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**MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

<p>CURTIS McINTYRE, As Trustee of the McIntyre Family Trust</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>CITY OF WHITEFISH, MONTANA</p> <p style="text-align: center;">Defendant.</p>	<p>Cause No. DV-_____</p> <p style="text-align: center;"><b>COMPLAINT FOR DECLARATORY AND SUPPLEMENTAL RELIEF</b></p> <p style="text-align: center;">(Sections 27-8-101, et seq. MCA)</p>
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Plaintiff alleges as follows:

**Allegations common to all Counts:**

1. Plaintiff is a resident of Flathead County, Montana and trustee of the McIntyre Family Trust.
2. Plaintiff owns, as trustee, real property and improvements at 1372 West Lakeshore Drive in Whitefish.

3. Plaintiff has offered his real property in Whitefish for rent to tenants, including for rental periods shorter than thirty (30) days.
4. Plaintiff received and processed reservations for rentals for calendar year 2022.
5. On December 15, 2022 the Plaintiff submitted a “Short-Term Rental Permit and Business License Application” on a form required by the City for property owners who propose to offer their properties for rentals of 30 or fewer days, along with the required application and business license fees.
6. The City refused to grant the requested permit on the basis that the Plaintiff’s property was located within a WR-1 zoning district which does not allow short-term rentals.

**Count I – Declaratory Relief**

7. Plaintiff re-alleges Paragraphs 1 through 7 as though set forth in full in this Paragraph.

8. Defendant is a local government located in Flathead County, Montana with self-government powers within the meaning of Title 7, Chapter 1 of the Montana Code Annotated (MCA).

9. Section 7-1-111(13) MCA provides that “A local government unit with self-government powers is prohibited from exercising the following:

(13) any power that applies to or affects landlords, as defined in 70-24-103 when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

10. Plaintiff is a “landlord” as defined in Section 70-24-103(9)(a) MCA.

11. Whitefish City Code Section 11-2F defines and governs the permitted uses of property located within WR-1 Districts in the incorporated limits of the City of Whitefish.

12. Whitefish City Code Section 11-2F-2 enumerates specific categories of permitted uses of property within WR-1 zones, including “Residential”.

13. Whitefish City Code Section 11-9-2 defines “Residential Purposes” as follows:

The intent to use an/or the use of a room or typically unfurnished dwelling unit for the living, sleeping and housekeeping activities of persons on a long term basis of intended tenure, typically on a six (6) to twelve (12) month or longer lease, but also on a month to month basis with the intent to continue renting long term to the same individual or family for housing. Short term rentals are not considered residential purposes.

14. Whitefish City Code Section 11-9-2 defines “Residential, Short-Term Rental” in part, as

The rental of an entire furnished privately owned house, townhouse unit, condominium unit, apartment or other residence, or any space within a dwelling unit rented independently, for stays of less than thirty (30) days to transient guests or tourists. Advertising for available stays of thirty (30) days or less on sites that predominantly cater to travelers looking for short term rentals presumes the property is being used as a short term rental. Short term rentals as defined herein do not include the following: bed and breakfasts, hostels, and motel or hotel establishments unless individual rooms or units with a kitchen or kitchenette are condominiumized, and under different ownership than the hotel or motel. Short term rentals shall not provide food or beverages for sale on premises or with the rental of the dwelling. Renting a portion of the home for a short term rental does not qualify as a home occupation.

15. Whitefish City Code Section 11-9-2 defines “Residential Purposes” as follows:

The intent to use an/or the use of a room or typically unfurnished dwelling unit for the living, sleeping and housekeeping activities of persons on a long term basis of intended tenure, typically on a six (6) to twelve (12) month or longer lease, but also on a month to month basis with the intent to continue renting long term to the same individual or family for housing. Short term rentals are not considered residential purposes.

16. The City of Whitefish applies the definitions of “Residential, Short-Term Rental” and “Residential Purposes” to prohibit any rental of residential property within its WR-1 zoning districts for rental terms of thirty or fewer days.

17. Whitefish City Code Section 11-3-35 requires property owners of rented units to obtain a short-term rental permit if the property is made available for rental terms of less than 30 days.

18. Whitefish City Code Section 11-3-35(A)(1) allows short-term rental activities only in “applicable short-term rental zones” and only if the property owner meets various “Performance Standards,” including holding a valid short-term rental registration from the City, providing proof of application for a State of Montana public accommodation license for a “tourist home,” providing a name and phone number of a local contact person responsible for handling “any problems” that may arise with the property, if not a full-time resident, posting an emergency contact notice visible from outside the front door with the owner’s name and phone number (or local contact) and the property’s City of Whitefish short-term rental registration number, and displaying the City’s short-term rental registration number on any print, electronic, or other medium marketing or booking the property for short-term rental purposes.

19. Whitefish City Code Section 11-3-35(B) provides for prosecution and punishment of violations of the “Performance Standards” as misdemeanor offenses as set forth in Section 1-4-1 of the Whitefish City Code.

20. Whitefish City Code Section 11-3-35(B) provides that operating a short-term rental property outside of an “allowed district” or without meeting all of the performance standards listed in Section 11-3-35(A)(1) “shall also be deemed a municipal infraction subject to a three hundred dollars (\$300) fine for the first violation and a five hundred dollars (\$500) fine for each subsequent violation.” It provides further that “each day that a violation remains shall constitute a separate violation.”

21. Whitefish City Code Section 1-4-1 Code provides that a person convicted of a violation of the Code

shall be punished by a fine of not more than five hundred dollars (\$500.00), payable to the city, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. Each day that a violation continues shall be deemed to be a separate offense.

22. Plaintiff's real property at 1372 West Lakeshore Drive is located within a WR-1 zoning district.

23. Whitefish City Code Sections 11F-2 and 11-3-35 are exercises of self-government power that apply to or affect landlords as defined in Section 70-24-103.

24. Whitefish City Code Sections 11-3-35 is an exercise of self-government power that is intended to license landlords.

25. The requirement of Whitefish City Code Section 11-3-35 that residential short-term rental activities as defined by Whitefish City Code Section 11-9-2 can be conducted only by landlords whose property lies within designated short-term rental zones is an exercise of self-government powers that is intended to regulate the activities of landlords with respect to their tenants.

26. Chapters 24 and 25 of Title 70 of the Montana Code Annotated do not regulate the length of rentals by landlords to their tenants or otherwise distinguish between rental terms of fewer than thirty days and rental terms of more than thirty days.

27. Whitefish City Code Section 11-3-35 is the exercise of a self-government power that is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, Chapters 24 and 25 of the Montana Code Annotated, and is not a provision that applies to all other businesses and residences within the Defendant's jurisdiction.

28. Because Whitefish City Code Section 11-3-35 is intended to license the Plaintiff in his capacity as a landlord, is intended to regulate the Plaintiff's activities with regard to tenants beyond the regulations contained in Title 70, Chapters 24 and 25, does not apply to all other businesses within the City's jurisdiction, and does not apply to all other residences within the City's jurisdiction, it is an exercise of self-government powers prohibited by Section 7-1-111(13) MCA.

29. Because Whitefish City Code Section 11-3-35 is an exercise of self-government powers prohibited by Montana law, and the Plaintiff's rental activities are affected by Defendant's enforcement of that Section, the Plaintiff is entitled to a declaration under Section 27-8-202 MCA that Section 11-3-35 is invalid and unenforceable.

30. Whitefish City Code Section 11-2F is an exercise of self-government powers regulating landlords with respect to their tenants prohibited by Section 7-1-111(13) MCA to the extent that it prohibits rentals of property for stays of less than thirty days.

31. Because Whitefish City Code Section 11-2F is an exercise of self-government powers prohibited by Montana law to the extent that it prohibits rentals of property for stays of less than thirty days, and the Plaintiff's rental activities are regulated by Defendant's enforcement of Section 11-2F, the Plaintiff is entitled to a declaration under Section 27-8-202 MCA that Section 11-2F is invalid and unenforceable to the extent it prohibits such stays.

### **Count II – Supplemental Relief – Monetary Damages.**

32. Plaintiff re-alleges Paragraphs 1 through 31 as though set forth in full in this Paragraph.

33. Whitefish City Code Section 11-3-35 provides in part that the operation of a short-term rental outside of an allowed district is a misdemeanor offense for which a convicted offender may be punished as set forth in Section 1-4-1 of the Whitefish City Code.

34. Section 1-4-1 of the Whitefish City Code provides that a person convicted of a violation of the Code

shall be punished by a fine of not more than five hundred dollars (\$500.00), payable to the city, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. Each day that a violation continues shall be deemed to be a separate offense.

35. Whitefish City Code Section 11-3-35 provides in part that the operation of a short-term rental outside of an allowed district

shall also be deemed a municipal infraction and subject to a \$300 fine for the first violation and a \$500 fine for each subsequent violation. Each day that a violation remains shall constitute a separate violation. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both.

36. Upon notice from Defendant that his rental activity was illegal, Plaintiff cancelled all his existing short-term rental contracts for calendar year 2022.

37. Defendant's notice to Plaintiff was given for the purpose of enforcing Whitefish City Code Sections 11-2F and 11-3-35 against the Plaintiff.

38. Because Section 7-1-111(13) MCA prohibits the exercise of self-government power in the manner intended by Whitefish City Code Sections 11-3-35 and 11-2F to the extent it prohibits stays of fewer than thirty days, the Defendant's enforcement of those Sections was illegal and resulted in monetary damage to the Plaintiff in the form of cancelled rental contracts.

39. Plaintiff is entitled to supplemental relief compensating him for monetary damages under Section 27-8-313 MCA.

**Count III – Supplemental Relief – Attorneys’ Fees and Costs.**

40. Plaintiff re-alleges Paragraphs 1 through 39 as though set forth in full in this Paragraph.

41. Plaintiff has directed the Defendant’s attention to Section 7-1-111(13) MCA, but the Defendant has continued its enforcement of Whitefish City Code Sections 11-2F and 11-3-35.

42. To obtain relief from the Defendant’s enforcement of Whitefish City Code Sections 11-2F and 11-3-35, the Plaintiff has been forced to bring this action for declaratory relief.

43. Plaintiff is entitled to supplemental relief compensating him for his costs of litigation pursuant to Section 27-8-311 MCA because an award of costs is both equitable and just.

44. Plaintiff is entitled to supplemental relief compensating him for his attorneys’ fees in a reasonable amount pursuant to Section 27-8-313 MCA because an award of attorneys’ fees is supported by equitable considerations, is necessary or proper, and because this action is necessary to change the status quo.

Wherefore the Plaintiff requests relief as follows:

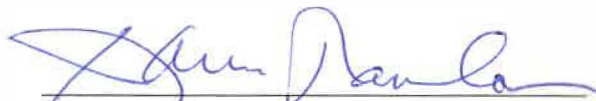
1. The Court’s declaration pursuant to Section 27-8-202 MCA that Whitefish City Code Section 11-3-35 is invalid and may not be enforced by the Defendant
2. The Court’s declaration pursuant to Section 27-8-202 MCA that Whitefish City Code Section 11-2F is invalid and may not be enforced by the Defendant to the extent that definitions which it incorporates under Section 11-9-2 exclude “short term rentals” from the definition of Residential Purposes and prohibit the rental of the Plaintiff’s property for stays of fewer than thirty days;



3. Supplemental relief consisting of an order to the Defendant that it show cause under Section 27-8-313 MCA why the Court should not order the Defendant to pay damages to the Plaintiff in an amount sufficient to compensate the Plaintiff for the lost revenue resulting from the Plaintiff's cancellation of his existing short-term rental contracts;
4. Supplemental relief consisting of an award of the Plaintiff's costs under Section 27-8-311 MCA;
5. Supplemental relief consisting of an award of the Plaintiff's legal fees under Section 27-8-313 MCA; and,
6. Such other and further relief as the Court deems appropriate and just, including such declarations of invalidity and unenforceability of other provisions of the Whitefish City Code which violate Section 7-1-111(13) MCA as are required to afford complete relief to the Plaintiff.

Dated March 22, 2023.

RAMLOW & RUDBACH, PLLP



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Attorneys for the Plaintiff