



INSTITUTE FOR JUSTICE

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Via Email

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**Re: The City's Ordinance Restricting Extended Stays at Hotels and Motels**

Dear Mayor Burrows and City Council Members,

My name is Erica Smith Ewing and I am a senior attorney at the Institute for Justice (IJ). I am writing about the City's ordinance restricting extended stays at hotels and motels, which it enacted in October 2021. *See* City Ordinance No. 2021-17. We believe this ordinance is very likely unconstitutional and that it violates the rights of both motel owners and their guests. We have been in contact with some of the individuals affected by the ordinance, who are extremely concerned.

We understand that after motel guests recently protested against the ordinance, the City decided to allow some or all of the motels to operate without the restrictions of the ordinance as the City evaluates potential next steps. We ask that the City repeal the ordinance in its entirety as soon as possible. In the meantime, we ask that the City continue to allow the motels to operate without the restrictions of the ordinance.

**I. About the Institute for Justice**

The Institute for Justice is a national nonprofit law firm that for 30 years has fought against laws that irrationally burden people's individual rights, including property rights and economic liberty. One area we focus on is challenging laws that restrict people from using their own property to provide food and housing to those in need. We believe people have a right to provide private solutions to the complex problems our society faces regarding poverty and homelessness, and the courts often agree with us.

For instance, we successfully sued a city in North Carolina that refused to allow a homeless shelter to open (*Catherine H. Barber Memorial Shelter, Inc. v. Board of Adjustment of the Town of North Wilkesboro*) and a city in the state of Washington that tried to ban a woman from feeding the homeless in her yard with a “little free pantry” (*Hay v. Asotin County*). We are also in pending litigation with a city in Ohio that tried to stop a man from housing the homeless on his commercial property (*The Homeless Charity v. Akron*), and with a city in Georgia that is trying to stop a charity from building affordable housing on its own land (*Tiny House Hand Up, Inc. v. Calhoun*). We also successfully represented motel owners offering low-cost rooms in Massachusetts when a city tried to forfeit their property after some of their guests were arrested for drug dealing. (*United States v. 434 Main Street, Tewksbury, Mass.*).<sup>1</sup>

In addition to bringing lawsuits, we also help local governments make good laws. For example, we frequently give guidance to municipalities and assist them in drafting ordinances that are constitutionally compliant. We hope to do the same here.

## **II. The City Should Repeal Its Ordinance**

The City should repeal its ordinance. Not only does the ordinance have serious policy concerns, but it also likely violates the state and federal constitutions.

As an initial matter, the ordinance is bad policy. Our country is experiencing an unprecedented housing crisis, which is especially acute in Richfield and other parts of Utah. Housing has simply become unaffordable for large segments of the population. Motel owners have stepped up to try to provide a partial solution to this crisis by using motel facilities to provide affordable short-term habitation to those most in need of it, and people have been eager to rent the low-cost rooms. Many of these guests are families and battered women with nowhere else to go, and some have even been referred to the motels by law enforcement in Richfield. There are currently about 78 adults with 35 children staying in Ville 647 alone (plus all of those staying in the approximately 4 other motels in the city) and many have made the motel rooms their homes.<sup>2</sup> These guests have built a community there, even using motel space to hold meetings for veterans and addiction recovery.<sup>3</sup> Enforcing the ordinance would make these people homeless and deprive them of important stability and community.

The City should be commending citizens who are offering private solutions to affordable housing. Instead, the ordinance makes this a criminal offense. Anyone who fails to comply with the ordinance is subject to a class B misdemeanor, which carries a penalty of up to six months in jail and a fine of \$1,000. Each day that a person violates the ordinance is considered a separate

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<sup>1</sup> You can read about our cases at our website at [www.ij.org](http://www.ij.org).

<sup>2</sup> Kylee McCure, *Extended Stay: Richfield City Council and owners of Ville 647 agree to cooperate on new ordinance*, Richfield Reaper (Mar. 24, 2022), <https://richfieldreaper.com/news/44207/extended-stay/>.

<sup>3</sup> City Council Minutes, statements of Keith Warburton (Nov. 26, 2021) [https://richfieldcity.com/city\\_council/11-26-21-council-minutes/](https://richfieldcity.com/city_council/11-26-21-council-minutes/).

offense. As a result, a person can easily rack up thousands of dollars in fines and jail time for violating the ordinance.

Some city council members stated that allowing people to stay in extended rooms “victimized” them, because the rooms lacked a mailbox with a permanent address.<sup>4</sup> But depriving people of their homes and the choice of where to live is the true victimization.

In addition to these important policy concerns, the ordinance’s restriction of extended stays is likely unconstitutional. We are not aware of any court upholding such an ordinance. In fact, City Council members stated that the ordinance was unique, drafted from “scratch” and not yet “tested or tried.” *See, e.g.*, City Council Meeting minutes, Oct. 12, 2021, [https://richfieldcity.com/city\\_council/10-12-21-council-minutes/](https://richfieldcity.com/city_council/10-12-21-council-minutes/) (Councilmember Hansen stating “We did not get it from anywhere else” and “we built this from scratch, no one else has tested and tried [it]”).

As discussed below, the ordinance implicates multiple constitutional provisions in both the federal and state constitutions. Section A below discusses how the ordinance likely violates the rights of motel owners and Section B discusses how it likely violates the right of guests. Section C also discusses the potential constitutional problems with the other parts of the ordinance, which require extended stay rooms to have kitchenettes and regular cleanings.

### **A. The Ordinance Likely Violates Motel Owners’ Constitutional Rights**

The ordinance likely violates the rights of motel owners in two major ways: First, it results in an unconstitutional search of motel guest logs under the federal Fourth Amendment. Second, it likely violates motel owners’ substantive due process rights, specifically their property rights and economic liberty, under both the state and federal constitutions.

#### **1. Violation of the Fourth Amendment**

The ordinance violates the Fourth Amendment’s protections against unreasonable searches. The city plans to enforce the ordinance by requiring motel owners to keep detailed guest logs and then having city police conduct warrantless inspections of these logs. As Section 9 of the Ordinance states:

The Chief of Police may require that the manager or person in charge of any motel or hotel shall furnish a list of the persons who have registered at such motel, hotel, including all guests in an Extended Stay room. The date and time of arrival of an occupant of each unit shall be noted upon the record to be kept pursuant hereto.

This provision of the ordinance is contrary to binding U.S. Supreme Court precedent. *City of Los Angeles v. Patel*, 576 U.S. 409 (2015).<sup>5</sup> In *Patel*, the Court held that a very similar provision was unconstitutional on its face under the Fourth Amendment’s protections against

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<sup>4</sup> *See* City Council Meeting minutes, Oct. 12, 2021, [https://richfieldcity.com/city\\_council/10-12-21-council-minutes/](https://richfieldcity.com/city_council/10-12-21-council-minutes/); City Council Meeting minutes, Nov. 26, 2021, [https://richfieldcity.com/city\\_council/11-26-21-council-minutes/](https://richfieldcity.com/city_council/11-26-21-council-minutes/).

<sup>5</sup> The Institute for Justice submitted an amicus brief in this case. <https://ij.org/amicus/los-angeles-rental-inspections/>. See also the Institute for Justice’s project on the Fourth Amendment. <https://ij.org/issues/ijs-project-on-the-4th-amendment/>.

unreasonable searches. There, Los Angeles passed an ordinance allowing the police to review motels' guest logs without a warrant. The Court struck the law down, holding that the law was unconstitutional because it did not give motel owners a right to refuse to consent to the search. If a motel owner refuses a search, the Fourth Amendment requires that police secure a warrant to review the logs.

Here, if a motel owner refuses to consent to the search, they are subject to arrest, misdemeanor charges, jail time, and fines. That is flatly unconstitutional under *Patel*.

## 2. Violation of economic liberty and property rights

Second, the ordinance likely violates motel owners' substantive due process rights by arbitrarily and unjustly limiting how long their guests can stay. The ordinance prohibits motels from allowing guests to stay for longer than 90 days in a 180-day period. The ordinance also states that "extended-stay rooms shall not exceed 25% of the number of hotel/motel rooms" in a particular motel. These provisions are unlikely unconstitutional under both the state and federal constitution's substantive due process rights, specifically the rights to economic liberty and property.

Both Utah and federal courts recognize that people have a right to economic liberty and property. *See, e.g., Leetham v. McGinn*, 524 P.2d 323, 325 (Utah 1974) ("The right to engage in a profession or occupation is a property right, which is entitled to protection by the law and the courts."). As a result, laws restricting how a business is run or how a property is used must be reasonable and in pursuit of a legitimate government interest. *Mountain Fuel Supply Co. v. Salt Lake City Corp.*, 752 P.2d 884, 888–90 (Utah 1988) (outlining cases in which Utah courts have invalidated "economic regulation[s]" as unreasonable.); *see also Leetham v. McGinn*, 524 P.2d 323, 325 (Utah 1974) (striking down law restricting cosmetologists because it lacked a "real and substantial" connection to a legitimate government interest). Federal courts have also invalidated laws infringing economic liberty as irrational on multiple occasions.<sup>6</sup>

Here, the ordinance is not a reasonable measure to achieve a legitimate government interest. First, the ordinance seems to lack a legitimate government interest. The ordinance claims it is intended to "promote peace, safety, and well-being in the community, to deter the attraction of criminal elements from outside of the City and the promulgation of criminal elements inside of the City." Yet the ordinance applies to all extended stay guests—including families with children, battered women, and honestly employed men and women—not just "criminals." If safety and crime are really what the City is concerned about, there are many more narrowly tailored ways the ordinance could address those concerns without limiting all extended stays to all people.

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<sup>6</sup> *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (striking down law regulating funeral directors); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002) (same); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008) (striking down law regulating pest controllers). *See also Dias v. City & County of Denver*, 567 F.3d 1169 (10th Cir. 2009) (reversing dismissal for government in substantive due process case because Plaintiff's expert witness showed evidence that the challenged law was arguably unreasonable).

It seems the ordinance's true purpose is to keep poor people out of Richfield. The mayor and city council have even stated that they drafted and enacted the ordinance to prioritize "tourists" over low-income residents in the City. As Mayor Burrows apparently told a reporter, the extended stays were "potentially detracting from tourism dollars that could be brought in by travelers looking to stay in Richfield."<sup>7</sup> The ordinance's preamble section similarly states that, "the City desires to promote traditional hotels and motels in approved zones to accommodate travelers." Pushing out low-income residents and the homeless to make room for tourists is a questionable government interest, at best.

Courts are especially suspect of laws showing animus to low-income individuals and the homeless. For instance, in our recent lawsuit successfully challenging a city's refusal to allow a homeless shelter to operate, a federal district court judge stated that a city cannot deny a permit to a homeless shelter "because of unsubstantiated fears of misconduct by homeless individuals that may or may not have happened by people who may or not ever stay at the Shelter again." *Catherine H. Barber Mem'l Shelter, Inc. v. Bd. of Adjustment*, Civil Action No. 5:20-CV-00163-KDB-DCK, 2021 WL 6065159, at \*15 (W.D.N.C. Dec. 20, 2021) (opinion granting summary judgment to shelter). As the court stated, "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Id.* (quoting *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984)). The ordinance here seems to be motivated by private biases against low-income individuals, as well.

Even if the ordinance did have a legitimate purpose, it still needs to be a reasonable means to achieve that purpose. It is not. The ordinance arbitrarily limits the amount of time people can stay in motel rooms, as well as how many rooms may be extended stay in any given time. As a result, the ordinance forces motel owners to turn away willing customers. The city also passed the ordinance after several motels had already invested significant sums of money in creating extended stay businesses. This is completely unreasonable.

### **B. Violations of Motel Guests' Constitutional Rights**

Not only does this ordinance violate the rights of motel owners, it also likely violates the right of their guests. Guests probably have a property interest in their motel rooms, especially if they have been staying there for months or even years. The government cannot just force them to leave against both their will and that of the motel owners.

Forcing people to leave their motel rooms creates several significant constitutional problems. It likely triggers the Fourth Amendment's protections against unreasonable seizures, by effectively seizing people's homes from them. For the same reason, it may trigger the Fifth Amendment's Due Process Clause, which protects against unlawful "takings" of people's homes. In a free country, people are allowed to choose where they live. If the motel owner wants the guests to stay, and the guests want to stay, the government should not force the owner to turn the guests away.

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<sup>7</sup> Logan Stefanich, *How this small, rural Utah community issue brings the housing crisis into focus*, KSL.com (Mar. 23, 2022), <https://www.ksl.com/article/50373596/how-this-small-rural-utah-community-issue-brings-the-housing-crisis-into-focus>.

The ordinance creates additional problems because it seems to restrict evicted guests from moving to another motel.<sup>8</sup> People have a right to travel and live where they please under constitutional protections for substantive due process, as well as their right to privacy. There are also serious equal protections problems if the City allows one person to stay in a particular motel or room, but not another, based purely on how long that person has lived in the City or whether they have previously occupied a motel room.

There are additional problems if the City enforces the ordinance not just against motel owners, but directly against the guests themselves. The City should absolutely not resort to arresting and pressing criminal charges against people who refuse to leave their homes. Doing so would further exacerbate the constitutional violations.

### **C. Constitutional Problems with Kitchen and Cleaning Provisions**

Other parts of ordinance have constitutional problems as well. For instance, the ordinance requires motel owners to provide kitchenettes (as opposed to just allowing motel owners to provide microwaves, mini-fridges, and hot plates as they do now) in any room that is rented for more than a week. This requirement unduly burdens the property and economic liberty rights of motel owners by requiring them to invest hundreds of thousands of dollars to install stovetops, kitchen sinks, and other kitchen appliances. Such an expense would force motel owners to charge more for their rooms and thus impede the motel owners' ability to offer affordable housing in the first place.

The kitchenette requirement also impedes the rights of existing guests. The ordinance doesn't allow anyone who has lived in the City for at least 60 days in an 180 day period to stay in a room without a kitchenette. That means that even if a person is already staying in that room, they would have to leave just because it has a microwave instead of a stovetop. This is unduly restrictive and completely arbitrary.

Similarly, there are problems with requiring the motels to regularly clean the rooms of current guests. While the City can certainly enforce existing laws against pests, outside clutter, and garbage, it likely cannot force motel owners to clean rooms of current guests. What if a guest chooses not to have their room cleaned? The City cannot force cleaning staff into someone's private room if the guest does not want them there. To do so would cause problems under the Fourteenth Amendment's protection of the right of privacy and Fourth Amendment protections against search and seizures. During incidents of high COVID-19 infection rates, forcing regular cleanings of private rooms could also cause safety concerns.

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<sup>8</sup> See, e.g., Stefanich, *How this small, rural Utah community issue brings the housing crisis into focus*, KSL.com (Mar. 23, 2022) (“Without the option to move to another extended-stay hotel, which is what the new ordinance states, many residents don't know when or where they'll find other housing.”); see also City Ordinance No. 2021-17 (“No person residing within Richfield City for a period of 60 days, or over, in any 180-day period, is deemed a transient guest under the City Code, nor is such person permitted to occupy any unit licensed hereunder unless such unit is so constructed as to be in full compliance with the building code.”); *id.* (stating that such units shall have a “working kitchen, including a sink [and] a cooktop or range”).

## Conclusion

We ask that you take steps to repeal the ordinance. In the interim, we ask that you allow all extended stays to continue at motels in the City, unrestricted by the new ordinance. We would be happy to work with the City to come up with an alternative ordinance to help resolve some of its concerns in a constitutional fashion.

Sincerely,

Erica Smith Ewing

A handwritten signature in black ink, appearing to read "Erica Smith Ewing". The signature is fluid and cursive, with a prominent initial "E" and "S".

Senior Attorney  
Institute for Justice