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Fourth Judicial District, Valley County
Douglas A. Miller, Clerk of the Court
By: Deputy Clerk - Zwinkel, LeeAnne

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

DAN and DIANE SCOTT, husband and wife, JAMES BUATTI, as sole trustee of The James V. Buatti and Colleen E. McAvoy revocable living trust dated 11/09/2000, SEASONS AT MCCALL LLC, an Idaho limited liability company, and CRISPIN MBR LLC, a Washington limited liability company,

Plaintiffs,

vs.

CITY OF McCALL, a municipal corporation,

Defendant.

Case No. CV43-24-60

MEMORANDUM DECISION AND ORDER ON SUMMARY JUDGMENT

In late 2022, Defendant City of McCall adopted an ordinance regulating the use of dwellings as short-term rentals ("STRs"). The ordinance affects Plaintiffs' properties, which they had been using—and still use—as STRs. They challenge its lawfulness. Each side moves for summary judgment. The motions were argued on May 16, 2025, and taken under advisement on June 2, 2025—when post-hearing briefs were filed. For the reasons that follow, the City largely prevails.

## I.

## BACKGROUND

Between them, Plaintiffs own four single-family residential properties in McCall, each of which has been used for years as an STR with a self-imposed occupancy limit ranging from fourteen to nineteen guests. (Scott Decl. ¶¶ 2–3;

Buatti Decl. ¶¶ 2–4; DeWitt Decl. ¶¶ 2–4; Crispin Decl. ¶¶ 2–6.) Plaintiffs have made good money using their properties as STRs. (Scott Decl. ¶ 3; Buatti Decl. ¶ 5; DeWitt Decl. ¶ 4; Crispin Decl. ¶ 7.) On September 8, 2022, however, the City of McCall enacted an ordinance regulating STRs ("STR Ordinance"), (O'Bannon Decl. Ex. 1, Apr. 18, 2025), which, some Plaintiffs say, has reduced their STR income, (Buatti Decl. ¶ 5; DeWitt Decl. ¶ 5).

The STR Ordinance's express purposes are to "ensure . . . [STRs] have no greater impacts than would be created by long-term residential occupancy," "protect the health, safety, and general welfare of occupants of [STRs] and the surrounding property owners," and "protect the rights of property owners adjacent to [STRs] to a quiet, safe and neighborly environment free from nuisances that would not exist or would be less intensive but for the use of a Dwelling as an [STR]." McCall City Code § 3.13.09(A). To these ends, it requires an annual permit to use a property as an STR, plus a separate conditional use permit if more than ten occupants would be allowed. McCall City Code §§ 3.13.09(B), (C)(3), 4.13.02, .03. All STR parking must be on site (not on the street) and may not exceed one vehicle per bedroom, McCall City Code § 3.13.09(C)(2), with "bedroom" defined to exclude unenclosed rooms and rooms lacking an interior closet, McCall City Code § 3.2.02. Occupancy is limited to two people per bedroom, plus another two people. McCall City Code § 3.13.09(C)(3). An STR may not, without a separate conditional use permit, host events (such as weddings, family reunions, seminars, or retreats) involving the presence of more people than the occupancy limit set by its annual permit. McCall City Code

§§ 3.2.02, 3.13.09(C)(7). And "any . . . noise that can be heard beyond the [STR's] perimeter . . . between the hours of 10:00 p.m. and 8:00 a.m. the following day" is prohibited. McCall City Code § 3.13.09(C)(4).

On February 13, 2024, Plaintiffs filed suit, challenging the STR Ordinance's validity. The amended complaint filed on December 31, 2024—their operative pleading—asserts four claims. Count One seeks a declaratory judgment that the STR Ordinance conflicts with I.C. §§ 67-6539 and -6511, so it is invalid. (1st Am. Compl. ¶¶ 40–63.) Count Two seeks a declaratory judgment that Plaintiffs' right to due process of law under the federal and state constitutions entitles them to maintain their preexisting use of their properties as though the STR Ordinance was never adopted. (*Id.* ¶¶ 64–72.) Count Three seeks a declaratory judgment that the STR Ordinance violates Plaintiffs' right to equal protection of the law under the federal and state constitutions. (*Id.* ¶¶ 73–79.) Finally, Count Four seeks a declaratory judgment that the STR Ordinance violates Plaintiffs' right to substantive due process under the federal and state constitutions because it arbitrarily and irrationally infringes on their property rights. (*Id.* ¶¶ 80–86.)

The parties filed cross-motions for summary judgment that, as already noted, were argued on May 16. Five days after the hearing, the Idaho Supreme Court issued an opinion applying section 67-6539. *See Idaho Ass'n of Realtors, Inc. v. City of Lava Hot Springs*, No. 50888, 2025 WL 1450018 (Idaho May 21, 2025). The Court immediately invited supplemental briefing addressing this new opinion's implications, if any, for the cross-motions. On May 23, the parties stipulated to

vacate the bench trial then set to begin in about three months, not wanting to prepare for trial while awaiting a decision on the cross-motions. The Court promptly approved the stipulation. On June 2, the parties filed supplemental briefs as invited, at which point the cross-motions are deemed to have been taken under advisement.[1] They are ready for decision.

## II.

## LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a).

To obtain summary judgment against a claim of the nonmovant, the movant must show that the evidence doesn't support an element of the claim. *E.g.*, *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 611, 349 P.3d 1197, 1202 (2015). This showing is made by offering evidence disproving the element, by demonstrating that the nonmovant can't prove it, or in both ways. *E.g.*, *id.*; *Fisk v. McDonald*, 167 Idaho 870, 891, 477 P.3d 924, 945 (2020) ("A defendant . . . may shift the burden to the plaintiff on . . . summary judgment in more than one way."); *see also* I.R.C.P. 56(c)(1). The movant then is entitled to summary judgment unless the nonmovant presents "specific facts" showing "a genuine issue for trial." *Haight v. Idaho Dep't of Transp.*, 163 Idaho 383, 387, 414 P.3d 205, 209 (2018).

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[1] Two of Plaintiffs' briefs include objections to portions of the City's evidence. Not relying on the challenged evidence, the Court leaves these objections alone.

To obtain summary judgment on its own claim, the movant must cite particular parts of the record for proof of the facts essential to the claim or defense. I.R.C.P. 56(c)(1)(A). The burden then shifts to the nonmovant to show that a genuine factual dispute must be resolved before judgment can be awarded to the movant. *E.g.*, *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 104, 294 P.3d 1111, 1116 (2013). To carry that burden, the nonmovant "may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Id.* (quotation marks omitted).

In either case, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient" for the nonmovant to avoid summary judgment. *E.g.*, *Holdaway*, 158 Idaho at 610, 349 P.3d at 1201 (quoting *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013)). Although the record normally must be construed in the light most favorable to the nonmovant, *e.g.*, *id.*, the trial court, when the trier of fact, may "arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences." *J.R. Simplot Co. v. Bosen*, 144 Idaho 611, 615, 167 P.3d 748, 752 (2006) (quoting *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 360–61, 93 P.3d 685, 691–92 (2004)).

## III.

## ANALYSIS

The Court's analysis begins with Count One. Under the doctrine of constitutional avoidance, it should be decided first; it isn't a constitutional claim, and were Plaintiffs to win it, the need to decide their constitutional claims (Counts

Two, Three, and Four) would be avoided. *See, e.g.*, *Miller v. Idaho State Patrol*, 150 Idaho 856, 864, 252 P.3d 1274, 1282 (2011). Because Count One largely fails, though, Counts Two, Three, and Four are addressed in turn.

**A. Count One, claiming the STR Ordinance conflicts with STR statutes**

Cities may adopt ordinances exercising their police power, but the ordinances may not conflict with state law. *See* Idaho Const. art. XII, § 2; I.C. § 50-302(1). In Count One of their amended complaint, Plaintiffs claim the STR Ordinance is invalid because it conflicts with Idaho's STR statutes, (1st Am. Compl. ¶¶ 40–62), specifically I.C. §§ 67-6539 and -6511, (Mem. Supp. Pls.' Mot. Summ. J. 28–36; Mem. Opp'n City's Mot. Summ. J. 2–6). The STR Ordinance's ostensible conflict with section 67-6539 is the place to start.

1. The STR Ordinance's ostensible conflict with section 67-6539

Under section 67-6539, "[n]either a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals in the county or city." I.C. § 67-6539(1). Plaintiffs acknowledge the STR Ordinance doesn't expressly prohibit STRs but say it conflicts with section 67-6539 because it prohibits them as a practical matter. (Mem. Supp. Pls.' Mot. Summ. J. 34–35.) This argument doesn't merit much discussion because it has no factual support. Plaintiffs admit they still earn substantial income from using their properties as STRs despite the STR Ordinance, though some of them say it has caused their STR income to decline. (Scott Decl. ¶ 3; Buatti Decl. ¶ 5; DeWitt Decl. ¶¶ 4–5; Crispin Decl. ¶ 7.) Summary judgment is entered against Plaintiffs'

theory that the STR Ordinance violates section 67-6539 by prohibiting STRs as a practical matter. It simply doesn't do that.

Plaintiffs have a second theory under which the STR Ordinance conflicts with section 67-6539. Under section 67-6539, "[a] county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate." I.C. § 67-6539(1). Plaintiffs say the STR Ordinance isn't reasonable, so it conflicts with section 67-6539. (Mem. Supp. Pls.' Mot. Summ. J. 30–33.) This theory fails to the extent it challenges the STR Ordinance as a whole rather than asks the Court to take a scalpel to it, excise the ostensibly unreasonable provisions, and leave the rest in place. Plaintiffs have no good argument that the STR Ordinance either (i) is unreasonable in its entirety, or (ii) includes so many unreasonable requirements that what would be left once the unreasonable requirements are invalidated wouldn't be a workable ordinance. Summary judgment is entered against Plaintiffs' theory that the entire STR Ordinance must be invalidated as an unreasonable regulation of STRs.

What's left is the notion that some of the STR Ordinance's regulations are unreasonable and, as such, conflict with section 67-6539.

In that vein, Plaintiffs' best argument concerns the STR Ordinance's noise regulation. (*See* Mem. Supp. Pls.' Mot. Summ. J. 10, 34, 36.) It prohibits "any . . . noise that can be heard beyond the [STR's] perimeter . . . between the hours of 10:00 p.m. and 8:00 a.m. the following day." McCall City Code § 3.13.09(C)(4). This

regulation is unreasonably restrictive. One example of how it works is enough to prove the point. Activating an STR's automatic garage door opener—or even using its front door normally—to leave for a fishing trip at 7:30 a.m. would violate the STR Ordinance by generating noise audible beyond the STR's perimeter (though undoubtedly too slight to disturb the neighbors). So, as a practical matter, the noise regulation prohibits coming and going between 10:00 p.m. and 8:00 a.m. Because it is unreasonably restrictive, it conflicts with section 67-6539 and is invalid.[2] Plaintiffs are granted summary judgment on Count One in this limited respect.[3]

Plaintiffs also challenge the parking regulation, (Mem. Supp. Pls.' Mot. Summ. J. 10, 34), which requires parking on site (not on the street) and limits parking to one vehicle per bedroom, McCall City Code § 3.13.09(C)(2). The City offers reasonable rationales for prohibiting street parking. (*See* Mem. Supp. Def.'s Mot. Summ. J. 23–24.) Its rationale for the one-vehicle-per-bedroom regulation—a backdoor means of enforcing occupancy limits and a visible indicator of potential occupancy-limit violations, (*id.* at 24)—may be less compelling, but it too is reasonable. Plaintiffs point out that, in the case of a one-bedroom STR, a couple spending a few days in an STR can't drive separately, (Mem. Pls.' Mot. Summ. J. 4),

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[2] A less restrictive, reasonable noise regulation can be adopted to replace this one. A potentially reasonable approach might be to employ—as the City does in its public parks noise ordinance—a decibles-and-distance threshold to distinguish disruptive noise from innocuous noise. McCall City Code § 8.14.5.

[3] Because noise regulation's conflict with section 67-6539 renders it invalid, there is no need to consider whether it is also invalid on constitutional grounds. So, it won't be considered in deciding Counts Two, Three, or Four.

but this isn't a class action and Plaintiffs' STRs range from three to seven bedrooms, (Scott Decl. ¶ 3; Buatti Decl. ¶ 4; DeWitt Decl. ¶ 4; Crispin Decl. ¶ 6), so the parking regulation's application to one-bedroom STRs isn't at issue. The evidence doesn't show that it is unreasonable to limit their three-to-seven-bedroom STRs to one vehicle per bedroom. The City is granted summary judgment against Plaintiffs' theory that the parking regulation is unreasonable and, hence, in conflict with section 67-6539.

Plaintiffs' other reasonableness arguments also fail as a matter of law. The STR Ordinance's occupancy regulations, McCall City Code §§ 3.2.02, 3.13.09(C)(3), aren't unreasonable. They promote the City's eminently reasonable—and perfectly lawful—objectives of "ensur[ing] . . . [STRs] have no greater impacts than would be created by long-term residential occupancy" and "protect[ing] the rights of property owners adjacent to [STRs] to a quiet, safe and neighborly environment free from nuisances that would not exist or would be less intensive but for the use of a Dwelling as an [STR]." McCall City Code § 3.13.09(A). The same goes for the regulation that prohibits using an STR as an events center without a conditional use permit. McCall City Code §§ 3.2.02, 3.13.09(C)(7). And, though Plaintiffs try, (Mem. Supp. Pls'. Mot. Summ. J. 11–12), it is hard to dismiss as unreasonable the STR Ordinance's requirement that STRs must meet certain safety standards, (1st Am. Compl. Ex. D), as determined in an inspection by the fire department, McCall City Code § 3.13.09(C)(5). In any event, the Court doesn't understand Plaintiffs to contend that their STRs don't meet the safety standards. Again, this isn't a class

action, so the reasonableness of any safety standard met by Plaintiffs' STRs isn't at issue. Finally, the STR Ordinance's limitation of one STR per single-family residential property, McCall City Code § 3.13.09(C)(8), is a reasonable intensity limitation, despite that it aggrieves Plaintiff Crispin MBR LLC, which, from time to time in the past, separately rented out the basement and the upper levels of its single-family residential property, (Crispin Decl. ¶¶ 2, 11).

In sum, the STR Ordinance's noise regulation is invalid because it conflicts with section 67-6539, but there is no other conflict with section 67-6539 that invalidates any other challenged provision of the STR Ordinance.

2. The alleged conflict between the STR Ordinance and section 67-6511

Under section 67-6511, "[a]ll standards shall be uniform for each class or kind of buildings throughout each [zoning] district, but the standards in one (1) district may differ from those in another district." I.C. § 67-6511(1)(a). Plaintiffs say the STR Ordinance's occupancy limits and inspection requirement, among other provisions, violate this uniformity mandate because neighboring homes not used as STRs need not meet them. (Mem. Supp. Pls.' Mot. Summ. J. 35–36.) The City argues, however, that the uniformity mandate, as applied to the zoning districts in which Plaintiffs' properties are located, pertains to the way homes are built, not how they are used, and, in any event, can't be read to negate section 67-6539, which specifically authorizes subjecting STRs to reasonable regulations. (Mem. Supp. Def.'s Mot. Summ. J. 10–12.)

The Court accepts the second of these arguments, eliminating any need to address the first. Section 67-6539 authorizes subjecting STRs to "reasonable

regulations . . . to protect the integrity of residential neighborhoods in which [they] operate," with no proviso that the rest of the homes in these neighborhoods must be subjected to the same regulations. I.C. § 67-6539(1). It is a legislative judgment that STR use and long-term residential use differ, and the former—if not specially regulated—imperils the latter's desirability. If, as Plaintiffs say, section 67-6511 requires regulating homes used as STRs and other homes in the same neighborhood in the same way, it conflicts with section 67-6539, which envisions specially regulating homes used as STRs.[4]

Section 67-6511's general uniformity mandate is decades-old, *see, e.g.*, 1987 Idaho Sess. Laws, ch. 329, § 1, while section 67-6539 is specific to the context of STRs and much more recent, 2017 Idaho Sess. Laws, ch. 239, § 2. Accordingly, section 67-6539 controls here. *See, e.g.*, Eller v. Idaho State Police, 165 Idaho 147, 154, 443 P.3d 161, 168 (2019) ("[W]here two statutes conflict, courts should apply the more recent and more specifically applicable statute."). STR regulations must be reasonable, but they aren't automatically invalid if they don't also apply to

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[4] Underscoring the conflict is Plaintiffs' argument that the STR Ordinance violates section 67-6511's uniformity mandate by requiring "posted notices" at STRs but not at other homes. (Mem. Supp. Pls.' Mot. Summ. J. 36.) The STR Ordinance requires posting a notice "that describes restrictions on use of the unit," including "the structure's maximum occupancy, parking requirements, solid waste and fireplace ash disposal, quiet hours, noise restrictions, and restrictions on outdoor activity," plus a notice "detailing the emergency exiting plan approved by the Fire Code Official . . . and the [property owner's] name and phone number." McCall City Code § 3.13.09(C)(6). An absurd consequence of accepting Plaintiffs' uniformity argument would be that if the City wants to require STR owners to post information their transiently present guests may need, it must require resident homeowners to see the same information day after day, year after year.

homes not used as STRs. Summary judgment is entered against Plaintiffs' theory that the STR Ordinance is invalid because it conflicts with section 67-6511.

### B. Count Two, claiming a due-process right to maintain a "nonconforming use"

In Count Two of their amended complaint, Plaintiffs seek a declaratory judgment that their due-process rights under the federal and state constitutions entitle them to maintain their preexisting use of their properties even though it doesn't fully conform to the STR Ordinance—in other words, to maintain an ostensible "nonconforming use," without need to comply with the STR Ordinance. (1st Am. Compl. ¶¶ 64–72.) A "nonconforming use" is "a use of land which lawfully existed prior to the enactment of a zoning ordinance" and which, by virtue of the landowner's due-process rights, may be "maintained after the effective date of the ordinance even though not in compliance with use restrictions." *Eddins v. City of Lewiston*, 150 Idaho 30, 34, 244 P.3d 174, 178 (2010) (quoting *Baxter v. City of Preston*, 115 Idaho 607, 608–09, 768 P.2d 1340, 1341–42 (1989)); see also *Use*, *Black's Law Dictionary* (12th ed. 2024) (defining "nonconforming use" as a "[l]and use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect."). The City contends Count Two fails because the STR Ordinance permits Plaintiffs to continue using their properties as STRs, so no true nonconforming use is at issue, and even if a true nonconforming use were at issue, the right to maintain a nonconforming use doesn't confer immunity from police-power regulations. (Mem. Supp. Def.'s Mot. Summ. J. 11–18.) The City is right on both counts.

As the City says, the STR Ordinance permits Plaintiffs to use their properties as STRs. *See* McCall City Code § 3.13.09. In section III.A.1, *supra*, the Court rejects Plaintiffs' baseless assertion that the STR Ordinance prohibits STRs not expressly but as a practical matter, so reiterating that assertion in this context, (Mem. Supp. Pls.' Mot. Summ. J. 6), gets Plaintiffs nowhere. Because the STR Ordinance allows Plaintiffs to continue the preexisting STR use of their properties (albeit subject to regulations that didn't previously exist), the "nonconforming use" doctrine doesn't apply here.

Regardless, "nonconforming status is not a talisman from which all zoning controls must retreat. Rather, the public policy embodied in zoning laws 'dictates the firm regulation of nonconforming uses with a view to their eventual elimination.'" *Bastian v. City of Twin Falls*, 104 Idaho 307, 309, 658 P.2d 978, 980 (Ct. App. 1983) (quoting 1 R. Anderson, *American Law of Zoning (Second)* § 6.07 (1976)); *see also, e.g.*, *Heck v. Comm'rs of Canyon Cnty.*, 123 Idaho 826, 829, 853 P.2d 571, 574 (1993) ("There is abundant authority to support the commissioners' position that due process does not absolutely prevent the county from exercising its police power, even though the exercise may affect the preexisting use of property.") (citing *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80 (1946)); *Rhod-A-Zalea & 35th, Inc. v. Snohomish Cnty.*, 959 P.2d 1024, 1028 (Wash. 1998) ("Nonconforming uses generally are held to be subject to later police power regulations imposed by statute or local ordinances regulating the manner or operation of use. These regulatory restrictions often take the form of licensing or special permit

requirements.") (quoting 4 Arden H. Rathkopf, *The Law of Zoning and Planning* § 51A.02 (Edward H. Ziegler ed. 1991)). So, even if the "nonconforming use" doctrine applies here, Plaintiffs' properties are subject to the STR Ordinance—a generally valid exercise of the City's police power—in the same way it applies to properties that hadn't been used as STRs before its adoption.

For these reasons, summary judgment is entered against Count Two.

**C. Count Three, claiming a violation of the right to equal protection**

In Count Three of their amended complaint, Plaintiffs seek a declaratory judgment that the STR Ordinance violates their right to equal protection of the laws under the federal and state constitutions by imposing a variety of STR regulations on them but not on the ostensibly similarly situated owners of certain other properties not regulated as STRs. (1st Am. Compl. ¶¶ 73–79.) Specifically, Plaintiffs say they are similarly situated to (i) the owners of single-family residential properties leased to long-term tenants, and (ii) the owner of Brundage Bungalows. (*E.g.*, Mem. Opp'n City's Mot. Summ. J. 13–14.) The City argues in its opening brief that the rational-basis test applies, and Plaintiffs concede the point by countering with an argument that the STR Ordinance fails the rational-basis test but no alternative argument that it should be subjected to heightened scrutiny. (Mem. Supp. Def.'s Mot. Summ. J. 19–21; Mem. Opp'n City's Mot. Summ. J. 12–19.)

Under the rational-basis test, a legislative classification withstands a challenge on equal-protection grounds if it "rationally further[s] a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Described more fully, the rational-basis test works as follows:

> In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.

*Id.* at 11 (internal citations and quotation marks omitted); *see also City of Lewiston v. Knieriem*, 107 Idaho 80, 85, 685 P.2d 821, 826 (1984) ("Under the 'rational basis' test, equal protection is offended only if the classifications are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them.") (quotation marks omitted). Further, "those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" *Jones v. Lynn*, 169 Idaho 545, 563, 498 P.3d 1174, 1192 (2021) (quoting *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 396, 987 P.2d 300, 308 (1999)).

Plaintiffs haven't met that burden—not by a long shot. The City says two key differences between STRs and single-family residential properties leased to long-term tenants justify subjecting only the former to the regulations in the STR Ordinance: unlike long-term tenants, STR occupants are present only transiently, and STRs tend to be more heavily occupied. (Mem. Supp. Def.'s Mot. Summ. J. 22.) The difference in occupancy duration is undeniable; by definition, STR occupancy is short-term, while occupancy under a long-term lease is long-term. The difference in occupancy intensity, though not definitional, is about as obvious. One of Plaintiffs' complaints about the STR Ordinance is that it requires them to obtain a conditional use permit to have more than ten occupants at a time in their STRs—fewer than

the fourteen to nineteen occupants they had been allowing. (Scott Decl. ¶ 3; Buatti Decl. ¶ 4; DeWitt Decl. ¶ 4; Crispin Decl. ¶ 6.) Plaintiffs haven't shown it would be irrational for the City's decision-makers to think single-family residential properties leased to long-term tenants tend to have fewer occupants.

Neither would it be irrational for the City's decision-makers to think these differences in occupancy duration and intensity justify regulations particular to STRs to serve the purposes identified in the STR Ordinance. *See* McCall City Code § 3.13.09(A). Occupancy transience rationally can be thought to increase, among other risks, the risk of disruptive behavior; an STR's transient occupants don't need good relationships with the people who live in neighboring homes. Heavy occupancy intensity rationally can be thought to increase that same risk, as well as safety risks and parking problems. Specially regulating STRs is rational. Indeed, it is invited by section 67-6539, a statute whose constitutionality Plaintiffs don't question. *See* I.C. § 67-6539(1) ("A county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate.").

Not only is it rational as a general matter to regulate STRs differently than single-family residential properties leased to long-term tenants, but also the City's particular regulations are rationally related to the STR Ordinance's objectives. *See* McCall City Code § 3.13.09(A). The City's opening briefly nicely summarizes why. (*See* Mem. Supp. Def.'s Mot. Summ. 26.) And, in section III.A.1, *supra*, the Court

concludes that the challenged regulations, except the noise regulation, are reasonable approaches to limiting the potential negative impacts of STRs, as the STR Ordinance seeks to do. Count Three fails as a matter of law, then, to the extent it claims equal-protection violations based on the City's different treatment of STRs and single-family residential properties leased to long-term tenants.

Left is the notion that subjecting STRs, but not Brundage Bungalows, to the STR Ordinance is an equal-protection violation. Brundage Bungalows is a series of small, jointly managed cabins located on a single parcel of property right beside Highway 55. (McQuade Decl. Ex. 2, at 29:10–22, 38:17–23, 46:1–6 & Exs. T–U.) It is in an R-4 low-density residential zone under the City's current zoning ordinance, but it was built around the 1950s, before the City had a zoning ordinance, and is regarded by the City as a historic property. (*Id.* Ex. 2, at 29:2–22.) The City regulates it as a hotel—a commercial use of property—but allows it to operate in a residential zone under the "nonconforming use" doctrine discussed in section III.B, *supra*. (*See id.* Ex. 2, at 29:10–22, 32:10–14.) Unlike Plaintiffs' properties, Brundage Bungalows isn't—and never was—a single-family residential property. Indeed, it better resembles a motel property than a single-family residential property. Under the City's zoning ordinance, a "hotel or motel" isn't an STR. McCall City Code § 3.2.02 (defining "hotel or motel" to exclude STRs). It isn't arbitrary or irrational for the City to treat Brundage Bungalows—a series of cabins built about seventy years ago on a single parcel of land right beside Highway 55—as a hotel or motel not subject to the STR Ordinance, despite that Plaintiffs' properties

are subject to it. Count Three also fails as a matter of law to the extent the claimed equal-protection violation lies in not being treated like Brundage Bungalows.

**D. Count Four, claiming a violation of the right to due process**

Finally, in Count Four of their amended complaint, Plaintiffs seek a declaratory judgment that the STR Ordinance violates their right to substantive due process under the federal and state constitutions by arbitrarily or irrationally restricting their use of their properties as STRs, thus depriving them of a property or liberty interest. (1st Am. Compl. ¶¶ 80–86.) In their opening briefs, the parties seem to agree that the STR Ordinance's restrictions don't violate Plaintiffs' right to substantive due process if there is a rational basis for them. (Mem. Supp. Pls.' Mot. Summ. J. 44–45; Mem. Supp. Def.'s Mot. Summ. J. 29–31.) In their brief opposing the City's motion, however, Plaintiffs contend—in what appears to be an argument for a change in existing law—that the Court should subject the STR Ordinance to strict or intermediate scrutiny rather than apply the rational-basis test. (Mem. Opp'n City's Mot. Summ. J. 20–23.)

The rational-basis test generally applies to due-process challenges to zoning ordinances. *See, e.g.*, *Cooper v. Bd. of Ada Cnty. Comm'rs*, 96 Idaho 656, 659, 534 P.2d 1096, 1099 (1975) ("Essentially herein we are asked to review and reverse legislative judgments. Those judgments should not be overturned by this court unless it can be shown that the [zoning] ordinance bears no rational relationship to a permissible state objective."). Plaintiffs press no discernible theory for the mode of review being intermediate scrutiny except the observation that courts in some states so apply the due-process clauses in their state constitutions. That revolution

can start, if at all, in the Idaho Supreme Court; it has no support in Idaho's existing jurisprudence. And strict scrutiny doesn't apply, even though property rights are at stake. *See, e.g.*, *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 416–17, 522 P.3d 1132, 1174–75 (2023) ("[T]he 'right to own and enjoy private property' is secured by the [Idaho Constitution's] Inalienable Rights Clause but it is also subject to 'reasonable limitation and regulation by the state' despite its status as 'one of the natural, inherent and inalienable rights of free men.'") (quoting Newland v. Child, 73 Idaho 530, 537, 254 P.2d 1066, 1069 (1953)); *Bradbury v. Idaho Jud. Council*, 136 Idaho 63, 69, 28 P.3d 1006, 1012 (2001) ("Where no fundamental right or suspect classification is involved or when dealing with legislation involving social or economic interests, courts apply the rational basis test's deferential standard of review.") (emphasis added). The rational-basis test applies to Plaintiffs' claim that the STR Ordinance's modest limitations on their property rights violate their right to substantive due process.

The parties' rational-basis briefing on Count Four mainly hearkens back to their rational-basis briefing on Count Three. (*E.g.*, Mem. Supp. Pls.' Mot. Summ. J. 45; Mem. Supp. Def.'s Mot. Summ. J. 30.) In section III.C, *supra*, the Court concludes in the context of Count Three that there is a rational basis for applying the STR Ordinance's restrictions to Plaintiffs' properties and that those restrictions are rationally related to the STR Ordinance's objectives. These conclusions apply with equal force to Count Four. Consequently, summary judgment is entered against Count Four.

Accordingly,

IT IS ORDERED that Plaintiffs' motion for summary judgment is denied in all respects but one: Plaintiffs are granted summary judgment on Count One of their amended complaint to the extent they claim the noise regulation in McCall City Code § 3.13.09(C)(4) is invalid because it conflicts with I.C. § 67-6539.

IT IS FURTHER ORDERED that the City's motion for summary judgment is granted in all respects but one: the City is denied summary judgment on Count One to the extent Plaintiffs claim the noise regulation is invalid.

IT IS FURTHER ORDERED that the scheduling conference set for 2:00 p.m. on July 18, 2025, is vacated.

Jason D. Scott 7/8/2025 1:20:46 PM

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on 7/8/2025 3:55:52 PM, I served a copy of this document as follows:

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Clerk of the District Court

By: _____
Deputy Court Clerk

MAGISTRATE DIV. DISTRICT COURT
FOURTH JUDICIAL DISTRICT
VALLEY CO. IDAHO