

DISTRICT COURT, ARCHULETA COUNTY, COLORADO Court Address: 109 Harman Park Dr, Pagosa Springs, CO 81147 Phone Number: (970) 264-8160	
Plaintiffs: CLINTON JAMES ALLEY; MONICA ANDREA ALLEY; BLACKHEAD PROPERTIES LLC; MELISSA B. BUCKLEY; ESCAPA, LLC; GREGG FITTS, TRUSTEE; JOHN E. GREY; KRISTIN A. GREY; JLSFUN LLC; PETER MACOMBER; NICOLE BUCKLEY; OLIVIA MODERN; AND AARON STEVEN MOORE v.	
Defendant: TOWN OF PAGOSA SPRINGS, COLORADO	▲ COURT USE ONLY ▲
Submitting Attorney: Paul Kosnik #38663 Eggleston Kosnik LLC 160 E. 12 th St., Ste 7 Durango, CO 81301 Phone Number: (970) 403-1580 E-mail: pkosnik@e-klaw.com	Case Number: 2022CV
COMPLAINT	

COMES NOW the Plaintiffs, by and through their undersigned counsel, and for their claims against Defendant, state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are owners of residential and commercial properties within the town limits of Pagosa Springs, Colorado, which are used for short-term rental purposes.
2. The Town of Pagosa Springs, Colorado ("Town") is a duly organized home rule municipality under the Colorado Constitution and the 2003 Pagosa Springs Home Rule Charter, as amended.
3. Jurisdiction is proper in the District Court pursuant to C.R.C.P. 57, C.R.C.P. 105 and C.R.S. §§ 13-51-101, *et seq.* and C.R.S. § 13-1-124 because the Town adopted an Ordinance related to the ownership, use or possession of real property situate in Pagosa Springs, Archuleta County, Colorado.

4. Venue is proper in Archuleta County pursuant to C.R.C.P. 98.

GENERAL ALLEGATIONS

5. On December 5, 2021 a petition was filed with the Town to amend the Town's Home Rule Charter to include additional charges related to certain short-term rental operations within the Town.

6. The Town Clerk certified the petition received on December 5, 2021 to the Town Council on January 5, 2022.

7. The Town of Pagosa Springs Town Council ("Town Council") adopted Ordinance No. 974 (Series 2022) ("Ordinance No. 974") on January 20, 2022, which ordered that the proposed amendment to the Town Charter be presented to the electorate during an election to be held on April 5, 2022.

8. Ordinance 974 included the following proposed addition to Section 9.20 of the Town's Home Rule Charter:

COMMENCING JUNE 1, 2002, THE TOWN OF PAGOSA SPRINGS SHALL COLLECT A WORKFORCE HOUSING FEE FROM SHORT-TERM RENTALS (STRS) LOCATED WITHIN TOWN LIMITS, AMOUNTING TO AT LEAST \$150 PER MONTH FOR EACH PERMITTED BEDROOM, EXCEPT NO WORK-FORCE HOUSING FEE SHALL BE DUE WHEN AN STR OWNER RESIDES FULL-TIME ON THE STR PROPERTY AT LEAST NINE (9) MONTHS OF THE YEAR. ALL WORKFORCE HOUSING FEES SHALL BE DEDICATED TO THE CREATION AND SUSTAINABILITY OF WORKFORCE HOUSING AIMED AT HOUSEHOLDS EARNING NO MORE THAN 100% OF AREA MEDIAN INCOME

(the "Charter Amendment").

9. The following ballot question was presented to the electorate during the April 5, 2022 election:

Shall the Town of Pagosa Springs Home Rule Charter be amended to initiate a workforce housing fee for short-term rentals amounting to at least \$150 per month for each permitted bedroom with all fees dedicated to creation and sustainability of workforce housing aimed at households earning less than or equal to 100% of Area Median Income, as set forth in Ordinance No. 974 (Series 2022)

(the “Ballot Question”).

10. On April 5, 2022, the Ballot Question to amend the Town Charter and to add the charges set forth in the STR Amendment was approved by a vote of 187 to 179 (an 8 vote margin - 51% to 49%).

11. The STR Amendment modifies and supplements existing Town Ordinance No. 958 (2021 Series) on short-term rentals (“Original STR Ordinance”), which took effect on September 7, 2021.

12. The Original STR Ordinance established a comprehensive, regulatory scheme to govern short-term rental operations.

13. The Original STR Ordinance contains a requirement for a non-refundable application fee and a renewal application fee.

14. The Town, prior to the STR Amendment, set the non-refundable application fee at \$500.

15. Prior to the STR Amendment, the Town already determined and allocated 50% of all STR application fees to a Town fund dedicated to affordable/workforce housing.

16. The STR Amendment modifies and supplements existing Town regulations (Article 4 Sec. 16.4.1 *et seq.*), which established a lodger’s tax (“Lodger’s Tax Ordinance”) of 3% on vacation rentals and other lodging.

17. The STR Amendment only applies to a subset of short-term rentals, namely those where the owner does not reside on the property for 9 months of the year, and affects approximately 130-140 properties within the Town.

18. The STR Amendment provides full-time residents on a property with a competitive advantage by allowing them to charge less for their short-term rental.

19. The people of Colorado have a limited Constitutional right to initiate legislative matters under Article V, Section 1 of the Colorado Constitution.

20. The people have no right to initiate or pass administrative or regulatory matters, and no right to infringe on the executive powers of a Town.

21. The STR Amendment provides no funding to the Town for its costs while requiring the Town to implement processes to collect and administer the newly required fee.

22. The STR Amendment is vague because it requires a person of common intelligence to guess as to its meaning and differ as to its application.

23. On or about May 19, 2022, the Town completed its second reading of Ordinance No. 982 (Series 2022)(“Ordinance 982”).

24. Ordinance No 982 is intended to implement the STR Amendment, by adding a section to the Town’s existing short-term rental regulations to charge and collect a workforce housing fee from certain short-term rental property owners.

**FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT
(Unconstitutional Initiative/Ordinance)**

25. The foregoing allegations are hereby incorporated, as if set forth fully herein.

26. Actions that relate to subjects of permanent or general character are legislative, including declarations of public policy of *general applicability*.

27. Acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative.

28. Matters of permanent, general applicability are deemed to be legislative.

29. Carrying out existing legislative policies, including revenue measures, setting rates or rate structures, are administrative and not subject to the initiative process.

30. The Town has existing regulations implementing and administering the short-term rental licensing requirements, including fees for short-term rentals, taxes on short-term rentals and related to affordable/workforce housing.

31. Under Sections 6.7.5.(1)(j) and 6.7.6. of the Original STR Ordinance, Town staff administratively determines the appropriate fees to be charged for short-term rental applications and renewals.

32. The STR Amendment is not a proper subject of an initiative because it changes how existing short-term rentals policies are administered, and does not change the existing policy decisions regarding allowance of short-term rentals.

33. The effect of the STR Amendment is to control and circumvent a series of existing, complex and multi-layered administrative processes related to the implementation of short-term rental requirements.

34. Determining the proper amount of any specific fee that is intended in conjunction with existing legislation is an executive, regulatory function.

35. The STR Amendment does not involve an issue of general applicability, purports to amend and control the administrative, regulatory and executive powers of the Town, is not legislative and is not subject to the initiative powers under the Colorado Constitution.

36. The STR Amendment is applied arbitrarily and capriciously to only a portion of the group of short-term rental owners in the Town.

37. The STR Amendment violates due process by using unconstitutionally vague terms and phrases such as “STR owner resides full-time on the STR property,” and “workforce housing fees shall be dedicated to the creation and sustainability of workforce housing aimed at households earning no more than 100% of area median income,” which cannot be uniformly applied and enforced.

38. The Ballot Question was vague, misleading and confusing for the same reason as the STR Amendment, as well as providing uncertainty as to whether the electorate was considering a tax or a fee.

39. The Ballot Question contained more than one subject.

40. Plaintiffs’ rights, status, or other legal relations are affected by the STR Amendment and have a right to seek a declaration of the validity of the STR Amendment.

41. The Court has the power to declare the rights of the Plaintiff under the STR Amendment pursuant to C.R.C.P. 57 and C.R.S. § 13-51-101, *et. seq.*

42. Plaintiff is entitled to a declaratory judgment that the STR Amendment is an administrative or executive function that is not a permissible subject of an initiative, that the STR Amendment is unconstitutionally vague, and/or the Ballot Question was unconstitutionally vague, misleading, or violated the single-subject requirement, and such other relief as the Court deems appropriate under Rule 57(h).

**SECOND CLAIM FOR RELIEF
DECLARATORY JUDGMENT
(Impermissible Fee and Tax)**

43. The foregoing allegations are hereby incorporated, as if set forth fully herein.

44. The charge of \$150 (at least) per month for each permitted bedroom of a short-term rental for an owner who does not live full-time on the property (the “Fee”) imposed by the STR Amendment and as proposed in Ordinance 982 is not a valid or permissible fee under Colorado law.

45. Under Colorado law, a fee must be reasonably related to the overall cost of the service of regulating an activity.

46. The STR Amendment and Ordinance 982 fail to establish that the Fee is reasonably related to the cost of the administration of the short-term rental program.

47. Impact fees can only be adopted through the process and procedures set forth in C.R.S. § 29-20-104.5.

48. The Fee is an impact fee that was adopted without complying with the requirements in C.R.S. § 29-20-104.5.

49. The Fee is recurring and not related to new development.

50. The Fee is not rationally related to and there is no essential nexus between short-term rental properties where the owner does not live on the property full-time and workforce housing.

51. If considered a tax, the Fee is unconstitutional.

52. A tax cannot be unreasonable or arbitrary or unequal and unjust in its operation.

53. The Fee unreasonably, arbitrarily, unequally and unjustly applies to licensees that do not live on the property for nine months per year.

54. The arbitrary, unreasonable, and unequal application of the Fee to licensees that do not live on the property for nine-months per year is a violation of the equal protection rights provided in the Fourteenth Amendment of the U.S. Constitution and Art. II, § 25 of the Colorado Constitution.

55. The STR Amendment did not comply with the requirements of the Taxpayer Bill of Rights ("TABOR"), including but not limited to providing all required notices and a compliant ballot question under TABOR.

56. The Fee applies to certain short-term rental properties and is not applied based on actual sales or use.

57. The Fee is a property tax.

58. The Fee is not uniformly applied to all residential properties in violation of Art. X, Sec. 3 of the Colorado Constitution.

59. Plaintiffs are entitled to a declaratory judgment that the STR Amendment and Ordinance 982 impose an invalid fee because the fee is not reasonably related to the cost of the administration of the short-term rental program, did not comply with statutory requirements for adoption of impact fees, or has no essential nexus between short-term rental properties, where

the owner does not live on the property full-time, and workforce housing, or in the alternative, if the Fee is considered a tax, the STR Amendment and Ordinance 982 is not a proper tax because it violates the equal protection clauses in the U.S. Constitution and Colorado Constitution, is unreasonable or arbitrary or unequal and unjust in its operation, was not adopted pursuant to the requirements of TABOR or is not uniformly applied as required in Art. X, Sec. 3 of the Colorado Constitution, and such other relief as the Court deems appropriate under Rule 57(h).

**THIRD CLAIM FOR RELIEF
C.R.C.P. 65 INJUNCTION**

60. The foregoing allegations are hereby incorporated, as if set forth fully herein.

61. Application and enforcement of the STR Amendment and Ordinance 982 causes immediate and irreparable injury, loss, and damage to Plaintiffs because their short-term rental properties would be charged monthly fees in violation of Colorado law and constitution, require Plaintiffs to choose between giving up their short-term rental permits or paying the Fee, and place Plaintiffs at a disadvantage when competing with licensees that are not required to pay the Fee.

62. Plaintiffs lack a plain, speedy and adequate remedy at law because the Town intends to apply and enforce the STR Amendment and Ordinance 982.

63. Requiring the Town to comply with State law and the constitution relating to initiative procedure, elections, and taxation serves the public interest.

64. The balance of equities favors an injunction, which would uphold State law and constitution.

65. Plaintiffs are entitled to injunctive relief that prohibits the Town from applying and enforcing the STR Amendment and Ordinance 982.

WHEREFORE, Plaintiffs pray for a complete adjudication pursuant to Rule 57 and respectfully requests that this Court:

1. Declare that the STR Amendment is invalid because:

- a. It is an administrative, regulatory or executive function that is not a permissible subject of an initiative;
- b. It is unconstitutionally vague; or
- c. The Ballot Question was vague, misleading, confusing or unconstitutional.

2. Declare that the STR Amendment and Ordinance 982 impose invalid fees because the Fee:
 - a. Is not reasonably related to the cost of the administration of the short-term rental program;
 - b. Did not comply with statutory requirements for adoption of impact fees; or
 - c. Has no essential nexus between short-term rental properties, where the owner does not live on the property full-time, and workforce housing.
3. If the Fee is considered a tax, declare that the STR Amendment and Ordinance 982 imposes an invalid tax because the Fee:
 - a. Violates the equal protection clauses in the U.S. Constitution and Colorado Constitution;
 - b. Is unreasonable or arbitrary or unequal and unjust in its operation;
 - c. Was not adopted pursuant to the requirements of TABOR; or
 - d. Is not uniformly applied as required in Art. X, Sec. 3 of the Colorado Constitution, and such other relief as the Court deems appropriate under Rule 57(h).
4. Enjoin the Town from applying and enforcing the STR Amendment and Ordinance 982; and
5. Such other relief as the Court may deem proper.

RESPECTFULLY SUBMITTED this 10th day of June 2022

Eggleston Kosnik LLC

/s/Paul Kosnik
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** In accordance with C.R.C.P. 121 § 1-26(9), the signed original of this document is on file at the offices of Eggleston Kosnik LLC and will be made available for inspection by other parties or the Court upon request.*