

5. Defendant Metropolitan Government of Nashville and Davidson County (interchangeably, “Metro” or “Nashville”) is a metropolitan government and public corporation capable of suing and being sued. Compl. & Ans. ¶ 8 (citing Nashville, Tenn., Metro. Charter § 1.01).

6. Nashville enacted the Client Prohibition and has enforced it against both Plaintiffs. Compl. & Ans. ¶ 8.

I. PLAINTIFFS’ BACKGROUNDS

A. Lij Shaw

7. Lij is a professional record producer. Shaw Decl. ¶ 3.

8. Lij maintains The Toy Box Studio, a professional-quality recording studio, in a detached, renovated garage on his property. Shaw Decl. ¶ 3.

9. Brasher Avenue, where Lij lives, is a residential street in East Nashville. Shaw Decl. ¶ 4.

10. Brasher Avenue sits roughly between, and well within earshot of, a busy train track and the Nashville Auto Diesel College. Shaw Decl. ¶ 4.

11. Lij built The Toy Box Studio in 2005 so that he could earn a living from home while raising his daughter, who was born that year. Shaw Decl. ¶ 5.

12. Well-respected musicians have used The Toy Box Studio: for example, gospel artist Mike Farris’s Grammy-winning album *Shine for All the People* was mixed there. Shaw Decl. ¶ 6.

13. For ten years before the events leading to this lawsuit, Lij earned money by recording musicians at The Toy Box Studio. Shaw Decl. ¶ 7.

14. Nashville admits that it is legal for Lij to have a home recording studio. The Client Prohibition merely prohibits Lij from serving clients there. Compl. & Ans. ¶ 26.

B. Pat Raynor

15. Pat is a professional hairstylist. Raynor Decl. ¶ 3.
16. Pat holds a cosmetology license from the Tennessee Board of Cosmetology and Barber Examiners (“Cosmetology Board”). Compl. & Ans. ¶ 39; Raynor Decl. ¶ 3.
17. Knobview Drive, where Pat lives, is a busy two-lane road in Nashville’s Donelson neighborhood. Raynor Decl. ¶ 4.
18. Pat’s house sits at the intersection of Knobview Drive and Capella Court, a short cul-de-sac. Her driveway runs from Capella Court to the back of her house. Raynor Decl. ¶ 4.
19. Pat’s husband Harold died in 2009. Raynor Decl. ¶ 5.
20. Harold’s death left Pat with extensive medical bills and a mortgage to pay, all without the second income that Harold had provided before. Raynor Decl. ¶ 5.
21. In 2011, Pat began renovating her garage to accommodate a home-based hair salon. She wanted to earn a living without the need to commute or pay commercial rent. Raynor Decl. ¶¶ 6–8.
22. After the renovation was complete, the Cosmetology Board inspected her home and issued Pat a residential shop license in April 2013. Raynor Decl. ¶ 9. Pat, who complies with all relevant cosmetology laws, has never been subject to discipline by the cosmetology board. Raynor Decl. ¶ 3.
23. For seven months before the events leading to this lawsuit, Pat earned money by cutting her clients’ hair in her licensed residential shop. Raynor Decl. ¶ 10.
24. Nashville admits that it is legal for Pat to have a home hair salon. The Client Prohibition merely prohibits Pat from serving clients there. Compl. & Ans. ¶ 51.

II. NASHVILLE’S HOME OCCUPATION ORDINANCE

A. General Legality of Home-Based Businesses

25. As a general rule, Nashville permits home-based businesses. Metro. Code § 17.16.250(D); Compl. & Ans. ¶ 94; Penn Dep. 16:2–13.

26. The Nashville Zoning Code refers to home-based businesses as “home occupation[s],”¹ defined as any “occupation, service, profession or enterprise carried on by a resident member of a family within a [residentially zoned] dwelling unit.” Metro. Code § 17.04.060; Compl. & Ans. ¶ 94; Michael Dep. 17:6–14.

27. Home occupations may be carried on within an accessory building apart from the main dwelling unit. Metro. Code § 17.16.250(D)(1).

28. Nashville treats home occupations as “an accessory use to a residence[,] subject to” certain eligibility criteria. Metro. Code § 17.16.250(D); *see also* Herbert Dep. 10:17–24; Penn Dep. 15:5–18.

29. Home occupations are legal with an accessory-use permit, which any homeowner can obtain “[a]s long as they meet the eligibility criteria.” Michael Dep. 10:25–11:7; *see also* Herbert Dep. 34:20–22; Penn Dep. 15:20–22.

B. Unchallenged Eligibility Criteria for a Home Occupation Permit

30. Most of the eligibility criteria that Nashville requires for a home occupation permit are not challenged by Plaintiffs. *See* Compl. & Ans. ¶ 95.

31. Home occupations must be conducted inside a dwelling unit or accessory building. Metro. Code § 17.16.250(D)(1); Compl. & Ans. ¶ 95(a).

32. Home occupations must be conducted by a resident of the property. Metro. Code § 17.16.250(D)(1); Compl. & Ans. ¶ 95(a).

¹ Plaintiffs use the terms “home-based business” and “home occupation” interchangeably, and define them as they are defined in the Zoning Code.

33. Home occupations may have one (but only one) employee who lives elsewhere. Metro. Code § 17.16.250(D)(1); Compl. & Ans. ¶ 95(a); Penn Dep. 16:18–20.

34. Home occupations must not maintain signs or any other exhibits indicating the presence of the home-based business. Metro. Code § 17.16.250(D)(3); Compl. & Ans. ¶ 95(b).

35. Home occupations must not generate “[o]ffensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects.” Metro. Code § 17.16.250(D)(7); Compl. & Ans. ¶ 95(c).

36. Home occupations must provide the same amount of parking as is already required for the home under the Zoning Code’s generally applicable parking requirements. Metro. Code § 17.20.030; Compl. & Ans. ¶ 95(d).

37. Home occupations must abide by the generally applicable noise restrictions for *all* residential properties, whose application already extends to “pick-up and delivery trucks, and any other commercial or industrial activities which are under the control of the occupant.” Metro. Code § 17.28.090(A); Compl. & Ans. ¶ 95(e).

C. The Client Prohibition

38. The only eligibility criterion that Plaintiffs challenge in this suit is the Client Prohibition. Compl. & Ans. ¶ 96.

39. The Client Prohibition dictates that “[n]o clients or patrons may be served on the property” at a home occupation. Metro. Code § 17.16.250(D)(1); Compl. & Ans. ¶ 96.

40. The Client Prohibition only applies to the property at which the home occupation is based; a resident conducting a home occupation may serve clients at the clients’ houses. Todd 30.02(6) Dep. 41:17–42:1; Thomopoulos Dep. 17:20–24.

41. According to the sponsor of a 2011 bill to repeal the Client Prohibition, who “went to the zoning codes of every comparable city in the United States[, t]here is not a

single city in the United States that flatly prohibits clients and patrons onsite. [Nashville is] the only city in the United States with that flat prohibition.” MetroNashville, *07/05/11 Council Meeting*, YouTube (July 6, 2011), <https://youtu.be/0UIVzksRJPI?t=3082>, *cited in* Metro. Gov’t’s Supp. Resps. Pls.’ Interrogs. ¶ 5 and Metro. Gov’t’s 2d Supp. Resps. Pls.’ Interrogs. ¶ 5.

42. The Client Prohibition is the reason Lij’s home-based recording studio and Pat’s home-based hair salon were (and are) illegal. Compl. & Ans. ¶ 96.

III. ENFORCEMENT OF THE CLIENT PROHIBITION

A. Enforcement Procedure

43. Nashville’s Department of Codes and Building Safety (“Codes Department”) administers and enforces the Client Prohibition. Herbert Dep. 6:25–7:4.

44. The Codes Department is “not aware of every violation [of the Client Prohibition] that is out there.” Penn Dep. 28:21–22; *see also* Thomopoulos Dep. 18:3–5.

45. According to retired Metro zoning examiner Richard Thomopoulos, it is “common” in Nashville for homeowners maintain home-based businesses that violate the Client Prohibition yet “go undetected for years on end.” Thomopoulos Dep. 16:22–25, 18:17–20.

46. The Client Prohibition is only enforced in response to complaints. Compl. & Ans. ¶ 34; *see also* Penn Dep. 28:23–29:2, 30:5–20; Herbert Dep. 21:17–24.

1. Complaint Intake

47. Violations of the Client Prohibition can be reported on the Codes Department’s website, over the phone, via email, in person, or by fax. Penn Dep. 44:4–6.

48. Ninety-nine percent of complaints are anonymous. Penn Dep. 29:11–14, 44:20–22; *see also* Jones Dep. 72:20–22.

49. The Codes Department does not try to learn the identity of anonymous complainants. Penn Dep. 29:15–17, 45:2–10; Jones Dep. 43:15–44:2.

50. The Codes Department assigns complaints directly to the property standards inspector for the territory in which the subject property is located. Penn Dep. 45:11–23.

51. It is up to the inspector to decide how to deal with the complaint. Complaints take priority over anything an inspector sees on his or her own; the Codes Department expects every single complaint to be addressed. Penn Dep. 45:24–46:7; *see also id.* at 41:15–42:18.

2. Complaint Verification

52. A complaint is not evidence that the Client Prohibition has been violated. Jones Dep. 33:6–8, 48:8–18; Rice Dep. 15:9–14, 16:16–22, 29:4–14, 33:6–8, 43:11–14, 53:2–16, 54:1–21, 55:15–17, 58:11–19; Thomopoulos Dep. 23:23–24:1, 39:6–7.

53. Even “several complaints about one property within the span of a couple of months” requires further “proof” in order to determine that the Client Prohibition has been violated. Rice Dep. 46:21–47:5.

54. “[C]ontact with the property owner” is the usual way of validating complaints about home-based businesses. Penn Dep. 47:15–17.

55. Property standards inspector Mattie Jones testified that she would “[f]ollow the same procedure” for investigating any hypothetical complaint she were assigned about a home-based business (whether an accountant or a tattoo artist). Jones Dep. 28:19–22.

56. First, Inspector Jones checks whether the reported home occupant has an accessory-use permit. *See* Jones Dep. 26:15–25. If so, she closes the case. *Id.* at 27:1–2.

57. If there is no permit on file, then Inspector Jones visits the property and asks the owner, occupant, or tenant whether the reported activity is in fact being conducted there. Jones Dep. 27:3–5, 27:23–25, 33:3–6; *see also* Penn Dep. 47:11–19.

58. Alternatively, Inspector Jones might contact the homeowner by phone. Jones Dep. 28:1–15, 33:8–10.

59. If an inspector goes to verify a complaint and no one is home, the inspector leaves a door hanger asking the resident to call the Codes Department. Penn Dep. 47:20–23.

60. A homeowner’s website may help verify a possible code violation. Jones Dep. 46:7–17, 116:15–22.

61. An inspection of the home’s interior may be conducted with the homeowner’s consent, or—if the inspector has a “strong indication” that the violation exists—with a warrant. Jones Dep. 31:20–33:2.

3. Indicia of a Client Prohibition Violation

62. “[M]ost of the time when [Inspector Jones] find[s] out someone’s having customers, it’s from the business owner himself.” Jones Dep. 34:18–21.

63. Inspector Jones testified that homeowners “usually answer honestly” when asked if they have a home-based business. Jones Dep. 30:8–9; *see also id.* at 28:4–8.

64. Inspectors “don’t know if a person’s lying,” however. If a homeowner denies violating the Client Prohibition, inspectors must “take the[homeowner’s] word until [the inspector] catch[es] them.” Rice Dep. 28:19–23; *see also id.* at 21:3–29:14 (testifying that, “[a]s far as [Inspector Rice] know[s],” a woman who admitted having an illegal home-based tutoring business to Inspector Rice on November 15, 2019, was “credible” when, in Inspector Rice’s presence on November 21, 2019, she applied for a home occupation permit for “bookkeeping”).

65. During an inspection, Inspector Jones looks for indicia of customer visits such as waiting chairs and tables. Jones Dep. 29:21–25, 31:15–19.

66. Asked “what else” she looks for—besides a homeowner’s admission and/or “strong indication[s]” of client activity she can see herself—Inspector Jones testified “[b]asically that’s it.” Jones Dep. 32:24–33:5.

67. Home-based business owners do “not [get] in trouble just because they have . . . cars in front of their house.” They “only [get] in trouble if they’re having customers.” Jones Dep. 40:20–25.

68. According to Inspector Jones, “a lot of cars in front of the house” is “not an indication” of a Client Prohibition violation. Jones Dep. 33:11–20; *accord* Thomopoulos Dep. 21:22–22:1. One homeowner could own multiple cars, or multiple friends could be visiting the property. Jones Dep. 33:11–20; Thomopoulos Dep. 21:22–22:1.

69. Inspector Jones “could take into account” “the amount of traffic going in front of the home” “[i]f [she] sit[s] there long enough,” but her “busy schedule” does not allow time for half-hour traffic observations. Jones Dep. 33:21–34:3.

4. Abatement of Client Prohibition Violations

70. When Metro finds that someone is “in violation of the zoning code[’s]” Client Prohibition—for example, by “giving piano lessons at [their] house”—Metro “ha[s] to cite them.” Penn Dep. 47:24–48:2.

71. Upon receiving the citation, “[i]t’s up to [the homeowner] to come into compliance. In th[e] case [of someone giving piano lessons at their house], they would have to stop [giving piano lessons] because it’s not allowed.” Penn Dep. 48:3–6; *see also* Jones Dep. 55:22–23.

72. Depending on the violation, “the normal course of action is to tell [the homeowner] . . . to remove all the equipment” “associated with the business.” Jones Dep. 81:23–82:10.

73. A homeowner who receives a citation and fails to comply can be taken to court. Jones Dep. 56:3–4.

74. “Any violation” of the Zoning Code, including of the Client Prohibition, is “a misdemeanor offense punishable by law. Each day of a violation [is] a separate offense.” Metro. Code § 17.40.610.

75. The usual remedy upon judgment is a mandatory injunction, a \$50 fine for each day the violation continues after the injunction is entered, and a one-day “codes school” that costs \$90. Jones Dep. 56:18–59:1; *see* Metro. Code § 17.40.620 (\$500 fine per day); *id.* § 17.40.630 (authorizing “injunction, mandamus, or other appropriate action to correct or abate a violation,” “in addition to other remedies”); *see also* Tenn. Const. art. VI, § 14 (limiting civil fines to \$50 unless assessed by a jury).

76. The assigned Codes inspector will report to the court when the violation has been abated. Jones Dep. 58:7–11.

B. Experience of the Codes Department

77. “In the grand scheme of things,” the Codes Department does not “get a lot of complaints about home businesses.” Herbert Dep. 23:4–7.

78. Of the types of businesses that violate Metro’s home occupation standards, “the ones [Inspector Jones] get[s] the most complaints on is lawn care businesses.” Jones Dep. 35:25–36:10.

79. By contrast, Codes does not “get a lot of complaints about home studios.” Herbert Dep. 26:10–12.

80. Director Herbert has seen “about two” complaints involving home recording studios “in the last six or seven years.” Herbert Dep. 26:23–27:3.

81. Codes does not “get a lot of complaints about single station hair salons in residential neighborhoods.” Herbert Dep. 28:2–4.

82. In his experience, Director Herbert has seen “[o]ne, maybe two” complaints about home-based hair salons. Herbert Dep. 28:5–6.

83. In Inspector Mattie Jones’s experience, reported complaints about the Client Prohibition are often “not . . . genuine,” having been submitted by “somebody with a grudge” who will “make something up just so [Codes will] go investigate [the homeowner].” Jones Dep. 48:4–10.

84. “At least four out of ten” complaints in Inspector Jones’s experience fit this description. Jones Dep. 48:19–49:1.

85. Inspector Chuck Rice testified that “60 to 70 percent” of reported Client Prohibition violations turn out to be false. Rice Dep. 15:15–16:15.

C. Enforcement Against Pat Raynor

86. Codes received an anonymous complaint about a home occupation at Pat’s home on November 11, 2013. Jones Dep. 72:14–19.

87. Metro does not know who turned Pat into Codes, or why the complainant reported Pat. Metro. Gov’t’s Resps. Pls.’ First Reqs. Admission ¶ 6; Todd 30.02(6) Dep. 121:8–12.

88. Inspector Jones visited Pat’s house and made the “initial violation determination” the following day. Jones Dep. 72:23–73:12 & Ex. 5.

89. “[T]here were two reasons [Inspector Jones] found that [Pat] was violating” the Client Prohibition. Jones Dep. 94:7–9.

90. First, Pat admitted it. “[T]he main reason [Inspector Jones] found [Pat] to be operating a business was because [Pat] told [Inspector Jones].” Jones Dep. 77:12–14; *see also id.* at 94:10–13.

91. Second, Inspector Jones observed Pat's property and "saw a couple of ladies come out [of Pat's house] with freshly co[i]ffed hair." Jones Dep. 76:17–77:1, 77:15–18; *see also id.* at 94:10–13.

92. Pat's admission, and the two women with fresh haircuts, were the only things Inspector Jones observed at Pat's property. Jones Dep. 81:2–5, 94:14–15.

93. "[O]ther than . . . people with nice hair," Inspector Jones could not say how what she observed was "any different from a regular social visit." Jones Dep. 79:25–80:4.

94. Inspector Jones observed no traffic, parking, noise, vibrations, smoke, dust, odors, heat, humidity, glare, or other objectionable effects at Pat's property. Jones Dep. 77:19–78:14.

95. Codes sent Pat an abate notice on November 26, 2013, informing Pat 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. Compl. & Ans. ¶ 72; Jones Dep. 69:16–70:20 & Ex. 4.

96. Pat contacted Codes several times over the following months, speaking to Inspector Jones and her then-supervisor, assistant zoning director Joey Hargis. *See* Jones Dep. 82:14–85:12 & Ex. 5.

97. Pat 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. Compl. & Ans. ¶ 74.

98. Pat was told that she would have to remove everything from her home that had to do with her business, specifically including the sink she had installed (even though it is normal to have a sink installed in a residential home). Compl. & Ans. ¶ 77.

99. Mr. Hargis gave Pat until February 1, 201[4] to comply. *See* Jones Dep. 85:6–12.

100. Pat complied with the orders Codes gave her. She removed all of the equipment and supplies from her home, including the sink. There remains today a circular mark on the floor of her garage where her chair once stood. Raynor Decl. ¶ 16; *see* Compl. ¶ 79.

101. On or about January 28, 2014, Pat spoke with Inspector Jones and scheduled an inspection on February 3, 2014. Jones Dep. 89:11–17; *see also id.* at 88:5–90:12 & Ex. 6.

102. On the agreed inspection date, Pat waited by her empty garage. Nobody from the Codes Department came to see whether Pat had destroyed her home-based hair salon. Raynor Decl. ¶ 17; *see* Compl. ¶ 80; Jones Dep. 85:21–87:11.

103. Pat reached out to Inspector Jones about the missed inspection. On February 10, 2014, she and Inspector Jones scheduled a makeup inspection for February 24, 2014. Jones Dep. 90:21–91:15.

104. Three Codes officers—Inspector Jones, then-Property Standards chief Jeff Castleberry, and supervisor-in-training Wayne Denton—inspected Pat’s home on February 24, 2014. Compl. & Ans. ¶ 83; Jones Dep. 91:21–93:12.

105. Inspector Jones stood outside with Mr. Denton while Mr. Castleberry walked with Pat around her empty renovated garage. Seeing that Pat had complied with Codes’s orders, Mr. Castleberry told Pat that she was free and clear, but threatened that if Pat ever tried to work out of her home again, Codes would take her to court and fine her. Compl. & Ans. ¶ 84; *see also* Jones Dep. 92:1–17.

D. Enforcement Against Lij Shaw

106. Codes received an anonymous complaint about a home-based business at Lij’s property on August 13, 2015. Jones Dep. 96:22–97:17 & Ex. 8.

107. Metro does not know who turned Lij into Codes, or why the complainant reported Lij. Metro. Gov't's Resps. Pls.' First Reqs. Admission ¶ 5; Todd 30.02(6) Dep. 121:8–12.

108. Inspector Jones made the initial violation determination on August 17, 2015. Jones Dep. 97:18–21, 98:14–22.

109. Inspector Jones never visited Lij's property. Jones Dep. 96:13–15, 97:22–24.

110. Accordingly, Inspector Jones found no traffic, parking, noise, vibration, smoke, dust, odor, heat, humidity, glare, or any other objectionable effects at Lij's property. Jones Dep. 98:23–99:24.

111. Instead, Inspector Jones visited The Toy Box Studio's website and used the website to determine that Lij was operating a business at his property. Jones Dep. 103:1–12.

112. Codes sent Lij an abate notice on September 1, 2015, 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. Compl. & Ans. ¶ 27; Jones Dep. 94:20–95:12 & Ex. 7.

113. Inspector Jones recalls having “several conversations” with Lij over the phone. Jones Dep. 105:1–3.

114. Inspector Jones asked Lij if he was recording clients, which Lij admitted. Jones Dep. 105:4–5; *see* Compl. & Ans. ¶ 31.

115. Lij stated that he wished to comply, and Inspector Jones talked with him about what to do and told him he would “have to cease and desist recording [clients] there.” Jones Dep. 105:5–7; *see* Compl. & Ans. ¶ 31.

116. Since “home recording studios are allowed”—they only violate the Client Prohibition when the homeowner “bring[s clients] in to record them”—Inspector Jones,

after checking with a supervisor, relayed to Lij that “he was allowed to keep [his] equipment, but . . . had to take his website down. [Lij] couldn’t advertise that [The Toy Box Studio] was [his] home recording studio and [that he was] recording” clients there. Jones Dep. 105:13–19, 107:6–18.

117. On or about September 17, 2015, Lij’s case was closed “because [Lij] . . . agreed not to have any more customers.” Jones Dep. 108:17–110:17 & Ex. 8.

IV. SIMILAR HOME-BASED BUSINESSES ARE NOT SUBJECT TO THE CLIENT PROHIBITION

118. In a Rule 30.02(6) deposition, Metro’s designated witness testified that the Metro zoning code’s definition of a “home occupation” contains three elements. Todd 30.02(6) Dep. 63:10–64:6; *see also* Metro. Code § 17.04.060 (definition), *quoted above in* ¶ 26.

119. First, home occupations take place inside a residential home. Todd 30.02(6) Dep. 63:20–22.

120. Second, home occupations are carried out by a resident of the home. Todd 30.02(6) Dep. 63:23–24.

121. Third, home occupations include any “occupation, service, profession or enterprise”—in layman’s terms, any “business.” Todd 30.02(6) Dep. 63:25–64:3.

122. Nothing else is important in understanding Metro’s definition of a home occupation. Todd 30.02(6) Dep. 64:4–6.

A. Specific Plans

123. Nashville defines a “specific plan (SP) district” as “an alternative zoning process that may permit *any* land uses, and alternative development standards, of an individual property.” Metro. Code § 17.40.105 (emphasis added); Compl. & Ans. ¶ 124.

124. Any residential property may apply for rezoning as an SP district. Metro. Code § 17.40.106(B); Compl. & Ans. ¶ 125.

125. SP applications are reviewed by the Metro Planning Department, then by the Metropolitan Planning Commission, and finally by the Metro Council, which has the exclusive authority to create an SP district by ordinance. Metro. Code §§ 17.40.050 *et seq.*; Compl. & Ans. ¶ 126.

126. The Metro Council can approve a specific plan “to allow a resident to conduct an occupation, service, profession or enterprise inside a residential dwelling unit.” Herbert Dep. 40:22–25.

127. In at least eleven ordinances, covering thirteen properties, Metro has used SP zoning to allow clients or patrons to be served in residential homes. Decl. David A. Phillips Supp. Pls.’ Mot. Summ. J. (“Phillips Decl.”) ¶ 7; *see also* Compl. & Ans. ¶ 127–128 (admitting Metro “has enacted many ordinances to rezone residential properties as specific plan districts,” and that some of these ordinances “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”).

1. 716 and 718 McFerrin Avenue

128. The Metro Council approved the service of clients in an SP ordinance for 716 and 718 McFerrin Avenue, formerly zoned RS5.² Metro Ordinance No. BL 2016-398; *see* Phillips Decl., Ex. A at 4–6.

129. The ordinance explicitly states:

The standards for the Home Occupation uses in this SP are similar to Metro Zoning Code Standards for Home Occupations. The home occupation shall only be conducted in the dwelling unit. *Clients may be served on the property This provision*

² Single-family residential, 5,000 ft² minimum lot size. *See* Metro. Code § 17.08.010(B)(1)(i).

is not currently in the Metro Zoning Code for Home Occupations.

Metro Ordinance No. BL2016-398, ¶ 4 (emphasis added).

130. The website of the Property Assessor for Nashville & Davidson County shows the home at 716 McFerrin Avenue as follows:



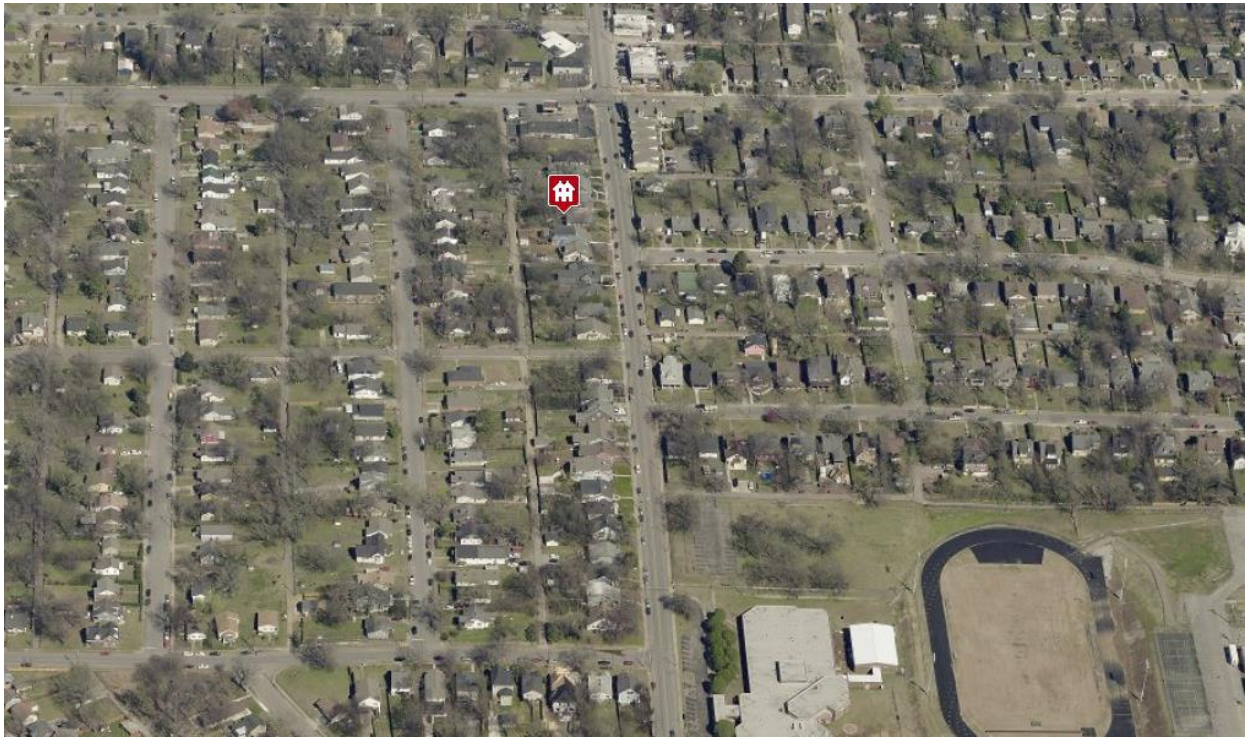
Phillips Decl., Ex. A at 4–5.

131. The property assessor's website shows the home at 718 McFerrin Avenue as follows:



Phillips Decl., Ex. A at 5.

132. The surrounding residential neighborhood is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 6.

2. 2901 Tuggle Avenue

133. The Metro Council approved the service of clients in an SP ordinance for 2901 Tuggle Avenue, formerly zoned RS10.³ Metro Ordinance No. BL 2012-311; *see* Phillips Decl., Ex. A at 6–8.

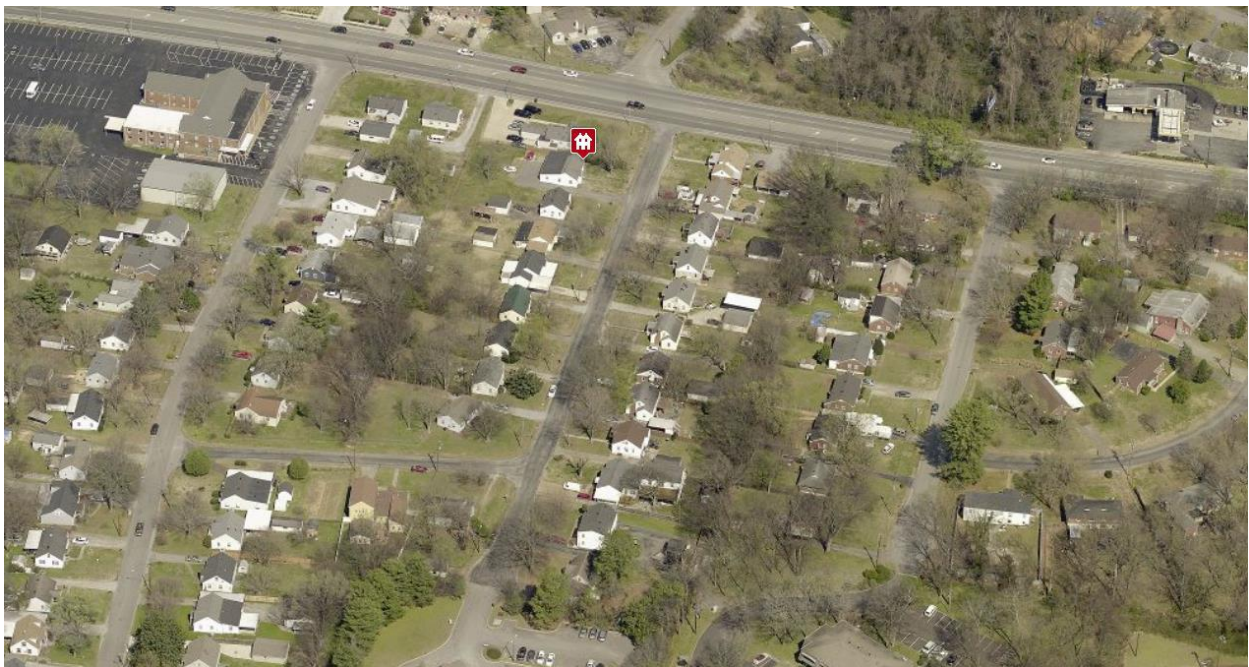
134. The property assessor's website shows the home at 2901 Tuggle Avenue as follows:

³ Single-family residential, 10,000 ft² minimum lot size. *See* Metro. Code § 17.08.010(B)(1)(f).



Phillips Decl., Ex. A at 8.

135. The surrounding residential neighborhood is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 8.

3. 2643 Smith Springs Road

136. The Metro Council approved the service of clients in an SP ordinance for 2643 Smith Springs Road, formerly zoned R10.⁴ Metro Ordinance No. BL 2005-816; *see* Phillips Decl., Ex. A at 9–10.

137. The property assessor’s website shows the home at 2643 Smith Springs Road—with a street-facing sign advertising a “HAIR SALON”—as follows:



Phillips Decl., Ex. A at 9.

138. This ordinance was approved even though the Metro Planning Commission recommended disapproval on the grounds that it was “not consistent with the existing single-family homes that are on both sides of this property. [Neighborhood] policy calls for a coordinated development plans, and because the request is for a single parcel and does not include a larger area, the policy is not met.” Phillips Decl., Ex. A at 9–10 (citing Metro Planning Comm’n Staff Recommendation, Proposal No. 2005Z-110U-13, http://maps.nashville.gov/sp/2005/2005SP-110/PC_Minutes_2005SP-110.pdf).

4. 2635 Smith Springs Road

⁴ One- and two-family residential, 10,000 ft² minimum lot size. *See* Metro. Code § 17.08.010(B)(2)(f).

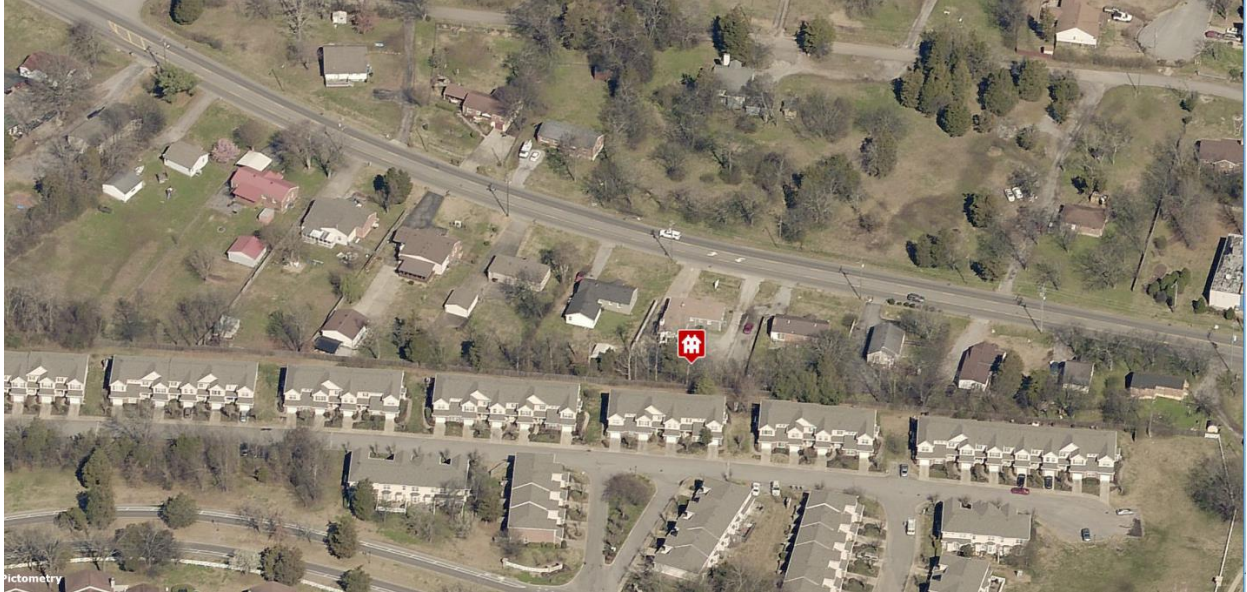
139. The Metro Council approved the service of clients in an SP ordinance for 2643 Smith Springs Road, formerly zoned R10. Metro Ordinance No. BL 2008-279; *see* Phillips Decl., Ex. A at 10–11.

140. The property assessor's website shows the home at 2635 Smith Springs Road as follows:



Phillips Decl., Ex. A at 10.

141. The surrounding residential neighborhood (for both 2635 and 2643 Smith Springs Road, which is two houses to the right of the red marker) is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 11.

5. 1812 Pearl Street

142. The Metro Council approved the service of clients in an SP ordinance for 1812 Pearl Street, formerly zoned R6.⁵ Metro Ordinance No. BL 2009-554; *see* Phillips Decl., Ex. A at 11–12.

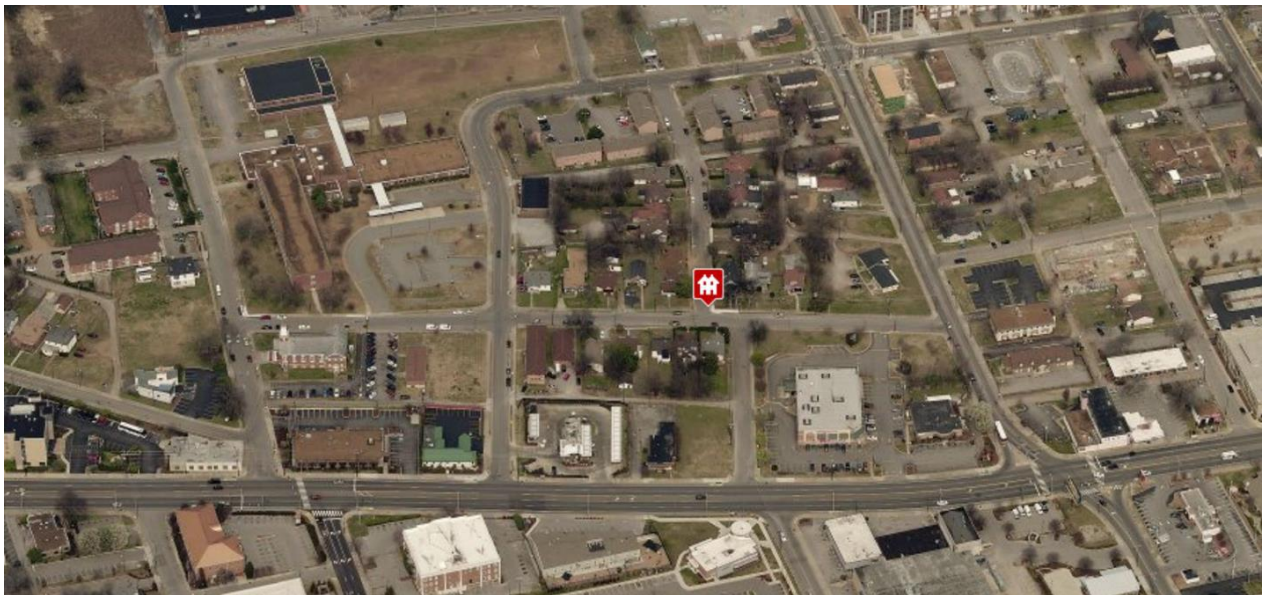
143. The property assessor’s website shows the home at 1812 Pearl Street as follows:

⁵ One- and two-family residential, 6,000 ft.² minimum lot size. *See* Metro. Code § 17.08.010(B)(2)(i).



Phillips Decl., Ex. A at 11–12.

144. The surrounding residential neighborhood is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 12.

6. 4414 Westlawn Drive

145. The Metro Council approved the service of clients in an SP ordinance for 4414 Westlawn Drive, formerly zoned RS7.5.⁶ Metro Ordinance No. BL 2010-698; *see* Phillips Decl., Ex. A at 12–13.

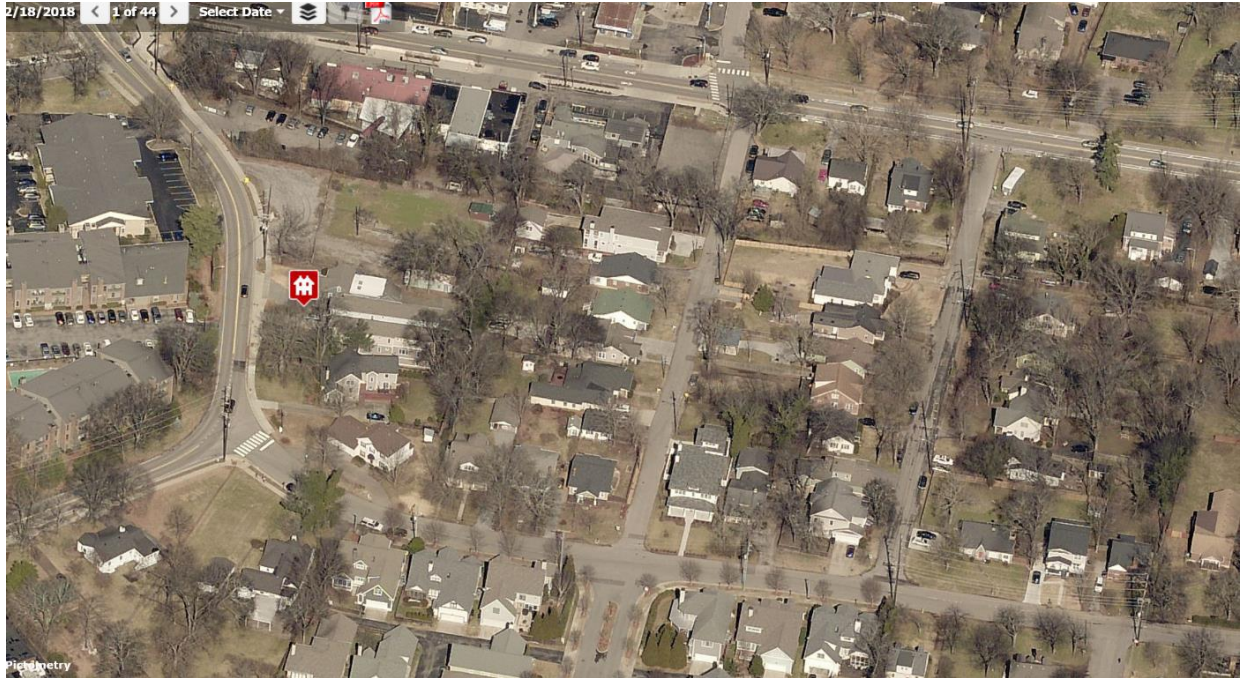
146. The property assessor’s website shows the home at 4414 Westlawn Drive as follows:



Phillips Decl., Ex. A at 13.

147. The surrounding residential neighborhood is shown on the property assessor’s website as follows:

⁶ Single-family residential, 7,500 ft.² minimum lot size. *See* Metro. Code § 17.08.010(B)(1)(g).



Phillips Decl., Ex. A at 13.

7. 69 Thompson Lane

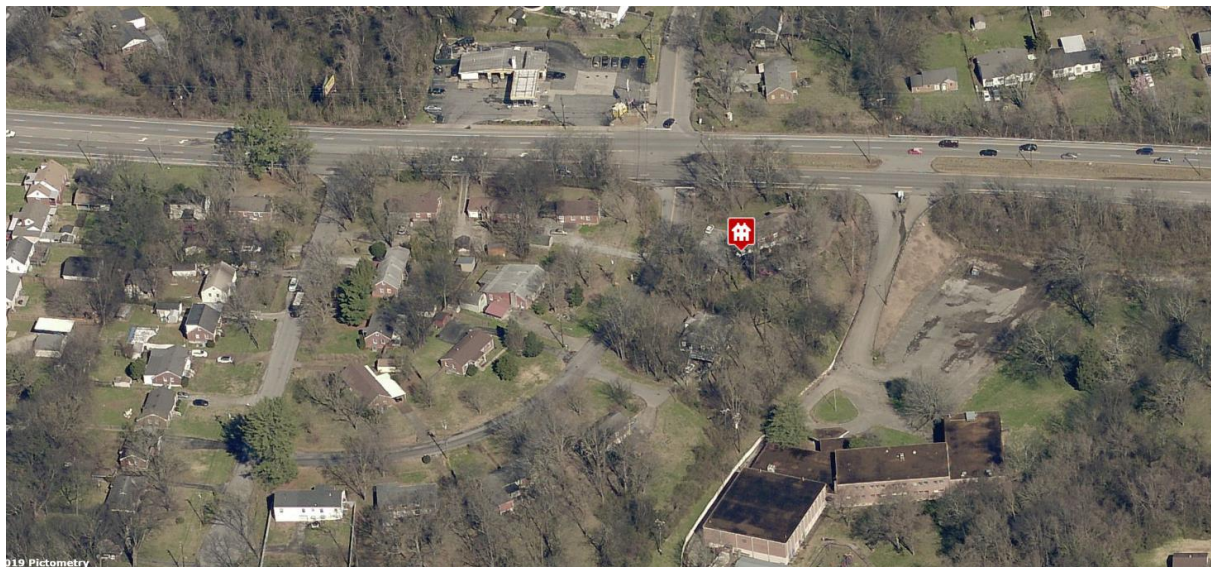
148. The Metro Council approved the service of clients in an SP ordinance for 69 Thompson Lane, formerly zoned RS10. Metro Ordinance No. BL 2014-649; *see* Phillips Decl., Ex. A at 14–15.

149. The property assessor’s website shows the home at 69 Thompson Lane as follows:



Phillips Decl., Ex. A at 14.

150. The surrounding residential neighborhood is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 15.

8. 912 Robinson Road

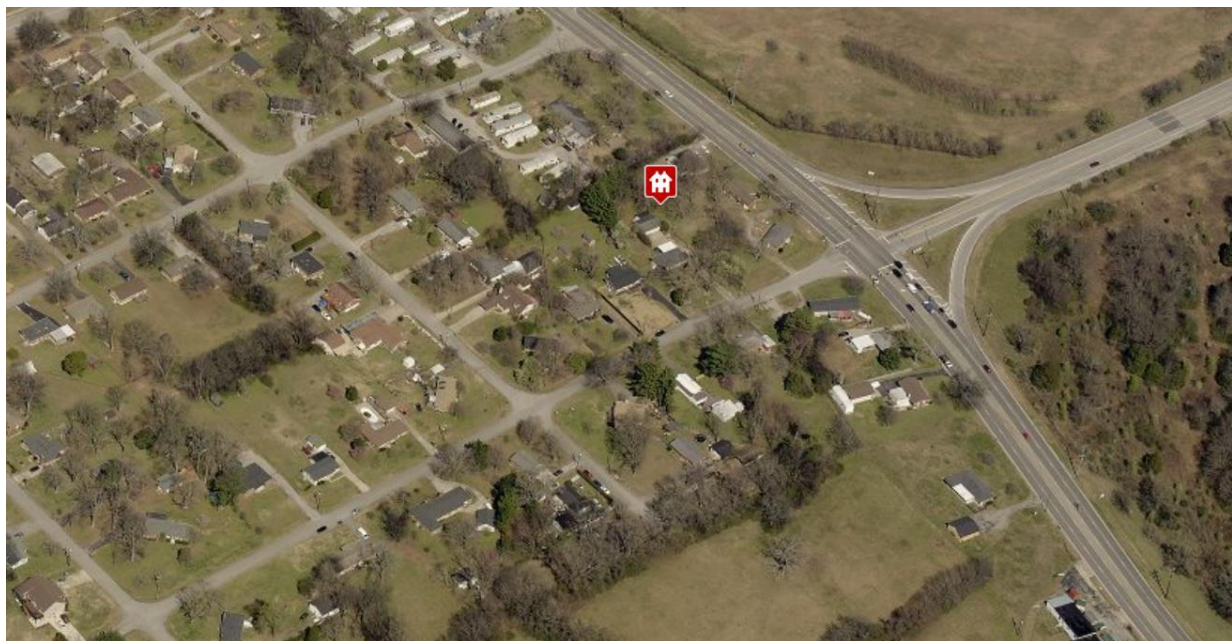
151. The Metro Council approved the service of clients in an SP ordinance for 912 Robinson Road, formerly zoned R10. Metro Ordinance No. BL 2015-77; *see* Phillips Decl., Ex. A at 15–16.

152. The property assessor’s website shows the home at 912 Robinson Road as follows:



Phillips Decl., Ex. A at 15.

153. The surrounding residential neighborhood is shown on the property assessor’s website as follows:



Phillips Decl., Ex. A at 16.

9. 4130 Andrew Jackson Parkway

154. The Metro Council approved the service of clients in an SP ordinance for 4130 Andrew Jackson Parkway, formerly zoned RS15.⁷ Metro Ordinance No. BL 2010-661; *see* Phillips Decl., Ex. A at 16–17.

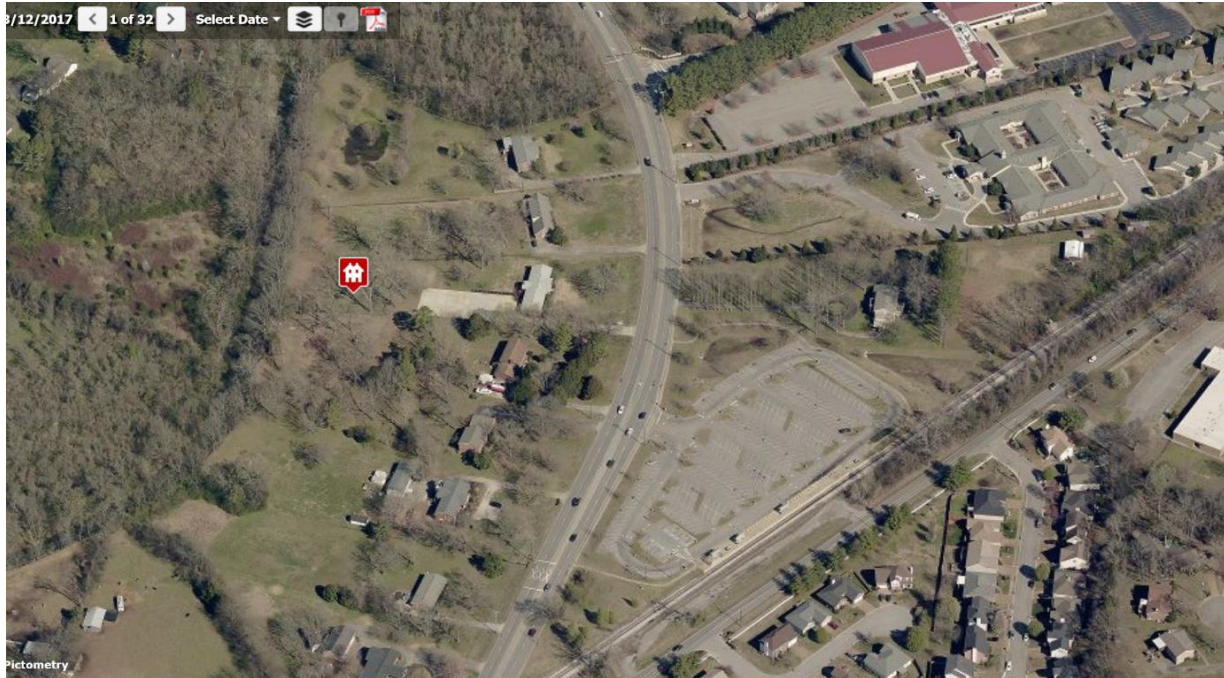
155. The property assessor’s website shows the home at 4130 Andrew Jackson Parkway as follows:



Phillips Decl., Ex. A at 17.

156. The surrounding residential neighborhood is shown on the property assessor’s website as follows:

⁷ Single-family residential, 15,000 ft.² minimum lot size. *See* Metro. Code § 17.08.010(B)(1)(e).



Phillips Decl., Ex. A at 17.

10. 904 Chicamauga Avenue and 941 West Eastland Avenue

157. The Metro Council approved the service of clients in an SP ordinance for 904 Chicamauga Avenue and 941 West Eastland Avenue, formerly zoned RS5. Metro Ordinance No. BL 2013-449; *see* Phillips Decl., Ex. A at 18–19.

158. The property assessor’s website shows the home at 904 Chicamauga Avenue as follows:



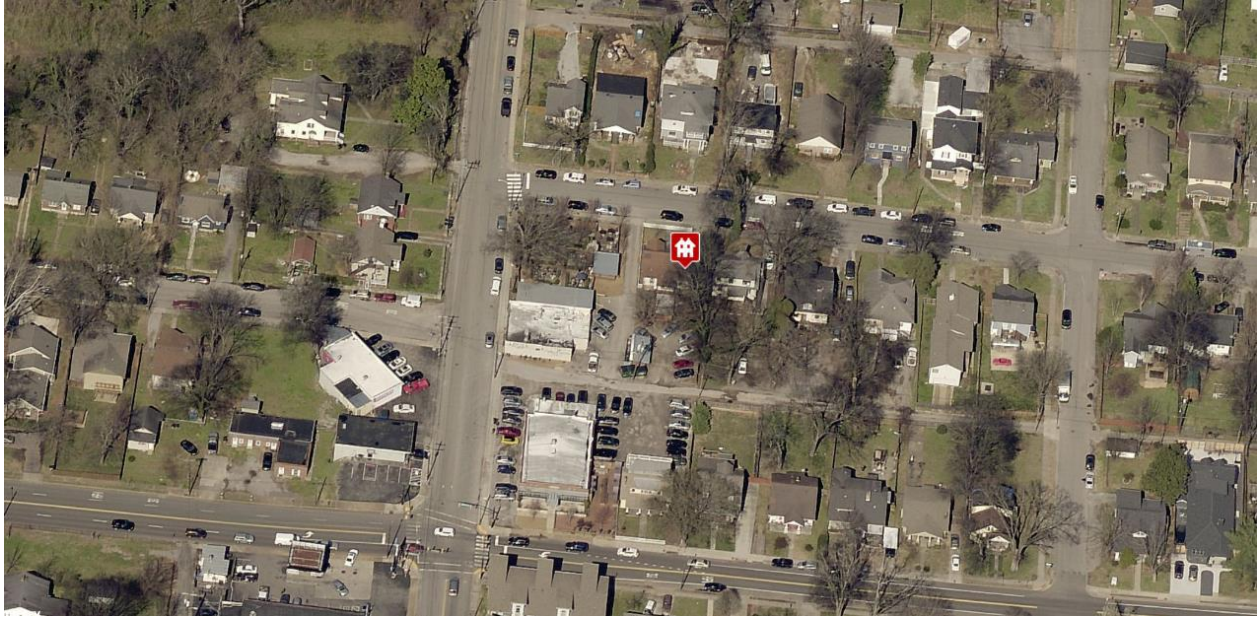
Phillips Decl., Ex. A at 18.

159. The property assessor's website shows the home at 941 West Eastland Avenue as follows:



Phillips Decl., Ex. A at 19.

160. The surrounding residential neighborhood is shown on the property assessor's website as follows:



Phillips Decl., Ex. A at 19.

11. 2898 Elm Hill Pike

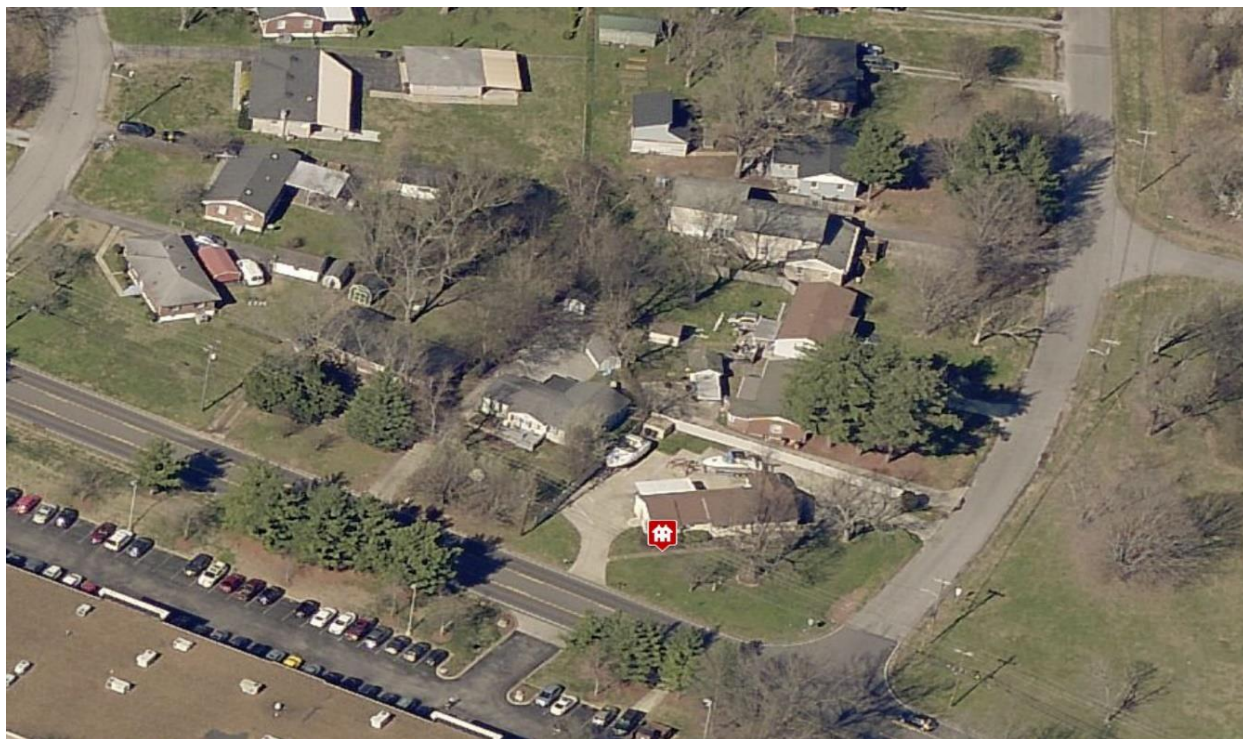
161. The Metro Council approved the service of clients in an SP ordinance for 2898 Elm Hill Pike, formerly zoned RS10. Metro Ordinance No. BL 2010-668; *see* Phillips Decl., Ex. A at 19–20.

162. The property assessor’s website shows the home at 2898 Elm Hill Pike as follows:



Phillips Decl., Ex. A at 20.

163. The surrounding residential neighborhood is shown on the property assessor’s website as follows:



Phillips Decl., Ex. A at 20.

B. Owner-Occupied Short-Term Rentals

164. Nashville defines a “[s]hort-term rental property (STRP)—[o]wner-occupied” as “an owner-occupied residential dwelling unit containing not more than four sleeping rooms that is used and/or advertised . . . for rent for transient occupancy by guests.” Metro. Code § 17.04.060; *see* Compl. & Ans. ¶ 110 (regarding prior version of code).⁸

165. Owner-occupied short-term rentals take place inside residential homes. Todd 30.02(6) Dep. 65:21–23.

166. Owner-occupied short-term rentals are carried out by a resident of the home. Todd 30.02(6) Dep. 65:24–25.

⁸ After this action was filed, Nashville amended its zoning code to phase out short-term rentals that are *not* owner-occupied. Metro Ordinance No. BL2017-608.

167. An owner-occupied short-term rental is a business. Todd 30.02(6) Dep. 66:1–2.

168. Owner-occupied short-term rentals may serve up to twelve clients at a time. Metro. Code § 17.16.250(E)(4)(f) (unaffected by amendment); Compl. & Ans. ¶ 110; Michael Dep. 65:15–23, 68:8–11.

169. Owner-occupied short-term rentals are permitted as accessory uses in all residential districts. Metro. Code § 17.08.030; Michael Dep. 64:25–65:10, 67:18–24.

170. As of July 11, 2018, there were 4,653 permitted owner-occupied short term rentals in Nashville, of which 3,001 were “active.” Metro. Gov’t’s Resps. Pls.’ Interrogs. ¶ 9.

171. Owner-occupied short-term rentals could not legally operate if the Client Prohibition applied to them, because short-term rentals serve clients or patrons on the property. Compl. & Ans. ¶ 114.

172. Nevertheless, Nashville expressly allows owner-occupied short-term rentals in residential zones to serve up to twelve clients per day on the property. Compl. & Ans. ¶ 115.

C. Day Care Homes

173. Nashville 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.” Metro. Code § 17.04.060; Compl. & Ans. ¶ 104.

174. 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; Compl. & Ans. ¶ 104.

175. Day care homes take place inside residential homes. Todd 30.02(6) Dep. 66:22–23.

176. Day care homes are carried out by a resident of the home. Todd 30.02(6) Dep. 66:24–25.

177. A day care home is a business. Todd 30.02(6) Dep. 67:1–2.

178. The zoning code allows for the existence of one day care home per street block—and in some cases more than one per block where the block is over 1,000 feet in length—provided that the day care home meets the requirements for and obtains a special exception permit. Metro. Code § 17.16.170(D)(4); Metro. Gov’t’s Resps. Pls.’ First Reqs. Admission ¶ 7.

179. Metro has granted eleven special exception permits for day care homes to operate in residential districts. Metro. Gov’t’s Resps. Pls.’ Interrogs. ¶ 8.

180. Day care homes could not legally operate if the Client Prohibition applied to them, because day care homes serve clients or patrons on the property. Compl. & Ans. ¶ 108.

181. Nevertheless, day care homes—provided they meet the requirements for and obtain a special exception permit—are permitted to serve up to twelve clients per day in residential districts. Metro. Gov’t’s Resps. Pls.’ First Reqs. Admission ¶ 9; *see also* Compl. & Ans. ¶ 109.

D. Historic Home Events

182. Nashville defines a “[h]istoric 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; Metro. Gov’t’s Resps. Pls.’ First Reqs. Admission ¶ 10.

183. Historic home events take place inside residential homes. Todd 30.02(6) Dep. 67:12–17.

184. Historic home events must be carried out by a resident of the home. Metro. Code § 17.16.160(B)(6) (“The owner of the property must reside permanently in the historic home.”); *see also* Compl. & Ans. ¶ 120 (admitting “Historic Home Events meet the broad

definition [of a home occupation] in [Metro. Code] § 17.04.060”); Todd 30.02(6) Dep. 67:19–68:8) (witness unsure whether historic homes have residents).

185. Historic home events are a business. Todd 30.02(6) Dep. 68:14–15.

186. Metro has granted seven special exception permits for historic home events to operate in residential districts. Metro. Gov’t’s Resps. Pls.’ Interrogs. ¶ 10.

187. Historic home events could not legally operate if the Client Prohibition applied to them, because historic home events serve clients or patrons on the property. Compl. & Ans. ¶ 121.

188. Nevertheless, historic home events, provided they meet the requirements for and obtain a special exception permit, are permitted to serve clients in residential districts. Metro. Code § 17.08.030; Metro. Gov’t’s Resps. Pls.’ First Reqs. Admission ¶ 11.

V. METRO’S ALLEGED INTERESTS IN THE CLIENT PROHIBITION

189. Plaintiffs and Metro agree that in order for the Client Prohibition to be constitutional, it must serve an interest with a substantial relationship to the public health, safety, morals, or general welfare. Metro. 30.02(6) (Todd) Dep. 17:10–24.

A. Metro’s Interrogatory Responses

190. Metro asserts the following to be interests that the Client Prohibition serves:

- [P]rotect[s] [and maintains] the residential nature of residentially-zoned property.
- 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 deal with 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.
- 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.
- 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 [Metro] start[s] 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 are often 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 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 b[u]y 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 burden for the HOAs to enforce their covenants prohibiting, if Metro allowed.
- [P]revent[s] commercial intrusion.
- [L]imit[s] non-residential traffic (both additional people and cars) in the neighborhood and avoid[s] parking problems.
- [C]ommercial real estate is harmed by having clients allowed to visit homes.

Metro. Gov't's 2d Supp. Resps. Pls.' Interrogs. ¶¶ 5–6; *see also* Metro. Gov't's Supp. Resps.

Pls.' Interrogs. ¶¶ 5–6 (incorporating reasons mentioned in selected public hearing videos);

Metro. Gov't's Resps. Pls.' Interrogs. ¶¶ 5–6 (initially denying knowledge of reasons).

B. Metro's Rule 30.02(6) Testimony

191. In a Rule 30.02(6) deposition, Metro testified that its

main overarching interest is that the client prohibition helps preserve the zoning code. It makes the zoning code have sense. Without it . . . residential would . . . become commercial. It would . . . gut the meaning of the residential portion of the zoning code. . . . [I]f you take out the client prohibition, the distinction between residential zoning and commercial zoning is meaningless. . . . [I]t is the lynchpin on why we have these different categories of zoning. So that's the overarching . . . legitimate state interest in having an effective workable zoning code. And if you take that out, I think the zoning code kind of collapses on itself and doesn't make any sense and doesn't work.

Todd 30.02(6) Dep. 18:17–19:8; *see also id.* at 53:17–25, 107:17–108:1.

192. Subordinate to its “overarching” interest in maintaining the residential nature of residential property, Metro’s Rule 30.02(6) witness identified “four big buckets” into which the “specific interest[s]” served by the Client Prohibition fall: “safety, order, certainty and quality of life.” Todd 30.02(6) Dep. 19:9–14.

1. Safety

193. Metro contends the “the most important” interest the Client Prohibition serves is safety. *See* Todd 30.02(6) Dep. 19:16–23:15.

194. Metro contends the Client Prohibition promotes a safety interest in “traffic and parking.” *See* Todd 30.02(6) Dep. 22:15–16; *see also id.* at 116:5–10.

195. Metro *denies* that the Client Prohibition serves any interest Metro has in regulating noise. Todd 30.02(6) Dep. 52:19–53:11.

196. Metro also contends “certain types of businesses . . . have an element of danger to them.” Metro contends that tattoo parlors, body-piercing businesses, and outpatient surgery facilities could produce needles, medical waste, and hazardous waste which Metro has an interest in keeping “away from children.” *See* Todd 30.02(6) Dep. 19:17–20:12; *see also id.* at 117:15–118:10.

197. Metro also contends “there are certain types of businesses that could have dangerous customers or clients come.” *See* Todd 30.02(6) Dep. 20:13–21:10; *see also id.* at 114:16–21.

198. Metro also contends the Client Prohibition “protects the clients of the business.” Metro expresses a concern about accommodations for disabled persons as well as a historic lack of sidewalks in Nashville neighborhoods. *See* Todd 30.02(6) Dep. 21:11–23; *see also id.* at 117:10–11.

199. Metro also contends the Client Prohibition eliminates “businesses [that] are attractive nuisances for children” from residential zones. *See* Todd 30.02(6) Dep. 21:24–14.

2. Order

200. Metro contends the Client Prohibition serves an interest in order. *See* Todd 30.02(6) Dep. 23:25–27:10; *see also id.* at 109:21–23.

201. Metro contends that “an orderly zoning code” is a legitimate interest in and of itself. *See* Todd 30.02(6) Dep. 23:1–25:14; *see also id.* at 111:21–114:15, 116:4–5, 118:20–119:9.

202. Metro also contends that “the biggest investment most Nashvillians make is in their home,” and that “Metro has an interest in keeping the order for its citizens on that big investment.” Todd 30.02(6) Dep. 24:3–6; *see also id.* at 119:20–21.

203. Metro also contends that the Client Prohibition protects the value of investments in commercial properties “by making sure that business owners who want to serve clients have to rent space in commercial districts.” Todd 30.02(6) Dep. 100:19–24; *see also id.* at 25:15–24, 116:11–13.

204. Metro also contends that the Client Prohibition helps preserve an “orderly [property] tax system” as well as the orderly assessment of utility charges. *See* Todd 30.02(6) Dep. 25:25–27:10; *see also id.* at 116:14–20, 117:12–14.

3. Certainty

205. Metro contends the Client Prohibition serves an interest in certainty of outcome. *See* Todd 30.02(6) Dep. 27:11–28:23.

206. Metro’s Rule 30.02(6) witness testified that the Client Prohibition’s absolute ban on home-business clients is “simple” and “crystal clear,” whereas an ordinance that

allowed “two people . . . or four people or eight people” would be “arbitrary.” Todd 30.02(6) Dep. 27:12, 28:11, 28:13–14.

207. Metro contends that the Client Prohibition thus conserves various enforcement resources. Todd 30.02(6) Dep. 109:15–20, 109:24–110:1, 118:17–19.

4. Quality of Life

208. Metro contends the Client Prohibition serves an interest in quality of life. *See* Todd 30.02(6) Dep. 28:24–28:23; *see also id.* at 109:9–14, 111:17–20, 118:11–16.

* * *

209. Metro contends that the Client Prohibition may serve other interests, but Metro cannot say what those interests may be. *See* Todd 30.02(6) Dep. 119:22–24.

VI. METRO HAS NO EVIDENCE THAT ENFORCING THE CLIENT PROHIBITION AGAINST PLAINTIFFS’ HOME-BASED BUSINESSES ADVANCES ANY OF METRO’S ALLEGED INTERESTS.

210. In its Rule 30.02(6) deposition, Metro testified that the only evidence of actual harm to Metro’s government interests from Lij’s or Pat’s home-based businesses were the anonymous complaints received by Codes. *See* Todd 30.02(6) Dep. 119:25–121:12.

211. Metro’s code enforcement officials testified, however, that complaints are evidence of neither a Client Prohibition violation nor harm to the neighborhood. *See above* ¶ 52 (not evidence of a Client Prohibition violation); Thomopoulos Dep. 39:14–18, 40:3–5 (not evidence of impact on neighborhood).

A. Safety

212. There is no evidence that Lij Shaw’s home recording studio was unsafe. Todd 30.02(6) Dep. 85:10–12, 93:22–94:3.

213. There is no evidence that Pat Raynor’s home-based hair salon was unsafe. Todd 30.02(6) Dep. 85:4–6, 93:18–21.

214. Metro allows traffic in residential neighborhoods. Todd 30.02(6) Dep. 37:1–9.

215. Metro does “[n]ot typically” require a traffic impact study for a proposed use that generates fewer than 750 daily and 100 peak-hour trips. Metro. Code § 17.20.140(A)(3) (numerical limits); *see also* Doyle 30.02(6) Dep. 10:12–15, 26:6–12, 27:9–12 (describing practice).

216. A “trip” is one vehicular arrival or departure; a client who arrives and leaves in his or her own car will generate two “trips.” *See* Doyle 30.02(6) Dep. 43:9–44:6 & Ex. 7 (authenticating methodology), 45:9–46:6 (confirming trip generation of ridesharing compared to clients who drive themselves).

217. Lij’s home recording studio would generate—at most—20 daily trips in addition to the 10 estimated trips generated by his existing single-family residential use. Doyle 30.02(6) Dep. 46:20–47:2, 49:18–50:2.

218. If Lij’s estimated five daily clients drove themselves instead of taking a rideshare, The Toy Box Studio would generate 10 additional daily trips in addition to the traffic Lij might generate by himself. Doyle 30.02(6) Dep. 46:3–6.

219. Pat’s home-based hair salon would generate—at most—32 daily trips in addition to the 10 estimated trips generated by her existing single-family residential use. Doyle 30.02(6) Dep. 46:12–19.

220. If Pat’s estimated eight daily clients drove themselves instead of taking a rideshare, Pat’s home-based hair salon would generate 16 additional daily trips in addition to the traffic Pat might generate by herself. Doyle 30.02(6) Dep. 45:17–21.

221. When Lij and Pat applied to Metro in 2016–2017 for specific plan rezoning to legalize their respective home businesses, the Metro planning staff’s “traffic and parking” recommendation was to *approve* both applications on the sole condition that they provide adequate parking on the property. Ammarell Dep. 24:10–25 & Ex. 2, 35:5–20 & Ex. 4; Doyle 30.02(6) Dep. 30:4–6 & Ex. 3, 31:23–32:1 & Ex. 4.

222. Lij has a long driveway with adequate space for his clients' vehicles. The Toy Box Studio would require no space on the street. Shaw Decl. ¶ 8.

223. Pat's driveway is large enough to accommodate the one client at a time she would like to serve. Her home hair salon would require no parking space on the street. Raynor Decl. ¶ 11.

224. Metro neither regulates nor has an interest in regulating cars parked on residential driveways with the homeowner's permission. Todd 30.02(6) Dep. 49:4–7, 50:8–11.

225. Metro testified that its concern about inherently dangerous businesses is directed at home-based businesses other than Lij's and Pat's. Metro characterizes Lij and Pat as "the two best plaintiffs" possible. Todd 30.02(6) Dep. 88:23–89:15 (expressing concern with "tattoo parlors, head shops, massage parlors," and "criminal defense attorneys").

226. Pressed further, Metro's witness speculated that Pat might "do body piercings" and that she might "use chemicals to treat hair, hair dye." Metro's witness offered no reason to believe Lij's recording studio might have an element of danger. Todd 30.02(6) Dep. 89:16–23.

227. Pat does not do body piercings. Raynor Decl. ¶ 15.

228. Pat is subject to licensure by the Tennessee State Board of Cosmetology and complies with all relevant statutes and regulations in her practice of cosmetology. Raynor Decl. ¶ 3.

229. Neither Lij nor Pat have knowingly invited (nor would knowingly invite) anyone with violent tendencies into their home, either socially or for business purposes. They would not want to endanger the neighborhood they live in. Shaw Decl. ¶ 10; Raynor Decl. ¶ 13.

230. Metro does not restrict the travel of unsafe people through residential neighborhoods. Todd 30.02(6) Dep. 87:6–8, 92:10–12.

231. Relatedly, Metro’s short-term rental ordinance imposes no restrictions with respect to the prior criminal history of short-term rentals’ overnight guests. Todd 30.02(6) Dep. 87:19–22.

232. Metro does not know whether its home occupation ordinance prevents unsavory characters from conducting home occupations themselves. Todd 30.02(6) Dep. 91:18–21.

233. Metro’s home occupation ordinance does not prohibit unsavory characters from working as the nonresident employee of a home occupation. Todd 30.02(6) Dep. 91:22–92:7. Metro has no evidence that such employees have led to any increase in crime. *Id.*

234. Metro has no disabled-persons act of its own. Todd 30.02(6) Dep. 94:12–14.

235. Metro does not know whether Lij’s or Pat’s businesses are places of public accommodation subject to the Americans with Disabilities Act. Todd 30.02(6) Dep. 94:22–95:2.

236. Metro does not know whether Lij’s or Pat’s businesses afforded reasonable accommodation to their clients under the Americans with Disabilities Act. Todd 30.02(6) Dep. 95:3–9.

237. In the time they operated their home-based businesses, neither Lij nor Pat were ever unable to serve a client on account of the client’s disability, and they would both make reasonable accommodations at their homes for any such client if Lij and Pat were not prohibited from serving them there by Metro’s Client Prohibition. Shaw Decl. ¶ 11; Raynor Decl. ¶ 14.

238. Asked whether Lij’s or Pat’s home-based businesses could be attractive nuisances, Metro’s Rule 30.02(6) witness speculated and qualified both answers with “I don’t know.” Todd 30.02(6) Dep. 89:24–90:14.

239. Neither Lij’s nor Pat’s businesses could be seen or heard from the street. In the time they operated their home-based businesses, neither business ever attracted the attention of a wandering child. Shaw Decl. ¶¶ 8, 12; Raynor Decl. ¶¶ 11, 15.

B. Order

240. The Client Prohibition currently turns neighbor against neighbor. Jones Dep. 48:19–50:12, 60:10–67:15; Rice Dep. 15:9–16:15; Thomopoulos Dep. 23:1–13 (“They’re using Metro to hammer another neighbor.”), 39:14–25 (“Usually when I see a complaint, it’s an indication that one neighbor’s mad at another.”).

241. The only injunctive relief Plaintiffs seek would “prohibit[] Nashville from enforcing the . . . Client Prohibition against Lij and Pat.” Compl., Prayer ¶ C.

242. Metro’s Rule 30.02(6) witness conceded that Lij and Pat are the only residents of their respective homes seeking to operate a home-based business. There would not be a second business in either home. Todd 30.02(6) Dep. 119:15–19.

243. According to Metro’s Rule 30.02(6) witness, the Metro assessor has *not* “had trouble assessing existing home-based businesses,” which are “subject to the residential tax provisions.” Todd 30.02(6) Dep. 102:16–103:19.

244. Metro’s Rule 30.02(6) witness did not know whether existing home occupations were subject to residential or commercial electric, water, or stormwater rates. Todd 30.02(6) Dep. 116:17–117:9.

245. Metro’s Rule 30.02(6) witness testified that the Client Prohibition is “probably unrelated” to the availability of alternative spaces for client meetings. *See* Todd 30.02(6) Dep. 110:2–21.

246. It is not feasible for Lij to record musicians in a rental conference space such as Weworks. Even if it were feasible, it would defeat Lij's purpose in maintaining his workspace in the same home where he raises his daughter. Shaw Decl. ¶ 16.

247. It will not long remain feasible for Pat to style her clients' hair in a rented salon. Pat is unsure how long her current sublease arrangement will last, and the four-day workweek she maintains to pay the rent there is physically exhausting. Raynor Decl. ¶¶ 18–20.

C. Certainty

248. Enforcing the Client Prohibition presently consumes Metro resources. Todd 30.02(6) Dep. 122:1–11. *See generally* Jones Dep.; Rice Dep.; Thomopoulos Dep.

249. “There'd be nothing to enforce” if the Client Prohibition were not part of Metro's home occupation ordinance. Todd 30.02(6) Dep. 122:12–122:23.

250. In a 2011 Metro Council debate identified in both Plaintiffs' complaint and in Metro's interrogatory responses, the councilman who Metro would later designate as its Rule 30.02(6) witness in this case stated

I've got tons of small businesses in my neighborhood, and nobody's complaining about them. I've got—down the street, there's a tutor. Farther down the street, there's a woman that teaches swim lessons. All these things technically may be against the law, but they don't bother anybody, nobody complains about it, and [complaint-based enforcement] works.

Compl. ¶ 102; Metro. Gov't's 2d Supp. Resps. Pls.' Interrogs. ¶ 5.

251. Asked whether the businesses mentioned in the above quotation “would have been in violation of the client prohibition,” Metro's designated Rule 30.02(6) witness responded:

That may have been more hyperbole or making a point. I'm not sure. I know there may have been a woman—an elderly woman that taught piano lessons but I don't know anyone that taught swim lessons. But I was probably making more of an

illustration. But say you have a 70-year-old woman who teaches piano lessons in her home, doesn't bother anybody, I'm not sure you have to turn her in. You know, I was thinking about this. . . . You don't have to call every time. And this statute is not unique. The noise ordinance, I just gave an example, is just like that. There are other ordinances that rely on neighbors to call in when something is being taken advantage of.

Todd 30.02(6) Dep. 124:2–125:4.

D. Quality of Life

252. Lij maintains a high privacy fence along his driveway outside The Toy Box Studio for the benefit of his clients and his neighbors. The Toy Box Studio cannot be seen from the street. Shaw Decl. ¶ 8.

253. In over ten years, not one of Lij's neighbors ever complained to Lij about The Toy Box Studio, for any reason. Shaw Decl. ¶ 8.

254. During professional acoustic testing on January 15, 2019, “with acoustic drums and electric bass playing high-energy music . . . for 30 minutes,” The Toy Box Studio demonstrated “full compliance” with the Nashville noise ordinance. Decl. Scott Walker Smith Supp. Pls.' Mot. Summ. J. (“Smith Decl.”) ¶¶ 4–6 & Ex. C (citing Metro. Code § 17.28.090).

255. The entrance to Pat's hair salon can only be seen by the handful of neighbors on the small cul-de-sac to which her driveway leads. It is indistinguishable at that distance from a normal residential home. Raynor Decl. ¶¶ 4, 11.

256. During all the time she ran her home-based hair salon, no one among Pat's neighbors ever complained to her about it. Raynor Decl. ¶ 11.

257. During professional acoustic testing on January 15, 2019, “with the owner simulating a hair appointment . . . using electric clippers, blow dryers, etc.,” the renovated

garage in which Pat had her home-based hair salon demonstrated “full compliance” with the Nashville noise ordinance. Smith Decl. ¶¶ 4–5, 7 & Ex. D.

VII. HOME-BASED BUSINESSES EXEMPT FROM THE CLIENT PROHIBITION HAVE EQUAL OR GREATER IMPACT ON METRO’S ALLEGED INTERESTS THAN WOULD LIJ OR PAT

258. Codes Director Bill Herbert testified that “certain activities”—“traffic patterns,” “[p]arking issues,” “[n]oise,” “dust and trash,” and “commerce”—can be “inconsistent with [the] residential character for a residential neighborhood.” Herbert Dep. 32:6–33:9.

259. Prior to his current role as Codes Director, Mr. Herbert spent five years serving as Metro’s zoning administrator, “charged with enforcement and interpretation of the zoning [code].” Herbert Dep. 54:10–15.

260. In his time as zoning administrator, Director Herbert “had oversight over a substantial number of complaints . . . regarding the zoning code.” Herbert Dep. 56:5–8.

261. In his time as zoning administrator, Director Herbert was “substantially aware about the types and nature of complaints that were coming in.” Herbert Dep. 55:2–6 (objection lodged).

A. Impact of Owner-Occupied Short-Term Rentals

262. The Codes Department “get[s] lots of complaints about short-term rentals.” Herbert Dep. 23:19–21.

263. Such complaints are a “daily occurrence.” Herbert Dep. 25:13–15.

264. “Generally,” complaints about short-term rentals report “over occupancy, operating without a permit, identification of property where there is a lot of people and maybe there are too many cars, maybe there is excessive noise, maybe there is lewd conduct in the yard.” Herbert Dep. 23:25–24:6.

265. Director Herbert testified that owner-occupied short-term rentals can present issues with “noise,” “traffic,” “parking,” “trash,” and “general lewdness.” Herbert Dep. 39:14–16, 39:19–24, 40:2–3.

266. In his experience, “the complaints [he has] seen about home [recording] studios” have “brought up traffic concerns” “[l]ess frequently than [complaints about] short-term rentals.” Herbert Dep. 41:22–42:1.

267. The complaints that Director Herbert has seen about home recording studios have brought up “noise complaints” “[l]ess frequently” than complaints about short-term rentals. Herbert Dep. 42:2–4.

268. The complaints that Director Herbert has seen about home recording studios have brought up “parking complaints” “[l]ess frequently” than complaints about short-term rentals. Herbert Dep. 42:5–7.

269. The complaints that Director Herbert has seen about home recording studios have brought up “trash complaints” “[l]ess frequently” than complaints about short-term rentals. Herbert Dep. 42:8–10.

270. The complaints that Director Herbert has seen about home recording studios have brought up “lewdness related complaints” “[l]ess frequently” than complaints about short-term rentals. Herbert Dep. 42:11–13.

271. The complaints that Director Herbert has seen about “single seat hair salons” have “involve[d] noise” “[l]ess” frequently than complaints about short-term rentals. Herbert Dep. 42:14–17.

272. The complaints that Director Herbert has seen about single-seat hair salons have involved “traffic” “[l]ess” frequently than complaints about short-term rentals. Herbert Dep. 42:18–20.

273. The complaints that Director Herbert has seen about single-seat hair salons have involved “parking” “[l]ess” frequently than complaints about short-term rentals. Herbert Dep. 42:21–23.

274. The complaints that Director Herbert has seen about single-seat hair salons have involved “trash restrictions” “[l]ess” frequently than complaints about short-term rentals. Herbert Dep. 42:24–43:1.

275. The complaints that Director Herbert has seen about single-seat hair salons have involved “lewd” behavior “[l]ess” frequently than complaints about short-term rentals. Herbert Dep. 43:2–4.

B. Impact of Day Care Homes

276. Director Herbert testified that day care homes “could” “affect the residential character of a neighborhood.” Herbert Dep. 35:22–25.

277. Day care homes can “present issues with traffic” and “parking.” Herbert Dep. 36:11–15.

278. “In [his] experience over the last several years, the traffic associated with a day care [home] is more of a concern than a home [recording] studio.” Herbert Dep. 44:3–7.

279. “[P]arking is more of a concern” with a day care home than it is with a home recording studio. Herbert Dep. 44:8–9.

280. “Based upon the number of complaints [Director Herbert has] had over the last several years,” “traffic” is a greater concern with a day care home than it is with a single-seat hair salon. Herbert Dep. 44:13–16.

281. “Based upon the number of complaints” Director Herbert has seen, “parking” is a greater concern with a day care home than it is with a single-seat hair salon. Herbert Dep. 44:17–20.

C. Impact of Historic Home Events

282. Director Herbert testified that historic home events can present “noise issues,” “traffic issues,” and “parking issues.” Herbert Dep. 38:6–8, 38:15–18.

283. “[B]ased upon the number of complaints” Director Herbert has seen, “noise” is a greater concern with historic home events than it is with home recording studios. Herbert Dep. 44:23–45:2.

284. “Based on [his] experience,” “traffic” is a greater concern with historic home events than it is with home recording studios. Herbert Dep. 45:7–10.

285. “[P]arking” is a greater concern with historic home events than it is with home recording studios. Herbert Dep. 45:11–13.

286. “[N]oise” is a greater concern with historic home events than it is with single-seat hair salons. Herbert Dep. 45:14–17.

287. “[B]ased upon the number of complaints” Director Herbert has seen, “traffic” is a greater concern with historic home events than it is with single-seat hair salons. Herbert Dep. 45:18–21.

288. Based on the number of complaints Director Herbert has seen, “parking” is a greater concern with historic home events than it is with single-seat hair salons. Herbert Dep. 45:22–23.

VIII. INJURY TO PLAINTIFFS

289. Nashville’s enforcement of the Client Prohibition against Lij has shut down his primary income stream, making it more difficult for Lij to support himself and his daughter. Shaw Decl. ¶¶ 14–15.

290. But for the Client Prohibition, Lij would use his home to earn a living by recording clients in The Toy Box Studio. Shaw Decl. ¶ 17.

291. Nashville’s enforcement of the Client Prohibition against Pat has destroyed her home-based business. Raynor Decl. ¶ 20.

292. Nashville's enforcement of the Client Prohibition against Pat has forced her to continue working long hours at a commercially rented studio in order to earn a living. Raynor Decl. ¶¶ 18–20.

293. Nashville's enforcement of the Client Prohibition against Pat has endangered Pat's ability to support herself in the future, since Pat leases her current space at her landlord's pleasure and would not be able to find a comparable space if her landlord were to terminate her lease or sell the property. Raynor Decl. ¶¶ 18–20.

294. But for Nashville's enforcement of the Client Prohibition against Pat and her home-based hair salon, Pat would move her hairstyling practice back into her home, reduce her hours, and work on her own terms. Raynor Decl. ¶ 21.

295. But for Nashville's enforcement of the Client Prohibition against Pat and her home-based hair salon, Pat would be able to earn an honest living—and stay in her home—for the rest of her life. Raynor Decl. ¶ 21.

Dated: June 14, 2019

Respectfully submitted,

s/ Keith E. Diggs

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Davidson County Chancery Court
***Shaw et al. v. Metro*, No. 17-1299-II**
CERTIFICATE OF E-SERVICE (Tenn. R. Civ. P. 5.02(2))

I, Keith E. Diggs, certify that I am today transmitting this 51-page Statement of Undisputed Material Facts and this one-page Certificate of E-Service, via e-file and immediately thereafter via email, to:

Counsel	For
Lora Fox lora.fox@nashville.gov	Metro

I further certify that I will either confirm receipt of the foregoing or else transmit it via facsimile to Metro Legal at (615) 862-6352. If you did not receive any of these documents, please contact me immediately to receive an electronic or physical copy of the missing document(s).

Dated: June 14, 2019

Respectfully,

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