

CAUSE NO. 236-342969-23**KELRAY LLC, et al.,***Plaintiffs,*

v.

CITY OF FORT WORTH,*Defendant.*§
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§**IN THE DISTRICT COURT****236TH JUDICIAL DISTRICT****OF TARRANT COUNTY, TEXAS****DEFENDANT CITY OF FORT WORTH'S
RESPONSE AND OBJECTIONS TO PLAINTIFFS' TRADITIONAL
MOTION FOR SUMMARY JUDGMENT**

Defendant City of Fort Worth (the "City") files this Response and Objections to Plaintiffs' Traditional Motion for Summary Judgment and respectfully shows the Court the following:

I. INTRODUCTION

The City detailed the relevant factual background in its Traditional Motion for Summary Judgment and incorporates that motion by reference for all purposes. TEX. R. CIV. P. 58. The arguments and authorities contained in the City's Traditional Motion for Summary Judgment are, alone, sufficient to justify a complete denial of Plaintiffs' Traditional Motion for Summary Judgment. Additional reasons as to why Plaintiffs are not entitled to a summary judgment (and the City is) are detailed herein.

**II. EVIDENCE IN SUPPORT OF RESPONSE TO MOTION FOR SUMMARY
JUDGMENT**

Along with the pleadings and papers on file with the Court, the City relies on and fully incorporates by reference the summary-judgment evidence contained in the Appendix it filed in support of its summary judgment motion (containing Exhibits A-H) and Exhibit I (attached hereto). All evidentiary cites in this response are to the Appendix or to Exhibit I.

III. SUMMARY JUDGMENT STANDARD AND APPLICABLE LAW

A court should grant summary judgment when there is “no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” TEX. R. CIV. P. 166a(c); *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 157 (Tex. 2004). Whether a zoning ordinance violates the Texas Constitution is a question of law. *Patel v. Tex. Dep’t of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015); *City of San Antonio v. TPLP Off. Park Props.*, 218 S.W.3d 60, 65 (Tex. 2007). Courts presume the challenged ordinance is constitutional and the challenging party has an “extraordinary burden” to prove otherwise. *See Patel*, 469 S.W.3d at 87. Indeed, the challenging party must show “that no conclusive or even controversial or issuable fact or condition existed which would authorize the municipality’s passage of the ordinance.” *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 792-93 (Tex. 1982).

This high burden exists because a zoning ordinance is one of the most fundamental tools of urban planning in this country—*i.e.*, the right of a city to regulate land use within its boundaries.¹ Property owners do *not* possess unfettered and unregulated property rights to the detriment of their neighbors and fellow citizens. “A city may enact reasonable regulations to promote the health, safety, and general welfare of its people as a valid exercise of its police power.” *City of Coll. Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 805 (Tex. 1984); *see also* TEX. LOC. GOV’T CODE § 211.001.² Relevant here, zoning ordinances and land-use restrictions—like the City’s STR Ordinances—have long been recognized as a valid exercise of this power. *See Truong v. City of Houston*, 99 S.W.3d 204, 210-11 (Tex. App.—Houston [1st Dist.] 2002, no pet.); TEX. LOC. GOV’T

¹ A zoning ordinance is “a city ordinance that regulates the use to which land within various parts of the city may be put.” *Powell v. City of Houston*, 628 S.W.3d 838, 844 (Tex. 2021).

² A city’s police power “is not confined to elimination of filth, stench, and unhealthy places” but may also include the laying out of zones (like single-family residential zoning districts) “where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.” *Ville of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974).

CODE § 211.003. And if reasonable minds can differ about whether a zoning ordinance, in fact, promotes the public health, the ordinance must stand. *Comeau*, 633 S.W.2d at 792; *see also City of Waxahachie v. Watkins*, 275 S.W.2d 477, 481 (Tex. 1955) (explaining that “if there is an issuable fact as to whether the ordinance makes for the good of the community, the fact that it may be detrimental to some private interest is not material”).

IV. ARGUMENT & AUTHORITIES

I. The City is entitled to summary judgment on Plaintiffs’ due course of law claim.

Plaintiffs’ claim that the STR Ordinances violate the due course of law provision in article I, section 19 of the Texas Constitution fails as a matter of law for three reasons:

- (1) Plaintiffs do not have a vested right to lease their properties for less than thirty days in residential districts;
- (2) the STR Ordinances are rationally related to a legitimate government purpose; and
- (3) the STR Ordinances are not so burdensome as to be oppressive.

[City MSJ at pp. 11-24]. As a result, the Court should deny Plaintiffs’ motion for summary judgment on this claim, grant the City’s motion, and render judgment dismissing the claim.

A. Plaintiffs do not have a vested right to lease their properties for less than thirty days in residential districts.

To prevail on their due course of law claim, Plaintiffs must first prove the STR Ordinances have deprived them of “an interest the due-course clause protects”—*i.e.*, a “vested” interest. *Tex. Dep’t of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648, 653 (Tex. 2022); *see also id.* at 668 (Young, J., concurring) (“If a given interest does not have substantive protection, then it cannot be irrational or oppressive for the legislature to prohibit that interest.”). Because Texas’s due course of law clause does not provide substantive protection and, even if it did, because Plaintiffs do not have a vested interest to lease residential property for less than thirty days,

Plaintiffs cannot make this required showing. [City MSJ at pp. 12-18]. Plaintiffs' arguments to the contrary are meritless.

1. Plaintiffs overstate their alleged interest.

Plaintiffs broadly allege the STR Ordinances deprive them of their vested interest to lease their real properties. [Plaintiffs' MSJ at pp. 4 (¶ 3), 24 (¶ 45)]. But because Plaintiffs can still lease or rent their residential properties for thirty days or more, and can also lease or rent their properties for less than thirty days in commercial and mixed-use districts, Plaintiffs have overstated their alleged interest. When it comes a due course of law clause challenge, however, an alleged interest must be defined as specifically and narrowly as possible. *Crown Distrib.*, 647 S.W.3d at 656 (courts "should define the interest as specifically as necessary to accurately reflect the constitution's language ('liberty' and 'property')"); *State v. Loe*, 692 S.W.3d 215, 235 (Tex. 2024) ("the first step in our inquiry under the Due Course of Law Clause is to carefully define the interest of which these plaintiffs are allegedly being deprived").

Thus, the question before this Court is not whether Plaintiffs have a comprehensive vested interest "to lease property." Instead, the proper question is whether Plaintiffs have a vested interest to rent residential property for less than thirty days. And as explained in the City's motion for summary judgment, the answer to that question is "No." [See City MSJ at pp. 14-18].

2. The Fort Worth Court of Appeals' opinion in *City of Grapevine v. Muns* did not hold that Texas citizens have a vested interest to lease property for less than thirty days in residential districts.

Plaintiffs' vested interest argument depends entirely on *City of Grapevine v. Muns*, 651 S.W.3d 317 (Tex. App.—Fort Worth 2021, pet. denied). According to Plaintiffs, "the Fort Worth Court of Appeals has already held that the right to lease is a fundamental, vested property right sufficient to uphold a due course of law claim." [Plaintiffs' MSJ at p. 24 (citing *Muns*, 651 S.W.3d

at 346-47)]. But as with their alleged interest, Plaintiffs overstate *Muns*' holding. In *Muns*, the court made "clear" on rehearing that it was *not* "holding that that Texas property owners have a vested right to lease their homes on a short-term basis." *Id.* Instead, the court narrowly held that Texas property owners "have a vested right to lease their properties" sufficient to "plead[] a viable due-course-of-law claim." *Id.* at 347. This holding provided nothing more than a determination that Plaintiffs in that case pleaded a viable due process claim sufficient to overcome Grapevine's governmental immunity. It was not a determination on the claim's "merits." *Id.* ("Whether the durational restrictions imposed by the STR Ordinance violate the Homeowners' due-course-of-law rights regarding their right to lease goes to the case's merits, an altogether improper inquiry at this stage of the case.").

In short, *Muns* does not answer the question before this Court. And Plaintiffs have not identified one case holding that a property owner has a vested right to lease or rent residential property for less than thirty days. But courts throughout the country—including the *Anding* case Plaintiffs rely on—have reached the opposite conclusion.³ *Anding v. City of Austin*, No. 1:22-CV-01039-DAE, 2023 WL 4921530, at *11 (W.D. Tex. Aug. 1, 2023) (because "property owners do not have a constitutionally protected, vested right to use property in any certain way, without

³ See, e.g., *Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623, at *5 (D.N.J. May 25, 2022) ("[T]he unilateral and unconditional right to use property, such as the right to rent a property, is not supported by case law. A nationwide survey demonstrates that there is no such fundamental right."); *Bondar v. Town of Jupiter Inlet Colony*, 321 So. 3d 774, 783-84 (Fla. Dist. Ct. App. 2021) ("The Owners have not cited any cases that hold that the right to rent property to others is a fundamental right in the constitutional sense, and we have been unable to find any such authority."); *Mogan v. City of Chicago*, No. 21 C 1846, 2022 WL 159732, at *16 (N.D. Ill. Jan. 18, 2022) ("Mogan's ability to rent the Unit on home sharing websites is not a fundamental right."); *Fletcher Props., Inc. v. City of Minneapolis*, 931 N.W.2d 410, 418-20 (Minn. Ct. App. 2019), *aff'd*, 947 N.W.2d at 1 ("Our review of the caselaw leads us to conclude that neither Minnesota nor the nation overall has a history of recognizing the right to rent property as a fundamental right."); *Hills Devs., Inc. v. City of Florence, Kentucky*, Civ. A. No. 15-175, 2017 WL 1027586, at *7 (E.D. Ky. Mar. 16, 2017) (there is "no support for the proposition that a citizen has a fundamental right or liberty interest in renting their property"); *Longacre v. W. Sound Util. Dist.*, No. C16-5122, 2016 WL 3186855, at *2 (W.D. Wash. June 8, 2016) ("Plaintiff offers no legal authority suggesting that his right to use, rent, or sell his property as he chooses is a fundamental property right subject to constitutional protection.").

restriction ... the right to lease property for a profit—such as using it for STR rentals—can be subject to restriction or regulation under certain circumstances”). This alone is fatal to Plaintiffs’ due process claim.

Additionally, *Muns* was issued before and does not take into account Justice Young’s concurrence in *Crown Distributing*—joined by Chief Justice Hecht and Justices Devine and Blacklock—observing that Texas’s due course of law clause is “not a freestanding font of substantive rights” and “offers no freestanding substantive protection in general.” *Crown Distrib.*, 647 S.W.3d at 668, 675 (Young, J., concurring). Instead, the due course clause provides “procedural” protections for citizens—*i.e.*, notice and a hearing—when the government decides to take away a citizen’s “life, liberty, property, privileges or immunities” *Id.* at 686. Plaintiffs do not—and cannot—complain that they were not provided with adequate procedural due course of law. [See City MSJ at pp. 13-14 (citing Ex. A-2 at 91:10-92:18; Ex. A-4 at 51:22-25, 52:07-52:21; Ex. B at ¶¶ 28-29; Exs. B-6-36)].

B. The STR Ordinances are rationally related to the City’s legitimate interests in protecting the public health and safety and preserving the residential character of its community.

Even if Plaintiffs have a vested right to lease their residential property for less than thirty days (they absolutely do not), the City is still entitled to summary judgment because Plaintiffs cannot show that the STR Ordinances are not rationally related to a legitimate government interest. The City prohibited STRs in residential neighborhoods to preserve the residential quality of neighborhoods, ensure the health and safety of STR guests and residents, and preserve the residential housing supply. [Ex. B at ¶¶ 11, 42, 56-59; Ex. B-5; Ex. B-37; *see also* Ex. E; Ex. F;

Ex. G]. Because Plaintiffs do not (and could not) dispute that these are legitimate purposes,⁴ the only issue is whether the STR Ordinances are rationally related to these purposes. As explained in the City’s summary judgment motion, the answer to this “deferential inquiry” is undoubtedly “Yes.”⁵ [See City MSJ at pp. 18-23]. Indeed, in a case directly on point—and a case Plaintiffs do not bother to address—the Fort Worth Court of Appeals expressly held that a city ordinance prohibiting STRs in certain residential districts was rationally related to the legitimate purpose of

⁴ See *Draper*, 629 S.W.3d at 786 (“safeguarding the life, health, safety, welfare, and property of STR occupants, neighborhoods, and the general public” and “minimizing the adverse impacts resulting from increased transient rental uses in neighborhoods that were planned, approved, and constructed for single-family residences” are “legitimate governmental interests”); see also *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (noting that a city’s police power “is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people”); *Karol v. City of New York*, 396 F.Supp.3d 309, 323 (S.D.N.Y. 2019) (holding the short term regulations were justified because the city had a legitimate interest in ensuring “permanent housing stock and maintain[ing] the residential character of neighborhoods”).

⁵ Several Plaintiffs admitted that “reasonable persons can differ in their opinions on [STRs],” including whether STRs should be permitted in residential districts. [Ex. A-1 at 20:17-24, 21:09-21:19; Ex. A-2 at 41:06-42:01; Ex. A-4 at 25:16-22, 26:03-20].

protecting the “residential character” of its neighborhoods.⁶ *Draper*, 629 S.W.3d at 787-89.⁷ Courts throughout the country have held the same.⁸

Nevertheless, Plaintiffs say the STR Ordinances do not actually further legitimate purposes because the City has “produced no firsthand reports, studies, or statistics showing that short-term rentals are causing problems from or in greater numbers than long-term rentals, other forms of leasing, or owner-occupied properties.” [Plaintiffs’ MSJ at pp. 26-27]. This argument is a red herring. In a rational-basis review, the City’s determinations about STRs “are not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.”⁹ *Klumb*, 458 S.W.3d at 13; *see, e.g., Draper*, 629 S.W.3d at 788 (rejecting a due course challenge to an STR ordinance even though the City of Arlington admitted that “no ‘data

⁶ *See Jackson Court Condominiums, Inc. v. City of New Orleans*, 874 F.2d 1070, 1078 (5th Cir. 1989) (“Certainly the protection of residential integrity is a legitimate objective of a zoning regulation. The City of New Orleans was concerned that the implementation of time-share arrangements in residential neighborhoods would increase the noise, littering, and vandalism which might be associated with transient users. This was a legitimate concern of the city and was debatable. Therefore the moratorium reaches the threshold established in *Shelton* for substantive due process.” (internal citations omitted)).

⁷ In *Draper*, the court observed that “[i]t stands to reason that the ‘residential character’ of a neighborhood is threatened when a significant number of homes ... are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days.” *Id.* at 792 n.21 (quoting *Ewing v. City of Carmel-By-The-Sea*, 286 Cal. Rptr. 382, 388 (1991)). And “[w]hether or not transient rentals have the other ‘unmitigatable [sic], adverse impacts’ cited by the Council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community.” *Id.*

⁸ *See Nekrilov v. City of Jersey City*, 45 F.4th 662, 681 (3d Cir. 2022) (upholding a short-term rental zoning restriction against a substantive due process challenge because it furthered “several legitimate state interests,” including “(1) protecting the long-term housing supply; (2) reducing ‘deleterious effects’ on neighborhoods caused by short-term rentals; and (3) protecting the residential character and density of neighborhoods”); *Stone River Lodge, LLC v. Vill. of N. Utica*, No. 20-3590, 2020 WL 6717729, at *4 (N.D. Ill. Nov. 15, 2020) (finding ordinance regulating short term rentals was rationally related to the village’s interests in protecting “life-safety concerns, quality of neighborhood and related life concerns, security concerns, fire safety concerns, and tax revenue concerns” and dismissing substantive due process claim); *Calvey v. Town Bd. of N. Elba*, No. 20-711, 2021 WL 1146283, at *12 (N.D.N.Y. Mar. 25, 2021) (dismissing substantive due process claim because a short-term rental ordinance was “rationally related to the Defendants’ interest in planning how to use land in a way that balances the interests of homeowners, renters, and short term visitors”); *Murphy v. Walworth Cnty.*, 383 F. Supp. 3d 843, 851 (E.D. Wis. 2019) (finding a short-term rental ordinance that imposed a minimum stay requirement passed rational basis review because “[t]he Ordinance’s stated purpose—to protect the health, safety, and general welfare of the public from seasonal over-occupancy—is an obvious and rational justification for the requirements imposed”).

⁹ Similarly, the City’s legislative findings in the STR Ordinances are entitled to great deference. *Hunt v. City of San Antonio*, 462 S.W.2d 536, 538 (Tex. 1971).

set’ exists to substantiate the City’s claim that excluding STRs allows neighborhoods to maintain their quiet and repose”).¹⁰

Thus, whether the City has produced “studies” showing that STRs are more disruptive to neighborhoods than long-term rentals is irrelevant to the Court’s analysis. The enactment of the STR Ordinances was a legislative action reflecting the City Council’s judgment that STRs uniquely impact the character of the City’s neighborhoods. *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex.1982) (zoning is a governmental function that allows “a municipality, in the exercise of its legislative discretion, to restrict the use of private property”). Because courts are “neither a super legislature nor a zoning board of appeal,” they cannot “weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulation.” *Nguyen v. City of Buena Park*, No. 820CV00348JLSADS, 2020 WL 5991616, at *6 (C.D. Cal. Aug. 18, 2020) (holding that “that short-term rentals undoubtedly affect the essential character of a neighborhood and the stability of a community”); *see also Mayhew*, 964 S.W.2d at 933 (“Zoning decisions are vested in the discretion of municipal authorities; courts should not assume the role of a super zoning board.”); *Garrett v. Tex. State Bd. of Pharmacy*, No. 03-21-00039-CV, 2023 WL 376900, at *5 (Tex. App.—Austin Jan. 25, 2023, pet. denied) (mem. op.) (rejecting due course of law challenge and noting that “[o]ur review is not premised on ‘second guessing’ legislative policy choices” (cleaned up)).

Moreover, whether the STR Ordinances are actually “effective” at achieving the City’s goals is immaterial—courts “ask only if the City could rationally have believed at the time of enactment that the ordinance would promote its objective.” *Draper*, 629 S.W.3d at 786; *see*

¹⁰ Even the case Plaintiffs rely on acknowledges that a governmental body does not have an “affirmative evidentiary burden.” *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013); *see also Nekrilov v. City of Jersey City*, 45 F.4th 662, 681 (3d Cir. 2022) (rejecting due process challenge to STR ordinance on “the face of the ordinance” alone).

Villanueva v. Vill. of Volente, Tex., No. 1:23-CV-1246-RP, 2024 WL 2143596, at *12 (W.D. Tex. May 13, 2024), *appeal dismissed*, No. 24-50396, 2024 WL 4815039 (5th Cir. June 13, 2024) (“While reasonable minds may differ about whether requiring conditional permits for STRs is necessary to protect the health, safety, or general welfare of the Village’s residents, deciding to regulate STRs in this way is not an abuse of the Village’s discretion.”).

Plaintiffs next argue that the City “cannot rely upon anecdotal statements from STR opponents at public meetings, or even unsupported conclusions of the City Manager.” [Plaintiffs’ MSJ at pp. 27-28].¹¹ But that is not an accurate statement of the law. *See Draper*, 629 S.W.3d at 788 (upholding STR ordinance as rationally related to legitimate purpose when it was based on “public comment and input”); *see also Schleuter v. City of Fort Worth*, 947 S.W.2d 920, 932 (Tex. App.—Fort Worth 1997, pet. denied) (rejecting a challenge to a zoning ordinance “not based on any credible, objective data” because “the City relied on studies, its ongoing experiences, *and public comment* when adopting the ordinances and their amendments” (emphasis added)); *City of Port Arthur v. Thomas*, 659 S.W.3d 96, 116 (Tex. App.—Beaumont 2022, no pet.) (rejecting equal protection claim and noting that “[c]ourts have recognized a rational basis for government entities focusing and allocating their limited resources *based on complaints by impacted citizens*.” (emphasis added)); *Three Legged Monkey, L.P. v. City of El Paso*, 652 Fed. Appx. 236, 239 (5th Cir. 2016) (rejecting equal protection claim and stating city had rational basis when it increased

¹¹ In support of this argument, Plaintiffs misrepresent the Fifth Circuit’s decision in *Marfil v. City of New Braunfels, Tex.*, 70 F.4th 893 (5th Cir. 2023). The Fifth Circuit did not “reject” the district court’s “approach,” as Plaintiffs contend. [Plaintiffs’ MSJ at pp. 27-28]. The Fifth Circuit simply held that a Rule 12(b)(6) dismissal on the face of a complaint was inappropriate because “factual development may often occur in these cases, and that summary judgment may often follow.” *Marfil* 70 F.4th 893. The court “ma[d]e no prediction on the future course of this case,” but simply held that “based on the complaint’s well-pled allegations, plaintiffs are entitled to engage in discovery in an attempt to surmount the currently high bar for challenging local zoning ordinances under the Constitution.” *Id.* This misrepresentation is indicative of the strength of Plaintiffs’ arguments as a whole. And on remand, the district court granted the city summary judgment dismissing the plaintiffs’ challenges to the STR ordinances.

enforcement “in response to [citizen] complaints”). Put simply, the argument that the City cannot rely on public comment and its elected officials in passing an ordinance (*i.e.*, the legislative process in a nutshell) is patently absurd.

Regardless, the City’s decision was based on more than just complaints and public comment. In enacting the STR Ordinances, the City also:

- “researched how other cities were addressing STRs in zoning ordinances”;
- “reached out to other cities on their experiences regulating STRs”;
- “consulted the National League of Cities and the American Planning Association ... on the topic of STR regulation”; and
- “reviewed scholarly articles ... regarding the negative impacts of STRs on residential neighborhoods.”

[Ex. B at ¶¶ 19-20, 26]. This was proper. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) (in enacting zoning ordinances, a city does not have to “conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses”); *Villanueva*, 2024 WL 2143596, at *7 (in enacting an STR ordinance, the municipality could rely on studies from other cities and public comment).

The City also produced the affidavits of two permanent City residents who live near an STR—both of whom testified about the negative impact the STR has had on their neighborhoods.

[Ex. F; Ex. G].¹² And Assistant City Manager Dana Burghdoff—who has multiple degrees in city

¹² Even though these affidavits were produced after the STR Ordinances’ enactment, they are still relevant to whether the ordinances are rationally related to a legitimate purpose. *See Draper*, 629 S.W.3d at 783 (in rejecting due course challenge to STR ordinance, citing testimony of city residents who later testified about the negative impact of STRs); *see also Duarte v. City of Lewisville, Tex.*, 858 F.3d 348, 355 (5th Cir. 2017) (“As long as there is a conceivable rational basis for the official action, it is immaterial that it was not *the* or *a* primary factor in reaching a decision or that it was not *actually* relied upon by the decisionmakers or that some *other* nonsuspect irrational factors may have been considered.”).

planning as well as twenty-five years of experience in zoning—testified that STRs are “inherently incompatible with a residentially-zoned neighborhood where there exists a sense of community and camaraderie (or, at least, familiarity) between neighbors.” [Ex. B at ¶ 11; *see also* Ex. E at ¶¶ 8-9]. Simply put, Plaintiffs’ contention that there is “no evidence in this case that short-term rentals are incompatible with residential uses or qualify as anything other than residential uses of real property,” is just wrong. [Plaintiffs’ MSJ at p. 27].

Plaintiffs’ complaint that the City’s thirty-day cutoff is arbitrary is likewise specious. [Plaintiffs’ MSJ at p. 26]. To begin with, Plaintiffs do not mention that the Fort Worth Court of Appeals has held that “the 30-day distinction between STRs and long-term rentals is rationally related to the City’s legitimate governmental interests of protecting the health and welfare of the community and “minimizing” the impact STRs have on residential neighborhood. *Draper*, 629 S.W.3d at 792. Moreover, as Burghdoff testified, thirty days “is consistent with most of the national and state definitions that distinguish lodging/transient stays from resident status.” [Ex. B at ¶ 12]. And a rental for less than thirty days triggers the imposition of a hotel-occupancy tax. TEX. TAX CODE §§ 156.001(b), .051. In short, nothing about the line between twenty nine and thirty days is arbitrary—the line was drawn there for very specific and legitimate reasons.

In any event, Plaintiffs’ complaint about the thirty-day cutoff is “irrelevant under rational basis review because municipalities must draw the line somewhere.” *Marfil v. City of New Braunfels, Tex.*, No. 620CV00248ADAJCM, 2021 WL 8082644, at *8 (W.D. Tex. July 29, 2021), *report and recommendation adopted*, No. 620CV00248ADAJCM, 2022 WL 18034356 (W.D. Tex. Sept. 15, 2022), *vacated and remanded*, 70 F.4th 893 (5th Cir. 2023); *Villanueva*, 2024 WL 2143596, at *10 (holding that a thirty-day leasing cutoff was not arbitrary and noting that “[l]ine-drawing does not inherently render a regulation arbitrary”); *see also Armour v. City of*

Indianapolis, 566 U.S. 673, 685 (2012) (“[T]he Constitution does not require the City to draw the perfect line nor even to draw a line superior to some other line it might have drawn. It requires only that the line actually drawn be a rational line.”); *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (“The fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial consideration.”).

C. The Ordinances are not so burdensome as to be oppressive under *Patel*.

Because the STR Ordinances are rationally related to legitimate governmental purposes, Plaintiffs can only save their due course claim by demonstrating that, “when considered as a whole, the [STR Ordinances’] actual, real-world effect as applied to [Plaintiffs] could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest.” *Patel*, 469 S.W.3d at 87. Plaintiffs must prove the STR Ordinances are more than “harsh” or “unreasonable”—the ordinances must completely prevent Plaintiffs from pursuing a chosen occupation. *See id.* at 90 (economic regulation violated due-course clause because the plaintiffs were “entirely shut out from practicing their trade” until they completed objectively burdensome regulatory mandates).

Plaintiffs cannot make this showing for the simple reason that the STR Ordinances do not completely prevent them from leasing or renting residential property long-term or even leasing short-term. [Ex. B at ¶ 60].¹³ Nor do the STR Ordinances prevent Plaintiffs from leasing property in commercial and mixed-use districts short-term provided they comply with the 2023 Ordinance’s

¹³ To lease short-term in a residential district, a property owner must apply with the Zoning Commission and City Council for a zoning change to allow STRs as a permitted use for that property. To date, the City has approved at least one such zoning change. [Ex. B-38]. Plaintiffs have not sought a zoning change.

regulations. [Ex. B-37].¹⁴ Because the STR Ordinances have “left room” for Plaintiffs to lease their properties, they are not unconstitutional under *Patel*. [City MSJ at pp. 23-24]; see *Crown Distrib.*, 647 S.W.3d at 668 (Young, J., concurring) (concluding that the challenged regulation did not violate *Patel* because “the legislature has left room for [plaintiffs] to participate in the affected industry”); *Garrett*, 2023 WL 376900, at *6-7 (rejecting due course challenge under the unduly burdensome standard because the plaintiffs did not show that the challenged law “erected an entry barrier into their medical profession so as to deprive them of their occupational freedom”).¹⁵

Equally fatal, Plaintiffs do not explain why, *as applied to them*, the STR Ordinances are unduly burdensome. Instead, Plaintiffs make blanket statements that “[e]very Fort Worth resident has lost the right to use their residential property as a short-term rental,” and that the restrictions are “a severe, universal burden on the City’s *entire* population.” [Plaintiffs’ MSJ at p. 29 (emphasis added)]. But how the STR Ordinances might impact non-parties does not help *Plaintiffs* prove the STR Ordinances are oppressive as applied to them. See *Johnson v. State*, 562 S.W.3d 168, 175 (Tex. App.—Houston [14th Dist.] 2018, pet. ref’d) (“As the scope of such [an as-applied] challenge is necessarily narrow, we do not entertain hypothetical claims or consider the potential impact of the statute on anyone other than the challenger.”).

¹⁴ Plaintiffs admitted that many of the 2023 Ordinance’s regulations are reasonable—*i.e.*, not oppressive. [Ex. A-1 at 107:02-108:03, 108:17-23, 108:25-109:09, 109:11-18; Ex. A-2 at 98:03-17; Ex. A-5 at 50:22-51:12, 64:23-65:14]. “If there is room for a fair difference of opinion as to the necessity and reasonableness of a legislative enactment on a subject which lies within the domain of the police power, the courts will not hold it void.” *State v. Richards*, 301 S.W.2d 597, 602 (Tex. 1957).

¹⁵ See also *City of S. Padre Island v. Surfivive*, No. 13-20-00536-CV, 2022 WL 2069216, at *8 (Tex. App.—Corpus Christi–Edinburg June 9, 2022, pet denied) (ordinance regulating the location of food trucks did not violate *Patel* when the ordinance required a food truck owner to obtain permission from a restaurant owner and the plaintiff did not seek that permission); *Transformative Learning Sys. v. Tex. Educ. Agency*, 572 S.W.3d 281, 293 (Tex. App.—Austin 2018, no pet.) (*Patel* did not apply because the statute at issue did “not erect an economic barrier of entry into a given profession”).

Nor are the STR Ordinances “completely disproportionate to their benefits,” as Plaintiffs argue. [Plaintiffs’ MSJ at pp. 29-30].¹⁶ The City reasonably determined that prohibiting STRs in residential districts will benefit the public because STRs erode the character of residential neighborhoods and deplete the housing market.¹⁷ Plaintiffs have not attempted to demonstrate how this benefit is vastly outweighed by any burden the STR Ordinances impose on their inability to lease or rent their residential properties for less than thirty days. And in fact, many Plaintiffs have profited by leasing their properties long-term. [See, e.g., Ex. A-4 at pp. 17:05-18:04; Ex. A-5 at p. 31:10-17; Ex. A-6 at pp. 25:25-26:19].

At most, Plaintiffs are losing excess income that allegedly comes with STRs (albeit there is no evidence in the record of the amount of lost income). But being deprived of excess income does not show that an economic regulation is overly oppressive under *Patel*. See, e.g., *Tex. Alcoholic Beverage Comm’n v. Live Oak Brewing Co., LLC*, 537 S.W.3d 647, 657 (Tex. App.—Austin 2017, pet. denied) (“unlike the entry barrier faced by the Threaders in *Patel*, appellees have not demonstrated that section 102.75(a)(7) has deprived them of occupational freedom, *i.e.*, that it has prevented them from operating within their chosen trade—brewing and selling beer”). As the Texas Supreme Court has observed: “It is not an effective argument against a zoning ordinance, otherwise valid, that it limits the use and depreciates the value of property, as the public health,

¹⁶ Plaintiffs rely on *Houston Lighting & Power Co. v. Railroad Commission of Texas*, 529 S.W.2d 763 (Tex. 1975), for their proposition that a law can only survive *Patel* if it is “proportional.” [Plaintiffs’ MSJ at pp. 28-29 & n.114]. But that case predates *Patel* and did not involve a due course of law challenge. *Houston Lighting & Power*, 529 S.W.3d at 767 (affirming Railroad Commission order that had the effect of “curtail[ing]” the plaintiff’s gas supply). As the Supreme Court has made clear, its holding in *Patel* must remain “properly limited to the particular legal framework” in which it was made. See *Hegar v. Texas Small Tobacco Coal.*, 496 S.W.3d 778, 788 n.35 (Tex. 2016). Plaintiffs also cite *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied). But *Zaatari* is inapplicable because it held the City of Austin’s restrictions infringed on property owners right to assembly and violated the due course clause. *Id.* at 202. *Zaatari* did not apply *Patel* or hold that preventing property owners from leasing residential properties short-term is unduly burdensome.

¹⁷ In *Patel*, by contrast, it was undisputed that the vast majority of licensing requirements were not related to activities that the plaintiffs actually performed. 469 S.W.3d at 89-90

safety, morals, and the general welfare are superior in importance to the pecuniary profits of the individual owner.” *Luse v. City of Dallas*, 131 S.W.2d 1079, 1084 (Tex. App.—Dallas 1939, writ ref’d).¹⁸

Finally, Plaintiffs argue that the STR Ordinances are unduly burdensome because the City “already has ordinances in effect” aimed at preventing the problems STRs cause. [Plaintiffs’ MSJ at pp. 30-31]. But a zoning ordinance is not unconstitutional simply because it overlaps with existing legislation. *Draper*, 629 S.W.3d at 787 (rejecting the argument that “state laws and local ordinances already prohibit all of the conduct the City cites to justify its [STR] ban” because “the City did present evidence that STRs can disrupt residential neighborhoods and that restricting STRs to ... certain zoning districts is rationally related to the City’s objectives”).¹⁹

II. The City is entitled to summary judgment on Plaintiffs’ equal protection claim.

The City (and not Plaintiffs) is entitled to summary judgment on Plaintiffs’ equal protection claim because, as a matter of law:

- the City has not treated Plaintiffs differently from similarly situated persons; and
- regardless, any disparate treatment between Plaintiffs and other residential property owners is rationally related to a legitimate purpose.²⁰

[City MSJ at pp. 25-30].

¹⁸ Because *Luse* has a “writ ref’d” designation, it has “equal precedential value with the Texas Supreme Court’s own opinions.” The Greenbook, Texas Rules of Form, App. E, p. 132 (13th ed.).

¹⁹ Plaintiffs complain that the STR Ordinances will somehow transform Fort Worth into some kind of police state. [Plaintiffs’ MSJ at p. 30 (¶57)]. But Plaintiffs’ hyperbolic speculation about how the City may or may not enforce the STR Ordinances has nothing to do with whether the ordinances violate Plaintiffs’ due course of law rights.

²⁰ Plaintiffs admit that the STR Ordinances are reviewed under the rational basis standard. [Plaintiffs’ MSJ at p. 6 (¶6)]; *Mayhew*, 964 S.W.2d at 939 (“Economic regulations, including zoning decisions, have traditionally been afforded only rational relation scrutiny under the equal protection clause.”).

A. Plaintiffs’ “class” of STR operators does not qualify for equal protection.

To begin, Plaintiffs’ equal protection claim fails because it is based on a voluntary decision—*i.e.*, their purported desire to lease residential property for less than thirty days. The equal protection clause, however, is designed to prevent the government from targeting groups based on “immutable traits,” such as race, religion, or sexual orientation, that have a “history of purposeful unequal treatment.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-43 (1985). A “discretionary or voluntary” act—that is, when “entry into the class ... is the product of voluntary action”—does not make one a member of a protected group. *Plyler v. Doe*, 457 U.S. 202, 219 n.19 (1982). After all, “persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State.” *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 62, 21 L.Ed. 394 (1872).

Because Plaintiffs’ “class” is based on an entirely voluntary act—and an act they may or may not decide to take—rather than an immutable trait, the City is entitled to summary judgment on their equal protection claim.

B. Plaintiffs have not been “treated differently” than any other Fort Worth homeowner.

Plaintiffs equal protection claim also fails because they admit, “[e]very Fort Worth resident has lost the right to use their residential property as a short-term rental.” [Plaintiffs’ MSJ at p. 29]. In other words, the STR Ordinances regulate *property use* based on duration of a rental, *not* the identity of owners or renters. The ordinances do not “single out” Plaintiffs—or anyone for that matter—for disparate treatment. Because the STR Ordinances treat everyone the same, Plaintiffs’ equal protection claim fails as a matter of law. *See Tex. Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 647 (Tex. 2004) (rejecting equal protection claim where “all Sun Valley residents suffered the same injury” and there was “simply no evidence that [the plaintiffs] were singled out

or treated disparately with regard to these alleged [injuries]”); *see also Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623, at *16 (D.N.J. May 25, 2022) (STR ordinance did not violate the equal protection clause because it impacted “all property owners”); *Town of W. Lakeland v. Auleciems*, No. A22-0967, 2022 WL 18046709, at *2 (Minn. Ct. App. Dec. 22, 2022) (rejecting equal protection claim to STR ordinance because “nothing in the record show[ed] that the town requires only appellants to abide by the code”).

C. STR operators and conventional residential landlords are not similarly situated.

Further, because Plaintiffs are not “similarly situated,” *i.e.*, “directly comparable in all material respects,” to other City property owners who lease their homes for thirty days or more, they cannot prove an equal protection claim. [City MSJ at pp. 26-28]; *see Draper*, 629 S.W.3d at 792 (rejecting equal protection challenge to STR ordinances where the STR operators “offer[ed] no argument or authority or point[ed] to any facts demonstrating that they are similarly situated to property owners who lease their properties long-term”); *City of Port Arthur v. Thomas*, 659 S.W.3d 96, 115 (Tex. App.—Beaumont 2022, no pet.) (an equal protection claim plaintiff “must allege that he is being treated differently from those whose situation is directly comparable in all material respects”); *City of Dallas v. Jones*, 331 S.W.3d 781, 787 (Tex. App.—Dallas 2010, pet. dism’d) (to establish an equal protection claim, a plaintiff must “allege he is being treated differently from those whose situation is directly comparable in all material respects”).

Plaintiffs make no attempt to show they are “directly comparable in all material respects” to other residential property owners. This is not surprising given that residential homes used for short-term rentals are not similarly situated to homes used for long-term use. [See City MSJ at pp. 26-28 (citing Ex. A-2 at 61:06-62:03; Ex. A-4 at 34:14-17, 34:21-35:07; Ex. A-5 at 30:16-31:01; Ex. A-6 at 46:04-47:02, 49:11-50:11, 51:11-15; Ex. A-12; Ex. B at ¶¶ 11-12; Ex. H; *see also* Ex.

E at ¶¶ 8-9; Ex. F; Ex. G]. A single-family home that is inhabited throughout the year by a family is differently situated than a single-family home that is inhabited intermittently by large groups of people. When it comes to STRs, there is a different rate of electricity, plumbing, and gas usage; the number of automobiles in the driveway will vary considerably; the amount of trash that people create on vacation tends to be greater (e.g., due to disposable travel items and prepackaged food and drink); and the interests that tourists have in preserving the quality of life in a neighborhood tends to be lower because they will soon leave. [*See id.*]; see *Murphy v. Walworth Cnty.*, 383 F. Supp. 3d 843, 851 (E.D. Wis. 2019) (“the single-family homes used for short-term rentals are not similarly situated as single-family homes used for long-term use”).

D. The STR Ordinances are rationally related to a legitimate purpose.

Even if Plaintiffs can show that the City, through the STR Ordinances, has treated them differently from similarly situated property owners, their equal protection claim still fails because the STR Ordinances are rationally related to a legitimate government interest. In particular, the STR Ordinances are designed to preserve the residential quality of neighborhoods, ensure the health and safety of STR guests and residents, and preserve the residential housing supply. [Ex. B at ¶¶ 11, 42, 56-59; Ex. B-5; Ex. B-37; see also Ex. E at ¶¶ 8-9; Ex. F; Ex. G]. These are legitimate goals.²¹ And the STR Ordinances are rationally related to those goals because STRs harm the character of residential neighborhoods and deplete the residential housing market. [*Id.*]. At the very least, it is “fairly debatable” that the City Council’s determination that regulating STRs will assist in the pursuit of those goals. See *Draper*, 629 S.W.3d at 786 (explaining that “[i]f it is at least ‘fairly debatable’ that the ordinance was rationally related to a legitimate government

²¹ See *Draper*, 629 S.W.3d at 786 (“safeguarding the life, health, safety, welfare, and property of STR occupants, neighborhoods, and the general public” and “minimizing the adverse impacts resulting from increased transient rental uses in neighborhoods that were planned, approved, and constructed for single-family residences” are “legitimate governmental interests”).

objective, the ordinance must be upheld” because courts “are not concerned with whether the ordinance was effective; we ask only if the City could rationally have believed at the time of enactment that the ordinance would promote its objective”).

Nevertheless, Plaintiffs contend that the STR Ordinances are invalid because “[t]here are no studies, no reports, and no documentation showing that a certain number of days causes a certain risk.” [Plaintiffs’ MSJ at p. 35 (¶68)]. But again, even if that were true, the City’s determinations about STRs “may be based on rational speculation unsupported by evidence or empirical data.” *Klumb*, 458 S.W.3d at 13. Because, as Plaintiffs admit,²² it is rational to believe that STRs are detrimental to the City’s residential neighborhoods, then the City’s decision to treat STRs differently is valid.²³ See *Draper*, 629 S.W.3d at 792 (“It stands to reason that the ‘residential character’ of a neighborhood is threatened when a significant number of homes ... are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days.” (quoting *Ewing v. City of Carmel-By-The-Sea*, 234 Cal.App.3d 1579, 286 Cal. Rptr. 382, 388 (1991)); see also *Heller v. Doe*, 509 U.S. 312, 320 (1993) (classifications “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification”); *Murphy*, 383 F. Supp. 3d at 851 (“Murphy seems to believe that the County must supply proof for the premises underlying the Ordinance’s rationale—*i.e.*, evidence that short-term rentals actually do erode the sense of community, result in increased drug

²² [Ex. A-1 at 107:02-108:03, 108:17-23, 108:25-109:09, 109:11-18; Ex. A-2 at 98:03-17; Ex. A-5 at 50:22-51:12, 64:23-65:14].

²³ An additional rational basis for imposing regulations on property rentals less than thirty days while not imposing the same regulations on property rentals for thirty days or more—and a basis Plaintiffs do not address—could be that any rental less than thirty days triggers the imposition of hotel occupancy taxes which the City has a legitimate interest in collecting. [Ex. B at ¶¶ 26-27; Ex. B-13]; see TEX. TAX CODE §§ 156.001(b), 156.101. Because Plaintiffs do not “negate every conceivable basis that might support” the STR Ordinances, their equal protection claim fails as a matter of law. *Walker v. State*, 222 S.W.3d 707, 711 (Tex. App.—Houston [14th Dist.] 2007, pet. ref’d) (rejecting an equal protection challenge when the plaintiff did “not fulfill his burden to negate every conceivable basis that might support the classification”).

use, and overload septic systems. That is not the standard. The standard is whether the Court ‘can reasonably conceive of any justification’ based on the evidence provided.”²⁴

Plaintiffs also argue the City’s “classification” is unconstitutional because “the City already has existing ordinances on the books to cure the very problems that the City contends (but cannot show) that STRs cause.” [Plaintiffs’ MSJ at p. 36]. But again, even if the STR Ordinances overlap with other ordinances, that does not mean the STR Ordinances violate the equal protection clause. *Draper*, 629 S.W.3d at 787; *cf. Fair v. City of Galveston*, 915 F. Supp. 873, 880 (S.D. Tex. 1996) (applying Texas law) (“[t]he mere existence of a state law regulating the same subject matter as an ordinance does not render the ordinance void, even if the state law and ordinance partially overlap”).

²⁴ See also *Short Term Rental Owners Ass’n of Georgia, Inc. v. Cooper*, 515 F. Supp. 3d 1331, 1347 (N.D. Ga. 2021), *aff’d sub nom. Heyman v. Cooper*, 31 F.4th 1315 (11th Cir. 2022) (rejecting equal protection challenge to STR ordinance because it was “a rational and reasonable means to accomplish enhancing and maintaining the residential character of the community by cutting down on traffic and protecting surrounding property values”); *Mogan v. City of Chicago*, No. 21 C 1846, 2022 WL 159732, at *15 (N.D. Ill. Jan. 18, 2022) (rejecting equal protection challenge to STR ordinance because “a potential rational basis for imposing a minimum stay on vacation rentals and shared housing units is to protect the City’s legitimate interest in local neighborhood preservation, continuity, and stability”); *Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623, at *6 (D.N.J. May 25, 2022) (“I find that the Borough has legitimate interests in reducing the influx of home-sharing, through websites like Airbnb, in order to maintain the quality of life in the Borough’s predominantly residential neighborhoods and reduce public nuisances.”); *Murphy*, 383 F. Supp. 3d at 851 (finding an STR ordinance that imposed a minimum stay requirement passed rational basis review because “[t]he Ordinance’s stated purpose—to protect the health, safety, and general welfare of the public from seasonal over-occupancy—is an obvious and rational justification for the requirements imposed”); *Karol v. City of New York*, 396 F.Supp.3d 309, 323 (S.D.N.Y. 2019) (holding the short term regulations were justified because the city had a legitimate interest in ensuring “permanent housing stock and maintain[ing] the residential character of neighborhoods.”).

Even so, Plaintiffs contend that that an STR is a “residential use” of property and thus cannot be regulated beyond measures already in place. [Plaintiffs’ MSJ at pp. 35-36].²⁵ But Plaintiffs agree that an STR is a commercial use of property, rather than a residential use.²⁶ In any event, property rights are *not* absolute and residential uses can be regulated or restricted by a city through its police power. *See Lombardo v. City of Dallas*, 73 S.W.2d 475, 478 (Tex. 1934) (“*All property* is held subject to the valid exercise of the police power; nor are regulations unconstitutional merely because they operate as a restraint upon private rights of person or property or will result in loss to individuals.” (emphasis added)); *Severance v. Patterson*, 370 S.W.3d 705, 710 (Tex. 2012) (explaining that “[l]imitations on property rights may be by ... appropriate government action under its police power”). Even *Zaatari* recognizes that “the right to lease property for a profit can be subject to restriction or regulation under certain circumstances” *Zaatari v. City of Austin*, 615 S.W.3d 172, 191 (Tex. App.—Austin 2019, pet. denied).

²⁵ Plaintiffs’ reliance on *Tarr v. Timberwood Park Owners Association*, 556 S.W.3d 274, 291 (Tex. 2018), for the concept that STRs are a residential use is misplaced. *Tarr* was not an equal protection case and has nothing to do with a municipality exercising its police power and is wholly inapplicable. *Tarr* involved a homeowners’ associations’ *private covenants*. Zoning ordinances and private covenants operate independently: validity of one is unaffected by the other. *Villanueva*, 2024 WL 2143596, at *11 (a “restrictive covenant is not the same concept as a zoning regulation”). Indeed, after *Tarr*, the Fort Worth Court of Appeals found that a zoning-based STR ordinance permissibly exercised the city’s police power. *See Draper*, 629 S.W.3d at 786-87; 5 Rathkopf’s *The Law of Zoning and Planning* § 82:2 (4th ed.) (“[Private covenants and zoning regulations] are held by courts to legally operate independently of one another. Whether either type of restriction is valid and enforceable presents two separate and distinct legal issues. As a local governmental exercise of the police power, zoning restrictions are subject to the usual constitutional and statutory limitations imposed on the exercise of the zoning power. Private covenant restrictions are subject to limitations imposed by the sometimes technical common law real property rules in each state which govern the creation, operation, termination, and enforcement of covenant restrictions that ‘run with the land.’” (internal citations omitted)).

²⁶ [Ex. A-1 at 46:23-47:24 (Plaintiff Smith stating that operating an STR is a “business opportunity”); Ex. A-2 at 13:24-14:03, 30:22-31:02; 60:17-61:05 (Plaintiff Brady acknowledging that she has a “commercial interest” in her STRs and that she is “not conducting residential business by renting a home” and that she’s running business to “earn money”); Ex. A-4 at 11:05-8 (Plaintiff Harper conceding that the operation of an STR is a “business” and not a residential use); Ex. A-5 at 29:10-22, 45:14-46:02 (Plaintiff Amaya agreeing that his STR is a “business” and that he “us[es] that home for a business use”); Ex. A-6 at 11:14-19, 41:17-42:01, 42:23-43:06, 93:14-94:13, 95:03-95:16 (Plaintiff Germain stating that short-term rentals are a “commercial use” and that he’s a “business operator”)].

III. The City is entitled to summary judgment on Plaintiffs’ retroactivity claim.

Twenty-one Plaintiffs²⁷ allegedly operated STRs in the City’s residential neighborhoods illegally prior to the enactment of the 2018 Ordinance (the “**Retroactivity Plaintiffs**”). These Plaintiffs move for summary judgment on the claim that the STR Ordinances, as applied to them, are unconstitutionally retroactive. [Plaintiffs’ MSJ at p. 8].²⁸ Because the remaining plaintiffs apparently concede they have no valid retroactivity claim, the Court should grant the City summary judgment on the retroactivity claim as to those Plaintiffs.

The Court should also grant summary judgment for the City as to the Retroactivity Plaintiffs because: (1) they do not have a settled expectation to rent their properties for less than thirty days in the City’s residential district and the STR Ordinances’ impairment of that expectation Plaintiffs is slight; and (2) regardless, the STR Ordinances promote several compelling public interests. [City MSJ at pp. 30-37]. The Retroactivity Plaintiffs’ arguments are without merit.

A. The Retroactivity Plaintiffs’ retroactivity analysis is backwards.

The Retroactivity Plaintiffs first argue that the “STR Ordinances serve no compelling public interest.” [Plaintiffs’ MSJ at pp. 16-19]. But this puts the cart before the horse. To establish a retroactivity claim, Plaintiffs “first” must show the STR Ordinances have taken away a settled expectation. Because Plaintiffs cannot make this showing, their retroactivity claim fails as a matter of law—regardless of whether the STR Ordinances promote a compelling interest. *See Fire Prot. Serv., Inc. v. Survitec Survival Prods., Inc.*, 649 S.W.3d 197, 201 (Tex. 2022) (“To determine whether a statute is unconstitutionally retroactive, we *first* consider the nature of the rights claimed

²⁷ The Retroactivity Plaintiffs are: Wendy Ann Armstrong-Green, Lauren Brady, Flaminia Chapman, Patrick Coddou, Jennifer Coddou, Betsy Darling, Lori Dugdale, Maynard Dyson, Lori Dyson, Patricia Floyd, Rita Gomez, David Latz, Brittany Latz, Theresa Riley, Shannon Ross, Cameron Schoepp, Smith Wallace Properties LLC, Callie Stevens, Andrew Zeiler, and Christine Zeliler. [Plaintiffs’ MSJ at p. 8].

²⁸ The Retroactivity Plaintiffs only point to evidence that Lauren Brady and Terry Smith operated STRs before 2018. [Plaintiffs’ MSJ at p. 8 n.9]. They point to no evidence for the other nineteen Retroactivity Plaintiffs.

and the statute’s impact on them. *If* the statute disturbs a party’s settled expectations, we *then* must consider whether the statute serves a public interest as opposed to simply benefiting one or a few private entities.” (internal citations omitted) (emphasis added)). “A law that does not upset a person’s settled expectations in reasonable reliance upon the law is not unconstitutionally retroactive.” *Id.*

B. Because the Retroactivity Plaintiffs do not have a “settled expectation” to rent their homes for less than thirty days in the City’s residential districts, the STR Ordinances are not unconstitutionally retroactive.

As discussed in the City’s motion for summary judgment [City MSJ at pp. 32-34], the Retroactivity Plaintiffs do not have a settled expectation to lease or rent their residential properties for less than thirty days because that interest never existed and, in any event, was always subject to valid zoning changes. *See Hogan v. S. Methodist Univ.*, 688 S.W.3d 852, 858 (Tex. 2024) (noting that a law is not retroactive when it resolves “lingering uncertainty”); *see, e.g., Villanueva v. Vill. of Volente, Tex.*, No. 1:23-CV-1246-RP, 2024 WL 2143596, at *8 (W.D. Tex. May 13, 2024) (in rejecting retroactivity challenge to STR ordinance, holding that the plaintiffs did not have a settled expectation “in leasing their properties for short terms by right and without restriction”).

Prior to the enactment of the STR Ordinances, the City did not permit STRs in residential districts. To the contrary, the City treated STRs like bed and breakfasts—an impermissible use in residential districts. [Ex. A-9; Ex. B at ¶¶ 3-5; Ex. C at ¶ 6]. And this policy “was communicated to the City’s residents and/or property owners in response to direct inquiries.” [Ex. B at ¶ 4]. Plaintiffs even admitted that the STR issue was “unsettled” and only “hope[d]” things would work on for them. [Ex. A-1 at 79:21-80:03, 81:09-21, 90:19-91:12; Ex. A-2 at 102:23-103:04; Ex. A-3 at 40:17-41:01; Ex. A-4 at 31:15-18, 45:09-12, 69:14-25; Ex. A-5 at 37:14-37:22, 65:16-66:08;

Ex. A-6 at 63:16-19, 65:25-66:05, 77:08-19]. Plaintiffs’ speculation that they *might* be allowed to lease or rent short-term is not a settled expectation. And whether or not they leased or rented short-term despite this prohibition does not give them a settled expectation.²⁹ *See Hogan*, 688 S.W.3d at 860 (a law is not unconstitutionally retroactive if it “resolv[es] lingering uncertainty”).

Plaintiffs contend that, before 2018, the Zoning Ordinance “did not bar short-term rentals” in residential districts. [Plaintiffs’ MSJ at pp. 12-15].³⁰ According to Plaintiffs, the Zoning Ordinance allowed one-family, two-family, and multifamily dwellings and that, because there “is no requirement as to amount of time required for occupancy,” STRs “are in full compliance with these provisions.” [*Id.* at p. 13]. But Plaintiffs miss the point. The City has always viewed short-term renting as falling under the Zoning Ordinance’s general prohibition of “bed and breakfasts” in residential districts because a bed and breakfast, like an STR, provides “overnight accommodations to transient guests.” [Ex. B at ¶ 5]. A “transient guest” is a person “occupying a dwelling unit, including rental of a home or room, for a period of less than 30 days.” [*Id.*]. In other words, bed and breakfast definition *does* have a “requirement as to amount of time for occupancy.” And even if a transient guest or guests may be staying in a bed and breakfast and operating as a

²⁹ Retroactivity Plaintiff Lauren Brady’s unsworn declaration claims that, in 2017, some unnamed person from the City’s planning and zoning department told her that she could lease her guest house on a short-term basis. This is hearsay and not evidence. Regardless, statements by City employees (even City Council members) are not binding and do not give property owners a settled expectation in any use of his or her property. *Sheffield Dev. Co., Inc. v. City of Glenn Heights*, 140 S.W.3d 660, 678 (Tex. 2004); *see, e.g., Drakulich v. City of San Antonio*, No. 04-00-00096-CV, 2000 WL 33128678, at *2 (Tex. App.—San Antonio Dec. 6, 2000, pet. denied) (mem. op.) (“statements or assurances regarding zoning made by individual members of the city council, board or commission are not binding and do not give private property owners a vested right to the use or disposal of their property so as to deny the city the exercise of its police power”); *Alamo Carriage Serv., Inc. v. City of San Antonio*, 768 S.W.2d 937, 941-42 (Tex. App.—San Antonio 1989, no writ) (“Statements of individual council members are not binding on the City.”); *City of Farmers Branch v. Hawncos, Inc.*, 435 S.W.2d 288, 292 (Tex. Civ. App.—Dallas 1968, writ ref’d n.r.e.) (“[assurances regarding continued zoning] by individual members of a council or board are not binding on a governmental body which may act only in its official capacity”).

³⁰ The question of whether the City prohibited STRs before 2018 is only relevant, if at all, to retroactivity—it has no bearing on whether the STR Ordinances violate the due course of law or equal protection clauses or whether they are an ultra vires act.

“family” under the Zoning Ordinance’s definition, that does not mean a bed and breakfast is a permitted use in residential districts.

To support their “settled expectation” argument, the Retroactivity Plaintiffs rely on several cases for the broad proposition that the right to acquire and own property is a “natural right.” [Plaintiffs’ MSJ at pp. 19-20]. But none of those cases hold that leasing or renting property for a particular period of time is a “settled expectation” for purposes of a retroactivity claim.³¹ And as discussed, property rights are *not* absolute. *Crown Distrib.*, 647 S.W.3d at 654 (noting that “[n]either property rights nor contract rights are absolute”); *Nebbia v. People of New York*, 291 U.S. 502, 523 (1934) (“[a]ll property is held subject to the valid exercise of the police power”).

The Retroactivity Plaintiffs’ cases recognize this. In *Spann v. City of Dallas*, the Texas Supreme Court observed that a “right to acquire and own property, and to deal with it and use it as the owner chooses, *so long as the use harms nobody*, is a natural right.” 235 S.W. 513, 515 (Tex. 1921) (emphasis added). A property right must “take[] into account the equal rights of others, for it is qualified by the obligation that the use of the property shall not be to the prejudice of others.” *Id.* Because property rights are “qualified,” a property owner cannot acquire a “settled expectation” in a particular use of property. *See Mbogo*, 2018 WL 3198398, at *5 (rejecting retroactivity claim because the plaintiff’s “reliance and expectation that the City would allow him

³¹ Additionally, courts throughout the country have held that the “right to lease” property is not an “absolute right” and does not “establish[] a vested property interest.” *City of Houston v. Guthrie*, 332 S.W.3d 578, 597 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (plaintiffs’ “right to lease” is not an “absolute right” and does not “establish[] a vested property interest”); *Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623, at *5 (D.N.J. May 25, 2022) (“[T]he unilateral and unconditional right to use property, such as the right to rent a property, is not supported by case law. A nationwide survey demonstrates that there is no such fundamental right.”); *Fletcher Props., Inc. v. City of Minneapolis*, 931 N.W.2d 410, 418-20 (Minn. Ct. App. 2019), *aff’d*, 947 N.W.2d at 1 (“Our review of the caselaw leads us to conclude that neither Minnesota nor the nation overall has a history of recognizing the right to rent property as a fundamental right.”).

to continue using the property as a nonconforming use or under a SUP in perpetuity was not reasonable”).

The Retroactivity Plaintiffs also argue they have a settled expectation to lease residential property short-term because “judicial decisions from as far back as the mid-1800s demonstrate that short-term rentals are an ingrained part of Texas culture.” [Plaintiffs’ MSJ at pp. 20-21]. But whether someone rented their home for less than thirty days in Fort Worth (or anywhere else) more than a century ago is not “evidence” of anything and has nothing to do with whether the Retroactivity Plaintiffs have a “settled expectation” to lease their properties for less than thirty days in the City’s residential districts.

C. The STR Ordinances’ impact on the Retroactivity Plaintiffs’ ability to rent their homes is slight.

The Retroactivity Plaintiffs’ complaint that STR Ordinances “completely impair” their property interest is just wrong. [Plaintiffs’ MSJ at pp. 21-23]. Again, the STR Ordinances do not prohibit Plaintiffs from leasing or renting their properties. Plaintiffs are only prohibited from renting out their homes for less than thirty days in residential districts. [Ex. B-5; Ex. B-37]. They can still rent out their residential properties for thirty or more days and can operate STRs in districts zoned commercial or mixed use. [*Id.*]; see *Villanueva*, 2024 WL 2143596, at *9 (any impairment on plaintiffs’ right to lease short-term was slight because STRs were not completely banned).

Nor does it matter that the Retroactivity Plaintiffs allegedly “contracted with third parties to rent their properties” or that the STR Ordinances will require them to “suffer the legal and contractual consequences” of not being able to honor those contracts. [Plaintiffs’ MSJ at p. 22]. To begin with, these arguments are supported by no evidence—they point to no “contracts” allegedly made or any “consequences” resulting from canceling those contracts. Regardless, a law “does not unconstitutionally impair contractual rights if the action is a valid exercise of the police

power necessary to safeguard the public safety and welfare.” *Liberty Mut. Ins. Co. v. Tex. Dep’t of Ins.*, 187 S.W.3d 808, 825 (Tex. App.—Austin 2006, pet. denied); *see also Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 635 (Tex. 1996) (explaining that “police power regulations dealing with physical things such as land or natural resources could have incidental effects on contracts if the power was exercised in the interest of the public welfare,” but that “an exercise of the police power necessary to safeguard the public safety and welfare can justify the impairment of contractual rights and obligations”).

The STR Ordinances do not “eliminate[] [a] settled right, almost immediately” [Plaintiffs’ MSJ at p. 23]. Between 2018 and the adoption of the 2023 Ordinance, the Retroactivity Plaintiffs knew that the STR issue was a “hot-button topic” and subject to City Council-mandated debate. [See e.g., Ex. A-2 at 90:04-07, 91:11-14]. They, in effect, had a three-year grace period to try to either change the STR prohibition in residential districts or to adapt to it. In fact, **all** of the Retroactivity Plaintiffs continued to lease their properties short-term between 2018 and 2023—*i.e.*, they had an additional **five years** to recoup any alleged loss of investment resulting from the prohibition against STRs in residential districts.³² [Ex. I-1 at pp. 5-11]. According to Plaintiff Brady:

...the City told us they were not going to be enforcing the ordinance unless there were legitimate nuisance complaints. At that point I opened the calendar up for short-term rentals to fill in some gaps between some mid-term rentals that I had already had in place...

³² The Retroactivity Plaintiffs leased their properties short-term between 2018 and 2023: Wendy Ann Armstrong-Green (July 2017 to February 2023); Lauren Brady (September 2017 to present day); Faminia Chapman (February 2017 to present day); Patrick and Jennifer Coddou (May 2017 to present day); Betsy Darling (October 2016 to present day); Lori Dugdale (May 2017 to present day); Maynard and Lori Dyson (approximately January 2018 to present day); Patricia Ford (January 2018 to present day); Rita Gomez (January 2018 to present day); David and Brittany Latz (May 2015 to present day); Theresa Riley (October 2010 to present day); Shannon Ross (three properties from November 2021 to present day, March 2009 to present day, and June 2015 to present day); Cameron Schoepp (February 2018 to December 2022); Carla Schoepp (January 2014 to December 2022); Smith Wallace Properties (two properties, August 2015 to present day and August 2017 to present day); Callie Stevens (April 2016 to present day); Andrew and Christine Zeiler (January 2016 to April 2016).

[Ex. A-2 at pp. 36:25-37:6].

The Texas Supreme Court has held that grace periods of “two months,” “four years,” and “seven years” have been sufficient to overcome “retroactivity challenges.” *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 708 (Tex. 2014) (explaining that the “impairment of ... a right may be lessened when a statute affords a plaintiff a grace period”); *see Fire Prot.*, 649 S.W.3d at 201-02 (“In determining whether a law disrupts or impairs settled expectations, courts consider whether the law gives parties a ‘grace period’ to adapt before the law takes effect.”); *Mbogo*, 2018 WL 3198398, at *7 (impairment is slight when a plaintiff has “a reasonable time to protect his investment”). Regardless, the Retroactivity Plaintiffs have made no argument and submitted no evidence to support that they did not have a reasonable time to protect any alleged investment.

The Court’s analysis can end here; the Retroactivity Plaintiffs have no viable retroactivity claim.

D. In any event, the City’s exercise of its police power is a compelling interest.

Even some impairment of settled expectations does not result in a constitutional violation if the governing body has shown a compelling interest in doing so. *See Fire Prot.*, 649 S.W.3d at 201, 205 (explaining that only if the law “disturbs a party’s settled expectations” do courts consider “whether the statute serves a public interest as opposed to simply benefiting one or a few private entities” and rejecting retroactivity claim because the plaintiff did not identify a settled expectation). Relevant here, a municipality’s proper exercise of its police power, including through zoning, is “not merely reasonable but [is] compelling, notwithstanding the statute’s effect on prior rights.” *Robinson*, 335 S.W.3d at 146; *e.g., Villanueva*, 2024 WL 2143596, at *8 (“The Village decided to enact the 2023 Ordinance because it wanted to regulate STRs more effectively in order to protect the public health, safety, and welfare of its residents and preserve the historically

quiet and residential nature of the community; these reasons constitute compelling public interests.”); *see also In re A.V.*, 113 S.W.3d 355, 361 (Tex. 2003) (a “valid exercise of the police power by the Legislature to safeguard the public safety and welfare ***is a recognized exception to the unconstitutionality of retroactive laws***” (emphasis added)); *Kilpatrick v. State Bd. of Registration for Professional Eng’rs*, 610 S.W.2d 867, 871 (Tex. Civ. App.—Fort Worth 1980, writ ref’d n.r.e.) (“The constitutional rules against ... retroactive laws are not absolute and must yield to a state’s right to safeguard the public safety and welfare.”).

Here, as described above and in the City’s motion for summary judgment with regard to Plaintiffs’ due-course-of-law and equal-protection claims, the City used its zoning powers for the purpose of safeguarding the “health, safety and welfare of the general public,” and minimizing the negative impact STRs have on residential neighborhoods, among other things. Again, this purpose is backed-up by City’s study of the impact STRs have on neighborhoods and how other cities have regulated STRs, as well as the testimony of several citizens who conveyed their first-hand experiences with living near STRs. And the City Council incorporated these findings into the STR Ordinances. [Ex. B-37]; *see Robinson*, 335 S.W.3d at 145 (in determining whether a law serves a compelling public interests, courts consider “the nature and strength of the public interest served by the statute ***as evidenced by the Legislature’s factual findings***” (emphasis added)). Importantly, there is nothing in the record showing that the motivation behind the STR Ordinances was to benefit a particular entity as opposed to the public at large. *Compare Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 58 (Tex. 2014) (noting that the record of the constitutional law at issue there “contain[ed] no evidence that the legislative purpose underlying [the statute] was to benefit any particular entity”), *with Robinson*, 335 S.W.3d at 149 (finding it “fairly clear” from the

legislative record that the successfully challenged law “was enacted to help only [the defendant company] and no one else”).

The Retroactivity Plaintiffs say the STR Ordinances do not serve a compelling interest because “nothing shows” that the problems the ordinances were designed to reduce are “specific to” STRs and that the City “has produced no statistical evidence whatsoever that STRs cause” more problems than other residential properties. [Plaintiffs’ MSJ at pp. 16-17]. But again, the record is replete with evidence showing that STRs cause problems for and undermine the character of residential neighborhoods. [*Supra* at section (IV)(I)(B)]. This evidence confirms the STR Ordinances’ legislative findings, which are not subject to judicial second-guessing. *See Robinson*, 335 S.W.3d at 146 (noting that “the necessity and appropriateness of legislation are generally not matters the judiciary is able to assess”). And contrary to the Retroactivity Plaintiffs’ argument, the City can rely on “public comments.” [Plaintiffs’ MSJ at p. 18]; *see Villanueva*, 2024 WL 2143596, at *8-9 (in rejecting a retroactivity challenge to an STR ordinance, noting that the municipality relied on “public feedback,” as well as “how other municipalities in Texas have regulated STRs”).

E. The Retroactivity Plaintiffs’ reliance on *Zaatari* is misplaced.

The Retroactivity Plaintiffs rely primarily on *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied), for their contention that the STR Ordinances are unconstitutionally retroactive. [Plaintiffs’ MSJ at pp. 12, 16-19 (calling *Zaatari* “dispositive in Plaintiffs’ favor on their retroactive law claim”]. And it’s true that in *Zaatari* the Austin Court of Appeals found an STR ordinance to be unconstitutionally retroactive. But because *Zaatari* is factually distinguishable from this case, the Retroactivity Plaintiffs’ reliance is misplaced.

In *Zaatari*, the City of Austin, in 2012, enacted an ordinance to regulate STRs—that is, Austin decided to **allow** STRs by law. 615 S.W.3d at 180. Four years later, however, the City

adopted an ordinance that prohibited STRs in non-owner-occupied homes but still allowed STRs in owner-occupied homes. *Id.* at 181. In addressing the nature of the plaintiffs’ expectation, *i.e.*, whether their expectation was “settled,” the court focused on the fact that Austin ***had previously allowed STRs*** in all homes. In fact, Austin “acknowledge[d] that Austinites have long exercised their right to lease their property by housing short-term rentals,” and even admitted that STRs are an “established practice and a historically ... allowable use” in Austin. *Id.* at 191.

Here, by contrast—and even crediting Plaintiffs’ argument that the City has never expressly “prohibited” STRs—the City has neither ***expressly authorized STRs*** by ordinance in residential districts nor tacitly acknowledged that STRs are an allowable use. As the Retroactivity Plaintiffs admit, “up until the [2023 Ordinance],” the propriety of STRs in residential districts was, at best, “unsettled.” [Ex. A-2 at 102:23-103:04; *see also* Ex. A-1 at 79:21-80:03, 81:09-21, 90:19-91:12; Ex. A-3 at 40:17-41:01; Ex. A-4 at 31:15-18, 45:09-12, 69:14-25; Ex. A-5 at 37:14-37:22, 65:16-66:08; Ex. A-6 at 63:16-19, 65:25-66:05, 77:08-19]. Put simply, Austin took away an interest it previously provided; Fort Worth did not do that.

In considering the nature and strength of Austin’s interest in enacting the ordinance, the *Zaatari* court found it significant that Austin “made no findings to justify the ordinance’s ban” on non-owner-occupied STRs, as opposed to owner-occupied STRs. *Zaatari*, 615 S.W.3d 189. In fact, the ordinance at issue did not contain any findings at all or any explanation as to why Austin was banning non-owner-occupied STRs and not owner-occupied STRs.³³ The Retroactivity Plaintiffs say that the “City of Austin pointed to legislative findings regarding public health concerns, public safety concerns, general welfare concerns, and negative impact on residential neighborhoods.”

³³ See Appellant’s Br. for the State of Texas, App. C in *Zaatari v. City of Austin*, No. 03-17-00812-CV, available at <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=3e86dc6e-0633-43be-a409-a90073a29e1c&coa=coa03&DT=Brief&MediaID=56a138dd-6783-4b30-86cf-576f98cc29d0>.

[Plaintiffs’ MSJ at p16 n.58]. But that is not accurate. Again, the ordinance itself contained no findings whatsoever. The “findings” the Retroactivity Plaintiffs refer to are the “conten[tions]” Austin made in its appellate brief—not actual legislative findings in the ordinance itself. *See Zaatari*, 615 S.W.3d at 189 (noting that Austin “contends that it enacted short-term rental regulations to address the following public-interest issues relating to short-term rentals”).

Here, on the other hand, the City made multiple findings in enacting the STR Ordinances.³⁴ The 2023 Ordinance itself states that the City Council found that regulating STRs “is necessary for the health, safety, and welfare of the general public, the promotion of consistent land uses and development, and the protection of landowners and residents of the City of Fort Worth[.]” [Ex. B-37 at 1]; *compare Villanueva*, 2024 WL 2143596, at *6 (STR ordinance was not unconstitutionally retroactive when it stated that “regulating short-term rental is necessary for the health, safety and welfare of the general public, the promotion of consistent land uses and development, and the protection of landowners and residents of the Village of Volente”). The City also recognized in the 2023 Ordinance that it had “received numerous complaints about STRs from citizens who have contacted code enforcement, policy, and city councilmembers about STRs[.]” [Ex. B-37 at 1].

Dana Burghdoff explained that the City “researched other cities’ ordinances regulating STRs [and] reached out to other cities on their experiences regulating STRs,” among other things. [Ex. B (¶19)]. Burghdoff also explained that the STR Ordinances were passed after the City engaged in an “extended period of public engagement and debate,” including surveys and public meetings where voices from both sides expressed their views about STRs [Ex. B (¶ 28)]. “The majority of feedback received by the City from its permanent residents and neighborhood

³⁴ Also, the City, unlike Austin, did not attempt to differentiate between types of STRs—it prohibited all STRs in residential neighborhoods.

organizations as expressed to the City Council was overwhelmingly in support of a ban on STRs in residentially-zoned districts.” [*Id.*]; compare *Villanueva*, 2024 WL 2143596, at *7-8 (STR ordinance was supported by strong public interest where record showed city “consistently heard and considered specific concerns from its residents before passing” and “considered how other municipalities in Texas have regulated STRs and modeled their ordinance based on their research”).³⁵

In sum, the City enacted the STR Ordinances because it wanted to regulate STRs more effectively in order to protect the public health, safety, and welfare of its residents and preserve the residential nature of its neighborhoods. These reasons constitute compelling public interests.³⁶ The STR Ordinances were enacted only after the City’s careful consideration of other municipalities’ experiences with STRs and hearing the concerns of many City residents over the span of nearly four years.

Because Fort Worth property owners have never possessed the right to lease short-term and because the record is sufficiently particularized to support the City’s action, *Zaatari* is inapposite.³⁷

³⁵ *TXI Operations, LP v. City of McKinney, Tex.*, is also distinguishable because, in that case, the court found the plaintiff had a settled expectation to “use its property as a concrete batch plant” since the plaintiff had been using its property for that purpose for two decades and had a permanent certificate of occupancy. No. 4:20-CV-353, 2023 WL 161942, at *20, 22 (E.D. Tex. Jan. 11, 2023).

³⁶ See *Kilpatrick*, 610 S.W.2d at 871 (“The constitutional rules against ... retroactive laws are not absolute and must yield to a state’s right to safeguard the public safety and welfare.”); cf. *Draper*, 629 S.W.3d at 786-87 (Tex. App.—Fort Worth 2021, pet. denied) (in a due course of law analysis, finding that the City of Arlington had legitimate governmental interests when it passed an STR regulation because it did so to safeguard the life, health, and safety of the public and to minimize the adverse impacts of STRs on historically residential communities).

³⁷ For the same reasons, *Browning v. Town of Hollywood Park, Texas*, is inapposite. No. SA-23-CV-01485-XR, 2023 WL 9503457, at *2 (W.D. Tex. Dec. 22, 2023) (granting preliminary injunction against enforcement of STR ordinance where “there are no legislative factual findings in the record to support the conclusion that a ban on short-term rentals would resolve these concerns,” and “at the preliminary injunction hearing, the City Secretary for the Town, Patrick Aten, testified that he was not aware of the Town’s police department or city council having performed any studies analyzing the difference between the number of police calls for long-term rentals versus short-term rentals,” and “only testified to generalized discussions at public City Council meetings regarding the Ordinance, not any express findings by the City Council in support of the Ordinance”).

IV. The City is entitled to summary judgment on Plaintiffs’ claim that the STR Ordinances violate the Zoning Enabling Act.

Plaintiffs’ claim that the STR Ordinances violate the Zoning Enabling Act is specious. To “promot[e] public health, safety, morals, or general welfare,” TEX. LOC. GOV’T CODE § 211.001, the Zoning Enabling Act empowers municipalities to regulate “the *location and use* of buildings, other structures, and land for business, industrial, residential, or other purposes.” *Id.* § 211.003 (emphasis added). Specifically, in accordance with a comprehensive plan, municipalities may enact zoning regulations designed to, among other things, “lessen congestion in the street” and “promote health and the general welfare.” *Id.* § 211.004.³⁸

As discussed and as the record shows, the STR Ordinances are designed to address at least two of the objectives in the Zoning Enabling Act—*i.e.*, to “lessen congestion in the street” and to “promote health and the general welfare.” *Id.* § 211.004. As part of the legislative process, City representatives and officials received significant input regarding problems associated with STRs, including excessive trash and noise, parking problems, traffic, and safety concerns. [Ex. B at ¶ 6; Exs. B-6-7, 14-15, 17-24, 32-33, 35-36; Ex. C at ¶ 5; Ex. C-2; Ex. F; Ex. G]. To address these issues, the City enacted the STR Ordinances. [*Id.*]. Thus, the Ordinances effectuate, rather than violate, the Zoning Enabling Act.

³⁸ Because these government interests are “objective[s] within the city’s police power,” they are reviewed under the highly deferential rational-basis standard. *Mayhew*, 964 S.W.2d at 938. As with due-course-of-law claims, a municipality does not have to prove that a zoning regulation *will* have a beneficial effect on the governmental interests at issue; it need show only that the government reasonably believed the zoning regulation *could* have such an impact. *Walker v. State*, 222 S.W.3d 707, 711 (Tex. App.—Houston [14th Dist.] 2007, pet. ref’d) (noting that courts “will uphold a statute as long as it implements any rational purpose, even if the legislature never considered the purpose when enacting the statute,” and that “it is irrelevant whether the conceived reason for the challenged distinction actually motivated the legislature”).

Plaintiffs argue that the STR Ordinances violate the Zoning Enabling Act because they are not regulating a “use” of property [Plaintiffs’ MSJ at pp. 38-39]. But renting property *is* using property. *See JBrice Holdings, L.L.C. v. Wilcrest Walk Townhomes Ass’n*, 644 S.W.3d 179, 186 (Tex. 2022) (a lease is “the right to use and occupy the property”). Plaintiffs also contend that “STRs are residential uses of property.” [Pet. at p. 33 (¶67)]. But in their depositions, Plaintiffs acknowledged that STRs are “commercial” in nature and that they want to operate STRs to make money. [*Supra* at n. 26]. As one Texas federal court explained in rejecting the argument that an STR ordinance violated the Zoning Enabling Act, just because STRs are operated out of houses and guests eat and sleep in them, does not mean an STR is “purely residential”:

STRs involve the residential use of property because visitors reside or live in the home for a period of time. However, there is also a commercial aspect of STRs and because of the transient nature of STR guests, STRs share attributes of hotels. Therefore, STRs may be better characterized as a quasi-residential use of property.

Villanueva, 2024 WL 2143596, at *11.

Even if STRs could be characterized as residential, courts have found that municipalities can enact zoning regulations to address residential-type uses within residential zoning districts. *See Avalon Residential Care Homes, Inc. v. City of Dallas*, 130 F. Supp. 2d 833, 840 (N.D. Tex. 2000) (upholding a city zoning law that required special use permits to operate care homes in residential districts); *Jackson Court Condominiums, Inc. v. New Orleans*, 874 F.2d 1070, 1077 (5th Cir. 1989) (upholding a prohibition on time-share condominiums in residential areas). Thus, “even if STRs are classified as a purely residential land use, it is not clear that restricting them in residential districts would be impermissible under a municipality’s zoning authority.” *Villanueva*, 2024 WL 2143596, at *11 (rejecting argument that STR regulation violated the Zoning Enabling Act).

Plaintiffs’ reliance on *Zaatari v. City of Austin*, 615 S.W.3d 172, 190 (Tex. App.—Austin 2019, pet. denied), is once again misplaced. [Pet. at p. 33 (¶67)]. *Zaatari*’s entire analysis about whether STRs are “residential” was one sentence long and relied on a case that interpreted whether STRs were allowed under a restrictive covenant. *Id.* (citing *Tarr v. Timberwood Park Owners Ass’n, Inc.*, 556 S.W.3d 274, 291 (Tex. 2018)). “But a restrictive covenant is not the same concept as a zoning regulation.” *Villanueva*, 2024 WL 2143596, at *11. Indeed, after *Zaatari*, the Fort Worth Court of Appeals found that a zoning-based STR ordinance permissibly exercised the city’s police power. *See Draper*, 629 S.W.3d at 786-87. The Fort Worth Court found that the municipality had identified a series of “legitimate governmental interests” that supported the STR ordinance, including “(1) safeguarding the life, health, safety, welfare, and property of STR occupants, neighborhoods, and the general public and (2) minimizing the adverse impacts resulting from increased transient rental uses in neighborhoods that were planned, approved, and constructed for single-family residences.” *Id.* at 786.

V. Plaintiffs are not entitled to attorney’s fees.

Plaintiffs seek attorney’s fees under the Declaratory Judgment Act. [Plaintiffs’ MSJ at p. 41]. But because Plaintiffs’ claims fail as a matter of law, they are not entitled to fees. That is, awarding Plaintiffs fees when their claims are meritless is not “equitable and just.” TEX. CIV. PRAC. & REM. CODE § 37.009.

V. OBJECTION TO PLAINTIFFS’ SUMMARY JUDGMENT EVIDENCE

Plaintiff Lauren Brady’s unsworn declaration claims that, in 2017, some unnamed person who allegedly worked in the City’s planning and zoning department told her that she could lease her guest house on a short-term basis. [Plaintiffs’ MSJ at Ex. B (¶3); *see also* Ex. A-2 at p. 53:15-25 (Plaintiff Brady admitting that she does not know who at the City she spoke to)]. This statement from an unidentified individual is hearsay and not relevant evidence because (even if true)

statements by City employees are not binding on the City. *Sheffield Dev. Co., Inc.*, 140 S.W.3d at 678. Moreover, City employees were authorized only to make zoning determinations that STRs were not permitted in residentially-zoned districts. [Ex. B at ¶ 4]; see *City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770, 774 (Tex. 2006) (noting that the “unauthorized act of a government official cannot estop a city’s enforcement of a zoning ordinance”). Brady’s unsworn statement does not—by any stretch—affect the outcome of the dispute. Nonetheless, it should be stricken to preserve the integrity of the Court’s record.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, the City of Fort Worth prays that the Court DENY Plaintiffs’ Motion for Summary Judgment, GRANT the City’s Traditional Motion for Summary Judgment in its entirety, enter judgment that all of Plaintiffs’ claims against the City of Fort Worth be dismissed with prejudice, and, upon further motion, award the City of Fort Worth its court costs and reasonable and necessary attorneys’ fees and all further relief to which it is justly entitled, whether at law or in equity.

Respectfully submitted,

/s/ W. Chase Medling

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Facsimile: (817) 878-9280

ATTORNEYS FOR CITY OF FORT WORTH

CERTIFICATE OF SERVICE

This is to certify that on this 13th day of December, 2024, a true and correct copy of the foregoing document was served on counsel of record via the Court's electronic case filing system pursuant to TEX. R. CIV. P. 21a.

/s/ W. Chase Medling

W. Chase Medling

EXHIBIT I

CAUSE NO. 236-342969-23

KELRAY LLC, *et al.*,

Plaintiffs,

v.

CITY OF FORT WORTH,

Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

236TH JUDICIAL DISTRICT

OF TARRANT COUNTY, TEXAS

AFFIDAVIT OF W. CHASE MEDLING

STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

BEFORE ME, the undersigned authority on this day appeared W. Chase Medling, who is personally known by me, and after first being duly sworn according to law upon his oath deposed and said:

1. “My name is W. Chase Medling. I am over twenty-one years of age and I am of sound mind. I have never been convicted of a felony. I am an attorney of record for The City of Fort Worth in the aforementioned matter. As such, I have personal knowledge of the statements made herein and they are all true and correct.

2. “Attached hereto as Exhibit I-1 is a true and correct copy of Plaintiffs’ First Supplemental Responses to City of Fort Worth’s First Set of Integrated Discovery.

3. Further, affiant sayeth not.”



W. Chase Medling

SUBSCRIBED AND SWORN TO BEFORE ME on the 13th day of December, 2024, to
certify which witness my hand and official seal.



Notary Public, State of Texas

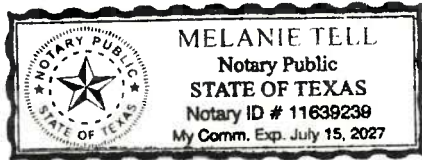


EXHIBIT I-1

NO. 236-342969-23

KELRAY LLC, AYODELE OLAYINKA	§	IN THE DISTRICT COURT
ADESUBOKAN, MANUEL A. AGUIRRE-	§	
ESCAMILLA, TRACEY AMAYA,	§	
EDUARDO AMAYA, MISAEL	§	
ANDRADE, WENDY ANN	§	
ARMSTRONG-GEREN, CLYDE AUSTIN,	§	
MELISSA BAKER, LAUREN BARRETT,	§	
CASON BECKHAM, TRUSTEE OF THE	§	
2120 FAIRMOUNT AVENUE TRUST,	§	
BROOKE BLANKENSHIP, HUNTER	§	
BLANKS, LAUREN A. BRADY,	§	
GRAYSON BUSTER, LUCAS BYERS,	§	
SARAH CALDWELL, TRUSTEE OF THE	§	
SARAH M. CALDWELL REVOCABLE	§	
TRUST, BRECCIA CONSTRUCTION,	§	
LLC, KAREN CATES, FLAMINIA	§	
CHAPMAN, BROOKVALE HOLDINGS	§	
LLC, SCOTT CLARK, PATRICK	§	
CODDOU, JENNIFER CODDOU,	§	
DOUBLE07, LLC, FUNKYTOWN	§	
PROPERTIES LLC, BETSY DARLING,	§	
MARTHA DOMINGUEZ, ADULFO	§	
DOMINGUEZ, IAN DORFMAN, LORI	§	
DUGDALE, LAURA DYSON, MAYNARD	§	
DYSON, ISABELLA ELLIS, WILLIAM	§	
ELLIS, CRYSTAL ELLIS, DAVID KEVIN	§	
FARMER, GUILLERMO FLORES	§	
RUEDA, SANDRA FLORY, PATRICIA	§	
FLOYD, TEXAS TUDOR TCU, LLC,	§	
JESSE FOX, SIJ PROPERTIES #3, LLC,	§	
RICHARD GARRISON, RITA GOMEZ,	§	
ALICIA GONZALEZ, CHANE	§	
GUILLORY, SUSAN HARPER, BLAKE	§	
HESTIR, MARK HUDSON, M AND M	§	
POOL HOUSE LLC, REI GOATS, LLC,	§	
RYAN BUYS HOUSES, LLC, JAMES	§	
RYAN JACKSON, 112 LORAIN SOUTH	§	
CORPORATION, MISTY KIMBROUGH,	§	
MARGARET KOLYVAS, TOM KRAUSE,	§	
ANXHELO LALAJ, DAVID LATZ,	§	
JENNIFER K. LEE, AARON BROOKS,	§	
URBAN LEGACY PROPERTIES, LLC	§	
D/B/A URBAN LEGACY PROPERTIES	§	
SERIES A LLC, STEVE LUCHAK, MARY	§	

LYLES, TYE MARTIN, DEBBIE	§	
MCWATERS, BARBARA MEECE, LORI	§	
METZ, PENELOPE BRADBURY	§	
MOREHEAD, RICHARD MORRIS,	§	
PATRIOTIC LAND PARTNERS, LLC,	§	
LACEY D. O'BRIEN, RILEE B. O'BRIEN,	§	
HEATH OLINGER, TRINA PARKIN,	§	
ROBERT PATTERSON, JAMES OLEN	§	
PAYTON, EVE PEARSON, VAREY	§	
INVESTMENT PROPERTIES LLC,	§	
MARY KATHLEEN RACHELE,	§	
JEFFREY REED, THERESA RILEY,	§	
TRUSTEE OF THE TK RILEY FAMILY	§	
TRUST, ALLI RODRIGUEZ, JORGE	§	
RODRIGUEZ, YOVANNI CHAVEZ	§	
RODRIGUEZ, JARROD ROECKER,	§	
TRUSTEE OF THE Q.T.R. TRUST,	§	
SHANNON ROSS, LUCAS RUIZ,	§	
CATHERINE SAXON, CAMERON	§	
SCHOEPP, CARLA SCHOEPP,	§	
AUDREYNETTE SHABAZZ,	§	
SMITH-WALLACE PROPERTIES, LLC,	§	
MODERN BUILDERS, LLC, DAVID	§	
STELTER, GRANT STEPHENS,	§	
TIMOTHY S. STEPHENS, HOME SUITE	§	
STAYS LLC, CALLIE STEVENS, SEAN	§	
SULLIVAN, MICHAEL SULLIVAN,	§	
LESA SUSI, TRUSTEE OF THE SUSI	§	
LIVING TRUST, DANNY G. TAYLOR,	§	
JOHN THURSTON, JR., JAIME COBB	§	
TINSLEY, TOM TINSLEY, CHERYL	§	
TURNER, TRUSTEE OF THE CHERYL	§	
TURNER LIVING TRUST, REVIVE	§	
ESTATES, LLC, JAMES & JAMES	§	
PROPERTIES, LLC D/B/A 4521 BBH,	§	
LLC, JUDA YORK, CHRISTINE	§	
ZEILER, AND ANDREW ZEILER,	§	
<i>Plaintiffs,</i>	§	236 th DISTRICT
	§	
V.	§	
	§	
CITY OF FORT WORTH,	§	
<i>Defendant.</i>	§	OF TARRANT COUNTY, TEXAS

**PLAINTIFFS' FIRST SUPPLEMENTAL RESPONSES TO CITY
OF FORT WORTH'S FIRST SET OF INTEGRATED DISCOVERY**

TO: Defendant City of Fort Worth ("Defendant"), by and through its counsel of record:

Dee J. Kelly, Jr.
dee.kelly@kellyhart.com
Bill Warren
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W. Chase Medling
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Joe R. Greenhill
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Fort Worth, Texas 76102
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In accordance with the Texas Rules of Civil Procedure, Plaintiffs in this case ("Plaintiffs") hereby serve upon all parties of record their *Responses and Answers to City of Fort Worth's First Set of Integrated Discovery*.

[Supplemental answers to Interrogatories begin on next page.]

INTERROGATORIES

INTERROGATORY NO. 2: Describe in detail each instance, from January 1, 2016 to March 2, 2018, in which You rented out a STR Property as a short-term rental. Include in Your answer, the following information for each instance described: (a) the address of the property rented; (b) the dates during which each rental occurred; (c) the name(s) of the renter(s); (d) the number of guests in each rental group; and (e) the compensation You received.

ANSWER: Regarding subpart (a), Plaintiffs would further show as follows:

- Wendy Ann Armstrong-Geren: 10412 Cattail Court, Fort Worth, Texas 76109
- Lauren A. Brady:
 - 2704 SW Loop 820, Fort Worth, Texas 76133
 - 3824 Pershing Avenue, Fort Worth, Texas 76107
- Flaminia Chapman: 4908 Birchman, Fort Worth, Texas 76107
- Patrick & Jennifer Coddou: 1908 Fairmount Avenue, Fort Worth, Texas 76110
- Betsy Darling: 3854 Harley Avenue, Fort Worth, Texas 76107
- Lori Dugdale: 3023 Milam Street, Fort Worth, Texas 76112
- Maynard & Laura Dyson: 2329 Mistletoe Avenue, Fort Worth, Texas 76110
- Patricia Floyd: 2725 Warren Lane, Fort Worth, Texas 76112
- Rita Gomez:
 - 14721 Cedar Flat Way, Roanoke, Texas 76262
 - 4309 Green Teal Street, Roanoke, Texas 76262
- David & Brittany Latz: 2204 Western Avenue, Fort Worth, Texas 76107
- Theresa Riley, Trustee of the TK Riley Family Trust: 7808 Vinca Circle, Fort Worth, Texas 76135
- Shannon Ross:
 - 3125 Milam Street, Fort Worth, Texas 76112
 - 3132 Milam Street, Fort Worth, Texas 76112
- Cameron Schoepp:
 - 3304 West 4th Street, Fort Worth, Texas 76107
 - 3305 West 4th Street, Fort Worth, Texas 76107
 - 3308 West 4th Street, Fort Worth, Texas 76107
 - 3317 West 4th Street, Fort Worth, Texas 76107
- Carla Schoepp:
 - 3301 West 4th Street, Fort Worth, Texas 76107
 - 3303 West 4th Street, Fort Worth, Texas 76107
- Smith Wallace Properties LLC:
 - 4700 Collinwood Avenue, Fort Worth, Texas 76107
 - 2100 Ashland Avenue, Fort Worth, Texas 76107
- Callie Stevens: 3808 Mattison Avenue, Fort Worth, Texas 76107
- Andrew & Christine Zeiler:
 - 1929 Hurley Avenue, Fort Worth, Texas 76110

Regarding subpart (b), Plaintiffs would further show as follows:

- Wendy Ann Armstrong-Geren: July 2017 to present day.

- Lauren A. Brady:
 - 2704 SW Loop 820, Fort Worth, Texas 76133: September 2017 to present day.
 - 3824 Pershing Avenue, Fort Worth, Texas 76107: September 2017 to present day.
- Flaminia Chapman: February 2017 to present day.
- Patrick & Jennifer Coddou: May 2017 to present day.
- Lori Dugdale: May 2017 to present day.
- Betsy Darling: October 2016 to present day.
- Maynard & Laura Dyson: June 2014 to present day.
- Patricia Floyd: January 2018 to present day.
- Rita Gomez:
 - 14721 Cedar Flat Way, Roanoke, Texas 76262: January 2018 to present day.
 - 4309 Green Teal Street, Roanoke, Texas 76262: January 2018 to present day.
- David & Brittany Latz: May 2015 to present day.
- Theresa Riley, Trustee of the TK Riley Family Trust: October 2010 to present day.
- Shannon Ross:
 - 3125 Milam Street, Fort Worth, Texas: March 2009 to present day.
 - 3132 Milam Street, Fort Worth, Texas 76112: June 2015 to present day.
- Cameron Schoepp: February 2018 to December 2022.
- Carla Schoepp: January 2014 to December 2022.
- Smith Wallace Properties LLC:
 - 4700 Collinwood, Fort Worth, Texas: August 2015 to present day.
 - 2100 Ashland, Fort Worth, Texas: December 2016 to present day.
- Callie Stevens: April 2016 to present day.
- Andrew & Christine Zeiler: January 2016 to April 2016.

INTERROGATORY NO. 3: Describe in detail each instance, from March 2, 2018 to the present, in which You rented out a STR Property as a short-term rental. Include in Your answer, the following information for each instance described: (a) the address of the property rented; (b) the dates during which each rental occurred; (c) the name(s) of the renter(s); (d) the number of guests in each rental group; and (e) the compensation You received.

ANSWER: Regarding subpart (a), Plaintiffs would further show as follows:

- Kelray LLC: 1302 Odd Street, Fort Worth, Texas 76164
- Ayedele Olayinka Adesubokan:
 - 2201 Park Hill Drive, Fort Worth, Texas 76110
 - 2203 Park Hill Drive, Fort Worth, Texas 76110
- Manuel A. Aguirre-Escamilla:
 - 11400 Petunia Drive, Fort Worth, Texas 76244
 - 13350 Dove Ranch Road, Roanoke, Texas 76262
- Tracey & Eduardo Amaya: 3505 Walton Avenue, Fort Worth, Texas 76133
- Misael Andrade: 7905 Hayfield Court, Fort Worth, Texas 76137
- Wendy Ann Armstrong-Geren: 10412 Cattail Court, Fort Worth, Texas 76109
- Lauren Barrett: 2829 Lee Avenue, Fort Worth, Texas 76106
- Melissa Baker:

- 2710 Keller Hicks Road, Fort Worth, Texas 76244
 - 1112 Cleckler Avenue, Fort Worth, Texas 76111
- Cason Beckham, Trustee of the 2120 Fairmount Avenue Trust: 2120 Fairmount Avenue, Fort Worth, Texas 76110
- Brooke Blankenship:
 - 1901 6th Avenue, Fort Worth, Texas 76110
 - 2259 Alston Avenue, Fort Worth, Texas 76110
- Hunter Blanks: 3824 Collinwood Avenue, Fort Worth, Texas 76107
- Lauren A. Brady:
 - 2704 SW Loop 820, Fort Worth, Texas 76133
 - 3824 Pershing Avenue, Fort Worth, Texas 76107
- Grayson Buster: 4000 Sanguinet Street, Fort Worth, Texas 76107
- Lucas Byers: 3716 El Campo Avenue, Fort Worth, Texas 76107
- Sarah Caldwell, Trustee of the Sarah M. Caldwell Revocable Trust: 1805 Lipscomb Street, Fort Worth, Texas 76110
- Breccia Construction, LLC: 1713 Martel Avenue, Fort Worth, Texas 76103
- Flaminia Chapman: 4908 Birchman, Fort Worth, Texas 76107
- Brookvale Holdings, LLC:
 - 4029 Piedmont Road, Fort Worth, Texas 76116
 - 6936 Brookvale Road, Fort Worth, Texas 76132
- Patrick & Jennifer Coddou: 1908 Fairmount Avenue, Fort Worth, Texas 76110
- Double 07, LLC: 3610 Crestline Road, Fort Worth, Texas 76107
- Betsy Darling: 3854 Harley Avenue, Fort Worth, Texas 76107
- Adulfo & Martha Dominguez: 6580 Wells Burnett Road, Fort Worth, Texas 76135 (leased from Yovanni Chavez Rodriguez; see below)
- Ian Dorfman: 1225 West Arlington Avenue, Fort Worth, Texas 76110
- Lori Dugdale: 3023 Milam Street, Fort Worth, Texas 76112
- Maynard & Laura Dyson: 2329 Mistletoe Avenue, Fort Worth, Texas 76110
- Crystal Ellis: 2030 Tierney Road, Fort Worth, Texas 76112
- David Kevin Farmer:
 - 6460 Waverly Way, Fort Worth, Texas 76116
 - 1529 Trafalgar Road, Fort Worth, Texas 76116
- Guillermo Flores Rueda: 9217 Monument Court, Fort Worth, Texas 76244
- Patricia Floyd: 2725 Warren Lane, Fort Worth, Texas 76112
- Jesse Fox: 1900 Lipscomb Street, Fort Worth, Texas 76110
- SIJ Properties #3, LLC: 2604 Wayside Avenue, Fort Worth, Texas 76110
- Richard Garrison:
 - 2820 Livingston Avenue, Fort Worth, Texas 76110
 - 2822 Livingston Avenue, Fort Worth, Texas 76110
- Rita Gomez:
 - 14721 Cedar Flat Way, Roanoke, Texas 76262
 - 4309 Green Teal Street, Roanoke, Texas 76262
- Alicia Gonzalez: 2720 Primrose Avenue, Fort Worth, Texas 76111
- Susan Harper:
 - 2248 5th Avenue, Fort Worth, Texas 76110

- 2250 5th Avenue, Fort Worth, Texas 76110
- Blake Hestir: 1916 Fairmount Avenue, Fort Worth, Texas 76110
- M and M Pool House, LLC: 3100 Marys Lane, Fort Worth, Texas 76116
- Misty Kimbrough: 4709 Driskell Boulevard, Fort Worth, Texas 76107
- Margaret Kolyvas: 2001 Columbus Avenue, Fort Worth, Texas 76164
- Anxhelo Lalaj: 2802 Lincoln Avenue, Fort Worth, Texas 76106
- David & Brittany Latz: 2204 Western Avenue, Fort Worth, Texas 76107
- Jennifer K. Lee: 2625 South Adams Street, Fort Worth, Texas 76110
- Aaron Brooks: 4921 El Campo Avenue, Fort Worth, Texas 76107
- Urban Legacy LLC: 3801 El Campo Avenue, Fort Worth, Texas 76107
- Steve Luchak: 8060 Woodvale Road, Fort Worth, Texas 76135
- Mary Lyles: 2917 May Street, Fort Worth, Texas 76110
- Debbie McWaters: 2855 Milam Street, Fort Worth, Texas 76112
- Barbara Meece: 7583 Surfside Drive, Fort Worth, Texas 76135
- Lori Metz: 2260 Washington Avenue, Fort Worth, Texas 76110
- Richard Morris: 7205 Teal Drive, Fort Worth, Texas 76137
- Patriotic Land Partners, LLC: 2249 6th Avenue, Fort Worth, Texas 76110
- Lacey D. & Rilee B. O'Brien: 2720 Keller Hicks Road, Fort Worth, Texas 76244
- Heath Olinger:
 - 3711 Ellsmere Court, Fort Worth, Texas 76103
 - 2249 Grace Avenue, Fort Worth, Texas 76111
- Trina Parkin: 7752 Stansfield Drive, Fort Worth, Texas 76137
- James Olen Payton: 3308 Martin Lydon Avenue, Fort Worth, Texas 76133
- Eve Pearson: 2616 Highview Terrace, Fort Worth, Texas 76109
- Varey Investment Properties, LLC: 4750 East Rosedale Street, Fort Worth, Texas 76104
- Mary Kathleen Rachele: 9886 Lake Haven Circle, Fort Worth, Texas 76108
- Theresa Riley, Trustee of the TK Riley Family Trust: 7808 Vinca Circle, Fort Worth, Texas 76135
- Alli Rodriguez: 2101 Lee Avenue, Fort Worth, Texas 76106
- Jorge Rodriguez:
 - 2504 Loving Avenue, Fort Worth, Texas 76164
 - 3107 McKinley Avenue, Fort Worth, Texas 76106
 - 5101 Malinda Lane South, Fort Worth, Texas 76112
- Shannon Ross:
 - 3100 Milam Street, Fort Worth, Texas 76112
 - 3125 Milam Street, Fort Worth, Texas 76112
 - 3132 Milam Street, Fort Worth, Texas 76112
- Lucas Ruiz: 4737 Diaz Avenue, Fort Worth, Texas 76107
- Catherine Saxon: 4933 Royal Drive, Fort Worth, Texas 76116
- Cameron Schoepp:
 - 3304 West 4th Street, Fort Worth, Texas 76107
 - 3305 West 4th Street, Fort Worth, Texas 76107
 - 3308 West 4th Street, Fort Worth, Texas 76107
 - 3317 West 4th Street, Fort Worth, Texas 76107
- Carla Schoepp:

- 3301 West 4th Street, Fort Worth, Texas 76107
 - 3303 West 4th Street, Fort Worth, Texas 76107
- Smith Wallace Properties LLC:
 - 4700 Collinwood Avenue, Fort Worth, Texas 76107
 - 2100 Ashland Avenue, Fort Worth, Texas 76107
- Modern Builders, LLC:
 - 2903 Lee Avenue, Fort Worth, Texas 76106
 - 1909 Homan Avenue, Fort Worth, Texas 76164
- David Stelter: 6525 Calmont Avenue, Fort Worth, Texas 76107
- Grant Stephens: 4924 Calmont Avenue, Fort Worth, Texas 76107
- Timothy S. Stephens: 2000 Standifer Street, Fort Worth, Texas 76164
- Home Suite Stays LLC: 3861 Jade Street, Fort Worth, Texas 76244
- Callie Stevens: 3808 Mattison Avenue, Fort Worth, Texas 76107
- Sean Sullivan: 3858 Tulsa Way, Apartments 2, 3, 4, 5, 7, 8, 9, 10, and 11, Fort Worth, Texas 76107
- Michael Sullivan: 3820 Birchman Avenue, Fort Worth, Texas 76107
- Lesa Susi, as Trustee of the Susi Living Trust: 2201 Hurley Avenue, Fort Worth, Texas 76110
- Danny G. Taylor: 3836 Calmont Avenue, Fort Worth, Texas 76107
- John Thurston, Jr.: 3412 Creston Avenue, Fort Worth, Texas 76133
- Jaime Cobb Tinsley: 2801 Ryan Avenue, Fort Worth, Texas 76110
- Tom Tinsley:
 - 1417 South Adams Street, Fort Worth, Texas 76110
 - 1419 South Adams Street, Fort Worth, Texas 76110
- Cheryl Turner, as Trustee of the Cheryl Turner Living Trust: 6913 Craig Street, Fort Worth, Texas 76112
- Revive Estates LLC:
 - 1501 Lagonda Avenue, Fort Worth, Texas 76164
 - 2600 Northwest 23rd, Fort Worth, Texas 76106
- James & James Properties, LLC d/b/a 4521 BBH, LLC: 3641 Watonga Street, Fort Worth, Texas 76107
- Juda York:
 - 521 Hudgins Avenue, Fort Worth, Texas 76111
 - 720 Karnes Street, Fort Worth, Texas 76111
 - 724 Karnes Street, Fort Worth, Texas 76111
 - 728 Karnes Street, Fort Worth, Texas 76111
- Andrew & Christine Zeiler: 1826 College Avenue, Fort Worth, Texas 76110

Regarding subpart (b), Plaintiffs would further show as follows:

- Kelray LLC: July 2021 to March 2023.
- Ayedele Olayinka Adesubokan:
 - 2201 Park Hill Drive, Fort Worth, Texas 76110: January 2023 to present day.
 - 2203 Park Hill Drive, Fort Worth, Texas 76110: January 2023 to present day.
- Manuel A. Aguirre-Escamilla:
 - 11400 Petunia Drive, Fort Worth, Texas 76244: January 2021 to present day.

- 13350 Dove Ranch Road, Roanoke, Texas 76262: January 2021 to present day.
- Tracey Amaya: November 2021 to present day.
- Eduardo Amaya: October 2021 to present day.
- Misael Andrade: October 2021 to present day.
- Wendy Ann Armstrong-Geren: July 2017 to February 2023.
- Melissa Baker:
 - 2710 Keller Hicks Road, Fort Worth, Texas 76244: December 2019 to present day.
 - 1112 Cleckler Avenue, Fort Worth, Texas 76111: April 2021 to present day.
- Cason Beckham, Trustee of the 2120 Fairmount Avenue Trust: October 2022 to present day.
- Brooke Blankenship: July 2018 to present day.
- Hunter Blanks: January 2019 to present day.
- Lauren A. Brady: September 2017 to present day.
- Grayson Buster: December 2021 to March 2023.
- Lucas Byers: July 2021 to present day.
- Sarah Caldwell, Trustee of the Sarah M. Caldwell Revocable Trust: May 2018 to present day.
- Flaminia Chapman: February 2017 to present day.
- Brookvale Holdings, LLC: July 2021 to present day.
- Patrick & Jenifer Coddou: May 2017 to present day.
- Double 07, LLC: September 2018 to November 2023.
- Betsy Darling: October 2016 to present day.
- Ian Dorfman: June 2022 to March 2023.
- Adulfo & Martha Dominguez: October 2021 to present day.
- Lori Dugdale: May 2017 to present day.
- Maynard & Laura Dyson: Approximately January 2018 to present day.
- Crystal Ellis: November 2020 to March 2023.
- David Kevin Farmer: November 2019 to present day.
- Guillermo Flores Rueda: November 2022 to December 2022.
- Patricia Floyd: January 2018 to present day.
- SIJ Properties #3, LLC: September 2021 to present day.
- Richard Garrison: November 2021 to present day.
- Rita Gomez: January 2018 to present day.
- Alicia Gonzalez: June 2022 to present day.
- Susan Harper: November 2019 to present day.
- Blake Hestir: November 2019 to present day.
- M and M Pool House, LLC: November 2021 to present day.
- Misty Kimbrough: April 2023 to present day.
- Anxhelo Lalaj: August 2022 to July 2023.
- David & Brittany Latz: May 2015 to present day.
- Jennifer K. Lee: September 2019 to present day.
- Aaron Brooks: September 2022 to present day.
- Urban Legacy LLC: February 2020 to June 2023.
- Mary Lyles: May 2022 to May 2023.

- Debbie McWaters: December 2020 to present day.
- Barbara Meece: 2020 to present day.
- Lori Metz: May 2018 to March 2023.
- Patriotic Land Partners, LLC: November 2020 to January 2022.
- Lacey D. & Rilee B. O'Brien: January 2022 to present day.
- Heath Olinger:
 - 3711 Ellsmere Court, Fort Worth, Texas 76103: January 2020 to present day.
 - 2249 Grace Avenue, Fort Worth, Texas 76111: January 2020 to September 2023.
- Trina Parkin: June 2022 to present day.
- Eve Pearson: April 2021 to present day.
- Varey Investment Properties, LLC: January 2022 to April 2023.
- Mary Kathleen Rachele: May 2021 to February 2023.
- Theresa Riley, Trustee of the TK Riley Family Trust: October 2010 to present day.
- Alli Rodriguez: April 2021 to November 2023.
- Jorge Rodriguez:
 - 2504 Loving Avenue, Fort Worth, Texas 76164: September 2023 to present day.
 - 3107 McKinley Avenue, Fort Worth, Texas 76106: September 2022 to present day.
- 5101 Malinda Lane South, Fort Worth, Texas 76112: March 2021 to present day.
- Shannon Ross:
 - 3100 Milam Street, Fort Worth, Texas 76112: November 2021 to present day.
 - 3125 Milam Street, Fort Worth, Texas 76112: March 2009 to present day.
 - 3132 Milam Street, Fort Worth, Texas 76112: June 2015 to present day.
- Lucas Ruiz: February 2022 to present day.
- Catherine Saxon: June 2023 to present day.
- Cameron Schoepp: February 2018 to December 2022.
- Carla Schoepp: January 2014 to December 2022.
- Smith Wallace Properties LLC:
 - 4700 Collinwood, Fort Worth, Texas: August 2015 to present day.
 - 2100 Ashland, Fort Worth, Texas: August 2017 to present day.
- Modern Builders, LLC:
 - 2903 Lee Avenue, Fort Worth, Texas 76106: October 2023 to present day.
 - 1909 Homan Avenue, Fort Worth, Texas 76164: October 2023 to present day.
- Grant Stephens: June 2022 to present day.
- Timothy S. Stephens: December 2019 to present day.
- Home Suite Stays LLC: May 2022 to October 2022.
- Sean Sullivan: September 2019 to present day.
- Michael Sullivan: January 2023 to June 2023.
- Lesa Susi, as Trustee of the Susi Living Trust: September 2022 to present day.
- Danny G. Taylor: May 2018 to 2019; 2022 to January 2023.
- Jaime Cobb Tinsley: August 2022 to present day.
- Cheryl Turner, as Trustee of the Cheryl Turner Living Trust: September 2019 to present day.
- Revive Estates LLC: June 2020 to present day.
- Andrew & Christine Zeiler: April 2020 to present day.

Plaintiffs are continuing to investigate and will supplement as additional information becomes available.

INTERROGATORY NO. 5: Identify, for each STR Property, the time period(s) in which You have collected and paid Hotel Occupancy Tax to City. Include in Your answer, for each STR Property, the date of the first Hotel Occupancy Tax payment made to City.

ANSWER: Based on the information currently available to Plaintiffs, none of the Plaintiffs that were engaged in short-term rentals prior to March 2018 paid Hotel Occupancy Tax to the City on any of their STR Properties before March 2018.

INTERROGATORY NO. 6: For each STR Property, describe in detail all renovations You have undertaken for the specific purpose of operating such property as a short-term rental. Include in Your answer: (a) a description of the renovations; (b) the date(s) on which the renovations were made; and (c) the cost of such renovations.

ANSWER: See below:

- Brooke Blankenship:
 - Installed new laminate flooring to replace old vinyl tiles
 - Had the property painted
 - Replaced the bathroom floor and toilet
 - Installed new glass range top and large hot water heater
 - Repaired windows on north and south sides of property
 - Replaced stairs and updated landing to Trex decking
- Lauren A. Brady: Constructed a backhouse at 3824 Pershing Avenue, Fort Worth, Texas 76107. Invoices for expenses related to same will be produced electronically.
- Karen Cates: Pool repairs, landscaping, refinishing floors, painting, and shower renovations.
- Flaminia Chapman:
 - \$1,600.00 in foundation work. A copy of the invoice will be produced electronically.
 - Interior design work to repaint, fix odds and ends
 - Furnished the Property
 - Plumbing and driveway work
- Patrick & Jennifer Coddou:
 - Finished out a 400 square foot apartment from scratch in 2017.
 - Total cost between \$40,000 and \$50,000.
- Lori Dugdale: Furnishings, kitchenware, and linens. Related documents will be produced electronically.
- Maynard & Laura Dyson: Subscription access, full kitchen services, new linens, laid carpet, linoleum, and other upgrades based on comparable properties' accommodations. Full renovation in 2021 with new wooden floors, complete repainting, portable clothes

washer, art, knickknacks, comforts of home, electronic keyless options, full night lighting, and property cameras.

- Crystal Ellis: Renovated backhouse for approximately \$70,000.00, plus about \$20,000.00 in furnishings.
- David Kevin Farmer:
 - Remodeled interior and exterior of both properties—total cost \$143,542.29.
 - Furnished both units to operate them as short-term rental properties—total cost \$30,500.07.
 - The cost sheet for both items will be produced electronically.
- Patricia Floyd:
 - Scrubbed, painted, repaired holes in the ceiling and walls
 - Cleaned carpets
 - Furnished the unit and added décor
 - Expanded the use of area for accommodating more guests
- Jesse Fox:
 - Added a garage to the property. The cost sheet will be produced electronically.
- Richard Garrison: Performed complete rehab of both units. Paint, flooring, appliances, complete furnishing of both units.
- Rita Gomez:
 - Added furnishings. Total expenses came out to \$22,237.00. A cost sheet will be produced electronically.
- David and Brittany Latz: Full renovation of building in the backyard to create studio space with bathroom and kitchen.
- Jennifer K. Lee: Built pergola and outdoor living space, built pool and spa, landscaped, put in fencing and metal railing to code on the back walkway.
- Debbie McWaters: Furnishings, kitchenware, and linens. A list of improvements will be produced electronically.
- Lori Metz: Total renovation of the property.
- Penelope Bradbury Morehead: Invested over \$1,000,000 in real estate to develop medical housing for nurses/doctors. Related documentation will be produced electronically.
- Theresa Riley, Trustee of the TK Riley Family Trust: Added a covered patio across the back of the house, repaired outside stairs for approximately \$8,000.00, and provided new patio furniture and kitchen. Further replaced both HVAC units, dishwasher, hot water heater, and refrigerator.
- Shannon Ross: Renovated several properties for STR purposes, including handicap bars, rails, ramps, accessible toilets, sinks, all décor, furniture, landscape, etc.
- Cameron Schoepp: Completely rebuilt the house, including new electric, plumbing, kitchen, bathroom, installed central air and heat, new interior and exterior paint, and metal roof
- Carla Schoepp:
 - Renovated property interior, put in new services, fixtures, and plumbing including new sewer line
 - Replaced windows with low E insulated windows
 - Reconfigured interior layout, all new kitchen and appliances, all new bathroom, new drywall and paint throughout
 - Insulated walls, floor, and ceiling

- New HVAC
- Redid wood floors
- Furnished house
- Installed metal roof
- Smith Wallace Properties LLC:
 - 2100 Ashland Avenue, Fort Worth, Texas 76107:
 - Kitchen: Installed new cabinets, counters, appliances, plumbing, lights
 - Bathroom: Installed new tub, toilet, sink, plumbing fixtures, tile
 - Installed central H&A
 - Refinished hardwood floors
 - Painted interior
 - 4700 Collinwood Avenue, Fort Worth, Texas 76107:
 - Completely gutted kitchen and bathroom
 - Kitchen: New flooring, cabinets, counters, appliances, tile
 - Bathroom: New flooring, cabinets, counters, tile, tub
 - Painted interior
 - Refinished hardwood floors
 - Smith Wallace Properties LLC is in the process of investigating total costs and will supplement as this information becomes available.
- Callie Stevens:
 - Added square footage, one additional bedroom, two additional baths
 - A cost sheet describing remodeling work and costs for same will be produced electronically.
- Andrew & Christine Zeiler:
 - 1826 College Avenue, Fort Worth, Texas 76110:
 - Built backhouse from the ground up (including garage)

INTERROGATORY NO. 7: Identify any and all Hosting Platforms utilized by You to market, advertise, license and/or lease Your STR Property, including the time period(s) during which You have utilized each Hosting Platform.

ANSWER: See below:

- Kelray LLC: Airbnb, July 2021 to March 2023.
- Ayedele Olayinka Adesubokan: Airbnb, January 2023 to present day.
- Manuel A. Aguirre-Escamilla: Airbnb, January 2021 to present day.
- Tracey & Eduardo Amaya: Airbnb & VRBO, November 2021 to present day.
- Misael Andrade: October 2021 to present day.
- Melissa Baker: Airbnb & VRBO, December 2019 to present day.
- Cason Beckham, Trustee of the 2120 Fairmount Avenue Trust: Airbnb, October 2022 to present day.
- Brooke Blankenship: Airbnb, July 2018 to present day.
- Hunter Blanks: VRBO, January 2019 to present day.
- Lauren A. Brady: Airbnb, September 2017 to present day.
- Grayson Buster: Airbnb & VRBO, December 2021 to March 2023.
- Lucas Byers: Airbnb, January 2019 to 2021, 2022 to present day.

**PLAINTIFFS' FIRST SUPPLEMENTAL RESPONSES TO CITY
OF FORT WORTH'S FIRST SET OF INTEGRATED DISCOVERY**

- Sarah Caldwell, Trustee of the Sarah M. Caldwell Revocable Trust: Airbnb, May 2018 to present day.
- Flaminia Chapman: Airbnb, February 2017 to present day.
- Brookvale Holdings, LLC: Airbnb & VRBO, July 2021 to present day.
- Patrick & Jennifer Coddou: Airbnb, May 2017 to present day.
- Double 07, LLC: Airbnb, September 2018 to November 2023.
- Betsy Darling: Airbnb, October 2016 to present day.
- Adolfo & Martha Dominguez: Airbnb, October 2021 to present day.
- Ian Dorfman: Airbnb, June 2022 to present day.
- Lori Dugdale: Airbnb & Furnished Finders, June 2022 to March 2023.
- Maynard & Laura Dyson: Airbnb, June 2014 to present day.
- Crystal Ellis: Airbnb, March 2021 to March 2023.
- Guillermo Flores Rueda: Airbnb & VRBO, November 2022 to December 2022.
- Patricia Floyd: Airbnb, January 2018 to present day.
- Jesse Fox: Airbnb, February 2020 to present day.
- SIJ Properties #3, LLC:
 - Airbnb: September 2021 to present day.
 - VRBO: October 2021 to present day.
- Richard Garrison: Red Team Realty, November 2021 to present day.
- Rita Gomez: Airbnb & VRBO, January 2018 to present day.
- Alicia Gonzalez: Airbnb, June 2022 to present day.
- Susan Harper: Airbnb, November 2019 to present day.
- Blake Hestir: Airbnb, November 2018 to present day.
- M and M Pool House, LLC: Airbnb, November 2021 to present day.
- Misty Kimbrough: Airbnb, April 2023 to present day.
- Anxhelo Lalaj: Airbnb, August 2022 to July 2023.
- David & Brittany Latz: Airbnb, May 2015 to present day.
- Urban Legacy LLC: Airbnb & VRBO, February 2020 to present day.
- Steve Luchak: Airbnb, December 2020 to present day.
- Mary Lyles: Airbnb, May 2022 to May 2023.
- Debbie McWaters: Airbnb, December 2020 to present day.
- Barbara Meece: Airbnb, 2020 to present day.
- Lori Metz: Airbnb, May 2018 to present day.
- Patriotic Land Partners, LLC: Airbnb, November 2020 to present day.
- Lacey D. & Rilee B. O'Brien: Airbnb, January 2022 to present day.
- Heath Olinger: Airbnb, January 2020 to present day.
- Trina Parkin: Airbnb, June 2022 to present day.
- Eve Pearson: Airbnb, April 2021 to present day.
- Varey Investment Properties, LLC: Airbnb, January 2022 to present day.
- Mary Kathleen Rachele:
 - Evolve Vacation Rentals: May 2021 to January 2023 (Evolve created listings on Airbnb, VRBO, and Booking.com)
 - Zillow: February 2023 to present day.
 - Furnished Finders: February 2023 to present day.

- Theresa Riley, Trustee of the TK Riley Family Trust: VRBO, October 2010 to present day.
- Alli Rodriguez: Airbnb, April 2021 to November 2023.
- Catherine Saxon: Airbnb, June 2023 to present day.
- Cameron Schoepp: Airbnb, February 2018 to December 2022.
- Carla Schoepp: Airbnb, January 2014 to December 2022.
- Smith Wallace Properties LLC:
 - Airbnb, August 2015 to present day.
 - VRBO, 2022 to present day.
- Timothy S. Stephens: Square House, December 2019 to September 2022 (property manager that likely used Airbnb and other hosting platforms)
- Home Suite Stays LLC: Airbnb & VRBO, May 2020 to October 2022.
- Sean Sullivan: Airbnb, September 2019 to present day.
- Lesa Susi, as Trustee of the Susi Living Trust:
 - Airbnb, September 2022 to present day.
 - Furnished Finders, January 2023 to present day.
- Danny G. Taylor: Airbnb, May 2018 to January 2023.
- Jaime Cobb Tinsley: Airbnb & VRBO, August 2022 to present day.
- Revive Estates LLC: Airbnb, June 2020 to present day.
- Andrew & Christine Zeiler:
 - 1929 Hurley Avenue, Fort Worth, Texas 76110: Airbnb, January 2016 to April 2016.
 - 1826 College Avenue, Fort Worth, Texas 76110: Airbnb, April 2020 to present day.

INTERROGATORY NO. 8: Describe in detail efforts made by You to ensure that each Transient Occupant is familiar with and/or complies with City's ordinances, including the Ordinances.

ANSWER: See below:

- Manuel A. Aguirre-Escamilla: Notifies guests via electronic message. A copy of the message will be produced electronically.
- Tracey & Eduardo Amaya: We notify guests of the STR Ordinances through the hosting text messaging. A copy of the notice will be produced electronically.
- Misael Andrade: None.
- Cason Beckham, Trustee of the 2120 Fairmount Avenue Trust: Email message provided to guests.
- Lauren A. Brady: Automatic message at the time of reservation letting guests know that the City is enforcing the STR Ordinances and it could impact their stay.
- Grayson Buster: Has notified some tenants but not others based on facts and circumstances, such as returning guests who could not find former listings for the STR property, guests who are staying at times when code compliance officers would be visiting the property, and upcoming guests who reach out about STRs being shut down in Fort Worth. Example message: "Hi, thanks for reaching out. Your booking is still reserved however we have had to snooze our listing on all platforms. The city of Fort Worth recently made short term rentals illegal and they are issuing owners citations and enforcing that they be shut down city wide. We are actively working to fight it and are a part of a lawsuit with the short term

rental alliance. We've had to take our property offline and are hoping to be able to honor all of our bookings through the end of the year by doing so. To be completely transparent, there is a chance that if the city finds out, we could have to shut down immediately. We are hoping to get an exemption from having to do so through the lawsuit but unfortunately don't know when that will happen. Please let me know if you have any questions!"

- Double 07, LLC: Has sent messages to tenants about enforcement of the STR Ordinances.
- Ian Dorfman: Tells tenants about the STR Ordinances.
- Lori Dugdale: Calls tenants and notifies them of the STR Ordinances.
- Maynard & Lori Dyson: Links to the STR Ordinances on the Airbnb listing.
- Jesse Fox: When guests ask, informs them that there is ongoing litigation regarding STRs in Fort Worth.
- Rita Gomez: Informs tenants that issues have arisen with Fort Worth Code Compliance and asks them to inform her if officers visit during their stay.
- Susan Harper: Email message provided to guests. A copy of the email will be produced electronically.
- Jennifer K. Lee: Notifies tenants verbally.
- Mary Lyles: Tells tenants that the City was cracking down with the STR Ordinances.
- Theresa Riley, Trustee of the TK Riley Family Trust: Notifies guests through the hosting platform that there is a new City ordinance. Also talks to tenants personally about the STR Ordinances.
- Jorge Rodriguez: Notifies guests via electronic message. A copy of the message will be produced electronically.
- Smith Wallace Properties LLC: Notifies tenants about the STR Ordinances and the risk that the City may shut down short-term rentals.
- Home Suite Stays LLC: "There is a war going on in the state of Texas over your right to stay in furnished short term housing like this home! Many local governments around the state of Texas are passing laws that would prohibit homes like this from existing. Their argument is that these homes are used only for hosting loud obnoxious house parties, neglect their property maintenance, and are generally a nuisance to their neighborhoods. With your help, we would like to provide an overwhelming number of testimonials showing that bad apples operating homes like those mentioned above are the exception and not the norm. We would like to show that short term housing can be a benefit to travelers and the local community. If you are willing, we could really use a short testimonial from you simply stating how staying in a short-term rental was a benefit to you. We frequently host folks who are traveling for work, visiting local families, or are locals displaced due to home repairs. If you live locally, please mention it in your testimonial to help show how this home is a benefit to our local community as well."
- Sean Sullivan: Notifies tenants of the STR Ordinances via email message.
- Danny G. Taylor: Automatic message at the time of reservation letting guests know that the City is enforcing the STR Ordinances and it could impact their stay.

[Supplemental responses to Requests for Production begin on next page.]

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 5: Produce any and all documents reflecting Hotel Occupancy Tax paid to the City on short-term rental at a STR Property, including the date of the payment(s).

RESPONSE: No documents were found, after a diligent search, that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 6: Produce any and all agreements with a Hosting Platform used by You to market, advertise, license and/or lease a STR Property.

RESPONSE: Production, inspection, or other requested action will be permitted. Plaintiffs are continuing to investigate and will supplement as additional information becomes available.

REQUEST FOR PRODUCTION NO. 7: Produce any and all listings or advertisements You posted for the short-term rental of a STR Property.

RESPONSE: Production, inspection, or other requested action will be permitted. Plaintiffs are continuing to investigate and will supplement as additional information becomes available.

REQUEST FOR PRODUCTION NO. 11: Produce any and all documents and communications exchanged between You and any employee or representative of the City that discuss, refer to, or otherwise relate to a Hotel Occupancy Tax.

RESPONSE: Production, inspection, or other requested action will be permitted. Plaintiffs are continuing to investigate and will supplement as additional information becomes available.

Respectfully submitted,

/s/ Graigory B. Fancher

Graigory B. Fancher

State Bar No. 24052016

gfancher@bwwlaw.com

Austin L. Caldera

State Bar No. 24105284

acaldera@bwwlaw.com

Emily B. Garza

State Bar No. 24136852

egarza@bwwlaw.com

Bourland, Wall & Wenzel, P.C.

301 Commerce Street, Suite 2500

Fort Worth, Texas 76102

Telephone: (817) 877-1088

Facsimile: (817) 877-1636

J. Patrick Sutton

jpatrickstutton@jpatrickstuttonlaw.com

State Bar No. 24058143

1017 Liberty St.

Bellingham, Washington 98225

Telephone: (512) 417-5903

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that, on November 27, 2023, a true and correct copy of the foregoing document was delivered in the following manner to:

☐ FIRST CLASS MAIL ☐ FACSIMILE ☐ HAND DELIVERY ☒ EMAIL

Dee J. Kelly, Jr.
dee.kelly@kellyhart.com
Bill Warren
bill.warren@kellyhart.com
W. Chase Medling
chase.medling@kellyhart.com
Joe R. Greenhill
joe.greenhill@kellyhart.com
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Facsimile: (817) 878-9280

ATTORNEYS FOR DEFENDANT

/s/ Graigory B. Fancher
Graigory B. Fancher

VERIFICATION

STATE OF Texas §

COUNTY OF Tarrent §

My name is Cason Wesley Beckham, my date of birth is 10/05/1981, and my address is 2120 Fairmount Avenue, Fort Worth, Texas 76110. I am the Trustee of 2120 Fairmount Avenue Trust, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Walker County, State of Texas, on the 23rd day of November
2023.

Cason Beckham

Declarant

Cason Beckham

VERIFICATION


STATE OF Texas

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COUNTY OF Tarrant

My name is Manuel Aguirre my date of birth is 03-25-1986 and my address is 11400 Petunia dr, Fort Worth TX 76244. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 23 day of November, 2023
2023.



Declarant

VERIFICATION

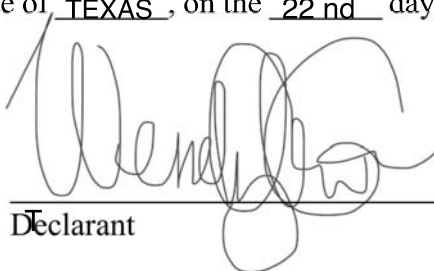
STATE OF TEXAS §

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COUNTY OF TARRANT COUNTY §

My name is Wendy Armstrong-Geren, my date of birth is 11-23-1976, and my address is 10412 Cattail Ct. FORT WORTH TX 76108. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in TARRANT County, State of TEXAS, on the 22 nd day of NOVEMBER 2023.



Declarant

VERIFICATION

STATE OF TX

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COUNTY OF Tarrant

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My name is Clyde Austin, my date of birth is 5/20/1956, and my address is 2464 Indian Cove St Fw, TX 76108. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 28th day of November 2023.



Declarant

VERIFICATION

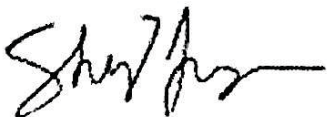
STATE OF TX

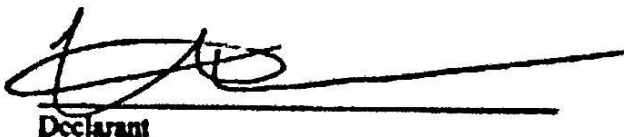
COUNTY OF Tarrant

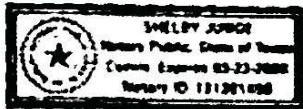
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My name is Hunter Blank, my date of birth is 1/7/92, and my address is 4117 Winding Way Burleson TX 76126, I am the Owner of 3324 Collinwood Ave FW, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 24th day of November 2023.




Declarant



VERIFICATION

STATE OF Texas §

COUNTY OF Tarrant §

My name is Flaminia G Chapman, my date of birth is 2/9/81, and my address is 4908 Birchman Ave Fort Worth TX 76107. I am the owner of 4908 Birchman Ave, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 23 day of November 2023.



Declarant

VERIFICATION

STATE OF

Texas

COUNTY OF

Tarrant

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My name is Betsy Darling, my date of birth is 11/01/61, and my
address is 3854 Harley Ave, Fort Worth TX 76107. I am a named

Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending
before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury
that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs'*
Responses to City of Fort Worth's First Set of Integrated Discovery and *Plaintiffs' First*
Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery is true and
correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 25th day of Nov.


2023.

Betsy Darling
Declarant

VERIFICATIONSTATE OF Texas §COUNTY OF Tarrant §

My name is Leigh Crates, my date of birth is 07 Jan 1959, and my address is 3610 Crestline Rd Ft Worth, TX. 76107. I am the Principle of Double 07, LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in _____ County, State of _____, on the _____ day of _____ 2023.

DocuSigned by:

 9063AAA97B41472...
 Declarant

VERIFICATION

STATE OF TEXAS

COUNTY OF TARRANT

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My name is PAT FLOYD DELGUDICE, my date of birth is 03/04/1958, and my address is 2725 WARREN LANE FORT WORTH 76112. I am a named Plaintiff in Cause No. 236-342969-23, styled Kebray LLC et al. v. City of Fort Worth, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in TARRANT County, State of TEXAS, on the 22nd day of November 2023.

PAT FLOYD DELGUDICE
Declarant

VERIFICATION

STATE OF **Texas** §

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COUNTY OF **Tarrant** §

My name is **Jesse Fox** , my date of birth is **4/8/1986** , and my address is **1900 Lipscomb St. Fort Worth TX 76110** . I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in **Tarrant** County, State of **Texas** , on the **22nd** day of **November** 2023.

 Jesse Fox
Declarant

VERIFICATION

STATE OF CA

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COUNTY OF ORANGE

My name is RICHARD GARRISON, my date of birth is 7-29-58, and my address is 25796 KNOTTY PINE LAGUNA HILLS CA 92653. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in ORANGE County, State of CA, on the 24TH day of NOVEMBER 2023.

Richard Garrison
Declarant

VERIFICATION

STATE OF Texas _____ §

COUNTY OF Tarrant _____ §

My name is Rita Gomez _____, my date of birth is 7/22/1974 _____, and my address is 4309 Green Teal St Roanoke, TX 76262 _____. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 22 day of Nov 2023 2023.

Declarant



VERIFICATION

STATE OF Texas §

COUNTY OF Tarrant §

My name is Susan Harper, my date of birth is 8/26/43, and my address is 2048 5th Ave, Fort Worth, Texas 76110. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 24th day of November 2023.

Susan Harper
Declarant

STATE OF Texas

COUNTY OF Tarrant

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My name is Kelly Accetta-Suarez, my date of birth is June 11, 1968, and my address is 925 Lake Bluff Drive Lake Dallas TX 75065. I am the Owner of Kelray LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Denton County, State of Texas, on the 22 day of November 2023.

Kelly Accetta-Suarez
Declarant

VERIFICATION

STATE OF twxas §
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COUNTY OF Tarrant §

My name is Misty Kimbrough, my date of birth is 09/08/1972, and my address is 4156 idlewild Fr, Fort Worth Tx 76107. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 21 day of November 2023.

Misty Kimbrough

Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Anxhelo Lalaj, my date of birth is 09-03-1995, and my address is 2802 Lincoln Ave, Fort Worth TX 76106. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 22 day of November 2023.


Declarant

VERIFICATION

STATE OF TEXAS

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COUNTY OF TARRANT

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My name is STEPHEN LUCHAK, my date of birth is 04/23/1981, and my address is 8060 WOODVALE RD FT WORTH TX 76135. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in DEWITT County, State of TX, on the 22 day of NOVEMBER 2023.

Steph Lube
Declarant

VERIFICATION

STATE OF TX
COUNTY OF Tarrant

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My name is Tye Martin, my date of birth is 02/15/74, and my
address is 605 Bent Oak Dr., 76131. I am a named

Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending
before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury
that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs'*
Responses to City of Fort Worth's First Set of Integrated Discovery and *Plaintiffs' First*
Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery is true and
correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 22 day of Nov.
2023.

Declarant

VERIFICATION

STATE OF TEXAS

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COUNTY OF TARRANT

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My name is DAVID STIGER MAIN, my date of birth is 8-2-58, and my
address is 2009 LIBBY LN
GRAND PRAIRIE, TX 75050. I am the
SOLE MEMBER of MODERN BUILDERS, LLC, a named
Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending
before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury
that the factual information contained in the above-named entity's Answers to Interrogatories
contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery*
and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated*
Discovery is true and correct and based upon my personal knowledge.

Executed in EAGLE County, State of CO, on the 23RD day of NOVEMBER
2023.


Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Penelope Bullock Morehead, my date of birth is 10/23/1961, and my address is 3004 Willing Ave Fort Worth, TX 76110. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 22 day of November 2023.

Penelope Bullock Morehead
Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Lacey O'Brien, my date of birth is 03-18-1987, and my address is 2720 Keller Hlks Rd-Fort Worth Tx. 76244. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Sonoma County, State of CA, on the 22nd day of November 2023.

Lacey O'Brien

Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Rilee O'Brien, my date of birth is 04-22-1986, and my address is 2720 Keller Hicks rd. Fort Worth TX 76244. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Somerset County, State of CA, on the 22nd day of November 2023.



Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Rilee O'Brien, my date of birth is 04-22-1986, and my address is 2720 Keller Hicks rd. Fort Worth TX 76244. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Sonoma County, State of CA, on the 22nd day of November 2023.

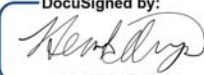


Declarant

VERIFICATIONSTATE OF Texas §COUNTY OF Dallas §

My name is Heath Olinger, my date of birth is 10-17-1975, and my address is 5911 Reiger Ave , Dallas, TX 75214. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Dallas County, State of Texas, on the 22 day of November 2023.

DocuSigned by:

 14BDA75B0F49435...

 Declarant

VERIFICATION

STATE OF Texas §

COUNTY OF Denton §
§

My name is Trina Parkin, my date of birth is 10/02/91, and my address is 5656 Oakhaven Drive, Fort Worth, TX, 76244. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Denton County, State of TX, on the 22nd day of November 2023.



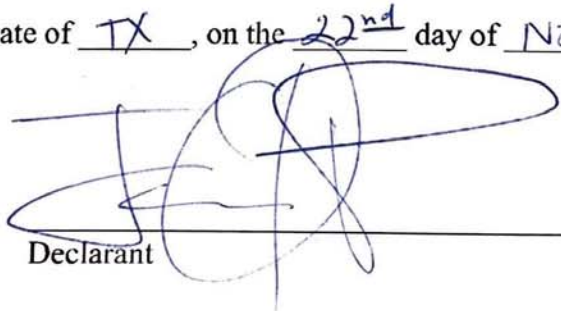
Declarant

VERIFICATION

STATE OF Texas §
COUNTY OF Tarrant §
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My name is James O. Payton, my date of birth is 11/14/1949, and my address is 1414 S. Lake St., Fort Worth, TX 76104. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 22nd day of November 2023.


Declarant

VERIFICATION

STATE OF Texas §

COUNTY OF Tarrant §

My name is Eve Pearson, my date of birth is 9/26/1978, and my address is 2616 Highview Terrace, Fort Worth, TX 76109. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 24th day of November 2023.



Declarant


VERIFICATION

STATE OF Alabama
COUNTY OF Madison

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My name is Jarrod Recker, my date of birth is 10/20/1981, and my address is 7621 Addison Dr NW Huntsville, AL 35806. I am the trustee of Q.T.R. Trust, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Madison County, State of AL, on the 26th day of November 2023.


Declarant

VERIFICATION

STATE OF TEXAS

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COUNTY OF TARRANT

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My name is Mary Kathleen Rachele, my date of birth is March 26, 1967, and my address is 9886 Lake Haven Cir, Fort Worth, TX 76108. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 23rd day of November
2023.

Mary Kathleen Rachele
Declarant

COUNTY OF Tarrant

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My name is Shannon Ross, my date of birth is 2/3/65, and my address is 3116 Milam St. Fort Worth, TX 76112. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 23rd day of November 2023.



Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

My name is Cameron Schaepp, my date of birth is 08-06-1962 and my address is 3308 W 4th St Fort Worth TX 76107. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Tx, on the 26 day of November 2023.

Cameron Schaepp
Declarant

VERIFICATION

STATE OF TEXAS

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COUNTY OF TARRANT

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My name is CARLA SCHOEPP, my date of birth is 11/26/33, and my address is 3301/03 W 4th St., Ft. Worth, TX. 76107. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in TARRANT County, State of TEXAS, on the 23rd day of November 2023.

Carla E. Schoepp
Declarant

VERIFICATION

STATE OF Texas §

COUNTY OF Tarrant §

My name is Terry Smith, my date of birth is 11/2/1956, and my address is 6500 Jacob Ct. Fort Worth, Tx 76116. I am the Managing member of Smith Wallace Properties, LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas ~~as of 11/2/2023~~ ~~as of 11/2/2023~~. I am under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Tx, on the 25 day of November 2023.


Declarant

VERIFICATION


STATE OF Texas §

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COUNTY OF Tarrant §

My name is Grant Stephens, my date of birth is 08/17/1967, and my address is 2100 Western Ave, Fort Worth, TX 76107. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 26 day of November 2023.



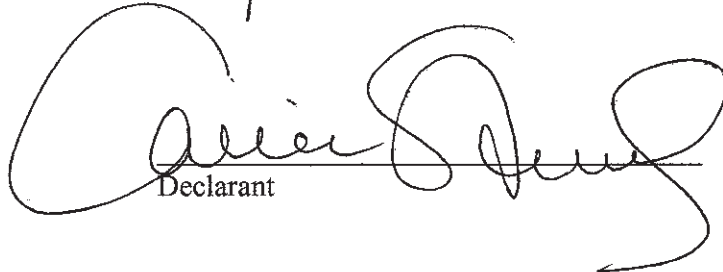
Declarant

VERIFICATION

STATE OF Texas §
COUNTY OF Tarrant §
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My name is Callie Steuens, my date of birth is 2/24/70, and my address is 3808 Mattison Ave, Fort Worth, TX I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Midland County, State of TX, on the 26 day of November 2023.


Declarant

VERIFICATION


STATE OF Texas

COUNTY OF Tarrant

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My name is Sean Sullivan, my date of birth is 10-19-71, and my address is 2620 Forest Park Blvd, Fort Worth, TX 76110. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 24th day of November 2023.


Declarant

VERIFICATION


STATE OF _____

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COUNTY OF _____

My name is LesA Susi, my date of birth is 09/07/1953, and my address is 2400 KLinger Rd. Arlington, TX 76016. I am the Trustee of Susi Living Trust, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 22nd day of NOVember 2023.


Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Tarrant

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My name is Jaime Cobb Tinsley, my date of birth is July 14, 1981, and my address is 2801 Ryan Ave., Fort Worth, TX 76110. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 25 day of November 2023.

Jaime Cobb Tinsley
Declarant

VERIFICATION

STATE OF Texas §

COUNTY OF Tarrant §

My name is Thomas Tinsley, my date of birth is August 2, 1975, and my address is 1419 South Adams, Fort Worth, TX 76104. I am a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in my Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 26 day of November 2023.


Thomas Tinsley
Declarant

VERIFICATION

STATE OF Texas §
COUNTY OF Tarrant §

My name is Theresa Riley, my date of birth is February 4th, 1964, and my address is 7808 Vinca Circle, Fort Worth, TX 76135. I am the Trustee of TK Riley Family Trust, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 22 day of November 2023.


Declarant

VERIFICATIONSTATE OF Texas §COUNTY OF Tarrant §

My name is Kelsey Michelle Long, my date of birth is 03/11/1990, and my address is 1318 Newport Dr Carrollton, TX 75006. I am the Representative of Urban Legacy Properties, LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of Texas, on the 23rd day of November 2023.



Declarant

VERIFICATION

STATE OF Texas

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COUNTY OF Johnson

My name is Adrienne Bennett, my date of birth is 3/11/1979, and my address is 1400 Grassy Meadows Dr. Joshua, TX 7605A. I am the Managing Member of Varex Investment Properties LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Johnson County, State of Texas, on the 22 day of November 2023.



Declarant

VERIFICATION

STATE OF Texas §

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COUNTY OF Tarrant §

My name is Cassie Warren, my date of birth is 01 Mar 1987, and my address is 2121 Skyline Dr Fort Worth TX 76114. I am the Managing Member of Revive Estates LLC, a named Plaintiff in Cause No. 236-342969-23, styled *Kelray LLC et al. v. City of Fort Worth*, pending before the 236th Judicial District Court of Tarrant County, Texas. I declare under penalty of perjury that the factual information contained in the above-named entity's Answers to Interrogatories contained within *Plaintiffs' Responses to City of Fort Worth's First Set of Integrated Discovery* and *Plaintiffs' First Supplemental Responses to City of Fort Worth's First Set of Integrated Discovery* is true and correct and based upon my personal knowledge.

Executed in Tarrant County, State of TX, on the 24 day of Nov 2023.

Cassie A Warren
Declarant

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

William Medling

Bar No. 24073061

chase.medling@kellyhart.com

Envelope ID: 95303546

Filing Code Description: Answer/Response

Filing Description: Defendant's Response and Objections to Plaintiffs'

Traditional Motion for Summary Judgment

Status as of 12/13/2024 3:00 PM CST

Associated Case Party: THECITY OF FORT WORTH

Name	BarNumber	Email	TimestampSubmitted	Status
Dee Kelly, Jr.		dee.kelly@kellyhart.com	12/13/2024 2:10:35 PM	SENT
Chase Medling		chase.medling@kellyhart.com	12/13/2024 2:10:35 PM	SENT
Bill Warren		bill.warren@kellyhart.com	12/13/2024 2:10:35 PM	SENT
Joe Greenhill		joe.greenhill@kellyhart.com	12/13/2024 2:10:35 PM	SENT
Elizabeth C.Thomas		elizabeth.thomas@kellyhart.com	12/13/2024 2:10:35 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Graigory B.Fancher		gfancher@bwwlaw.com	12/13/2024 2:10:35 PM	SENT
Austin Caldera		acaldera@bwwlaw.com	12/13/2024 2:10:35 PM	SENT
J. Patrick Sutton		jpatrickssutton@jpatrickssuttonlaw.com	12/13/2024 2:10:35 PM	SENT