

STATE OF MINNESOTA  
COUNTY OF WASHINGTON

DISTRICT COURT  
TENTH JUDICIAL DISTRICT

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John P. Norusis,

Plaintiffs,

v.

City of Marine on Saint Croix,

Defendant.

Case Type: Declaratory Judgment  
Court File No.: 82-CV-20-3974

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

The Short-Term Rental Ordinance, Ordinance No. 2020-156 (“Ordinance”), is unenforceable and unconstitutional. The record is clear, indeed undisputed, that the Ordinance has no relationship to public health, safety, morals, or general welfare, let alone the required substantial relationship for the City of Marine on Saint Croix (“City”) to validly exercise its police powers. Because the Ordinance is unenforceable and unconstitutional, summary judgment must be granted in favor of John P. Norusis (“Norusis”) both as to his Amended Complaint and the City’s Counterclaim.

The testimony is undisputed that Short-Term Rentals (“STRs”) and events (such as weddings or parties) were not of such a character that restraints upon private rights were necessary for the general welfare. STRs and events had no injurious affect on the public health, morals, safety, convenience, or general welfare. There was no crime, nuisance violation, parking violation, ordinance violation, theft, or any other criminal activity tied to STRs or events. And the City conducted no studies on any impact that STRs or events had on the general welfare before adopting the Ordinance. The City’s argument that it passed the Ordinance under its police power is devoid of factual support.

Instead, the Ordinance was adopted solely to prevent Norusis, formally incarcerated, from using his property as a STR and for events because his neighbors do not like him. This is improper and does not constitute a legitimate exercise of the City’s police powers. The Ordinance is unconstitutional and unenforceable.

Even if the Ordinance were validly adopted (it was not), the Ordinance violates the equal-protection clause and is still unconstitutional. The Ordinance creates three classes of individuals

treated differently without justification in violation of the equal-protection clause.

Additionally, the Ordinance is unenforceable as it is impossible to comply with. The Ordinance permits STRs under certain conditions once a license is obtained. To obtain a license, the property must be in a zoning district in which STRs are permitted. But the Zoning Ordinance does not permit STRs within any zoning district. The Ordinance is thus impossible to comply with and therefore, for this additional and independent reason, unenforceable.

As the Ordinance is unconstitutional and unenforceable, the City's Counterclaim premised on alleged violations of the Ordinance must be dismissed. The City has not issued a citation to Norusis for any alleged violation of the Ordinance. To begin any misdemeanor action, which a violation of the Ordinance is classified, there must be the issuance of a citation. This is a fundamental and basis tenant of due process – the accused has a right to know what he/she is being charged with, on what dates, and what facts the charging party has to support the criminal allegation. Because the City failed to issue a citation for any violation of the Ordinance, the Counterclaim accusing Norusis of a misdemeanor fails as a matter of law.

The City also produced no evidence from anyone with any firsthand knowledge that Norusis violated the Ordinance. Without admissible evidence to support each element of its Counterclaim, the Counterclaim must be dismissed.

Norusis requests that his Motion be granted in its entirety.

### **ISSUES**

1. Is the Ordinance unconstitutional and unenforceable?
2. Should the Counterclaim be dismissed?

## DOCUMENTS RELIED UPON

1. *Affidavit of John P. Norusis*, Doc. No. 45 (“Norusis Aff.”);
2. *Affidavit of Brandon M. Schwartz*, Doc. No. 46 (“Schwartz Aff.”); and
3. *Affidavit of Brandon M. Schwartz* (“BMS Aff.”).

## FACTS

### NORUSIS’ USE OF THE PROPERTY:

1. Norusis is an individual resident of the City. *Norusis Aff.*, ¶ 2.
2. Norusis is the owner of real property located at 801 Pine Cone Trl, City of Marine on St. Croix, County of Washington, State of Minnesota and legally described as:
 

Section 06 Township 031 Range 019 GOV LT 6 ENT N OF PLT OF  
MARINE EXC W 500FT AND EXC N 100FT

 (“Property”).
 

*Id.*, ¶ 3.
3. The City is a Minnesota municipality in the County of Washington and State of Minnesota. *Id.*, ¶ 4.
4. Before purchasing the Property, Norusis confirmed with the City, specifically the City’s Clerk, Zoning Administrator, and Treasurer (Lynette Peterson), that the City did not have any ordinance or regulation prohibiting or otherwise regulating long-term or STRs within the City’s limits. *Id.*, ¶ 5; *see also Exhibit A*, p. 16:17-24 to the *Schwartz Aff.*:

Q When was the first time that you can recall speaking with John Norusis?

A I believe he – well, he contacted me, I don’t remember the exact date, but he contacted me to let me know that – or to question whether or not the City allowed short-term rentals. And I told him that the City at the time did not regulate short-term rentals.

Q Do you know when that conversation occurred?

A I don't remember the date exactly.

Q Do you know if that was before or after Mr. Norusis purchased the property in Marine?

A I believe it was before.

*See also Exhibit A*, p. 53:11-14 to the *BMS Aff.*

5. Before purchasing the Property, Norusis confirmed with the City, specifically Ms. Peterson, that no permit was required from the City to hold a wedding or other social event at the Property. *Norusis Aff.*, ¶ 6; *see Exhibit A*, p. 17:17-18:8 to the *Schwartz Aff.*:

Q Did he also ask you about holding weddings at the property?

A Yes.

Q And when I say ask you about, during this initial conversation.

A Yes.

Q Was this initial conversation in person or over the telephone?

A I believe it was over the phone.

Q What specifically did Mr. Norusis ask you about holding weddings at the property?

A I believe he asked if there was any permits required or if it was allowed.

I told him at the time the City did not regulate weddings. However, we did have ordinances that regulated noise and parking on public streets.

*See also Exhibit A*, p. 53:15-18 to the *BMS Aff.*



6. As of May 17, 2018, the City did not have any ordinances or regulations prohibiting or otherwise regulating long-term rentals or STRs within the City's limits. *Norusis Aff.*, ¶ 7; **Exhibit A**, p. 16:17-24 of the *Schwartz Aff.*
7. As of May 17, 2018, the City did not have any ordinances or regulations mandating permits be issued from the City to hold a wedding or other social event at the Property. *Id.*, ¶ 8; **Exhibit A**, p. 17:17-18:8 to the *Schwartz Aff.*
8. The City's Council expressly recognized there is a "place for short-term rentals in Marine on Saint Croix". *Id.*, ¶ 9.
9. The City's Council expressly recognized that there is a "long history of renting in Marine on Saint Croix". *Id.*, ¶ 10.
10. Based on the express confirmations and representations from the City, based on the lack of any ordinances or regulations by the City prohibiting or otherwise regulating long-term rentals or STRs within the City's limits, and based on the lack of any requirement for a permit from the City to hold a wedding or other social event at the Property, Norusis purchased the Property on or about May 17, 2018 for \$1,130,000.00. *Id.*, ¶ 11.
11. It was an important consideration for Norusis in buying the Property that he was able to rent the Property for short-terms. *Id.*, ¶ 12.
12. It was necessary for Norusis to be able to repay the mortgage in purchasing the Property that he was able to rent the Property for short-terms. *Id.*, ¶ 13.
13. Norusis has not received any citations alleging that his use of the Property is in any way unlawful. *Id.*, ¶ 14.

**THE ORDINANCE WAS NOT ADOPTED BY A VALID EXERCISE OF POLICE POWERS:**

14. On August 13, 2020, the City approved the Ordinance. *Id.*, ¶ 21; **Exhibit A** to *Norusis Aff.*

15. The Ordinance alleges that it was adopted to protect “the public health, safety and general welfare of the long term residents by regulating the time period a transient guest is allowed.” **Exhibit A** to *Norusis Aff.*; see also Doc. No. 25, p. 1 (“adopted its short-term rental licensing ordinance in recognition that it was necessary to protect the public health, safety, and general welfare.”), 5 (“In the end, the City Council addressed the community concerns as best they could, and exercised their legislative discretion to adopt a STR Licensing Ordinance, which would best advance the public interest and preserve the community’s health, safety, and welfare.”) 9 (arguing that the City is “empowered with the authority to adopt and enforce ordinances to protect the health, safety, and general welfare of the community.”), 10 (“enforcement of properly enacted regulations, designed to protect the public’s health, safety, and general welfare”), 14 (“**Here, the STR Licensing Ordinance was adopted pursuant to the City’s police power, and is not a zoning ordinance.**” (emphasis added)).<sup>1</sup>

16. The City’s assertion that it properly adopted the Ordinance based on its police power is without factual support. Lynette Peterson, the City’s Clerk, Zoning Administrator, and Treasurer testified, relevant to the police power argument:

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<sup>1</sup> Interestingly, the City’s Clerk, Zoning Administrator, and Treasurer has never even heard the term “police powers”. **Exhibit A**, p. 77:7-17 to the *Schwartz Aff.* Likewise, neither has the Chairperson of the City’s Planning Commission. **Exhibit A**, p. 44:22-24 to the *BMS Aff.*

Q Are you aware of any injurious effect or injuries to the public from short-term rentals?<sup>2</sup>

A No.

Q Are you aware of any injurious effect to the public health from Mr. Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the morals of the City from short-term rentals?

A No.

Q Are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A To the City specifically?

Q Correct.

A Outside of that he currently does not have a license to run it, no.

Q Are you aware of any injurious effect to the safety of the city's residents from short-term rentals?

A Outside of complaints that we've received from adjacent property and neighbors, but nothing specific.

Q Sure. And I want to -- just so that we have a clear record, Ms. Peterson, the first question was as it relates to short-term rentals in general, okay, and then I'll ask you about Mr. Norusis's property specifically. Okay?

A Okay.

Q And I understand complaints about the property. Are you aware of any injurious effect to the safety of the city's residents from short-term rentals?

A No.

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<sup>2</sup> Norusis has cited the testimony verbatim as it is powerful and to ensure that the Court knows that no liberties have been taken by paraphrasing rather than quoting directly from the key witnesses.

Q Are you aware of any injurious effect to the safety of the city's residents from Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the convenience of the city's residents from short-term rentals?

A No.

Q Are you aware of any injurious effect to the convenience of the city's residents from Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the general welfare of the city's residents from short-term rentals?

A No.

Q Are you aware of any injurious effect to the general welfare of the city's residents from Norusis's use of the property?

A No.

**Exhibit A**, p. 19:15-21:19 to the *Schwartz Aff.*

17. Gerald Mroska, the Chairperson of the City's Planning Commission, similarly testified under oath that there is no factual support to the City's argument that the Ordinance was a valid exercise of its police powers:

Q The first minutes, just for a point of reference that I can find in the Planning Commission related to short-term rentals is a July 12th, 2018, City Council meeting minute, all right, just using that for point of reference.

A Okay.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the public health from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the public health from Norusis's use of the property?

A No, sir.

Q You know -- I'm sorry. I don't mean to butcher it. It's Mrosła; right?

A Mrosła.

Q Do you know the address of Mr. Norusis's property?

A I know it's on Pine Cone Trail. I don't know the address.

Q Does 801 Pine Cone Trail sound accurate?

A Yes.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the morals of the City from short-term rentals?

A No, sir.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the safety of citizens from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the safety of citizens from Norusis's use of the property?

A No, sir.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the convenience of the citizens of the City from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the convenience of the citizens of the City from Norusis's use of the property?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the general welfare of the citizens of the City from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the general welfare of the citizens of the City from Norusis's use of the property?

A No.

Q Now I want to ask you about prior to the passage of the ordinance. If I call it the ordinance, can we have an understanding that we're referring to Ordinance 2020-156, which was the short-term rental ordinance?

A Sounds correct.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the public health from short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the public health from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the morals of the City from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the safety of the citizens from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the safety of the citizens of the City from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the convenience of the citizens of the City from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the convenience of the citizens of the City from Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the general welfare of the citizens of the City from short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the general welfare of the City from Norusis's use of the property?

A No, sir.

**Exhibit A**, p. 23:14-27:24 to the *BMS Aff.*

18. Both Ms. Peterson and Mr. Mrosla testified to the utter lack of any injurious affect to the health, safety, and general welfare of the community before adopting the Ordinance:

**Ms. Peterson Testimony:**

Q Prior to July 12th of 2018, are you aware of how many police calls were reported to the City regarding John's use of the property?

A None.

Q Prior to July 12th of 2018, are you aware of how many noise related complaints were reported to the City due to short-term rentals?

A None.

Q Prior to July 12th of 2018, are you aware of how many noise-related complaints were made to the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many zoning violations were written due to short-term rentals in the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many zoning violations were written due to John's use of the property?

A None.

Q Prior to July 12th of 2018, are you aware of how many nuisance complaints were made to the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many nuisance complaints were made to the City due to John's use of the property?

A None.



Q Prior to July 12th of 2018, are you aware of how many crimes were reported to the City due to short-term rentals?

A None.

Q Prior to July 12th of 2018, are you aware of how many crimes were reported to the City due to John's use of the property?

A None.

Q Prior to July 12th of 2018, did the City retain any independent consultants to study the impact of short-term rentals?

A No.

Q Prior to July 12th of 2018, did the City retain any independent consultants to study the impact of John's use of the property?

A No.

Q I'm going to ask you a similar line of questions, but this time I'm asking you prior to the passage of the ordinance. Okay? So I asked you prior to July of 2018.

Prior to the passage of the ordinance, are you aware of how many police calls were made to the City due to short-term rentals?

A None.

Q Prior to the passage of the ordinance, are you aware of any how many police calls were made to the City due to John's use of the property?

A None.

Q Prior to the passage of the ordinance, are you aware of how many noise-related complaints were made to the City due to short-term rentals?

A I don't know.

...

Q Prior to the passage of the ordinance, are you aware of how many noise-related complaints were made due to John's use of the property?

A I don't know.

Q Prior to the passage of the ordinance, are you aware of any zoning violations that were written due to short-term rentals in the City?

A Prior to the passage of the ordinance, no.

Q Prior to the passage of the ordinance, are you aware of any zoning violations written due to John's use of the property?

A No

...

Q (By Mr. Schwartz, continuing) Prior to the passage of the ordinance, are you aware of any crimes that were reported to the City due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes that were reported to the City due to Mr. Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, did the City retain any independent consultants to study the impact of short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any independent consultants retained by the City to study the impact of John's use of the property?

A No.

**Exhibit A**, p. 30:2-35:19 to the *Schwartz Aff.*

**Mr. Mrosla Testimony:**

Q Prior to the passage of the ordinance, are you aware of any police calls made due to short-term rentals in the City?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any police calls made due to Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any noise-related complaints made due to short-term rentals in the City?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any noise-related complaints made due to Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any zoning violations written by the City due to short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any zoning violations issued by the City to Norusis from the use of his property?

A No.

Q Prior to the passage of the ordinance, are you aware of any nuisance complaints made due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any nuisance complaints made related to Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes committed in the City due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes committed related to Norusis's use of the property?

A No, sir.

...

Q Are you aware of any increased crime or noise complaints or nuisances from commercial or social events being held at a short-term rental?

A No.

**Exhibit A**, p. 37:4-38:18, 62:17-20 to the *BMS Aff.*

19. Ms. Peterson and Mr. Mrosla both also confirmed that the City conducted no cost-benefit analysis or studies that established any injurious affect to the health, safety, and general welfare of the community from STRs:

**Ms. Peterson Testimony:**

Q Are you aware of any studies<sup>3</sup> that the City conducted on the effect of short-term rentals on any city resident?

A No. I'm not aware of any.

Q Are you aware of any studies that the City conducted on the effect of John's use of the property on any city resident?

A No.

Q Are you aware of any studies the City conducted regarding the impact of short-term rentals on neighborhood quality?

A I don't know.

---

<sup>3</sup> Ms. Peterson confirmed that when questioned about any “studies” or “data”, she was confirming that the City had no such documents establishing any injurious affect from STRs. **Exhibit A**, p. 93:12-25 to the *Schwartz Aff.*

Q You're not aware of any; correct?

A Correct.

Q Are you aware of any studies the City conducted regarding John's use of the property on neighborhood quality?

A No.

Q Are you aware of any studies the City conducted regarding crime in the city related to short-term rentals?

A No.

Q Are you aware of any studies the City conducted regarding crime in the city related to John's use of the property?

A No.

Q Are you aware of any studies the City conducted regarding nuisance claims in the city related to short-term rentals?

A No.

Q Are you aware of any studies the City conducted regarding nuisance claims in the city related to John's use of the property?

A No.

Q Are you aware of any studies the City conducted regarding zoning violations in the city related to short-term rentals?

A No.

Q Are you aware of any studies the City conducted regarding zoning violations in the city related to John's use of the property?

A No.

...

Q My question is, are you aware of any comprehensive cost-benefit analysis on the impact of short-term rentals in Marine that was conducted by the City?

A No.

...

Q Are you aware of any studies that the City conducted regarding the impact of holding weddings?

A As part of the ordinance or in general?

Q In general.

A No.

...

Q Are you aware of any studies that were conducted relating to the impact of holding events?

A Not studies no.

Q Are you aware of any data that the City maintains related to crime regarding weddings being held within the city?

A No.

Q Are you aware of any data that the City maintains related to crime for events being held within the city?

A No.

...

Q Are you aware of any studies conducted by the City related to the recommendation that a short-term rental be limited to 14 days per calendar month and 72 days per calendar year?

A No.

Q Are you aware of any studies conducted by the City related to why short-term rental type A and B are permitted, but short-term rental type C is not?

A No.

...

Q Are you aware of any studies that the City conducted regarding percentages of days in which a property is rented out?

A No.

**Exhibit A**, p. 19:15-21:19, 48:8-12, 59:19-24, 60: 14-24, 67:8-17, 68:4-7 to the *Schwartz Aff.*

**Mr. Mrosła Testimony:**

Q Are you aware of any studies conducted by the City on the effect of short-term rentals on any neighborhoods?

A No.

Q Are you aware of any studies conducted by the City on the effect of Norusis's use of the property on any neighborhoods?

A No.

Q Are you aware of any studies conducted by the City on the effect of short-term rentals on any City resident?

A No.

Q Are you aware of any studies conducted by the City on the effect of Norusis's use of the property on any City resident?

A No, sir.

...

Q Are you aware of any studies that the City conducted related to crime in the City from short-term rentals?

A No, sir.

Q Are you aware of any studies that the City conducted related to crime in the City regarding Norusis's use of the property?

A No, sir.

Q Are you aware of any studies the City conducted regarding nuisance claims in the City related to short-term rentals?

A I don't recall.

Q Are you aware of any studies the City conducted regarding nuisance claims in the City related to Norusis's use of the property?

A No, sir.

Q Are you aware of any studies the City conducted regarding zoning violations in the City from short-term rentals?

A No, sir.

Q Are you aware of any studies the City conducted regarding zoning violations in the City related to Norusis's use of the property?

A No, sir.

...

Q Did the City retain any independent consultants to study the impact of short-term rentals?

A I don't believe so.

Q Did the City retain any independent consultants to study the impact of Norusis's use of the property?

A No.

**Exhibit A**, p. 32:20-33:6, 34:20-35:18, 38:19-25 to the *BMS Aff.*



20. Of the City's 689 residents<sup>4</sup>, only 88 residents (12.7% of the City's population) returned the singular survey that the City conducted about STRs. **Exhibit B** to the *Schwartz Aff.*

21. Of those 88 residents, 62% stated that there is a need for STRs and 71% said that STRs should be allowed. *Id.*

22. The Ordinance was not passed because of any injurious affect on the public, but rather a discriminatory act aimed exclusively at Norusis:

Q The timing of it, Mr. Norusis buys his property in May of 2018, and then in June – or excuse me, July of 2018 there's discussion by the Planning Commission about regulating short-term rentals.

It looks like the regulation of short-term rentals is almost entirely focused on Mr. Norusis' property; correct?

A Possible.

**Exhibit A**, p. 65:14-21 to the *BMS Aff.*

#### **THE ORDINANCE VIOLATES THE EQUAL-PROTECTION CLAUSE:**

23. The Ordinance defines Primary Residence as: "A dwelling within which a person having a bona fide ownership interest demonstrably occupies and resides in for more days annually than it is rented for a minimum of six months during a calendar year." **Exhibit A**, Section 3 to *Norusis Aff.*

24. The Property is Norusis' Primary Residence as defined by the Ordinance. *Norusis Aff.*, ¶ 16.

25. The Ordinance mandates that any applicant for a STR License from the City must ensure the City's Clerk that the building or portion thereof be "materially used for its owner's enjoyment-which shall mean to state the owner shall accurately certify and document to

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<sup>4</sup> **Exhibit A**, p. 47:1-3 to the *BMS Aff.*

- the City annually that the Dwelling has been physically inhabited by the owner for more days and nights than it has been rented.” **Exhibit A**, Section 4(E)(a)(vi) to *Norusis Aff.*
26. The Ordinance provides a General Performance Standard that: “[a]ll residential properties offering Short Term Rentals must be owner-occupied (meaning the owner demonstrably occupies and resides in the property for more days annually than it is rented), except for multi-dwelling properties.” **Exhibit A**, Section 5(G) to *Norusis Aff.*
27. Norusis occupies and resides in the Property for more days annually than it is rented. *Norusis Aff.*, ¶ 19.
28. The Property has been classified by Washington County as “residential homestead.” **Exhibit B** to *Norusis Aff.* (Marine Assessor stating: “Sending an email to confirm our conversation today that the County will be granting a homestead for you at 801 Pine Cone in Marine.”); **Exhibit A**, p. 49:23-50:2 to the *Schwartz Aff.*
29. The Ordinance defines STR as: “A dwelling that is offered to transient guests for a period of less than 30 consecutive days at a time.” **Exhibit A**, Section 3 to *Norusis Aff.*
30. The Ordinance defines STR Type A as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the property is primarily present (i.e., from 10:00 p.m. to 7:00 a.m. during overnight stays) during the period of occupancy by the transient guest.” **Exhibit A**, Section 3 to *Norusis Aff.*
31. The Ordinance defines STR Type B as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the

property is not present while the transient guests are present.” **Exhibit A**, Section 3 to *Norusis Aff.*

32. The Ordinance defines STR Type C as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where the primary property use (“use” is a typical term) is a short-term rental.” **Exhibit A**, Section 3 to *Norusis Aff.*

33. “Type C Short Term Rentals are not permitted in the City.” *Id.*, Section 4(A).

34. There was no rational basis in permitting Type A and B STRs, but excluding Type C:

Q Are you aware of any increase in crime from short-term rentals for people that have homesteaded homes versus nonhomesteaded homes?

A Not at all.

...

Q Are you aware of any increase in crime or nuisances from dedicated short-term rentals versus hosted or unhosted short-term rentals?

A No.

Q Are you aware of any increase in noise complaints from dedicated short-term rentals versus hosted or unhosted short-term rentals?

A No. You’re talking about this community; right?

Q Yes, sir.

A No

...

Q What discussion do you recall the Planning Commission had as to why type C short-term rentals are not permitted in the City?

A What are type C? Can you read it to me?

Q Yep. It's short-term rental type C is a dwelling or portion thereof that is offered to transient guests for a period of less than 30 consecutive days where the primary property use is a short-term rental.

And then if we go right here under 4A it says type C short-term rentals are not permitted in the City.

A I think that was to discourage investors to come into the city and purchase house for dedicated short-term rentals.

Q Any other discussion you can recall as part of the Planning Commission as to why type C short-term rentals were not permitted?

A I think that's the one I recall. There may be some other discussions, but I think that was the strong point.

...

Q Are you aware of any increased crime or nuisances or noise complaints from short-term rentals for nonowner-occupied properties?

A No.

**Exhibit A**, p. 54:24-55:2, 59:11-21, 59:22-60:17, 63:7-10 to the *BMS Aff.*

**THE ORDINANCE IS IMPOSSIBLE TO COMPLY WITH:**

35. Section 4 provides, in pertinent part, as follows for the issuance of a Short Term Rental

License:

A. License required. No property, structure or dwelling may be used as a Short-Term Rental (Type A, B or C) unless an application is submitted and a license is first granted by the City provided, however, that Short-Term Rentals located exclusively within the Central Business District shall not be subject to the restrictions of this Ordinance. The License shall be entered on a short-term rental registry. Type C Short Term Rentals are not permitted in the City.

B. Issuance. All Short-Term Rental Licenses shall be issued administratively by the City Clerk pursuant to the terms contained herein.

....

E. Criteria for Issuance. Prior to issuance of a Short-Term Rental License hereunder, the applicant shall ensure and the City Clerk, or if requested by the Clerk, City Council, that the **following criteria are met**:

a. The licensee accurately certifies on the application form that all applicable items found in this Section are satisfied. In addition, the **certification shall constitute an ongoing assurance of compliance herewith**. Such items **shall**, but not be limited to, the following:

i. **Short Term Rentals are a permitted use in the zoning district of the subject property...**

**Exhibit A**, Section 4 to *Norusis Aff.* (emphasis added).

36. The Property is zoned St. Croix Urban Residential. *Norusis Aff.*, ¶ 18; **Exhibit A**, p. 58:18-19 to the *Schwartz Aff.*

37. Most importantly, STRs are not a permitted use in any zoning district within the City.

**Exhibit A**, p. 69:1-4 to the *Schwartz Aff.*

Q Ms. Peterson, I'm going to show you, I'm on the City's website here, and specifically I'm on the zoning ordinance. Do you see that?

A Yes.

Q And the City maintains the zoning ordinance on its website that's [marineonstroix.org](http://marineonstroix.org); correct?

A Yes.

Q And earlier I believe you testified that Mr. Norusis's property is under, is classified as Urban Residential District; is that right?

A Correct.

Q So if we look at 507.2 here, short-term rentals are not specifically defined – or is a permitted use for St. Croix Urban Residential District; correct?

A Correct.

Q As the zoning administrator and city clerk and city treasurer, it is your understanding that short-term rental would fall under home occupation?

A No.

...

Q (By Mr. Schwartz, continuing) But you would agree with me, ma'am, that under the current zoning ordinance of the City, short-term rentals aren't even a permitted use for St. Croix Urban Residential District?

A They are not listed, correct.

Q And that's actually true for – it's not just St. Croix Urban Residential.

If I scroll up here to St. Croix Rural Residential District, which is 505.2, short-term rentals aren't permitted there either; correct?

A Correct.

**Exhibit A**, p. 73:1-24, 74:18-75:4 to the *Schwartz Aff.*; **Exhibit C** to the *Schwartz Aff.* attaching the “Permitted Uses” for each zoning district (Single Family Rural, St. Croix Rural Residential District, Single Family Urban, St. Croix Urban Residential District, Village Center, Limited Industry, Lower St. Croix River Overlay District and Floodplain) within the City – none of which permit Short Term Rentals.

38. The City's Planning Commission has provided no recommendations or amendments to the comprehensive zoning plan for STRs and is not making any updates to the Zoning Code as it relates to STRs. **Exhibit A**, p. 55:3-7, 61:22-25 to the *BMS Aff.*

## THE CITY'S FAILURE TO COMPLY WITH THE MINNESOTA RULES OF CRIMINAL PROCEDURE:

39. The Ordinance provides that “[o]perating a Short-Term Rental without a license shall constitute a misdemeanor and shall constitute a fine of \$1,000.” **Exhibit A**, Section 6(A)(2) to *Norusis Aff.*
40. Norusis has received no citations for any violation of the Ordinance. *Norusis Aff.*, ¶ 14.

### ARGUMENT

Summary judgment is vital to judicial procedure and is appropriate in cases, like the present one, where there are no genuine issues of material fact, and the law allows only one conclusion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 327 (1986); Minn. R. Civ. P. 56.01.

The City cannot defeat summary judgment simply by asserting legal or factual conclusions or relying on general statements of speculation. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995); *R.A., Inc. v. Anheuser – Busch, Inc.*, 556 N.W.2d 567, 569 (Minn. Ct. App. 1996), *review denied* (1997). Rather, the City must present admissible evidence that specific facts material to its position present a genuine dispute that requires resolution by a fact finder. *Nicollet Restoration*, 533 N.W.2d at 848.

To “raise a genuine issue of material fact[,] the nonmoving party must present more than evidence 'which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.'" *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364 (Minn. 2009), *quoting DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). The provision of "mere allegations [is insufficient] to survive summary judgment." *DLH*, 566 N.W.2d at 71.

As it relates to the City's counterclaims, this case presents the circumstances outlined in Minn. R. Civ. P. 56.03(a)(2) that summary judgment is appropriate because the City has not and "cannot produce admissible evidence to support the fact."

**I. THE ORDINANCE IS UNCONSTITUTIONAL AND UNENFORCEABLE.**

The City asserts that the Ordinance was adopted using its police powers. To properly exercise police powers, the business or trade had to injuriously affect the public health, morals, safety, convenience, or general welfare. The evidence is undisputed that STRs and events did not have any injurious affect. As a result, the Ordinance was not properly adopted. Separately, the Ordinance violates the equal-protection clause as it creates multiple classes of individuals, treated differently under the Ordinance, without justification. And third, the Ordinance is impossible to comply with and therefore unenforceable. For each of these independent reasons, summary judgment should be granted as requested by Norusis.

"The constitutionality of an ordinance presents a question of law". *Dean v. City of Winona*, 843 N.W.2d 249, 258 (Minn. Ct. App. 2014), *review granted* (Minn. May 20, 2014) *and appeal dismissed* (Minn. Aug. 5, 2015). "[T]he interpretation of an existing ordinance is a question of law for the court." *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

**a. The City's police power argument fails.**

The City **may only** exercise its police power to "regulate by license any business or trade which may ***injuriously affect*** the public health, morals, safety, convenience, or general welfare." *City of St. Paul v. Dalsin*, 71 N.W.2d 855, 858 (Minn. 1955) (emphasis added). "But even these powers are limited." *In re 1994 and 1995 Shoreline Imp. Contractor Licenses of Landview*



*Landscaping Inc.*, 546 N.W.2d 747, 750 (Minn. Ct. App. 1996). Such power is limited to those which “impose such restraints upon private rights as are **necessary for the general welfare.**” *Id.* (emphasis added). Indeed, it is only once a “business becomes of such a character as to be **sufficiently affected with public interest**, [that] there may be a legislative interference and regulation of it in order to secure the general comfort, health, and prosperity of the state, provided the measures adopted do not conflict with constitutional provisions, and have some relation to, and some tendency to accomplish, the desired end.” *Dean*, 843 N.W.2d at 257 (emphasis added) quoting *State ex rel. Beek v. Wagener*, 80 N.W. 633, 635 (Minn. 1899). If the Ordinance has “**no substantial relationship to public health, safety, morals, or general welfare**”, the **exercise of the City’s police power is unconstitutional.** *County of Freeborn v. Claussen*, 203 N.W.2d 323, 326 (Minn. 1972) (emphasis added).

There is no evidence that STRs were in any way injurious to the public health, morals, safety, convenience, or general welfare of the City. The City’s Zoning Administrator, Clerk, and Treasurer and Chairperson of the Planning Commission both testified under oath that there were no injurious affects to the public health, morals, safety, convenience, or general welfare from STRs or Norusis’ use of the Property. And the few City residents that responded to the City’s sole survey on the issue overwhelmingly stated a need for STRs and that STRs should be allowed in the City.

The City conducted no studies and has no data on any injurious affect from STRs or events on the City, on any neighborhoods in the City, on any residents within the City, or any neighborhood quality in the City.

The City conducted no studies and has no data that STRs or events increased crime, nuisance claims, or zoning violations.

Before the Ordinance, there were no police calls because of STRs or events, criminal activity from STRs or events, noise complaints from STRs or events, or zoning violations written for STRs or events.

The City did not retain any independent consultants to study the effect of STRs or events and did not conduct any cost-benefit analysis to regulating STRs or events.

There is a defining silence of any admissible evidence that STRs or events were in any way injurious to the public health, morals, safety, convenience, or general welfare of the City thereby necessitating the adoption of the Ordinance. The lack of any such evidence establishes that there was not a proper exercise of police power in adopting the Ordinance.

A review of *Dean*, 843 N.W.2d 249, decided on summary judgment, highlights and distinguishes between when a city properly exercises its police powers and what occurred here. While *Dean* did not regulate STRs, but “the number of lots on a block that are eligible to obtain certification as a rental property”, *Dean*, 843 N.W.2d at 253, the case is instructive and was previously heavily relied on by the City in opposition to Norusis’ Motion for Temporary Injunction.

In *Dean*, the City of Winona “decided to **seek studies and findings** on the effect of rental housing on the area.” *Id.* at 254 (emphasis added). The City of Winona formed a task force that found that “52% of the complaints received by the Community Development Department (CDD) related to rental properties.” *Id.* The task force also found that “student rental housing tend to become run-down and unattractive”, the “CDD found that 95 of the 99 addresses that had two or

more calls for police service based on noise and party-related complaints were rental properties”, and the planning commission noted that “52% of the zoning violations that resulted in written violations during 2004 were for rental properties.” *Id.* The City of Winona also retained a consulting firm (the Hoinsington Koegler Group Inc.) to provide a report about the rental-housing concentration on neighborhood quality and liveability which concluded that: “the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods and that the concentration of rental housing leads to a decreased neighborhood quality and liveability.” *Id.* at 255 (internal quotations omitted).

Based on these comprehensive studies finding an increase in crime, nuisances, zoning violations, and dilapidated properties from renting, the City of Winona adopted an ordinance that provided that rental properties must obtain certification from the City of Winona as a rental property and that only 30% of the number of lots on a block are eligible for such certification. *Id.* at 256. The City of Winona included “an exception for rental properties that were certified when the 30% rule was adopted”. *Id.*

*Dean* highlights the inadequacies of the City’s actions here. The City did not seek out any studies or findings on the effect STRs or events have on the City or its residents. There is no evidence that STRs or events increased complaints to the City, increased calls to the police for noise or party-related complaints, or that STRs were run-down properties. The City did not retain an independent consulting firm to provide a report on STRs or events and the impact they have on neighborhood quality. The record is also barren that STRs or events led to increased levels of nuisance and police violations or decreased neighborhood quality or liveability.

Because STRs and events have not injuriously affected the public health, morals, safety, convenience, or general welfare, the Ordinance was not properly adopted.

STRs and events have not become of such a character as to be sufficiently affected with public interest thereby requiring interference and regulation by the City. Instead, this Ordinance was adopted to appease Norusis' unhappy neighbors that a formally incarcerated individual lived next to them with the hopes that adoption would force him to move. Because the Ordinance "has no substantial relationship to the public health, safety, morals or general welfare", it is unenforceable. *Hyland*, 431 N.W.2d at 872 quoting *County of Freeborn*, 203 N.W.2d at 326.

**b. The Ordinance violates the equal-protection clause.**

"A facial equal-protection challenge alleges that the statute creates at least two classes of individuals, which are treated differently under the statute, and that this difference in treatment cannot be justified." *Matter of Griepentrog*, 888 N.W.2d 478, 491 (Minn. Ct. App. 2016) citing *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980). The Ordinance restricts one class of persons (Type C) which are not imposed on others (Type A and B) engaged in the same business (STRs) and under similar circumstances. The City produced no evidence or testimony that this difference in treatment can be justified.

There is no evidence, information, data, or studies that Type C STRs caused higher crime or more nuisance calls or additional domestic disturbances than Type A or B STRs.

Both Type B and Type C STRs are unhosted STRs. The only difference between Type B and Type C STRs is that Type C's primary purpose is STR while a Type B is the homeowner's "Primary Residence". If there is a limit on the number of days a property can be used as an STR, whether the homeowner uses the property as his/her "Primary Residence" or primarily as an STR

has no impact. As such, there is no justification for permitting Type B STRs, but prohibiting Type C STRs.

This unequal treatment requires ruling that the Ordinance is unconstitutional as a violation of the equal protection clause. *City of St. Paul*, 71 N.W.2d at 860 (declaring ordinance unconstitutional); *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980) (“the equal protection clause provides protection against arbitrary discrimination resulting from the express terms of a statute as well as from a statute’s improper execution”); *Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470, 476 (Minn. Ct. App. 2013) (holding that Minn. Stat. § 268.035, subd. 20(20) (2012) violated equal protection because it provided that immediate-family-member caregivers were not covered under the unemployment statutes but non-immediate-family-member caregivers were covered); *Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444, 447, 449, 453 (Minn. Ct. App. 2012) (holding that a pay cut imposed on relative caregivers but not on caregivers who were unrelated to their patients violated equal protection because both groups were “required to comply with the same statutes, rules and regulations” and were thus similarly situated).

**c. The Ordinance is impossible to comply with and therefore unenforceable.**

To obtain a license pursuant to the Ordinance, the licensee must certify and Ms. Peterson as the City’s Clerk must verify, that “Short Term Rentals are a permitted use in the zoning district of the subject property.” **Exhibit A**, Section 4(a)(ii) to the *Norusis Aff.* The City’s Zoning Ordinances make clear, however, and the City’s Zoning Administrator acknowledged during her deposition, there are no zoning districts which permit STRs. As a result, it is impossible for anyone to comply with the Ordinance. Under the “void for vagueness doctrine”, because the Ordinance is impossible to comply with, its is unenforceable:

The doctrine, which stems from common-law principle of strict construction and nonenforcement of incomprehensible penal statutes, is now embodied in the constitutional command of due process. When it is claimed that penal statutes or ordinances are void or unenforceable for unconstitutional uncertainty, the question to be determined is whether their ‘words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law’. Such a legislative enactment offends the first essential of due process when it forbids the doing of an act or a course of conduct in language so vague ‘that men of common intelligence must necessarily guess at its meaning and differ as to its application.’ We have applied these fundamentals to cases involving similar attacks on statutes proscribing a course of conduct as well as specific acts.

*City of St. Paul v. Franklin*, 175 N.W.2d 16, 18 (Minn. 1970) quoting *Champlin Refining Co. v. Corporation Comm.*, 286 U.S. 210, 243 (1932); *State v. Hyland*, 431 N.W.2d 868, 871 (Minn. Ct. App. 1988) (“Vague statutes are prohibited under the due process clause of the fourteenth amendment.”); *Humenansky v. Minnesota Bd. of Md. Exam’rs*, 525 N.W.2d 559, 564 (Minn. Ct. App. 1994), *review denied* (Minn. Feb. 14, 1995) (a law is void because of vagueness if is so indefinite that people “must guess at its meaning.”).

There can be no conclusion other than that the Ordinance is unenforceable. Under the plain language of the Ordinance and the City’s Zoning Codes, it is impossible to obtain a license from the City to operate a STR. As a result, the Ordinance must be struck down.

**II. THE COUNTERCLAIM MUST BE DISMISSED AS THE ORDINANCE IS UNENFORCEABLE, THE CITY FAILED TO ISSUE A CITATION, AND AS THE CITY HAS NO ADMISSIBLE EVIDENCE OF ANY VIOLATION.**

Because the Ordinance is unconstitutional and unenforceable, the City’s Counterclaim seeking to enforce the Ordinance must be dismissed. The City also failed to issue a citation for a misdemeanor and has not offered any admissible evidence establishing any violation of the Ordinance. The City’s Counterclaim must be dismissed.

**a. The City's failure to comply with the Minnesota Rules of Criminal Procedure.**

The Ordinance provides that: “Operating a Short-Term Rental without a license shall constitute a misdemeanor and shall constitute a fine of \$1,000.” **Exhibit A**, Section 6(A)(2) to the *Norusis Aff.* A misdemeanor is defined as “a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.” Minn. Stat. § 609.02, subd. 3; Minn. R. Crim. P. 1.04 (“Unless these rules direct otherwise, “misdemeanor” includes state statutes, local ordinances, charter provisions, or rules or regulations punishable – either alone or alternatively – by a fine or imprisonment of not more than 90 days.”).

The City must issue a citation asserting any misdemeanor not punishable by incarceration. Minn. R. Crim. P. 6.01, subd. 1(c). The citation, defined as a “charging document issued under Rule 6, filed in paper form or by electronic means” under Minn. R. Crim. P. 1.04(e), must include the following:

(a) General Form. Any citation, including an electronic citation, filed or e-filed with the court must be in a form prescribed by this rule and approved by the State Court Administrator and the Commissioner of Public Safety, who shall, to the extent practicable, include in the citation the information required by Minnesota Statutes, section 169.99, subs. 1, 1a, 1b, and 1c, and Minnesota Statutes, section 97A.211, subd. 1. The citation must contain the summons and complaint, and must direct the defendant to appear at a designated time and place or to contact the court or violations bureau to schedule an appearance.

Minn. R. Crim. P. 6.01, subd. 4(a); *see also* Minn. Stat. § 484.82.

The City has not issued a citation as required by Minn. R. Crim. P. 6.01 or Minn. Stat. § 484.82. The requirement that a citation be issued to initiate a misdemeanor violation is fundamental to Norusis' due process rights. Norusis has a right to know the exact date and specific facts which the City alleges violate the Ordinance — a misdemeanor crime. The City

has to strictly comply with Minnesota Rules of Criminal Procedure to lawfully assert a misdemeanor violation against Norusis. The Counterclaim does not comply with the letter nor the spirit of Minn. R. Crim. P. 6.01 as it contains no specific dates of any alleged violations of the Ordinance by Norusis. The City violated the fundamental requirement of the issuance of a citation thereby depriving Norusis of his due process rights and, as a result, the Counterclaim must be dismissed.

**b. The City has produced no admissible evidence of any Ordinance violation.**

To avoid summary dismissal of its Counterclaim, the City must produce admissible evidence of a violation by Norusis of the Ordinance. To date, the City has failed to do so. The Counterclaim must be dismissed with prejudice.

**CONCLUSION**

Norusis asks the Court to grant his Motion for Summary Judgment.

Dated: June 11, 2021

Sincerely,  
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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minnesota Statute § 549.211.

Dated: June 11, 2021

Sincerely,  
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