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**SUPERIOR COURT OF WASHINGTON
KING COUNTY**

SEATTLE VACATION HOME, LLC; and
ANDREW MORRIS,

Plaintiffs,

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.

No. 18-2-15979-2

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

William C. Severson, Esq., and the Scharf-Norton Center for Constitutional
Litigation at the Goldwater Institute (Matthew R. Miller and Christina Sandefur), for Plaintiff.

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I. INTRODUCTION

1. This civil-rights lawsuit seeks to vindicate the property rights of home-sharing entrepreneurs in the City of Seattle (“Seattle” or the “City”).

2. The City has violated those rights by adopting Ordinance No. 125490, which dramatically curtails the ability of Seattle residents to exercise their property rights to generate income through home-sharing. Beginning January 1, 2019, this new law will limit most Seattle residents to using their primary residence plus two additional properties for short-term rentals. Short-term rentals will be prohibited on any additional properties that an entity or individual owns. For entrepreneurs, like Plaintiffs, who have built businesses around owning more than two properties for short-term rentals, these new restrictions threaten their very livelihoods.

3. These restrictions violate the substantive due process provisions of the Washington and United States Constitutions by imposing significant burdens on Plaintiffs’ property rights while having no substantial connection to a legitimate public purpose.

4. These restrictions further violate the privileges and immunities clause of the Washington State Constitution by exempting some, but not all, property owners from the restrictions.

5. Therefore, Plaintiffs Seattle Vacation Home, LLC, and Andrew Morris, by and through their undersigned counsel, hereby file this Complaint and sue the City of Seattle as follows:

II. JURISDICTION AND VENUE

6. This action arises under Article I, § 3 of the Washington Constitution; Article I, § 12 of the Washington Constitution; and the Fourteenth Amendment to the U.S. Constitution.

7. Jurisdiction and venue are proper in the Superior Court of the State of Washington, because, at all times pertinent to this action, the acts complained of occurred and are occurring in King County, Washington.

8. Under RCW 4.12.010 and RCW4.12.020, this Court is the proper venue.

1 **III. PARTIES AND GENERAL ALLEGATIONS**

2 9. Plaintiff Seattle Vacation Home, LLC is incorporated in and does business in
3 King County, Washington.

4 10. Plaintiff Andrew Morris is the Governor of Seattle Vacation Home, LLC and a
5 resident of Seattle in King County.

6 11. Defendant City of Seattle is a political subdivision of the State of Washington,
7 situated in King County.

8 12. Defendant Jenny A. Durkan is Mayor of the City of Seattle and shares governing
9 authority with the City Council of Seattle and is responsible for passing and enacting the
10 ordinances complained of in this action. She is sued in her official capacity only.

11 13. Defendants Bruce A. Harrell, Sally Bagshaw, M. Lorena González, Lisa
12 Herbold, Rob Johnson, Debora Juarez, Teresa Mosqueda, Mike O'Brien and Kshama Sawant
13 are Councilmembers on the City Council of Seattle, which is the governing body for the City of
14 Seattle. Commissioners are responsible for passing and enacting the ordinances complained of
15 in this action. They are sued in their official capacities only.

16 *The Rise of Home-Sharing in Seattle*

17 14. Home-sharing is the rental of one's property—from a single room to an entire
18 house—on a short-term basis. Seattle defines a short-term rental as a rental, for pay, of shorter
19 than 30 nights. SEATTLE, WA., MUN. CODE § 6.600.030.

20 15. People have been successfully and peaceably sharing their homes in Seattle for
21 decades. And recently, with the influx of new residents into the City, some local entrepreneurs
22 have built small businesses around home-sharing. These businesses typically manage a
23 portfolio of properties and employ professional cleaning and property maintenance crews.

24 16. As an alternative to traditional hotels, short-term rentals offer local hospitality, a
25 personal touch, and the ability to rent anything from a single room to an entire house. This
26 makes them popular with travelers seeking a different experience than that offered by the
27

1 Marriott or Holiday Inn—including travelers on a limited budget, groups needing flexibility and
2 shared work-space, and families looking for a house to rent for the weekend.

3 17. Home-sharing was occurring in Seattle long before the rise of digital platforms
4 like HomeAway and Airbnb, but those platforms have made the process easier and, thus, more
5 popular. They have also increased the public’s awareness of home-sharing in their local
6 neighborhoods and cities.

7 18. While many people choose to rent one or more rooms in their houses, or let
8 guests stay there while they are away on vacation, some Seattle residents have, in response to
9 growing demand around the City, built entire businesses around managing modest portfolios of
10 properties that are used for home-sharing.

11 19. The rise of Internet home-sharing platforms has benefitted renters, owners, and
12 neighbors. Feedback keeps everyone honest. Renters who use HomeAway, Airbnb, and other
13 platforms are encouraged to leave detailed feedback about their rental experience at a given
14 property, and frequently do so. This feedback from renters is made publicly available by
15 HomeAway, Airbnb, and similar companies. As a result, property owners have a strong
16 incentive to keep their property clean and in excellent repair if they hope to be successful. This
17 benefits neighbors by holding homeowners accountable for the condition of their properties.

18 20. Home-sharing platforms also provide resources to help neighbors deal with
19 disruptive rental guests. For example, Airbnb operates an online hotline that allows
20 neighbors—anonously if they prefer—to file complaints about noisy guests, parking
21 violations, etc. See <https://www.airbnb.com/neighbors>.

22 *Seattle Vacation Home is a Local-Business Success Story*

23 21. Plaintiff Andrew Morris started conducting short-term rentals in 2015, with one
24 property.

25 22. Since then, Andrew and his wife incorporated Seattle Vacation Home, LLC. The
26 business has grown to manage 11 properties owned by Andrew (in most cases he is a minority
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1 investor together with friends or family), as well as properties that he does not own, but that
2 others entrust Seattle Vacation Home to manage.

3 23. Seattle Vacation Home lists the properties it manages on multiple digital
4 platforms, including HomeAway, Airbnb, and others.

5 24. The properties offered by Seattle Vacation Home range from small 1-bedroom
6 apartments to large 8-bedroom single-family homes.

7 25. Specifically, the short-term rental properties (collectively the “Properties”) that
8 are owned or co-owned by Andrew and are located in Seattle are at the following addresses:

9 2606 East Thomas Street, Unit 1;

10 2606 East Thomas Street, Unit 2;

11 2606 East Thomas Street, Unit 3;

12 2606 East Thomas Street, Unit 4;

13 1728 23rd Avenue;

14 215A 26th Avenue East;

15 226B 26th Avenue East;

16 129A 26th Avenue East;

17 127A 26th Avenue East;

18 127B 26th Avenue East;

19 1612 26th Avenue;

20 1116 25th Avenue; and,

21 26. Seattle Vacation Home works with other local entrepreneurs to maintain and
22 clean the Properties. These entrepreneurs have grown their own businesses in conjunction with
23 the growth of Seattle Vacation Home, eventually establishing Clean Team, LLC. They
24 professionally clean every unit after every rental and conduct repairs as necessary. This
25 business—which was built as a direct result of the short-term rentals that Seattle Vacation
26 Home operates—has changed the lives of its owners and employees, allowing them to join the
27 ranks of the middle-class as their venture has expanded.

1 27. The Properties are very popular with renters. They are located in beautiful areas
2 of Seattle and are well-maintained and accommodating.

3 28. The Properties have received high marks from renters on HomeAway, Airbnb,
4 and other home-sharing sites.

5 29. Over the course of its existence, Seattle Vacation Home has managed
6 approximately 2,500 bookings.

7 30. The company carefully tracks and responds to any problems with its rentals.

8 31. Over the course of over 2,500 bookings at the Properties, the police have been
9 summoned only once (by Andrew himself, when a loud party needed to be evicted). Neighbors
10 have complained approximately 10 times over excessive noise; and fewer than 10 complaints
11 have been made over other minor problems like garbage bags being left in the wrong location
12 by renters.

13 32. The company takes all complaints seriously and works quickly and directly with
14 guests, neighbors, and the City to resolve them. To date, none have related to a serious crime,
15 continuous or repeated noise or other nuisances, or resulted in a fine or prosecution of any sort.

16 33. Seattle Vacation Home is the primary source of income for Andrew and his wife.

17 *Seattle Suddenly and Arbitrarily Divests Homeowners
18 of their Right to Share their Homes*

19 34. Everything changed on December 11, 2017, when Seattle passed sweeping new
20 restrictions on short-term rentals when it adopted Ordinance No. 125490, which is the subject
21 of this lawsuit.

22 35. The new rules are codified at Seattle Municipal Code Chapter 6.600 *et seq.*

23 36. Ordinance No. 125490 defines a short-term rental as “a lodging use, that is not a
24 hotel or motel, in which a dwelling unit, or portion thereof, that is offered or provided to a
25 guest(s) by a short-term rental operator for a fee for fewer than 30 consecutive nights.”
26 SEATTLE, WA., MUN. CODE § 6.600.030.

27 37. Ordinance No. 125490, which takes effect on January 1, 2019, restricts the
28 number of units that a property owner may dedicate to short-term rentals. Under the law, an

1 owner will only be able to rent their primary residence plus two other properties as short-term
2 rentals (the “two-property rule”). SEATTLE, WA., MUN. CODE § 6.600.040.B.1.

3 38. The restrictions treat married couples as a single person, meaning that Andy and
4 his wife are limited to two properties since they are married, whereas they could own four
5 properties between them if they were not.

6 39. The restrictions treat majority stake-holders in a property the same as minority
7 stake-holders. Thus, a person who owned only a 1% stake in two different properties would,
8 under the rule, be precluded from owning any more properties for short-term rentals.

9 40. The penalty for violating the two-property rule is \$500 per day for the first ten
10 days, and \$1,000 per day beyond that. SEATTLE, WA., MUN. CODE § 6.600.110.B.4.a.

11 41. The two-property rule applies everywhere in the City, with two exceptions. In
12 the Downtown Urban Center and First Hill neighborhoods, existing owners will have all of their
13 short-term rental units grandfathered in, meaning they will not be limited to renting their
14 primary residence plus two units when the Ordinance takes effect. SEATTLE, WA., MUN. CODE
15 §§ 6.600.040.B.2 & B.3. In other words, if homeowners were renting more than two units prior
16 to September 30, 2017, they can continue to do so – but only if their properties are in the
17 Downtown or First Hill neighborhoods. SEATTLE, WA., MUNICIPAL CODE §§ 6.600.040.B.2 &
18 B.3.

19 42. Thus, property owners in Downtown and First Hill enjoy a significant advantage
20 over owners, like Plaintiffs, who will be limited by the “two property” rule. As a result of the
21 “two property” rule, grandfathered owners in Downtown and First Hill will face less
22 competition and will accordingly be able to charge higher prices for their short-term rentals.

23 43. This carve-out benefits people who own property in Downtown and First Hill,
24 but harms other, similarly situated property owners in the City, and people who might wish to
25 rent properties from them.

26 44. Downtown and First Hill contain many properties that are substantially the same
27 as those owned by Plaintiffs.

1 45. The Properties are located within the City of Seattle and are not included in
2 Downtown or First Hill exclusionary zones.

3 46. That means that, on January 1, 2019, Andrew will not legally be allowed to
4 conduct short-term rentals on any of his properties except for his primary residence plus two
5 more properties. At least nine of his eleven properties will no longer be permitted to be used for
6 home-sharing. They must either be sold or converted to long-term rentals.

7 47. Long-term rentals provide lower income potential than short-term rentals.

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

17 **IV. FIRST CLAIM FOR RELIEF**
18 **(Substantive Due Process)**

19 49. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

20 50. Beginning January 1, 2019, Seattle Municipal Code § 6.600.040.B.1 will prohibit
21 Plaintiffs from conducting short-term rentals on any properties in excess of their primary
22 residence plus two properties. That means short-term rentals will be prohibited at nine of
23 Plaintiffs’ eleven Properties.

24 51. The two-property rule is an irrational and arbitrary restriction on Plaintiffs’
25 property rights, and it violates Plaintiffs’ substantive due process rights under the Fourteenth
26 Amendment to the U.S. Constitution and Article I, § 3 of the Washington Constitution. This
27 restriction does not use means that are reasonably necessary to achieve a legitimate public
28 purpose and the burden it imposes on Plaintiffs is unduly oppressive.

1 52. By forcing Plaintiffs to cease short-term rentals at nine of their eleven Properties,
2 the two-unit rule will destroy Plaintiffs’ business and deny them the continued, peaceful use of
3 the Properties as the basis for their livelihood and primary source of income.

4 53. Plaintiffs are entitled to judgment based upon RCW 7.24.020 which states that
5 persons whose rights are affected by a statute may bring questions of construction or validity
6 under the statute and obtain a declaration of rights, status or other legal relations.

7 54. Plaintiffs are entitled to a permanent injunction against the enforcement of
8 Seattle Municipal Code § 6.600.040.B.1 based upon RCW 7.24.080 which states that this Court
9 may grant any further relief that is necessary and proper upon issuance of a declaratory
10 judgment in favor of the Plaintiffs.

11 **V. SECOND CLAIM FOR RELIEF**
12 **(Privileges and Immunities)**

13 55. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

14 56. Beginning January 1, 2019, Seattle Municipal Code § 6.600.040.B.1 , B.2 and
15 B.3 will prohibit Plaintiffs from conducting short-term rentals on any properties in excess of
16 their primary residence plus two properties while allowing grandfathered owners in the
17 Downtown Urban Center and First Hill neighborhoods to continue renting any property that was
18 being used for short-term rentals prior to September 30, 2017.

19 57. The carve-out for the Downtown Urban Center and First Hill neighborhoods
20 violates the privileges and immunities clause, Article I, § 12, of the Washington Constitution.
21 No justifiable grounds exist for exempting property owners in the Downtown Urban Center and
22 First Hill neighborhoods from the two-property rule.

23 58. The restriction that married couples may only conduct short-term rentals from
24 two properties—rather than the four they would be permitted if they were not married—
25 violates the privileges and immunities clause, Article I, § 12, of the Washington Constitution.
26 No justifiable grounds exist for treating married and unmarried couples differently.

27 59. By forcing Plaintiffs to cease short-term rentals at nine of their eleven Properties,
28 the two-unit rule will destroy Plaintiffs’ business and deny them the continued, peaceful use of

1 the Properties as the basis for their livelihood and primary source of income, while providing a
2 different set of rules for similar property owners in other areas of the City.

3 60. Plaintiffs are entitled to judgment based upon RCW 7.24.020 which states that
4 persons whose rights are affected by a statute may bring questions of construction or validity
5 under the statute and obtain a declaration of rights, status or other legal relations.

6 61. Plaintiffs are entitled to a permanent injunction against the enforcement of
7 Seattle Municipal Code § 6.600.040.B.1 based upon RCW 7.24.080 which states that this Court
8 may grant any further relief that is necessary and proper upon issuance of a declaratory
9 judgment in favor of the Plaintiffs.

10 WHEREFORE, Plaintiffs pray for order and judgment as follows:

- 11 i. A declaratory judgment that Seattle Municipal Code § 6.600.040.B.1 violates
12 Plaintiffs' substantive due process rights under Article I, § 12 of the Washington
13 Constitution and the Fourteenth Amendment to the U.S. Constitution.
- 14 ii. A declaratory judgment that Seattle Municipal Code § 6.600.040.B.1 violates the
15 privileges and immunities clause, Article I, § 12, of the Washington Constitution.
- 16 iii. A permanent injunction against the enforcement of Seattle Municipal Code §
17 6.600.040.B.1 against Plaintiffs.
- 18 iv. An award to Plaintiffs for their reasonable attorney's fees, costs, and
19 disbursements incurred herein;
- 20 v. Granting to Plaintiffs such other, different, or ancillary relief as the Court deems
21 just and equitable.

22 DATED this 26th day of June, 2018.

23 /s/ Matthew R. Miller

24 * Matthew R. Miller

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* Motion for admission *pro hac vice* pending.

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