

**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE**

ELIJAH SHAW and PATRICIA RAYNOR,)	
)	
Plaintiffs,)	
)	
v.)	No. _____
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY,)	
)	
Defendant.)	

COMPLAINT

Introduction

1. This is a civil rights complaint for relief from an arbitrary and unreasonable restriction on home-based businesses in Nashville’s zoning ordinance. Nashville allows businesses to be operated from residential homes, but prohibits most (though not all) of them from serving clients onsite. Nashville is an outlier, both within Tennessee and among all major cities nationwide, in keeping such a harsh law on its books. This prohibition makes outlaws out of perhaps thousands of Nashvillians who use their homes for ordinary, common occupations and are simply trying to earn an honest living—including the Plaintiffs, a recording engineer and a cosmetologist. Nashville’s prohibition, as written and enforced here, is not rationally related to any legitimate government interest, and thus violates Plaintiffs’ rights under the Tennessee Constitution.

Jurisdiction and Venue

2. Plaintiffs' causes of action arise under Tenn. Const. art. I, § 8, and art. XI, § 8.

3. This Court has jurisdiction pursuant to Tenn. Const. art. VI, § 8, and Tenn. Code Ann. §§ 16-11-101 *et seq.*, 29-1-101 *et seq.*, and 29-14-102.

4. This Court has authority to enter a declaratory judgment and to provide permanent injunctive relief pursuant to Tenn. Code Ann. §§ 29-1-101 *et seq.*, 29-14-102, 29-14-103, and Tenn. R. Civ. P. 65.01 *et seq.*

5. Venue is proper under Tenn. Code Ann. § 20-4-101.

Parties

6. Plaintiff Elijah "Lij" Shaw, an individual, is a 50-year-old single father and Nashville homeowner who lives at 2407 Brasher Avenue.

7. Plaintiff Patricia "Pat" Raynor, an individual, is a 66-year old widow and Nashville homeowner who lives at 3233 Knobview Drive.

8. Defendant Metropolitan Government of Nashville and Davidson County ("Nashville") is a political subdivision of the State of Tennessee. It is a metropolitan government and public corporation, capable of suing and being sued. Nashville, Tenn., Metro. Charter § 1.01. It enacted the Client Prohibition, described in paragraph 9 below, and has enforced it against the Plaintiffs.

Statement of Facts

9. Plaintiffs challenge a single sentence within the Zoning Code for Metropolitan Nashville and Davidson County. It states, with respect to most (but not all) home-based businesses (termed "home occupations" by the Zoning Code), that "[n]o clients or patrons may be served on the property." Nashville, Tenn., Metro. Code § 17.16.250(D)(1). Plaintiffs shall refer to this sentence as the "Client Prohibition."

I. Lij Shaw

10. Lij Shaw is a lifelong record producer who has lived in Nashville since moving from Boston in 1991. He has an established presence in the recording industry and has recorded nationally renowned, Grammy Award-winning performers such as John Oates, Jack White, Wilco, Adele, and the Zac Brown Band.

11. In 2000, Lij bought the house in East Nashville where he still lives.

12. In 2005, Lij's then-wife gave birth to his daughter Sarayah, who is now 12.

13. Lij and Sarayah's mother separated in 2009, and Lij has been raising Sarayah by himself ever since. (Lij and Sarayah's mother are now divorced.) Lij is a devoted father, takes an interest in Sarayah's school and social life, and it is important to him that he spend as much time with Sarayah as he can.

A. Lij Safely and Quietly Operated a Home-Based Recording Studio

14. Sarayah's birth in 2005 inspired Lij to take charge of his work life and find a way to be close to his family.

15. Lij accordingly launched two business ventures: the Hay Bale Studio, a recording studio in a mobile trailer encased in hay bales at the annual Bonnaroo Music Festival in Manchester, Tennessee; and the Toy Box Studio, a year-round recording studio located in Lij's detached garage at his home in East Nashville.

16. The Toy Box Studio serves as a permanent base for Lij's recording business, as well as a series of podcasts that Lij both monetizes and uses to raise awareness for his recording brand.

17. Well-respected musicians use the Toy Box Studio. For example, Mike Farris's album *Shine for All the People*—which won the 2015 Grammy Award for Best Roots Gospel Album—was mixed at the Toy Box Studio.

18. Lij's studios use a historic recording console that was originally built for MCI's Miami-based Criteria Studios. The console was used in the 1970s to record classic hit songs including the Bee Gees' "Stayin' Alive," the Eagles' "Hotel California," and Jimmy Buffett's "Margaritaville."

19. In addition to the financial benefits, the Toy Box Studio allows Lij to work at home and remain close to Sarayah. He has raised Sarayah with the Toy Box Studio as a constant feature in her life. Sarayah sometimes sits in on recording sessions, meets musicians, and generally enjoys playing with her father's recording and musical equipment.

20. Lij keeps peace with his neighbors and is one of the longer-tenured residents on his block. His studio is invisible and inaudible from the street; his neighbors know him primarily as an avid barefoot runner and Sarayah's father, not as someone who operates a recording studio in their midst (though he does not conceal that fact).

21. A busy train track runs about a block behind Lij's house. The train track is, by a wide margin, the chief source of noise in Lij's neighborhood.

22. As one does with a professional recording studio, Lij has the Toy Box Studio fully soundproofed. Soundproofing is crucial for preventing outside noises from bleeding into recordings, and works both ways: when no street noise comes in, no sound from recording sessions makes it to the street.

23. Lij has a long driveway, with access to both the street and back alley, that accommodates clients' vehicles. The Toy Box Studio requires no parking space on the street.

24. Lij also maintains a high fence along his driveway, for the privacy of both his clients and his neighbors.

25. In over ten years, not one of Lij's neighbors has ever complained to Lij about the Toy Box Studio, for any reason.

26. It is legal for Lij to have a home recording studio. The Zoning Code merely prohibits Lij from serving clients there.

B. Without Any Evidence that His Recording Studio Was Disrupting His Neighborhood, the Codes Department Forces Lij to Cease Advertising.

27. On or about September 1, 2015, Lij received a notice to correct from Nashville's Department of Codes & Building Safety (the "Codes Department" or "Codes"), informing him that he was suspected of operating a recording studio and ordering him to cease and desist by September 17 or else face prosecution, fines of \$50 per day, and/or court costs.

28. The only zoning provision cited in the notice, Metro. Code § 17.08.030, consists of a land-use table which now runs approximately 198 rows by 32 columns. The notice did not cite the Client Prohibition, but later events have made it clear that Lij received the notice because he was suspected of violating the Client Prohibition.

29. On September 17, 2015, Lij got a phone call from an officer at Codes to verify that he had brought his home into compliance.

30. The Codes officer narrated Lij's website and social-media postings back to Lij over the phone, pointing out that Lij was recording music and podcasting from his home.

31. Lij cooperated, telling the officer that he had a home recording studio and wished to bring it into compliance. The officer then invented ways Lij would have to comply: she ordered him to remove his recording rates and welcome video from The Toy Box Studio's website; to remove The Toy Box Studio's address from Google Maps; and to stop posting videos of bands performing in his studio to YouTube (even though Internet postings do not violate the Client Prohibition). The officer ended the call with a warning

that Codes might have to schedule an inspection to verify that all recording equipment had been removed from Lij's home.

32. About an hour later, the officer called back and left Lij a voicemail stating that her supervisor had agreed not to inspect Lij's property. But she warned Lij that if anyone ever turned The Toy Box Studio into Codes in the future, Codes would file a warrant and take Lij to court.

33. Lij has since refrained from posting his recording rates and welcome video on The Toy Box Studio's website; from listing The Toy Box Studio's address on Google Maps; and from posting videos of bands performing in his studio to YouTube. His business has suffered as a result.

34. Lij later learned that Codes doesn't enforce the Client Prohibition unless somebody turns a home-based business in, which can be done anonymously on Codes's website.

35. Lij never learned who turned him into Codes. He lives in fear that The Toy Box Studio will be turned in to Codes again, which could shut down the business and destroy over \$100,000 of investment.

36. Lij also wants to resume a full online presence. Lij's online advertising and presence are critical both as a source of revenue and brand awareness for a modern entrepreneur like Lij, especially in the fast-paced recording industry.

37. Lij would like to earn a living secure in the knowledge that his business, which imposes no harm on his neighborhood, is legal. The Client Prohibition currently makes that impossible.

II. Pat Raynor

38. Pat Raynor is a lifelong hairstylist who has been, with rare exceptions, self-employed ever since she began her career in 1970.

39. Pat is, and at all relevant times has been, licensed as a cosmetologist by the Tennessee Board of Cosmetology and Barber Examiners.

40. Pat moved to Nashville with her late husband Harold in 1989, so that Harold could take a new job.

41. Pat and Harold began renting the house Pat still lives in, in Nashville's Donelson neighborhood, in 1997. They then bought the house on September 16, 1999.

42. Around that time, Harold began suffering from a progressive kidney failure that reduced his ability to work and required Pat to spend extra time caring for him while shouldering the financial burden on the family.

43. Harold's condition forced him to stop working in October 2008, leaving Pat's household without a second income.

44. Harold passed away in April 2009, widowing Pat and leaving her to sort out the extensive medical bills from his ten-year illness.

45. Pat could not afford to stop working. This is still true today—over eight years later—and Pat expects that she will never be able to afford a retirement.

A. Pat Decides to Move Her Business Into Her Home

46. After two years grieving the loss of her husband, Pat resolved in 2011 to take charge of her financial security in her golden years. This led her to decide that she should move her business into her home.

47. There were intertwined health, safety, and financial considerations that drove Pat to make that decision. At age 60, it was becoming difficult for Pat to work a full-time schedule. She no longer had the energy she had in her physical prime, and she needed to cut back her hours in order to prolong her career.

48. The overhead cost of commercial rent, however, was a complete barrier to working part-time. At the market rate Pat can charge, she must work full-time in order to rent a commercial studio for her hairstyling practice.

49. Pat is now 66, and the considerations just described have all grown in importance to her. Moving her practice into her home would eliminate the overhead cost of commercial rent, make it possible to work part-time, prolong her career, and allow Pat to maintain her independence.

50. Pat's sensible idea to open a home-based business has been frustrated, however, by the Client Prohibition.

51. It is legal for Pat to have a home hair salon. The Zoning Code merely prohibits Pat from serving clients there.

52. In the six years since 2011, Pat has taken three successive approaches to obtain legal approval for a home-based business through civic engagement with her local and state governments: seeking municipal legislative change, then a residential-shop permit from the Tennessee State Board of Cosmetology, then seeking rezoning as a "Specific Plan" under a more flexible provision in Nashville's Zoning Code.

53. All three approaches failed despite widespread acknowledgement by Nashville councilmembers, commissioners, and officers that the Client Prohibition is "dishonest," against "the American way," and otherwise not reflective of Nashville's official policy or civic attitude toward home-based businesses—in other words, arbitrary and unreasonable.

B. Pat Voices Support for a 2011 Effort to Reform the Client Prohibition

54. At the start of 2011, Pat was unaware of the Client Prohibition and thought working from home was a simple matter of getting a business permit from the Codes Department.

55. Pat contacted Sonny West at Codes to ask about such a permit, and was informed that would not be possible due to the Client Prohibition. Mr. West advised her to contact then-Councilman Bruce Stanley, who was sponsoring legislation to legalize home-based cosmetology and barber shops.¹

56. Mr. Stanley's proposed ordinance attracted the interest of another then-Councilman, Mike Jameson, who would propose another ordinance to repeal the Client Prohibition and legalize home-based "cottage industry" generally—defined to include "one-chair barber[s] or beautician[s]"—for up to ten clients per day and no more than two per hour.²

57. Pat attended Mr. Jameson's community meetings and tried to support the bill, but to no avail. Her own Councilman at the time, Phil Claiborne, told her that he did not wish to be involved in a neighborhood situation. Mr. Jameson's bill failed on second reading on July 5, 2011, by a vote of 21–11 with 5 abstaining and 3 absent.

C. Pat Seeks and Obtains State Approval for a Residential Shop, Learns the Hard Way that Nashville Can Still Shut Her Down

58. Disappointed by the outcome of the vote on Mr. Jameson's ordinance but determined to forge ahead, Pat turned to the Tennessee State Board of Cosmetology for approval to operate as a "residential shop." *See* Tenn. Comp. R. & Regs. 0440-02-.07(6). Pat, who is an entrepreneur and not a lawyer, believed (honestly but incorrectly) that state recognition would provide legal security for a home-based business.

¹ *See* Prop. Ord. No. BL2010-754 (withdrawn Aug. 16, 2011), www.nashville.gov/mc/ordinances/term_2007_2011/bl2010_754.htm.

² *See* Prop. Ord. No. BL2011-924 (failed July 5, 2011), www.nashville.gov/mc/ordinances/term_2007_2011/bl2011_924.htm; *see also* Prop. Ord. No. BL2011-858 (withdrawn June 7, 2011), www.nashville.gov/mc/ordinances/term_2007_2011/bl2011_858.htm (earlier Jameson-sponsored bill proposing similar reforms in less detail).

59. Pat undertook a lengthy and expensive effort to convert her garage into a welcoming state-licensed salon for her clients. *See id.* (allowing “[r]esidential shops” upon two conditions: that there be “a separate entrance” and “[s]eparate restroom facilities” from the living quarters).

60. Her brother, John Murphy, worked with her starting in late 2011 to renovate the former garage from the studs up.

61. When John left to take a job in Illinois, Pat enlisted her neighbor Jeff Latour, across the street, to finish with the renovation.

62. By the time the renovation was complete, Pat, John, and Jeff had added windows, a bathroom, a sink, French doors, insulation, sheetrock walls, lighting, a single chair, electrical installations for a chair dryer, a baseboard heater, a window air-conditioning unit, a water heater, cabinets, several potted plants, a laundry room, and a dropped ceiling; they also painted and sealed the concrete floor.

63. All told, the renovation cost Pat over \$10,000.

64. The Codes Department visited the property at one point to inspect her property. Pat told the officer of her plan to install a hair salon; the officer told her that she would need a plumbing permit to install the sink and bathroom that were required by the cosmetology regulations. Tenn. Comp. R. & Regs. 0440-02-.07(1)(a), (1)(j).

65. Pat got the plumbing permit as required. When the Codes Department came back to perform the plumbing inspection (which Pat passed), the inspecting officer told Pat that it was the best plumbing job he had ever seen.

66. On April 24, 2013, the State Board of Cosmetology inspected her new home-based hair salon (before she ever served a customer) and gave her a residential shop license, for which Pat paid a \$100 inspection fee.

67. The salon opened up to the driveway in the back of her house and is not visible from Knobview Drive, the main street. The entrance to Pat's salon can only be seen by the handful of neighbors on Capella Court, the small cul-de-sac to which her driveway leads.

68. Pat took care to avoid disturbing her neighbors. She had her clients park in her driveway, so that they would not be visible from the road in front of her house—which, in any case, is far more affected by thru traffic whizzing by at speeds up to 40 miles per hour than it ever was by Pat's clients.

69. Pat maintained no exterior signage or lighting to advertise the presence of her small home-based hair salon. She served her preexisting clients, who learned about her business by word of mouth.

70. Pat ran her business on an appointment-only basis, employing nobody but herself, and only receiving one client at a time and never more than 12 per day. She would work between 9am and 7pm, Tuesday through Friday.

71. During all the time she ran her home-based hair salon, no one among Pat's neighbors ever complained to her about her home-based hair salon.

72. On November 26, 2013, however, Pat received a notice to correct from the Codes Department, informing her that she was suspected of the illegal "operation of a commercial business," and ordering her to cease and desist or else face prosecution, fines of \$50 per day, and/or court costs.

73. The notice to correct was substantially identical to the one Lij would later receive, as described above in paragraph 27.

74. Confused, Pat contacted Codes and was informed that the Client Prohibition was a complete bar to Pat using her home to operate her hair salon, despite her salon being inspected, approved, and licensed by the State Board of Cosmetology.

75. Upon learning this, Pat asked the Codes Department staff whether they actively look for home-based businesses. Codes told her that they do not. They had investigated Pat because somebody had turned her in.

76. Pat asked the Codes Department who had turned her in. Codes informed her that it does not keep such records and would not be able to tell her.

77. The Codes Department then told Pat that she would have to remove everything from her home that had to do with her business. They specifically ordered her to remove the sink she had installed (even though it is normal to have a sink installed in a residential home).

78. Codes then told Pat that they would have to inspect her home to verify that she had complied with their orders. Pat and Codes agreed upon an inspection date of February 1, 2014.

79. Pat complied with the orders Codes gave her. She removed all of the equipment and supplies from her home, including the sink. There remains today a circular mark on the floor of her garage where her chair once stood.

80. On February 1, 2014—the agreed-upon date for the inspection—Pat waited by her empty garage. Nobody from the Codes Department came to see whether Pat had destroyed her \$10,000 home-based hair salon.

81. In an effort to abide by the law, Pat contacted Codes about the missed inspection. Codes rescheduled, and again failed to show up at Pat's house on the agreed-upon date.

82. Pat again called the Codes Department and insisted that it would have to inspect her property to follow up on its order that she dismantle her home-based hair salon.

83. On February 24, 2014, three Codes officers finally came to Pat's house to inspect the property and shut down her home-based hair salon.

84. Two officers stood outside while the third walked with Pat around her empty renovated garage. Seeing that Pat had complied with Codes' orders, he told Pat that she was free and clear, but threatened that if Pat ever tried to work out of her home again, Codes would take her to court and fine her.

85. After the inspection, Pat had no choice but to find a commercial space to run her business.

86. In today's market, it is very difficult to find a commercial rental space small enough to be financially viable for a single hairstylist. Commercial landlords prefer to rent out larger spaces, where a multi-chair salon would be necessary to generate enough income to pay the rent.

87. Pat has neither worked for nor employed anyone else for any significant stretch of her career. She takes pride in being a sole proprietor and has no desire to change her business model this late in her life.

88. After much searching, Pat was finally able to sublease a one-chair room at \$135 per week, plus \$20 per month for water. The room is located inside a nail salon whose owner leases the space from a commercial landlord.

89. The forced relocation into a commercial studio has roughly doubled Pat's monthly overhead costs. In addition to paying commercial rent, she is still making mortgage payments on her home of \$574.33 per month.

90. Pat is unsure how long her current arrangement will last. Pat's sublease depends on the continuation of the nail-salon owner's lease. If the nail-salon owner ever moved elsewhere, or if the commercial landlord sold the property, Pat would lose the location and would have to find another financially viable place—within a distance her

clients are willing to travel—for her small salon. She is not optimistic that she would be able to find another place (besides her home) that she could afford on her present volume of business.

91. This uncertainty is exacerbated by the fact that Pat will have to scale down her business as she ages, and as her book of business shrinks due to clients moving or passing away. Pat intends never to retire, but already finds her four-day workweek physically exhausting. She will have to cut back to working once or twice a week in the near future—but will not be able to afford to do so if she must pay commercial rent.

92. Nashville’s arbitrary enforcement of the Client Prohibition against Pat will shortly present her with the Hobson’s choice of surrendering her independence in order to abide by the law. She will not be able to work full-time due to her health; she will not be able to pay commercial rent due to her inability to work full-time; she will not be able to work at all due to her inability to pay commercial rent; and she will not be able to pay her mortgage due to her inability to work at all.

93. Pat would not face this injustice if she could legally serve one client at a time in her home.

III. The Client Prohibition and Its Context Within Nashville’s Zoning Code

94. The general rule in Nashville is that home-based businesses are permitted. Metro. Code § 17.16.250(D). The Nashville Zoning Code refers to home-based businesses as “home occupation[s],” defined as any “occupation, service, profession or enterprise carried on by a resident member of a family within a [residentially zoned] dwelling unit.” *Id.* § 17.04.060. (Plaintiffs use the terms “home-based business” and “home occupation” interchangeably, and define them as they are defined in the Zoning Code.)

95. Being permitted, home-based businesses are subject to many restrictions not challenged here. For example, home-based businesses must:

- a. Be conducted in a dwelling unit or accessory building, by a resident, and employ no more than one nonresident employee, § 17.16.250(D)(1);
- b. Not maintain signs or any other exhibits indicating the presence of a home-based business, § 17.16.250(D)(3);
- c. Not generate “[o]ffensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects,” § 17.16.250(D)(7);
- d. Provide the same amount of parking as is already required for the home under the Zoning Code’s generally applicable parking requirements, § 17.20.030; and
- e. Abide by the generally applicable noise restrictions for *all* residential properties, whose application already extends to “pick-up and delivery trucks, and any other commercial or industrial activities which are under the control of the occupant,” § 17.28.090(A).

96. The *only* restriction of which Plaintiffs here complain is the Client Prohibition, Metro. Code § 17.16.250(D)(1) (“No clients or patrons may be served on the property.”). The Client Prohibition is the reason Lij’s home-based recording studio and Pat’s home-based hair salon were (and are) illegal.

97. As applied to Lij and Pat, however, the Client Prohibition does not rationally relate to any legitimate government interest Nashville has in regulating land use in residential zones. This is clear from both Nashville’s enforcement practices and other provisions of its Zoning Code, which show that Nashville in fact tolerates traffic, noise, and commerce in residential zones at far greater levels than were (or would be) generated by Pat’s hair salon or Lij’s recording studio.

98. There is no official rationale for the Client Prohibition’s existence. At a 2011 Metro Council debate in which a bill to repeal the Client Prohibition failed a vote, the bill’s sponsor stated that he had researched the history of the Client Prohibition and determined that it originated as part of a 1998 revision of Nashville’s zoning ordinance, but that nothing in the Council’s archives indicated why the Client Prohibition was added to the zoning ordinance.

A. Nashville Enforces the Client Prohibition on a Don’t-Ask-Don’t-Tell Basis

99. The Client Prohibition is enforced via a “don’t-ask-don’t-tell” policy, understood by everybody in the Nashville government, that is intended to accommodate small-scale, inoffensive home-based businesses that serve clients on the property.

100. Under the don’t-ask-don’t-tell enforcement policy, the Codes Department does not actively search residential neighborhoods for violations of the Client Prohibition. It enforces the Client Prohibition based primarily on whether or not a tipster turns a home-based business in.

101. Metro Councilmembers, Planning Commissioners, and Codes enforcement officers have all made public statements acknowledging the don’t-ask-don’t-tell enforcement policy.

102. For example, one Councilman in the 2011 Metro Council debate, just described, explained his vote to preserve the Client Prohibition by stating: “I’ve got tons of small businesses in my neighborhood, and nobody’s complaining about them. I’ve got—down the street, there’s a tutor. Farther down the street, there’s a woman that teaches swim lessons. All these things technically may be against the law, but they don’t bother anybody, nobody complains about it, and [the don’t-ask-don’t-tell policy] works.”

103. The Client Prohibition is also at odds with other provisions in the Zoning Code that expressly permit client-serving home-based businesses: day care homes, short-term rentals, and historic home events.

B. Nashville Allows Day Care Homes to Serve Up to Twelve Clients at a Time, Even Though They Are Home-Based Businesses.

104. Nashville’s zoning ordinance defines “day care” as “the provision of care for individuals, who are not related to the primary caregiver, for less than twenty-four hours per day.” A “[d]ay care home” is a home at which day care is provided for up to twelve clients at a time. Metro. Code § 17.04.060.

105. Day care is permitted in all residential districts. § 17.08.030.

106. Day care homes, one or more of which are permitted to exist on any residential block, may maintain outdoor playgrounds so long as they have a fence to “minimize[] noise impacts on neighboring residences.” § 17.16.170(D)(4)–(5). They must maintain up to three parking spaces in addition to the two required for a single-family home. § 17.20.030.

107. Day care homes fit the Zoning Code’s definition of a “home occupation.” § 17.04.060.

108. Day care homes could not legally operate if the Client Prohibition applied to them (as it does to home occupations), because day care homes serve clients or patrons on the property.

109. Nevertheless, Nashville expressly allows day care homes in residential zones to serve up to twelve clients per day on the property.

C. Nashville Allows Short-Term Rentals to Serve Up to Twelve Clients at a Time, Even Though They Are Home-Based Businesses.

110. Nashville’s zoning ordinance defines “[s]hort-term rental property” (“STRP” or a “short-term rental”) as “a residential dwelling unit containing not more than four

sleeping rooms that is used and/or advertised ... for rent for transient occupancy by guests” for up to thirty days at a time. Metro. Code § 17.04.060. Because the maximum occupancy is limited to “twice the number of sleeping rooms plus four,” this means that a short-term rental may serve up to twelve clients at a time. § 17.16.250(E)(4)(f).

111. Short-term rentals are permitted as accessory uses in all residential districts. § 17.08.030.

112. To guard against excessive traffic or noise, short-term rentals must “abide by all applicable noise restrictions . . . and all applicable waste management provisions” in the Metropolitan Code. Short-term rentals may not allow RVs, buses, or trailers to park anywhere visible, § 17.16.250(E)(4)(a), (c).

113. Short-term rentals fit the Zoning Code’s definition of a “home occupation.” § 17.04.060.

114. Short-term rentals could not legally operate if the Client Prohibition applied to them (as it does to home occupations), because short-term rentals serve clients or patrons on the property.

115. Nevertheless, Nashville expressly allows short-term rentals in residential zones to serve up to twelve clients per day on the property.

D. Nashville Allows Historic Home Events to Serve More Than Twelve Clients at a Time, Even Though They Are Home-Based Businesses.

116. Nashville’s zoning ordinance defines a “[h]istoric home event” as “the hosting of events such as, but not limited to, weddings or parties for pay in a private home which has been judged to be historically significant by the historical commission.” Metro. Code § 17.04.060. The Metropolitan Code sets no limits on the historical commission’s ability to judge homes as historically significant. *See* §§ 2.128.010 *et seq.*

117. Historic home events are permitted in all residential districts. § 17.08.030.

118. Historic home events may not maintain signage, § 17.16.160(B)(4), but the traffic engineer has the power to require them to maintain extra parking. § 17.20.030(F).

119. The board of zoning appeals may limit the frequency of historic home events “to minimize disturbance to surrounding properties.” § 17.16.160(B)(7). But the board has also been ordered by the Tennessee Court of Appeals to allow at least one home to conduct six events per week for up to forty guests, with two events per week being permitted to entertain up to seventy-five guests. *Demonbreun v. Metro. Bd. of Zoning Appeals*, No. M2009-00557-COA-R3-CV, 2011 WL 2416722, at *4 n.7 (Tenn. Ct. App. June 10, 2011).

120. Historic home events fit the Zoning Code’s definition of a “home occupation.”

121. Historic home events could not legally operate if the Client Prohibition applied to them (as it does to home occupations), because historic home events serve clients or patrons on the property.

122. Nevertheless, Nashville expressly allows historic home events in residential zones to serve more than twelve clients per day on the property.

IV. Lij and Pat Apply for Rezoning Under Nashville’s “Specific Plan” Mechanism, but Are Rejected Despite the Overwhelming Support of Their Neighbors.

123. Having had the Client Prohibition enforced against them—unlike most home-based businesses in Nashville—Lij and Pat each applied to the Nashville government in 2016–2017 to have their homes rezoned into “specific plan” districts that would have made it legal for their home-based businesses to serve a limited number of clients per day on the property.

124. The Zoning Code defines a “specific plan (SP) district” as “an alternative zoning process that may permit *any* land uses, and alternative development standards, of an individual property,” for the stated purpose of “avoid[ing] monotony, promot[ing]

variety, and yield[ing] a context sensitive development.” Metro. Code § 17.40.105 (emphasis added).

125. Any property, including a residential property, may apply for rezoning as an SP district. *See* § 17.40.106(B).

126. SP applications are reviewed by the Metro Planning Department, then by the Metropolitan Planning Commission, and finally by the Metro Council, which has the exclusive authority to create an SP district by ordinance. §§ 17.40.050 *et seq.*

127. A property rezoned as a specific plan district “must comply with the building, fire and life safety codes,” but otherwise may operate as agreed between the property owner, Metropolitan Planning Commission, and Metropolitan Council. *See* §§ 17.40.105, .106(D)–(E).

128. Since the time it introduced the specific plan rezoning process in 2005, the Metropolitan Government has enacted many ordinances to rezone residential properties as specific plan districts.

129. Some of the ordinances described in paragraph 128 allow an occupation, service, profession or enterprise to be carried on within the specific plan district, while simultaneously providing that the character of the property within the specific plan district shall remain substantially residential.³

130. Lij and Pat filed their SP applications on or about December 2016.

131. Before Lij’s and Pat’s SP applications got to the Metro Council, they were reviewed by the Metro Planning Commission, at which all officials expressed a sense of injustice at the Client Prohibition. For example:

³ *E.g.*, Ordinance No. BL2008-279 (eff. Sept. 22, 2008), http://www.nashville.gov/mc/ordinances/term_2007_2011/BL2008_279.htm (authorizing the provision of “personal care services in an existing . . . dwelling” located within a residential zone).

- a. Metro Councilwoman Burkley Allen, who chairs the Metro Council's Planning, Zoning, and Historical Committee and served as the Council's liaison to the Planning Commission, stated that the Client Prohibition and the don't-ask-don't-tell enforcement policy were "dishonest."
- b. Planning Commissioner Farr intimated that Lij's SP application for a recording studio would have been approved if Lij had not "openly stated" his intent to serve customers.
- c. Planning Commissioners Hagen-Dier and McLean both stated that Lij's and Pat's client-serving home-based businesses represented "the American way," and that the Client Prohibition and the don't-ask-don't-tell enforcement policy were against that.

132. Pat's application eventually failed by a full vote of the Metro Council in August 2017, while Lij's application failed a full vote in October 2017.

133. Lij's and Pat's SP applications failed even though they provided the Council with petitions containing signatures from 39 and 44 of their neighbors, respectively, voicing unequivocal support for Lij's home-based recording studio and Pat's home-based hair salon.

134. Having had the Client Prohibition arbitrarily and unreasonably enforced against them, and having failed to obtain legal recognition for their home-based businesses via legislative rezoning—despite the overwhelming support of their neighbors—Lij and Pat have no option other than this constitutional lawsuit to protect their right to use their homes to earn an honest living.

Injury to Plaintiffs

135. Nashville’s enforcement of the Client Prohibition against Lij has hampered his ability to openly conduct his home-based business. This has shut down his primary income stream, making it more difficult for Lij to support himself and his daughter.

136. But for the Client Prohibition, Lij would be able to continue operating his home-based recording studio without fear that Nashville will act to destroy his investment. He would continue using his home to earn a living, and would be able to finish raising Sarayah through adulthood in the home she has known her entire life.

137. Nashville’s enforcement of the Client Prohibition against Pat has destroyed her home-based business. This has forced her to continue working long hours at a commercially rented studio in order to earn a living. It has also endangered Pat’s ability to support herself in the future, since Pat leases her current space at her landlord’s pleasure and would not be able to find a comparable space if her landlord were to terminate the lease or sell the property.

138. But for Nashville’s enforcement of the Client Prohibition against Pat and her home-based hair salon, Pat would move her hairstyling practice back into her home, reduce her hours, and work on her own terms. She would thus be able to earn an honest living—and stay in her home—for the rest of her life.

Count One: Substantive Due Process

Nashville’s Enforcement of the Client Prohibition Against Lij and Pat Violates Article I, Section 8 of the Tennessee Constitution

139. Plaintiffs re-allege and incorporate paragraphs 1–138.

140. Article I, Section 8 of the Tennessee Constitution guarantees “[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed

or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”

141. Under this provision, Lij and Pat have a right to earn an honest living and to use their private property for any lawful use.

142. The Client Prohibition, Metro. Code § 17.16.250(D)(1) (“No clients or patrons may be served on the property.”), as applied to and enforced against Lij and Pat, deprives them of both their liberty and property in contravention of the law of the land.

143. Nashville’s enforcement of the Client Prohibition against Lij and Pat deprived them of their liberty and property without sufficiently furthering any legitimate government interest.

144. Nashville’s enforcement of the Client Prohibition against Lij and Pat therefore violates Article I, Section 8 of the Tennessee Constitution.

145. Lij and Pat have no other adequate remedies at law for vindicating their rights under Article I, Section 8 of the Tennessee Constitution.

146. Lij and Pat therefore pray for declaratory and injunctive relief against Nashville’s enforcement of the Client Prohibition as described below.

Count Two: Equal Protection

Nashville’s Enforcement of the Client Prohibition Against Lij and Pat Violates Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution.

147. Plaintiffs re-allege and incorporate paragraphs 1–138.

148. Article I, Section 8 of the Tennessee Constitution guarantees “[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”

149. Article XI, Section 8 of the Tennessee Constitution further provides that the government may not “pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.”

150. These two clauses guarantee Lij and Pat the right to equal protection under the law.

151. The Client Prohibition, Metro. Code § 17.16.250(D)(1) (“No clients or patrons may be served on the property.”), as applied to and enforced against Lij and Pat, violates equal protection by outlawing their home-based businesses for engaging in the same activity—serving clients onsite—as the many home-based businesses which are either expressly legal under Nashville’s Zoning Code or widely tolerated under Nashville’s don’t-ask-don’t-tell enforcement policy.

152. There is no legitimate reason to treat Lij’s recording studio or Pat’s hair salon differently than the thousands of other Nashville home-based businesses which, legally and/or as tolerated by Nashville:

- serve up to twelve clients per day;
- employ no more than one nonresident;
- do not cause a nuisance;
- comply with the generally applicable residential noise ordinance; and
- are entirely conducted within a dwelling unit or accessory building.

153. The differential treatment of Lij’s and Pat’s home-based businesses does not sufficiently further any legitimate governmental interest.

154. Nashville's enforcement of the Client Prohibition against Lij and Pat therefore violates Article I, Section 8, of the Tennessee Constitution.

155. Lij and Pat have no other adequate remedies at law for vindicating their rights under Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution.

156. Lij and Pat therefore pray for declaratory and injunctive relief against Nashville's enforcement of the Client Prohibition as described below

Prayer for Relief

As remedies for the constitutional violations just described, Plaintiffs respectfully request the following relief:

A. Entry of judgment declaring the Client Prohibition—the sentence within § 17.16.250(D)(1) of the Nashville Zoning Code stating that “[n]o clients or patrons may be served on the property”—unconstitutional in violation of Article I, Section 8 of the Tennessee Constitution;

B. Entry of judgment declaring the Client Prohibition—the sentence within § 17.16.250(D)(1) of the Nashville Zoning Code stating that “[n]o clients or patrons may be served on the property”—unconstitutional to the extent that it prohibits Lij and Pat from serving up to twelve clients per day at their respective home-based businesses, in violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution;

C. Entry of a permanent injunction prohibiting Nashville from enforcing the unconstitutional Client Prohibition against Lij and Pat;

D. An award of costs pursuant to Tenn. Code Ann. § 29-14-111 and Tenn. R. Civ. P. 54.04; and

E. Such further legal and equitable relief as the Court may deem just and proper.

DATED this 5th day of December, 2017.

Respectfully submitted,

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*Pending admission *pro hac vice*

EXHIBIT

Metro. Code § 17.16.250

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Counsel	Counsel for	Via
Jon Cooper Director of Law Metro Courthouse Ste. 108 P.O. Box 196300 Nashville, TN 37219-6300 615/862.6341 jon.cooper@nashville.gov	Metro Nashville	<input type="checkbox"/> United States mail, postage prepaid <input checked="" type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

DATED this 5th day of December, 2017. Respectfully submitted,

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