotline (by Granicus, already signed on) and having a 24/7 local contact for all 3600+
So what this has become is just a discussion of where the City wants to prohibit any new VHRs b/c existing permits are land use permits and can't be removed and condos have HOAs so those that allow STRs will apply for an exception.

Moratorium was due to an "emergency" based on emails/comments to Council about noise and trash in citizen's neighborhoods, and the only lever that could be pulled but SINCE THEN...

We've dug deep into the data and public opinion and found:
- 1,000 Petition signers (called "Reasonable Short Term Regulations in Steamboat Springs" on change.org) asking to "Regulate, Register, and Enforce" not jump to an overlay and to remove the Moratorium

- Data shows that the number of all total STRs (includes 214 VHRs) has decreased since 2020 (Source: KeyData)

- Direct Economic impact of STRs in STeamboat per year - $250M. That doesn't include indirect of all of the employee spend. Depending on an overlay, we can determine the economic impact and sales tax impact of prohibiting (in the latest overlay proposal, a rough estimate is $25M loss annually) - full study can be seen in attachment turned into Council in August.

- In the past 5 years, the % of local buyers each year is 50% and out of state buyers the other 50%. Of out of state buyers, Front Range buyers has grown significantly vs outside of Colorado. What does this mean?
This stayed true in August (Land Title) - Of the 162 transactions, 86 were local buyers, 38 were front range and 38 were from out of state. None were international.

- Data shows that the number of new VHR permits is barely keeping up with the rate of growth/new builds (net 6 per year)
Data to back that up: Over the last 14 years since the city started permitting Vacation Home Rentals, there have been a total of 314 homes that have applied. Over that same period of time, 100 permits have expired or have been turned in as no longer being used. That means on average, 15 expire each year. On average, 21 new ones apply each year. This means 6 net per year. If you even took the average over the last 5 years

which would be 25 new ones per year, it's still only 10 new ones per year. We also know of active permit holders who no longer rent, but are holding them as “placeholders”.

- Of 272 VHR qualified properties that were purchased in last 18 months, only 12 applied for a VHR permit (I would argue that's NOT an emergency)

- The VHR permit process is arduous. Unless you really want to rent your home, you’re probably not going to get one - floor plan, site plan, snow plan, trash plan, parking plan and sending letters to your neighbors

- Zoomers and Super Rich non-STR owners are most likely the reason for property values skyrocketing not investors wanting to cash in on STRs

- Brown Ranch has been purchased and moving forward. This creates choice vs. forcing a property owner to give up their rights for affordable housing causes.

- Enforcement has not been done on STRs or VHRs but Granicus is signed on and ready to go. Let's focus Rebecca and her team on that positive effort.

- When STRs are prohibited, the homes usually “go dark” - that’s less spending, less tax.
There has been much public comment asking to defer to HOAs to allow or not allow STRs in those areas

Moratorium
- Some areas included in the Moratorium are near the Mountain, were built with the intention of being for visitors, and have low local density (aka under 25% and often under 10%). We have researched every street and turned in that data and a map to Planning and Council that shows local density per street. We believe these areas should be removed from the Moratorium asap. Please let these few owners who cannot get a permit move on and rent their home for the ski season if they so choose.

I think we all agree that the past four months has brought us to the table, let us all look at valid data regarding this issue, yet we still have made no progress to enforcement. No “bad actors” have been contacted, fined, or shut down. Let’s reduce the scope of the Moratorium, hit pause on a complicated overlay and get moving with Granicus to register all STRs, and start real enforcement.

Karen Lewer

From: noreply@civicplus.com
Sent: Friday, September 24, 2021 8:54 PM
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form

Planning Commission Comment Form

First Name	Matthew
Last Name	Stensland
Mailing Address	[redacted]
Physical Address	[redacted]
City	Steamboat Springs
State	CO
Zip	[redacted]
Email Address	
Phone Number	
Question	Re: Short-term rentals Thanks for all of your service. I've owned and lived at 491 Eaglepointe Court (Eaglepointe Townhomes at the top of Hilltop Parkway) since 2006. There are 28 townhome units in our community. I believe we have 2-3 units that are used for short-term, nightly rentals. We've had some issues with noise. Residents are told to call the cops, and police tend to deal with it. We've had issues with parking. The HOA has dealt with those issues. Just a couple thoughts on short-term rentals: Several years ago our HOA was reviewing the bylaws, and we ultimately decided to continue to allow short-term rentals. Some believed not allowing short-term rentals would have a

negative impact on our 2,000-square-foot, 4br/4ba properties. I agree it would have a negative impact on property values, and it's a matter of balancing that impact with the character of OUR Eaglepointe community.

Instead of the city government deciding who can and cannot rent their condos/townhomes, I would like to put that responsibility on each HOA. It feels a little more democratic that way and much less of an overreach by government.

Like anything that potentially has negative impacts, tax the hell out of it and use the revenue to fund enforcement/compliance.

Sincerely,

Matt Stensland

From: noreply@civicplus.com
To: Karen Lewer
Subject: Online Form Submittal: Planning Commission Comment Form
Date: Sunday, September 26, 2021 11:16:53 AM

Planning Commission Comment Form

First Name	vince
Last Name	arroyo
Mailing Address	[redacted]
Physical Address	[redacted]
City	STEAMBOAT Springs
State	co
Zip	[redacted]
Email Address	
Phone Number	
Question	On the 9/23/2021 Planning Meeting regarding the STRs First i want to thank Rebecca Bessey(and team) for her work on this item>>> I agree with the overlay that was presented. This town has changed due to STR, VaCasa, VRBOs etc . I agree with the comments on the amount of noise, trash and the disrespect that some have on the neighborhood character! Yes many associations do allow rentals of their units: "The Owner, Tenants and Guests have to abide By the rules and regulations of the complex" But many do not ! My concerned is that with the amount of rentals available, the amount that are registered on the books.

Many that aren't registered are they paying taxes from the income?

Regards

Vince Arroyo
