

1 Timothy Sandefur (224436)
*Matthew R. Miller
2 *Christina Sandefur
*Pro Hac Vice
3 **Scharf-Norton Center for**
4 **Constitutional Litigation at the**
5 **GOLDWATER INSTITUTE**
6 500 East Coronado Road
7 Phoenix, Arizona 85004
(602) 462-5000
8 Fax (602) 256-7445
9 litigation@goldwaterinstitute.org

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MONTEREY**

10 WILLIAM HOBBS;
11 SUSAN HOBBS;
DONALD SHIRKEY;
and IRMA SHIRKEY,
12 Plaintiffs,

13 vs.

14 CITY OF PACIFIC GROVE,
15 CALIFORNIA;
BILL KAMPE, in his official capacity as the
Mayor of the City of Pacific Grove;
16 ROBERT HUITT, in his official capacity as
a Councilmember of the City of Pacific
17 Grove;
KEN CUNEO, in his official capacity as a
18 Councilmember of the City of Pacific Grove;
RUDY FISCHER, in his official capacity as
19 a Councilmember of the City of Pacific
Grove;
20 CYNTHIA GARFIELD, in her official
capacity as a Councilmember of the City of
21 Pacific Grove;
BILL PEAKE, in his official capacity as a
22 Councilmember of the City of Pacific Grove;
and NICK SMITH, in his official capacity as
23 Councilmember of the City of Pacific Grove,

24 Defendants.

No. 18CV002411

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF (Civ. Proc.
§§ 526, 527, 1060)**

Hon. Vanessa W. Vallarta

25 1. This civil-rights lawsuit seeks to vindicate William and Susan Hobbs and
26 Donald and Irma Shirkey's ("Plaintiffs") constitutional rights to be free from unlawful
27 deprivation of their right to allow guests to stay in their home.
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1 for passing and enacting the ordinances complained of in this action. He is sued in his
2 official capacity only.

3 9. Defendants Robert Huitt, Ken Cuneo, Rudy Fischer, Cynthia Garfield, Bill
4 Peake, and Nick Smith are Councilmembers on the City Council, which is the governing
5 body for the City of Pacific Grove. Councilmembers are responsible for passing and
6 enacting the ordinances complained of in this action. They are sued in their official
7 capacities only.

8 **JURISDICTION AND VENUE**

9 10. At all times pertinent to this action, the acts complained of have occurred
10 in, or are occurring in, Monterey County, California.

11 11. This action arises under Article I, § 7 of the California Constitution; the
12 Fourteenth Amendment to the United States Constitution; and Cal. Pub. Res. Code §§
13 30108.6; 30514(a). Accordingly, this Court has subject matter jurisdiction over this
14 action.

15 12. This Court has jurisdiction over actions for declaratory and injunctive
16 relief pursuant to California Code of Civil Procedure § 1060 and § 526, respectively.

17 13. Venue is proper in this court, as the properties in question and Defendants
18 are located in Monterey County.

19 **FACTS COMMON TO ALL CLAIMS**

20 *Home-Sharing in Pacific Grove*

21 14. With its small-town hospitality, sandy beaches, and popular tourist
22 attractions such as an award-winning natural history museum, a nationally recognized
23 18-hole golf course, and the oldest continuously-operating lighthouse on the west coast,
24 Pacific Grove is a popular vacation destination.

25 15. Home-sharing—renting a room or an entire house on a short-term basis—
26 is a popular way for tourists to visit Pacific Grove. Indeed, the City’s own website boasts
27 of the availability of local vacation rentals for tourists.

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1 23. Susan’s family has owned Sea Dance since her parents purchased it over
2 50 years ago, when Susan was a teenager.

3 24. In 2013, Susan’s mother had to move into an assisted living facility. To
4 help the family afford the considerable costs of that care, Susan obtained a short-term
5 rental license from the City and began to offer Sea Dance for rent through the property
6 management company Sanctuary Vacation Rentals.

7 25. Before they could rent Sea Dance, Susan and William had to conduct
8 significant repairs and improvements, which required them to take money out of savings.
9 They did this based on the assurance that they would be able to recover the costs of
10 repairs through short-term rentals. Susan and William worked daily for two months and
11 overall have spent an estimated \$50,000 to turn the home from an unmaintained eyesore
12 to a beautiful oceanfront vacation home.

13 26. Susan inherited the home when her mother passed away six months later.
14 Because she had put considerable resources into fixing the home and because she
15 wanted to keep the home for future use as a primary residence, Susan continued to offer
16 the home for rent on a short-term basis.

17 27. Sea Dance is a popular rental home, with a 74% occupancy rate in 2017. It
18 is ideal for short-term rentals, as it is located on the ocean and has ample parking.

19 28. The average duration of a rental is three days, although renters sometimes
20 occupy Sea Dance for a couple of weeks at a time.

21 29. In her five years of renting Sea Dance, Susan has never received a
22 complaint about her renters from the City or anyone else. Her renters have generally
23 been good guests and have never damaged the home or property.

24 30. When William and Susan are no longer permitted to use Sea Dance as a
25 short-term rental, they will suffer a reduction in income and will have to economize to
26 pay their expenses.

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The Shirkey Property

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2 31. Plaintiffs Donald and Irma Shirkey own a home at 105 5th St. (the
3 “Shirkey Property”) in Pacific Grove. It is licensed and used for short-term rentals.

4 32. Donald and Irma purchased the Shirkey Property in 1999 as a second
5 home for their children and grandchildren to use when they visit. In order to cover costs,
6 they decided to rent the home out when their family was not occupying it.

7 33. The Shirkey Property is a two-story, single family-home with a small guest
8 quarters over the garage. Donald and Irma often rent it as a single unit, and the City only
9 required one short-term rental license when it was first licensed in 2010.

10 34. When the City began licensing short-term rentals in April 2010, Donald
11 and Irma applied for and received a license to share the Shirkey Property.

12 35. To offer the Shirkey Property as a short-term rental, Donald and Irma
13 made repairs and improvements, including installing new decks and replacing and
14 upgrading appliances.

15 36. The average duration of a rental is three days, although renters sometimes
16 occupy the Shirkey Property for a couple of weeks. Only once since 2010 did Donald
17 and Irma have renters stay in the Shirkey Property for more than a month.

18 37. In their eight years offering the Shirkey Property as a short-term rental,
19 Donald and Irma have never received a complaint about renters from the City or anyone
20 else. The Shirkey Property has received excellent reviews from renters on online home-
21 sharing sites.

22 38. In 2017, the City required Donald and Irma to obtain two short-term rental
23 licenses for the Shirkey Property: one for the main house, and one for the guest quarters
24 over the garage.

25 39. Being able to offer the Shirkey Property as a short-term rental gives
26 Donald and Irma the flexibility to keep a well-maintained property for their children and
27 grandchildren to visit, so that they do not have to spend money staying in a hotel, and,
28 when their family is not visiting, to use the property by allowing guests to stay in it.

1 47. In 2015, the City placed a moratorium on new short-term rental license
2 applications but specified that “[r]enewal of existing permits shall not be inhibited by
3 this measure.” Pacific Grove Ordinance 15-016 § 2(A).

4 48. In 2016, the City created two short-term rental (“STR”) categories, Type A
5 and B, established a cap limiting Type A STR licenses to 250, and establishing density
6 limits to restrict the number of new Type A STR licenses. Pacific Grove Ordinance 16-
7 007. The amendment did not change or affect Plaintiffs’ existing licenses.

8 49. In 2017, the City resolved to amend its General Plan to address short-term
9 rentals in residential zones and to clarify that if short-term rental licenses exceeded the
10 250 cap, new license applications would be placed on a waiting list. Pacific Grove
11 Ordinance 17-024. The amendment did not change or affect Plaintiffs’ existing licenses.

12 50. At the City’s insistence, Plaintiffs Donald and Irma Shirkey obtained a
13 second short-term rental license for the Shirkey Property in 2017 and have maintained
14 both licenses in good standing ever since. Their second short-term rental license is a
15 vested right.

16 51. In February 2018, the City adopted the ordinance that is the subject of this
17 lawsuit. Under that Ordinance, the City imposed a 15% density cap, Zones of Exclusion,
18 and a procedure for determining whether properties existed in “over-dense blocks.”
19 Pacific Grove Ordinance 18-005.

20 52. This new Ordinance, for the first time, subjected existing short-term rental
21 licenses to risk of dissolution. Properties that held existing short-term rental licenses that
22 were previously deemed indefinitely renewable and irrevocable without a showing of
23 specific misconduct or violations would nevertheless be subject to termination if the
24 properties were outside a Zone of Exclusion or in an area that had reached the 15%
25 density cap. For those licenses, the Ordinance required the City Manager to “conduct a
26 lottery to implement this ordinance.” Pacific Grove Ordinance 18-005 § 2.

27 53. On May 22, 2018, the City set up a ping-pong-ball lottery machine to
28 determine at random who could and could not continue using their property for short-

1 term rentals. The lottery was the sole basis on which the City selected license-holders
2 who would have their licenses revoked.

3 54. At the lottery, the City selected 51 license-holders who will have their
4 short-term rental permits revoked in April 2019. They will remain ineligible to even
5 apply for another permit until such time as the lottery's winners choose to relinquish
6 their permits and open up space.

7 55. As a result of the City's lottery, Plaintiffs William and Susan Hobbs'
8 permit to rent Sea Dance will be revoked.

9 56. Because the City required Plaintiffs Donald and Irma Shirkey to obtain a
10 second license for the upstairs guest quarters at their single-family rental home, the
11 Shirkey Property was competing against itself for the right to keep its short-term rental
12 licenses.

13 57. As a result of the City's lottery, Plaintiffs Donald and Irma Shirkey's
14 permit to rent the Shirkey Property will be revoked. They will be allowed to keep the
15 license to rent the upstairs guest quarters. They were not given the opportunity to choose
16 which of the licenses they wanted to keep.

17 58. The process for stripping people of their short-term rental licenses was not
18 based on how long the homeowner had been renting the home, or whether they or their
19 guests had caused disturbances or on any other factor except for the lottery. As a result,
20 owners who had incurred numerous complaints were allowed to keep their permits,
21 while responsible homeowners and long-time renters like Plaintiffs were stripped of
22 theirs.

23 59. On November 6, 2018, Pacific Grove voters approved Measure M, which
24 prohibits and phases out, over an 18-month sunset period, *all* existing permitted short-
25 term rentals in residential districts, except in the Coastal Zone.

26 60. As a result of Measure M, Plaintiffs William and Susan Hobbs will be
27 permanently prohibited from renting Sea Dance short-term.
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1 **COUNT ONE – COASTAL ACT**

2 61. Plaintiffs reassert and reallege paragraphs 1 through 60 as if fully stated
3 herein.

4 62. Pacific Grove Ordinance 18-005 imposes, among other things, a 15%
5 density cap on short-term rental permits and subjects existing short-term rental licenses,
6 which were previously deemed indefinitely renewable and irrevocable, to a lottery to
7 determine which licenses will be dissolved.

8 63. Beginning in April 2019, Pacific Grove Ordinance 18-005 will prohibit
9 Plaintiffs from conducting short-term rentals in their previously-licensed properties.

10 64. Under California law, changes in a coastal city’s zoning laws that
11 effectively amend a city’s Local Coastal Program, and which constitute a
12 “development,” require approval from the California Coastal Commission, which
13 oversees land use in California’s coastal zone. Cal. Pub. Res. Code §§ 30108.6; 30510.

14 65. Because Ordinance 18-005 changes the zoning in Pacific Grove, it
15 effectively amends the City’s Local Coastal Program and constitutes a “development.”

16 66. Pacific Grove did not submit Ordinance 18-005 to the Coastal Commission
17 for approval prior to the Ordinance’s adoption, or before holding the lottery at which
18 Plaintiffs were selected to be stripped of their licenses.

19 67. By adopting and enforcing Ordinance 18-005 without first submitting it to
20 the Coastal Commission for approval, the City has acted *ultra vires* in violation of Cal.
21 Pub. Res. Code §§ 30108.6; 30514(a).

22 **COUNT TWO – DUE PROCESS**

23 68. Plaintiffs reassert and reallege paragraphs 1 through 67 as if fully stated
24 herein.

25 69. The Due Process Clause of the California Constitution (Article I, § 7)
26 provides in relevant part, “A person may not be deprived of life, liberty, or property
27 without due process of law or denied equal protection of the laws.”
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1 70. The Fourteenth Amendment to the United States Constitution provides in
2 relevant part, “No state shall ... deprive any person of life, liberty, or property, without
3 due process of law.”

4 71. The Due Process Clauses of the California and U.S. Constitutions protect
5 Plaintiffs’ right to use their private property as they see fit, subject only to regulations
6 that are rationally related to the public’s health, safety, or welfare.

7 **Ordinance 18-005**

8 72. Pacific Grove Ordinance 18-005, both on its face and as applied, violates
9 Plaintiffs’ right to due process by arbitrarily limiting the number of homes that can be
10 offered as short-term rentals.

11 73. Pacific Grove Ordinance 18-005, both on its face and as applied, violates
12 Plaintiffs’ right to due process by subjecting Plaintiffs to an arbitrary lottery process by
13 which they were selected to be deprived of their vested rights to offer their homes as
14 short-term rentals.

15 74. Pursuant to Pacific Grove Ordinance 18-005, the City randomly selected
16 Plaintiffs to have their vested rights annulled and revoked without any consideration of
17 fault, or opportunity to be heard or to contest the revocation on the merits.

18 75. Pacific Grove Ordinance 18-005 is not rationally related to any legitimate
19 government interest and therefore is not a valid exercise of the City’s police power to
20 protect the public’s health, safety, or welfare.

21 76. The City’s decision to limit the number of homes that can be offered as
22 short-term rentals within a specified area, without, e.g., grandfathering existing license-
23 holders who are in good standing, bears no relationship to the public’s health, safety, or
24 welfare.

25 77. The City’s decision to count Plaintiffs Donald and Irma’s single-family
26 home as two rental properties for purposes of the lottery, thus depriving them of the
27 license to rent the main house bears no relationship to the public’s health, safety, or
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1 welfare. The City made this decision without consideration of fault and without giving
2 the Plaintiffs any opportunity to be heard on the merits.

3 **Measure M**

4 78. Measure M, both on its face and as applied, violates Plaintiffs William and
5 Susan Hobbs's right to due process by prohibiting all homes outside of the Coastal Zone
6 from being offered as short-term rentals.

7 79. Measure M, both on its face and as applied, violates the Hobbses' right to
8 due process by phasing out existing permitted short-term rentals, thus depriving permit
9 holders of their vested rights to offer their homes as short-term rentals.

10 80. Measure M annuls and revokes the Hobbses' vested rights without any
11 consideration of fault, or opportunity to be heard or to contest the revocation on the
12 merits.

13 81. Measure M is not rationally related to any legitimate government interest
14 and therefore is not a valid exercise of the City's police power to protect the public's
15 health, safety, or welfare.

16 82. Prohibiting and phasing out existing permitted short-term rentals outside
17 of the Coastal Zone, without, e.g., grandfathering existing license-holders who are in
18 good standing, bears no relationship to the public's health, safety, or welfare.

19 83. A regulation actually directed toward protecting the public's health, safety,
20 or welfare would address how such homes and units are used—e.g., by prohibiting
21 specific nuisance activities or specified noise levels, imposing mandates on property
22 management companies, etc., so as to ensure that actions taken by guests in short-term
23 rentals do not harm others. Limiting the number of homes that can be offered as short-
24 term rentals and depriving responsible license-holders who are in good standing of their
25 license to rent accomplishes none of these purposes. The City can protect quiet, clean,
26 and safe neighborhoods by, for example, implementing rules to limit noise, enforce
27 parking restrictions, and restricting other specific nuisances.

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their short-term rental licenses under a lottery held pursuant to Ordinance 18-005;

v. a permanent injunction against the City of Pacific Grove prohibiting the City from enforcing Measure M or divesting Plaintiffs of their short-term rental licenses under Measure M;

vi. an award to Plaintiffs for their reasonable attorney’s fees and costs; and,

vii. any further relief as this Court deems just and proper.

DATED this 12th day of December, 2018.

/s/ Christina Sandefur
Timothy Sandefur (224436)
* Matthew R. Miller
* Christina Sandefur
* *Pro hac vice* applications pending

CERTIFICATE OF SERVICE

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I, Kris Schlott, declare as follows:

I am employed by the Goldwater Institute, Scharf-Norton Center for Constitutional Litigation. I am over the age of eighteen years, and not a party to the within cause; my business address is Goldwater Institute, 500 East Coronado Road, Phoenix, Arizona 85004. On December 12, 2018, I served the above Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief on the interested parties in this action addressed via the electronic filing portal and email as follows:

David C. Laredo, Esq.
Heidi A. Quinn, Esq.
Michael D. Laredo, Esq.
De LAY & LAREDO
606 Forest Avenue
Pacific Grove, CA 93950
dave@laredolaw.net
michael@laredolaw.net
Counsel for Defendants

Dated this: 12th day of December, 2018

/s/ Kris Schlott
Kris Schlott, Paralegal