

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF GREENVILLE)
)
 JEREMY SARK, SARKS AUTOMOTIVE,)
 LLC, and JOHN S. ABNEY, JR.,)
 Plaintiff,)
)
 vs.)
)
 CITY OF MAULDIN, SOUTH)
 CAROLINA, MAULDIN CITY COUNCIL,)
 TERRY MERRITT, in his official capacity)
 as mayor of Mauldin, and DAVID)
 DYRHAUG, in his official capacity as)
 Business and Development Services)
 Director,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

SUMMONS

Civil Action No. ____-CP-____-____

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Greenville, South Carolina

Dated: September 8, 2022

/s/ Miles E. Coleman
 Attorneys for Plaintiffs

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COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
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JEREMY SARK, SARKS AUTOMOTIVE, LLC, and JOHN S. ABNEY, JR.,)	
)	
Plaintiffs,)	COMPLAINT
)	
v.)	_____ - CP - _____ - _____
)	
CITY OF MAULDIN, SOUTH CAROLINA, MAULDIN CITY COUNCIL, TERRY MERRITT, in his official capacity as mayor of Mauldin, and DAVID DYRHAUG, in his official capacity as Business and Development Services Director,)	
)	
Defendants.)	
)	

Plaintiffs Jeremy Sark, Sarks Automotive, LLC, and John S. Abney, Jr., hereby file this complaint against Defendants City of Mauldin, the Mauldin City Council, the Mayor of Mauldin, in his official capacity, and the Business and Development Services Director, in his official capacity, and allege as follows.

INTRODUCTION

1. This is a civil rights action under the South Carolina Constitution against an unlawful scheme to destroy a small business to help other private businesses. Jeremy Sark opened Sarks Automotive, LLC, and started doing business as Sark’s Automotive in 2013 (“Sark’s Auto”). Since opening, Sark’s Auto has been at its current location on North Main Street in Mauldin, and Jeremy has operated a U-Haul dealership and rented out U-Haul trucks and trailers there. Now, Defendants have chosen to single him out and shut down his U-Haul business because private developers that Defendants like better wanted U-Hauls gone from Mauldin.

2. Defendants have targeted the U-Haul business at Sark’s Auto, which has served more and more Mauldin residents year after year, by amending Mauldin’s zoning ordinance to relegate “sale and rental of moving trucks [and] trailers” to a single zone in the City. Sark’s Auto is not within this zone. Normally, an existing nonconforming use would be grandfathered in. But not for Jeremy and Sark’s Auto. The City is demanding that he move or close his U-Haul business by December 31, 2022.

3. That rezoning is unconstitutional because it eliminates Plaintiffs’ vested rights. Jeremy has a vested right to keep using his property as he did before the zoning change, absent a showing that his use is a public nuisance. The Defendants cannot make that showing and did not even attempt to during the rezoning process.

4. The rezoning is also unconstitutional because it is arbitrary and irrational. The South Carolina Constitution does not allow governments to eliminate safe, ordinary, preexisting land uses in order to serve private economic development. But that is exactly what Defendants are doing here. Worse yet, and another reason the rezoning is unconstitutional, Defendants are eliminating safe, ordinary, preexisting U-Haul businesses, including the one at Sark’s Auto, while exempting every other type of business in the City from the rezoning.

5. The rezoning is unconstitutional for yet another reason: It will result in the uncompensated taking of Plaintiffs’ property with no public use and no valid purpose.

6. Plaintiffs, therefore, request that this Court award them declaratory relief and temporary and permanent injunctive relief, and any further relief the Court finds just and proper.

THE PARTIES

7. Plaintiff Jeremy Sark is a resident of the State of South Carolina. Jeremy opened Sark’s Auto in 2013 at 731 North Main Street, Mauldin, SC 29662 (“Jeremy’s location”). He has

operated the business there since it opened in 2013. He has rented the property under a month-to-month lease with Plaintiff John S. Abney, Jr., since opening Sark's Auto in 2013. Jeremy intends to keep Sark's Auto, including the U-Haul business, operating at that location indefinitely.

8. Plaintiff Sark's Automotive, LLC, is a South Carolina limited liability company wholly owned by Plaintiff Jeremy Sark, a resident of the State of South Carolina. Jeremy and Marie Dougherty, the General Manager of Sark's Auto, manage Sark's Auto's operations and business, including the U-Haul business.

9. Plaintiff John S. Abney, Jr. is a resident of the State of South Carolina. He owns the property on which Sark's Auto is located at 731 North Main Street, Mauldin, SC 29662. He owns the property in fee simple. He has leased the property to Jeremy since he opened Sark's Auto in 2013.

10. Defendant City of Mauldin is the municipal corporation possessing powers and privileges under S.C. Code § 5-1-10, with the capacity to sue and be sued, and which passed the zoning ordinance challenged by this action.

11. Defendant Mauldin City Council, together with the Mayor, is the legislative body for the City of Mauldin. Mauldin Code of Ordinances ("MC") §§ 2-1, 2-34. The City Council has the authority to enact all ordinances for the City, *id.* § 2-43, and enacted the ordinance that is being challenged in this lawsuit. *See* Ordinance No. 970 (Apr. 19, 2021). Furthermore, the City Council, with the Mayor, controls the appointment or removal of the Business and Development Services Director, who is charged with enforcing the City's zoning ordinances, including the ordinance that is being challenged in this lawsuit. *See* MC § 2-104(2),(4).

12. Defendant Mayor of Mauldin, Terry Merritt, is sued in his official capacity. He has been Mayor since January 2020. He, with the City Council, comprises the legislative body for

the City of Mauldin and has the power to enact all ordinances for the City, *see* MC §§ 2-1, 2-34, 2-43, and he was Mayor when the City enacted the ordinance that is being challenged in this lawsuit. *See* Ordinance No. 970 (Apr. 19, 2021). He, with the City Council, controls the appointment or removal of the Director of Business and Development Services Director, who is charged with enforcing the City’s zoning ordinances, including the ordinance that is being challenged in this lawsuit. *See* MC § 2-104(2),(4).

13. Defendant Business and Development Services Director, David Dyrhaug, is sued in his official capacity. He has been Director since his appointment to that position in March 2019. He is the city official responsible for enforcing the City’s zoning ordinances, including the ordinance that is being challenged in this lawsuit. *See* Mauldin Zoning Ordinance (“MZO”) §§ 4:1.1.1 to 4:1.1.4.

JURISDICTION AND VENUE

14. Plaintiffs bring this action under Article I, Sections 3 and 13 of the South Carolina Constitution, and the Uniform Declaratory Judgment Act, S.C. Code §§ 15-53-20, 15-53-30, and 15-53-120.

15. Plaintiffs seek declaratory and injunctive relief against enforcement of provisions of Section 3:12.3.8 of the Mauldin Zoning Ordinance, which exceeds the City’s police power and violates Plaintiffs’ constitutional rights.

16. Venue lies in the Thirteenth Judicial Circuit under S.C. Code §§ 15-7-10 and 15-7-20.

STATEMENT OF FACTS

Jeremy Has Operated His U-Haul Business for Nearly a Decade

17. In 2013, Jeremy Sark created Sarks Automotive, LLC, and began doing business as Sark’s Automotive on the property at 731 N. Main Street, Mauldin, SC, 29662. The property is

about 1.6 acres and zoned C-2 (“Commercial District”). It is surrounded by properties also zoned C-2 or I-1 (“Industrial District”). Jeremy operates Sark’s Auto on the property today and intends to do so for the foreseeable future.

18. Jeremy leases the property at 731 N. Main Street from John S. Abney, Jr., who has owned the property since March 2002.

19. Mr. Abney has been leasing the property to Jeremy for the past nine years. He is not involved in Jeremy’s business but would allow Jeremy to continue using the property for Sark’s Auto and the related U-Haul business indefinitely.

20. Sark’s Auto is an automotive service and repair business.

21. When Sark’s Auto opened, Jeremy Sark also entered into a U-Haul dealership agreement so that Sark’s Auto could rent U-Haul trucks and trailers.

22. It made good sense to Jeremy to open a U-Haul business. Sark’s Auto earns additional revenue through the U-Haul business itself. But the U-Haul business also enhances the auto shop business.

23. For example, new arrivals to Mauldin drop off U-Haul trucks and trailers at Sark’s Auto. By providing fast and friendly service in the U-Haul business, Jeremy establishes good will with potential new customers for the auto shop business.

24. Additionally, Sark’s Auto earns additional revenue for the auto shop business by maintaining and repairing the U-Haul trucks and trailers for U-Haul, which revenue would decrease substantially, if not entirely, if it were not a U-Haul dealer.

25. There are other benefits to Jeremy from the U-Haul business, too, such as discounted insurance for his business because it is affiliated with U-Haul.

26. Sark's Auto was issued a Tenant Occupancy Certificate for Jeremy's location on August 20, 2013, by the Mauldin Department of Building Safety. The Certificate does not have an expiration date and does not prohibit rental or storage of moving trucks or trailers on the property.

27. From opening through today, Sark's Auto has remained in business repairing and servicing vehicles and renting U-Haul trucks and trailers at its location. And it has remained in business without incident or harm to public health and safety.

28. Sark's Auto has never been cited for violating any zoning, building, or environmental code.

29. Sark's Auto has been inspected annually by the Fire Department. It has passed each inspection.

30. Sark's Auto complies with all applicable laws and regulations concerning the operation of auto shops.

31. Sark's Auto complies with all applicable laws and regulations concerning the operation of a U-Haul business.

32. On information and belief, Sark's Auto has not been the subject of public complaints concerning health or safety.

33. On information and belief, Sark's Auto has not been the subject of public complaints concerning its appearance. In fact, the property is well-maintained. The U-Haul portion of the business maintains a low profile. Most trucks and trailers are stored in the back. All in all, Sark's Auto presents as a welcoming place to get automotive work done, or to rent a U-Haul:



(Google Images, August 2021).

34. Jeremy has invested significant time and resources into Sark’s Auto and the U-Haul business over the years.

35. Sark’s Auto has been a successful auto repair shop and U-Haul location, growing its customer base, its number of staff members, and its revenue since opening in 2013. Jeremy has employed approximately 80 people in total over that time, typically employing approximately 10 to 15 employees at any given time. Of his approximately 10 to 15 employees at any given time, Jeremy—who is both U-Haul certified and performs ongoing training—requires two or three to be U-Haul-certified to ensure timely service for U-Haul customers.

36. Jeremy’s operation of the U-Haul business has been an important component of the success of Sark’s Auto.

37. Not only that, Jeremy intends for the U-Haul business to remain an important part of the business at Sark’s Auto for the foreseeable future.

To Attract Private Developers and Investors, the City Sets Its Sights on Eliminating U-Haul Businesses Like Jeremy’s

38. In late 2020 and early 2021, the City announced it was working with, and contracting to sell land to, a private developer for a plan to overhaul and develop the center of the City of Mauldin into a walkable downtown area (“City Center”).

39. The property for the City Center development takes up approximately 6.5 acres bordered by northbound Main Street (on the property’s western edge), westbound East Butler

Road (on the property's southern edge), southbound Murray Drive (on the property's eastern edge), and eastbound Jenkins Street (on the property's northern edge).

40. Jeremy's location is well away from the City's proposed City Center development, lying approximately 1.25 miles north on Main Street.

41. The proposed City Center development property does, however, abut another Mauldin U-Haul business, which is also on Main Street.

42. This was not the first such announcement about developing a city center. The City has been trying to develop a walkable downtown for at least a decade, negotiating at different times with developers from the area and from out-of-state. The last private developer announced a \$200 million investment in the project, only to back out about seven months later.

43. In September 2012, a City Councilman stated the City had no plans to use eminent domain for the City Center development, reminding residents who attended a city council meeting that the project would be driven by private developers. He assured the residents, "***The city of Mauldin would never come after your business to buy it for this project.***"

44. In August 2017, when the City was considering a 120-day moratorium on any new development activity where the City wanted to place the hoped-for City Center development, the City's former Economic Development Director said that using eminent domain for the downtown development project was not an option.

45. The same official repeated in November 2018 that he did not ever see the City using eminent domain for the project.

46. Since those other developers came and went, in December 2020, the City announced it had retained the Greenville-based development firm, The Parker Group.

47. The City planned for this iteration of the development to open in late spring or early summer 2022. But, as recently as May 2022, the development was reportedly “a long way away.” At the same time, although “not the least bit of dirt ha[d] moved on the original project,” the developer still predicted the new city center development would open in summer 2023.

48. Even though the development is still well in the future today, according to Mauldin’s Mayor, the City knew it had to eliminate, in particular, U-Haul businesses on Main Street in order to bring in private “developers” and “investors.”

49. By December 2021, the Mayor was quoted as saying:

As developers would come through, or potential investors, and they would look and they would say “you know, your main street looks old. . . . [Y]ou’ve got all these cars parked out there . . . *look there’s a convenient [sic] center with U-Haul is parked on the side of N. Main St.* You’ve got 40 to 50,000 cars passing you every day and that’s what they see?” *So we said we’ll [sic] we need to clean that up.*” (emphasis added).¹

50. The City began to “clean . . . up” U-Haul businesses soon after it announced it had selected the Parker Group for the new city center development.

51. Honoring the Councilman’s promise that the City would “never come after [a] business to buy it for this [private development] project,” the City instead amended its zoning ordinances to eliminate disfavored businesses at no cost to the City—but a significant cost to the effected business owners.

The City Amends Its Zoning Ordinance to Eliminate or Relocate U-Haul Businesses

52. As early as February 1, 2021, City staff presented the City’s Building Codes Committee with a proposal to overhaul the land uses in the C-2 zone, where Jeremy’s U-Haul

¹ Renee Wunderlich, *No Trailer Rentals After Next Year, Mauldin Ordinance Says*, Channel WYFF4 (Dec. 10, 2021), <https://www.wyff4.com/article/trailers-cant-be-rented-downtown-after-next-year-mauldin-city-ordinance-says/38478644#>.

business and the only other U-Haul business in town were both located. Building Code Committee Meeting Agenda at 4 (Mar. 1, 2021) (laying out February 1, 2021, committee meeting minutes); Building Code Committee Meeting Minutes at 1 (Mar. 1, 2021) (approving February 1, 2021, minutes without amendment).

53. The minutes reflect that “City Officials have shared a vision for new and improved development along Main Street,” among other places, and that the “uses allowed in the C-2 district show[] signs of being outdated” and “not consistent with th[at] vision.” *See* Building Code Committee Meeting Agenda at 4 (Mar. 1, 2021) (laying out draft minutes for Feb. 1, 2021 meeting). The City’s vision preferred that the Main Street area be occupied by “retail stores, restaurants, hotels, business services (banks, print shops, etc.) and offices.” *Id.*

54. The minutes identified “specific uses currently allowed in the C-2 zoning district that may be inconsistent” with the City’s vision: “Car washes,” “Automobile sales,” “Rentals of automobiles, trucks, and trailers,” “Stand-alone parking lots,” and “Boat sales.” *Id.*

55. City Staff asked for permission to work with the Planning Commission to update the design standards “for consistency with the City’s vision.” *See id.*

56. One member of the Building Code Committee commented that the proposed changes “may not go far enough” *id.*, because use descriptions needed modernizing but also wanted “business owners along Main Street” to know their “nonconforming use could continue to a point, up until the use of the property changes”

57. Another committee member suggested “limiting certain types of businesses instead of prohibiting” them, such that one might close and could not be replaced by a prohibited use. *Id.*

58. Another commented, “[W]e want to make sure these are nonconforming uses, and the owners understand *they can stay open until circumstances change.*” *Id.* at 5 (emphasis added).

He worried that proceeding otherwise would “penalize anybody that has a legalized, operational business now; then, because we changed the zoning that they’re not conforming now.”

59. At the meeting, no one said that businesses that rent or sell moving trucks or trailers would be the only businesses in Mauldin that could not continue until “the use of the property changes” and could not “stay open until circumstances change.”

60. No members of the public made comments on the proposed amendment.

61. Weeks later, Director Dyrhaug presented the City Planning Commission with a draft amendment to overhaul portions of the Mauldin Zoning Ordinance on February 23, 2021. Planning Comm’n Meeting Minutes at 4 (Feb. 23, 2021). The draft proposed a “text amendment to the zoning ordinance regarding allowed uses, use standards, and building design standards.”

Id. The Minutes describe the “draft ordinance” as one

that introduces a consolidated table of allowed uses, describes each of the use categories listed in the table, provides standards for conditional and special exception uses, and establishes general building design standards. Additionally, the draft ordinance relocates and rearranges a few sections of the zoning ordinance so that related regulations are grouped together and easier to find.

Id.

62. The Planning Commission discussed the draft. The only substantive discussion related to recommending the removal of a “conditional standard that restricts outdoor music for bars, brew pubs, and drinking places.” *Id.*

63. The Planning Commission unanimously (6-0) recommended approval of the amendment to the zoning ordinance.

64. No members of the public commented on the proposed amendment.

65. The minutes do not reflect any discussion of the Building Code Committee Members' concerns about treating preexisting businesses—including those specifically identified in the C-2 zone by Director Dyrhaug the month before—as legal nonconforming uses.

66. The minutes do not reflect any discussion that businesses that sell or rent moving trucks or trailers were the only businesses that would not be treated as legal nonconforming uses.

67. The minutes do not reflect any discussion about how those businesses that sell or rent moving trucks or trailers—such as Jeremy's U-Haul business located on property zoned C-2—were required either to close, or relocate to property zoned S-1, no later than December 31, 2022.

68. The S-1 zone ("Services District") was "established to provide a transition between commercial and industrial districts." It was intended for commercial uses that are "service related," that "sell merchandise which requires storage in warehouses or outdoor areas," and "light industries which in their normal operations would have a minimal effect on adjoining properties." As described in the next section, the S-1 zone is distributed somewhat randomly throughout the City and not isolated to a specific area.

69. The proposed amendment then went before the City's Building Codes Committee on March 1, 2021. Building Code Committee Meeting Minutes at 3 (Mar. 1, 2021).

70. The minutes reflect that "[p]lans and work on the redevelopment of City Center have contributed to" the City's "vision for improved development along Main Street" and other areas. *Id.*

71. At that meeting, David Dyrhaug, the Director of the City's Department of Business & Development, introduced the amendment, explaining the City had long sought "a new standard . . . that would bring the City forward and . . . add to the appeal of the City of Mauldin."

He went on, “[I]t’s become clear that some of the standards in the zoning ordinance just don’t necessarily match up with that.”

72. One Committee member “said he believes this ordinance *allows for the continuation of nonconforming uses within these districts.*” Building Code Committee Meeting Minutes at 4 (Mar. 1, 2021) (emphasis added). He was “happy this has been included as well to protect business owners if they want to pass the business down to their family members, as long as the use stays the same.” *Id.*

73. Director Dyrrhaug confirmed that committee member was correct, stating that “in those circumstances, they *would be treated as a legal nonconforming use so they can continue to expand their business.*” *Id.* (emphasis added).

74. No one said that businesses that sell or rent moving trucks or trailers were the only businesses not “treated as a legal nonconforming use,” or that they were the only businesses that could not be “pass[ed] . . . down to their family members” or that could not “continue to expand their business.”

75. There was no discussion of the list of uses in the C-2 district that had been identified the previous month as potentially inconsistent with the City’s vision for the downtown city center development.

76. No members of the public commented on, nor was there any debate on, the proposed amendment.

77. The Building Codes Committee approved the draft amendment unanimously (3-0) and forwarded it to the City Council with a recommendation that it be adopted.

78. At its meeting on March 15, 2021, the Mauldin City Council approved the proposed amendment as Ordinance No. 970 on first reading.

79. There was no substantive discussion of the ordinance.

80. No members of the public commented on, nor was there any debate on, the ordinance.

81. No one said that businesses that sell or rent moving trucks or trailers were the only businesses in Mauldin that would not be treated as a legal nonconforming use going forward.

82. At its meeting on April 19, 2021, the Mauldin City Council passed Ordinance No. 970 unanimously on second reading.

83. There was no substantive discussion of the ordinance.

84. No members of the public commented on, nor was there any debate on, the ordinance.

85. No one said that businesses that sell or rent moving trucks or trailers were the only businesses in Mauldin that would not be treated as a legal nonconforming use going forward.

86. The prohibition on trailer sale and rentals outside the S-1 zone after December 31, 2022, became Section 3:12.3.8 in the Mauldin Zoning Ordinance, and read in full:

3:12.3.8 Cessation of Trailer Rentals and Sales. Trailer rentals and sales not in the S-1 district that had previously been allowed shall cease all trailer rental and sales activity no later than December 31, 2022. No trailers for rent, for sale, or otherwise stored on the property shall remain on the premises after that date.

87. Every other nonconforming use created by Ordinance No. 970 was granted grandfathering protection.

88. There was no discussion at any point during public City Council, Committee, or Commission proceedings why the rental or sale of moving trucks and trailers was the only nonconforming use that should be denied grandfathering protection and eliminated over time.

89. Ordinance No. 970 included a boilerplate statement that the City of Mauldin desired to protect “a satisfactory visual appearance” and “taxable values,” and only then referred generally to “health, safety, and general welfare.”

90. But at no point was evidence presented that the sale and rental of moving trucks and trailers have a detrimental effect on the public health and safety, morals, general welfare, surrounding property values, or the visual appearance of the surrounding area.

91. No citizens complained about the need to eliminate the sale or rental of moving trucks and trailers in Mauldin because their effects on health, safety, general welfare, property values, or the City's visual appearance.

The City Clarifies Ordinance No. 970 to Specify that only U-Haul Businesses are Denied Grandfathering Rights under the New Zoning Ordinance

92. Due to apparent confusion about which types of businesses were subject to Section 3:12.3.8, the City's Building Codes Committee considered a further amendment on December 6, 2021.

93. The amendment provided a description of moving trucks and trailers in order to clarify that it only applied to moving trucks and trailers, like U-Hauls, and did not apply to the sale or rental of passenger vehicles, including pickup trucks.

94. The clarification exempted Enterprise Rent-A-Car from the ordinance, which had a location down the street from Jeremy's location also in the C-2 zone (and, thus, outside the S-1 zone).

95. Jeremy Sark attended this meeting of the Building Codes Committee.

96. He informed the committee that he had been operating a U-Haul business since 2013, asked that his U-Haul business be grandfathered in, and stated that Jeremy would have to lay off an employee if they lost the U-Haul business because of the ordinance. Building Code Committee Meeting Minutes at 1 (Dec. 6, 2021).

97. The owner of another U-Haul business also appeared and spoke, stating, "We were told that our existing business would not be affected by this zoning change. . . . [W]e had a

conversation with Ms. Hamel with the change of zoning, and she said [‘]no, you will be grandfathered.’” *See id.*

98. The Committee did not respond in any way to Jeremy’s or the other gentleman’s comments.

99. No other members of the public commented on, nor was there any debate on, the proposed clarification.

100. The Building Code Committee ultimately voted to approve the clarification to Section 3:12.3.8 unanimously (3-0) and forwarded the amendment to the full City Council with a recommendation that it be adopted.

101. On December 20, 2021, the Mauldin City Council, at its meeting, approved on first reading the proposed clarification to Section 3:12.3.8.

102. There was no substantive discussion of the proposed clarification.

103. No members of the public commented on, nor was there any debate on, the proposed clarification.

104. On January 18, 2022, the Mauldin City Council, at its meeting, approved unanimously on second reading the changes to the amortization ordinance.

105. There was no substantive discussion of the proposed clarification.

106. No members of the public commented on, nor was there any debate on, the proposed clarification.

107. At no point in these City Council meetings—or in any City Council, Committee, or Commission proceedings—did City officials suggest there were detrimental effects on health, safety, welfare, property values, or appearance caused by businesses that sell, rent, or store moving trucks or trailers.

108. Nonetheless, the City Council specifically identified U-Haul as an example of a business that was not a legal nonconforming use and, instead, was required to cease or relocate to the S-1 zone as of December 31, 2022:

The intent of the sunset provision pertaining to the operation of trailer rentals outside of the S-1 district includes the rental and sale of trucks, trailers, and containers primarily used for moving and hauling goods (e.g., the rental of U-Haul or Penske trucks and trailers). This provision is not intended to include the rental of personal vehicles, such as pickup trucks, used as personal transportation (e.g., the rental of personal vehicles by companies such as Enterprise).

Building Code Committee Meeting Minutes at 2 (Dec. 6, 2021).

109. The current version of Ordinance No. 970 that prohibits Plaintiffs' U-Haul business outside the S-1 district after December 31, 2022, was finally approved by Mauldin City Council at its meeting on January 18, 2022.

110. The relevant portion of Ordinance No. 970, Section 3:12.3.8, reads in full:

3:12.3.8. Cessation of the Sale and Rental of Moving Trucks, Trailers, Intermodal Containers, and Temporary Portable Storage Units. The sale and rental of moving trucks, trailers, intermodal containers and temporary portable storage units not in the S-1 district that had previously been allowed shall cease no later than December 31, 2022. No moving trucks, trailers, intermodal containers, or temporary portable storage units for rent, sale, or otherwise stored on the property shall remain on the premises after December 31, 2022. As used herein, moving trucks and trailers shall mean trucks (including box trucks and cargo vans) and trailers primarily used for storing, moving, and hauling goods. An intermodal container is defined as a standardized reusable steel box used for the safe, efficient and secure storage and movement of materials and products within a global containerized intermodal freight transport system. A temporary portable storage unit is defined as a temporary, self-contained storage unit, which is intended to be picked up and moved to various locations on demand. The sunset provisions contained herein shall not apply to car rental services which rent pickup trucks and other vehicles primarily used for personal transportation instead of transporting goods and shall not apply to the temporary use of storage containers as otherwise allowed by the Mauldin Zoning Ordinance.

111. The City enacted that provision to change Jeremy’s once-legal use of property to conduct a U-Haul business into an illegal use of property but delayed the elimination or forced relocation of the U-Haul business until months later. That process is what the Supreme Court of South Carolina has called “amortization.”

112. Amortization is a process that cities like Mauldin use to circumvent limits on their power to eliminate ordinary, safe, preexisting property uses that are typically “grandfathered” or protected as “legal nonconforming uses.”

113. As described in the next section, Section 3:12.3.8 (which Plaintiffs refer to as the “amortization ordinance”) is not rational or consistent in light of the rest of Ordinance No. 970.

The Amortization Ordinance Irrationally Eliminates Jeremy’s U-Haul Business While Preserving Other, Similar Nonconforming Businesses

114. At the same time it eliminated Jeremy’s U-Haul business, the City amended its zoning ordinance to preserve “[n]onconforming structures or uses that were properly permitted and legally established” when the amortization ordinance was enacted by allowing those structures or uses to “continue in operation provided they conform to the provisions contained in this section.” MZO § 3:12.

115. Put another way, a legal, preexisting use “which would be prohibited under the regulations for the district in which such structures or uses are located” would be “nonconforming” but could continue operating in the City unless another section of Article 3 prohibited the use. *Id.* § 3:12.1.

116. The amortization ordinance was enacted specifically to avoid granting the preexisting U-Haul businesses, including the one operated by Jeremy, the nonconforming use protections in Sections 3:12 and 3:12.1. It required nonconforming sales and rentals of moving trucks and trailers—i.e., all those outside the S-1 zone—to cease operating after December 31, 2022.

117. Businesses that sell, rent, or store moving trucks and trailers are the only businesses that were denied nonconforming use protection under Sections 3:12 and 3:12.1. Every other nonconforming use is allowed to continue.

118. Given that the amortization ordinance targeted U-Haul businesses but allowed every other nonconforming use to continue, the amortization ordinance did not eliminate land uses that are both highly similar and very close to Sark's Auto and the U-Haul business there.

119. Sark's Auto is located in the C-2 zone (the "General Commercial District"). *See id.* § 5:8. The C-2 zone is meant to "promote accessible and central concentrations of business activities and commercial establishments . . . [and] is primarily located along major roadways" *Id.* It is adjacent to other properties zoned C-2, and lies across Main Street from another property zoned I-1 ("Industrial District"), which is intended for "manufacturing plants, assembly plants, and warehouses" and allows, among other uses, large vehicle sales and service, manufacturing, self-storage, towing service, truck and freight transportation services, and warehousing. *See id.* §§ 5:10, 7:1.

120. As of December 31, 2022, Jeremy cannot operate his U-Haul business in the C-2 zone where it has operated since 2013.

121. The City's supposed justification for this is that businesses that sell or rent moving trucks or trailers need to be "cleaned up" from Main Street.

122. Nonetheless, similar uses nearby Jeremy's location are allowed to continue in the C-2 zone as legal nonconforming uses. The auto parts store next door, the used car dealer next to that, the swimming pool store, the furniture store, and the Enterprise Rent-A-Car nearby are all treated as legal nonconforming uses and allowed to continue operating as they were before, on N. Main Street.

123. Even Sark's Auto is allowed to continue operating exactly where it is, and it could continue maintaining and repairing U-Haul trucks and trailers right on N. Main Street, just so long as Sark's Auto does not rent or sell them to anyone.

124. Nearby, more-intensive uses are also allowed to continue, although in the I-1 Industrial zone. For example, across Main Street from Sark's Auto lies an industrial mayonnaise factory which involves box trucks and semi-trailers. It will continue to operate as it did before.

125. Jeremy's U-Haul business is the only business near it that is not treated as a legal nonconforming use.

126. As a result, as of December 31, 2022, the S-1 zone will be the only zone in which Jeremy's U-Haul business (or any other U-Haul business) can operate.

127. The S-1 zone is the "Trades and Commercial Services District," which is meant to "provide a transition between commercial and industrial districts," and no use may emit beyond the property lines any "noxious odor, fumes, smoke, dust, or noise." *See id.* § 5:9.

128. The City supposedly forced businesses like Jeremy's U-Haul business to move to the S-1 zone to clean up Main Street for private economic development. It might argue it was motivated by some other goal related to the proposed City Center development.

129. Relegating those businesses that sell or rent moving trucks or trailers to the S-1 zone is not a rational way to promote any legitimate goal. That is because the S-1 zone is distributed seemingly randomly throughout the City. There are properties zoned S-1 very close to Jeremy's current location, the City's proposed development property, on Main Street, close to residential areas, or even slotted in the middle of multiple different property uses.

130. For example, there is property zoned S-1 about 820 feet (or .15 miles) from Sark's Auto—across North Main Street, adjacent to the road and bordering the I-1 zone, and slightly to the north.

131. There is an approximately 10-acre property zoned S-1 at the corner of Miller Road and Green Street. That property is under 520 feet away from the City's planned downtown development and adjacent to property zoned C-2 and R-M ("Residential Multifamily").

132. Similarly, there is another property, approximately 1.5 acres, zoned S-1 situated between Alexander Street and Murray Drive. That property is under 550 feet away from the City's planned downtown development and adjacent to property zoned C-2.

133. Another property of approximately 2.2 acres is zoned S-1 and lies between Murray Drive and Main Street, just at the end of Alexander Street. That property is less than 1150 feet (approximately .21 miles) from the City's planned downtown development. It is adjacent to property zoned C-2.

134. Another approximately 33 acres of S-1 properties surround Ellwood Court, bordered by Old Mill Drive and Miller Road. Adjacent to those 33 acres of S-1 property are properties zoned I-1, R-M, C-2, and R-12, which is a "Residential District" where the "principal use of land is for single-family dwellings."

135. Additionally, there is a 1.23 acre property zoned S-1 near the intersection of Miller Road and Old Mill Drive. It is adjacent to properties zoned I-1, C-2, R-12, and R-M1, which is a "Mixed Residential District" whose "principal use of land is for one- and two-family dwellings."

136. In short, under the new zoning ordinance, a U-Haul business is allowed on S-1 properties even though they are closer to the City's planned downtown development, adjacent to

Main Street, adjacent to residential areas, and/or nearby Jeremy's current location. But Jeremy cannot operate a U-Haul business at his current location.

137. Eliminating Jeremy's U-Haul business in this way does nothing to promote the public health and safety.

138. Eliminating Jeremy's U-Haul business in this way does nothing to change the appearance or character of the area surrounding the City's proposed downtown development.

139. Eliminating Jeremy's U-Haul business also does nothing to change the appearance or character of the area surrounding his current location or the Main Street corridor.

140. For example, all other commercial and industrial land uses are allowed to continue. Across the street from Sark's Auto is a food manufacturing plant zoned I-1. On either side are an auto parts store and a big box furniture store, both zoned C-2. To the south and closer to downtown are a large apartment complex, a swimming pool repair company, a manufactured homes retailer, an auto paint and body shop, a tire shop, more auto parts stores, and an Enterprise Rent-A-Car. All of these are on North Main Street and all are zoned C-2.

141. Moreover, the S-1-zoned property less than a quarter-mile away from Jeremy's location, also on N. Main Street, continues to be eligible for a U-Haul business.

142. The only business in the vicinity of Sark's Auto that will be eliminated by the amended version of Mauldin's Zoning Ordinance is Jeremy's U-Haul business.

143. The neighborhood and immediate vicinity of Sark's Auto will be essentially unchanged by eliminating Jeremy's U-Haul business. The neighborhood will still be used for manufacturing, automotive businesses, and other commercial and light industrial businesses that involve large vehicles. And nearby property can even be used for renting or selling U-Haul trucks and trailers.

144. There is no reason for treating Jeremy's U-Haul business differently in this way. Renting U-Haul trucks and trailers out of Sark's Auto is not a unique eyesore and it has never been suggested to have a detrimental effect on the public health, safety, morals, or general welfare, or even on surrounding property values.

The Amortization Ordinance Completely Destroys Jeremy's U-Haul Business

145. The amortization ordinance completely destroys Jeremy's U-Haul business that has been in operation since 2013.

146. Jeremy can, and will, continue operating his auto shop business at its current location after December 31, 2022.

147. However, Jeremy cannot continue renting U-Haul trucks and trailers at his current location after December 31, 2022.

148. But for the City's amortization ordinance, Jeremy would continue to rent U-Haul trucks and trailers at his current location after December 31, 2022, under his three-year dealership agreement with U-Haul.

149. Jeremy cannot relocate his U-Haul business because doing so would deprive him of his rights under the dealership agreement with U-Haul, which allows U-Haul to terminate the agreement if Jeremy were to relocate the business.

150. Since Jeremy cannot relocate the U-Haul business without losing his rights under the dealership agreement with U-Haul and the amortization ordinance prohibits him continuing to rent U-Hauls at his current location as of December 31, 2022, the amortization ordinance destroys all Jeremy's rights under the dealership agreement with U-Haul.

151. Additionally, Jeremy cannot relocate the U-Haul business to the S-1 zone in order to continue operating it after December 31, 2022, because it is financially unfeasible for Jeremy to do so.

152. It is financially unfeasible to move the U-Haul business and Sark's Auto together to a new location. The auto shop business is a large operation that requires a unique property like the one Sark's Auto is located on. Moreover, Jeremy has poured over \$300,000 into improving the property since opening, some of which was at the City's insistence.

153. It is financially unfeasible to close down the U-Haul business and reopen it in the S-1 district. Jeremy would need a new location, staff located there only conducting U-Haul business, and new insurance. The U-Haul business alone is not financially lucrative enough to do this. The U-Haul business currently works because it shares resources with Sark's Auto.

154. Thus, if the amortization ordinance goes into effect, Jeremy's U-Haul business will cease on or before December 31, 2022.

155. Jeremy would continue operating his U-Haul business indefinitely, past December 31, 2022, but for the amortization ordinance.

Jeremy Was Not Required to Seek a Variance Because No Variance Can Be Granted

156. South Carolina Code § 6-29-800 allows, but does not require, a local governing body to provide by ordinance for the granting of variances from the zoning code, including variances for uses that are normally prohibited in a given district.

157. The Mauldin Zoning Ordinance does not provide for a use "variance." Instead, it defines a "variance" as a "relaxation of the dimensional terms of the Zoning Ordinance," which, among other things, "*does not involve a change in the use of property.*" MZO § 3:3 (emphasis added).

158. So, a “variance” is not an available remedy to Jeremy because the amortization ordinance does not involve the dimensional terms of the Zoning Ordinance or the dimensions of Jeremy’s property, but rather involves which uses are permitted in what areas. And the Mauldin Zoning Ordinance expressly forbids granting a variance to change uses on a property. *See* MZO § 3:3.

159. In any event, the Mauldin Zoning Board of Appeals is the local governing body in Mauldin empowered to grant variances. MZO § 4:1.3.2.

160. The Zoning Board of Appeals is also empowered to authorize “uses permitted by special exception.” *Id.* § 4:1.3.5. A “use[] permitted by special exception” is a use “allowable where facts and conditions detailed in this ordinance as those upon which a use may be permitted are found to exist.” *Id.* § 3:3.

161. The Mauldin Zoning Ordinance does not empower the Zoning Board of Appeals to grant a variance or a “special exception” for any use that is prohibited or “not permissible” in the relevant district.

162. In fact, the Mauldin Zoning Ordinance expressly forbids the Zoning Board of Appeals from granting a variance or a “special exception” for prohibited uses, meaning any use which is not identified for the relevant district as a permitted use, conditional use, or a use permitted as a special exception. *See id.* § 4:1.3.4 (“Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved.”); *id.* § 4:1.3.5 (no special exceptions unless “[t]he use is allowed as a special exception in the zoning district”); *id.* § 7:1.1.1-4 (describing “permitted,” “conditional,” “special exception,” and “not permitted” use categories); *id.* § 7:1.5 (table of uses by district).

163. Moving truck and trailer rentals and sales—i.e., U-Haul businesses—are permitted only in the S-1 district, and they are not permitted, allowed as a conditional use, or allowed as a use by special exception in any other district, including the C-2 district where Jeremy’s current location is. *Id.* § 3:12.3.8 (expressly limiting rental and sale of moving trucks and trailers to the S-1 zone only); *see also id.* § 7:1.5 (not including rental and sale of moving trucks and trailers as a permitted, conditional, or special exception use in any district).

164. Therefore, no variance can be granted to allow Jeremy’s U-Haul business to continue after December 31, 2022. Any request for a variance, thus, would be futile.

165. Even if the Board of Appeals could grant a variance for Jeremy’s U-Haul business, requesting one would be futile because the City very recently and very specifically amended Mauldin’s Zoning Ordinance to prohibit Jeremy’s use of his property for the U-Haul business, making any request for a variance futile.

166. Similarly, no “special exception” can be granted to allow Jeremy’s U-Haul business to continue after December 31, 2022. Any request for a special exception, thus, would be futile.

167. Even if the Board could grant a special exception for Jeremy’s U-Haul business, the City very recently and very specifically amended Mauldin’s Zoning Ordinance to prohibit Jeremy’s use of his property for the U-Haul business, making any request for a special exception futile.

168. Because the Board of Zoning Appeals is forbidden to grant a variance for a non-permissible use and does not have the power to grant a special exception to operate a U-Haul business in the C-2 zone, Plaintiffs were not required to seek a variance or a special exception and doing so would have been futile.

169. Without any administrative remedy available to them, Plaintiffs filed this constitutional lawsuit challenging the ordinance as being in violation of the South Carolina Constitution.

INJURY TO PLAINTIFFS

170. But for the amortization ordinance, Jeremy and Sark's Auto would continue operating the U-Haul business at its current location indefinitely, past December 31, 2022.

171. But for the amortization ordinance, Jeremy and Sark's Auto would continue to derive revenue from the U-Haul business indefinitely, past December 31, 2022.

172. But for the amortization ordinance, Jeremy and Sark's Auto would continue to derive income indirectly from the U-Haul business, such as through repairing the U-Haul equipment or developing good will with new Mauldin residents, indefinitely, past December 31, 2022.

173. But for the amortization ordinance, Jeremy and Sark's Auto would continue to enjoy a substantial discount on his business insurance indefinitely, past December 31, 2022, because they would continue to be affiliated with U-Haul, a nationwide company.

174. But for the amortization ordinance, Jeremy and Sark's Auto would not have to lay off one or two employees.

175. But for the amortization ordinance, John S. Abney, Jr. would still have the right to use his property for the operation of a U-Haul business.

176. But for the amortization ordinance, John S. Abney, Jr. would still have the right to lease his property to Jeremy for his continued operation of the U-Haul business there.

177. But for the amortization ordinance, John S. Abney, Jr. would not have a property that is devalued after December 31, 2022, by the current lessee having reduced revenue and by the property by having one less potential use for any future lessee or sale.

COUNT I: Invalid Exercise of the Police Power to Eliminate a Vested Right

178. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶ 1 through ¶ 177 of this Complaint as if fully set forth herein.

179. The City's power to enact zoning laws derives from the state's police power.

180. The state has delegated its police power to cities to enact zoning laws generally in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994. *See* S.C. Code §§ 6-29-310 *et seq.*

181. That statute specifically delegates police power to cities to “provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.” *Id.* § 6-29-730.

182. The state's police power—including any portion of it delegated to local governments via statute—has historical limits, such as due process limitations, under Article I, Section 3 of the South Carolina Constitution, preventing the police power from eliminating vested rights.

183. A property owner has a vested right to continue using property to operate a business that was in existence at the time the government attempts to eliminate it, absent a showing by the government that the business is a nuisance (i.e., detrimental to the public health or safety). In other words, the police power does not extend to the suppression or removal of a preexisting, ordinary, lawful business

184. Plaintiffs have used the property at Jeremy's location for a U-Haul business continuously since 2013.

185. The amortization ordinance was first enacted in April 2021—nearly eight years after Plaintiffs began operating a U-Haul business at Jeremy's location.

186. The amortization ordinance did not take its final form clarifying exactly which property uses it eliminated until January 2022—more than eight years after Plaintiffs began operating a U-Haul business at Jeremy’s location.

187. When enacting the amortization ordinance, the City did not make any factual showing that U-Haul businesses generally, or Jeremy’s U-Haul business specifically, are a nuisance or detrimental to the public health or safety.

188. In fact, Jeremy’s U-Haul business is a safe and ordinary business. It is not a nuisance and does not pose a threat to the public health or safety.

189. The City has no evidence that U-Haul businesses generally, or Jeremy’s U-Haul business specifically, are a nuisance or pose a threat to public health or safety.

190. U-Haul businesses generally, and Jeremy’s U-Haul business specifically, are not inconsistent with any other legitimate government interest.

191. The City has no evidence that U-Haul businesses generally, or Jeremy’s U-Haul business specifically, are inconsistent with any other legitimate government interest.

192. Instead, the City identified U-Haul businesses generally, and Jeremy’s U-Haul business specifically, for amortization in order to promote private economic development.

193. Thus, Plaintiffs have a vested right to continue operating the U-Haul business at Jeremy’s location and the City’s attempt to eliminate that vested right with the amortization ordinance is unreasonable, arbitrary, and invalid.

194. The City cannot avoid that conclusion by relying on Section 6-29-730, because that statute could not delegate power to the City to violate Plaintiffs’ vested rights.

195. As a result, the Court should find that the amortization ordinance is an invalid exercise of the police power and declare the amortization ordinance unconstitutional under Article I, Section 3 of the South Carolina Constitution.

COUNT II: Substantive Due Process (Facial and As Applied to Plaintiffs)

196. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶ 1 through ¶ 177 of this Complaint as if fully set forth herein.

197. South Carolina Constitution Article I, Section 3 states: “[N]or shall any person be deprived of life, liberty, or property without due process of law”

198. This Due Process guarantee protects, among other things, the right to own and use property free from arbitrary, irrational, unreasonable, or oppressive government interference.

199. Governments violate substantive due process when they arbitrarily and capriciously deprive someone of a cognizable property interest rooted in state law. Said differently, to establish a violation of substantive due process, a party must show the governmental act has no reasonable relationship to any legitimate interest of government.

200. Under South Carolina law, Plaintiffs have cognizable property interests in the continuation of Jeremy’s U-Haul business.

201. If the amortization ordinance goes into effect, Plaintiffs will be deprived of their cognizable property interests in the continuation of Jeremy’s U-Haul business.

202. The amortization ordinance does not bear a reasonable relationship to any legitimate government interest.

203. The amortization ordinance was motivated by a desire to promote the proposed city center economic development.

204. After decades of failing to lure and keep an investor or developer for that development project, the City decided the time had come to eliminate or force the relocation of business that sell or rent moving trucks or trailers, and *only* those businesses.

205. The City's amended zoning ordinance rendered other uses nonconforming. However, every other nonconforming use was grandfathered in.

206. The only reason offered for treating U-Haul businesses differently from any other business or nonconforming use was that some investor or developer wanted the U-Haul businesses gone. That is not a legitimate government purpose.

207. The purpose of local zoning codes, as established by the state statute authorizing them, is to "promot[e] the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code § 6-29-710.

208. The amortization ordinance does not rationally promote those purposes either.

209. The City has no evidence that the amortization ordinance rationally promotes those purposes.

210. U-Haul businesses generally, and Jeremy's U-Haul business specifically, do not pose any unique threat to public health, safety, morals, convenience, order, appearance, prosperity, or general welfare.

211. The City has no evidence that U-Haul businesses generally, or Jeremy's U-Haul business specifically, pose any unique threat to public health, safety, morals, convenience, order, appearance, prosperity, or general welfare.

212. The City of Mauldin's purposes for its zoning code are "to lessen traffic congestion; to secure safety from fire, panic, and other danger; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration

of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements.” MZO § 1:1.

213. The amortization ordinance does not rationally promote those purposes.

214. The City has no evidence that the amortization ordinance rationally promotes those purposes.

215. U-Haul businesses generally, and Jeremy’s U-Haul business specifically, do not pose unique risks due to traffic congestion, fire, panic, other danger, inadequate air or light, overcrowding of land, undue concentration of population, or the inadequate provision of transportation, water, sewerage, schools, parks, or other public requirements.

216. The City has no evidence that U-Haul businesses generally, or Jeremy’s U-Haul business specifically, pose unique risks due to traffic congestion, fire, panic, other danger, inadequate air or light, overcrowding of land, undue concentration of population, or the inadequate provision of transportation, water, sewerage, schools, parks, or other public requirements.

217. Eliminating U-Haul businesses does not promote any legitimate government purpose.

218. The City has no evidence that eliminating U-Haul businesses promotes any legitimate government purpose.

219. Instead, the amortization ordinance that eliminates the U-Haul businesses, including Jeremy’s U-Haul business, served the purpose of attempting to promote private economic development.

220. Unless the court enjoins the amortization ordinance, as of December 31, 2022, Plaintiffs will suffer irreparable and continuing deprivations of their property and liberty interests in violation of their rights to substantive due process.

221. As a result, the Court should find that the amortization ordinance is unconstitutional under Article I, Section 3 of the South Carolina Constitution.

COUNT III: Equal Protection (Facial and As Applied to Plaintiffs)

222. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶ 1 through ¶ 177 of this Complaint as if fully set forth herein.

223. The Equal Protection Clause in the South Carolina Constitution, Article I, Section 3 states: “[N]or shall any person be denied the equal protection of the laws.”

224. The Equal Protection Clause guarantees the right of similarly situated individuals to be treated similarly.

225. To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis.

226. The amortization ordinance creates two classifications. First, it classifies U-Haul businesses differently from other “nonconforming” land uses. Second, it classifies U-Haul businesses differently from every other business in Mauldin. Both classifications violate equal protection.

227. Mauldin’s Zoning Ordinance classifies businesses into conforming and nonconforming land uses.

228. The businesses that are deemed nonconforming are similarly situated, but they are not treated equally under similar circumstances.

229. U-Haul businesses are just one of several kinds of businesses deemed nonconforming under Mauldin’s Zoning Ordinance.

230. U-Haul businesses are, however, the only nonconforming businesses that are denied grandfathering protection to continue operating where and how they were before the amortization ordinance was enacted.

231. There is no legitimate purpose for treating U-Hauls differently from other businesses deemed to be nonconforming.

232. The City has no evidence of a legitimate purpose for treating U-Hauls differently from other businesses deemed to be nonconforming.

233. Treating U-Hauls differently from other businesses deemed to be nonconforming does not rationally promote any legitimate government purpose.

234. The City has no evidence that treating U-Hauls differently from other businesses deemed to be nonconforming rationally promotes any legitimate government purpose.

235. Treating U-Haul businesses differently from other businesses deemed to be nonconforming does not even rationally promote the City's purpose of benefitting private economic development.

236. The City has no evidence that treating U-Haul businesses differently from other businesses deemed to be nonconforming even rationally promotes the City's purpose of benefitting private economic development.

237. For example, the amortization ordinance does not affect sale or rental of personal vehicles, including pickup trucks. There is an Enterprise Rent-A-Car down the street that is unaffected by the amortization ordinance.

238. Likewise, other commercial and light industrial uses in the vicinity that involve heavy traffic by large vehicles are unaffected. This includes a mayonnaise manufacturing plant,

automotive repair, tire shops, auto parts stores, and other retailers that commonly require shipment or delivery of goods in large box trucks and semi-trailers.

239. The second classification under the amortization ordinance also violates equal protection for similar reasons.

240. The amortization ordinance also classifies the sale or rental of moving trucks and trailers—i.e., U-Haul businesses—differently from every other business in Mauldin insofar as only the sale or rental of moving trucks has been identified as the kind of businesses subject to elimination or forced relocation by the amortization ordinance.

241. Every other preexisting business in Mauldin—even nonconforming ones engaged in similar land uses near Jeremy’s location, near the City’s proposed downtown development, and near residential areas—is allowed to continue operating where and how they were prior to the enactment of the amortization ordinance.

242. The U-Haul businesses in the city are similarly situated and are treated similarly insofar as they are eliminated (or forced to relocate to the S-1 zone) by the amortization ordinance.

243. But there is no legitimate legislative purpose for classifying U-Haul businesses differently from every other business in Mauldin, which the City established solely in order to promote private economic development and private economic interests.

244. The City has no evidence of a legitimate legislative purpose for classifying U-Haul businesses differently from every other business in Mauldin.

245. The amortization ordinance does not even rationally promote the City’s illegitimate interest of promoting private economic development and private economic interests.

246. The City has no evidence that the amortization ordinance even rationally promotes the City's illegitimate interest of promoting private economic development and private economic interests.

247. The amortization ordinance's classification of U-Haul businesses differently from every other business in Mauldin—even nonconforming ones engaged in similar land uses near Jeremy's location, near the City's proposed downtown development, and near residential areas—does not rationally promote any legitimate government purpose.

248. The City has no evidence that the amortization ordinance's classification of U-Haul businesses differently from every other business in Mauldin—even nonconforming ones engaged in similar land uses near Jeremy's location, near the City's proposed downtown development, and near residential areas—even rationally promotes any legitimate government purpose.

249. The City has no legitimate purpose for treating U-Haul businesses differently from every other business in Mauldin.

250. The City has no evidence of any legitimate purpose for treating U-Haul businesses differently from every other business in Mauldin.

251. Unless the court enjoins the amortization ordinance, as of December 31, 2022, Plaintiffs will suffer irreparable and continuing deprivations of their rights to equal protection.

252. As a result, the Court should find that the amortization ordinance is unconstitutional under Article I, Section 3 of the South Carolina Constitution.

COUNT IV: Unconstitutional Taking

253. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶ 1 through ¶ 177 of this Complaint as if fully set forth herein.

254. Article I, Section 13(a) of the South Carolina Constitution provides that “[e]xcept as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” It further provides that “the purpose or benefit of economic development” is not a valid purpose of exercising the eminent domain power. *Id.*

255. The amortization ordinance violates that provision because it “takes” Plaintiffs’ property without any public use, for an improper purpose, and without just compensation.

256. The City engaged in affirmative conduct when it enacted the amortization ordinance, which results in the “taking” of Plaintiffs’ property.

257. The amortization ordinance “takes” Plaintiffs’ property by completely eliminating their right to use, enjoy, or dispose of their property interests in the U-Haul business. Plaintiffs are denied the entire economically feasible use of their property interests in the U-Haul business because of the amortization ordinance.

258. The amortization ordinance is unconstitutional because it is not made for a public use.

259. Instead, it simply eliminates Jeremy’s U-Haul business to promote possible economic development by private developers.

260. Nor does it eliminate or purport to eliminate blight at Jeremy’s location or in the surrounding area.

261. Thus, the amortization ordinance is a “taking” without a public use, and it is, thus, unconstitutional under Article I, Section 13.

262. The amortization ordinance is unconstitutional for the additional reason that it serves the impermissible “purpose or benefit of economic development.” S.C. Const. art. I, § 13.

263. Plaintiffs have not consented, and do not consent, to the City taking their property to promote that possible economic development by private parties.

264. Thus, the amortization ordinance is a “taking” in furtherance of an invalid purpose, and it is, thus, unconstitutional under Article I, Section 13.

265. The amortization ordinance is unconstitutional for the additional reason that it is an uncompensated taking of Plaintiffs’ property.

266. The amortization ordinance, if not enjoined, will eliminate Jeremy’s U-Haul business from December 31, 2022, onward. But for the amortization ordinance, Jeremy would continue operating his U-Haul business on the property indefinitely, past December 31, 2022.

267. Depriving Plaintiffs of their continued use of private property to operate the U-Haul business after December 31, 2022, is not “compensation.”

268. Thus, the amortization ordinance is an uncompensated “taking,” and it is, thus, unconstitutional under Article I, Section 13.

269. Unless the court enjoins the amortization ordinance, as of December 31, 2022, Plaintiffs will suffer irreparable and continuing deprivations of their right to be free from uncompensated takings with no public use and no valid purpose.

270. As a result, the Court should find that the amortization ordinance is unconstitutional under Article I, Section 13 of the South Carolina Constitution.

PRAYER

WHEREFORE, Plaintiffs Jeremy Sark, Sarks Automotive, LLC, and John S. Abney, Jr., respectfully request that this Court:

- A. Enter a declaratory judgment that Mauldin Zoning Ordinance Section 3:12.3.8 exceeds the City's police power and is void under Article I, Section 3 of the South Carolina Constitution;
- B. Enter a declaratory judgment that Mauldin Zoning Ordinance Section 3:12.3.8 violates the Due Process Clause of Article I, Section 3 of the South Carolina Constitution;
- C. Enter a declaratory judgment that Mauldin Zoning Ordinance Section 3:12.3.8 violates the Equal Protection Clause of Article I, Section 3 of the South Carolina Constitution;
- D. Enter a declaratory judgment that Mauldin Zoning Ordinance Section 3:12.3.8 violates Article I, Section 13 of the South Carolina Constitution;
- E. Enter an order preliminarily and permanently enjoining Defendants from further enforcing Mauldin Zoning Ordinance Section 3:12.3.8 against Plaintiffs and allowing Plaintiffs to continue operating the U-Haul business at its current location;
- F. Award Plaintiffs nominal damages of \$1 for the violations of their rights under the South Carolina Constitution;
- G. Award Plaintiffs' reasonable costs and attorneys' fees in this action; and
- H. Order any other or further legal or equitable relief to which Plaintiffs are justly entitled.

Respectfully submitted,

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