IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

GREATER CHATTANOOGA COALITION FOR PRIVATE PROPERTY RIGHTS,	)	
Plaintiff,	)	Case No.: _____
v.	)	
CITY OF CHATTANOOGA,	)	
Defendant.	)	

MOTION AND MEMORANDUM FOR PRELIMINARY INJUNCTION

COMES NOW, Plaintiff, Greater Chattanooga Coalition for Private Property Rights ("GCCPR"), and respectfully file this Motion for Preliminary Injunction pursuant to Tenn. R. Civ. P. 65. In support, Plaintiff states:

INTRODUCTION

Plaintiff brings this lawsuit as a challenge to the constitutionality of Ordinance No. 13981 (hereinafter the "STR Ordinance"). The Ordinance was enacted by the City of Chattanooga on May 16, 2023, to go into effect two weeks later. (Complaint, ¶ 1).

The STR Ordinance, as enacted, amends and replaces Chattanooga City Code, Part II, Chapter 11, Article XX (Short Term Rental Vacation Rental Certificate), and creates new Chapter 38, Zoning, Division 27 (Uses Requiring Short Term Vacation Rental Certificates). (Complaint, ¶ 2).

The intent of the ordinance is to "provide appropriate opportunities for the development of short-term vacation rentals in the City of Chattanooga." (Ord. Section 38.431). (Complaint, ¶ 3). As alleged in the pleadings, this Ordinance and the associated code sections, violate the

constitutional rights of short-term rental owners by drawing a distinction between owner-occupied STRs and non-owner-occupied STRs and by limiting certain STRs to commercial zones versus residential zones. (Ord., Section 38.431). (Complaint, ¶ 4). Further, the ordinance discriminates against non-owner-occupied applicants in that it charges a higher application fee and has more requirements related to inspections in order to qualify for a certificate. (Ord., Section 38-436(b)-(c)). (Complaint, ¶ 5). Further, the ordinance violates a property owners' First Amendment right to place signage on-site unless the rental is at least (5) five acres and does not have a dwelling visible from the public right-of-way. (Ord., Section 38-435(b)). (Complaint, ¶ 6).

STANDARD OF LAW

Tenn. R. Civ. P. 65.01 provides trial courts with authorization to provide injunctive relief by issuing a preliminary, temporary injunction. A trial court should issue an injunction when:

> It is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

Gentry v. McCain, 329 S.W.3d 786, 792-93 (Tenn. Ct. App. 2010) (quoting *S. Cent. Tenn. R.R. Auth. V. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000) and Tenn. R. Civ. P. 65.04(2)).

The standard of issuance of the injunction is guided by a four-part test:

> The most common description of the standard for a preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.

Id. at 793 (quotations omitted). As observed by the Sixth Circuit, when considering injunctive relief: "These factors are not prerequisites which must be met but are interrelated considerations that must be balanced together." *Northeast Ohio Coalition for Homeless and Service Employees*

v. Blackwell, 467 F.3d 999, 1009 (6th Cir. 2006) (quotation omitted) (dismissed on other grounds in part in *Northeast Ohio Coalition for Homeless and Service Employees v. Blackwell*, 652 F. Supp. 2d 871 (S.D. Ohio 2009)). The Court need not consider each of these factors if fewer factors are "dispositive." *Jones v. City of Monroe*, 341 F.3d 474, 476 (6th Cir. 2003) (citations omitted).

ARGUMENT

The foregoing factors weigh in favor of issuing the injunction. The claims raised in the instant motion are all substantially likely to prevail. Absent injunctive relief, the Plaintiff's constitutional rights will be immediately damaged. Additionally, their ability to consider important business and investment matters will be hampered. The City of Chattanooga will undergo no harm if the injunction was granted. And interest the City of Chattanooga has in the enforcement of the Ordinance would be reclaimed in full once a judgment was entered.

I. IRREPARABLE HARM

Plaintiff and its members will undergo immediate and irreparable harm absent an injunction. First, the Ordinance deprives Plaintiff of constitutional rights. *See Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003) (when constitutional rights are at issue "the likelihood of success on the merits is often the determinative factor."); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). If there is no adequate remedy at law, an injunction is the proper form of relief. *See Pro. Home Health & Hospice, Inc. v. Jackson-Madison Cnty. Gen. Hosp. Dist.*, 759 S.W.2d 416, 420 (Tenn. Ct. App. 1988).

As further briefed herein, Plaintiff has lost several constitutional freedoms under both the United States Constitution and Tennessee Constitution, including First Amendment, Fourteenth Amendment, and the Contracts Clause. The loss of such constitutional rights cannot be properly

compensated by a monetary judgment. Sure, there may be some ascertainable monetary losses – but the loss of a constitutional right is incalculable. This factor weighs strongly in Plaintiff's favor.

II. BALANCING OF HARMS

Granting the injunction would cause no harm to the City of Chattanooga. Property owners would be free to operate short-term rentals as they have in the past several years. Those looking to convert dwellings into short-term rentals in any zone would now be eligible for a permit. And investors looking to purchase and operate short-term rentals in the City of Chattanooga would be eligible as well. This is actually a benefit to the City because of the potential economic benefit in terms of taxes, growth, and tourism.

There are plenty of health and safety codes that exist to ensure rentals are compliant with fire regulations, insurance needs, habitability, sanitation, noise ordinances, pollution, etc. Short-terms rentals often depend on customer reviews, so property owners have a vested interest in maintaining their properties to the highest degree.

If the City of Chattanooga prevailed here, it would be perfectly free to resume its regulation. This is not an instance where the Ordinance prevents some great harm that can never be undone. Nor it is a situation where the City of Chattanooga would lose significant economic opportunities. In other words, the City of Chattanooga has nothing to lose; but the people do.

In contrast, the Ordinance takes a great toll on property owners, such as Plaintiff and its members. It chills civil liberties and has a detrimental impact to the City of Chattanooga. The balance of hardships tilts overwhelmingly in the Plaintiff's favor.

III. SUCCESS ON THE MERITS

Plaintiff is highly likely to prevail on each individual claim in the Complaint.

A. Freedom of Speech and Freedom of Association

The Ordinance's restriction and total ban of on-site signage violates Plaintiff's constitutional rights to freedom of speech.[1] Specifically, section 38-435(d) of the Ordinance prohibits "on-site" signage for vacation rentals except for those that are at least five acres and have a dwelling unit that is not visible from the street. Further, section 38-435(d) prohibits "off-site" signage except for any city designated required signage for designated parking spaces.

Freedom of speech is one of the most protected constitutional rights. "Regulations which restrain speech on the basis of content presumptively violate the First Amendment." *State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905 (Tenn. 1996) ("the free flow of commercial information is indispensable to the public"). Those protections apply to commercial speech. *See Va. Bd. Of Pharmacy v. Va. Citizen's Consumer Council*, 425 U.S. 748, 765 (1976) ("the free flow of commercial information is indispensable to the public."). The right to freedom of speech is fundamental and is reviewed under a strict scrutiny analysis. *Bemis Pentecostal Church v. State*, 731 S.W.2d 897 (Tenn. 1987). However, as a general rule, courts have been more permissive of restrictions on advertising. *See, e.g., Central Hudson Gas & Electric Co. v. Public Service Commission of New York*, 447 Y.S. 557 (1980) (articulating a four-part intermediate scrutiny test to restrictions on commercial speech).

Likewise, the same protections are extended to the freedom of association; and together these First Amendment freedoms apply to those that are engaged in business activities. *Thomas v. Collins*, 323 U.S. 516, 531 (1945).

[1] *See* U.S. Const. amend. I (Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech…); *see also* Tenn. Const. Art. I, § 19 (The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty).

When a municipality enacts an ordinance that targets speech based on content, the ordinance is "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Gilbert*, 135 S. Ct. 2218, 2225 (2015) (internal citations omitted). It does not make a difference if a content-based law was motivated by legitimate concerns like nuisance regulations. *See H&L Messengers v. Brentwood*, 577 S.W.2d 444, 453 (Tenn. 1979) (commercial speech restrictions, regulations, and exemptions so based are constitutionally offensive whether evil or benign).

Here, the Ordinance fails to articulate and reason for the signage prohibition. Such a blanket prohibition on on-site or off-site signage for vacations rentals clearly targets speech - commercial or otherwise – because it only applies to vacation rental properties. A neighboring property is free to put up signs advertising their property as a long-term type of rental. This is an example of content-based discrimination.

When applying the strict scrutiny test, the City of Chattanooga must show that the "restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 135 S. Ct. at 2231 (internal citations and quotations omitted). "Content-based regulations are presumptively invalid." *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992) (citations omitted). The City of Chattanooga must show that the Ordinance's differentiation between vacation rental signage and other types of signs further a compelling governmental interest and is narrowly tailored to that end. *Reed*, 135 S. Ct. at 2231. Plaintiffs "must be deemed likely to prevail" unless the City of Chattanooga can show that there are no less restrictive means. *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

The Court cannot defer to the City of Chattanooga's assessment of harms and remedies. In trying to ban advertising of short-term rentals, the City of Chattanooga cannot meet its burden "by

mere speculation or conjecture." *Edenfield v. Fane*, 507 U.S. 761, 771 (1993) (using intermediate scrutiny). The harms the Ordinance is designed to address must be real and not speculative and the Court must also scrutinize whether the Ordinance actually works, meaning that "its restriction will in fact alleviate the harm to a material degree." *Edenfield*, 507 U.S. at 770-771. The signage restriction must serve the stated interest in a "direct and material manner." *Id*.

The Ordinance also fails under a strict scrutiny analysis. There is no interest, let alone a compelling one, in totally banning short-term rental signage, or restricting it more narrowly than other, similar signs. *See Peel v. Attorney Registration and Disciplinary Commission*, 496 U.S. 91, 111 (1990) ("State may not…completely ban statement that are not actually or inherently misleading."). For example, a "For Rent" sign is no different than a sign that reads "For Rent on AirBnb." There is simply no compelling reason prohibiting signage in all circumstances that provide helpful information to visitors. Moreover, the is no compelling reason to place caps on the amount of people that may stay in any one particular rental or place arbitrary limits on square footage and caps on the number of rooms a rental may have. These items are covered by the fire safety code; but exist only as arbitrary limits in the Ordinance.

The Ordinance is unconstitutional on these grounds because it is violative of Plaintiff's First Amendment freedoms of speech and association.

B. Equal Protection

"Both the United States and Tennessee Constitutions guarantee to citizens the equal protection of the laws....[w]e have consistently held that these two provisions confer the same protections as does the Fourteenth Amendment to the United States Constitution." *State v. Tester,* 879 S.W.2d 823, 827 (Tenn. 1924); *Tennessee Small School Sys. v. McWherter,* 851 S.W.2d 139, 152 (Tenn. 1993). Thus, in analyzing equal protection challenges, we have followed

the analytical framework developed by the United States Supreme Court, which, depending on the nature of the right asserted, applies one of three standards of scrutiny: (1) strict scrutiny, (2) heightened scrutiny, and (3) reduced scrutiny, applying the rational basis test. *State v. Tester,* 879 S.W.2d at 828; *Tennessee Small School Sys. v. McWherter,* 851 S.W.2d at 153. *State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905 (Tenn. 1996).

Equal protection analysis requires strict scrutiny of a legislative classification only when the classification interferes with the exercise of a "fundamental right" or operates to the peculiar disadvantage of a "suspect class." *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 16, 93 S.Ct. 1278, 1287, 36 L.Ed.2d 16 (1973). *State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905, 911 (Tenn. 1996).

A property owner's right to own, use, and enjoy private property is a fundamental right. *McArthur v. East Tenn. Natural Gas Co*., 813 S.W.2d 417, 419 (Tenn.1991); *State v. Gainer*, 22 Tenn. (3 Hum.) 39, 40 (1842). As such, this Court has held that,

> every proprietor of land, where not restrained by covenant or custom, has the entire dominion of the soil and the space above and below to any extent he may choose to occupy it, and in this occupation he may use his land according to his own judgment, without being answerable for the consequences to an adjoining owner, unless by such occupation he either intentionally or for want of reasonable care and diligence inflicts upon him an injury.

Humes v. Mayor of Knoxville, 20 Tenn. (1 Hum.) 403, 407 (1839); *see also McArthur v. East Tenn. Natural Gas Co.,* 813 S.W.2d 417, 419 (Tenn.1991) (A property owner's right to own, use, and enjoy private property is a fundamental right).

For example, Tennessee law does not favor restrictive covenants imposed by homeowner's associations, because such restrictions are in derogation of the rights of free us and enjoyment of property. *Hughes v. New Life Dev. Corp*., 387 S.W.3d 453, 474 (Tenn. 2012). Other than a homeowner's association not being a government body, the Ordinance here is no different. It is a

derogation of the rights of free use and enjoyment of property implicating a fundamental right – so strict scrutiny applies.

The Ordinance discriminates in several ways:

- Discriminates against owner-occupied and non-owner-occupied property owners; as compared to long-term rental owners that have no such restrictions imposed by the Ordinance.
- Fees for permits are applied differently to owner-occupied versus non-owner-occupied.
- The inspection requirements are applied owner-occupied versus non-owner-occupied.
- The Ordinance discriminates against owner-occupied and non-owner-occupied properties by imposing different requirements for qualifying for rental certificates.
- The Ordinance has different requirements for property owners in commercial zones versus residential zones.
- The Ordinance is discriminatory in that it treats short-term rental owners differently than similarly licensed business such as hotels, motels, and long-term rental properties.
- The Ordinance requires short-term rental owners to have an agent available and on call 24 hours a day, 7 days a week; which does not apply to similarly situated businesses or long-term rentals.

The overarching issue on all of these points is that the Ordinance restricts the use of short-term rentals and discriminates against different classes of property owners and business owners. When applying the strict scrutiny test, the City of Chattanooga must show that the "restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 135 S. Ct. at 2231. The only articulated interest is "is to provide appropriate opportunities for the development of short-term vacation rentals in the City of Chattanooga." (Ordinance, p. 1).

The foregoing list of restrictions are certainly not narrowly tailored to achieve appropriate opportunities for the development of short-term rental vacations. Each listed restriction is not only arbitrary but extraordinarily overbroad. In fact, these restrictions do just the opposite than *provide* reasonable opportunities. Instead, they restrict the free use of property rights across the board which is a blanket violation of Plaintiff's fundamental rights. The Ordinance must be declared unconstitutional because it violates the tenants of equal protection.

D. Takings Clause

The Tennessee Constitution prevents the government from taking private property. "That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor." Tenn. Const. art. I, § 21.

The United States Supreme Court has recognized that an unconstitutional government taking may occur when a regulation simply goes "too far." *Cedar Point Nursery v. Hassid*, 591 U.S. 141 S. Ct. 2063, 2072 (2021); *see Home v. Department of Agriculture*, 576 U.S. 350, 360 (2015); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (holding that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking").

There are two types of takings: (1) a physical taking; and (2) nuisance-type taking. Physical occupation takings arise when a governmental defendant causes either a direct and continuing physical invasion of private property or a destruction of a plaintiff's property rights. *Edwards v. Hallsdale-Powell Util. Dist. Knox Cnty., Tenn.*, 115 S.W.3d 461, 465 (Tenn. 2003) (internal citations omitted).

Tennessee courts also recognize nuisance-type takings which occurs when the governmental defendant interferes with a landowner's beneficial use and enjoyment of the property. *Id*.

To amount to a "taking," the interruption or interference must be serious or significant, *Johnson v. City of Greeneville,* 222 Tenn. at 269, 435 S.W.2d at 480; *Barron v. City of Memphis,* 113 Tenn. at 92, 80 S.W. at 832–33, and must produce a particular and direct effect on the property involved not shared by the general public. *Johnson v. City of Greeneville,* 222 Tenn. at 269, 435 S.W.2d at 480; *Illinois Cent. R.R. v. Moriarity,* 135 Tenn. at 453, 186 S.W. at 1054. The disruption must be more than "momentary," *Obion County v. Edwards,* 159 Tenn. 491, 493, 19 S.W.2d 236, 237 (1929), but need not be permanent or irremediable as long as it affects the "usable and rental or permanent value of the property." *Louisville & Nashville Terminal Co. v. Lellyett,* 114 Tenn. 368, 402, 85 S.W. 881, 889 (1905). *Betty v. Metro. Gov't of Nashville & Davidson Cnty.*, 835 S.W.2d 1, 7 (Tenn. Ct. App. 1992), *overruled on other grounds by Edwards v. Hallsdale-Powell Util. Dist. Knox Cnty., Tenn.*, 115 S.W.3d 461 (Tenn. 2003).

The Ordinance here amounts to a nuisance taking because it affects the usable and rental value of the Plaintiff's properties. It is also not a momentary disruption – but rather a permanent disruption so long as the Ordinance remains in effect. On this basis, the Ordinance must be declared to be an unconstitutional taking of private property.

E. Contracts Clause

The Contract Clause of the Tennessee Constitution provides "[t]hat no retrospective law, or law impairing the obligations of contracts shall be made." Tenn. Const. art. I, § 20. The Contract Clause of the United States Constitution similarly provides that "[n]o state shall . . . pass any . . . law impairing the obligation of contracts . . . ." U.S. Const. art. I, § 10. The Tennessee Supreme

Court has stated that the meaning of these two constitutional provisions is identical. *First Util. Dist. of Carter Cnty. v. Clark*, 834 S.W.2d 283, 287 (Tenn. 1992).

As interpreted by the Tennessee Supreme Court, the Contract Clause "does not mean that absolutely no retrospective law shall be made." *Dark Tobacco Growers' Co-op. Ass'n v. Dunn*, 150 Tenn. 614, 632, 266 S.W. 308, 312 (1924). Rather, a "retrospective law" that violates the Contracts Clause is one that takes away or impairs vested rights acquired under existing laws, creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed. *See Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999); *Dark Tobacco*, 150 Tenn. at 632, 266 S.W. at 312. Stated another way, a constitutionally objectionable retrospective law is one that "operates forward but looks backward in that it attaches new consequences or legal significance in the future to past acts or facts that existed before the statute came into effect." *Estate of Bell v. Shelby Cnty. Health Care Corp*., 318 S.W.3d 823, 836 n. 4 (Tenn. 2010).

Here, the Ordinance impairs both prior and future contracts. Property owners' contract with individuals to rent their properties on a short-term basis. The basis tenants of contract exist in every transaction – there is an offer to rent property, an acceptance by making a reservation, and an exchange of money, or consideration, for the use of a property. The Ordinance prevents property owners from exercising their fundamental constitutional rights to enter into such agreements, which is prohibits by the contracts clause. On this basis, the Ordinance must be declared to be unconstitutional.

F. The Ordinance is Void for Vagueness and Violates Due Process

Due process rights are enshrined in the Fifth[2] and Fourteenth[3] Amendments of the United States Constitution and Article 1, Section 8, of the Tennessee Constitution.[4]

> The language of the "due process" provisions in the United States Constitution differs from the "law of the land" provision found in the Tennessee Constitution. Although the terms on occasion have been viewed as synonymous, *Daugherty v. State,* 216 Tenn. 666, 393 S.W.2d 739, 743 (1965), the United States Supreme Court's interpretations of the United States Constitution establish a minimum level of protection while this Court, as final arbiter of the Tennessee Constitution, is always free to extend greater protection to its citizens. *Doe v. Norris,* 751 S.W.2d 834, 838 (Tenn. 1988).

Seals v. State, 23 S.W.3d 272, 277 (Tenn. 2000).

The federal and state due process clauses prevent the government from infringing upon significant property or liberty interests without first providing notice and an opportunity to be heard at a meaningful time and in a meaning manner. *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985). However, before such procedural safeguards are required, several factors must be established. *State v. AAA Aaron's Action Agency Bail Bonds, Inc.,* 993 S.W.2d 81, 85 (Tenn. Crim. App. 1998).

> First, a constitutionally protected liberty or property interest must be possessed by the party allegedly aggrieved. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 569–78, 92 S.Ct. 2701, 2705–06, 2709, 33 L.Ed.2d 548 (1972). The right to engage in a chosen business, occupation, or profession without unreasonable governmental interference or deprivation thereof is both a liberty and property interest, protected by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I Section 8 of the Tennessee Constitution. *See Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. at 543,

[2] "No person shall … be deprived of life, liberty or property, without the due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.
[3] No "State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV.
[4] "That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." Tenn. Const. art. I, § 8.

> 105 S.Ct. at 1494; *see also Livesay v. Tennessee Board of Examiners in Watchmaking,* 204 Tenn. 500, 322 S.W.2d 209 (1959). *Harbison v., Knoxville Iron Company,* 103 Tenn. 421, 53 S.W. 955 (1899), *aff'd by,* 183 U.S. 13, 22 S.Ct. 1, 46 L.Ed. 55 (1901).

State v. AAA Aaron's Action Agency Bail Bonds, Inc., 993 S.W.2d 81, 85 (Tenn. Crim. App. 1998).

Additionally, there must be a deprivation of that interest by the government. *See Rowe v. Board of Educ. of City of Chattanooga,* 938 S.W.2d 351, 354 (Tenn.1996), *cert. denied,* 520 U.S. 1128, 117 S.Ct. 1271, 137 L.Ed.2d 349 (1997) (citation omitted). *State v. AAA Aaron's Action Agency Bail Bonds, Inc.*, 993 S.W.2d 81, 85 (Tenn. Crim. App. 1998).

Once it is determined that due process applies, the interests of AAA and the government must be weighed to determine what process is due and whether deprivation has occurred. *Federal Deposit Ins. Corp. v. Mallen,* 486 U.S. 230, 240, 108 S.Ct. 1780, 1787, 100 L.Ed.2d 265 (1988); *Board of Regents of State Colleges v. Roth,* 408 U.S. at 569–570, 92 S.Ct. at 2705. *State v. AAA Aaron's Action Agency Bail Bonds, Inc.*, 993 S.W.2d 81, 85 (Tenn. Crim. App. 1998).

> Due process requires notice and an opportunity to be heard.
>
> Due process requires "notice reasonably calculated under all the circumstances, to apprise interested parties" of the claims of the opposing parties. *McClellan v. Board of Regents of State University,* 921 S.W.2d 684, 688 (Tenn.1996) (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)). The purpose of due process requirements is to notify the individual in advance in order to allow adequate preparation and reduce surprise. *Id.* (citing *Memphis Light, Gas and Water Division v. Craft,* 436 U.S. 1, 14, 98 S.Ct. 1554, 1562–63, 56 L.Ed.2d 30 (1978)). In other words, the contents of the notice cannot be ambiguous or obscure; they must clearly inform the person of the nature of the charge against him. *See Turk v. Franklin Special School Dist.,* 640 S.W.2d 218, 220 (Tenn.1982). To comport with these notions of fair play, the means employed should equal or exceed that which one desirous of actually informing the opposite party would employ. *Id.* (citations omitted). Under these standards, the trial court's May 2 order suspending AAA from writing bail bonds "as the result of the actions of [AAA] on Wednesday, April 23, 1997" cannot be held sufficient to

> adequately apprise AAA of the charges to be met. Thus, notice was constitutionally inadequate.

State v. AAA Aaron's Action Agency Bail Bonds, Inc., 993 S.W.2d 81, 86 (Tenn. Crim. App. 1998).

> In addition to guaranteeing a person with notice, due process provides an opportunity to be heard. The opportunity to present reasons, either in person or in writing, why a proposed action should not be taken is a fundamental due process requirement. *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. at 546, 105 S.Ct. at 1495 (citation omitted).

State v. AAA Aaron's Action Agency Bail Bonds, Inc., 993 S.W.2d 81, 86 (Tenn. Crim. App. 1998).

The Ordinance reserves the City's right to "revoke a granted short-term vacation rental certificate at any time upon notice" and "after a public hearing once the property has three (3) documented violations…" The Ordinance goes on to state that such violations shall be evidenced by a finding of guilt or fault by court "or other administrative officer or body designated by City Council."

There are several issues here. "Documented violations" is not defined and begs the question documented violations of what? A violation of city noise laws, pollution, nuisance, parking tickets, or other code violations, or a violation of the Ordinance itself? This language points to no statutory authority or code section that may constitute a potential violation or a penalty. Moreover, the wording here is so overbroad that the City of Chattanooga could use *any* violation of *any* law as a basis to revoke a rental certificate. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *American Show Bar Series, Inc. v. Sullivan County*, 30 S.W.3d 324 (Tenn. Ct. App. 2000) citing *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222 (1972). This is vague and overbroad and must be declared unconstitutional.

IV. Public Interest

The intent behind the Ordinance "is to provide appropriate opportunities for the development of short-term vacation rentals in the City of Chattanooga." (Ordinance, p. 1). However, the Ordinance fails to define or expound upon the meaning of "appropriate opportunities." The public interest is served by granting the injunction because the public as a whole has significant interest in the protection of civil liberties guaranteed by the U.S. Constitution and Tennessee Constitution. *See Husted*, 751 F.3d at 412 (quoting *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir 1995) (the public as a whole as a significant interest in … protection of First Amendment Liberties). This rule applies with more force given the other constitution rights that are implicated.

The public interest is also served because this a new Ordinance that affects a great number of people. It affects local property owners, investors, and those who have complied with the short-term rental laws that may no longer be eligible for permit renewal. Moreover, it affects the City of Chattanooga as a whole due to its broad application. If anything, the Ordinance serves only to hinder the development of short-term rental properties in the community.

If the intent is truly to provide appropriate opportunities for the development of short-term vacation rentals, then the Ordinance should apply with equal force to all and not discriminate against different classes of property owners. And it definitely should not operate to chill civil liberties of any citizen.

WAIVER OF BOND

Under Tenn. R. Civ. P. 65.05, the applicant for an injunction must provide a bond for the payment of costs and damages as may be incurred or suffered by any person who would have been wrongfully enjoined. The bond is an issue for the Court to determine. *See Moltan Co. v. Eagle-*

Picher Indus., 55 F.3d 1171, 1176 (6th Cir. 1995) (courts "possess discretion over whether to require the posting of security.").

A bond here is unnecessary and, in fact, does not make sense. The bond is to be set in the amount of "costs and damages as may be incurred or suffered by any person who is found to have been wrongfully restrained or enjoined." Tenn. R. Civ. P. 65.05(1). There are no costs and damages that could result. The parties are not suing each other over money. Indeed, even Plaintiffs are not requesting compensatory damages. This case only seeks injunctive and declaratory relief so there will be no financial loss to the City of Chattanooga if this Court grants a preliminary injunction.

CONCLUSION

Plaintiff respectfully requests this Court rule on this matter, or in the alternative, set this matter for a hearing at the earliest possible date so they need not suffer any further erosion of their constitutional rights. All of the factors in determining whether to issue an injunction weigh heavily in the Plaintiff's favor. This Court should not hesitate to issue a preliminary injunction finding that the Plaintiff has a high likelihood of prevailing in their claim that the Ordinance does not apply to them and by enjoining the City of Chattanooga from enforcing the Ordinance.

Respectfully submitted,

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