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

9 WILLIAM HOBBS;  
10 SUSAN HOBBS;  
11 DONALD SHIRKEY;  
and IRMA SHIRKEY,

12 Plaintiffs,

13 vs.

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

Defendants.

No.

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

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 enacting the ordinances complained of in this action. They are sued in their official  
2 capacities only.

3 **JURISDICTION AND VENUE**

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

6 10. This action arises under Article I, § 7 of the California Constitution; the  
7 Fourteenth Amendment to the United States Constitution; and Cal. Pub. Res. Code §§  
8 30108.6; 30514(a). Accordingly, this Court has subject matter jurisdiction over this  
9 action.

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

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

14 **FACTS COMMON TO ALL CLAIMS**

15 ***Home-Sharing in Pacific Grove***

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

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

23 15. As an alternative to traditional hotels, home-sharing offers local  
24 hospitality, a personal touch, and the ability to rent anything from a single room to an  
25 entire house. This makes home-sharing popular with travelers seeking a different  
26 experience than that offered by traditional hotels or bed and breakfasts—including  
27 travelers on a limited budget, groups needing flexibility, and families looking for an  
28 entire house to rent for the weekend.





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

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

6           34.    To offer the Shirkey Property as a short-term rental, Donald and Irma  
7 made repairs and improvements, including installing new decks and replacing and  
8 upgrading appliances.

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

12          36.    In their eight years offering the Shirkey Property as a short-term rental,  
13 Donald and Irma have never received a complaint about renters from the City or anyone  
14 else. The Shirkey Property has received excellent reviews from renters on online home-  
15 sharing sites.

16          37.    In 2017, the City required Donald and Irma to obtain two short-term rental  
17 licenses for the Shirkey Property: one for the main house, and one for the guest quarters  
18 over the garage.

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

23          39.    The upstairs guest quarters is very small and not economically viable as a  
24 stand-alone rental for many guests.

25          40.    When Donald and Irma are deprived of their existing home-sharing license  
26 pursuant to the lottery system described in Paragraphs 50-57 below, and are  
27 consequently prohibited from using the Shirkey Property's main house as a short-term  
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1 rental, they will suffer a reduction in income and will have to economize to pay their  
2 expenses.

3 *Pacific Grove Suddenly and Arbitrarily Divests Homeowners*  
4 *of their Vested Right to Share their Homes*

5 41. Short-term rentals have been expressly permitted and licensed in Pacific  
6 Grove since 2010, when the City enacted Ordinance 10-001. The City required home-  
7 sharers to obtain and maintain a Transient Use License to offer their home as a short-  
8 term rental. Pacific Grove Municipal Code. § 7.40

9 42. Transient Use Licenses were indefinitely renewable and would not be  
10 revoked unless the City could show substantial evidence that the license-holder had  
11 committed specific misconduct or violations. Pacific Grove Municipal Code §§  
12 7.40.080, 7.40.180.

13 43. The City defines short-term rentals as the lodging, occupancy, possession,  
14 or tenancy for less than thirty consecutive calendar days. Pacific Grove Municipal Code  
15 § 7.40.030.

16 44. Plaintiffs Donald and Irma Shirkey obtained their short-term rental license  
17 for the Shirkey Property in 2010 and obtained their second license for the upstairs guest  
18 quarters in 2017. They have maintained both licenses in good standing ever since. Their  
19 licenses are a vested right.

20 45. Plaintiffs William and Susan Hobbs obtained their short-term rental  
21 license for Sea Dance in 2013 and have maintained it in good standing ever since. Their  
22 license is a vested right.

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

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

3 48. In 2017, the City resolved to amend its General Plan to address short-term  
4 rentals in residential zones and to clarify that if short-term rental licenses exceeded the  
5 250 cap, new license applications would be placed on a waiting list. Pacific Grove  
6 Ordinance 17-024. The amendment did not change or affect Plaintiffs’ existing licenses.

7 49. At the City’s insistence, Plaintiffs Donald and Irma Shirkey obtained a  
8 second short-term rental license for the Shirkey Property in 2017 and have maintained  
9 both licenses in good standing ever since. Their second short-term rental license is a  
10 vested right.

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

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

22 52. On May 22, 2018, the City set up a ping-pong-ball lottery machine to  
23 determine at random who could and could not continue using their property for short-  
24 term rentals. The lottery was the sole basis on which the City selected license-holders  
25 who would have their licenses revoked.

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

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

5 55. Because the City required Plaintiffs Donald and Irma Shirkey to obtain a  
6 second license for the upstairs guest quarters at their single-family rental home, the  
7 Shirkey Property was competing against itself for the right to keep its short-term rental  
8 licenses.

9 56. As a result of the City's lottery, Plaintiffs Donald and Irma Shirkey's  
10 permit to rent the Shirkey Property will be revoked. They will be allowed to keep the  
11 license to rent the upstairs guest quarters. They were not given the opportunity to choose  
12 which of the licenses they wanted to keep.

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

19 **COUNT ONE – COASTAL ACT**

20 58. Plaintiffs reassert and reallege paragraphs 1 through 57 as if fully stated  
21 herein.

22 59. Pacific Grove Ordinance 18-005 imposes, among other things, a 15%  
23 density cap on short-term rental permits and subjects existing short-term rental licenses,  
24 which were previously deemed indefinitely renewable and irrevocable, to a lottery to  
25 determine which licenses will be dissolved.

26 60. Beginning in April 2019, Pacific Grove Ordinance 18-005 will prohibit  
27 Plaintiffs from conducting short-term rentals in their previously-licensed properties.  
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1           70. Pacific Grove Ordinance 18-005, both on its face and as applied, violates  
2 Plaintiffs' right to due process by subjecting Plaintiffs to an arbitrary lottery process by  
3 which they were selected to be deprived of their vested rights to offer their homes as  
4 short-term rentals.

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

8           72. Pacific Grove Ordinance 18-005 is not rationally related to any legitimate  
9 government interest and therefore is not a valid exercise of the City's police power to  
10 protect the public's health, safety, or welfare.

11           73. The City's decision to limit the number of homes that can be offered as  
12 short-term rentals within a specified area, without, *e.g.*, grandfathering existing license-  
13 holders who are in good standing, bears no relationship to the public's health, safety, or  
14 welfare.

15           74. The City's decision to count Plaintiffs Donald and Irma's single-family  
16 home as two rental properties, thus depriving them of the license to rent the main house  
17 bears no relationship to the public's health, safety, or welfare. The City made this  
18 decision without consideration of fault and without giving the Plaintiffs any opportunity  
19 to be heard on the merits.

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



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DATED this 26th day of June, 2018.

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