

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

RACHEL AND P. J. ANDERSON, )  
Plaintiffs, )  
 )  
v. ) Case No. 15C3212  
THE METROPOLITAN GOVERNMENT )  
OF NASHVILLE & DAVIDSON COUNTY, )  
Defendant. )

**MOTION TO DISSOLVE PRELIMINARY INJUNCTION  
AND PARTIAL MOTION TO DISMISS**

The Metropolitan Government moves to dissolve the preliminary injunction granted by this Court on November 12, 2015 pursuant to Tenn. R. Civ. 65.04(5) and to dismiss Claims Three (commercial speech) and Seven (unreasonable search) pursuant to Tenn. R. Civ. 12.02(6) because the portions of the ordinances that were at issue have been or are being amended, and those claims are therefore moot.

**FACTUAL BACKGROUND**

Plaintiffs filed the Complaint in this lawsuit on August 26, 2015. Claim Three alleges that the STRP ordinance (Metro Code § 6.28.030) violates Article 1, Section 19 of the Tennessee Constitution and the First Amendment of the U.S. Constitution by categorically banning signs of any kind on short-term rental properties. Claim Seven alleges that Metro Code § 6.28.010 violates Article 1, Section 2 of the Tennessee Constitution and the Fourth Amendment of the U.S. Constitution by requiring a person “engaged in the business of lodging transients” to keep a book of information on their guests and surrender the information to the police upon written request without any opportunity for pre-compliance review.

On November 12, 2015, this Court issued a preliminary injunction “prohibiting the enforcement of either the prohibition on STRP signage or the obligation to keep and surrender guest records” as applied to the Plaintiffs in this case.

On May 3, 2016, the Metropolitan Council passed Ordinance No. BL2016-177 (**Exhibit A**) amending Section 6.28.010(C) of the Metro Code. The Ordinance was approved by the Mayor on May 4, 2016. The amended Ordinance adds a subsection allowing the refusal of inspection of a book or register of guests as long as the book or register is kept in a secured location “until such time as an administrative or judicial search warrant, subpoena, or order can be granted or denied, and any appeal resolved.”

On July 5, 2016, the Metropolitan Council introduced Ordinance No. BL2016-309 (**Exhibit B**) amending Sections 6.28.030, 17.16.250, and Chapter 17.32 of the Metro Code. As of the filing of this Motion, the Ordinance had passed second reading and is on the agenda for third reading on August 16, 2016 (**Exhibit C**). It is likely that by the hearing date of this Motion, the Ordinance will have passed and become law. The Ordinance removes the ban on STRP signage from the Metro Code and instead “[a]ny sign, as defined in M.C.L. 17.32.030.B, on a property used as a short term rental property shall be governed by the provision of M.C.L. Chapter 17.32 Sign Regulations.”

## ARGUMENT

“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 196, 203–04 (Tenn. 2009). “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); *Cnty. of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). There are a limited number of exceptional circumstances that make it appropriate to address the merits of an issue in spite of its mootness: “(1) when the issue is of great public importance or affects the administration of justice; (2) when the challenged conduct is capable of repetition and evades judicial review; (3) when the primary dispute is moot but collateral consequences persist; and (4) when a litigant has voluntarily ceased the challenged conduct.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013).

Here, the amended version of the Code renders moot Plaintiffs’ constitutional claims related to commercial speech and unreasonable search. Under the amended version, the Plaintiffs are not banned from erecting signage on the premises of their short-term rental property. Now, they must simply comply with non-content based signage regulations in Chapter 17.32 of the Metro Code. Further, the Plaintiffs may refuse inspection of their guest register as long as they secure it pending the outcome of an appeal.

Because the amendments moot the issues raised in the Complaint, a permanent injunction in favor of Plaintiffs is inappropriate. *See Hargett*, 414 S.W.3d at 96 (finding that amendments to the Tennessee Voter Identification Act rendered plaintiffs’ claims moot because “the Plaintiffs’ claims concerning the library photo ID cards are premised upon the construction of a provision that is no longer in force”).

Because these claims are now moot, Metro requests that the Court dissolve the preliminary injunction and dismiss the commercial speech and unreasonable search claims.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

*Lora Fox*

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**NOTICE OF HEARING**

**THIS MOTION IS EXPECTED TO BE HEARD ON THE 26<sup>TH</sup> DAY OF AUGUST, 2016, AT 9:00 A.M, OR AS SOON THEREAFTER AS POSSIBLE. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE TO THIS MOTION MAY RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING BY THE COURT.**

**Certificate of Service**

I hereby certify that a true and exact copy of the foregoing was served upon the following, via United States mail postage prepaid to Braden H. Boucek, Beacon Center of Tennessee, P.O. Box 198646, Nashville, TN 37219 on August 12, 2015.

*Lora Fox*

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Lora Barkenbus Fox