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**SUPERIOR COURT OF WASHINGTON  
KING COUNTY**

SEATTLE VACATION HOME, LLC; and  
ANDREW MORRIS,

No. 18-2-15979-2

Plaintiffs,

**PLAINTIFFS' REPLY IN  
SUPPORT OF CROSS-MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

vs.

CITY OF SEATTLE, WASHINGTON;  
JENNY A. DURKAN, Mayor of the City of  
Seattle, in her official capacity only; BRUCE  
A. HARRELL, President of the City Council  
of Seattle, in his official capacity only;  
SALLY BAGSHAW, Councilmember of the  
City Council of Seattle, in her official  
capacity only; M. LORENA GONZÁLEZ,  
Councilmember of the City Council of  
Seattle, in her official capacity only; LISA  
HERBOLD, Councilmember of the City  
Council of Seattle, in her official capacity  
only; ROB JOHNSON, Councilmember of  
the City Council of Seattle, in his official  
capacity only; DEBORA JUAREZ,  
Councilmember of the City Council of  
Seattle, in her official capacity only;  
TERESA MOSQUEDA, Councilmember of  
the City Council of Seattle, in her official  
capacity only; MIKE O'BRIEN,  
Councilmember of the City Council of  
Seattle, in his official capacity only;  
KSHAMA SAWANT, Councilmember of  
the City Council of Seattle, in her official  
capacity only;

Defendants.

1 **I. INTRODUCTION**

2 This case is about the constitutionality of a City of Seattle ordinance that arbitrarily and  
3 irrationally stripped Plaintiffs of their ability to rent 10 of their 12 properties for periods of  
4 fewer than 30 days. Prior to the change in the law, Plaintiffs Seattle Vacation Home, LLC, and  
5 Andrew Morris were able to rent all of their properties for less than a month at a time—which  
6 they did legally and peaceably, without causing nuisances.

7 Defendant now seeks to violate its stipulation that the parties would submit summary  
8 judgment briefing on the proper standards of constitutional review in this case. Mar. 27, 2018  
9 Stipulation to Change Trial Date and Amend Case Schedule (Stip.). Instead, in contravention of  
10 the stipulation, the City moves for full summary judgment, claiming that Plaintiffs should not  
11 even be allowed to conduct discovery to show that there is no link between housing  
12 affordability and short-term rentals, and therefore that its ban is irrational and arbitrary. City’s  
13 Reply in Supp. of Mot. for Summ. J. and Resp. to Pls.’ Cross-Mot. for Partial Summ. J. (City’s  
14 Reply) at 6–11. As shown in Sections III.A. and III.B below, City’s motion on the merits of  
15 Plaintiffs’ claims should be denied. Instead, the Court should consider the question that the  
16 parties stipulated to: the proper standard of constitutional review, which is addressed in Section  
17 III.C. Stip. at ¶ 4.

18 **II. ISSUES**

- 19 A. Should a party be estopped from violating a stipulation that the parties jointly  
20 made to the Court?
- 21 B. Are there remaining disputed facts due to the stipulated stay of discovery?
- 22 C. Is *Presbytery of Seattle v. King County* still good law?
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1 **III. ARGUMENT**

2 **A. The City should be estopped from moving for summary judgment in**  
3 **violation of the parties’ stipulation to the Court.**

4 The City should be estopped from making any motion that exceeds the stipulation made  
5 by the parties. “A written stipulation signed by counsel on both sides of the case *is binding on*  
6 *the parties and the court.*” *Riordan v. Commercial Travelers Mut. Ins. Co.*, 11 Wn. App. 707,  
7 714-15, 525 P.2d 804, 809 (1974) (emphasis added) (citing CR 2A; *Cook v. Vennigerholz*, 44  
8 Wn.2d 612, 269 P.2d 824 (1954)). Here, the parties stipulated that they would “file cross-  
9 motions for summary judgment, regarding the constitutional standard of review, on an agreed  
10 briefing schedule, to be heard by the Court on June 21, 2019.” Stip. ¶ 4.

11 The City’s motion for summary judgment goes far beyond its stipulation to the Court  
12 and asks the Court to adjudicate the merits of Plaintiffs’ claims. To the extent that the City seeks  
13 adjudication of the merits of Plaintiffs’ constitutional claims—rather than the applicable  
14 standards of review for those claims—it should be estopped from doing so. *See, e.g., Smyth*  
15 *Worldwide Movers, Inc. v. Whitney*, 6 Wn. App. 176, 178, 491 P.2d 1356, 1358 (1971) (“courts  
16 look upon stipulations with favor, and, as a rule, will enforce all stipulations of parties or their  
17 attorneys for the government of their conduct”) (*quoting* 50 Am. Jur. Stipulations § 12 (1944)).  
18 To allow the City to exceed the plain scope of its stipulation would work mischief upon the  
19 judicial process. Its motion for summary judgment on the merits of Plaintiffs’ claims should be  
20 denied. At this stage, summary judgment should be limited to standards of constitutional  
21 review, as stipulated by the parties.

22 **B. Disputed facts must be resolved to adjudicate the rationality of the**  
23 **ordinance.**

24 If the Court believes the City should not be estopped from moving on issues beyond the  
25 scope of its stipulation with Plaintiffs, it should still reject the City’s motion for summary  
26 judgment. As shown in Plaintiffs’ motion for partial summary judgment, there are many facts  
27 that are disputed in this case. PMSJ at 6–14. Defendant disputes this, arguing incorrectly that  
28 evidence is immaterial under rational basis review. City’s Reply at 6–11. Even if rational basis  
review asks little of the government, plaintiffs bear the burden—and therefore must have the

1 opportunity—of proving that the government’s purported justifications for a law are irrational.  
2 *Andersen v. King Cnty.*, 158 Wn.2d 1, 31–32 ¶ 57, 138 P.3d 963, 979 (2006). Because  
3 discovery has been stayed in this case *by stipulation of the parties* (Stip. ¶ 5), summary  
4 judgment against Plaintiffs at this stage would be premature and legally unwarranted.

5 **1. Under any standard of rational basis review, evidence matters.**

6 If Plaintiffs in rational basis cases are required to negate the purported justifications for a  
7 law, they must be allowed to obtain and introduce evidence to do so. The Washington Supreme  
8 Court has held that a challenging party must be allowed “to show [that a law] is purely  
9 arbitrary” in rational basis cases. *In re Det. of Thorell*, 149 Wn.2d 724, 749, 72 P.3d 708, 721  
10 (2003). That is why the Court is sometimes willing to reject *all* of the government’s purported  
11 justifications for a law. *See, e.g., Willoughby v. Dep’t of Labor & Indus.*, 147 Wn.2d 725, 741,  
12 57 P.3d 611, 619 (2002). Federal courts regularly say the same thing. *See, e.g., Craigmiles v.*  
13 *Giles*, 110 F. Supp. 2d 658, 662 (E.D. Tenn. 2000), *aff’d*, 312 F.3d 220 (6th Cir. 2002) (“the  
14 mere assertion of a legitimate government interest has never been enough to validate a law.”);  
15 *Nunez-Reyes v. Holder*, 646 F.3d 684, 715 (9th Cir. 2011), *overruled on other grounds*,  
16 *Hernandez-Padilla v. Holder*, 446 F. App’x. 851 (9th Cir. 2011) (en banc) (Courts “cannot  
17 allow ‘rational basis review’ to serve as a rubber stamp.”).

18 **2. Because evidence is required and discovery has been stayed by**  
19 **stipulation, summary judgment is inappropriate.**

20 Plaintiffs have shown that they plan to introduce many types of evidence to demonstrate  
21 the irrationality of the City’s new short-term rental restrictions. PMSJ at 6–14. This evidence is  
22 necessary for the Court to evaluate Plaintiffs’ substantive due process claims under at least two  
23 prongs of *Presbytery*. For instance, even assuming that promoting affordable housing is a  
24 legitimate governmental interest (prong one), Plaintiffs require discovery on prong two, which  
25 examines whether restricting short-term rentals substantially advances that interest, and prong  
26 three, which involves looking at whether the burden placed on Plaintiffs is “unduly oppressive.”  
27 *Presbytery*, 114 Wn.2d at 330-31. This evidence will likely take the form of expert witnesses,  
28 analysis of relevant data, depositions and discovery requests to the City seeking to examine the

1 City's own evidence supporting its assertions, the Plaintiffs' own evidence demonstrating undue  
2 burden, and other evidence that will allow the Court to conduct a full analysis under *Presbytery*.

3 The parties understood that plaintiffs' requests for this information were likely to trigger  
4 significant discovery disputes while the proper standards of constitutional review remained  
5 uncertain. That is why, after Plaintiffs attempted to depose the City, the parties came together  
6 and agreed by stipulation to stay discovery until the proper standards of review could be  
7 established. But this stipulation cut off even threshold questions in this case. To wit, the  
8 deposition notice (attached as Exhibit 1) sought to question the City about the following topics:

- 9 1. Policies and procedures used by the City to record, monitor, investigate,  
10 and enforce its short-term rental laws and rules.
- 11 2. The City's responses to Plaintiffs' Interrogatories, including but not  
12 limited to any facts, studies, research, and reports that would support a link  
13 between the City's asserted governmental interests and the challenged  
14 Ordinance.
- 15 3. The City's governmental interests in treating married couples as one  
16 "owner" for purposes of enforcing its short-term rental laws and rules.
- 17 4. The City's purported justifications for excluding grandfathered units in the  
18 Downtown Urban Core and First Hill neighborhoods from the two-unit  
19 restriction, including the City's reasons for treating grandfathered units in  
20 those neighborhoods differently than all other neighborhoods in the City.

21 Exhibit 1 at 2.

22 After agreeing to stay discovery on these topics, the City now claims that "how effective  
23 the Ordinance will be in achieving the City's goals" is "immaterial under rational basis review."  
24 City's Reply at 7. Not so. Even under rational basis review, the means the government chooses  
25 must have a "meaningful impact" on the government's goals. *DeYoung v. Providence Med.*  
26 *Ctr.*, 136 Wn.2d 136, 149, 960 P.2d 919, 925 (1998). *See also Willoughby*, 147 Wn.2d at 741-  
27 42 (finding economic regulation unconstitutional under rational basis); *In re Det. of Brooks*, 145  
28 Wn.2d 275, 292, 36 P.3d 1034, 1044 (2001) (same); *Hunter v. N. Mason High Sch.*, 85 Wn.2d  
810, 539 P.2d 845 (1975) (same); *Simpson v. State*, 26 Wn. App. 687, 695, 615 P.2d 1297, 1301  
(1980) (same). To take the example of housing affordability again: If Plaintiffs show that the

1 ordinance does not actually promote housing affordability—or increases the price of housing—  
2 that would demonstrate that the ordinance is irrational vis-à-vis the City’s asserted purpose.  
3 Housing affordability, under such a set of facts, *could not* be a rational basis for the law. This  
4 same method of analysis would apply to every justification the City might assert. Plaintiffs  
5 have pleaded sufficient facts that, if they can prove those facts, will negate them all.

6 **C. The City has not shown that *Presbytery* has been overruled.**

7 Plaintiffs showed in their motion that a long line of cases since *Presbytery* has continued  
8 to apply the *Presbytery* test to substantive due process claims in land use cases. PMSJ at 15–17.  
9 The City responds by citing three irrelevant *non-land* use cases from the Washington Supreme  
10 Court and two irrelevant *non-land* use cases from the Court of Appeals. *See Dot Foods, Inc. v.*  
11 *State Dep’t of Revenue*, 185 Wn.2d 239, 372 P.3d 747 (2016) (taxes); *In re Det. of Morgan*, 180  
12 Wn.2d 312, 330 P.3d 747 (2014) (detention); *Fields v. State Dep’t of Early Learning*, \_\_\_ Wn.2d  
13 \_\_\_, 434 P.3d 999 (2019) (employment); *State v. Conway*, \_\_\_ Wn. App. 2d \_\_\_, 438 P.3d 1235  
14 (2019) (prisoner financial obligations); *Haines-Marchel v. Wash. State Liquor & Cannabis Bd.*,  
15 1 Wn. App. 2d 712, 406 P.3d 1199 (2017) (marijuana license).

16 Instead, the dispute between Plaintiffs and the City is whether *Amunrud v. Board of*  
17 *Appeals*, 158 Wn.2d 208, 143 P.3d 571 (2006), overruled *Presbytery*. The City argues that it  
18 did. But *Amunrud* was not a case involving private property rights. It involved the revocation  
19 of a driver’s license over unpaid child support. *Id.* at 214–15 ¶ 11. It is therefore unsurprising  
20 that it did not overrule—or even discuss—*Presbytery*.

21 The City does cite a Court of Appeals case that lends support to its argument. *See*  
22 *Olympic Stewardship Found. v. State*, 199 Wn. App. 668, 719 ¶ 111, 399 P.3d 562, 586 (2017)  
23 (“In *Amunrud* ... our Supreme Court severely limited the application of the third prong of [the  
24 *Presbytery*] test”). Weighing against this are the cases cited in Plaintiffs’ motion, all of which  
25 were decided since *Amunrud*, and all of which applied *Presbytery*. *See Cradduck v. Yakima*  
26 *Cnty.*, 166 Wn. App. 435, 271 P.3d 289 (2012) (same); *Bayfield Res. Co. v. WWGMHB*. 158  
27 Wn. App. 866, 244 P.3d 412 (2010) (rezoning of property); *Conner v. Seattle*, 153 Wn. App.

1 673, 223 P.3d 1201 (2009) (historical preservation restrictions); see also *Laurel Park Cmty.,*  
2 *LLC v. City of Tumwater*, 698 F.3d 1180, 1193-96 (9th Cir. 2012) (mobile home park zoning).

3 The Washington Supreme Court does not overrule previous cases *sub silentio*. *Lunsford*  
4 *v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280 ¶ 22, 208 P.3d 1092, 1100–01 (2009).  
5 *Amunrud* did not mention *Presbytery* by name, much less expressly overrule it. The apparent  
6 conflict between *Olympic Stewardship Foundation* and the cases cited by Plaintiffs can  
7 therefore best be resolved by concluding that *Olympic Stewardship Foundation* is an erroneous  
8 outlier. However, to the extent that this Court is uncertain of how to proceed, one option is to  
9 wait. The ongoing vitality of *Presbytery* is a central issue in *Yim v. City of Seattle*, No. 958131,  
10 Wash. Sup. Ct. (filed Aug. 24, 2018), and oral argument in that case took place on June 11,  
11 2019. Although there is no timeframe for when a decision will be issued, the parties agree that  
12 this Court’s consideration of the proper standard of review for Plaintiffs’ state substantive due  
13 process claim could be properly suspended by this Court pending the outcome of *Yim*.

#### 14 **IV. CONCLUSION**

15 Plaintiffs’ partial motion for summary judgment on the standard of review should be  
16 granted, the City’s motion should be denied, and discovery on all claims should proceed.  
17 Alternatively, the Court should stay consideration of the *Presbytery* issue until *Yim* is decided.

18  
19 *I certify that Microsoft Word 2016 calculated all portions of this document required by*  
20 *the Local Civil Rules to be counted contain 2,073 words, which complies with the Local*  
21 *Civil Rules and the parties’ stipulation approved by the court.*

22 DATED this 14th day of June, 2019.

23 /s/ Matthew R. Miller

\* Matthew R. Miller

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1 /s/ William C. Severson

2 William C. Severson, WSBA # 5816

3 William C. Severson PLLC

4 1001 Fourth Avenue, Suite 4400

5 Seattle, WA 98154

6 (206) 838-4191

7 bill@seversonlaw.com

8 Attorneys for Plaintiffs

9 \* Admitted *pro hac vice*.

10 Trial Attorney:

11 Matthew R. Miller

12 **CERTIFICATE OF SERVICE**

13 I certify that I electronically filed Plaintiffs' Reply in Support of Cross-Motion for  
14 Partial Summary Judgment with the Clerk of the Court using the ECR system.

15 I also certify that on this date, I sent a copy of this document by email to the following  
16 parties.

17 Roger Wynne  
18 Carolyn Boies  
19 Seattle City Attorney's Office  
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Alanna.peterson@pacificallawgroup.com

*Attorneys for Defendant City of Seattle*

DATED this 14th day of June, 2019,

25 /s/ Kris Schlott

26 Kris Schlott, Paralegal

27 PLS.' REPLY IN SUPPORT OF  
28 CROSS-MOT. FOR SUMM. J. - 7

GOLDWATER INSTITUTE  
500 East Coronado Road  
Phoenix, Arizona 85004  
(602) 462-5000



**Exhibit 1**  
**Plaintiffs' Reply in Support of Partial Summary Judgment**

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**SUPERIOR COURT OF WASHINGTON  
KING COUNTY**

SEATTLE VACATION HOME, LLC; and  
ANDREW MORRIS,

No. 18-2-15979-2

Plaintiffs,

**NOTICE OF 30(b)(6) DEPOSITION**

vs.

CITY OF SEATTLE, WASHINGTON;  
JENNY A. DURKAN, Mayor of the City of  
Seattle, in her official capacity only; BRUCE  
A. HARRELL, President of the City Council  
of Seattle, in his official capacity only;  
SALLY BAGSHAW, Councilmember of the  
City Council of Seattle, in her official  
capacity only; M. LORENA GONZALEZ,  
Councilmember of the City Council of  
Seattle, in her official capacity only; LISA  
HERBOLD, Councilmember of the City  
Council of Seattle, in her official capacity  
only; ROB JOHNSON, Councilmember of  
the City Council of Seattle, in his official  
capacity only; DEBORA JUAREZ,  
Councilmember of the City Council of  
Seattle, in her official capacity only;  
TERESA MOSQUEDA, Councilmember of  
the City Council of Seattle, in her official  
capacity only; MIKE O'BRIEN,  
Councilmember of the City Council of  
Seattle, in his official capacity only;  
KSHAMA SAWANT, Councilmember of  
the City Council of Seattle, in her official  
capacity only;

Defendants.

**TO: City of Seattle and its Attorney:**

1 PLEASE TAKE NOTICE that, pursuant to CR 30(b)(6), the deposition will be taken  
2 upon oral examination of the City of Seattle through its designated representative at the time  
3 and place stated below before an officer authorized by law to administer oaths.

4 YOU ARE ALSO NOTIFIED that this deposition will be recorded by stenographic  
5 means and may be recorded by audio means.

6 YOU ARE FURTHER NOTIFIED pursuant to CR 30(b)(6), that you have the obligation  
7 to designate one or more officers, directors, or managing agents, or designate other persons who  
8 consent to testify on the deponent's behalf, to offer knowledgeable testimony regarding the  
9 following matters:

- 10 1. Policies and procedures used by the City to record, monitor, investigate, and enforce its  
11 short-term rental laws and rules.
- 12 2. The City's responses to Plaintiffs' Interrogatories #8 and 9, including but not limited to  
13 any facts, studies, research, and reports that would support a link between the City's  
14 asserted governmental interests and the challenged Ordinance.
- 15 3. The City's governmental interests in treating married couples as one "owner" for  
16 purposes of enforcing its short-term rental laws and rules.
- 17 4. The City's purported justifications for excluding grandfathered units in the Downtown  
18 Urban Core and First Hill neighborhoods from the two-unit restriction, including the  
19 City's reasons for treating grandfathered units in those neighborhoods differently than  
20 all other neighborhoods in the City.

21  
22 **DATE/TIME:** January 17, 2019 at 9:00 a.m.

23  
24 **LOCATION OF DEPOSITION:** William C. Severson PLLC  
25 1001 Fourth Avenue, Suite 4400  
26 Seattle, WA 98154

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DATED this 18th day of December, 2018.

/s/ Matthew R. Miller  
\* Matthew R. Miller  
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/s/ William C. Severson  
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Seattle, WA 98154  
(206) 838-4191  
bill@seversonlaw.com

Attorneys for Plaintiffs

\* Motion for admission *pro hac vice* pending.

Trial Attorneys:

Matthew R. Miller

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I sent a copy of this document by email to the following  
3 parties.

4 Roger Wynne  
5 Michael K. Ryan  
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7 701 Fifth Ave., Ste. 2050  
8 Seattle, WA 98104  
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17 Matthew.segal@pacificallawgroup.com  
18 Alanna.peterson@pacificallawgroup.com

19 *Attorneys for Defendant City of Seattle*

20 DATED this 18th day of December, 2018,

21 /s/ Kris Schlott  
22 Kris Schlott, Paralegal