

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

ELIJAH SHAW and PATRICIA RAYNOR,)	
)	
Plaintiffs,)	
)	
v.)	No. 17-1299-II
)	Hon. Anne C. Martin
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY,)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT

Introduction

1. This is a civil rights complaint for relief from an arbitrary, unreasonable, and discriminatory restriction on certain home-based businesses in Nashville’s zoning ordinance. After years of litigation, Nashville finally allows Plaintiffs to have some clients to their home-based businesses. But it does so only on discriminatory terms that continue to privilege certain home-based businesses with regard to clients.

2. This discriminatory restriction continues to restrict 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.

3. There is no real and substantial difference between Plaintiffs’ home-based businesses and the privileged home-based businesses that is germane to the claimed purposes of the client restrictions. Nashville’s client restriction

discriminates against Plaintiffs and violates their rights under the Tennessee Constitution.

Jurisdiction and Venue

4. Plaintiffs' causes of action arise under Tenn. Const. art I, § 8 and art. XI, § 8. These two provisions "encompass the equal protection guarantee" of the Tennessee constitution.

5. 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.

6. 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.*

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

Parties

8. Plaintiff Elijah "Lij" Shaw, an individual, is a 55-year-old single father and Nashville homeowner who lives at 2407 Brasher Avenue.

9. Plaintiff Patricia "Pat" Raynor, an individual, is a 71-year-old widow and Nashville homeowner who lives at 3233 Knobview Drive.

10. 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 ordinance challenged in this litigation.

Statement of Facts

I. Lij Shaw

11. 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.

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

13. In 2005, Lij's then-wife gave birth to his daughter Sarayah, who is now 16 years old.

14. 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.

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

16. 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.

17. 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.

18. 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.

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 sixteen 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.

27. Until recently, however, it was illegal for Lij to have "clients or patrons" to his home recording studio. Nashville, Tenn. Metro. Code of Ordinances ("Metro Code") § 17.16.250(D) (2019) (the "Client Prohibition").

28. Nashville's Department of Codes & Building Safety (the "Codes Department" or "Codes") enforces restrictions on clients to home based businesses based only on anonymous reports to Codes's website.

29. In 2015, someone anonymously reported Lij's home recording studio to Codes. Neither Lij nor Codes knows the identity of the person.

30. On or about September 1, 2015, Lij received a notice to correct from 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.

31. The notice did not cite the Client Prohibition, but subsequent events made it clear that Lij received the notice because he was suspected of violating the Client Prohibition.

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

33. 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.

34. 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.

35. 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.

36. Thereafter, Lij 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 suffered as a result.

II. Pat Raynor

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

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

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

40. 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.

41. 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 their family.

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

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

44. Pat could not afford to stop working. This is still true today—over 14 years later—and Pat expects that she will never be able to afford a retirement.

45. 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.

46. 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.

47. 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.

48. Pat is now 71, and the considerations just described have all grown in importance to her. Moving her practice into her home eliminates the overhead cost of commercial rent, and makes it possible for Pat to work part-time, prolong her career, and maintain her independence.

49. It is legal for Pat to have a home hair salon. But until recently, the Client Prohibition prohibited her from having “clients or patrons” come to her home salon. Metro Code § 17.16.250(D) (2019).

50. Among other efforts to open her home hair salon, Pat obtained approval from the Tennessee State Board of Cosmetology to operate as a “residential shop.” *See* Tenn. Comp. R. & Regs. 0440-02-.07(6).

51. Pat undertook a lengthy and expensive effort to convert her garage into a state-licensed salon for her clients. *See id.* (requiring “[r]esidential shops” to have “a separate entrance” and “[s]eparate restroom facilities” from the living quarters).

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

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

54. 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.

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

56. 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).

57. 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.

58. 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.

59. The salon opens 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.

60. 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 through traffic whizzing by at speeds up to 40 miles per hour than it ever was by Pat’s clients.

61. 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.

62. 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 9 a.m. and 7 p.m., Tuesday through Friday.

63. None of Pat’s neighbors ever complained to her about her home-based hair salon while she ran it.

64. 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.

65. The notice to correct was substantially identical to the one Lij would later receive, as described above in paragraph 30.

66. 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.

67. Someone anonymously reported Pat's home salon to Codes. Neither Pat nor Codes knows the identity of the person.

68. 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).

69. Codes then told Pat that they would have to inspect her home to verify that she had complied with their orders.

70. Pat complied with the orders Codes gave her. She removed all of the equipment and supplies from her home, including the sink.

71. After some delay, Codes officers finally came to Pat's house to inspect the property and shut down her home-based hair salon. Codes confirmed that Pat had complied with its orders, but threatened that if Pat ever tried to work out of her home again, Codes would take her to court and fine her.

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

73. It was 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.

74. 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.

75. 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.

76. Forced relocation into a commercial studio also created greater uncertainty about how long her sublease would last and whether she (and her clients) would have to relocate.

77. That uncertainty was 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.

III. Nashville's Regulation of Home-Based Businesses

78. The general rule in Nashville is that home-based businesses are allowed. 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.).

79. Being permitted, home occupations are subject to many restrictions not challenged here. For example, home occupations are restricted as to location,

employees and vehicles, outward appearances, activities, and other requirements.
Metro. Code § 17.16.250(D).

80. Lij and Pat both have home occupation permits.

81. Nashville has also regulated customer visits to home occupations.

Since this action was first filed, Nashville has amended the home occupation regulations regarding customer visits. Lij and Pat continue to challenge only Nashville's restrictions on customer visits to home occupations.

82. As to customer visits to home occupations, Metro. Code § 17.16.250(D)(3) provides:

- a. Customer visits must occur by scheduled appointment and only between the hours of 8:00 a.m. and 7:00 p.m., Monday through Saturday.
- b. Customer visits shall be limited to no more than three visits per hour and a maximum of six total visits per day.
- c. The permit holder shall maintain and make available to the codes department a log or register of customer appointments for each calendar year.

83. As applied to Lij and Pat these customer visit restrictions and regulations discriminate against Lij's and Pat's home-based business compared to other, privileged home-based businesses which are not subject to these customer visit restrictions or regulations.

84. Nashville allows thousands of privileged home-based businesses serve clients inside residential homes without restriction as to appointments or day and time, without limiting them to three visits per hour or six total visits per day, and without having to maintain and make available to the Codes Department a log or register of customer appointments.

85. These privileged home-based businesses are similarly situated to Lij's and Pat's home-based businesses but Nashville has privileged them over Lij and Pat as to customer visits.

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

86. Nashville's zoning ordinance defines "Short term rental property (STRP)—Owner-occupied" (or a "short-term rental") as "an owner-occupied residential dwelling unit containing not more than four sleeping rooms that is used and/or advertised through an online marketplace for rent for transient occupancy by guests." Metro. Code § 17.04.060.

87. 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. *Id.* § 6.28.030(A)(5)(f).

88. Short-term rentals are "permitted as an accessory use in all zoning districts that allow residential use excluding NS districts." *Id.* § 17.16.250(E).

89. Short-term rentals fit the Zoning Code's definition of a "home occupation."

90. Short-term rentals in residential districts implicate the same interests that Metro claims support restrictions on Lij’s and Pat’s clients; indeed, implicate them to a greater extent than do Lij and Pat.

91. Short-term rentals are not subject to the same client restrictions as Lij and Pat are. Short-term rentals are not subject to Metro. Code § 17.16.250(D)(3).

92. Short-term rentals can serve clients without restriction as to appointments, day of the week, or time of day.

93. Short-term rentals are not limited to three client visits per hour or six total visits per day.

94. Short-term rentals do not have to maintain and make available to the Codes Department a log or register of customer appointments.

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

95. 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.

96. Day care is permitted in all residential districts. *Id.* § 17.08.030.

97. One or more day care homes are permitted to exist on any residential block. *Id.* § 17.16.170(D)(4).

98. Nashville expressly allows day care homes in residential zones to serve up to twelve clients per day on the property. *Id.* §§ 17.04.060; 17.16.035(D).

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

100. Day care homes in residential districts implicate the same interests that Metro claims support restrictions on Lij’s and Pat’s clients; indeed, implicate them to a greater extent than do Lij and Pat.

101. Day care homes are not subject to the same client restrictions as Lij and Pat are. Day care homes are not subject to Metro. Code § 17.16.250(D)(3).

102. Day care homes can serve clients without restriction as to appointments, day of the week, or time of day.

103. Day care homes are not limited to three client visits per hour or six total visits per day.

104. Day care homes do not have to maintain and make available to the Codes Department a log or register of customer appointments.

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

105. Nashville’s zoning ordinance defines a “historic 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 id.* §§ 2.128.010 *et seq.*

106. Historic home events are permitted in all residential districts. *Id.* § 17.08.030.

107. The board of zoning appeals may limit the frequency of historic home events “to minimize disturbance to surrounding properties.” *Id.* § 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).

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

109. Historic home events fit the Zoning Code's definition of a "home occupation."

110. Historic home events in residential districts implicate the same interests that Metro claims support restrictions on Lij's and Pat's clients; indeed, implicate them to a greater extent than do Lij and Pat.

111. Historic home events are not subject to the same client restrictions as Lij and Pat are. Short-term rentals are not subject to Metro. Code § 17.16.250(D)(3).

112. Historic home events can serve clients without restriction as to appointments, day of the week, or time of day.

113. Historic home events are not limited to three client visits per hour or six total visits per day.

114. Historic home events do not have to maintain and make available to the Codes Department a log or register of customer appointments.

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

115. Nashville’s zoning ordinance defines a “specific plan (SP) district” as “an alternative zoning process that may permit any land uses, mixture of 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).

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

117. A property rezoned as a specific plan district “must comply with the building, fire and life safety codes,” *id.* § 17.40.105, but otherwise may operate as agreed between the property owner, Metropolitan Planning Commission, and Metropolitan Council. *See*, § 17.40.106(D)–(E).

118. 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.

119. Some of the ordinances described in paragraph 118 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.

120. Lij and Pat filed SP applications in or about December 2016 but those applications were ultimately denied.

121. The SPs defined in paragraph 119 fit the Zoning Code's definition of a "home occupation."

122. The SPs defined in paragraph 119 implicate the same interests that Metro claims support restrictions on Lij and Pat's clients; indeed, implicate them to a greater extent than do Lij and Pat.

123. The SPs defined in paragraph 119 are not subject to the same client restrictions as Lij and Pat are. Short-term rentals are not subject to Metro. Code § 17.16.250(D)(3).

124. The SPs defined in paragraph 119 can serve clients without restriction as to appointments, day of the week, or time of day.

125. The SPs defined in paragraph 119 are not limited to three client visits per hour or six total visits per day.

126. The SPs defined in paragraph 119 do not have to maintain and make available to the Codes Department a log or register of customer appointments.

Injury to Plaintiffs

127. Nashville's enforcement of the restrictions on customer visits to home occupations in Metro. Code § 17.16.250(D)(3) against Lij hampers his ability to conduct his home recording studio.

128. The restrictions on customer visits to home occupations in Metro. Code § 17.16.250(D)(3) reduce Lij's primary income stream, making it more difficult for Lij to support himself and his daughter.

129. Prior to being shut down in 2015, Lij frequently had more than three clients at a time or in the same hour at his home recording studio—such as when he was recording a band—and would like to again.

130. Prior to being shut down in 2015, Lij often had more than six clients a day at his home recording studio and would like to again.

131. Prior to being shut down in 2015, Lij frequently had clients, including musicians and students, at his home recording studio on Sundays or after 7 p.m.

132. Lij needs the ability to have more than three clients at a time or per hour because a single recording session often requires more than three clients at a time, such as when recording a band.

133. Lij needs the ability to have more than six clients per day because a single recording session with a band often requires more than six people and some of the classes he teaches are affordable for students only if there are more than six students in the class.

134. Lij needs the ability to have clients to his home recording studio on Sundays and after 7 p.m. because many independent musicians only have time to record on weekends or evenings and many students also only have time to take lessons on weekends or evenings.

135. Although Lij does not accept “walk-in” clients, he wants the flexibility to not have to schedule appointments, maintain a log or register of all customer appointments, or make this log or register available to the Codes Department.

136. Other, similarly situated home-based businesses are not subject to these same restrictions on and requirements for having clients to their home-based businesses.

137. But for the restrictions on and requirements for having clients in Metro. Code § 17.16.250(D)(3), Lij would make more money from, have more clients to, and record more music at his home-recording studio and would continue to operate his home-recording studio free from onerous, unreasonable, restrictions.

138. Nashville's enforcement of the restrictions on customer visits to home occupations in Metro. Code § 17.16.250(D)(3) against Pat hampers her ability to conduct her home hair salon.

139. The restrictions on customer visits to home occupations in Metro. Code § 17.16.250(D)(3) impose operating burdens on Pat's home-based business that are not imposed on other similarly situated businesses.

140. Prior to being shut down in 2013, Pat occasionally had more than six clients a day at her home hair salon and would like to have the flexibility to do so again.

141. Prior to being shut down in 2013, Pat occasionally had more than three clients at a time or in the same hour at her home hair salon and would like to have the flexibility to do so again.

142. Although Pat does not accept "walk-in" clients, she wants the flexibility to not have to schedule appointments, maintain a log or register of all

customer appointments, or make this log or register available to the Codes Department.

143. Other, similarly situated home-based businesses are not subject to these same restrictions on and requirements for having clients to their home-based businesses.

144. But for the restrictions on and requirements for having clients in Metro. Code § 17.16.250(D)(3), Pat would continue to operate her home-based hair salon free from onerous, unreasonable, restrictions.

Count One: 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.

145. Plaintiffs re-allege and incorporate paragraphs 1–144.

146. 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.”

147. 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, immunities, 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.”

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

149. Metro. Code § 17.16.250(D)(3) limits customer visits to Lij's and Pat's home-based businesses to no more than three visits per hour and a maximum of six total visits per day, to only between the hours of 8:00 a.m. and 7:00 p.m., Monday through Saturday, and Lij and Pat must accept customers by appointment only, maintain a log or register of customer appointments for each calendar year, and make that log or register of customer appointments available to the Codes Department.

150. The privileged home-based businesses are not subject to Metro. Code § 17.16.250(D)(3) may serve up to twelve (or even more) clients per day, are not limited as to day or time, need not accept clients by appointment only, and are not required to maintain a log or register of customer appointments for each calendar year, or make that log or register of customer appointments available to the Codes Department.

151. There is no legitimate reason to treat Lij's recording studio or Pat's hair salon differently than the thousands of privileged home-based businesses.

152. Lij's and Pat's home-based businesses are similarly situated with the privileged home-based businesses with regard to Nashville's proffered justifications for restricting clients to home-based businesses.

153. The restrictions on clients at home-based businesses in Metro. Code § 17.16.250(D)(3), as applied to and enforced against Lij and Pat, violate equal

protection because the privileged home-based businesses are not subject to the same restrictions.

154. Nashville's enforcement of the Client Prohibition against Lij and Pat therefore violates Article I, Section 8, and Article XI, 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 violation just described, Plaintiffs respectfully request the following relief:

A. Entry of judgment declaring § 17.16.250(D)(3) of the Nashville Zoning Code unconstitutional in violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution to the extent that it limits Lij and Pat to fewer than 12 clients per day, limits the number of clients Lij and Pat may have per hour, limits the hours of the day and days of the week Lij and Pat may serve clients, requires Lij and Pat to accept clients only by scheduled appointment, and requires Lij and Pat to maintain and make available to the Codes Department a log or register of customer appointments for each calendar year.

B. Entry of a permanent injunction prohibiting Nashville from enforcing § 17.16.250(D)(3) against Lij and Pat;

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

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

Respectfully submitted this 22nd day of November, 2022.

Beacon Center of Tennessee

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PROOF OF E-SERVICE

I certify that by filing this brief through the Court's e-filing system, I caused automatic e-service on Metro counsel, who is a registered user. *See* Tenn. Sup. Ct. R. 46, §§ 1.01, 3.02, 4.01.

/s/ Meggan S. DeWitt
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