Honorable Roger Rogoff
Noted for argument on June 21, 2019 at 10:30 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SEATTLE VACATION HOME, LLC; and ANDREW MORRIS, Plaintiffs, v. CITY OF SEATTLE, WASHINGTON *et al.* Defendants.	No. 18-2-15979-2 CITY OF SEATTLE'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiffs' opposition and cross motion confirms that each of their claims are subject to rational basis review, and should be dismissed under that standard. First, Plaintiffs concede that their privileges and immunities claim is subject to rational basis review. Second, with respect to their federal substantive due process claim, Plaintiffs simply misrepresent established federal law in an attempt to avoid rational basis. Third, as argued at length in the City of Seattle's (the "City") Motion, there is no independent state law analysis under Washington's due process clause, and thus it is the same federal rational basis standard, and not the discredited "undue oppression" analysis, that governs Plaintiffs' "state" substantive due process claim.

Rational basis is easily satisfied in this case. Following the lead of more than a dozen jurisdictions, the City passed licensing legislation (the "Ordinance") limiting the operation of short-term rentals ("STRs"). The Ordinance addresses issues regarding the affordability of long-term housing, the increased displacement of vulnerable communities, and the balancing of benefits and challenges of STRs. The Ordinance on its face states that these are the purposes for which it was adopted. The Ordinance treats married couples as a single operator for purposes of STR licenses (similar to some other business licenses) as but one of multiple preventative measures to inhibit any one licensee from amassing a large-scale STR enterprise and subverting the purposes of the Ordinance. The City also grandfathered in STRs in parts of the Downtown, First Hill, and South Lake Union neighborhoods, where the existing density and combination of uses (including tourism, nightlife and entertainment, and other short-term options like hotels) are more consistent with and less impacted by STRs than other less dense or residential neighborhoods. The legislative history of the Ordinance, which has been produced to Plaintiffs through discovery, further demonstrates that the City carefully considered input from impacted

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communities, relevant data and research (including numerous memoranda compiled by City staff), and the design and impact of similar laws passed by other jurisdictions before enacting the Ordinance.

Because the Ordinance is rationally related to legitimate government interests, and Plaintiffs do not dispute the facts material to that conclusion, summary judgment is appropriate. The City thus respectfully requests that the Court grant its Motion, deny Plaintiffs' cross motion, and dismiss Plaintiffs' claims with prejudice.

II. ARGUMENT

A. Rational basis is the appropriate standard of review for each of Plaintiffs' claims.

1. Plaintiffs agree that their privileges and immunities claim is subject to rational basis review.

As detailed in the City's Motion, Article I, section 12 of the Washington Constitution provides greater protection than the 14th Amendment only if the challenged law involves a fundamental right of state citizenship. *See* City's Mot. at 13-16. If no fundamental right of state citizenship is implicated, the Court's review is limited to whether the challenged law satisfies the "rational basis" inquiry under the federal equal protection clause. *See id*. Plaintiffs do not dispute that analysis, and do not claim that a fundamental right of state citizenship is at issue. Indeed, Plaintiffs agree that rational basis is the appropriate standard of review for their privileges and immunities claim. Plfs.' Opp. at 6.

2. Plaintiffs' substantive due process claim is subject only to rational basis review, and Plaintiffs' argument to the contrary misconstrues settled precedent.

Plaintiffs' substantive due process claim is also subject to rational basis review. City's Mot. at 9-10. Plaintiffs assert that federal substantive due process claims are governed by a "substantially advances" test, *see* Plfs.' Opp. 6, 9, but that argument finds no support in (and is

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directly contradicted by) the authority they cite.[1] *See Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114, 71 L. Ed. 303 (1926) (holding that an ordinance is unconstitutional if its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."); *Nectow v. City of Cambridge*, 277 U.S. 183, 188, 48 S. Ct. 447, 72 L. Ed. 842 (1928) (same); *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 488 n.6, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977) (quoting *Euclid*). None of these cases include the phrase "substantially advances" or otherwise suggest that the efficacy of a challenged law is relevant to the rational basis inquiry. Under federal law, unless the challenged regulation implicates a federally recognized fundamental right or suspect class (neither of which Plaintiffs assert here), the "rational basis" analysis controls. *See, e.g.*, *Lingle*, 544 U.S. at 540–42. Although Plaintiffs contend that their substantive due process claim "demands evidence," that improperly reverses the burden of proof in a manner consistent with heightened scrutiny. *See* Plfs.' Opp. at 9; *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978) (presentation of evidence that "may cast some doubt on the wisdom of the statute" is irrelevant under the rational basis inquiry).

3. Washington courts do not recognize an independent state substantive due process claim, and the discredited "undue oppression" test is inapplicable here.

There is also no basis, as Plaintiffs request, to apply a separate analysis to their "state" due process claim. As the City previously addressed, Washington has never recognized an independent state substantive due process claim under Article I, section 3 of the Washington

[1] The "substantially advances" test was an error limited to, and ultimately ejected from, federal takings law. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 540–44, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005); *see also City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 753-54, 119 S. Ct. 1624 (1999) (cited by Plaintiffs, but instead relating to "whether a land-use decision substantially advances legitimate public interests **within the meaning of our regulatory takings doctrine**") (emphasis added). The U.S. Supreme Court also clarified that the "substantially advances" test has no place in substantive due process law either, where "rational basis" controls. *Id.* at 544–45.

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Constitution. The U.S. Supreme Court applies the "rational basis" analysis, *see supra*, and the Washington Supreme Court "has repeatedly iterated that the state due process clause is coextensive with and does not provide greater protection than the federal due process clause." *See, e.g., Nielsen v. Washington State Department of Licensing*, 177 Wn. App. 45, 52 n.5, 309 P.3d 1221 (2013). Thus, it is the federal rational basis standard that governs Plaintiffs' substantive due process claim under both Article I, section 3 and the 14th Amendment. *See* Section II.A.2.

As anticipated, Plaintiffs attempt to invoke the discredited "undue oppression" standard, but that question was settled by the Washington Supreme Court's decision in *Amunrud*. *See* City's Mot. at 10-13. There, the Court clarified that the "appropriate test" for substantive due process claims is **not** whether the challenged law is "unduly oppressive on individuals," but instead "whether the law bears a reasonable relationship to a legitimate state interest," under the rational basis inquiry.[2] City's Mot. at 12 (quoting *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 226, 143 P.3d 571 (2006)). Although Plaintiffs argue that there is an "unbroken" line of "undue oppression" case law, that is far from the truth. *See* Plfs.' Opp. at 6, 17. The Washington Supreme Court has applied only rational basis review to substantive due process claims since *Amunrud*. *See Dot Foods, Inc. v. State, Dept. of Revenue*, 185 Wn.2d 239, 372 P.3d 747 (2016); *In re Detention of Morgan*, 180 Wn.2d 312, 324, 330 P.3d 774 (2014); *Fields v State Department of Early Learning*, __ Wn.2d __, 434 P.3d 999, 1008 (2019) (Gordon McCloud, J., concurring), 1014 (Fairhurst, C.J., dissenting, joined by three others) (same).[3] Plaintiffs also

[2] Although the Washington Supreme Court clearly rejected the "undue oppression" analysis, it did not expressly overrule *Presbytery*, which has caused some confusion. That is the issue the City asks the Washington Supreme Court to clarify in *Yim I* and *Yim II*, but either way the holding of *Amunrud* controls in the present case.

[3] The four-justice lead *Fields* opinion did not reach the substantive due process claim. 434 P.3d at 1002 n.2.

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omit the considerable line of Washington Court of Appeals decisions applying "rational basis" to substantive due process claims since *Amunrud*. *See, e.g. State v. Conway*, __ Wn. App. 2d. __, 438 P.3d 1235, 1244 (2019); *Haines-Marchel v. Washington State Liquor & Cannabis Bd.*, 1 Wn. App. 2d 712, 741–42, 406 P.3d 1199 (2017), *rev. denied*, 191 Wn.2d 1001, 422 P.3d 913 (2018), *cert. denied*, __ S. Ct. __, 2019 WL 1318639 (2019); *Olympic Stewardship Foundation v. State*, 199 Wn. App. 668, 720–21, 399 P.3d 562 (2017) *rev. denied*, 189 Wn.2d 1040, 409 P.3d 1066 (2018), *cert. denied*, 139 S. Ct. 81 (2018).

Plaintiffs attempt to sidestep *Amunrud* by arguing that the "undue oppression" analysis only applies to "land use cases," but cite no authority to support that proposition. Plfs.' Opp. at 17. Plaintiffs' argument is belied by the numerous pre-*Amunrud* cases applying the "undue oppression" analysis beyond land use disputes. *See, e.g.*, *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 238, 119 P.3d 325 (2005) (local improvement district assessments); *Viking Properties*, 155 Wn.2d 112, 130-31, 118 P.3d 322 (2005) (judicial enforcement of a covenant between private parties); *Willoughby v. Department of Labor & Industries*, 147 Wn.2d 725, 732–34, 57 P.3d 611 (2002) (prisoner labor conditions). Plaintiffs also ignore Washington and federal case law applying "rational basis" to land use disputes. *E.g.*, *Nectow*, 277 U.S. at 185–89; *Village of Euclid*, 272 U.S. at 379–84; *Samson*, 683 F.3d at 1053–56; *North Pacifica*, 526 F.3d at 480–83; *Olympic Stewardship*, 199 Wn. App. at 720–21.

Regardless, this case is not a land use dispute in the manner Plaintiffs allege. The Ordinance is not an exercise of the City's land use authority; it is "an exercise of the City's police power to license short-term rental platforms, short-term rental operators and bed and breakfast operators." SMC 6.600.010; *accord* SMC 6.600.040 (requiring a license); SMC 6.600.050 (license applications). Those licenses are subject to the City's general License

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Code, which governs business licenses. SMC 6.600.020; SMC 6.202.060.A.9 ("'License' means a valid permit required by the new license code in order to engage in a business or occupational activity in the City.") Because this is not a land use dispute, Plaintiffs would be unable to invoke the "undue oppression" analysis even if it remained good law and applied to review of land use decisions.

B. Summary judgment is appropriate because the rationality of the Ordinance can be resolved as a matter of law and there are no disputed facts material to that inquiry.

Likely recognizing that rational basis review should apply here across the board, Plaintiffs shift their focus to arguing that summary judgment is premature because discovery is required. That argument both misapplies the standard of review and ignores that Plaintiffs do not dispute a single material fact. Importantly (and contradictorily), Plaintiffs concede that "[t]he City's motion should only be granted if the Court believes that the City is correct on two points: that rational basis review controls all claims in this case, and that such review means that the Court need not review the evidence that would have been presented by the parties." Plfs.' Opp. at 7. Both of these points are correct.

Under rational basis review, the Ordinance must be upheld if "if there is **any conceivable set of facts** that could provide a rational basis" for it.[4] *Gossett v. Farmers Ins. Co. of Wash.*, 133 Wn.2d 954, 979, 948 P.2d 1264 (1997) (citing *Heller v. Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993)) (emphasis added). This highly deferential standard "may be satisfied where the 'legislative choice is based on rational speculation **unsupported by evidence or empirical data.**'" *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 147–49, 960 P.2d 919 (1998) (quoting *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315, 113 S. Ct. 2096, 124

[4] The rational basis test is functionally the same for both privileges and immunities and substantive due process claims. *See A.J. California Mini Bus, Inc. v. Airport Comm'n of the City & Cty. of San Francisco*, 148 F. Supp. 3d 904, 914 (N.D. Cal. 2015).

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L. Ed. 2d 211 (1993)) (emphasis added). Where "the purported [government] interest is conceivably rational on its face and the plaintiffs have pled no facts to suggest it could not have been the defendants' true purpose in passing" the challenged law, additional discovery is not warranted. *Associated Builders & Contractors, E. Pennsylvania Chapter, Inc. v. Cty. of Northampton*, No. CV 18-2552, 2019 WL 1858636, at *1–2 (E.D. Pa. Apr. 25, 2019) (granting motion to dismiss constitutional claims under rational basis review, and declining Plaintiffs' request for additional discovery into "what they claim is the true basis for the ordinances and into whether a rational relationship exists" between the ordinances and the defendants' purported interests).

Here, the primary subject on which Plaintiffs seek additional discovery is how effective the Ordinance will be in achieving the City's goals, which is immaterial under rational basis review. *See, e.g.*, Plfs.' Opp. at 10 (asserting that whether the Ordinance "will meaningfully address housing affordability in Seattle" is a "dispute of material fact"), 8 (desiring expert testimony on "the connection, if any, between short-term rentals and housing costs"). The proper inquiry is whether the City's stated purposes "rationally relate" to the Ordinance. *See id*. For that reason, a law cannot be challenged simply by "introduc[ing] evidence tending to support a conclusion contrary to that reached by" the governing body. *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 238 (3d Cir. 1987) (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 154, 58 S. Ct. 778, 82 L. Ed. 1234 (1938)). Plaintiffs' disagreement with the City's approach is more appropriately voiced in the political arena, not the courts. *See In re Detention of Thorell*, 149 Wn.2d 724, 749, 72 P.3d 708 (2003) (if a challenged law meets rational basis review, courts "must disregard the existence of alternative methods of furthering the objective that we, as individuals, perhaps would have preferred.").

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While Plaintiffs argue generally that a challenging party should be afforded the opportunity to show that justifications are "purely arbitrary" and that the "mere assertion that a law serves a legitimate purpose" is insufficient, they do not specifically argue that either are the case here.[5] Plfs.' Opp. at 12, 13. Nor could they. The City's expressly-stated purposes for enacting the Ordinance—as stated above—are well within the province of the City's police powers and are the same purposes for which other jurisdictions have been adopting similar laws regulating STRs. *See* City's Mot., App. 1, Preamble, SMC 6.600.010. And although under rational basis "[t]he court accepts at face value contemporaneous declarations of the legislative purposes" or "rationales constructed after the fact," here the legislative history for the Ordinance further buttresses those same purposes. City's Mot. at 1-8; *Hancock*, 811 F.2d at 237 (quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n. 7, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981)). Housing issues are a legitimate concern for any city, particularly a city like Seattle with well-documented struggles with homelessness, gentrification, and one of the fastest-growing housing markets in the country, such that renting is for many the only viable option. The City certainly has a legitimate interest in ensuring that Seattle remains a place that people can live, not just visit short-term. The City's stated purposes were not only rationally related to, but an integral component of, the development and adoption of the Ordinance.

In light of the above legal standards, there is no legal basis for discovery regarding other "actual" purposes for enacting the Ordinance, as that would be irrelevant to the rational basis

[5] Contrary to Plaintiffs' assertion, the Court in *Willoughby* did not address whether a "fully developed factual record" is necessary to resolve a rational basis claim. *See* Plfs.' Opp. 13. Instead, the Court ultimately held that the law was not rationally related to any legitimate public purpose, regardless of the record, and declared the law unconstitutional without granting any additional discovery. *Willoughby*, 147 Wn.2d at 736. The Court reiterated that its inquiry was not limited to "the evidence," as Plaintiffs suggest, Plfs.' Opp. 13, but noted the Court can consider "any conceivable set of facts that could provide a rational basis for the classification." *Id.* at 747.

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inquiry.[6] *See* Plfs.' Opp. 8; *F.C.C.*, 508 U.S. at 315 ("a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."). Because "[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature," further inquiry along those exact lines would be fruitless. *See id.* Plaintiffs' desire to depose various City officials regarding the purpose of the Ordinance would be futile for the same reason. *Hancock*, 811 F.2d at 237 ("the court has no occasion to inquire into the subjective motives of the decisionmakers" on rational basis review).

Plaintiffs also do not dispute any distinct facts material to their privileges and immunities claim. Although Plaintiffs argue that grandfathering certain STRs is not rationally related to the purposes of "increas[ing] the amount of cultural and entertainment activities" or "encourag[ing] tourism," the City never asserted that those were the purposes for which the grandfathered zones were adopted.[7] *See* Plfs.' Opp. at 13-14. Instead, the grandfathered zones are consistent with the Ordinance's purposes because they concentrate STRs in areas that already have an existing density and combination of uses (including tourism, nightlife and entertainment, and other short-term options like hotels) that are more consistent with and less impacted by STRs than other less dense or residential neighborhoods. *See* City's Mot. at 17-18; SMC.600.010 (including "protect[ing] the livability of residential neighborhoods" among the Ordinance's purposes).

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[6] Plaintiffs' assertion that rational basis "requires the Court to allow Plaintiffs the opportunity to demonstrate the irrationality of the City's asserted justifications for the law" is wrong. Plfs.' Opp.at 6. The rational basis inquiry asks not whether the City's asserted justifications are rational, but instead whether there is a **rational relationship** between a conceivable, legitimate public purpose and the Ordinance. *See, e.g., American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 609-10, 192 P.3d 306 (2008).

[7] Plaintiffs also appear to seek discovery to quibble with the specific locations and borders of the grandfathered zones. But "[a] classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *Gossett*, 133 Wn.2d at 979-80 (internal quotations omitted).

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Plaintiffs do not challenge that conclusion. Instead, the bulk of Plaintiffs' argument opposing summary judgment on this claim is comprised of citations to inapplicable federal cases that do not involve article I, section 12 of the Washington Constitution at all (and, although Plaintiffs characterize them as "privileges-and-immunities cases," most involve other, unrelated federal constitutional claims). *See* Plfs.' Opp. at 11-12; *see, e.g.*, *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 884, 105 S. Ct. 1676, 1685, 84 L. Ed. 2d 751 (1985) (stating that plaintiffs assert only an equal protection claim "because, as corporations, they are not 'citizens' protected by the Privileges and Immunities Clauses of the Constitution.").

Finally, Plaintiffs summarily state that "discriminating against married couples does not serve any legitimate interest." Plfs.' Opp. 14. The Ordinance, however, does not "discriminat[e]" against married couples; instead, it rationally treats married couples as one operator for purposes of STR licenses. *See* SMC 6.600.070.A.2 (barring a person from being a principal or spouse of a principal in more than one license). This provision furthers the purposes of the Ordinance by preventing married couples from each operating STRs individually to sidestep the limitations in the Ordinance, essentially double-dipping. The Ordinance includes similar restrictions for members of an LLC. *See id*; SMC 6.600.030 (definition of "principal" includes any "governing member of any business entity," such as an "LLC member"). It is not unusual for a business license or other government benefit to consider the licensee's marital status. Indeed, the Court of Appeals recently upheld the statutory inclusion of one's spouse in an individual's business license (as a true party in interest for retail marijuana distribution). *Haines-Marchel*, 1 Wn. App. 2d at 737–38. It is well within the City's discretion to prevent double-dipping (through marriage or certain business relationships) to ensure the Ordinance furthers the purposes for which it was intended.

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In short, summary judgment is appropriate as to each of Plaintiffs' claims because the Ordinance was enacted to serve legitimate public purposes, and Plaintiffs do not meaningfully dispute any facts material to that inquiry. *See Hancock*, 811 F.2d at 238 (internal marks and citation omitted) ("If the legislative determination that its action will tend to serve a legitimate public purpose 'is at least debatable' the challenge to that action must fail as a matter of law."). The Court's review should thus end here; any additional discovery would be nothing more than a "fruitless exercise." *See Associated Builders* 2019 WL 1858636, at *17.

C. In the alternative, the Court could stay consideration of the "state" substantive due process claim pending the outcome in *Yim*.

Although, based on the above, summary judgment should be granted for the City in full, if this Court feels it cannot rule on the appropriate standard of review for Plaintiffs' "state" substantive due process claim pending the *Yim* decision, then the proper course is to grant the City's Motion with respect to the state privileges and immunities claim and the federal substantive due process claim and stay consideration of the remainder pending the Washington Supreme Court's decision in *Yim*. Plaintiffs themselves propose a stay. Plfs.' Opp. at 3. The decision in *Yim* is of no import to Plaintiffs' privileges and immunities and federal substantive due process claims.

Continuance of the summary judgment hearing to permit additional discovery regarding the "undue oppression" analysis would be inappropriate because Plaintiffs have failed to comply with CR 56(f). The rule requires that the party seeking a continuance file a motion or affidavit stating what evidence it seeks and how the evidence will raise an issue of fact precluding summary judgment. CR 56(f); *Barkley v. GreenPoint Mortg. Funding, Inc.*, 190 Wn. App. 58, 71, 358 P.3d 1204 (2015). Here, Plaintiffs have not filed a motion or an affidavit substantiating their need for a continuance; instead, they have merely included a general request in their

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response to the City's Motion.

Plaintiffs wrongly suggest that a continuance is warranted because the City's Motion seeks relief inconsistent with the parties' stipulation to stay discovery. *See* Plfs.' Opp. at 2. But the stipulation acknowledged that these motions might "resolve or moot" discovery issues. *See* Stip. to Change Trial Date and Amend Case Schedule at ¶ 5. Plaintiffs' selective quotation of the stipulation omits the last sentence in the quoted paragraph, which expressly contemplates that summary judgment briefing may "resolve" the case. *See id.* (the stipulation "will allow the parties to engage in dispositive motions practice and, **if the case is not resolved**, will provide sufficient time for the parties to complete discovery, including depositions and expert discovery, and prepare for trial.") (emphasis added).

If the Court is inclined to continue the summary judgment hearing to allow additional time for discovery regarding the "undue oppression" analysis, then any such discovery should be limited both in time and scope. Specifically, discovery should be limited to that necessary to facilitate the Court's application of the three-prong "undue oppression" test in *Presbytery of Seattle v. King Cty.*, 114 Wn.2d 320, 330-31, 787 P.2d 907 (1990). Although Plaintiffs assert that the first prong of that analysis considers whether the challenged law "substantially advances" a legitimate public purpose, that conclusion is contrary to the plain language of *Presbytery*, and they cite no other authority for it. *Id*. at 330-31, 333 (holding that the first factor is "whether the regulation is aimed at achieving a legitimate public purpose," and discussing "substantially advances" only in the context of takings). Any evidentiary issues related to whether the Ordinance "substantially advances" legitimate public purposes are irrelevant to the "undue oppression" inquiry, too. *See* Section II.B. The City anticipates that the bulk of any discovery on this issue would relate to the third prong, whether the Ordinance is "unduly

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oppressive on the land owner," and would thus come primarily from Plaintiffs, not the City. *Presbytery*, 114 Wn.2d at 330-31. Given the limited scope, the City suggests that if discovery is allowed, that no more than 60 days be permitted to complete it.

III. CONCLUSION

Summary judgment is appropriate as to each of Plaintiffs' claims because whether the Ordinance has a rational basis can be resolved as a matter of law and Plaintiffs do not meaningfully dispute any facts material to that inquiry. The City thus respectfully requests that the Court grant the City's Motion and dismiss Plaintiffs' claims with prejudice.

I certify that MS Word 2016 calculates all portions of this memorandum required by the Local Civil Rules to be counted contain 4,164 words, which complies with the Local Civil Rules and the parties' stipulation approved by the Court.

Respectfully submitted June 5, 2019.

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CERTIFICATE OF SERVICE

This certifies that I served a copy of this document on counsel of record in the manner stated below with the Clerk of the Court using the ECR system, which will send notification of the filing to:

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