

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

**GREATER CHATTANOOGA COALITION)
FOR PRIVATE PROPERTY RIGHTS,)**

Plaintiff,)

v.)

CITY OF CHATTANOOGA,)

Defendant.)

CASE NO. 1:23-cv-00221

CITY OF CHATTANOOGA’S ANSWER TO COMPLAINT

Comes now the Defendant, the City of Chattanooga (the “City”), by and through counsel, and for answer to the Complaint for Declaratory and Injunctive Relief (“Complaint”) filed against it by Plaintiff, Greater Chattanooga Coalition for Private Property Rights (“Plaintiff”), states as follows:

FIRST DEFENSE

The Complaint fails to state a claim against the City upon which relief can be granted.

SECOND DEFENSE

In answer to the specific allegations of the Complaint, the City responds as follows:

Introduction

1. As to the allegations contained in Paragraph 1 of the Complaint, the City admits that the Chattanooga City Council enacted Ordinance No. 13981 on May 16, 2023 that repealed the former Ch. 11, Art. XX, §§ 11-510-11-519 and involved Short Term Vacation Rental regulations which had been in effect by the City since they were first regulated by City Ordinance No. 13194, and as amended since July 11, 2019. Ordinance No. 13981 went into effect as a Zoning

Ordinance amendment to the Chattanooga City Code two weeks later. Based on this explanation the allegations in Paragraph 1 are admitted.

2. The City admits the allegations contained in Paragraph 2 of the Complaint based on the Zoning Ordinance changes that were adopted in Ordinance No. 13981 and the prior requirements for Short Term Vacation Rental Certificates that were required by former Ch. 11, Art. XX, §§ 11-510-11-519 all affected the operations of Short Term Vacation Rentals in the City of Chattanooga since 2019.

3. The City admits the allegations contained in the current and previous Short Term Vacation Rental ordinances affected the development of Short Term vacation rentals in the City of Chattanooga as alleged in Paragraph 3 of the Complaint.

4. The City denies all of the allegations contained in Paragraph 4 of the Complaint which allege violation of the constitutional rights of short term rental owners and strict proof is demanded thereof.

5. The City denies the allegations contained in Paragraph 5 of the Complaint which assert that the ordinance discriminates against non-owner occupied applicants and strict proof is demanded thereof.

6. The City denies the allegations contained in Paragraph 6 of the Complaint that the Ordinance violates a property owners' First Amendment right to place signage subject to certain distance restrictions and strict proof is demanded thereof.

Jurisdiction and Venue

7. It is admitted that the allegations set forth in Paragraph 7 of the Complaint are asserting First, Fourth, and Fourteenth Amendment claims under the United States Constitution as well as Tennessee Constitutional claims which are within this Court's jurisdiction.

8. It is admitted that the allegations set forth in Paragraph 8 of the Complaint assert claims under 42 U.S.C. § 1983 which are alleged to address the deprivation of rights secured by the U.S. Constitution, which are denied. Such allegations and claims are admitted to be within the jurisdiction of this Court over federal constitutional claims.

9. The allegations set forth in Paragraph 9 of the Complaint are admitted in this Court after removal pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446.

10. The allegations set forth in Paragraph 10 of the Complaint are denied unless otherwise provided by federal law or the Federal Rules of Civil Procedure and strict proof of such authority is demanded thereof.

The Parties

11. This Defendant has insufficient proof to admit or deny the allegations set forth in Paragraph 11 of the Complaint and, as such, allegations are denied and strict proof of such allegations is demanded.

12. It is admitted that the City is a municipality located in Hamilton County, Tennessee and can be served with process via the Office of the City Attorney. However, the Office of the City Attorney is located at 100 East 11th Street and not 110 East 11th Street in Chattanooga Tennessee.

13. The City is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 13 of the Complaint and strict proof of such allegations is demanded.

Factual Background

14. The City admits the allegations contained in Paragraph 14 of the Complaint that it has regulated STVR operations since the passage of Ordinance No. 12231 in 2009.

15. The City admits the allegations contained in Paragraph 15 of the Complaint that prior Ordinances restricted certain operations of STVRs to areas within a defined Overlay Zone pursuant to Ordinance No. 13194 in 2017 and limited certain business operations to a defined Overlay Zone shown as Exhibit A to Ordinance No. 13194 which is attached hereto as **Exhibit 1**.

16. The City denies the allegations contained in Paragraph 16 of the Complaint. Properties zoned R-3 or R-4 prior to October 1, 2017 and were still zoned as such shall not be subject to the Short-Term Vacation Rental location restrictions when Ordinance No. 13194 was approved by the City Council. All other owner-occupied and non-owner occupied properties were required to comply with Ordinance No. 13194 since its passage.

17. The City admits the allegations contained in Paragraph 17 of the Complaint.

18. The City admits the allegations contained in Paragraph 18 of the Complaint that certain amendments were made to Short Term Rental Certificate requirements in Ordinance No. 13515 in December of 2019 which is attached hereto as **Exhibit 2**. All other allegations in Paragraph 18 are denied.

19. The City Council imposed a moratorium on the acceptance of new Short Term Vacation Rental Applications for Non-Owner occupied rental properties, which are not the primary residence of the applicant, beginning on April 5, 2022 in Ordinance No. 13795 which is attached hereto as **Exhibit 3**. That moratorium was extended by the City Council in Ordinance No. 13931 on February 20, 2022 through July 10, 2023. A copy of Ordinance No. 13931 is attached hereto as **Exhibit 4**.

20. The City admits the allegations contained in Paragraph 20 of the Complaint.

21. The City denies the allegations that Ordinance No. 13981 is unconstitutional contained in Paragraph 21 of the Complaint and strict proof is demanded thereof.

CAUSES OF ACTION
COUNT I: DECLARATORY JUDGMENT

22. With respect to the allegations in Paragraph 22, the City incorporates by reference its previous responses to Paragraphs 1-21 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

23. The City denies the allegations that this zoning ordinance violates numerous constitutional rights and federal laws which is contained in Paragraph 23 of the Complaint and strict proof is demanded thereof.

24. The allegations set forth in Paragraph 24 of the Complaint are denied.

**COUNT II: VIOLATION OF U.S. CONST. AMEND. I. AND
ARTICLE I, SECTION 19 OF THE TENNESSEE CONSTITUTION
(COMMERCIAL SPEECH)**

25. With respect to the allegations in Paragraph 25, the City incorporates by reference its previous responses to Paragraphs 1-24 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

26. The allegations set forth in Paragraph 26 of the Complaint regarding any violations of the First Amendment, freedom of speech, or commercial speech under the First Amendment or the Tennessee Constitution are denied by the passage of Ordinance No. 13981 and strict proof thereof is demanded.

27. The allegations set forth in Paragraph 27 of the Complaint are denied to the extent limited by Ordinance No. 13981.

28. The City admits the allegations contained in Paragraph 28 of the Complaint.

29. The City admits the allegations contained in Paragraph 29 of the Complaint.

30. The City admits the allegations contained in Paragraph 30 of the Complaint. It will be established that the sign limitations in this local ordinance are merely time, manner, and place restrictions that are not subject to strict scrutiny by this Court and are valid regulations on any constitutional challenge.

31. The City denies the allegations contained in Paragraph 31 of the Complaint and strict proof is demanded thereof. It will be established that the sign limitations in this local ordinance are merely time, manner, and place restrictions that are not subject to strict scrutiny by this Court and are valid regulations on any constitutional challenge.

32. The City denies the allegations contained in Paragraph 32 of the Complaint and strict proof is demanded thereof.

33. The City denies the allegations contained in Paragraph 33 of the Complaint and strict proof is demanded thereof.

**COUNT III: VIOLATION OF U.S. CONST. AMEND. I. AND
ARTICLE I, SECTION 19 OF THE TENNESSEE CONSTITUTION
(FREEDOM OF ASSOCIATION)**

34. With respect to the allegations in Paragraph 34, the City incorporates by reference its previous responses to Paragraphs 1-33 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

35. The allegations set forth in Paragraph 35 of the Complaint are denied regarding the First Amendment and Tennessee Constitutional rights of people to assemble and associate by the passage of Ordinance No. 13981 and strict proof of any such constitutional claims are demanded.

36. The City admits the allegations contained in Paragraph 36 of the Complaint.

37. The City admits the allegations contained in Paragraph 37 of the Complaint regarding capacity limitations of short term rental units.

38. The City admits, in part, and denies, in part, the allegations contained in Paragraph 38 of the Complaint. The City admits that Section 38-435(e) of Chattanooga City Code (i.e. “the Ordinance”) limits rentals to a maximum of five bedrooms in one dwelling unit and no more than five sleeping rooms available in properties located in R-1 and R-2 residential zones. The City denies that these limitations are arbitrary based on the zoning definitions allowed by its ordinances and strict proof of any constitutional violation is demanded thereof.

39. The allegations set forth in Paragraph 39 of the Complaint are denied and strict proof is demanded thereof.

40. The City denies the allegations contained in Paragraph 40 of the Complaint and strict proof of any alleged constitutional violation is demanded thereof.

COUNT IV: VIOLATION OF 42 U.S.C. § 1988

41. With respect to the allegations in Paragraph 41, the City incorporates by reference its previous responses to Paragraphs 1-40 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

42. The City denies the allegations contained in Paragraph 42 of the Complaint of any Tennessee or United States constitutional violations, civil rights violations, or state and federal laws in connection with the adoption of Ordinance No. 13981 and strict proof is demanded thereof.

43. The allegations set forth in Paragraph 43 of the Complaint are admitted regarding prevailing parties under 42 U.S.C. § 1988, however such allegations are denied as to the City, and strict proof of any basis for the award of attorney’s fees is denied based on the allegations set forth in this complaint.

44. The City denies the allegations contained in Paragraph 44 of the Complaint and strict proof is demanded that plaintiff can be the prevailing party entitled to any fees under 42 U.S.C. § 1988 based on the allegations or proof in this case.

**COUNT V: ARTICLE I, SECTION 21 OF THE TENNESSEE CONSTITUTION -
TAKINGS CLAUSE**

45. With respect to the allegations in Paragraph 45, the City incorporates by reference its previous responses to Paragraphs 1-44 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

46. The allegations set forth in Paragraph 46 of the Complaint are denied based on the provisions of Article I, Section 21 that prevents property from being taken for public use without just compensation. It is denied that Ordinance No. 13981 takes any man's services or property for public use. As such, the City further denies that Ordinance 13981 amounts to a regulatory taking in violation of the Tennessee Constitution.

47. The allegations set forth in Paragraph 47 of the Complaint are denied, the City denies that Ordinance 13981 deprives property owners of an economic benefit but is a valid zoning restriction under Tennessee law.

48. The City denies the allegations contained in Paragraph 48 of the Complaint and strict proof is demanded thereof.

49. The City denies the allegations contained in Paragraph 49 of the Complaint and strict proof is demanded thereof.

50. The City admits the allegations contained in Paragraph 50 of the Complaint subject to the specific use that is requested for the property that is allowed in compatible use zones under the zoning ordinance. It is submitted that such actions by the City are valid legislative decisions by the Chattanooga City Council under Tennessee law.

51. The City admits, in part, and denies, in part, the allegations contained in Paragraph 51 of the Complaint. The City admits that Section 38-438 of Chattanooga City Code (i.e. “the Ordinance”) regulates renewals of permits for those that have already obtained permits under the previous code. The City denies that such regulations are improper or constitute any regulatory taking and strict proof is demanded thereof.

52. The City denies the allegations contained in Paragraph 52 of the Complaint and strict proof is demanded thereof.

**COUNT VI: VIOLATION OF U.S. CONST. AMEND. 14 AND
ARTICLE I, SECTION 8 AND ARTICLE XI, SECTION OF THE TENNESSEE
CONSTITUTION
(EQUAL PROTECTION)**

53. With respect to the allegations in Paragraph 53, the City incorporates by reference its previous responses to Paragraphs 1-52 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

54. The allegations set forth in Paragraph 54 of the Complaint are denied and strict proof of any association of citizens represented by Plaintiff as set forth in this Paragraph is demanded at the trial of this cause. It is further denied that Ordinance No. 13981 in any way violates the rights to equal protection under the Fourteenth Amendment or the Tennessee Constitution.

55. The City denies the allegations contained in Paragraph 55 of the Complaint and strict proof is demanded thereof.

56. The City denies the allegations contained in Paragraph 56 of the Complaint and strict proof is demanded thereof. It is admitted that different fees are involved in Ordinance No. 13981 due to the need for additional government inspections due to the activities of different

business activities of homestay or owner occupied and non-owner occupied short-term rental units. It will be established that such fee differences are reasonable and rationally based.

57. The City denies the allegations contained in Paragraph 57 of the Complaint and strict proof is demanded thereof. It is admitted that different inspection requirements are involved in Ordinance No. 13981 due to the need for additional government inspections due to the activities of different business activities of homestay or owner occupied and non-owner occupied short-term rental units. It will be established that such inspection requirements are reasonable and rationally based.

58. The City denies the allegations contained in Paragraph 58 of the Complaint and strict proof is demanded thereof. It is admitted that different qualification requirements are involved in Ordinance No. 13981 due to the need for additional government inspections due to the activities of different business activities of homestay or owner occupied and non-owner occupied short-term rental units. It will be established that such qualification requirements are reasonable and rationally based.

59. The City denies the allegations contained in Paragraph 59 of the Complaint and strict proof is demanded thereof.

60. The City denies the allegations contained in Paragraph 60 of the Complaint and strict proof is demanded thereof.

61. The City denies the allegations contained in Paragraph 61 of the Complaint and strict proof is demanded thereof.

62. The City denies the allegations contained in Paragraph 62 of the Complaint and strict proof is demanded thereof.

63. The allegations set forth in Paragraph 63 of the Complaint are denied and strict proof is demanded thereof in the trial of this cause. All of the allegations in Count VI are denied to establish any violation of the equal protection clauses of the Fourteenth Amendment to the United States Constitution or the Tennessee Constitution.

**COUNT VII: VIOLATION OF U.S. CONST. ART. I, § 10
(CONTRACTS CLAUSE) AND
ARTICLE I, SECTION 20 OF THE TENNESSEE CONSTITUTION
(CONTRACTS CLAUSE)**

64. With respect to the allegations in Paragraph 64, the City incorporates by reference its previous responses to Paragraphs 1-63 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

65. The allegations set forth in Paragraph 65 of the Complaint are denied in that Ordinance No. 13981 does not impair the obligations of any legal contracts or vested property rights based on any prior legal nonconforming uses under Tennessee law.

66. The allegations set forth in Paragraph 66 of the Complaint are denied insofar as Tennessee law clearly recognizes regulatory uses of real estate property by valid zoning regulations which are authorized under Tennessee and strict proof of such allegations is demanded thereof.

67. The allegations set forth in Paragraph 67 of the Complaint are admitted in part, however such uses are subject to regulations such as zoning which are properly adopted by legislative bodies in Tennessee pursuant to Tennessee law. It has long been recognized in Tennessee that certain property uses are different and may be zoned differently under Tennessee law such as Hotels, Bed and Breakfast facilities, and multi-family housing which may only be located in specific zones by local governments. Any right to enter into contracts would have to comply with such laws to be legally valid.

68. The City denies the allegations contained in Paragraph 68 of the Complaint and strict proof is demanded thereof.

69. The City denies the allegations contained in Paragraph 69 of the Complaint and strict proof is demanded thereof. Further to the extent that contracts were initiated by any persons during the legal moratoriums adopted by the City Council in Ordinance Nos. 13795 and 13931 any such contracts would have been legally invalid and could not be enforced.

**COUNT VIII: VOID FOR VAGUENESS AND ARBITRARY
ENFORCEMENT VIOLATING DUE PROCESS**

70. With respect to the allegations in Paragraph 70, the City incorporates by reference its previous responses to Paragraphs 1-69 of the Complaint pursuant to Rule 10 of the *Federal Rules of Civil Procedure* as if fully set forth herein.

71. The City denies the allegations contained in Paragraph 71 of the Complaint regarding any due process violations under the Fifth and Fourteenth Amendments to the United States Constitution or the Tennessee Constitution from the passage of Ordinance No. 13981 and strict proof is demanded thereof.

72. The City admits the allegations contained in Paragraph 72 of the Complaint.

73. The City admits the allegations contained in Paragraph 73 of the Complaint.

74. The City denies the allegations contained in Paragraph 74 of the Complaint and strict proof is demanded thereof.

75. The City denies the allegations contained in Paragraph 75 of the Complaint and strict proof is demanded thereof.

76. The City denies the allegations contained in Paragraph 76 of the Complaint and strict proof is demanded thereof.

77. The City denies the allegations that the provisions of Ordinance No. 13981 are unconstitutional or violate due process as contained in Paragraph 77 of the Complaint and strict proof is demanded thereof.

78. All other allegations contained in the Complaint not heretofore admitted, explained, or denied are hereby specifically denied, and the City demands strict proof thereof.

79. The City reserves the right to assert any additional defense which its investigation or discovery reveals may apply to bar in whole or in part any of the Plaintiff's claims.

80. The City states that no answer is necessary from it with respect to the prayer for relief, but to the extent that an answer may be required, the City denies that the Plaintiff is entitled to any of the relief sought in the Complaint. The City further denies that it is liable to the Plaintiff for any damages or attorneys' fees under in any amount whatsoever.

THIRD DEFENSE

The City denies that Ordinance No. 13981 discriminates against non-owner occupied vacation rentals and owner occupied vacation rentals because neither category of vacation rental property owners is a protected class under the United States Constitution nor the Tennessee Constitution.

FOURTH DEFENSE

The City denies that Ordinance No. 13981 violates any United States or Tennessee Constitutional rights under the First Amendment for Free Speech, Freedom of Association, or the Fourteenth Amendment for Equal Protection, or the Fifth or Fourteenth Amendments for Due Process based on the zoning provisions which regulate certain property uses and locations where such uses may occur within the City as provided under Tennessee law.

FIFTH DEFENSE

The City denies that Ordinance No. 13981 violates the takings clause of the Tennessee Constitution since this local zoning ordinance was adopted after presentation and review by the Regional Planning Agency and Regional Planning Commission and the Chattanooga City Council in the same manner as any zoning regulation adopted by the City in accordance with Tennessee law. This regulatory action did not violate Tennessee law nor did it deprive the property owners of all beneficial use of their property in violation of the United States Constitution for a public use.

SIXTH DEFENSE

The City denies that Ordinance No. 13981 violates the Contracts Clause at Article I, Section 10 of the United States Constitution or Article I, Section 20 of the Tennessee Constitution in that it is a valid zoning regulation authorized under Tennessee law and no contracts for contractual lease agreements for short-term rentals were allowed during the moratoriums established by Ordinance Nos. 13795 and 13931 any such contracts would have been legally invalid and could not be enforced.

SEVENTH DEFENSE

The City denies that Ordinance No. 13981 should be declared unconstitutional and unenforceable for any allegations set forth in the Complaint.

EIGHTH DEFENSE

The City asserts that any claims for constitutional violations in the enactment of regulatory or zoning violations following the adoption of multiple Ordinances regulating Short Term Vacation Rentals since Ordinance No. 12231 in 2009 is barred by the applicable statute of limitations for such actions.

WHEREFORE, having fully answered, the City prays that this cause filed against it be dismissed and that it be allowed to recover reasonable costs and attorney fees pursuant to 42 U.S.C. § 1988 and Tenn. Code Ann. § 29-20-113 for its defense and representation in this matter.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF CHATTANOOGA, TENNESSEE

By: s/PHILLIP A. NOBLETT

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CERTIFICATE OF SERVICE

This is to certify that a copy of this pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Mr. Bennett J. Wills
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This 6th day of October, 2023.

s/PHILLIP A. NOBLETT
PHILLIP A. NOBLETT

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