

NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 23-CVS-2108

KIMBERLY DUNCKEL and FAIRYTALE )  
FARM ANIMAL SANCTUARY, )

Plaintiffs, )

vs. )

CITY OF WINSTON-SALEM, NORTH )  
CAROLINA; ALLEN JOINES, in his )  
official capacity as City Mayor; CITY OF )  
WINSTON-SALEM CITY COUNCIL; )  
DENISE D. ADAMS, BARBARA H. )  
BURKE, ROBERT C. CLARK, JOHN C. )  
LARSON, JEFF MACINTOSH, KEVIN )  
MUNDY, ANNETTE SCIPPIO, JAMES )  
TAYLOR, JR., in their official capacities as )  
City Council members; CHRIS MURPHY, )  
in his official capacity as Director of )  
Planning & Development Services )  
Department; the WINSTON- )  
SALEM/FORSYTH COUNTY )  
PLANNING AND DEVELOPMENT )  
SERVICES DEPARTMENT; and the )  
WINSTON-SALEM/FORSYTH COUNTY )  
PLANNING BOARD, )

Defendants. )

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FORSYTH CO., C.S.C.  
BY 

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR  
NOMINAL DAMAGES

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Plaintiffs Kimberly Dunckel and the Fairytale Farm Animal Sanctuary, by and through their undersigned counsel, hereby file this lawsuit against the City of Winston-Salem, North Carolina; its Mayor in his official capacity; the members of its City Council in their official capacities; the Director of the Winston-Salem/Forsyth County Planning and Development Services Department in his official capacity, the Winston-Salem/Forsyth County Planning and Development Services Department; and the Winston-Salem/Forsyth County Planning Board. Plaintiffs allege as follows:

### **INTRODUCTION**

1. The North Carolina Constitution protects the rights of individuals to use their private property safely and reasonably as they choose—whether that be to provide charitable services, have a business, educate students, or welcome friends and the community to gather together. Kimberly Dunckel and her family engaged in all of these protected activities on their 3.3-acre property in the City of Winston-Salem (“the Property”), where they live and run a community-based animal sanctuary for abused and neglected farm animals. But according to the City, the local zoning code prohibits them from continuing to engage in any of these activities. As a result, the Dunckels’ sanctuary—Fairytale Farm Animal Sanctuary—is in jeopardy. The Dunckels bring this civil rights suit to protect their sanctuary and validate their constitutional rights.

2. The Dunckels have been running Fairytale Farm Animal Sanctuary on their property for almost two years. There is no dispute that the Dunckels can legally have

their farm animals on the Property. *See, e.g.,* Winston-Salem Code of Ordinances (“City Code”), ch. 6, § 6-4 (allowing farm animals on Duncckels’ property). The local zoning code also allows a variety of property uses in the Duncckels’ zoning district that are much more intensive than the animal sanctuary, including many involving more visitors and clients than the Sanctuary has.

3. The problem is that the zoning code has no provisions that permit an animal sanctuary. As a result, the City first tried to shut down the Sanctuary completely. But after public backlash, the City has allowed the Sanctuary to remain open, but only if it satisfies conditions that threaten its mission and very existence.

4. The City has told Kimberly that her family can no longer hold any events related to the Sanctuary on the Property (the “event ban”)—not even small educational classes for homeschoolers and girl scouts. The City has also told the Sanctuary that it can no longer have more than a couple of volunteers at a time to the Property (the “volunteer restrictions”). The City insists on these restrictions even though the Sanctuary is not bothering anyone: The City admits that none of the Sanctuary’s neighbors have had any complaints about the Sanctuary, and in fact, many neighbors are actively involved in the Sanctuary. The Property is also more than capable of handling guests without disturbing neighbors, since the Property has ample, private acreage and a suitable parking lot.

5. Making matters worse, the event ban and volunteer restrictions are nowhere in local law. Instead, the City seems to be taking the position that, because the

zoning code does not authorize (or even contemplate) animal sanctuaries, the City can impose whatever restrictions on the Sanctuary that it wishes in order to allow it to remain open.

6. The City's severe and unique restrictions on operating the Sanctuary make it almost impossible for the Sanctuary to carry out its mission. It cannot effectively engage with the community with these restrictions. Nor can it have sufficient volunteers to run the Sanctuary effectively.

7. Meanwhile, the City allows multiple other property uses within the same zoning district as the Sanctuary that inherently involve more clients and visitors than those permitted at the Sanctuary, without any reasonable basis for treating the Sanctuary differently. Other permitted businesses include those that take place within and alongside single family homes, such as in-home day cares, adult care facilities, and home businesses. These property uses also include even more intensive property uses, such as public recreation facilities and sports fields, schools, libraries, churches, shuttle parking lots, and golf courses. Indeed, several such property uses exist near the Sanctuary.

8. The City's restrictions on the Sanctuary are unconstitutional. The North Carolina Constitution protects property from arbitrary and unreasonable restrictions. N.C. Const., Art. I, §§ 1, 19. Instead, restrictions on property need to have a reasonable or substantial relationship to a legitimate government interest. The Constitution also protects property owners from unequal treatment under the law. N.C. Const., Art. I, § 19.

Here, the City's severe and unique restrictions on the Sanctuary violate these provisions under the North Carolina Constitution and should be declared unconstitutional and enjoined from further enforcement.

### **JURISDICTION AND VENUE**

9. Plaintiffs bring this lawsuit pursuant to Article I, Sections 1 and 19 of the North Carolina Constitution; North Carolina's Declaratory Judgments Act, N.C.G.S. §§ 1-253, et seq.; and N.C.G.S. §§ 160A-174 and 160A-4.

10. This Court has jurisdiction over this action pursuant to N.C.G.S. §§ 7A-240 and 7A-245.

11. Venue is proper in this Court, as the parties are located primarily in Forsyth County, and the relevant events occurred in Forsyth County. *E.g.*, N.C.G.S. § 1-82.

### **THE PARTIES**

12. Plaintiff Kimberly Dunckel ("Kimberly") is a citizen and resident of Winston-Salem, North Carolina. She and her husband own 480 Wayside Drive, Winston-Salem, North Carolina 27107, a 3.33-acre lot where they live with their two sons. They also run the nonprofit Fairytale Farm Animal Sanctuary on the property. Kimberly is the registered agent of the nonprofit.

13. Plaintiff Fairytale Farm Animal Sanctuary ("the Sanctuary") is a 501(c)(3) nonprofit corporation that provides a home to neglected and abused farm animals and

offers the community the opportunity to engage with and learn from the animals the nonprofit serves. It operates on the Duncckels' land in Winston-Salem, North Carolina.

14. Defendant City of Winston-Salem ("Winston-Salem" or "the City") is a municipal corporation organized under the laws of North Carolina and located in Forsyth County.

15. Defendant Allen Joines is the Mayor of Winston-Salem. He is being sued in his official capacity.

16. Defendant Winston-Salem City Council is a government corporation organized under the laws of North Carolina and located in Forsyth County.

17. Defendant Denise D. Adams is a member of the City Council of Winston-Salem. She is being sued in her official capacity.

18. Defendant Barbara H. Burke is a member of the City Council of Winston-Salem. She is being sued in her official capacity.

19. Defendant Robert C. Clark is a member of the City Council of Winston-Salem. He is being sued in his official capacity.

20. Defendant John C. Larson is a member of the City Council of Winston-Salem. He is being sued in his official capacity.

21. Defendant Jeff MacIntosh is a member of the City Council of Winston-Salem. He is being sued in his official capacity.

22. Defendant Kevin Mundy is a member of the City Council of Winston-Salem. He is being sued in his official capacity.

23. Defendant Annette Scippio is a member of the City Council of Winston-Salem. She is being sued in her official capacity.

24. Defendant James Taylor, Jr., is a member of the City Council of Winston-Salem. He is being sued in his official capacity.

25. Defendant Chris Murphy is the Director of the Winston-Salem/Forsyth County Planning & Development Services Department for the City of Winston-Salem and Forsyth County. He is being sued in his official capacity.

26. The Defendant Winston-Salem/Forsyth County Planning and Development Services Department (also known as the City-County Planning and Development Services Department) is a government entity organized under the laws of North Carolina and located in Forsyth County.

27. The Defendant Winston-Salem/Forsyth County Planning Board (also known as the City-County Planning Board) is a government entity organized under the laws of North Carolina and located in Forsyth County.

28. The Defendants are responsible for the relevant laws, policies, and/or government decisions challenged in this Complaint, whether through their adoption, enforcement, or both. All Defendants are also bound to follow the State Constitution.

## FACTUAL ALLEGATIONS

### **Kimberly Creates Fairy Tale Farm Animal Sanctuary**

29. When Kimberly Dunckel transitioned away from her career in video production, she knew she wanted to use her time to invest in and give back to the community she loved—the City of Winston-Salem. She, her husband Art, and their two sons (ages 13 and 7) shared Kimberly’s goals, and the family set out to find the most meaningful way to accomplish them.

30. The family believes that gathering people together to educate them and to serve others is vital to the success of a community. So they decided to buy a home and land where they could welcome guests and community members.

31. They thought they found the perfect property at 480 Wayside Drive, Winston-Salem, North Carolina 27107 (the “Property”) in 2017. The Property is a 3.33-acre piece of land that they could fix up as they thought would best serve the community.

32. Before investing their time and money into the Property, they went to the City and asked if there would be any problem with them using the Property as a place for the community to gather. At the time, they envisioned using the space for large events—and that is what they told the City.

33. Kimberly spoke to a city employee, Elizabeth Colyer, a Zoning Plan Examiner, who told her that there would be no problem with them opening the property



for community guests and on-site events as long as they followed the instructions to qualify as a “bona fide farm” under N.C.G.S. § 160D-903.

34. The North Carolina legislature created the “bona fide farm” exception to county zoning requirements. N.C.G.S. § 160D-903; *see also* Winston-Salem/Forsyth County Unified Developed Ordinances, ch. 11, § 11.2, tbl. 11.2.2 (definition of “Farm, Bona Fide (F)”), available at <https://www.udoclearcode.org/files/ugd/eea7455e539df32c2c4a68b589fa450452335d.pdf>. The exception prohibits counties from placing zoning limitations on “bona fide” farms, including those that operate in “agritourism.” N.C.G.S. § 160D-903(a). Such “agritourism” includes but is not limited to “weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.” *Id.* The exception also prohibits counties from placing zoning limitations on bona fide farms for activities “relating or incidental to” livestock and poultry. *Id.* The Duncckels moved ahead with purchasing the Property and followed Ms. Colyer’s instructions to successfully become a registered bona fide farm.

35. When Kimberly and her husband purchased the Property, it was abandoned, completely dilapidated, and filled with garbage and debris.

36. Kimberly and her family invested thousands of dollars and countless hours to get the Property in shape. They even had to rent dumpsters to haul away all the garbage.

37. As they worked on the Property, they began to take in and house animals that needed a place to live. Again, they checked with the City, and the City confirmed this was permitted. The first animal to arrive at the Property was a rabbit named Emerson. Soon after, there came a group of male goats that had been headed to be slaughtered. One of them, Garth, has since become one of the most popular animals with guests of the Sanctuary. Shortly after the group of goats arrived on the Property, the Duncckels took in Simone, a dairy goat who was born with a leg abnormality. From there, more and more animals in need of help began to find their way to the Sanctuary, through word of mouth, referrals, and the larger rescue community. Many of the animals they took in suffered from physical challenges like Simone and had nowhere else to go.

38. For example, many nearby animal shelters limit the types of animals they can take (*e.g.*, nearby shelters apparently don't take rabbits, other small animals, or farm animals). But the Duncckels embrace all these animals and give them a home. Even Forsyth County Animal Control has repeatedly referred animals to the Sanctuary.

39. As the Duncckels adopted more animals, their vision for the Property became increasingly clear. The Duncckels decided to create an animal sanctuary. The sanctuary would provide a home for needy animals and also a community gathering place that would facilitate community building and education. They began having people over to work with and learn about the animals.

40. In June 2021, Kimberly formally registered the 501(c)(3) Fairytale Farm Animal Sanctuary (“the Sanctuary”) and officially launched the nonprofit. The mission of the Sanctuary is “to be a place of safety and healing for human and non-human animals by offering kindness to all creatures.”

41. Our animal residents are all rescued from injury, neglect, trauma or have special needs.

42. The Duncckels make no money from the nonprofit and do not pay themselves or have any paid staff. Rather, they use a significant portion of their personal income, along with donations and volunteer labor, to provide for the animals.

43. The Sanctuary currently has 70 animals in its three-acre backyard. These are mostly small animals like rabbits, gerbils, a turkey, and ducks, but the Sanctuary is also home to two miniature donkeys, 16 goats, and one sheep (all spayed and neutered). Many of the animals come from bad situations, are coping with injuries, or have permanent physical challenges.

44. The Sanctuary fits right into its neighborhood, which has a rural feel. While the neighborhood is zoned residential, many nearby properties have large, multi-acre lots, and several properties have farm animals visible from the road. Yet it is not obvious from the road that the Duncckels’ Property houses farm animals, much less an animal sanctuary. Instead, the Property sits on a busy street with a double yellow line, and appears to be just an attractive home with a gravel parking lot in front. Most of the

Property's acreage is taken up by its large backyard, which is largely screened from the road.

45. A photo of the front of the Property is shown here:



46. There is also no dispute that the Property can legally have its farm animals. The City Code permits the keeping of horses, mules, donkeys, goats, sheep, and cattle as long as they are kept within an "adequate fence" and have an "appropriate shelter . . . maintain[ed] . . . in a clean and sanitary condition." City Code, ch. 6, § 6-4. The City Code also permits the keeping of rabbits, chickens, and other fowl.

47. Accordingly, the Duncckels can keep the Sanctuary's goats, donkeys, sheep, rabbits, and ducks on the Property without any problem.

48. As discussed further below, the Duncckels' zoning district also allows multiple property uses that involve visits from customers, clients, and guests. These

property uses include golf courses, schools, churches, home day cares, and home businesses. So the Sanctuary's visitors were not unusual for the area.

### **The Sanctuary Builds and Educates the Community**

49. After its launch, the Sanctuary quickly became an important part of the community.

50. Many residents volunteered at the Sanctuary. Small groups of volunteers came over almost every day to learn about and work with the animals.

51. The Sanctuary also began hosting a variety of educational and fundraising events. For example, the Sanctuary routinely hosted groups of between five and 12 homeschool students or Girl Scouts to participate in educational classes about the animals and to complete projects at the Sanctuary. During the summer, the Sanctuary also held summer camps for teens to learn about and work with the animals.

52. These educational classes and events also had a special importance and emphasis for children with disabilities. The children were able to see the animals living happy lives despite their disabilities, which helped inspire the children. The children with disabilities also felt a special kinship with the animals.

53. Kimberly and her family also hosted various other events at the Sanctuary to otherwise engage the community and fundraise for the support of the animals.

54. These educational classes and other events are usually free, but request a donation of funds or a donation of supplies to help with the animals. Other events charged a small fee.

55. These educational classes and other events did not disrupt traffic or cause parking problems. The Sanctuary has a parking lot that can easily accommodate at least ten cars. If an event ever involved more cars than that, a neighbor had generously volunteered her property for additional parking. As a result, their events never obstructed the road.

56. Both the volunteers and events are central to the longevity and health of the Sanctuary. They are key to Kimberly's goal of using her land to benefit and educate the community and provide for animals with nowhere else to go. There have never been any neighbor complaints caused by volunteer visits or events at the Sanctuary.

57. In fact, the neighbors around the Property support the Sanctuary—many volunteer at the Sanctuary, donate, or are otherwise involved with it. Several have also expressed gratitude that Kimberly and her husband purchased and rehabilitated the Property, which had long been abandoned and dilapidated.

58. The Duncckels were thrilled with the development and growth of the Sanctuary in its first year and a half; they were seeing their dreams come true.

### **The City Suddenly Tries to Shut Down the Sanctuary**

59. In January 2023, after the Sanctuary had operated for over a year without issue, the City suddenly told the Duncckels that the Sanctuary was illegal.

60. Zoning Inspector Marco A. Ramos visited Fairytale Farm Animal Sanctuary and informed Kimberly that she could not continue to operate the Sanctuary on the Property.

61. On January 20, 2023, Mr. Ramos emailed Kimberly Dunckel and stated that “Bona Fide Farms are not permitted in the city limits of Winston-Salem” and that “the current use of the property will have to stop operating.”

62. Confused that Mr. Ramos appeared to be telling her that she could not use the Property in exactly the way that the City had assured her she could before purchasing it, Kimberly emailed Mr. Ramos back to ask for clarification. But Mr. Ramos’s only response was to reiterate what he said in his prior email.

63. Amy Lanier, a Senior Zoning Inspector, then replied to Kimberly’s email and stated Kimberly “would not be able to run/operate an animal rescue/sanctuary, have events . . . etc.” on the Property.

64. Upon a subsequent visit to the Property, Ms. Lanier and Mr. Ramos told Kimberly and her husband that they also could not have events or fundraise in any way for the animals on the property (even online). They also informed Kimberly that she “can

have a nonprofit office that consists of up to 25% of the inside of our home, or . . . close the nonprofit and have the animals as . . . personal pets, but absolutely not both.”

65. Upon hearing all this, Kimberly was shocked, frustrated, and very upset. She turned to the local community for support. Several news outlets ran stories and expressed outrage about the City’s actions.

66. Kimberly also started a petition to protect the Sanctuary, garnering 3,284 signatures from the community.

### **The City Lets the Sanctuary Stay Open, But Severely Restricts its Operation**

67. After the public spotlight was placed on the issue, on February 2, 2023, Defendant Chris Murphy, Director of Planning and Development Services for Winston-Salem and Forsyth County, gave a news interview that softened the City’s stance. He stated that the Sanctuary could stay open, and the City was just limiting visitors to the Property.

68. When Kimberly followed up with him by email, he maintained the new position. Mr. Murphy further stated that “on-site events—whether free or ‘by admission fee’ on the property” are entirely prohibited.

69. As to the information that the City itself gave Kimberly before she purchased the property, Mr. Murphy stated: “As I wrap up this response, I can only apologize if Elizabeth gave you incorrect information when you checked with her 6 years ago.” According to the City, because the Sanctuary is within City limits (as opposed to



just within the County), the “bone fide farm” exception never applied to it, and it has never been authorized to operate with events and volunteers on that basis.

70. Determined to find a way forward, Kimberly continued to engage with the City.

71. She explored all alternative options, like having their Property rezoned, but was told by Mr. Murphy that this would very likely be futile and require a significant investment of money that would be wasted.

72. Mr. Murphy also warned her that, while she could have friends to the Property, she could not have them over for anything related to the animals: “Simply stating that ‘we are going to begin having these events for our “friends”’ isn’t enough to overcome the fact that the events would truly be for and on the behalf of the animal rescue operation.”

73. Based on that warning, Kimberly became uncomfortable even having her and her sons’ friends over to the house if they were to interact with the animals at all.

74. Kimberly and the Sanctuary were forced to immediately stop all events.

75. Kimberly also stopped having any more than one or two volunteers at a time to the Property because she was afraid anything more would be a violation.

76. The lack of volunteers makes caring for the animals incredibly difficult. Since the City’s warnings, Kimberly and her husband have largely cared for the animals alone as a result of the volunteer restrictions.

77. The inability to have events undermines the Sanctuary's educational mission. It also poses a significant challenge to the fundraising necessary to support the animals.

78. On March 6, 2023, Kimberly again reached out by email to Mr. Murphy for additional clarification about having events at the Sanctuary. Mr. Murphy reiterated that there could be absolutely no Sanctuary-related events on the Property, including "both on-site fundraising and on-site educational programs."

79. Kimberly also asked Mr. Murphy to clarify the rules around volunteers and to specify how many volunteers she could have at the property at a time. But he could not do so. Mr. Murphy told her this was "tricky." He indicated that "2-3 folks is not an issue," nor is one family that has three children. But, he further explained, five unrelated volunteers in separate cars *would* likely be a violation. However, he could not tell her where the line was and refused to give a direct answer.

80. Mr. Murphy did not provide her with any specific statute, ordinance, or regulation that was the basis for either the event ban or the volunteer restrictions. That is probably because while the local codes do not bar the animal sanctuary, they do not explicitly allow it either.

### **The Local Ordinances Do Not Allow the Sanctuary**

81. The City's changing and arbitrary treatment of the Sanctuary seems to stem from the fact that the local ordinances never contemplated animal sanctuaries.

82. There are two relevant local ordinances. The City Code, and the Winston-Salem/Forsyth County Unified Developed Ordinances (the “UDO”). The UDO was adopted by the City Code. Chapter 86, § 86-1. The City Code governs some aspects of the City, such as the keeping of animals (discussed above, *supra*, ¶¶ 45–46). The UDO, on the other hand, governs the City’s zoning and land use, and is central to this dispute.

83. The UDO lists all the permitted property uses in each zoning district in the City. The complete list is at the “Principal Use Table,” at Table 5.1.1. of the UDO.

84. The Duncckels’ property is zoned residential, specifically the RS9 zoning district.

85. The UDO does not identify an animal sanctuary as a permitted use in RS9. In fact, “animal sanctuary” is not a use identified in any zoning district.

86. The UDO specifies that “[w]hen a proposed use is not listed” in the Principal Use Table, “the Director of Inspections shall classify the use with that use in the Table most similar and enforce the requirements of the similar listed use.” UDO, ch. 5, § 5.1.3.

87. Yet the City has not identified any use from the Table as a “similar listed use” with which requirements the Sanctuary must comply. Nor does it provide any specifics on how such a determination of “similar[ity]” is made or how an individual seeking to use property for an unlisted use may receive such a determination. Nor, when Kimberly sought to work with the City to pursue all options available to her, did the City

indicate that such a determination could solve her situation (or that such a process even existed at all).

88. Many of the similar listed uses in the UDO involve comparable or greater visitors and traffic as those generated by the Sanctuary. Yet the UDO has such specific requirements uniquely tailored for each use that it would not make sense to apply these other requirements to the Sanctuary.

89. So the City has not identified a “similar listed use,” it is not clear what a “similar listed use” would be, and it would not be helpful to apply the requirements of a “similar listed use” because each use has requirements uniquely tailored to it.

90. This goes back to the problem of the City never contemplating animal sanctuaries in the UDO.

91. Instead, as seen in its emails with Kimberly, the City attempts to treat the Sanctuary as a “home occupation.” “Home occupations” are a category of in-home businesses allowed with a permit. *See* UDO, ch. 5, § 5.3.4.D. Notably, home occupations are not an allowed listed use in the table because they are not a “principal” or primary use. Instead, they are allowed only to take place within a residential dwelling, and are thus “accessory” uses.

92. Classifying the Sanctuary as a home occupation is not helpful. By its very nature, the Sanctuary does not—and cannot—qualify as a “home occupation,” and it does not make sense to treat the Sanctuary as such. As shown below, complying with the

“home occupation” requirements would inherently make it impossible to operate the Sanctuary, since home occupations are not allowed to be operated outside.

93. Moreover, even if the Sanctuary was a home occupation, the City’s event ban and volunteer restrictions are not in the code provisions applying to home occupations. Thus, as discussed below, it is unclear what the legal support is for the City’s event ban and volunteer restrictions on the Sanctuary.

94. It seems the City’s event ban and volunteer restrictions have no basis in the local ordinances at all.

*Applying the home occupation provisions to the Sanctuary does not make sense.*

95. A home occupation is “[t]he use of a dwelling unit or accessory building on the same zoning lot for commercial activities that are clearly subordinate to the principal use of the dwelling unit for residential purposes and located in a residential district.” UDO, ch. 11, § 11.2, tbl. 11.2.2. The City regulates home occupations “to [e]nsure compatible uses which do not add significant traffic, noise or other environmental conditions such as dust or odor.” *Home Occupations: Zoning and Permitting Requirements*, City of Winston-Salem/Forsyth Cnty. Inspections Division, <https://www.cityofws.org/DocumentCenter/View/7018/Home-Occupations-Zoning-and-Permitting-Requirements-PDF>; see also UDO, ch. 5, § 5.3.4.D.

96. The code has many requirements for home occupations. One restriction is that there can be “[n]o exterior evidence of the presence of a home occupation.” UDO, ch. 5, § 5.3.4.D.

97. The Sanctuary is not a home occupation for two reasons. First, it does not have commercial activities. Instead, it is a nonprofit venture. Second, by its very nature, the Sanctuary cannot take place only, or even primarily, within “a dwelling unit or accessory building.” UDO, ch. 5, § 5.3.4.D. Instead, it largely and necessarily takes place outdoors because its farm animals must be kept and cared for outdoors

98. For the same reason, the Sanctuary cannot avoid “exterior evidence” of its presence and thus cannot comply with the requirements on home occupations. UDO, ch. 5, § 5.3.4.D.

99. Thus, complying with the “home occupation” requirements would destroy the Sanctuary’s ability to operate. For the same reasons, applying for a home occupation permit would be futile.

*The event ban and volunteer restrictions are nowhere in the local ordinances.  
They also make no sense.*

100. Even if the City did regulate the Sanctuary like a home occupation, however, it would still be unclear how the City came up with the event ban and volunteer restrictions. Such restrictions are nowhere present in the home occupation requirements in the codes. To the contrary, home occupations are allowed to have clients and visitors

so long as they do “not increase significantly traffic, noise, electrical interference, glare, dust, smoke, or odors.” UDO, ch. 5, § 5.3.4.D(3)(C).

101. Here, there is no evidence the Sanctuary’s visitors and volunteers pose such a problem. (Nor do the animals themselves pose such a problem.) None of the Sanctuary’s neighbors have ever complained about the Sanctuary and the Sanctuary has not caused problems for the neighborhood.

102. The Sanctuary does not negatively impact traffic or create parking congestion. The Sanctuary has its own 10 car lot, as well as access to additional parking on a neighbor’s property. This is more than enough for its guests.

103. Nor does the City prevent people from visiting the Duncckels for reasons unrelated to the animals. The local ordinances do not place limits on the Duncckels’ personal visitors or limit their ability to have friends over for a party.

104. The City’s only stated justification for its restrictions is a general concern for the “residential nature” of the area around the Sanctuary property. But it has not identified how the Sanctuary negatively impacts this.

105. Thus, the City has arbitrarily imposed the event ban and volunteer restrictions on the Sanctuary without legal or actual basis.

**The City Does Not Place These Restrictions on All Other Businesses/Entities in the Same Zoning District**

106. Multiple permitted uses within the RS9 district involve activities that involve the same or greater numbers of guests or visitors than the Sanctuary.

107. The UDO allows public recreation facilities, neighborhood churches and religious institutions, police and fire stations, and family group homes with a zoning permit. The City “shall” allow such uses within RS9, so long as all other requirements are satisfied. UDO, ch. 5, §§ 5.1, tbl. 5.1.1, 5.1.5(A)(1).

108. Community churches, golf courses, public libraries, and public and private schools also “shall” be permitted within RS9, subject to planning board approval of a site plan. UDO, ch. 5, §§ 5.1, tbl. 5.1.1, 5.1.5(A)(2).

109. Not only are all of these businesses and organizations allowed within RS9, but multiple such businesses and organizations currently operate in RS9, not far from the Sanctuary.

110. Upon reason and belief, each involves a regular stream of visitors, clients, and/or employees, and none are subject to a complete ban on events or guests. Nor are any subject to a restriction on employees or volunteers.

111. RS9 also permits several categories of home businesses. For example, the City allows an adult day care home in RS9 to provide care for up to six adolescents or disabled, older adults. UDO, ch. 5, §§ 5.1, tbl. 5.1.1, 5.2.4; *see also id.* § 11.2.2 (defining terms).



112. A small home day care can care for eight children in RS9. UDO, ch. 5, §§ 5.1, tbl. 5.1.1, 5.2.21.

113. A large home day care can care for up to 12 preschool age children or 15 school age children, with a special use permit in RS9. UDO, ch. 5, §§ 5.1, tbl. 5.1.1, 5.2.20.

114. Yet the City won't allow the Sanctuary to have more than 3-4 unrelated volunteers at a time, and the City won't allow the Sanctuary to have *any* visitors for an onsite event. Nor does a permit even exist that they could apply for to authorize the Sanctuary to have more volunteers *or* events.

115. There is no justification for why the Sanctuary can have such limited volunteers and no visitors for an event when home day cares can have 15 children at a time inside their home and larger entities open to the public are permitted within the zoning district.

116. As mentioned above, *supra* ¶¶ 90, 94–98, the City also allows other home businesses, referred to as “home occupations,” in RS9. UDO, ch. 5, § 5.3. When it comes to visitors, the City is more lenient with these businesses than it is with the Sanctuary.

117. Home occupations can have clients visit the home. The code does not cap the amount of visitors most of these businesses can have, nor does it ban them from having events. Instead, they just cannot “increase significantly traffic, noise, electrical interference, glare, dust, smoke, or odors.” UDO, ch. 5, § 5.3.4.D

118. While some home occupations do have caps on clients, even these caps are more lenient than those on the Sanctuary. For example, educational businesses (like tutors and piano teachers) can teach up to three pupils at a time, and there is no limit on how many of these educational sessions they can have each day. But the Sanctuary is not allowed to have *any* educational events on its Property, not even for a few homeschoolers or Girl Scouts. *Id.*

119. The City's restrictions are jeopardizing the Sanctuary's mission, as well as its ability to most effectively care for the animals housed there.

120. While Kimberly has considered moving the Sanctuary, she and her family cannot afford to do so after all the time and money they have invested in the Property.

121. Kimberly also does not want to move the Sanctuary because they love their location and the community around them.

**Plaintiffs Have No Available Administrative Remedies, Nor Would They Otherwise Be Required to Exhaust Administrative Remedies**

122. There are no administrative remedies available that would provide Plaintiffs adequate relief.

123. Kimberly and the Sanctuary would be happy to complete any necessary permitting process if it would allow them to fully or reasonably operate. But there is no such process.

124. Neither the City Code nor the UDO have any provisions allowing for an animal sanctuary. Nor do these codes have any “catchall” provisions that the sanctuary can apply to allow it to operate.

125. While the City stated that the Sanctuary can apply to be a home occupation, home occupations are not allowed to have “exterior evidence” of their operation or to otherwise operate outdoors. Thus, applying to be a home occupation would be futile for the Sanctuary.

126. Applying for a variance wouldn’t help either. The Winston-Salem/Forsyth County Zoning Board of Adjustment is not permitted to “grant a variance to permit a use not permitted in the applicable zoning district.” UDO, ch. 3, § 3.2.16. Indeed, variances are only allowed as exemptions for specific types of provisions under the UDO (*e.g.*, set backs, minimum lot sizes, parking requirements, etc.), and property uses is not one of them. *Id.* at § 3.2.16. The Sanctuary has no issues with set backs, lot size, or parking. Thus, Plaintiffs cannot apply for a variance to be permitted to continue operating the Sanctuary.

127. It would thus be futile for Plaintiffs to pursue any administrative remedy other than bringing this lawsuit.

128. Moreover, even if administrative remedies are available, Plaintiffs are not required to exhaust administrative remedies before bringing constitutional claims. *See City of Wilmington v. Hill*, 189 N.C. App. 173, 175 (2008) (“Where an aggrieved party challenges the constitutionality of a regulation or statute, administrative remedies are

deemed to be inadequate and exhaustion thereof is not required” (cleaned up)); *see also Swan Beach Corolla, L.L.C. v. County of Currituck*, 234 N.C. App. 617, 623–24 (2014) (no exhaustion required to seek review of an administrative enforcement officer’s determination on constitutional grounds). This is in part because local governments do not have authority to decide the constitutionality of their own regulations, statutes, or decisions. *See Carolinas Med. Ctr. v. Emps. & Carriers Listed in Exh. A*, 172 N.C. App. 549, 553 (2005) (“It is a well-settled rule that a statute’s constitutionality shall be determined by the judiciary” (cleaned up)); *see also Swan Beach Corolla, L.L.C.*, 234 N.C. App. at 623–24 (“Boards of adjustment do not have the authority to adjudicate constitutional claims.”).

129. Plaintiffs have been injured by the City’s violations of their constitutional rights and they properly brought this lawsuit.

### **Injuries to Plaintiffs**

130. Kimberly and her family purchased the Property because they felt called to give back to their community. They invested thousands of dollars and months of time to make the Sanctuary a place where they can gather and build the community and care for animals in need.

131. Plaintiffs want to continue to use the Property to save animals and serve the community. But the City’s event ban and volunteer restrictions severely impede their ability to fulfill that mission.

132. Before the City informed the Sanctuary of the restrictions, the Sanctuary regularly hosted multiple events and volunteer opportunities, some of which were recurring. The City's restrictions forced the Plaintiffs to cancel these events and opportunities.

### *Impact of the Event Ban*

133. A major focus of the Sanctuary's community engagement mission is to provide educational programming for children and teenagers. On a typical week, there would be multiple groups of six to 20 students who came to the Sanctuary to learn and engage with the animals through their programming. The event ban stopped all of this.

134. For example, the Sanctuary has had two Girl Scout Troops partner with the Sanctuary as part of one of their merit badges. Each troop would come over once or twice per week while working on their respective projects to learn about the animals and work on the Property. For example, one troop built and planted an enclosed garden around the rabbit hutch, so the rabbits would have an area to safely exercise. The Sanctuary was forced to stop all these visits from the Girl Scouts because of the event ban.

135. At the time the event ban was imposed, the Sanctuary was also in discussion with two other Girl Scout Troops that wanted to use the Sanctuary as part of a merit badge and would have undertaken projects to help improve the Sanctuary and benefit the animals. They had presented their projects for approval, but the Plaintiffs had

to turn them down for the sole reason that the City's event ban does not allow them to have the Girl Scouts to their Property.

136. At the time the event ban was imposed, the Duncckels were also preparing to launch a new semester of homeschool educational enrichment courses. Each semester, the Duncckels would host classes for six or eight weeks where groups of six to 10 home school students would come over twice a week to learn about the Sanctuary and animal care and gain hands-on practical experience at the Sanctuary. Plaintiffs already had students registered for the spring semester but were forced to cancel the course as a result of the event ban.

137. Plaintiffs also regularly hosted "Fairytale Friday" events on the first Friday of each month—an event directed at inviting younger children and their parents to the Sanctuary, introducing them to the animals and sharing stories about animals with them. These events would typically involve 20 attendees, and the Sanctuary was forced to indefinitely suspend this program as a result of the event ban as well.

138. The Sanctuary also planned to run its second annual "Teen Camp" this summer and now cannot move forward with the program. Last year, around 20 teenagers would come over for four hours a day, twice each week, during the summer. They worked with the animals and also developed special projects on the property, learning tangible skills related to both the animals and life at the Sanctuary. For example, last year, the camp students built a duck pond and created a goat sensory wall for the resident

goats with physical challenges. Plaintiffs cannot hold Teen Camp this year due to the event ban.

139. Plaintiffs also had planned to expand their camp offerings this year to offer several week-long sessions for small groups of elementary and middle school age students to come and spend their days at the Sanctuary. This expansion has also been made impossible by the ban. These students would have gained firsthand experience with the animals, learned about the work the Sanctuary does, fed the animals, gained insight into the day-to-day aspects of a nonprofit, and developed personal skills like responsibility.

140. As a result of the event ban, the Sanctuary has been forced to—and continues to have to—cancel and turn down new homeschool, Girl Scout, and school field trip groups who want to come to the Sanctuary. These small groups would typically involve between six and 20 individuals and are the exact type of groups that the Plaintiffs believe the Sanctuary is suited to serve—and the types of groups whose visits benefit the animals.

141. Plaintiffs see teaching children as a central part of the Sanctuary's mission, and they are particularly devastated by having to cancel this programming and deny these requests.

142. Without their on-site educational programming, the community cannot interact with the animals, gain hands-on experience with them, effectively contribute their time and skills to the Sanctuary, or fully understand the work that it is doing.

143. Along with its educational programming, the Sanctuary would also regularly hold events aimed at fundraising before the event ban.

144. At the time the City informed Plaintiffs of the event ban, they had an upcoming "Cookies and Cuddles" event planned for Valentine's Day that was being actively advertised. The event was an opportunity to come to the Property in a small group, have cookies, and visit Archie, a baby goat with fused back legs whom the Sanctuary rescued recently. Groups of up to 20 were allowed at each timeslot throughout the event. As a result of the ban, the whole event was canceled, and they lost an estimated \$2,000.00 in donations.

145. Plaintiffs also had already brainstormed numerous other events for the rest of the year to help educate the public and raise awareness and funds for the Sanctuary. They cannot move forward with any of these as a result of the event ban. These included monthly "Unschool Days" for homeschoolers, which they anticipated would bring in approximately \$500.00 a month; a meditation walk, which was anticipated to raise \$500.00; and on-site birthday parties, which they estimated to raise \$600.00 a month.

146. Last year, they also had several highly successful fundraising events, and the City is now making it impossible for them to repeat any of these events.



147. For Easter 2022, they held a “Hop the Bunny Trail” event focused around allowing small groups of visitors to see the rabbits and walk through the Sanctuary. This event raised approximately \$4,000.00 in donations.

148. Last fall, they had a “Not So Spooky Trail” Halloween event where small groups could sign up for time slots to come and visit the Sanctuary to celebrate Halloween over several weeks. That event raised \$8,000.00 in donations.

149. They also held a “Grinchmas” holiday event last December, their final seasonal event before being shut down to the public by the City. It raised \$3,500.00 for the Sanctuary.

150. The funds raised at these events went to the animals’ care, including their medical bills and feed. These funds are essential to ensuring that the animals at the Sanctuary receive the best possible care and have the highest quality of life.

151. The loss of the ability to hold these fundraising events is causing significant financial harm to the Sanctuary, and this harm will increase the longer the Sanctuary is closed to the public.

152. Along with the fundraising events, many of the Sanctuary’s educational events also provided financial support to the Sanctuary.

153. Last year, the Sanctuary charged a fee for each participant in the Teen Camp. Each teen also donated hours of their time to projects on the property that improved the quality of life of the animals. If the Duncckels had been permitted to expand

their camp programming as they planned to this summer, they anticipated approximately \$10,000.00 in revenue from the camps over the course of the summer. This revenue is impossible without the camps.

154. When the Sanctuary had "Fairytale Fridays," there was a \$5.00 recommended donation for each attendee. Many participants would go above and beyond, paying more than the suggested donation or bringing supplies that were of a far greater monetary value. This regular income has also been lost as a result of the event ban.

155. Additionally, when educational groups would come to the Sanctuary, they would often bring supplies to help support the animals. These donations of feed, medical supplies, and other materials used for the animals significantly decreased the overhead costs the Sanctuary must pay to care for the animals. The Girl Scouts would also pay for their own supplies for improvement projects at the Sanctuary and sometimes would sponsor animals at the Sanctuary.

156. The incidental effect of the loss of these events is also significant. Plaintiffs have seen a direct relationship between visitors to the Sanctuary and a willingness to financially support the Sanctuary. Because people cannot visit the animals and see the Sanctuary in action, they are now less likely to give.

157. Donors often give to a specific project or animal they connected with during a visit. For example, one visitor who came for a "Fairytale Friday" with her child and met

a duck being cared for by the Duncckels made a special donation to provide for the construction of a special hutch that would benefit the duck. These types of need-specific gifts make up a significant part of the donations the Sanctuary receives. And people cannot make these specific donations if they do not have the opportunity to see and know the animals and their needs.

158. Because of the City's restrictions, Kimberly and the Sanctuary are being forced to consider alternatives like holding off-site events. They have recently begun doing so. But many of the events that Kimberly and the Sanctuary pride themselves on require bringing the community to the Sanctuary and involving community members in the work there.

159. Kimberly and the Sanctuary want to share the joy and experience of on-site animal care with kids and adults alike. Off-site events cannot replace or recreate that.

160. These off-site events are also less convenient, require transportation of the animals, and greatly diminish the participant experience and the fundraising potential of these events.

161. Moreover, it is not in the interest of many animals to transport them to events, so they do not go. For example, the donkeys and the larger goats cannot be easily transported. Additionally, many of the animals have suffered trauma that makes them nervous about traveling. So in order to protect them, they cannot be transported.

162. As a result, the community does not get to meet the animals. The animals do not get to interact with the community. Both the public and the animals miss out on the benefits of interacting.

163. Each off-site event also requires Kimberly and the Sanctuary to expend additional resources to secure and pay for a location and pay transportation costs, even as they lose the benefit of using the space on the Property they have specifically designed to facilitate the types of events they have long-envisioned hosting.

164. Kimberly is required to spend time and energy that she wants to direct toward animal care and developing quality event programming to instead handle logistics and secure sponsorships for off-site events. This frustrates Kimberly and the Sanctuary and makes it harder for the Sanctuary to accomplish its goals and serve the community.

165. Because they cannot raise as much money without their events, the Sanctuary is now more limited in the number of animals it can care for, as well as the type of care that it can provide to the animals. They are limited in accepting new animals because they do not have the financial ability to take care of them without the fundraising and assistance derived from their events.

166. Many animals at the Sanctuary require prosthetics, wheelchairs, or other specialty care that is extremely expensive. Without the financial support that comes from donations of money and supplies from events and visitors to the Sanctuary, the Sanctuary

lacks the resources to make sure that they can all obtain the necessary tools and medical equipment for any new animal brought to them and to ensure they are able to replace equipment for existing animals when needed.

167. The loss of fundraising income also creates additional challenges in simply paying for the day-to-day maintenance of the Sanctuary. Fundraising and supply donations help cover the cost of animal feed, hay, medicines, prosthetics, toys, grooming supplies, and various other day-to-day necessities for the Sanctuary. Kimberly and the Sanctuary are now being forced to try to raise this money through alternative means to keep the Sanctuary running and ensure that they can continue to provide the highest standard of care to the animals. They worry they won't be able to.

#### *Impact of the Volunteer Restrictions*

168. The volunteer restrictions are also causing serious harm to the Sanctuary.

169. Volunteers have been essential to the vision and day-to-day function of the Sanctuary since its founding.

170. Before the volunteer restrictions, the Sanctuary offered volunteer slots in the morning and afternoon six days a week for small groups to come and work with the animals and help with various tasks at the Sanctuary. These groups would generally consist of three to 10 volunteers per shift. Depending on the day, these groups were sometimes families, sometimes groups of friends, and sometimes small homeschool groups.

171. Plaintiffs invested months of time and energy into developing their volunteer program and training the volunteers to provide significant help to them and the animals.

172. They even developed an animal "Rescue Teams" program that allowed volunteers to learn about the Sanctuary over time and progress in their volunteer responsibilities.

173. Plaintiffs relied on the Teams to help ensure that the Sanctuary was being kept in the best possible condition and that the animals were receiving the best possible care and attention.

174. Volunteers would handle animal feeding, facility care and clean up, and many other tasks to help the Sanctuary. Now, Kimberly and her husband are forced to handle most of this work themselves. This takes hours of additional time and physical effort each day.

175. The Animal Rescue Teams were also a source of fundraising, and it typically brought in an additional \$500.00 in financial support each month.

176. Because they are not allowed to have their usual number of volunteers at the Sanctuary under the volunteer restrictions, it is harder for Plaintiffs to care for the animals, and the Plaintiffs are more limited in the number of animals they can help because they do not have the necessary manpower.

177. Since starting the Sanctuary, Kimberly would often take on freelance work related to her old job to help support the Sanctuary financially. Because she does not have volunteers to assist with the Sanctuary, she cannot take on as much work. This further harms the Sanctuary financially.

178. Additionally, the vision of the Sanctuary was to engage and educate the public, and the Duncckels structured the volunteer program for that purpose. But this has also been stopped.

## CAUSES OF ACTION

### Count I: Law of the Land – N.C. Const. art I, § 19

179. Plaintiffs reassert and reallege Paragraphs 1-178 as if fully stated herein.

180. Article I, Section 19 of the North Carolina Constitution protects, among other things, the fundamental rights to conduct a lawful business/enterprise and to use private property free from arbitrary and irrational government regulations. The provision declares that no person shall be “in any manner deprived of his life, liberty, or property, but by the law of the land.” While the Sanctuary is a not-for-profit organization, it is still an enterprise protected by this provision.

181. A law violates the protections for lawful enterprises and private property under Article 1, Section 19 when it lacks a rational, real, and substantial relation to a valid governmental objective. *Treants Enters., Inc. v. Onslow County*, 83 N.C. App. 345, 352 (1986).

182. The City has violated Article I, Section 19 of the North Carolina Constitution in four ways: (1) the City's rigid restriction of the Sanctuary just because it is un contemplated, and thus an unlisted use in the UDO, violates Article I, Section 19; (2) the event ban on the Sanctuary property violates Article I, Section 19; (3) the volunteer restrictions on the Sanctuary violate Article I, Section 19; and (4) to the extent the home occupation regulations, including the restriction on exterior evidence of an occupation, apply to the Sanctuary, they violate Article I, Section 19 both on their face and as applied.

#### *Uses Not Contemplated*

183. The UDO allows property to be used only for approved uses, and an animal sanctuary is not an approved use in RS9. Nor is an animal sanctuary listed as an approved use in any zoning district within Winston-Salem.

184. The reason for this omission is not because there is anything inherently harmful about an animal sanctuary but instead because the UDO failed to contemplate animal sanctuaries.

185. Because the Sanctuary is not explicitly allowed, the City seems to have taken the position that it can restrict the Sanctuary however it wishes. The City has decided to prevent the Sanctuary from having any events (the "event ban") and restrict the Sanctuary from having volunteers (the "volunteer restrictions"). These restrictions are nowhere found in the UDO, the City Code, or in any local law.



186. The City has provided no means of pursuing a permit to fully or reasonably operate the Sanctuary without these restrictions by the City.

187. It is irrational and unreasonable for Defendants to restrict the Sanctuary just because the City never contemplated the use of an animal sanctuary when drafting its codes.

188. These restrictions thus violate Article I, Section 19 of the North Carolina Constitution.

#### *Event Ban*

189. The City's event ban prohibits the Sanctuary from having any events on Kimberly's Property.

190. But for the event ban, Plaintiffs would host events on behalf of the Sanctuary on Kimberly's private Property.

191. There is no constitutionally legitimate reason to prohibit the Sanctuary from hosting events, especially since the event ban applies regardless of how small the event is.

192. The Sanctuary wishes to be able to host regular events for groups of five to 10, 10 to 15, and 15 to 20 guests. These events are primarily educational. Yet the City will not even allow the Sanctuary to have events for just a handful of people.

193. The Sanctuary also would like to be permitted to host occasional larger events, primarily for fundraising in support of the animals' care.

194. The Sanctuary has a parking lot for over 10 cars to use for these events, and it has access to additional parking on a neighbor's land if more parking is needed. Its events will not create any parking issues.

195. The event ban is not reasonably, rationally, or substantially related to any constitutionally legitimate government purpose, nor can the City meet the heightened scrutiny which protects fundamental rights like the right to private property or the right to conduct a lawful business/enterprise.

196. The City's decision to apply the event ban to Plaintiffs violates Plaintiffs' right to use private property free from irrational and arbitrary regulations.

197. The City's decision to apply the event ban to Plaintiffs violates Plaintiffs' fundamental right to conduct a lawful enterprise free from irrational and arbitrary regulations.

198. As a result, the Court should find that the City's event ban on the Sanctuary violates Article I, Section 19 of the North Carolina Constitution.

#### *Volunteer Restrictions*

199. The volunteer restrictions limit Plaintiffs in having groups of volunteers come to the Property to learn about and care for the Sanctuary animals.

200. But for the volunteer restrictions, the Plaintiffs would use their private property to involve and educate the community about the animals at the Sanctuary

through their volunteer program. They would also be able to rely on their volunteers to ensure the Sanctuary animals get the highest possible standard of care.

201. Plaintiffs do not wish to have more than 5 to 10 volunteers at a time.

202. There is no constitutionally legitimate reason to prohibit Plaintiffs from hosting groups of volunteers on the Sanctuary's behalf on the Property.

203. The volunteer restrictions are not reasonably, rationally, or substantially related to any constitutionally legitimate government purpose, nor can the City meet the heightened scrutiny which protects fundamental rights like the right to private property and the right to pursue a lawful enterprise.

204. The City's decision to apply the volunteer restrictions to Plaintiffs violates Plaintiffs' right to use private property and to pursue a lawful enterprise free from irrational and arbitrary regulations.

205. As a result, the Court should find that the City's volunteer restrictions on the Sanctuary violate the property right and occupational protections of Article I, Section 19 of the North Carolina Constitution.

### *Home Occupation Restrictions*

206. Moreover, to the extent that the City attempts to apply its restrictions on home occupations to restrict the activities of the Sanctuary, UDO, ch. 5, § 5.3.4.D, these restrictions are unconstitutional under the property right and lawful occupation

protections of Article 1, Section 19 of the North Carolina Constitution on their face and as applied to the Plaintiffs.

207. The requirement of the UDO, ch. 5, § 5.3.4.D prohibiting exterior evidence of a home occupation is also unconstitutional as applied and on its face under Article 1, Section 19.

**Count II: Fruits of Their Own Labor – N.C. Const. art. I, § 1**

208. Plaintiffs reassert and reallege Paragraphs 1–178 as if fully stated herein.

209. Article I, Section 1 of the North Carolina Constitution protects, among other things, the fundamental rights to conduct a lawful business/enterprise and to use private property free from arbitrary and irrational government regulations. Article 1, Section 1 declares that the “inalienable rights” of each person include “the enjoyment of the fruits of their own labor.” This provision “guarantees] the right to pursue ordinary and simple occupations free from governmental regulation.” *N.C. Real Est. Licensing Bd. v. Aikens*, 31 N.C. App. 8, 13 (1976). Other cases also refer to the clause as protecting economic enterprises. While the Sanctuary is a not-for-profit organization, it is an enterprise protected by this provision.

210. A law violates the protections under Article 1, Section 1 when it lacks a rational, real, or substantial relationship to a legitimate government purpose. *Roller v. Allen*, 245 N.C. 516, 522 (1957).

211. Kimberly is running the Sanctuary on her private property to help animals and the community. It is a lawful nonprofit, and she is investing her time and energy there to help animals, build community, and educate community members about animals.

212. The City has violated Article I, Section 1 of the North Carolina Constitution in four ways: (1) the City's rigid restriction of the Sanctuary just because it is un contemplated, and thus an unlisted use in the UDO, violates Article I, Section 19; (2) the event ban on the Sanctuary property violates Article I, Section 1; (3) the volunteer restrictions on the Sanctuary violate Article I, Section 1; and (4) to the extent the home occupation regulations, including the restriction on exterior evidence of an occupation, apply to the Sanctuary, they violate Article I, Section 1 both on their face and as applied.

#### *Uses Not Contemplated*

213. The UDO allows property to be used only for approved uses, and an animal sanctuary is not an approved use in RS9. Nor is an animal sanctuary listed as an approved use in any zoning district within Winston-Salem.

214. The reason for this omission is not because there is anything inherently harmful about an animal sanctuary, but instead because the UDO failed to contemplate animal sanctuaries.

215. Because the Sanctuary is not explicitly allowed, the City seems to have taken the position that it can restrict the Sanctuary however it wishes. The City has

decided to prevent the Sanctuary from having any events (the “event ban”) and restrict the Sanctuary from having volunteers (the “volunteer restrictions”). These restrictions are nowhere found in the UDO, the City Code, or in any local law.

216. The City has provided no means of pursuing a permit to fully or reasonably operate the Sanctuary without these restrictions by the City.

217. It is irrational and unreasonable for Defendants to restrict the Sanctuary just because the City never contemplated the use of an animal sanctuary when drafting its codes.

218. These restrictions thus violate Article I, Section 1 of the North Carolina Constitution.

### *Event Ban*

219. The event ban severely burdens Plaintiffs’ ability to pursue their chosen enterprise of running the Sanctuary on their private property.

220. But for the event ban, Plaintiffs would be fully able to enjoy the fruit of their own labor by conducting their chosen lawful enterprise on their private property.

221. There is no constitutionally legitimate reason to prohibit the Sanctuary from hosting events, especially since the event ban applies regardless of how small the event is.

222. The Sanctuary wishes to be able to host regular events for groups of five to 10, 10 to 15, and 15 to 20 guests. These events are primarily educational. Yet the City will not even allow the Sanctuary to have events for just a handful of people.

223. The Sanctuary also would like to be permitted to host occasional larger events, primarily for fundraising in support of the animals' care.

224. The Sanctuary has a parking lot for over 10 cars to use for these events, and it has access to additional parking on a neighbor's land if more parking is needed. Its events will not create any parking issues.

225. The event ban is not reasonably or rationally related to any legitimate purpose, nor does it meet the heightened scrutiny which protects fundamental rights like the right to conduct a lawful business/enterprise and to use private property free from arbitrary and irrational government regulations.

226. The event ban violates Plaintiffs' rights to the enjoyment of the fruits of their own labors.

227. As a result, the Court should find that the event ban on the Sanctuary violates Article I, Section 1 of the North Carolina Constitution.

### *Volunteer Restrictions*

228. The volunteer restrictions severely burden Plaintiffs' ability to pursue their chosen enterprise of running the Sanctuary on their private property.

229. But for the volunteer restrictions, Plaintiffs would be fully able to enjoy the fruit of their own labor by conducting their chosen lawful enterprise on their private property.

230. But for the volunteer restrictions, the Plaintiffs would use their private property to involve and educate the community about the animals at the Sanctuary through their volunteer program. They would also be able to rely on their volunteers to ensure the Sanctuary animals get the highest possible standard of care.

231. Plaintiffs do not wish to have more than 5 to 10 volunteers at a time.

232. There is no constitutionally legitimate reason to prohibit Plaintiffs from hosting The volunteer restrictions are not reasonably, rationally, or substantially related to any constitutionally legitimate government purpose, nor can the City meet the heightened scrutiny which protects fundamental rights like the right to private property and the right to pursue a lawful enterprise.

233. The City's decision to apply the volunteer restrictions to Plaintiffs violates Plaintiffs' right to use private property and to pursue a lawful enterprise free from irrational and arbitrary regulations.

234. The City's decision to apply the volunteer restrictions to Plaintiffs violates Plaintiffs' right to use enjoy the fruit of their own labor.

235. As a result, the Court should find that the City's volunteer restrictions on the Sanctuary violate Article I, Section 1 of the North Carolina Constitution.



### *Home Occupation Regulations*

236. Moreover, to the extent that the City attempts to apply its restrictions on home occupations to restrict the activities of the Sanctuary, UDO, ch. 5, § 5.3.4.D, these restrictions are unconstitutional under Article 1, Section 1 of the North Carolina Constitution on their face and as applied to the Plaintiffs.

237. The requirement of the home occupation regulations, UDO, ch. 5, § 5.3.4.D, prohibiting exterior evidence of a home occupation is also unconstitutional on its face and as applied to Plaintiffs under Article 1, Section 1.

### **Count III: Equal Protection – N.C. Const. art. I, § 19**

238. Plaintiffs reassert and reallege Paragraphs 1–178 as if fully stated herein.

239. Article I, Section 19 of the North Carolina Constitution protects Plaintiffs' right not to be subject to unequal treatment on an arbitrary or irrational basis under the City's economic and property regulations. The provision declares, "No person shall be denied the equal protection of the laws[.]"

240. A law violates the protections for equal treatment when it fails to follow the directive that "all persons similarly situated should be treated alike." *M.E. v. T.J.*, 275 N.C. App. 528, 557 (2020). A regulation that creates a classification is invalid if it bears no rational relationship to any legitimate government interest. *Id.*

241. Kimberly and the Sanctuary are similarly situated to property owners in RS9 who have many visitors, customers, and employees come to their properties on a

regular basis. These similarly situated property owners include in-home day cares, churches, golf courses, schools, recreation centers, and certain home occupations. Like the Sanctuary, these other businesses and organizations all serve the public in the RS9 zone.

242. Yet unlike the Sanctuary, the City allows these other property owners to have many visitors, customers, and employees come to the property on a regular basis. They can also have events at their property. At the same time, the City prohibits the Sanctuary from having *any* events on-site, including even very small groups for educational events (the “event ban”). The City also prohibits the Sanctuary from having more than a few volunteers at a time (the “volunteer restrictions”).

243. The City has violated Article I, Section 19 of the North Carolina Constitution in four ways: (1) the City’s rigid restriction of the Sanctuary just because it is un contemplated, and thus an unlisted use in the UDO, violates Article I, Section 19; (2) the event ban on the Sanctuary property violates Article I, Section 19; (3) the volunteer restrictions on the Sanctuary violate Article I, Section 19; and (4) to the extent the home occupation regulations, including the restriction on exterior evidence of an occupation, apply to the Sanctuary, they violate Article I, Section 19 both on their face and as applied.

### *Uses Not Contemplated*

244. The UDO allows property to be used only for approved uses, and an animal sanctuary is not an approved use in RS9. Nor is an animal sanctuary listed as an approved use in any zoning district within Winston-Salem.

245. The reason for this omission is not because there is anything inherently harmful about an animal sanctuary, but instead because the UDO failed to contemplate animal sanctuaries.

246. Because the Sanctuary is not explicitly allowed, the City seems to have taken the position that it can restrict the Sanctuary however it wishes. The City has decided to prevent the Sanctuary from having any events (the “event ban”) and restrict the Sanctuary from having volunteers (the “volunteer restrictions”). These restrictions are nowhere found in the UDO, the City Code, or in any local law.

247. The City has provided no means of pursuing a permit to fully or reasonably operate the Sanctuary without these restrictions by the City.

248. The City treats the Sanctuary differently from similarly situated properties it contemplated at the time the UDO was created and that are open to customers or the public within RS9, including in-home day cares, schools, golf courses, recreation centers, and certain home occupations.

249. The City’s approach to the Sanctuary as an un contemplated use has a disparate effect on the Sanctuary, as compared to similarly situated business enterprises

and property owners in zoning district RS9. It has the effect of treating the Sanctuary worse and being more restrictive of its activities than of those similarly situated.

250. The City's approach to unanticipated uses treats the Sanctuary differently from other similarly situated property owners without a rational, reasonable, substantial, or otherwise sufficient basis.

251. But for the City's approach to unanticipated uses, Plaintiffs would host events and have volunteers on the Property on behalf of the Sanctuary.

252. The City's decision to treat the Sanctuary differently because it is a previously unanticipated use under the UDO violates Plaintiffs' rights to equal protection of the laws.

253. It is irrational and unreasonable for Defendants to treat the Sanctuary disparately from those uses contemplated by the City at the time it enacted the City Code just because the City never contemplated the use of an animal sanctuary when drafting its codes.

254. As a result, the Court should find the City's approach to the Sanctuary as a previously unanticipated use violates Article I, Section 19 of the North Carolina Constitution.

#### *Event Ban*

255. The City's event ban prohibits the Sanctuary from having any events on Kimberly's Property.

256. But for the event ban, Plaintiffs would host events on behalf of the Sanctuary on Kimberly's private Property.

257. The Sanctuary wishes to be able to host regular events for groups of five to 10, 10 to 15, and 15 to 20 guests. These events are primarily educational. Yet the City will not even allow the Sanctuary to have events for just a handful of people.

258. The Sanctuary also would like to be permitted to host occasional larger events, primarily for fundraising in support of the animals' care.

259. The Sanctuary has a parking lot for over 10 cars to use for their events, and it has access to additional parking on a neighbor's land if more parking is needed. Its events will not create any parking issues.

260. Yet the event ban treats the Sanctuary differently from similarly situated properties that are open to the customers or the public within RS9, including in-home day cares, schools, golf courses, recreation centers, and certain home occupations.

261. The City's event ban has a disparate effect on the Sanctuary, as compared to similarly situated business enterprises and property owners in zoning district RS9. It has the effect of treating the Sanctuary worse and being more restrictive of its activities than of those similarly situated.

262. The event ban thus treats the Sanctuary differently from other similarly situated property owners without a rational, reasonable, substantial, or otherwise sufficient basis.

263. The City's decision to apply the event ban to Plaintiffs violates Plaintiffs' rights to equal protection of the laws.

264. As a result, the Court should find the event ban violates Article I, Section 19 of the North Carolina Constitution.

### *Volunteer Restrictions*

265. The volunteer restrictions limit Plaintiffs in having groups of volunteers come to the Property to learn about and care for the Sanctuary animals.

266. The volunteer restrictions treat the Sanctuary differently from other properties that are open to the public within RS9, including in-home day cares, churches, golf courses, schools, recreation centers, and certain home occupations.

267. The City's volunteer restrictions have a disparate effect on the Sanctuary, as compared to similarly situated business enterprises and property owners in zoning district RS9. They have the effect of treating the Sanctuary worse and being more restrictive of its activities than of those similarly situated.

268. But for the volunteer restrictions, the Plaintiffs would use their private property to involve and educate the community about the animals at the Sanctuary through their volunteer program. They would also be able to rely on their volunteers to ensure the Sanctuary animals get the highest possible standard of care.

269. But for the volunteer restrictions, Plaintiffs would have groups of volunteers over multiple times a week to better care for the animals at the Sanctuary and teach the volunteers about them.

270. The volunteer restrictions create an arbitrary and irrational distinction between Plaintiffs and other businesses in RS9 that can have regular visitors or attendees, including in-home day cares, schools, golf courses, recreation centers, and certain home occupations.

271. The City's decision to apply the volunteer restrictions to Plaintiffs violates Plaintiffs' rights to equal protection of the laws.

272. As a result, the Court should find the volunteer restrictions violate Article I, Section 19 of the North Carolina Constitution.

### *Home Occupation Regulations*

273. Moreover, to the extent that the City attempts to apply its restrictions on home occupations to restrict the activities of the Sanctuary. UDO, ch. 5, § 5.3.4.D, these restrictions are unconstitutional under the equal protection under the law provisions under Article 1, Section 19 of the North Carolina Constitution as applied to the Plaintiffs.

274. The requirement of the UDO, ch. 5, § 5.3.4.D prohibiting exterior evidence of a home occupation is also unconstitutional on its face under Article 1, Section 19.

275. It is also irrational and unreasonable for Defendants to treat the Sanctuary disparately from those uses contemplated by the City at the time it enacted the City Code

just because the City never contemplated the use of an animal sanctuary when drafting its codes.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request as follows:

A. A declaratory judgment that the City's event ban on Plaintiffs violates Article I, Sections 1 (Fruits of Their Own Labor) and 19 (Law of the Land and Equal Protection) of the North Carolina Constitution.

B. A declaratory judgment that the City's volunteer restrictions on Plaintiffs violates Article I, Sections 1 (Fruits of Their Own Labor) and 19 (Law of the Land and Equal Protection) of the North Carolina Constitution.

C. A declaratory judgment that to the extent that the City applies its restrictions on home occupations to the Sanctuary, these also violate Article I, Sections 1 (Fruits of Their Own Labor) and 19 (Law of the Land and Equal Protection) of the North Carolina Constitution on their face and as applied to the Plaintiffs.

D. A declaratory judgment that to the extent that the City applies its restrictions on home occupations to the Sanctuary UDO, ch. 5, § 5.3.4.D's provision limiting exterior evidence of a home occupation is unconstitutional on its face and as applied to the Plaintiffs.



E. A preliminary injunction enjoining Defendants and their officers, employees, and agents from enforcing the event ban and volunteer restrictions against the Plaintiffs.

F. A permanent injunction enjoining Defendants and their officers, employees, and agents from enforcing the event ban and volunteer restrictions against the Plaintiffs.

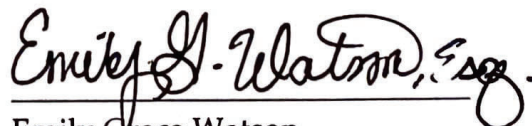
G. To the extent the City attempts to use its home occupation code provisions to restrict the Sanctuary, a preliminary and permanent injunction enjoining Defendants and their officers, employees, and agents from enforcing those restrictions on their face and as applied to the Plaintiffs.

H. Nominal damages of one dollar (\$1) to each Plaintiff for each constitutional violation caused to Plaintiffs;

I. An award of the costs reasonably incurred by Plaintiffs in pursuing this action; and

J. All further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 25 day of April, 2023.



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\*Motion for admission *pro hac vice* pending