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SHORT TERM RENTAL OWNERS &
8 NEIGHBORS GROUP OF PACIFIC GROVE
("STRONGpg"), an unincorporated association;
9 JOY COLANGELO; KEVIN DELANEY;
WILLIAM B. HARDER; ALKA JOSHI;
10 KATHRYN KRANEN; and SPENCER TALL

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MONTEREY

14 SHORT TERM RENTAL OWNERS
15 NEIGHBORHOOD GROUP OF PACIFIC
GROVE ("STRONGpg"), an unincorporated
16 association; JOY COLANGELO; KEVIN
DELANEY; WILLIAM B. HARDER; ALKA
17 JOSHI; KATHRYN KRANEN; and SPENCER
TALL,

18 Plaintiffs and Petitioners,

19 vs.

20 CITY OF PACIFIC GROVE, a California
21 municipal corporation; MAYOR AND CITY
COUNCIL OF THE CITY OF PACIFIC
22 GROVE; and
23 DOES 1 through 100,

24 Defendants and Respondents.

Case No.18CV001242

To the Presiding Judge of the Civil Division
[Monterey County Superior Court Rules of
Court , Rule 15.05]

PETITION FOR WRIT OF MANDATE
(Code Civ. Proc., §§ 1085)

AND

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF
(Code Civ. Proc., §§ 526, 527, 1060.)

1 The Plaintiffs and Petitioners SHORT TERM RENTAL OWNERS NEIGHBORHOOD
2 GROUP OF PACIFIC GROVE (“STRONGpg”), an unincorporated association; JOY
3 COLANGELO; KEVIN DELANEY; WILLIAM B. HARDER; ALKA JOSHI; KATHRYN
4 KRANEN; and SPENCER TALL (“Petitioners”) allege as follows:

5
6 **INTRODUCTION**

7 1. This action seeks issuance of immediate injunctive and mandamus relief to prevent
8 Defendant and Respondent CITY OF PACIFIC GROVE (“Respondent” or “City”) and the
9 MAYOR AND CITY COUNCIL of the City (“COUNCIL”) from taking unlawful and arbitrary
10 action, in excess of their authority, in violation of state and local laws and constitutional
11 protections, and in derogation of the Petitioners’ fundamental vested rights for the continued
12 lawful use of their properties for short-term occupancies and vacation rentals under the City’s
13 Municipal Code, ordinances, and policies as they existed prior to the Respondents’ recent adoption
14 of Ordinance 18-005 on or about February 21, 2018 and it going into effect 30 days thereafter.

15 2. Respondents have recently taken actions to rescind, amend, and rewrite portions of
16 the City’s ordinances and policies applicable to the rights of the owners of property in the City.
17 More particularly, on or about February 21, 2018, the Respondents adopted an ordinance
18 (Ordinance No. 18-005) amending the City’s Municipal Code and policies pertaining to “short-
19 term rentals” (including Pacific Grove Municipal Code Chapter 7.40).¹ The new Ordinance would
20 arbitrarily disregard, terminate, and de-vest the existing rights and entitlements of Petitioners, and
21 others similarly situated, under the Municipal Code and permits properly issued by the City, and
22 would instead create and implement new regulations including (a) an arbitrary “cap” on the
23 number of properties eligible for short term rental (“STR”) use; (b) an arbitrary set of irrational
24 geographic “exclusion zones;” (c) discriminatory, incoherent, and unworkable “density”
25 limitations on properties eligible for approval as STR use or occupancy; and (d) an arbitrary and
26 discriminatory “lottery” to determine the revocation, or continuation, or right to renewal, of
27 permission for STR use or occupancy.

28 ¹ A true and correct copy of Ordinance 18-005 is attached, marked as “Exhibit E.”

1 3. Respondents' actions, including the creation of a new "cap" on the number of
2 permitted short term rentals, and a new "zone of exclusion" and new "density limitations" in
3 conjunction with the Respondent Council's inadequately-controlled delegation to the City
4 Manager to hastily create and implement a novel, complicated, and internally-inconsistent "lottery
5 process" to govern the revocation, continuation, or renewal of licenses or permits for short term
6 rentals would arbitrarily and unlawfully change the terms and conditions of the entitlements
7 previously granted by the City to those, including Petitioners, who have been authorized to
8 improve and use their properties for such short-term occupancies and rentals, and who have been
9 actually and reasonably making use of their properties for such lawful purposes in justifiable
10 reliance on the City's ordinances, policies, and approvals.

11 4. Respondents' actions, as described herein, unlawfully violate, deny, and impair the
12 fundamental vested rights of the Petitioners and others lawfully using their properties for short
13 term occupancy and rentals. Respondents' actions arbitrarily and capriciously prohibit or restrict
14 the reasonable and lawful use of property, abridge constitutionally-protected rights, and are
15 inconsistent with other City policies and plans, including the City's General Plan, and are
16 inconsistent with the City's repeated assurances that existing lawful STR properties and licensees
17 would be protected or grandfathered in the event of changes in City policy. Respondents' actions
18 are in excess of the City's power and authority, contrary to the Respondents' pre-existing policies
19 and representations, and not reasonable on the basis of evidence in the record.

20 5. Respondents' actions, unless enjoined, invalidated, and rescinded, imminently
21 threaten to unlawfully and arbitrarily inflict substantial and irreparable harm on Petitioners, and
22 others similarly situated, and to cause irreparable harm to the City and local community at large.
23 These actions would irreparably disrupt and impair the provision of visitor accommodations and
24 other short term housing opportunities, would change the density and use of residential properties
25 in conflict with local plans and policies, would impermissibly impair or burden public access to
26 the California coast and coastal zone contrary to State law and the City's Local Coastal Plan,
27 would impair, burden or prevent planning, improvements and investments to provide suitable
28 housing accommodations, and would negatively impact the collection of taxes and revenues, as

1 well as inflict other irreparable harms on the local economy, residents, visitors, and workers
2 dependent on the continuing and stable provision of STR opportunities under the existing laws and
3 regulations.

4 6. Petitioners bring this action for judicial review and invalidation of the unlawful
5 actions of Respondents, and for injunctive relief to preserve the *status quo* and maintain the
6 continuing use and compliance of existing licensees under the pre-existing ordinances and
7 regulations governing short term rentals in the City, pending final resolution of these issues at trial
8 or on appeal.

9 7. Petitioners bring this action in the public interest, for enforcement of the important
10 public interests and rights embodied in the pre-existing local law, ordinances and policies, as well
11 as the applicable constitutional and state law.

12 8. Immediate injunctive relief is therefore necessary and appropriate to prevent or
13 minimize the otherwise irreparable harms that would be suffered as a result of Respondents'
14 arbitrary and unlawful actions, denying or impairing vested rights, in disregard of actions taken
15 and investments made in reasonable reliance on Respondents' pre-existing plans, policies,
16 representations and approvals, and in disregard of irreparable harms to public interests.

17 **PARTIES**

18 9. Respondent CITY OF PACIFIC GROVE is a municipal corporation, and a charter
19 city organized under the laws of California, located in Monterey County. Respondents, MAYOR
20 AND CITY COUNCIL OF THE CITY OF PACIFIC GROVE are the elected members of the
21 governing board or council of the City (collectively, "COUNCIL") responsible for the legislation,
22 policies, and official actions of the CITY. Respondents have mandatory duties to conduct their
23 actions in conformity with the controlling provisions of the Constitution and state laws.

24 10. Petitioners Joy Colangelo, Kevin Delaney, William B. Harder, Alka Joshi, Kathryn
25 Kranen and Spencer Tall are individuals residing in California and owners of real property located
26 in the City of Pacific Grove, as to which the City previously granted approval for use and
27 occupancy as a short term rental under the City's pre-existing ordinances and policies.

28 11. Petitioner Short Term Rental Owners Neighborhood Group of Pacific Grove (aka

1 “STRONGpg”) is an unincorporated association whose members include individuals, entities, and
2 businesses owning or managing properties in the City of Pacific Grove which have been approved
3 and authorized for use as short term rentals under the City’s pre-existing ordinances and policies
4 or who are injured or threatened by the recent changes in City policies as set forth below.

5 12. Petitioners are informed and believe, and thereon allege, that other persons or parties
6 have or may have responsibility or liability for the wrongful actions set forth below, or interests in
7 the subjects of this litigation, but Petitioners are currently unaware of the true names and
8 capacities of those parties named herein as Does 1 through 100, inclusive, and therefore sues those
9 Respondents/ Defendants by such fictitious names. Petitioners will amend this Petition to allege
10 the true names and capacities of these fictitiously named Respondents/Defendants when they have
11 been ascertained.

12 **JURISDICTION AND VENUE**

13 13. This Court has jurisdiction over this action pursuant to California Code of Civil
14 Procedure §§ 1085, 1060, 526, and 527.

15 14. Venue is proper in this Court because the acts and real property involved in this
16 action are located in this County, and the action seeks relief against Respondents, which are
17 located in Monterey County.

18 **GENERAL FACTUAL ALLEGATIONS**

19 15. In or about January 2010, the Planning Commission of the Respondent City
20 recommended that the City Council adopt City Ordinance No. 10-001, amending the Pacific
21 Grove Municipal Code (“PGMC”), particularly PGMC § 23.64.350, and adding new “Chapter
22 7.40” to the PGMC, “to establish a license process for transient use of residential property,.” to
23 allow and provide for regulation of “transient use of residential property” including short term and
24 vacation rental use. Petitioners are informed and believe, and thereon allege, that the Respondents
25 contend that prior to the adoption of Ordinance 10-001, the Municipal Code prohibited the
26 “transient use” of residential property for remuneration.

27 16. On or about January 6, 2010, the Respondent City Council adopted the Planning
28 Commission’s recommendation, and enacted Ordinance 10-001, effective immediately. In doing

1 so, the Council expressly made findings based on the Planning Commission’s recommendations,
2 and based on an Initial Study and Mitigated Negative Declaration prepared pursuant to the
3 California Environmental Quality Act (“CEQA”), that the proposed adoption of Ordinance 10-001
4 would not have the potential to significantly degrade the environment; would have no significant
5 impact on long term environmental goals; will have no significant cumulative impacts on the
6 environment; and will not cause substantial adverse effects on human beings either directly or
7 indirectly. A true and correct copy of **Ordinance 10 -001** is attached, marked as **Exhibit A**.

8 17. Ordinance 10-001 added Chapter 7.40 to the PGMC, entitled “Transient Use
9 License” which expressly provided that “transient use” – including “short term and vacation
10 rentals”— of residential property for remuneration is an allowed and permissible use, provided
11 that a Transient Use License has been obtained and validly maintained, and a license fee paid.
12 “Transient use” was further defined to mean the commercial use of any residential property, by
13 any person, for transient lodging, occupancy, possession or tenancy for less than thirty (30)
14 consecutive calendar days.

15 18. Ordinance 10-001 further provided that such approvals and licenses would be
16 renewable indefinitely, and would not be revocable in the absence of substantial evidence showing
17 six specific types of misconduct or violation (PGMC § 7.40.180).

18 19. Petitioners subsequently applied for, obtained, and validly maintained and renewed
19 City approvals for “transient use licenses” for their respective residential properties, paid license
20 fees as demanded by the City under the existing Code provisions, paid the City’s transient
21 occupancy taxes, and otherwise fully complied with the applicable provisions of the City’s
22 adopted Municipal Code applicable to short term or vacation rentals of residential property.

23 20. The Petitioners reasonably relied in good faith upon the City’s existing legislation
24 allowing short term and vacation rentals and “transient use of residential property” as a lawful and
25 conforming use under the City’s Municipal Code, and complied with the terms of the Municipal
26 Code in obtaining City approvals and licenses for short term and vacation rentals of their
27 properties. In obtaining the City’s approvals and in investing substantial time, money and
28 resources in adapting their properties to short term residential rental uses, the Petitioners

1 reasonably relied in good faith upon the terms of the City's legislation, and the City's
2 representations and practices assuring that transient use licenses would not be revoked, terminated,
3 or denied renewal in the absence of substantial evidence demonstrating specified forms of
4 misconduct or violations.

5 21. In reasonable and good faith reliance upon the Respondents' legislation, policies,
6 practices and representations, the Petitioners and many others similarly situated to the Petitioners
7 (a) invested substantial time, money, and other resources for the acquisition, improvement,
8 renovation, remodeling, upgrading, maintenance and repair of residential properties so that they
9 would be suitable for use as short term or vacation rental in compliance with the City's standards
10 and regulations over an indefinite period of years, and (b) paid various fees and charges to the City
11 for plan checks, building inspections, and other permits for the conversion and renovation of
12 properties for City-approved STR use; and (c) additionally spent time and money in assuring their
13 on-going compliance with the City's STR requirements, including management, supervision,
14 payment of fees and taxes.

15 22. In reasonable and good faith reliance upon the Respondents' legislation, policies,
16 practices and representations, the Petitioners made long-term retirement planning, real estate
17 purchase and other investment decisions including investments in residential property in Pacific
18 Grove, as described above, in reasonable expectations of continuing sources of financial support
19 from lawful and on-going short term rental uses of their properties.

20 23. As a result of the Petitioners' actions and good faith reliance upon the City's
21 existing legislation and licensing program providing for reasonable expectations of continued
22 lawful use of their properties for STR purposes and on-going City approvals for conforming STR
23 properties and owners (in the absence of good cause for denial), the Petitioners rights to continued
24 lawful and conforming STR use became vested, and not subject to arbitrary revocation, non-
25 renewal, or termination without due process of law and without a demonstration of substantial
26 evidence of misconduct or violation of specified City requirements warranting such extraordinary
27 revocation, non-renewal, or termination.

28 24. Petitioners are informed and believe, and thereon allege, that on or about August 5,

1 2015, the Respondent Council undertook to adopt Ordinance No. 15-016, an “urgency ordinance
2 establishing a moratorium on approval of first time applications for transient use of residential
3 property within the City of Pacific Grove.” That Ordinance imposed “a temporary moratorium on
4 the issuance” of new, first time, “permits, licenses, or entitlements” for transient use of residential
5 properties beyond those already issued. The Ordinance did not modify or limit existing STR
6 permits or entitlements, however, and specifically provided that “renewal of existing permits shall
7 not be inhibited by this measure.” (Ord. 15-016, Section 2 (A).) The ordinance stated that a
8 moratorium on issuance of new first-time STR permits was necessary while Council was directing
9 City Staff to study possible conceptual modifications to the existing policies and provisions under
10 the terms of existing PGMC Ch. 7.40. A true and correct copy of **Ordinance 15-016** is attached
11 hereto, marked as **Exhibit B**.

12 25. Petitioners are informed and believe, and thereon allege, that the Respondents
13 subsequently directed the creation of a “Short Term Vacation Rental Task Force” and the City
14 Staff conducted studies regarding various potential modifications to the existing City legislation in
15 PGMC Chapters 7.40 and 23.64. Petitioners are informed and believe, and thereon allege, that the
16 Task Force reported back and made a series of recommendations to the Council regarding possible
17 changes to the City’s regulation of future STR uses of residential properties in the City in
18 December 2015.

19 26. Petitioners are informed and believe, and thereon allege, that the Respondents
20 referred the proposal for amending the City’s STR program to the City’s Planning Commission for
21 consideration and further public comment at the Commission’s meetings in January 2016; and that
22 Respondents prepared a draft ordinance to amend Chapters 7.40 and 23.64 of the PGMC. The
23 draft of an amending ordinance (eventually revised and adopted by Council as “Ordinance 16-
24 007”) was reviewed by the Planning Commission and recommended for adoption. Ordinance 16-
25 007 recites that, in connection with its consideration of that draft ordinance, the City prepared an
26 Initial Study and Mitigated Negative Declaration pursuant to CEQA; the draft ordinance was
27 “revised after the Negative Declaration was published” but the City asserted that the changes did
28 not constitute substantial revisions under CEQA so recirculation of the Negative Declaration was

1 not required.

2 27. Petitioners are informed and believe, and thereon allege, that on or about April 6,
3 2016, the Respondent Council undertook to adopt Ordinance No. 16-007, “amending Municipal
4 Code Section 23.64.350 and Chapter 7.40 related to the license process for transient use of
5 residential property.” A true and correct copy of **Ordinance 16-007** is attached hereto, marked as
6 **Exhibit C**.

7 28. Ordinance 16-007 amended PGMC Chapter 7.40, and created two new definitions
8 for “short term rental uses; “STR Type A” and “STR Type B,” and established, for the first time, a
9 numerical cap on Type A licenses (limited to not more than 250 STR Type A licenses within the
10 City; there was no cap on the number of Type B licenses); and established, for the first time,
11 purported “density limits” restricting the issuance of new STR Type A licenses in various
12 residentially-zoned areas of the City.

13 29. Petitioners continued to maintain and renew their respective transient use licenses,
14 without interruption or impairment, and to pay all required local fees and transient occupancy
15 taxes, and to comply with the applicable municipal code provisions, notwithstanding the adoption
16 of Ordinance 15-005 or 16-007.

17 30. On or about May 17, 2017, the Respondent Council initiated a public review process
18 pertaining to possible amendment of PGMC Chapter 7.40 regarding short-term rental use of
19 residential properties, and the Council held a special meeting on May 17, 2017, to review the
20 City’s short-term rental program and to receive public comment. Petitioners, and many others,
21 participated in that review process and meeting, and provided comments, questions, and objections
22 both in writing and verbally at public hearing sessions.

23 31. The Respondent Council continued the special meeting and public review process
24 over for further hearings and public comment, and directed City Staff to reassess
25 recommendations regarding proposed amendments to the STR regulatory program, including new
26 restrictions on “density” of STR properties and a cap on the overall number of STR properties
27 licensed in the City, among other issues, and regarding the issues and objections raised by
28 Petitioners and other members of the community.

1 32. During the public review process and various public meetings and hearings
2 conducted by Respondents in 2017, the Respondents repeatedly represented and gave assurances
3 to Petitioners and the public that existing, lawful, and conforming STR properties would not be
4 subjected to new restrictions under the proposed amendments, nor would they be terminated or
5 non-renewed, but would instead be grandfathered as lawful and vested pre-existing uses.

6 33. In or about July 2017, the City drafted an Initial Study and Negative Declaration
7 pursuant to the California Environmental Quality Act (CEQA) to review the possible impacts of a
8 proposed new ordinance that would amend the STR program, and which would incorporate
9 mitigations to ensure that the draft Ordinance (1) will not have the potential to significantly
10 degrade the environment; (2) will have no significant impact on long-term environmental goals;
11 and (3) will have no significant cumulative effect upon the environment.

12 34. On October 18, 2017, the City Council adopted the Initial Study and Negative
13 Declaration, and directed Staff to return to Council with a proposed amending STR ordinance for
14 further review and comment.

15 35. After further review by the City Council at several public meetings, in which the
16 Petitioners participated and communicated questions, issues, and objections to aspects of the
17 proposed new ordinance, on December 20, 2017, the City Council adopted new Ordinance 17-024,
18 “amending Chapter 7.40 of the Pacific Grove Municipal Code pertaining to short-term rentals.” A
19 true and correct copy of **Ordinance 17-024** is attached hereto, marked as **Exhibit D**.

20 36. Ordinance 17-024 provides, in part: “(5) The existence and corresponding
21 regulation of short-term rentals is consistent with the State Law and the Coastal Act, and is
22 permitted under the City’s existing General Plan and Housing Element;” and “(11) Following the
23 City Council’s 2nd read of the Ordinance, the Planning Commission will consider a specific
24 amendment to the General Plan expressly identifying the use of short-term rentals within
25 residential zoning districts.”

26 37. Ordinance 17-024 provides that, upon its effective date, it “shall supersede and
27 repeal Ordinance 16-007.”

28 38. Again, during the public process for review and Council action on new Ordinance

1 17-024, the Respondents represented and assured members of the public, including Petitioners,
2 that although “a lottery system” was discussed, the establishment and implementation of such a
3 lottery system would be deferred indefinitely and held in abeyance. Ordinance 17-024 made no
4 provision for any such STR lottery process or non-renewal of existing licenses, and instead
5 clarified that in the event that the number of existing STR licenses exceeds the 250 cap, “new
6 license applications shall be placed on a waiting list.”

7 39. Notwithstanding the Respondents’ actions in December 2017 and adoption of
8 Ordinance 17-024, and the Respondents’ representations regarding non-disturbance of existing
9 lawful STR properties and licenses, the Respondents abruptly changed positions and scheduled
10 new Council hearings in February 2018 for consideration of further amendments to the City’s STR
11 regulatory program, including drastic, unreasonable, and arbitrary changes to the existing STR
12 program, the impairment of fundamental vested rights, and the imposition of caps on the number
13 of STR licenses, density limits restricting the locations and types of properties eligible for new
14 transient use licenses, and the creation of a lottery system for the revocation of STR licenses.

15 40. Petitioners and many other members of the public protested and objected to the
16 Respondents’ proposed new changes to the STR regulatory program, and properly raised the
17 issues and objections that are included in this action for judicial review.

18 41. Notwithstanding the foregoing objections and public protests, and notwithstanding
19 the failure to properly allow the City’s Planning Commission to consider or provide its
20 recommendations regarding the possible amendment of the City’s General Plan (as directed by
21 Ordinance 17-024) or to provide input as to the new proposed amendments to the STR program
22 embodied in new Ordinance 18-005, and Respondents’ failure to provide adequate public notice of
23 the proposed changes to the STR program or of the proposed action on new Ordinance 18-005, the
24 Respondent Council voted (4-1, with two members absent) to adopt new Ordinance 18-005 on
25 February 21, 2018, “implementing and amending Pacific Grove Municipal Code Chapter 7.40
26 limits on short-term rentals.” A true and correct copy of **Ordinance 18-005** is attached hereto,
27 marked as **Exhibit E**.

28 42. Ordinance 18-005 states, at “Section 2,” that “the following process shall be

1 followed to ensure complete and fair implementation of Chapter 7.40 of Title 7 of the Pacific
2 Grove Municipal Code” and directs that “the City Manager shall conduct a lottery to implement
3 this ordinance.” Section 2 of the Ordinance further purports to direct the City Manager to conduct
4 the STR lottery “as soon as practicable following the effective date of this ordinance but shall not
5 be held before April 1, 2018.”

6 43. Section 2 of Ordinance 18-005 does not purport to amend the Municipal Code to
7 specify the terms, conditions, scope, or operation of any such “lottery process,” and is thus
8 arbitrary, in excess of authority, without effect and not a valid or lawful exercise of the Council’s
9 quasi-legislative authority.

10 44. Ordinance 18-005 subjects existing STR licenses, including Petitioners’ licenses, to
11 new burdens and impairments, including new risk of non-renewal or termination based merely on
12 arbitrary and discriminatory provisions for a new STR lottery process, compounded by additional
13 arbitrary and discriminatory provisions for determining “over-dense blocks” and determining
14 “zones of exclusion” around other STR-licensed properties. The Ordinance provides, in part:
15 “(11) The ordinance addresses density in Over-Dense Blocks. City Council acknowledges there
16 will still be some overlapping Zone of Exclusion (ZOE) remaining in the over-dense blocks, even
17 after thinning down to the 15% density threshold. This Ordinance requires each existing licensed
18 STR be evaluated for its impact on City-wide STR density limits. This ordinance authorizes a
19 lottery system to ensure a fair and equitable implementation of the STR license limits.”

20 45. However, the new STR lottery process, as outlined by Respondents, would not
21 provide for or “ensure a fair or equitable implementation of STR license limits” as mandated by
22 the Ordinance. Instead, the lottery is a complicated, arbitrary and discriminatory process to divest,
23 terminate, or non-renew existing STR licenses and vested rights, using an irrational, inconsistent,
24 and random process to determine which existing STR licenses and vested rights would be subject
25 to revocation or non-renewal, under a flawed and irrational methodology which is not shown to be
26 reasonably-related to any legitimate governmental interest, and under which rights are determined
27 by the luck of the draw and by the luck of the draw of neighboring property owners.

28 The lottery system contains a multi-step process, and includes many errors and deficiencies,

1 including the following: First, the lottery immediately and arbitrarily exempts certain properties
2 from inclusion in the lottery if they are outside the arbitrary ZOE of any other STR, or if they are
3 on a block that is determined to be at or below the mathematically-unsound and discriminatory
4 “Block Density Limit” calculation. The Block Density Limit calculation is flawed by using
5 different and inconsistent units between the numerator and denominator, the end result of which is
6 discrimination against properties that are not single-family residences. The Block Density Limit
7 calculation erroneously divides the numerator (the number of STR units on a block) by the
8 denominator (the number of parcels in a block). By this calculation, blocks that include multiple
9 dwelling units per parcel result in artificially-high Block Density ratings, arbitrarily increasing the
10 likelihood that STRs on those blocks will be revoked through the lottery process. In addition,
11 Respondents failed to produce any evidence demonstrating that this Block Density Limit is
12 rationally related to a legitimate government interest. To the contrary, the record evidence showed
13 that since 2010 there have been fewer than 25 complaints reported about STRs in over 400,000
14 nights of room-stays, none of which complained that STRs were “too dense” on any given block.
15 The evidence and record of the few complaints failed to show any correlation to blocks exceeding
16 the Block Density Limit. Additionally, the provisions of the lottery prohibiting or allowing STRs
17 based on the Zone of Exclusion (ZOE) methodology runs counter to any legitimate government
18 interest, as the end result of arbitrary ZOE restrictions would be to spread out STR throughout the
19 City, thus ensuring that more STRs would be located in proximity to existing homes and
20 residences.

21 46. Second, the lottery randomly selects various blocks scattered throughout the City for
22 “density” analysis under this flawed methodology, and thus fails to provide a rational or coherent
23 basis for application of the lottery to limit or revoke existing STRs.

24 47. Third, the lottery compounds these errors by randomly selecting from the non-
25 exempt STRs in that block to determine which existing licenses not already exempted may be
26 subjected to termination or non-renewal by the City. Only if the STR is outside the ZOE of all
27 other STRs in the City, or, when considering exempt STRs, the STR under review does not
28 exceed the Block Density Limit for the block, may an STR continue.

1 48. Petitioners and other members of the public timely and properly objected to the
2 foregoing actions of Respondents, and have raised numerous objections and issues with regard to
3 the procedural and substantive deficiencies of the new Ordinance 18-005, and the Council's
4 improper delegation of authority and directive to the City Manager to invent and implement an
5 inequitable and arbitrary "STR lottery process" which will impact and impair the fundamental
6 vested rights of Petitioners and many others who have reasonably relied in good faith and have
7 incurred expenses, liabilities, and long-term obligations in compliance with the City's existing
8 ordinances, policies and practices.

9 49. Petitioners are informed and believe that the Respondents and City Staff are
10 currently working to create an STR lottery process and intend to implement it in the imminent
11 near future after April 1, 2018. Such a lottery would impair the rights and interests of the
12 Petitioners and many others similarly situated, as alleged herein, and immediately threatens
13 holders of existing and vested rights under the STR program, as well as members of the
14 community and public at large with irreparable and permanent harm.

15 50. Petitioners have duly pursued and exhausted administrative remedies, to the extent
16 that such remedies were available, feasible, and not otherwise futile.

17 51. Respondent's actions improperly subject Petitioners, and the public generally, to
18 irreparable harm or the imminent risk of irreparable harm. Petitioners have no plain, speedy and
19 adequate remedy at law to set aside and correct Respondents' arbitrary actions, or to prevent or
20 mitigate such harm other than the relief sought in this action, including the issuance of immediate
21 temporary and preliminary injunctive relief.

22
23 **FIRST CAUSE OF ACTION**

24 **[Petition for Writ of Traditional Mandate Pursuant to Code of Civil Procedure § 1085]**

25 52. Petitioners hereby incorporate the allegations of the foregoing paragraphs as though
26 set forth in full herein by this reference.

27 53. Respondents acted arbitrarily and capriciously, and in excess of their authority, by
28 purporting to adopt Ordinance 18-005, and in derogation of Petitioners' rights, and mandamus

1 relief is appropriate and necessary on many grounds, including without limitation, as follows:

2 (a) Respondents' actions were unreasonable, not reasonably related to
3 legitimate governmental interests within the scope of Respondents' authority, and were not
4 supported by substantial evidence, or any evidence, sufficient to justify the actions or the resulting
5 harms to Petitioners and the community as a whole;

6 (b) Respondents' actions were unreasonable, arbitrary and capricious, by
7 attempting to create and impose a new regulatory program, applicable to existing properties and
8 owners operating lawfully as STRs and in conformity with the City's existing ordinances and
9 policies and representations prior to the enactment of Ordinance 18-005, and not otherwise subject
10 to revocation, non-renewal, or termination of their transient use licenses, and without being
11 subjected to the arbitrary caprice of a new lottery system, without due process of law and
12 substantial evidence demonstrating specified violations of Code or specified misconduct;

13 (c) Respondents' actions were unreasonable, arbitrary and capricious, in that
14 they create a new complex of restrictions on properties that may be deemed eligible for STR use
15 or transient use licensing, based on vague, discriminatory, and arbitrary "density" factors and
16 based on vague, discriminatory, and arbitrary "zone of exclusion" factors, in which the right to use
17 residential property for otherwise allowable STR uses is unreasonably and capriciously dependent
18 upon arbitrary circumstances regarding the uses of neighboring properties.

19 (d) Respondents' actions were unreasonable, arbitrary and capricious, in that
20 the inter-relationship between the new STR density factors, zone of exclusion factors, the new
21 overall numerical cap on allowable STR licenses, and categories of residential zoning ("R-1, R-2,
22 R-3, R-4") make it impossible for any "STR lottery process" to "ensure a fair and equitable
23 implementation of the STR license limits" as mandated by the Council in Paragraph 11 of
24 Ordinance 18-005;

25 (e) Respondents' actions were unreasonable, arbitrary and capricious, in that
26 they would wrongfully impair or divest Petitioners' fundamental vested rights in their existing and
27 lawfully conforming, City-approved, use of their properties for short term or vacation rentals
28 under the laws in effect that those rights became vested in Petitioners;

1 (f) Respondents' actions were unreasonable, arbitrary and capricious, and
2 unlawfully and unreasonably discriminate between persons and properties deemed eligible to be
3 approved for STR use or to obtain or renew a transient use license under the amended terms of
4 Ordinance 18-005;

5 (g) Respondents' actions were unreasonable, arbitrary and capricious, in that
6 they unlawfully attempt to delegate the Council's non-delegable quasi-legislative authority to
7 regulate land uses to staff, unlawfully directing the City Manager to create and implement an
8 unspecified "STR lottery process" without codified directions or standards and without further
9 Council review and approval;

10 (h) Respondents' actions were unreasonable, arbitrary and capricious, and in
11 excess of authority in that Petitioners are informed and believe, and thereon allege, that the recent
12 amendments to the City's STR program are not consistent with the City's applicable General Plan;

13 (i) Respondents' actions were unreasonable, arbitrary and capricious, and in
14 excess of authority in that Petitioners are informed and believe, and thereon allege, that the recent
15 amendments to the City's STR program are not consistent with the City's approved Local Coastal
16 Plan or the policies promoting coastal access under the California Coastal Act;

17 (j) Respondents' actions were unreasonable, arbitrary and capricious, and in
18 excess of authority and procedurally deficient in that they were taken without adequate public
19 notice, or opportunities for public consideration and recommendations by the City's Planning
20 Commission prior to the Council action on Ordinance 18-005 or the lottery system;

21 (k) Respondents' actions were unreasonable, arbitrary and capricious, in that
22 Respondents were equitably estopped, based on their prior representation, policies and practices
23 and Petitioners' reliance thereon, from attempting to subject Petitioners' to new STR regulations
24 which might allow revocation or non-renewal of STR licenses without good cause or due process
25 of law, or which might otherwise impair the continued lawful STR use in conformity with pre-
26 existing laws and regulations.

27 54. Based on the foregoing facts and actions, and without limitation, the Respondents'
28 actions in adopting Ordinance 18-005, and in purporting to direct the City Manager to create and