IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

ELIJAH "LIJ" SHAW and PATRICIA "PAT" RAYNOR,	)	
Plaintiffs/Appellants,	)	Court of Appeals No. M2019-01926-COA-R3-CV
v.	)	
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	Chancery Court No. 17-1299-II
Defendant/Appellee.	)	

THE METROPOLITAN GOVERNMENT'S BRIEF

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QUESTION PRESENTED

The Supreme Court ruled many decades ago that whether to prohibit home businesses from operating at residential properties was a matter of legislative discretion. *Davidson Cty. v. Hoover*, 211 Tenn. 223, 229–31, 364 S.W.2d 879, 882 (1963). Proposals to allow clients to visit home-based businesses have been considered by the Metropolitan Council numerous times within the last twenty years, without success.

Did the Trial Court err when it ruled that there was a rational reason for Nashville prohibiting clients from visiting home businesses, regardless of Plaintiffs' laborious efforts to disprove every rational basis?

Did the Trial Court err when it required the Metropolitan Government to produce a 30.02(6) witness to proffer the rational reasons that the Metropolitan Council prohibits clients at home-based businesses?

Does the post-judgment enactment of Ordinance BL2019-48, which repeals the provision prohibiting clients from visiting home businesses in its entirety, moot this lawsuit?

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STATEMENT OF THE CASE

The Complaint in this case was filed on December 5, 2017. (T.R. 1-27). The Metropolitan Government filed a motion to dismiss, arguing that the prohibition on allowing clients to visit home-based businesses was rationally related to the legitimate goals of protecting the residential nature of neighborhoods. (T.R. 66). This motion was denied. (T.R. 481).[1] Metro answered the Complaint on May 21, 2018. (T.R. 501).

Substantial discovery was taken by the Plaintiffs, both written and by deposition. Over its objections, the Metropolitan Government was ordered to produce a Tenn. R. Civ. P. 30.02(6) witness to explain all the reasons that the legislative body (the Metropolitan Council) had not passed an ordinance allowing clients to visit home-based businesses. (T.R. 592-94; 611-13). Former Metro Councilman Carter Todd served as the Metropolitan Government's 30.02(6) witness and offered a multitude of rational reasons for why ordinances seeking to lift the client prohibition had not passed. (T.R. 740-866).

The Plaintiffs and Metropolitan Government both moved for summary judgment on June 14, 2019. (T.R. 618, 640). In making its ruling, the Court reviewed both motions and the voluminous record that had been developed. (T.R. 2309-34). The Court also spent time identifying the appropriate standard for analyzing an as-applied challenge. *Id*. This was significant because the Plaintiffs had chosen *not* to appeal the denial

[1] This Order was entered by Chancellor William E. Young. The remainder of rulings in the case were made by Chancellor Anne C. Martin.

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of their re-zoning application (this change in zoning would have allowed them to have clients visit their home businesses). The Court concluded that there were multiple rational bases for the client prohibition:

> Preserving the residential nature of residential neighborhoods is at the heart of the public policy reason for modern zoning laws. As set out in *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114 (1926) by the United States Supreme Court:
>
> > Building zone laws are of modern origin. . .with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.
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> 272 U.S. at 386-87, 47 S.Ct. at 118. The regulation of what can be built where is central to the role of a metropolitan government in protecting the health and safety and quality of life of a community. The issue of the Client Prohibition has been proposed and re-proposed to several Metro Councils, and each time it was defeated because of concerns about the residential nature of neighborhoods; traffic and parking concerns; safety; and other rational and relevant considerations. The Plaintiffs attempt to discount these arguments by claiming there is no proof that allowing at-home businesses to service clients will increase parking woes or traffic congestion, or create safety problems. They assert that they, themselves, operated home-based businesses for some period of time, in violation of the Client Prohibition, without problems until the anonymous complaint. Respectfully, the Court does not believe the law requires Metro to prove that the predicted problems will absolutely occur, or have occurred; rather, the inquiry is whether it is a reasonable concern that has some basis

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in rationality. Successive Metro Councils have believed that to be the case. Members of the public who testified at public hearings believe it to be the case. The Court finds these concerns to be rational and appropriate considerations. It defies logic to say that customers coming into neighborhoods to call on businesses, in any number, will not affect parking and traffic. In fact, in almost all of the successful SP rezoning efforts detailed in this opinion, parking and traffic patterns were discussed in detail in the resulting ordinances. Controlling the number of at-home businesses, whether they have customers and what hours customers may call on them, is a particular challenge and will affect the neighborhood feel of residential neighborhoods. Metro's consistent decision that allowing customers will be the exception, and not the rule, is reasonable. The Plaintiffs sought the opportunity to be the exception and, after a full legislative hearing, their requests were denied. The Court does not find any basis to substitute its judgment for that of the Metro Council.

Moreover, regulatory issues associated with home-based, client servicing businesses – taxes, utility rates and the like – are very valid legislative concerns. There is a reason that businesses are taxed differently, and their utility rates and consumption calculations differ. To use a residential property as a business and to service customers there some days a week, at any volume, changes the nature and quantity of the consumption of resources.

Another issue of significant concern is accessibility for the disabled. Residential properties are not required to be accessible to the public, as only invitees of a private nature come to homes. However, if an at-home business is inviting the public to come onto its property, it opens itself up to an entirely different set of legal obligations. *See generally*, Title III of the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990). It is well within Metro's obligations to protect the health and welfare of its citizens by ensuring that businesses who invite the public onto their property comply with accessibility requirements.

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The fact that the Metro Code selectively exempts a few categories of businesses from the Client Prohibition, or that some real properties have been rezoned as SP so they could serve the public, is not a basis to invalidate the law. As held in *Gann v. City of Chattanooga*, No. E2007-01886-COA-R3-CV, 2008 WL 4415583 (Tenn. Ct. App. Sept. 30, 2008):

> The notion that we would invalidate the City Council's 2006 action because of a perceived inconsistency with the council's stated rationale for an action on a similar matter, four years prior, totally misconceives our role in cases such as this. We are bound by the language of *Fallin*. If we can find any rational basis – or, stated even more broadly, `any possible reason' – to uphold the council's decision, we must do so, absent evidence of arbitrary, capricious, or illegal action by the council. The differences between the 2002 and 2006
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> application certainly constitute possible, rational reasons to reach a different conclusion in 2006, regardless of how the council may have articulated its reasoning in 2002. The record simply does not demonstrate that the different results in 2002 and 2006 constitute either "discrimination" or arbitrary inconsistency. . . It is not our role to re-weigh all the factors considered by the council; that would invade a legislative prerogative and would far exceed the scope of our review as defined by *Fallin*. It is sufficient for us to affirm the trial court's conclusion that "this decision to rezone was debated by the City Council," and that a rational basis existed for the council's decision.

Id. at *5.

The Client Prohibition has a rational relationship to the reasons Metro has given for its imposition. Metro Council members and citizens have expressed genuine concern about the difference between at-home businesses without customers and those that allow customers. Limited exceptions exist in the Metro Code for daycares and historic home events. STRP's are a more problematic exception and the Court does not dismiss their interference with the residential nature of Nashville's residential neighborhoods. The Metro Council and Metro government generally are clearly grappling with that issue, which is not before the Court today. Just because they are allowed, however, does not invalidate the logic behind the Client Prohibition. Metro has proffered real, rational and appropriately-related

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reasons for the Client Prohibition. Those reasons meet Metro's burden of defending the constitutionality of the Client Prohibition under both due process and equal protection provisions of the United States and Tennessee Constitutions. The doctrine of "sic utere tuo ut alienum non laedus"[1] applies here – a property owner is free to use his property as he sees fit as long as it does not cause harm to others. *Euclid,* 272 U.S. at 387, 47 S.Ct. at 118. Metro has determined that the Client Prohibition is a reasonable restriction on the use of residential property for the benefit of its citizens, and the Plaintiffs have not shown otherwise.

[1] Common law maxim meaning that one should use his own property in such a manner as not to injure that of another. BLACK'S LAW DICTIONARY 1380 (6th Ed. 1990).

(T.R. 2309-34).

Plaintiffs appealed to this Court on October 28, 2019. (T.R. 2335). After the record was filed in this matter, the Metropolitan Council enacted Ordinance BL2019-48, which repealed METROPOLITAN CODE § 17.16.250(D)(1) in its entirety and replaced it with a new ordinance that allows clients to visit home businesses. (Motion to Consider Post-Judgment Facts and Dismiss as Moot, Ex. A).

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STATEMENT OF THE FACTS

This lawsuit challenges the constitutionality of a previous version of METROPOLITAN CODE § 17.16.250(D)(1),[2] which allowed residents to use

[2] Residential Uses…D. Home Occupation. A home occupation shall be considered an accessory use to a residence subject to the following:

1. The home occupation shall be conducted in a dwelling unit or accessory building by one or more occupants of the dwelling unit. No clients or patrons may be served on the property. No more than one part-time or full-time employee not living within the dwelling may work at the home occupation location.
2. The home occupation shall not occupy more than twenty percent of the total floor area of the principal structure and in no event more than five hundred square feet of floor area.
3. Signage. Any sign, as defined in M.C.L. 17.32.030.B, on a property used for a home occupation shall be governed by the provision of M.C.L Chapter 17.32 Sign Regulations.
4. The use of mechanical or electrical equipment shall be permitted in connection with a home occupation provided such equipment:

a. Would be used for purely domestic or household purposes;
b. Is located entirely within the dwelling unit or accessory building and cannot be seen, heard or smelled from outside the dwelling unit or accessory building and has an aggregate weight of less than five hundred pounds; and
c. Does not interfere with radio and television reception on neighboring properties.

5. The storage of materials or goods shall be permitted in connection with a home occupation provided such storage complies with the following standards.

a. All materials or goods shall be stored completely within the space designated for home occupation activities.
b. Only those materials or goods that are utilized or produced in connection with the home occupation may be stored within the dwelling unit or accessory building.
c. All materials or goods shall be stored completely within the dwelling unit or accessory building.

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their homes for home occupations, so long as no clients were served on the property.

I. PLAINTIFFS' ALLEGATIONS.

Plaintiffs wish to legally operate home-based businesses that involve having clients visit their homes (a beauty shop and a recording studio). (T.R. 1, ¶ 96).

Plaintiffs allege that this prohibition on client-visits violates their due process and equal protection rights under the Tennessee Constitution. (*Id.*, ¶¶ 144, 151). Plaintiffs asked that the Court to invalidate the prohibition on client-visits and allow them to serve up to twelve clients per day. (*Id.*, ¶ 152).

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d. All flammable or combustible compounds, products or materials shall be maintained and utilized in compliance with Fire Code NFPA-30.

6. External structural alterations not customary in residential buildings shall not be permitted.

7. Offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects shall not be permitted.

8. The manufacture or repair of transportation equipment shall not be permitted as a home occupation.

9. Vehicles associated with the home occupation shall be limited to one vehicle with a maximum axle load capacity of one and one-half tons.

(T.R. 80 – METROPOLITAN CODE OF LAWS § 17.16.250(D) (emphasis added)). As explained in the Statement of the Case and addressed in Section VII of this Brief, this version of § 17.16.250(D) was repealed in its entirety by Ordinance BL2019-48 and replaced with a new ordinance, which permits but strictly regulates client visits to home businesses.

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II. PROPOSALS OF THE KIND SOUGHT BY THE PLAINTIFFS HAVE BEEN REPEATEDLY REJECTED BY THE METROPOLITAN COUNCIL.

Proposals to allow clients to visit home-based businesses have been considered by the Metropolitan Council numerous times within the last twenty years, without success (until the recent enactment of Ordinance BL2019-48, of course). In 2000, Councilmembers Arriola and Ponder filed BL2000-173, which would have created an exception allowing clients or patrons to be served at a hair salon home business. (T.R. 1006). In 2010, Councilmember Stanley filed BL2010-754, which would have created a similar exception for home-based cosmetology and barber shops and allowed owners up to one chair and two customers at a time. (T.R. 1009).

BL2011-858, which would have allowed up to two clients per hour, was introduced by Councilmember Jameson in 2011. (T.R. 1012). Councilmember Jameson also filed BL2011-924, which would have created a separate land use for home businesses. (T.R. 2301). In 2012, at-large-Councilmember Barry introduced BL2012-292, which would have allowed home recording studios and no more than ten clients, customers or musicians to visit per day. (T.R. 1017). In 2013, Councilmember Stanley filed BL2013-451, which would have allowed up to ten visits per day for client visits to "professional service home businesses" (accountants, investment advisors, and attorneys). (T.R. 1022).

And, in 2017, Councilman Davis filed BL2017-719, which would have changed Mr. Shaw's zoning from residential to SP (allowing his home recording studio) and Councilmember Syracuse filed BL2017-798,

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which would have changed Ms. Raynor's zoning from Residential to Specific Plan (allowing her home hair salon). (T.R 1026, 1032).

All of these proposals, including Mr. Shaw and Ms. Raynor's requests for SP zoning, were unsuccessful. Metro Council considered them and decided, as the local legislative body, not to adopt these zoning measures.

Mr. Shaw and Ms. Raynor did not file any challenge to the Council's denial of their zoning request, although they later attempted to attack this denial through this lawsuit (the Court rejected this collateral attack). (T.R. 2333 ("The Plaintiffs assert that their businesses are benign and would not be ones that would create problems for neighbors, but the Court is not going to substitute its judgment for that of the Metro Council, which gave due consideration to the Plaintiffs' [rezoning] applications, neither of which was recommended by the Planning Commission")).

III. LEGITIMATE RATIONAL BASES WERE PROFFERED BY THE METROPOLITAN GOVERNMENT THROUGH WRITTEN DISCOVERY.

In its discovery responses, the Metropolitan Government proffered the following overview of its rational reasons for not allowing clients to be served in homes:

The client prohibition serves to protect and maintain the residential nature of residentially-zoned property and prevent commercial intrusion. Related are the goals of limiting non-residential traffic (both additional people and cars) in the neighborhood and avoiding parking problems.

The more specific reasons listed below, including many related to

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the need to preserve healthy commercial districts, indicate there were many other arguments the legislature considered in keeping the client prohibition:

- Some homeowners selected residential areas because they did not want businesses near their house. There is plenty of room for businesses in commercial areas.
- It is difficult to ensure that the businesses will follow the restrictions that would be placed on these home businesses (e.g. limits on number of clients per day). Enforcement resources are already stretched very thin, and they do not have the manpower in Codes to enforce.
- The police department does not have resources to handle additional non-criminal related disputes.
- Would turn neighbor against neighbor, which is not what Nashville needs.
- Codes Dept. does not traditionally work on weekends or evenings, so it has difficulty enforcing Metro's ordinances during these times.
- There are alternatives (e.g. Weworks or rental of conference spaces) so that most home businesses can meet clients elsewhere.
- Allowing clients to visit home businesses is inconsistent with residential policy as currently set by the Metropolitan Code county-wide. For those areas that do not mind commercial intrusions, we already have a category designated as mixed use or SP (which also provides the procedural safeguards of a rezoning).
- This would create de facto mixed use all over the county, without a zoning change.
- It is a mass rezoning without procedural safeguards. A rezoning, such as to commercial, mixed use, or SP, requires public notice to nearby neighbors and has other procedural safeguards, such as a limit on what types of businesses will be allowed and a discussion of whether that location is appropriate for a zone change.

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- A one-size fits all approach to this problem is not appropriate. Neighborhoods have different goals, expectations, histories.
- Delivery trucks and lawn care businesses coming into neighborhoods generally identify themselves when they come into neighborhoods, by their vehicles and/or uniforms or equipment. Clients would have no identification to show the reason they are in the neighborhood.
- The addition of unidentified strangers in the neighborhood means it will be more difficult for neighborhood watch groups to identify potential concerns for the neighborhood.
- Smaller steps toward allowing clients to visit home businesses in certain areas of town would be more appropriate.
- If start allowing one home occupation to have clients, other occupations will quickly ask to be included also (slippery slope).
- Overlap in customers arriving (late, early) means more than one at a time parking in the area.
- There is often inadequate parking for clients in residential areas.
- Neighbors do not want additional traffic in their neighborhoods.
- Neighborhood streets are often not wide enough to accommodate a lot of additional traffic.
- There often are not sidewalks in residential neighborhoods, so clients cannot walk to businesses.
- Commercial properties have or will have vacancies. They need tenants. Takes part of the market away from commercially zoned properties. Creates an unlevel playing field.
- Home business spaces are not taxed at a commercial rate, because they are accessory to the primary use (residential). This is not fair to other office spaces or to businesses that rent commercial space.
- Commercial electric, water and stormwater rates are also different from residential.
- Commercial businesses have different ADA standards than residences.
- Determining whether a home business is primarily a

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residence or business would be a new burden on the Metro Assessor.

- Some businesses might be more appropriate for having in residential areas than others.
- Some neighborhoods are historically more used to home businesses with clients visiting than others.
- Some neighborhoods are transitional (between commercial and residential) and better suited for clients visiting, or have existing businesses nearby, or are on very busy streets that are not as quiet. Most neighborhoods are not and do not have that expectation.
- Worried about unintentional and unknown consequences.
- People may buy in certain areas in order to use for a home-business and be able to pay higher prices; this may crowd out residential purchasers.
- If you had two home businesses in the house – this would double the number of client visitors allowed and double the issues above, such as traffic and parking.
- It creates a burden for the HOAs to enforce their covenants prohibiting client visits, if Metro allowed them.

(T.R. 2134). These reasons arose out of the public hearings where the client prohibition ban was debated in the context of BL2011-924 (T.R 2301) at the July 5, 2011 Metro Council hearing.[3]

IV. LEGITIMATE RATIONAL BASES WERE PROFFERED BY THE METROPOLITAN GOVERNMENT THROUGH THEIR 30.02(6) REPRESENTATIVE.

Former Councilmember Todd testified at length as the TENN. R. CIV. P. 30.02(6) witness[4] for the Metropolitan Government and

[3] https://youtu.be/0UlVzksRJPI?t=1060 (minutes 17:40-1:07:30).

[4] Although Councilman Todd gave a thorough and careful explanation the reasons behind the client-prohibition, the Metropolitan Government submits that his 30.02(6) testimony should not have been

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elaborated on the reasons provided in written discovery. He testified that there are four categories for why the client prohibition exists: order, certainty, quality of life, and safety. (T.R. 1172). Each of these categories has sub-categories within them. *Id.*

A. The Interest in Public Order.

Councilmember Todd testified that order and reliance on zoning categories is an important government interest that must be preserved. (T.R. 1176). There is a value in a zoning code and knowing what you are buying, when you buy your house. (T.R. 1186). "If you take out the very thing that makes residential zoning residential ... it's no longer residential… the whole zoning code will kind of collapse in on itself. It won't have any meaning." *Id.* "[W]hen you completely delete this requirement, to me the residential nature of residentially-zoned property has been diminished to the point of not really being residential anymore." (T.R. 1261).

The biggest investment most Nashvillians make is in their home, and homes in residential neighborhoods were purchased in reliance on the residential zoning. (T.R 1176-1178). They were purchased with the expectation that clients would not be served in those neighborhoods. It would not be appropriate to suddenly change all of them to de-facto mixed use. (*Id.*; T.R. 1264-65). There is an orderly process that should be followed for rezoning, which involves procedural safeguards such as

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required by the Court (see Argument Section VI).

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public notice, mailings, and an opportunity to participate in the process. (T.R. 1182-83).

Investments in commercial businesses, shopping centers and the central business district also must be preserved. If the client prohibition is removed, it will hurt those businesses and areas of town. (*Id.*; T.R. 1252-53). It would also be unfair to subject the commercial businesses to a different tax rate than residential properties who can serve customers, because it would put residential businesses at an advantage. (T.R. 1252-56). There are different water and storm water rates. (T.R. 1269). The tax assessor would be burdened by having to determine what rate is appropriate for home businesses who frequently serve customers in the home. (T.R. 1252-53).

Affordable housing problems could also result, because property owners who chose to receive clients in their homes might be able to pay a higher price for the home. (T.R. 1271). This crowds out potential homeowners who do not have that home business income.

It is possible that some neighborhoods may wish to accommodate client-visits, but it is not appropriate to impose this county-wide. (T.R. 1266-67). Neighborhoods have different goals, histories, and expectations. *Id.*

In addition, there are alternative workspaces, such as WeWork or rental of conference spaces, to allow most businesses to meet clients outside a home. (T.R. 1263). Or, home-based businesses could rent space in commercial or mixed-use zoned areas. (*Id.*; T.R. 1264).

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B. The Interest in Certainty of Outcome.

Councilmember Todd testified that certainty of outcome is also an important interest. (T.R. 1180-81). The client prohibition is simple and therefore easy to enforce. *Id.* Picking a number of clients to allow would be both arbitrary (why pick 4 and not 5, why pick 8 and not 9?) and difficult to enforce (who keeps count of how many clients really come to the house?). (*Id.*; T.R. 1279).

The Police and Codes Departments do not have the resources to enforce these restrictions and track visitors versus clients. (T.R. 1262, 1275). Allowing a certain number of clients to come to the home would make the neighbors the entity that has to observe and track visitors versus clients. (T.R. 1278). This can hurt neighborhood relationships.

C. The Interest in Quality of Life.

Councilmember Todd testified that many of his constituents had chosen, purposefully, to live in a residential area. (T.R. 1181-82). They did not want commercial activity near them. *Id.* Home businesses where no clients are served can exist without causing a disturbance, but once clients start visiting, it can bother the neighbors. (T.R. 1188).

There must have been someone in Lij or Pat's neighborhoods who objected to their receiving clients in their homes, or they would not have been reported to the Codes Department. (T.R. 1273).

D. The Interest in the Safety of Clients and Neighbors.

Councilmember Todd testified that clients of businesses are entitled to an expectation of safety. (T.R. 1174). Homes are typically not built with a view toward accommodating the general public, especially on

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a daily basis. But business districts and structures are designed as places of public accommodation, to be safe for visitors who are unfamiliar with an area and to comply with the Americans With Disabilities Act through properly graded sidewalks, wide aisles, and handicap bathroom facilities. *Id*.

The International Building Code, which is adopted and incorporated into the Metropolitan Code by reference (T.R. 1038-39 – METROPOLITAN CODE § 16.08.010), takes issues like this into consideration by setting different standards for buildings where professional services are transacted ("Business Group B"), buildings where merchandise is sold ("Mercantile Group M"), and structures used for sleeping purposes ("Residential Group R") (https://codes.iccsafe.org/content/IBC2015/chapter-3-use-and-occupancy-classification). There is a separate International Residential Code for One- and Two-Family Dwellings, which is also incorporated into the Metropolitan Code. *Id*.

Also, some types of businesses are more appropriate for receiving clients in neighborhoods than others. There are certain businesses that have an element of danger, potentially dangerous clients, or might be attractive nuisances. (T.R. 1172-174). Some businesses may have medical waste, chemicals, or sharp objects associated with them. Residential areas often have unsupervised children playing in them and there is a clear interest in locating these kinds of businesses in away from children, in commercial districts. *Id*.

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Traffic and parking is another aspect of safety – many neighborhoods were built without sidewalks and many neighborhoods are not built to accommodate frequent parking on the street. (T.R. 1175-76). Some neighborhoods, such as 12 South, have to use permit parking on their streets, in order to have enough parking for residents. (T.R. 1279-0).

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ARGUMENT

I. STANDARD OF REVIEW.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04.

A trial court's ruling is reviewed on a motion for summary judgment de novo without a presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC,* 477 S.W.3d 235, 250 (Tenn. 2015) (*citing Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997)); *Martin v. Rolling Hills Hosp., LLC*, No. M201602214SCR11CV, 2020 WL 2065528, at *4 (Tenn. Apr. 29, 2020).

II. AN ANALYSIS OF SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION UNDER THE TENNESSEE CONSTITUTION IS IDENTICAL TO THE ANALYSIS UNDER THE U.S. CONSTITUTION.

Tennessee courts have applied the same analysis for substantive due process claims brought pursuant to the Tennessee Constitution as they have applied in such challenges brought under the U.S. Constitution. *Gallaher v. Elam,* 104 S.W.3d 455, 463 (Tenn. 2003); *Riggs v. Burson,* 941 S.W.2d 44, 51 (Tenn. 1997), *cert. denied,* 522 U.S. 982 (1997). *Newton v. Cox,* 878 S.W.2d 105, 110 (Tenn. 1994), *cert. denied,* 513 U.S. 869 (1994).

The Tennessee Constitution's equal protection provisions confer "essentially the same protection" as the Equal Protection clause of the United States Constitution. *Riggs,* 941 S.W.2d at 52; *Tennessee Small*

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Sch. Sys. v. McWherter, 851 S.W.2d 139, 152 (Tenn. 1993). "Both guarantee that all persons who are similarly situated will be treated alike by the government and by the law." *Consolidated Waste Sys. v. Metro. Gov't.,* 2005 WL 1541860, *7 (Tenn. Ct. App. June 30, 2005) (citing *Tennessee Small Schools,* 951 S.W.2d at 153).

Plaintiffs are mistaken when they attempt to differentiate the Tennessee and U.S. Constitution's due process and equal protection analysis. This is not a case about privacy or the right to work. It is about an economic regulation and limitations on the location of businesses, and this analysis is identical under both constitutions. The Court of Appeals elaborated on the *Riggs* standard in *Brown v. Metro. Gov't of Nashville*, 2018 WL 6169251 (Tenn. Ct. App. Nov. 26, 2018):

> Our Supreme Court stated in *Riggs* that:
>
> This Court has held that the "law of the land" provision of article I, section 8 of the Tennessee Constitution "is synonymous with the due process clause of the Fourteenth Amendment to the United States Constitution." *Newton v. Cox,* 878 S.W.2d [105] at 110 [(Tenn. 1994)]; *State ex rel. Anglin v. Mitchell,* 596 S.W.2d 779, 786 (Tenn.1980). Thus, unless a fundamental right is implicated, a statute comports with substantive due process if it bears "a reasonable relation to a proper legislative purpose" and is "neither arbitrary nor discriminatory." *Newton v. Cox,* 878 S.W.2d at 110. *6 941 S.W.2d at 51.
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> In our analysis, we address whether the distance requirement is reasonably related to a legitimate legislative purpose. Stated somewhat differently, "[a] zoning ordinance is the product of legislative action and, before it can be declared unconstitutional, a court must find that the provisions are clearly arbitrary and unreasonable, having no substantial

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> relationship to the public health, safety, morals or general welfare." *Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at *5 (Tenn. Ct. App. June 30, 2005) (citing *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 395 (1926)). Courts do not "inquire into the motives of a legislative body or scrutinize the wisdom of a challenged statute or ordinance." *Martin v. Beer Bd. for City of Dickson,* 908 S.W.2d 941, 955 (Tenn. Ct. App. 1995) (citations omitted).
>
> The Petitioners concede that "concerns about property values and economic redevelopment are valid concerns and a proper state interest for consideration in enacting zoning regulations"; they argue that the distance requirement "is not reasonably related to advancing" that interest. The preamble to the ordinance includes concerns related to the detrimental effect of clustering alternative financial services on property values; the location of the businesses in areas that are disproportionately minority and low income; the permissive regulatory environment, which allows the businesses to charge an annual interest rate of up to 459 percent; and new regulations, effective January 1, 2015, that regulate three new types of alternative financial lenders. Taken in their entirety, the statements in the preamble reflect legitimate legislative purposes, specifically, protecting the welfare of economically vulnerable citizens. The Metropolitan Council chose to restrict the location of alternative financial service providers in order to regulate the proliferation and clustering of these services; this decision reasonably advances the governmental interests identified in the preamble to the ordinance. Accordingly, we affirm the dismissal of the Petitioners' due process claim.

Brown, 2018 WL 6169251 at *5–6 (emphasis added); *see also, In re Walwyn*, 531 S.W.3d 131, 138 (Tenn. 2017); *Consolidated Waste*, 2005 WL 1541860 at *7.

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III. THE RATIONAL BASIS TEST IS A QUESTION OF LAW, NOT FACT.

The Sixth Circuit has explained the relationship between the Fourteenth Amendment and constitutional challenges:

> A first requirement of any law, whether under the Due Process Clause or Equal Protection Clause, is that it rationally advance a legitimate government policy. Two words ("judicial restraint") and one principle (trust in the people that "even improvident decisions will eventually be rectified by the democratic process") tell us all we need to know about the light touch judges should use in reviewing laws under the standard. So long as judges can conceive of some plausible reason for the law—*any* plausible reason, even one that did not motivate the legislators who enacted it—the law must stand, no matter how unfair, unjust, or unwise the judges may consider it as citizens.
>
> ... The signature feature of rational basis review is that governments will not be placed in the dock for doing too much or for doing too little in addressing a policy question.... [R]ational basis review does not permit courts to invalidate laws every time a new and allegedly better way of addressing a policy emerges, even a better way supported by evidence and ... by judicial factfinding. If legislative choices may rest on "rational speculation unsupported by evidence or empirical data," it is hard to see the point of premising a ruling on unconstitutionality on factual findings made by one unelected federal judge that favor a different policy. Rational basis review does not empower federal courts to "subject" legislative line-drawing to "courtroom" factfinding designed to show that legislatures have done too much or too little.

DeBoer v. Snyder, 772 F.3d 388, 404–405 (6th Cir.2014) (emphasis added).

The federal courts of appeals which have directly addressed this issue, whether in the context of equal protection or substantive due

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process, have concluded that whether a classification is rationally related to a legitimate governmental interest presents a question of law for a court, not a question of fact. *See, e.g., Myers v. County of Orange,* 157 F.3d 66, 74-75 & n. 3 (2d Cir. 1998); *FM Properties Operating Co. v. City of Austin,* 93 F.3d 167, 172 (5th Cir. 1996); *Midnight Sessions Ltd. v. City of Philadelphia,* 945 F.2d 667, 682 (3d Cir. 1991), *overruled on other grounds by United Artists Theatre Circuit, Inc. v. Township of Warrington,* 316 F.3d 392, 410 (3d Cir. 2003); *Izquierdo Prieto v. Mercado Rosa,* 894 F.2d 467, 471 (1st Cir. 1990).

Judge Trauger has described the meaning of the phrase "rational basis" as a term of art:

> The term "rational" has a special meaning in constitutional law. It does not mean that a law must be reasonable, sensible, well-founded, effective, or supported by evidence. In fact, in many contexts (including public education), state legislatures and policymakers can make "rational" decisions that, when implemented, are unreasonable, counter-productive to a stated goal, or contrary to all past experience and evidence. When a federal court conducts a rational basis review, the review is limited to determining only whether there is a *conceivable* rational *relationship* between the policy and a legitimate governmental objective. The rational relationship need not even be articulated by the policymakers defending the policy choice, and there may be no actual proof supporting that decision (in fact, there could even be proof demonstrating that the policy does not, in fact, achieve the desired result).

Wagner v. Haslam, 112 F. Supp. 3d 673, 692–93, 2015 WL 3658165 (M.D. Tenn. 2015) (emphasis added). Judge Trauger explained that an "irrational" policy would be one completely unrelated to the classification at issue:

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> By contrast, one can conceive of performance metrics that would be truly irrational, such as basing a Tennessee teacher's evaluation on the test scores of students in Arizona, whether the Nashville Sounds baseball team had a winning season that school year, or the State of Tennessee's economy on evaluation day. It is inconceivable that a Tennessee teacher's "value added" to a student's performance would bear any relationship to those metrics. By contrast, it is rational to believe that a teacher can impact the school-wide performance of both her own students and other students at that school by being an effective teacher and by improving the overall educational environment at the school.

Id. at 696.

IV. UNDER A RATIONAL BASIS REVIEW, COURTS MUST UPHOLD AN ORDINANCE IF THERE IS ANY CONCEIVABLE RATIONAL BASIS.

Courts cannot substitute their judgment on local land use policy for that of local legislative bodies. *McCallen v. City of Memphis,* 786 S.W.2d 633, 640 (Tenn.1990); *Varner v. City of Knoxville*, 2001 WL 1560530, at *3 (Tenn. Ct. App. Nov. 29, 2001) ("Courts are not 'super' legislatures. They do not decide whether a challenged legislative action is wise or unwise. It is not the role of judges to set public policy for local governments, nor do we decide if a municipality has adopted the 'best,' in our judgment, of two possible courses of action."); *Fielding v. Metro. Gov't of Lynchburg, Moore Cty.*, 2012 WL 327908, at *2–3 (Tenn. Ct. App. Jan. 31, 2012), quoting *Fallin v. Knox Cnty. Bd. of Comm'rs*, 656 S.W.2d 338, 342 (Tenn. 1983) ("The courts should not interfere with the exercise of zoning power and hold a zoning enactment invalid, unless the enactment, in whole or in relation to any particular property, is shown to be clearly arbitrary, capricious, or unreasonable, having no substantial relation to

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the public health, safety, or welfare, or is plainly contrary to the zoning laws.").

If an ordinance bears a reasonable relationship to the public health, safety or welfare, it is a valid exercise of police power. *Davidson County v. Rogers,* 198 S.W.2d 812, 814 (Tenn. 1947). Where the question is whether the legislature had a rational basis for an ordinance, "[i]f any reasonable justification for the law may be conceived, it must be upheld by the courts." *Riggs,* 941 S.W.2d at 48 (emphasis added).

The rational basis test is the same as the test for arbitrary and capricious action. *Varner*, 2001 WL 1560530 at *4. Under both, "the burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute; and if any state of facts can reasonably be conceived to justify the classification or if the unreasonableness of the class is fairly debatable, the statute must be upheld." *Beaman Bottling Co. v. Huddleston,* 1996 WL 417100, at *4 (Tenn. Ct. App. 1996) (quoting *Harrison v. Schrader,* 569 S.W.2d 822, 826 (Tenn. 1978)).

It is irrelevant, for constitutional purposes, whether the reason proffered for the ordinance actually motivated the legislature. *FCC v. Beach Communications,* 508 U.S. 307, 315 (1993). So contrary to Plaintiffs' assertions, evidence is not required to support a rational basis:

> The plaintiffs' arguments that there is no evidence in the record to establish a genuine safety risk from helicopter operations, and that the law will increase any potential risk and disruption by forcing longer flights, do not establish that the statute is irrational. To the contrary, under the rational

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> basis test, specific evidence is not necessary to show the relationship between the statute and its purpose. *See Newton v. Cox,* 878 S.W.2d at 110. Rather, this Court asks only whether the law is reasonably related to proper legislative interests. *Id.* We conclude that it is. …
>
> Although the plaintiffs contend that there is no evidence to support classifying helicopter operators within nine miles of the park differently from any others in Tennessee, such evidence is unnecessary; the relevant inquiry is whether there is a reasonably conceivable set of facts to justify the classification within the statute. We have concluded that there is such a set of facts which justifies the classification.

Riggs, 941 S.W.2d at 52-53 (emphasis added).

A court's "standards for accepting a justification for the regulatory scheme are far from daunting. A proffered explanation for the statute need not be supported by an exquisite evidentiary record; rather we will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Craigmiles v. Giles,* 312 F.3d 220, 224 (6th Cir. 2002) (emphasis added); *see also, Wagner,* 112 F.Supp.3d at 692–93 ("[T]here may be no actual proof supporting [the legislature's] decision (in fact, there could even be proof demonstrating that the policy does not, in fact, achieve the desired result).") (emphasis added).

"[I]f any state of facts may reasonably be conceived to justify it, the classification will be upheld." *Tennessee Small Schools,* 851 S.W.2d at 153 (citing cases); *see also, Harrison,* 569 S.W.2d at 825. Further, "[t]he individual challenging the statute has the burden of demonstrating that

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the legislative classification is unreasonable." *State v. Tester*, 879 S.W.2d 823, 829 (Tenn. 1994).

V. THE TRIAL COURT CORRECTLY DETERMINED THAT THE PROHIBITION ON CLIENT-VISITS TO HOME BUSINESSES IS A RATIONAL MEANS TO SERVE A LEGITIMATE GOVERNMENTAL INTEREST.

A. PAST ANALYSIS OF HOME-BUSINESS CLIENT PROHIBITIONS.

The Tennessee Supreme Court ruled many decades ago that whether to prohibit home businesses from operating at residential properties was a matter of legislative discretion:

> Whether beauty shops *per se* are such that they cannot be engaged in on the premises without affecting the use of the premises as a residence is a legislative problem. This legislative act, that is the Zoning Ordinance which was passed by the city fathers of Nashville, does not *per se* permit beauty shops in this District, while the many many exceptions as permitted in Residential 'A' Estate Districts which are likewise permitted in Residential 'B' Districts, where this property is, do not cover beauty shops. Frankly, with the many things that are permitted in Residential 'A' Estate Districts, we cannot see why the legislative body did not permit beauty shops. Be that as it may, this is not a question for the Court's determination but is a legislative problem, which must be left to the judgment of the local municipal legislative body based on its knowledge of conditions peculiar to a locality.

Davidson Cty. v. Hoover, 364 S.W.2d 879, 882 (Tenn. 1963) (holding that beauty shops were not permitted under the definition of home occupations that could operate on a residentially zoned property) (emphasis added). Even earlier, the Court ruled that the local legislature

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had a legitimate interest in keeping residentially zoned property from being used for commercial purposes:

> In many instances residential property owners could derive much larger incomes if they were permitted to devote same to commercial purposes. The right, however, to restrict such areas has become the law in this and practically every jurisdiction in the United States. While such regulations frequently result in financial loss to property owners, they are based upon the idea that "the interests of the individual are subordinate to the public good." Des Moines v. Manhattan Oil Company, supra [193 Iowa 1096, 184 N. W. 828, 23 A. L. R. 1322]. It is not our province to pass upon the wisdom of such laws; that is the prerogative of the Legislature.

Howe Realty Co. v. City of Nashville, 141 S.W.2d 904, 907 (Tenn. 1940) (emphasis added).

B. METRO PROVIDED NUMEROUS JUSTIFICATIONS FOR THE CLIENT PROHIBITION THAT HAVE A CONCEIVABLE RATIONAL RELATIONSHIP TO A LEGITIMATE GOVERNMENTAL OBJECTIVE.

Through its discovery responses and the testimony Councilmember Todd, the Metropolitan Government has provided the Court with numerous reasonable justifications on which the Court can rely in finding that the Council had a rational basis for its enactment. These include the justification of preserving residentially zoned property as a sanctuary from commercial and crowded spaces, which the U.S. Supreme Court has recognized and approved:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker, supra.* The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values,

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> and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Vill. of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).[5]

In addition to protecting residential spaces, the client-prohibition serves the dozens of other legitimate governmental interests described

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[5] Many cases since have agreed that preserving the residential nature of residential properties meets the rational basis test. *Varner,* 2001 WL 1560530 at *3 (rejecting rezoning that would allow commercial development and increased traffic, noise, and lighting adjacent to residences); *City of Jackson v. Shehata*, 2006 WL 2106005, *6–7 (Tenn. Ct. App. July 31, 2006) ("We also must remain cognizant of the overriding purpose for enacting residential zoning. A fundamental purpose of zoning legislation may be to create and maintain residential districts to exclude businesses."); *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1224 (6th Cir. 1992) (concerns about the deterioration of the neighborhood, including traffic and over-commercialization are rationally related to the goals of zoning); *Hartman & Tyner, Inc. v. Charter Twp. of W. Bloomfield,* 985 F.2d 560 (6th Cir. 1993) ("The record indicates that defendants based their decision on their desire to preserve the residential and quiet nature of the neighborhood. These concerns relate to the health, safety, and welfare of the community and are permissible motives for zoning decisions."); *Curto v. City of Harper Woods*, 954 F.2d 1237, 1243 (6th Cir. 1992) (Legitimate government interests include "preventing traffic congestion and overflow of parked vehicles into surrounding properties or the street, controlling harmful fumes and odors, reducing the risk of fire hazards, ensuring adequate ingress and egress by emergency vehicles, and preserving the aesthetic value of the property and surrounding neighborhood."). A limit on the intensity of a use passes the rational basis test. *Richardson v. Twp. of Brady*, 218 F.3d 508, 513-514 (6th Cir. 2000) (township's zoning ordinance limiting number of livestock on property was rationally related to purpose of ordinance, namely controlling odors in administratively feasible manner).

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by Councilmember Todd and in discovery, as well (described in Sec. III & IV of the Fact section of this Brief).

C. PLAINTIFFS DID NOT MEET THEIR BURDEN TO NEGATIVE EVERY REASONABLY CONCEIVABLE STATE OF FACTS THAT PROVIDE A RATIONAL BASIS FOR THE CLIENT PROHIBITION.

Plaintiffs makes numerous arguments to challenge the client-prohibition as applied to themselves, in attempting to negate the rational reasons provided by the Metropolitan Government. These are addressed in turn below, *although it is key to remember that only one rational reason needs to be accepted by the court in order for the ordinance to pass the rational basis test.*

1. Allowing other types of home-based businesses in residential districts does not violate equal protection.

Plaintiffs assert that the fact that the Metropolitan Government allows client visits in owner-occupied short-term rentals, certain specific plans, historic home events, and day care homes violates Tennessee's equal protection guarantee.

First, it's important to note that legislation "does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). A law can be underinclusive or overinclusive without running afoul of the Equal Protection Clause. *New York Transit Authority v. Beazer*, 440 U.S. 568, 592 n.38 (1979); *see also, Millennium Taxi Serv., L.L.C. v. Chattanooga Metro. Airport Auth.*, No. E200800838COAR3CV, 2009 WL 1871927, at *8 (Tenn. Ct. App. June 30, 2009) ("A classification having some

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reasonable basis "is not unconstitutional merely because it results in some inequality."").

The role of courts in reviewing zoning is not to compare the rationales behind allowing certain uses while disallowing others:

> The notion that we would invalidate the City Council's 2006 action because of a perceived inconsistency with the council's stated rationale for an action on a similar matter, four years prior, totally misconceives our role in cases such as this. We are bound by the language of *Fallin*. If we can find any rational basis-or, stated even more broadly, "any possible reason"-to uphold the council's decision, we must do so, absent evidence of arbitrary, capricious, or illegal action by the council. The differences between the 2002 and 2006 application certainly constitute possible, rational reasons to reach a different conclusion in 2006, regardless of how the council may have articulated its reasoning in 2002. The record simply does not demonstrate that the different results in 2002 and 2006 constitute either "discrimination" or arbitrary inconsistency. This contention is without merit.

Gann v. City of Chattanooga, No. E200701886COAR3CV, 2008 WL 4415583, at *5 (Tenn. Ct. App. Sept. 30, 2008).

"Rational basis review begins with a strong presumption of constitutional validity," and "[i]t is [Plaintiff]'s burden to show that the law, as-applied, is arbitrary; and not the government's to establish rationality." Moreover, "[u]nder rational basis review, differential treatment must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Graham v. Mukasey,* 519 F.3d 546, 551 (6th Cir. 2008) (internal citations omitted, emphasis added).

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"Rational basis review does not empower … courts to 'subject' legislative line-drawing to 'courtroom' fact-finding designed to show that legislatures have done too much or too little." *DeBoer,* 772 F.3d at 404–405.

> In sum, where rational basis review applies … the U.S. Constitution allows … legislators and policymakers to make both excellent decisions and terrible decisions, provided that the decisions are based on some conceivable modicum of rationality at the time of their passage or application in practice. The U.S. Constitution does not permit a … court to evaluate or rule upon the wisdom of these decisions, even where the policy may be unfair, misguided, or counter-productive. Thus, when a … court finds that a policy is "rationally related to a legitimate government objective," the court is not endorsing the policy, finding that it is empirically supported, or concluding that it is a wise idea. The court is merely ruling that the U.S. Constitution does not forbid a state or locality from adopting or applying that policy.

Wagner, 112 F.Supp.3d at 693 (emphasis added).

Plaintiffs point to several uses that are permitted in residential areas to support their belief that the client-prohibition is arbitrary. As the Trial Court pointed out, "[j]ust because [other uses] are allowed … does not invalidate the logic behind the Client Prohibition." (T.R. 2332). And the argument that these allowed uses make the client-prohibition arbitrary is mistaken, because there are legitimate rational bases for allowing these uses.

Day cares

Day cares are permitted in residential neighborhoods under limited circumstances. They are permitted as of right (without special

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permission from Metro) as an accessory use to a single-family dwelling for up to four children. METROPOLITAN CODE § 17.04.060. (T.R. 1038-39). Day cares that do not meet this definition require obtaining a special exception permit from the Board of Zoning Appeals, which may impose conditions. (T.R. 922-23 – Deposition of Bill Herbert; T.R. 116-24 – METROPOLITAN CODE § 17.08.030, District Land Use Tables).

Allowing day cares in residential areas is not arbitrary or inconsistent with prohibiting clients to visit home businesses. Caring for children in a home is entirely consistent with the residential use of a home. Allowing up to four children to be cared for in a single home is a traditional residential use and is consistent with the policy set by the State, which does not require a license for child care homes providing care for four or fewer children. TENN. CODE ANN. § 71-5-501.

Once a day care cares for greater than four children, state licensing is required, and the Metropolitan Code requires a special exception permit, which means only certain size lots are eligible, street standards must be met, and landscape buffers are required. (T.R. 174-76 – METROPOLITAN CODE § 17.16.170). Day cares are subject to inspection by the State, employees must undergo background checks, and licenses may be revoked. TENN. CODE ANN. §§ 71-5-507-509.

It is not arbitrary to allow day cares in a residential area, because this is a traditional residential use and is subject to strict regulations. Councilmember Todd's testimony further demonstrated the reasonableness of this zoning choice when he noted that parents drop off children in the morning and do not come back until the end of the day.

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This differs from home recording studios where band members and clients may come and go frequently during the day. (T.R. 1225-26 – Deposition of Carter Todd). And, there is a public interest in allowing a daycare in a neighborhood, so that children are near their home for daycare. (T.R. 1230, 1234 – Deposition of Carter Todd).

Historic home events

Historic home events also require a special exception permit from the Board of Zoning Appeals, which may impose conditions, including limits on the number and frequency of events. (T.R. 173-74 – METROPOLITAN CODE § 17.16.160(B)). The general public is not invited into the home – it is open for special events. *Id*. The owner of the property must reside in the home, and the home must be a historically significant structure, as determined by the historic zoning commission. *Id*.

Councilmember Todd explained that there are not that many historic homes and that they host events that are not that different from opening a house to social guests. (T.R. 1235-37 – Deposition of Carter Todd). The city has an interest in preserving these homes and the events they are permitted to host are a way for the historic homes to earn income. *Id*. And, the number of events can be limited in number and frequency. (T.R. 173-74 – METROPOLITAN CODE § 17.16.160(B)) This differs from a hair salon, which typically has a schedule of tightly packed appointments and operates daily.

Short-term rentals

Short-term rentals allow owners to rent their homes to visitors for fewer than 30 days at a time. (T.R. 184-85 – METROPOLITAN CODE §

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17.16.250(E)). Short-term renters are basically renting a space to sleep, eat, and rest, which are activities typically done in a residential district by those that live there. (T.R. 1232-34 – Deposition of Carter Todd).[6] Allowing short-term rentals was in the public interest because of the shortage of hotel rooms. *Id.*[7] More recently, the Metropolitan Council has determined that such use is more "commercial" in nature and not suited for residentially zoned areas – so it has restricted non-owner occupied short-term rental use in one and two-family residential neighborhoods. Metropolitan Ordinance No. BL 2017-608. (T.R. 1040-56).

Plaintiffs argue that their case is comparable to *Consolidated Waste*, but in that case, the Court determined that the ordinances at issue "arbitrarily single out C & D landfills and Metro has articulated no rational reason for how the two (2) mile buffer for only these landfills serves a legitimate governmental purpose." *Consolidated Waste,* 2005

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6 William Penn, Assistant Director of the Department of Codes and Building Safety opined that renters of short-term rentals are not "clients" visiting a home business:

> Q: I'm sorry, the people who are staying at the short-term rental are paying clients of the short-term rental?
>
> A: I would consider it more just a rental. I mean, a person who is renting – just like I would rent a hotel room. It depends on your point of view.

(T.R. 994 – Deposition of William Penn).

7 Councilmember Todd also notes that there are many Nashvillians who believe that even allowing this typically residential type of use for a home detracts from the residential nature of the neighborhood and are furious that it has been allowed. (T.R. 1233 – Deposition of Carter Todd).

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WL 1541860 at *33. In contrast, the client prohibition does not single out the Plaintiffs – it is applied consistently to all residential properties with relatively few exceptions (one being owner occupied short-term rentals). Also, unlike *Consolidated Waste,* Metro has provided rational bases for those limited exceptions, including short-term rentals.

Specific Plans

Specific plans are described in the Metropolitan Code as follows:

> The specific plan (SP) district is an alternative zoning process that may permit any land uses, mixture of land uses, and alternative development standards, of an individual property or larger area, to achieve consistency with the general plan. In return, a SP district requires the specific plan to be designed such that, at a minimum, the location, integration and arrangement of land uses, buildings, structures, utilities, access, transit, parking, and streets collectively avoid monotony, promote variety, and yield a context sensitive development.

(T.R. 414 – METROPOLITAN CODE § 17.40.105). An application for an SP must contain a development plan, which "describes existing conditions, the purpose and intent of the SP, the plan's consistency with the principles and objectives of the general plan, a list of allowable land uses, height and size of proposed building types, and development standards and a conceptual site plan, regulatory plan, or site-specific plan for the development." (T.R. 414 – METROPOLITAN CODE § 17.40.106). Applicants must then go through the rezoning process, which involves review of the plan by the Planning Commission at a public hearing and consideration by the Metropolitan Council. *Id.*

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Both Plaintiffs failed in their efforts to rezone their properties to an SP that would allow visitors to their home businesses. (T.R. 19-21 – Complaint, ¶¶ 123-134). They could have challenged the denial of the rezoning through a declaratory judgment or inverse condemnation action but chose not to do so. *See Brown v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2011-01194-COA-R3CV, 2013 WL 3227568 (Tenn. Ct. App. June 21, 2013); *Varner*, 2001 WL 1560530 at *1. In fact, Plaintiffs represented to the Trial Court that this lawsuit does not challenge the Metropolitan Council's denial of their SP rezoning applications. (T.R. 468 – Plaintiffs' Response in Opposition to Motion to Dismiss, p. 21).

Under these circumstances, there is no basis for any kind of equal protection analysis comparing the Plaintiffs' situation (residing in a residential district) with properties that are zoned SP (a different zoning classification). Further, there is nothing arbitrary about requiring home-based businesses to go through an extensive rezoning process in order to determine whether a particular property is properly suited for client visits despite being within a residential area. This allows for an individualized analysis on the very issues that the Metropolitan Government identified as being its rational bases for the client prohibition. In actuality, Plaintiffs appear to be complaining about the denial of their rezoning requests, which as stated above, is *not* part of this lawsuit.

Because there are important distinctions between the above-described uses and allowing clients to visit home-based businesses in residential districts, the Plaintiffs failed to show that the zoning

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classifications are arbitrary. Therefore, the Trial Court was correct in determining that these uses did not preclude granting summary judgment to the Metropolitan Government.

2. The Plaintiffs' arguments and the evidence does not demonstrate that the rational bases provided by the Metropolitan Government are irrational or arbitrary

Plaintiffs' Brief examines each of the ten reasons mentioned by the Trial Court in its Order and attempts to demonstrate that they do not support the client prohibition. This Brief will take each in turn as well.

Residential nature of residential property

Plaintiffs suggest that because the Metropolitan Government allows certain types of commercial activity to occur in residentially-zoned districts, it is oppressive not to allow client visits to their home-based businesses. But this argument ignores the legal standard at issue in this case. Under rational basis, the Court is not empowered to step into the role of the legislature and "'subject' legislative line-drawing to 'courtroom' factfinding designed to show that legislatures have done too much or too little." *DeBoer,* 772 F.3d at 404–405. This is exactly what Plaintiffs are suggesting, and the Trial Court was correct to disregard these arguments.

The Plaintiffs' proposed use of the property (twelve visits by clients per day to their home businesses) is obviously commercial in nature, and therefore, logic dictates that allowing such use would detract from the residential nature of their neighborhoods. The fact that other commercial uses might also cause some amount of harm is not relevant.

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Enforcement by Metro Codes

Plaintiffs point out that the enactment of the client prohibition provision creates an enforcement problem that would not exist if such provision did not exist in the first place. This is an absurd argument. Obviously, enforcing any rule is harder than enforcing no rule, but Plaintiffs requested relief was to be able to serve twelve clients per day at their home businesses. And logically, enforcing a limit on the number of clients (rather than an outright ban on client visits) would be much more difficult for the already understaffed Codes Department.

Crimes by nonresident clients

Plaintiffs argue that Metro has not produced any evidence that allowing client visits would result in increased crime. But again, this is not Metro's burden. Rather, it is Plaintiffs' burden. *See Ziss Bros. Const. Co., Inc. v. City of Indep., Ohio*, 439 Fed. Appx. 467, 476 (6th Cir. 2011) "Because a plaintiff bears the entirety of the burden in demonstrating that the challenged action had no rational basis, the government entity, in this case the City and the Commission, 'has no obligation to produce evidence to sustain the rationality of its action; its choice is presumptively valid and may be based on rational speculation unsupported by evidence or empirical data.'").

Carter Todd testified as to the concern of unknown persons entering residential neighborhoods (T.R. 1238 – Deposition of Carter Todd), and this concern has been endorsed by the U.S. Supreme Court as a rational reason for restricting commercial businesses from residential areas:

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> [T]he exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. ...

Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 391-395 (1926) (emphasis added).

Opportunities for commercial tenancy

Plaintiffs also claim that that Metro's concern that commercial spaces will be vacant if residential businesses may receive customers is an illegitimate interest. Plaintiffs characterize this interest as illegal "economic protectionism" but it is not. Both cases cited by Plaintiffs involve unrelated legal concepts favoring one type of business over another.

Bean v. Bredesen, No. M200301665COAR3CV, 2005 WL 1025767, (Tenn. Ct. App. May 2, 2005) involved the standard *under the commerce clause*, which requires that a state cannot favor in-state interests over out-of-state interests unless it is tethered to a legitimate local purpose unrelated to economic protectionism and if this purpose cannot be served as well by other reasonably available non-discriminatory means. Here, the standard is rational basis review, which involves an entirely different analysis.

In *Craigmiles v. Giles,* 312 F.3d 220 (6th Cir. 2002), the Sixth Circuit invalidated a state statute that *explicitly favored one commercial*

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group over another (funeral directors versus casket retailers). Finding no rational relationship to any of the articulated purposes of the state, the only logical conclusion was that the statute existed as a form of economic protectionism for the funeral directors. *Id.* at 228.

In this case, the client prohibition is not favoring one business over another for no rational reason – it is carrying out the important governmental interest in preserving a healthy residential area and a healthy commercial district. These are legitimate rational reasons, as discussed in *Nordlinger v. Hahn*, 505 U.S. 1 (1992).

In *Nordlinger*, the U.S. Supreme Court stated that the government has a legitimate interest in local neighborhood preservation, continuity, and stability and "can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses, for example, in order to inhibit displacement of lower income families by the forces of gentrification or of established, 'mom-and-pop' businesses by newer chain operations. By permitting older owners to pay progressively less in taxes than new owners of comparable property, the Article XIIIA assessment scheme rationally furthers this interest." *Id.* at 12.

The *Norlinger* Court also endorsed additional rational bases articulated by Carter Todd (T.R. 1252-53 – Deposition of Carter Todd) – specifically, a legitimate governmental interest in stability of a community and in investment based expectations :

> This Court previously has acknowledged that classifications serving to protect legitimate expectation and reliance interests do not deny equal protection of the laws. "The protection of reasonable reliance interests is not

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only a legitimate governmental objective: it provides an exceedingly persuasive justification..."

Id. at 13. These reliance interests are significant here – it is appropriate for a government to want investments in commercial areas to be stable, and to honor the wishes of homeowners who chose not to buy a home in a mixed-use neighborhood and do not expect or desire commercial visitors in their residential neighborhoods. Plaintiffs' personal desires to have their properties be zoned differently, to allow clients, cannot trump the legitimate expectations of all their neighbors to the continuation of their homes' residential zoning.

Traffic and parking

Plaintiffs admit that their businesses would an impact on traffic and parking in their neighborhoods but that it would be negligible. This argument misses the point of rational basis review. The question is not whether Plaintiffs businesses will reach some threshold amount of traffic but whether the client prohibition is rationally related to the issue of traffic and parking. Plaintiffs have not demonstrated that it is not.

Concern about the generation of additional traffic has been approved by the U.S. Supreme Court as a legitimate rational basis for governmental action. *Vill. of Euclid,* 272 U.S. at 391-395. ("[T]he segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially

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to children, by reducing the traffic and resulting confusion in residential sections...".).

Likewise, Tennessee Courts have approved this as a rational basis for taking steps to prevent adding hundreds of cars to a neighborhood each week. *Fallin*, 656 S.W.2d at 343 (adding traffic to the point where a road would become inadequate and hazardous is a rational reason for disapproving a rezoning); *MC Properties, Inc. v. City of Chattanooga*, 994 S.W.2d 132, 135 (Tenn. Ct. App. 1999) (limiting commercial development where appropriate infrastructure had not been built passed the rational basis test).

Pedestrians and sidewalks

Plaintiffs argue that there is no evidence to support this concern and asserts that Metro's corporate representative stated that he was "not concerned with sidewalks." But Plaintiff mischaracterizes Mr. Todd's testimony. Mr. Todd clearly stated in his deposition that many residential neighborhoods are not equipped with sidewalks, which is a serious safety concern when those residences might be serving clients. (T.R. 761-62 – Deposition of Carter Todd). Plaintiffs produced no evidence to negate this concern, so the Trial Court was correct to identify it as one of the rational bases for the client prohibition.

Administration of tax and utility rates

Plaintiffs suggest that because tax and utility rates are within Metro's control and there is no evidence that allowing client visits would be difficult to administer, this is not a valid basis for the client prohibition. But again, Plaintiffs misunderstand the rational basis

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analysis. Metro is not required to produce evidence to support its arguments – the client prohibition "may be based on rational speculation unsupported by evidence or empirical data." *Beach Commc'ns, Inc.*, 508 U.S. at 318. What Plaintiffs suggest – a complete overhaul of the taxation and utility rates – clearly would place some sort of burden on the Metropolitan Government.

Access by disabled

Plaintiffs argue because the Metropolitan Government does not enforce the ADA, it does not have a legitimate interest in promoting access by disabled persons. Obviously, the Metropolitan Government has a legitimate interest in making sure its citizens have equal access to places of public accommodation. Arguing otherwise is absurd. In that same vein, as explained above, Metro has adopted the International Building Code, which distinguishes between residential and commercial properties and has different safety requirements for each.

Property price inflation

Plaintiffs assert that there is no evidence to support Metro's concern that allowing client visits would result in property price inflation and also that there is no reason to believe this would occur. Again, it is not Metro's burden to produce such evidence, but Metro's concern is a logical one. Plaintiffs have improved their properties in ways that allows them to be income-producing, which, in turn, clearly affects their value.

Enforcement by HOAs

Lastly, Plaintiffs argue that the concern that HOAs may have more difficulty enforcing their contractual restrictions is not legitimate

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rational basis because HOAs are private entities. However, this concern relates to the need for order and certainty of outcome testified to by Mr. Todd. (T.R. 1180-81 – Deposition of Carter Todd). At the moment, the Codes Department is responsible for enforcing the client prohibition. Changing that suddenly by striking down the client prohibition would necessarily have an adverse effect on multiple neighborhoods who have relied on the Codes Department's enforcement but would now have to determine how to enforce their contractual restrictions on commercial activity.

Because the client-prohibition is based on legitimate health, safety and welfare reasons, and Plaintiffs failed to establish that its bases are irrational or arbitrary, it withstands the rational basis test as a matter of law. Therefore, the Trial Court correctly granted summary judgment to the Metropolitan Government.

VI. THE TRIAL COURT ERRED WHEN IT REQUIRED THE METROPOLITAN GOVERNMENT TO PRODUCE A 30.02(6) WITNESS.

The Metropolitan Government objected to the Plaintiff's discovery requiring the Metropolitan Government produce a 30.02(6) witness to testify on these topics:

- Metro's interest(s) in maintaining the Client Prohibition, Metro Code § 17.16.250(D)(1) ("No clients or patrons may be served on the property.")
- Metro's interest(s) in applying the Client Prohibition to Plaintiffs' recording studio and hair salon; and

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- Metro's interest(s) in prohibiting Plaintiffs' recording studio and hair salon from serving clients on the property, when home-based businesses that qualify for accessory use permits for owner-occupied short-term rentals, special exception permits for day care homes and/or historic home events, and/or specific plan ordinances are allowed to serve clients on the property.

The Court ordered the testimony on January 22, 2019, and on February 22, 2019, denied Metro's Motion to Alter or Amend. (T.R. 592-594; 611-14). Grounds for Metro's objections were that it is the Plaintiffs' burden to disprove any rational conceivable rational basis and that the government need not present a basis through discovery. And in fact, doing so violates the Council's legislative immunity.

A. The Court erred in compelling Metro to provide a 30.02(6) witness because such testimony is protected by the Metro councilmembers' legislative immunity.

The United States Supreme Court has recognized that legislators are entitled to absolute immunity for their legislative activities. *Bogan v. Scott-Harris,* 523 U.S. 44, 49 (1998). This privilege extends to local legislators. *Id.* Actions such as voting for or against an ordinance of general applicability are "quintessentially legislative." *Id.* at 55. Immunity attaches for "conduct that is 'integral' to the legislative process, such as introducing a bill or conducting fact-finding for a piece of legislation and other acts 'generally done in the course of the process of enacting legislation.'" *Johnson v. Metro. Gov't of Nashville & Davidson Cty.,* 2009 WL 1952780, at *2 (M.D. Tenn. July 2, 2009) (quoting *Government of Virgin Islands v. Lee,* 775 F.2d 514, 520 (3d Cir. 1985).

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Legislative immunity does not only protect against civil liability; "it also functions as an evidentiary and testimonial privilege." *Johnson,* 2009 WL 1952780 at *3-4 (citing *Miles–Un–Ltd., Inc. v. Town of New Shoreham,* 917 F. Supp. 91, 98 (D.N.H. 1998)); *see also Marylanders for Fair Representation, Inc. v. Schaefer,* 144 F.R.D. 292, 297–98 (D.Md. 1992); *Cunningham v. Chapel Hill, ISD,* 438 F.Supp.2d 718, 723 (E.D. Tex. 2006) ("[T]he testimonial privilege is an inherent aspect of the legislative immunity that applies to local legislators .... The vote taken ... was a legislative act. Accordingly, the doctrine of legislative immunity protects [all] trustees from having to testify with regard to actions taken in the sphere of legitimate legislative activity ...."); *Williams v. Johnson,* 597 F.Supp.2d 107, 115 (D.D.C.2009) ("Legislative immunity ... affords protection not only when a legislator is named a defendant in a lawsuit but also when a litigant wishes to obtain discovery from a legislator as a third-party witness.").

Here, the Court allowed the Plaintiffs to use Tenn. R. Civ. P. 30.02(6) as an end-run around the legislative immunity afforded to the members of the Metro Council, which should not have been permitted. *See e.g., Alliance for Global Justice v. D.C.,* 437 F. Supp. 2d 32, 37 (D.D.C. 2006) ("Plaintiffs are seeking testimony relating to a Council investigation, which was conducted as part of the Council's deliberative and legislative process. They also appear to be seeking testimony about the Council's understanding and interpretation of its own statutes. Both areas of testimony clearly fall within the "legislative sphere" and are shielded by the District's speech and debate statute. Therefore, to the

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extent that plaintiffs are arguing that the "collective knowledge" of the District includes the knowledge and views of the Council, plaintiffs are not entitled to such testimony. The fact that plaintiffs seek to obtain the Council's knowledge and views via a Rule 30(b)(6) deponent and disclaim any intention of directly questioning any Council member or staff is irrelevant. … By its very nature, a Rule 30(b)(6) deposition notice requires the responding party to prepare a designated representative so that he or she can testify on matters not only within his or her personal knowledge, but also on matters reasonably known by the responding entity. … That preparation would require the very type of intrusion into the Council's legislative activities that the speech and debate statute was intended to prevent.") (emphasis added) (internal citations omitted).

B. Information related to the Metro Council's reasons for enacting the Ordinances at issue is irrelevant and was not calculated to lead to the discovery of admissible evidence because the Court was applying rational basis review.

Metro also submits that the Metro Council's intentions or reasoning in enacting the ordinance at issue is entirely irrelevant for purposes of this lawsuit because the Court must apply rational basis review. The Court determined that the request for a 30.02(6) witness was "proper from an evidentiary standpoint. It is not Plaintiff's duty to guess what Metro's rational basis or bases might be. At some point, Metro must say what those bases are and allow Plaintiffs to question them." But under rational basis review, this information is not discoverable because it is not reasonably calculated to lead to the discovery of admissible evidence

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as such evidence is completely irrelevant. *See Johnson v. Bredesen,* 579 F. Supp. 2d 1044, 1054 (M.D. Tenn. 2008), *aff'd,* 624 F.3d 742, (6th Cir. 2010) ("[A]lthough the burden is clearly upon the Plaintiffs as the challenging party 'to negative any reasonably conceivable state of facts that could provide a rational basis for the classification,' ... Plaintiffs must carry that burden by resorting to logic rather than to discovery.") (emphasis added); *see also, Primary Care Physicians Grp., P.C. v. Ledbetter,* 102 F.R.D. 254, 255-57 (N.D. Ga. 1984) ("Even if all these assumptions were in fact true, they would be irrelevant to the question the court must eventually decide; that is, whether there is any conceivable purpose which may justify the statute. In other words, even if the plaintiffs can prove that the legislature's reason for passing the statute was improper, the constitutionality of the statute would still be upheld if there was another, legitimate basis for the legislation. Accordingly, the court determines that the information the plaintiffs seek ... is irrelevant and not calculated to lead to the discovery of admissible evidence.") (emphasis added).

Because the 30.02(6) deposition was not reasonably calculated to lead to the discovery of admissible evidence, the Trial Court erred in compelling it.

VII. WITH THE ENACTMENT OF BL2019-48, THIS APPEAL IS NOW MOOT AND SHOULD BE DISMISSED.

After the Trial Court issued its Order, Ordinance BL2019-48 was enacted and became law. The new ordinance amends METROPOLITAN CODE OF LAWS § 17.16.250(D) by "deleting it in its entirety and replacing"

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it with a new provision, which allows a maximum of six client visits per day (by appointment) between 8:00 a.m. and 7:00 p.m. Monday through Saturday at home-based businesses.

"Tennessee's courts believe[] that 'the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions.' Accordingly, they limit[] their role to deciding 'legal controversies.' A proceeding qualifies as a 'legal controversy' when the disputed issue is real and existing, and not theoretical or abstract, and when the dispute is between parties with real and adverse interests." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County,* 301 S.W.3d 196, 203 (Tenn. 2009). "Although a showing of present injury is not required in a declaratory judgment action, a real 'case' or 'controversy' must nevertheless exist." *Thomas v. Shelby Cty.,* 416 S.W.3d 389 (Tenn. Ct. App. 2011).

"A case must remain justiciable (remain a legal controversy) from the time it is filed until the moment of final appellate disposition." *Norma Faye Pyles Lynch Family Purpose LLC,* 301 S.W.3d at 203–04. "A moot case is one that has lost its justiciability either by court decision, acts of the parties, or some other reason occurring after commencement of the case." *Id.* at 204. A case is moot when the prevailing party will be provided no meaningful relief from a judgment in its favor. *Knott v. Stewart Cnty.,* 207 S.W.2d 337, 338 (Tenn. 1948); *County of Shelby v. McWherter,* 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996).

Because the law Plaintiffs are challenging has been repealed and amended, their claims for declaratory judgment and injunctive relief are

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now moot. *Hooker v. Haslam,* 437 S.W.3d 409, 417 (Tenn. 2014) ("Where the plaintiff challenged the constitutionality of a statute and the statute was repealed after the case was initiated but before it was heard, the repeal rendered the case moot, since the challenged statute was no longer the law of the land."); *see also, Tini Bikinis-Saginaw, LLC v. Saginaw Charter Tp.,* 836 F.Supp.2d 504, 519–20 (E.D. Mich. 2011) ("Indeed, declaring a repealed ordinance void and enjoining its enforcement … would be an empty act. In the vernacular, declaring it void would be as meaningful as shooting a dead horse. And enjoining its enforcement, moreover, would be shooting the horse once again.").

"Legislative repeal or amendment of a challenged statute while a case is pending on appeal usually eliminates [the] requisite case-or-controversy because a statute must be analyzed by the appellate court in its present form." *Kentucky Right to Life, Inc. v. Terry,* 108 F.3d 637, 644 (6th Cir. 1997); *see also, Brandywine, Inc. v. City of Richmond, Kentucky,* 359 F.3d 830, 836 (6th Cir. 2004) ("Plaintiffs ask this court to declare unconstitutional the zoning scheme as it existed when their license was revoked and to enjoin Richmond from enforcing that scheme. We can neither declare unconstitutional nor enjoin the enforcement of a provision that is no longer in effect."); *Home Builders Assoc. of Middle Tenn. v. Metro. Gov't of Nashville and Davidson Cnty.,* 2019 WL 369271, *3-4 (Tenn. Ct. App. Jan. 30, 2019) (dismissing appeal as moot due to General Assembly's enactment of a statute that would prohibit the enforcement of the ordinance challenged by the plaintiffs). "Generally, when an ordinance is repealed any challenges to the constitutionality of

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that ordinance become moot." *Tini Bikinis-Saginaw, LLC,* 836 F.Supp.2d at 519 (E.D. Mich. 2011) (quoting *Coal. For the Abolition of Marijuana Prohibition v. City of Atlanta,* 219 F.3d 1301 (1310 (11th Cir. 2000). Plaintiffs' Complaint does not challenge the current version of METROPOLITAN CODE OF LAWS § 17.16.250(D). Rather, it challenges an ordinance that has been repealed and amended.

Despite the fact that the ordinance expressly challenged by Plaintiffs has been repealed and amended, Plaintiffs argue that Metro's claim of "voluntary cessation" is insufficient to moot its claims. Plaintiffs assert it is Metro's burden to persuade the Court that this case is moot, but the Tennessee Supreme Court has explained the burdens can be different when a governmental entity is involved:

> We have determined that the mandates of the Constitution of Tennessee and the interests of the parties are best served by holding that the burden of persuading a court that a case has become moot as a result of the voluntary cessation of the challenged conduct is and remains on the party asserting that the case is moot. However, when the party asserting that the case has become moot based on the cessation of its own conduct is a government entity or official, the court may, if justified by the circumstances of the case, require the opposing party to demonstrate why the proceeding should not be dismissed for mootness.

Norma Faye Pyles Lynch Family Purpose LLC, 301 S.W.3d at 206. Here, the challenged ordinance has been repealed and replaced with an ordinance that allows Plaintiffs to have clients visit their properties. While a sunset provision is included in the new ordinance, there is no way to know what a future Metropolitan Council will do in 2023 after

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having time to observe the ordinance's effects on residential neighborhoods. Under these circumstances, it is appropriate to shift the burden to the Plaintiffs, and Plaintiffs have not met that burden. Therefore, this appeal should be dismissed as moot.

CONCLUSION

Plaintiffs asked the Court to substitute its judgment for the Metro Council. They asked not only that the Court invalidate the ordinance prohibiting clients from visiting home-based businesses, but asked that the Court determine that twelve visitors a day are appropriate for a home-based business. This is not the role of the judiciary and is contrary to the will of the citizens of Metro Nashville, who, though their elected representatives, chose to reject such proposals many times. The fact that some home-based businesses are now allowed does not change this legal standard.

Because the provision in the Metro Code preventing client-visits to home-based businesses is rationally related to the legitimate goals of protecting the residential nature of neighborhoods, the commercial activity essential to commercial districts, and the order, certainty, quality of life, and safety that this provision provides, the Plaintiffs' substantive due process and equal protection were correctly determined to be without merit. For these same bases, the Metropolitan Government asks that summary judgment be affirmed.

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