FILED
COUNTY CLERK
2026 SEP 23 AM 10: 16
WHATCOM COUNTY
WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

KATHRYN AND PATRICK SUTTON, Petitioners, vs. CITY OF BELLINGHAM, a municipal corporation. Respondent.	NO. 25-2-00625-37 COURT'S ORDER AND FINAL JUDGMENT GRANTING PETITIONERS RELIEF

THIS MATTER CAME ON FOR HEARING ON August 27, 2026, on Petitioners'/Plaintiffs' Motion and Brief for Partial Disposition or in the alternative Partial Summary Judgment, and City's Cross-Motion for Partial Summary Judgment. Petitioners/Plaintiffs sued Respondent City of Bellingham contending that the City's short-term rental regulations, on an as-applied basis, violate their rights under the United States and State of Washington Constitutions.

The instant case, No. 25-2-00625-37, is Stage 2 of a LUPA appeal. Stage 2 involves as-applied constitutional challenges relating to the real property of Petitioners/Plaintiffs situated at 1017 Liberty Street, Bellingham WA. This case No.

25-2-00625-37 was previously consolidated with Cause No. 25-2-00927-37, which is an original lawsuit asserting various constitutional claims for declaratory relief as concerns the real property of Petitioners/Plaintiffs situated at 1017 Liberty Street, 1529/1531 Humboldt Street, and 3108 Birchwood Avenue, Bellingham WA.

Having considered the motions, the responses and replies, the summary judgment evidence, the case file, the record on appeal, and the arguments of counsel, the Court concludes that Petitioners'/Plaintiffs' should be granted relief, and that Respondent's Motion should be denied.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that the Court GRANTS Petitioners'/Plaintiffs' Motion as follows:

a. The Court determines and declares that Bellingham Municipal Code (BMC) 20.10.037's prohibition on the leasing specifically of *detached* accessory dwelling units (ADUs) for short terms, while allowing such leasing in *attached* ADUs and other dwellings of similar characteristics, deprives the Suttons of substantive due process as concerns their property at 1017 Liberty Street in that it does not pass the two-part rational basis test which limits, at the minimum, the exercise of any government power.

b. It appears that the City has a legitimate interest in regulating short term rentals. For instance, the City has a legitimate interest in protecting the local rental and home sales markets from inflated prices due to pressures occasioned by the higher price per square foot often available through short term rentals. However, the distinction between attached

and detached ADUs is not rationally related to that legitimate interest. All of the City's interests that may be impacted by the short-term rental of ADUs would appear to be present regardless of whether an ADU is attached or detached. Also, the possible permutations of what constitutes the attachment of an ADU to a primary dwelling could easily devolve into various scenarios *reductio ad absurdum*, which could and likely would, demonstrate no relationship at all to the City's legitimate interests.

c. Because Petitioners have not demonstrated that there is a definable protected class existing between the owners of attached versus detached ADUs or that they would be, or have been, treated differently than any other property owner with detached ADUs within the City of Bellingham, there is not a sufficient basis for this Court to conclude that Petitioners have been denied equal protection of the laws.

d. The Court finds that Petitioners'/Plaintiffs satisfy BMC 20.10.037's owner-occupancy requirement as to 1017 Liberty Street, both on the record presented and as conceded and judicially-admitted by Respondent.

e. Further, that BMC 20.10.037's owner-occupancy requirement for the short-term renting of homes is preempted by RCW 36.70A.681(1)(b) as concerns any requirement of owner-occupancy of ADUs, though the Respondent municipality can in other respects restrict the use of

accessory dwellings for short-term rentals as allowed by RCW 36.70A.680(5)(a).

f. As concerns the dormant Commerce Clause claim of Petitioners'/Plaintiffs' asserted in both of the consolidated cases, the Court determines that to be a facial claim inappropriate for resolution in this LUPA appeal and over which the Court lacks jurisdiction. *See Young v. Pierce Cnty.*, 120 Wash. App. 175, 181-182, 84 P.3d 927, 930 (2004) ("In examining a vagueness challenge [under LUPA] to a land use regulation, we judge the ordinance as applied, not for facial vagueness."); *Swoboda v. Town of La Conner*, 97 Wash. App. 613, 618–19, 987 P.2d 103, 106 (1999) ("When a challenged ordinance involves land use regulation, the ordinance is judged as applied, not evaluated for facial vagueness.") (citing multiple authorities). That claim is therefore DISMISSED WITHOUT PREJUDICE.

g. The Court DENIES the City's Cross-Motion for Partial Summary Judgment in its entirety.

h. This Court previously DENIED the Petitioners'/Plaintiffs' land use petition to the extent that it alleges violations of the standards in RCW 36.70C.130(1)(a)-(e). (Stage 1 – LUPA Appeal). *See* Court's Order Denying Petitioners' Claims of Statutory Errors under LUPA, August 15, 2025. That order is incorporated herein by reference.

i. This Court previously DENIED the Petitioners'/Plaintiffs' land use petition to the extent that it alleges violations of the standards in RCW

36.70C.130(1)(a)-(e). (Stage 1 – LUPA Appeal). *See* Court's Order Denying Petitioners' Claims of Statutory Errors under LUPA, August 15, 2025. That order is incorporated herein by reference.

j. Notwithstanding the title of Petitioners'/Plaintiffs' Motion as seeking only partial relief, the foregoing determinations dispose of all parties and claims in the LUPA appeal, case No. 25-2-00625-37.

k. Accordingly, this Order and Judgment is final and appealable, and all relief not specifically granted is DENIED.

DATED this 23 day of September, 2026.

ROBERT E. OLSON, JUDGE
Whatcom County Superior Court