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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 06/03/2026
By Perla Conder, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

Monterey County Vacation Rental Alliance,

Plaintiff(s)/Petitioner(s)

vs.

County of Monterey, et al.,

Defendant(s)/Respondent(s)

Case No.: 24CV004922

TENTATIVE RULING ON MERITS FOR WRIT OF MANDATE

Judge: Thomas W. Wills
Date: May 22, 2026
Time: 8:30 AM
Dept.: 15

The above-entitled matter came on for hearing on the merits of the Petition for Writ of Mandate on May 22, 2026 in Department 15.

Shaun Murphy, Esq., appeared for Petitioner

Michael Colantuono, Esq., and Michael Whilden, Esq., Deputy County Counsel appeared for Respondents.

This is a petition for writ of mandate and complaint for declaratory and injunctive relief ("Petition") challenging the legality of Monterey County and the Board of Supervisors of the County of Monterey's (collectively "County") adoption of Ordinances 5422 and 5424 ("Ordinances"), effective October 14, 2024, governing Short Term Rentals ("STRs"). No damages are sought under the current Petition. The Petition was filed November 20, 2024.

On or about September 5, 2025 the parties stipulated to, among other things:

(1) Allow Petitioner leave to amend to file a first amended petition/ complaint "to add claims causes of action challenging the County's amendment to Title 20 regulating short-term rentals in the Coastal Zone, and to join the California Coastal Commission as a defendant/ respondent …. after the Board of Supervisor's vote on September 23, 2025." (Stipulation at 2:23-28.)

(2) "Petitioner waives any right to seek a change of venue from Monterey County arising out of the additional parties and/ or causes of action being added to the petition/ complaint." (Stipulation at 2:31 through 3:1-2.)

On October 13, 2025, after review of the Stipulation, the Court entered an order ("October Order") allowing Petitioner leave to amend to file the first amended petition/ complaint to:

> "1. …add claims/ causes of action challenging the County's amendment to Title 20 regulating short-term rentals in the Coastal Zone, and to join the California Coastal Commission as a defendant/ respondent.
>
> 2. …file the first amended petition/ complaint after the Board of Supervisor's vote on September 23, 2025…..
>
> 3. Petitioner shall not seek a change of venue from Monterey County arising out of the additional parties and/ or causes of action being added to the petition/ complaint."

(October Order at 2:1-11.)

Petitioner filed its First Amended Complaint ("FAC") on November 14, 2025; however, instead of merely adding claims challenging the County's amendment to Title 20 regulating short term rentals in the Coastal Zone and join the California Coastal Commission ("Commission") as a Defendant, Petitioner amended the Complaint to add claims for 42 U.S.C. section 1983 damages. Respondents filed a Motion to Strike the FAC on the grounds that permission was not granted for leave to amend the complaint to add, among other things, a claim for damages. On February 20, 2026, the court granted the Motion to Strike and the Petition filed on November 20, 2024 was deemed the operative pleading.

The Court's ruling was after the Petitioner's filed their Opening Brief on the writ portion of this case, but before the Respondents filed their Merits Brief. Regardless, the Petitioner filed a reply on April 10, 2026.

The Ordinances At Issue.

Petitioner Monterey County Vacation Rental Alliance ("MVRA" or "Petitioner") challenges two ordinances that regulate STRs in the County of Monterey:

(1) **Ordinance No. 5422** (adopted on August 27, 2024) a zoning ordinance regulating residential short term vacation rentals and details the circumstances under which STRs are allowed, requiring use permits, and sets forth operational requirements; and

(2) **Ordinance No. 5424** (adopted September 10, 2024) concerning licensing requirements and adopting a ban on corporate ownership, advertising, fees and enforcement related to STRs.

The Ordinances, 5442 (AR 262-277) and 5424 (AR 301-319) and the Findings of Fact for the Monterey County Vacation Rental Project (AR 250-261) add regulations to the Monterey County Code ("MCC") regarding STRs, which are referred to in the Ordinances as Vacation Rentals defined as 30 days or less in duration. (AR 270, MCC § 21.64.290 (B) (13)).

The Ordinances separate short-term rentals into three categories:

(1) "**Homestays**" which are hosted rentals where the owner lives on the property during the rental (AR 305, MCC § 7.120.020(J)) and the rental property is the Owner's Primary Residence, MCC § 21.64.290 (B)(4)[1]

(2) "**Limited Vacation Rentals**" which are non-hosted rentals offered no more than three times per year. (AR 305, MCC § 7.120.020(N))

(3) "**Commercial Vacation Rentals**" are non-hosted rentals offered more than three times per year. (AR 305, MCC § 7.120.020(E))

A "Non-hosted" rental is one where "an Operator does not occupy the Vacation Rental while it is being rented." (AR 270, MCC § 21.64.290 (B)(6)). An "Operator," in turn, is "a person who operates the Vacation Rental and, if not the Owner, a person who has the legal permission of the Owner to operate the Vacation Property." (AR 270, MCC § 21.64.290(B)(7).)

An "Owner" is defined as "the person or persons who hold fee title to the real property upon which a Vacation Rental is operated." (AR 270, MCC § 21.62.290(B)(8)), but is restricted by MCC section 7.120.040 (F) which states that: "[t]he Owner of the Vacation Rental must be an Individual, except if the Vacation Rental is held in a trust, in which case the trustee may apply for a License and operate the Vacation Rental on behalf of the trust beneficiaries."

All three categories are subject to the same general regulations set forth in MCC sections 7.120.040 ("Regulations for Vacation Rentals" AR 307-310), 7.120.080 ("Regulations for Housing Platforms" AR 312), 7.120.090 ("License Application Process" AR 312-314), 7.120.100 ("Criteria for Grant of License" AR 314), 7.120.110 ("License Renewal Process and Grounds for Denial" AR 315), 7.120.120 ("Fees" AR 315), 7.120.130 ("Grounds for Revocation" AR 315-316), 7.120.140 ("Process for Hearing by Hearing Officer" AR 316-317), 7.120.150 ("Service Requirements" AR 317), 7.120.160 ("Enforcement" AR 317-318), and contain a severability savings clause, discussed further below.

However, there are separate provisions addressing the regulation of Homestays (AR 210-311, MCC § 7.120.050, Limited Vacation Rentals (AR 311, MCC § 7.120.060) and Commercial Vacation Rentals (AR 311-312, MCC § 7.120.070.).

Neither Homestays nor Limited Vacation Rentals may have more than one rental contract at any given time, nor have more than one rental per 7-day period[2] and neither requires a use permit. The only significant difference between restrictions on a Homestay and a Limited Vacation Rental is that a Limited Vacation Rental may only be rented three times in a 12-month

[1] The "Owner's Primary Residence" is further defined as "lived in by the Owner for at least 183 days, which is documented by at least two of the following: motor vehicle registration, voter registration, homeowner's exemption on their property taxes, or a utility bill." (AR 270, MCC § 21.64.290 (B)(9).)

[2] MCC sections 7.120.050(B), and 7.120.060(B), respectively.

period. If it is rented more frequently, it must be a Commercial Vacation Rental. There is no limitation on the number of times per 12-month period a Homestay rental may be rented, but on the other hand, a Limited Use Vacation Rental need not be occupied by the owner during the rental period, either.

A Commercial Vacation Rental has no 7-day period limitation, no limitation on the number of times it may be rented within a 12-month period, and does require a use permit. (See AR 311, MCC § 7.120.070(B), AR 272, MCC §21.64.290(F).) Commercial Vacation Rentals are subject to additional parking, Onsite Waste Treatment Facilities, a need to demonstrate emergency response times, and other requirements. (AR 272-275, MCC § 21.64.290(F).) They are not allowed in certain areas of the County where Homestay and Limited STRs are permitted. (AR 272-273, MCC § 21.64.290(F)(3).)

Challenges to the Ordinances.

Petitioner challenges the Ordinances on three grounds, that the ordinances: (i) violate the Commerce Clause of the U.S. Constitution; (ii) violate the Equal Protection Clauses of the U.S. and California Constitutions; and (iii) are preempted by California state statutes.

Commerce Clause Challenge.

Petitioner's contention – Commerce Clause.

Petitioner contends that the Ordinances violate the "Dormant" Commerce Clause of the U.S. Constitution by facially discriminating against interstate commerce. Specifically, the Ordinances facially prohibit out-of-state property Owners from offering Homestays in residential zones, while allowing Monterey residents to offer Homestays in all residential zones. Alternatively, Petitioners argue that the Ordinances also impose substantial burdens on interstate commerce that exceed any purported local benefits. (OB at p. 14.)

Petitioner argues the Ordinances facially discriminate against interstate commerce by reserving "Homestays" to owners whose properties qualify as their "Primary Residence," thereby excluding out-of-state owners from participating in the Homestay market. (OB at pp. 16-23.)

Likewise, in its Reply, Petitioner maintains the Ordinances are facially discriminatory because they provide differential treatment to similarly situated in-state and out-of-state economic actors. (Reply at pp. 2-4.) Petitioner argues the ordinances require owners to reside at the property at least 183 days annually and document that residency through items such as voter registration, vehicle registration, homeowner's exemption, or utility bills. (OB at pp. 17-18.)

The parties cite to several cases which have addressed the dormant Commerce Clause issue in the context of STRs with different outcomes. Only one is a California State Court decision.[3]

[3] There is at least one additional unpublished California appellate court decision recognizing, in dicta, that a prohibition of short-term rentals violates the commerce clause: *City of Diamond Bar v. Zhong* (March 12, 2025) 2025 WL 7819861. In *City of Diamond Bar*, the municipal code prohibited short term rentals fewer than 30 days in

Petitioner relies on two of the cases in support of its position, arguing that both cases held owner-primary-residency restrictions on STRs facially discriminate against interstate commerce: *South Lake Tahoe Property Owners Group v. City of South Lake Tahoe* (2023) 92 Cal.App.5th 735 ("*South Lake Tahoe*"), and *Hignell-Stark v. City of New Orleans* (5th Cir. 2022) 46 F.4th 317 ("*Hignell-Stark*"). (Reply at pp. 1-6.). Petitioner argues the County unlawfully requires out-of-state owners "to become a resident in order to compete on equal terms." (*South Lake Tahoe, supra*, 92 Cal.App.5th at p. 761; OB at pp. 18-20.) Petitioner further cites *Granholm v. Heald* (2005) 544 U.S. 460, 472-476 and *Pacific Merchant Shipping Assn. v. Voss* (1995) 12 Cal.4th 503, 517 to argue discrimination exists whenever local laws benefit in-state economic interests while burdening out-of-state competitors. (Reply at pp. 2-3.) Petitioner further asserts discriminatory laws are subject to a "virtually per se rule of invalidity" under the dormant Commerce Clause. (*Granholm, supra,* 544 U.S. at p. 476; *Oregon Waste Systems, Inc. v. Dept. of Environmental Quality* (1994) 511 U.S. 93, 101; OB at pp. 7-8, 16.)

Petitioner attempts to distinguish a third case, *Rosenblatt v. City of Santa Monica* (9th Cir. 2019) 940 F.3d 439 ("*Rosenblatt*"), which also addressed whether STR regulations violated the dormant Commerce Clause, where the court found no violation of the commerce clause. Petitioner argues that Santa Monica's ordinance allowed nonresident owners to continue participating in the STR market because the required resident occupant did not need to be the property owner. (OB at p. 19.) By contrast, Petitioner argues, the County's Ordinances expressly require the owner personally meet the residency requirement, thereby excluding nonresident owners entirely from the Homestay market. (OB at pp. 18-20.) Petitioner alternatively maintains that even if not deemed facially discriminatory, the ordinances fail the benefit v. burden balancing test of *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142. ("*Pike*") (OB at pp. 23-24.) Petitioner contends the burdens imposed on interstate commerce by the ordinances substantially outweigh any local benefits because the County's own evidence allegedly demonstrates short-term rentals represent only a small percentage of housing stock and nuisance complaints. (OB at pp. 10-11, 23-24.)

County's position – Commerce Clause.

The County argues that the Ordinances are the result of an extensive, multi-year effort to address increasing problems associated with STRs in Monterey County. (RB at pp. 8-10.) The County explains that it first adopted regulations concerning transient residential occupancy in 1997, but the emergence of online platforms such as Airbnb and VRBO dramatically increased the number of STRs operating throughout the unincorporated areas of the County. According to the County, by 2023 only 29 permits had ever been issued, while approximately 825 STRs were advertised online. (RB at p. 9, citing AR 01270, 12600, 12613, 14438.)

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any residential neighborhood. (*Id.* at *1.) The code also prohibited advertising such short-term rentals on the internet. (*Ibid.*) The homeowners argued on appeal that the ordinance violated the dormant commerce clause. The Court declined to address the issue finding that the appellants did not properly preserve the issue for appeal but noted in a footnote that "a nearly identical challenge to an ordinance with an across-the-board prohibition of short-term rentals of residential homes has been rejected. (*Rosenblatt v. City of Santa Monica* (9th Cir. 2019) 940 F.3d 439, 422, 447; cf. *South Lake Tahoe Property Owners Group v. City of South Lake Tahoe* (2023) 92 Cal.App.5th 735, 761 [finding violation when ordinance permits California residents, but not non-residents, to use their residences for short-term rentals].)" (*Id.* at Footnote 2.)

The County asserts it spent approximately eleven years studying and developing the ordinances through extensive public outreach, advisory committee participation, Planning Commission proceedings, Board of Supervisors hearings, and environmental review. (RB at pp. 8-10, citing AR 04059, 06671, 06724, 04445, 06724.) The County emphasizes that the Petitioner actively participated throughout this process by submitting comment letters, memoranda, and proposed revisions and by organizing public participation efforts. (RB at p. 9, citing AR 06671, 01890, 02187, 02190, 02924, 03576, 03673, 03682, 04148, 04330, 04600, 05464, 06678, 06682, 07105, 02818, 02284, 01781, 01784, 01788, 02019, 05596, 05629, 05669-06860, 11999, and 12427.)

According to the County, the Ordinances were motivated by three primary concerns: preservation of housing supply and affordability, protection of neighborhood character, and promotion of public health and safety. (RB at p. 9, citing AR 01638, 01265.) The County contends STRs contribute to the loss of long-term housing stock, degradation of residential neighborhoods, excessive noise, traffic congestion, illegal parking, trespassing, and related public safety concerns. (RB at p. 9.) The County also stresses the practical difficulty of enforcing nuisance violations in the County's large rural unincorporated areas, particularly where events often conclude before enforcement personnel can respond. (RB at pp. 9-10, citing AR 06584, 02357, 05824, 06854 .)

The County further relies on findings from the EIR concluding vacation rentals may have "moderate to significant impacts on housing supply and prices" and may contribute to conversion of housing stock from residential occupancy into transient visitor-serving use. (RB at p.10, citing AR 12587, 12625, 12626, 12631, 13257, 13271, and 12631.) The County explains the ordinances' three categories of STRs --"Homestays," "Limited Vacation Rentals," and "Commercial Vacation Rentals" -- and that hosted rentals were treated more permissively because owner occupancy was believed to reduce nuisance impacts and housing-conversion concerns. (RB at pp. 10-11, 14-16.)

There are also extensive findings of fact contained in the EIR, found in the Administrative Record at AR 250-261, reciting the history, studies and problems raised by STRs in Monterey County.

The County argues the ordinances do not violate the dormant Commerce Clause because they neither discriminate against interstate commerce nor impose burdens on interstate commerce that outweigh legitimate local benefits. (RB at pp. 11-19.) The County begins by describing the two-tier dormant Commerce Clause framework, under which discriminatory laws are subject to strict scrutiny while nondiscriminatory laws are reviewed under the balancing test articulated in *Pike, supra,* 397 U.S. 137 . (RB at pp. 11-12.)

The County focuses on *Rosenblatt* to argue that the Ordinances regulate land use and residential compatibility rather than discriminating based on residency. (RB at pp. 12-16.) The County contends the Ordinances apply "evenhandedly" because both residents and nonresidents remain eligible to participate in portions of the STR market, including limited and commercial vacation rentals. (RB at pp. 13-15.)

The County further argues Petitioner improperly defines the relevant market too narrowly by isolating "Homestays" rather than considering the broader STR market as a whole. (RB at pp. 13-14.) In support, the County cites *General Motors Corp. v. Tracy* (1997) 519 U.S. 278, 298-299 and *International Franchise Assn., Inc. v. City of Seattle* (9th Cir. 2015) 803 F.3d 389, 403 for the principle that dormant Commerce Clause analysis compares "substantially similar" market participants. (RB at pp. 13-15.)

The County seeks to distinguish *South Lake Tahoe* and *Hignell-Stark* cases on the ground that the Ordinances here do not entirely exclude out-of-state owners from the STR market. (RB at pp. 12-16.) According to the County, the Ordinances instead reflect a permissible distinction between hosted and non-hosted rentals grounded in operational differences and neighborhood impacts.

The County additionally argues the Ordinances satisfy *Pike* balancing test because they further substantial governmental interests involving preservation of residential character, protection of housing supply, reduction of nuisance activity, and promotion of public safety. (RB at pp. 17-19.) The County relies on *National Pork Producers Council v. Ross* (2023) 598 U.S. 356, 377-379 and *Pike, supra*, 397 U.S. at p. 142 to argue the ordinances regulate local land use and impose at most incidental burdens on interstate commerce. (RB at pp. 11, 17-18.)

It is clear to the Court that under *Pike*, these are legitimate interests which would preponderate in favor of County over any burdens caused out-of county owners. As stated in *Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d 1579, 1591:

"It stands to reason that the "residential character" of a neighborhood is threatened when a significant number of homes—at least 12% in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days. Whether or not transient rentals have the other "unmitigatable, adverse impacts" cited by the Council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community."

However, for reasons set forth below, the Court concludes that under existing case law the ordinances are facially discriminatory as written and thus not subject to the less-stringent *Pike* balancing test.

The County has also cited to *Hause v. City of Fayetteville, Arkansas* (2025) 805 F.Supp.3d 963 ("*Hause*") in support of its argument that nonresident owners are not excluded from the STR market where alternative categories of STR participation remain available. The County contends that Monterey's ordinances are analogous because nonresidents may still operate Limited and Commercial Vacation Rentals. (RB at p. 16.) In *Hause*, the district court rejected a dormant Commerce challenge to STR regulations that distinguished between owner-occupied and non-owner occupied rentals. (*Id.* at pp. 969-973, relying on *General Motors Corp.,*

supra, 519 U.S. at 298-300.) The court concluded that resident homeowners and absentee investors were not similarly situated market participants and that differing treatment of those categories did not constitute discrimination against interstate commerce.

The court in *Hause* also found that the proper comparison was not resident owner versus nonresident owners but rather Type 1 STRs (primary residence/ hosted rentals), and Type 2 STRs (non-primary residence rentals). The court emphasized that Type 1 rentals were required to remain primary residences for at least nine months each year and therefore were not operating in the same market as Type 2 rentals. (*Id.* at pp. 971-972.) The court concluded that "Type 1 rentals must remain primary full-time residences, [and] they are not similarly situated to Type 2 rentals for purposes of the dormant Commerce Clause." (*Id.* at 972, relying on *General Motors, supra*, 519 U.S. at 298 (stating "any notion of discrimination assumes a comparison of substantially similar entities.") The court therefore held that no discrimination existed, *Pike* applied, and the ordinance survived. (*Id.* at p. 696-972.)

In contrast, the Fifth Circuit court, in *Hignell-Stark, supra*, 46 F.4th 317, held that resident owners and nonresident owners seeking to operate STRs are substantially similar entities because "[o]ut-of-staters want to offer the same services to the same customers in the same locations as the City's residents." (*Id.* at 326.) The court viewed the relevant market as providing short-term lodging, to the same customers, in the same neighborhoods. The ordinance allowed only owners whose STR property was their primary residence to obtain licenses in residential neighborhoods, therefore, the Fifth Circuit concluded that the ordinance "completely prohibited out-of-state residents who owned property in the city from obtaining short-term rental licenses" in those areas. (*Id.* at 326.) Thus, the court found the law was facially discriminatory, strict scrutiny applied, *Pike* balancing never came into play, and the ordinance failed because reasonable nondiscriminatory alternatives existed. (*Id.* at 325-329.)

It is noted that the *Hause* and *Hignell-Stark* cases, however, are not irreconcilable in the sense that they apply different legal tests; both rely on the same dormant Commerce Clause framework and *Tracy's* "substantially similar entities" principle. They disagree, however, on how to define the relevant market and the proper comparisons that should be made. That disagreement led *Hignell-Stark* to find facial discrimination and apply strict scrutiny, while *Hause* found no discrimination and applies *Pike* balancing.

The County relies on *Hause* to argue that Homestays and Commercial Vacation Rentals, likewise, constitute distinct land uses with different impacts on housing, neighborhood character, and enforcement, justifying differential regulation notwithstanding incidental effects on interstate participants. (RB at pp. 16-17.) In contrast, as noted above, the Petitioner cites to *Hignell-Stark* to argue that the relevant comparison is between resident and nonresident owners seeking to provide the same STR service to the same customers in the same lodging market. (OB at pp. 16-20, Reply at pp. 2-6.)

The Commerce Clause – Discussion.

The Commerce Clause of the United States Constitution gives Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]" (U.S. Const. art. I, § 8, cl. 3.) "'Although the Commerce Clause is by its text an affirmative grant of power to Congress to regulate interstate and foreign commerce, the Clause has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce.'" (*Association des Eleveurs de Canards et d'Oies du Quebec v. Harris* (9th Cir. 2013) 729 F.3d 937, 947, quoting *National Association of Optometrists & Opticians v. Harris* (9th Cir. 2012) 682 F.3d 1144, 1147.) This self-executing limitation or "negative" aspect, also referred to as the Dormant Commerce Clause, "denies the States the power to unjustifiably to discriminate against or burden the interstate flow of articles of commerce." (*Oregon Waste Systems, Inc. v. Dept. of Environmental Quality of State of Oregon* (1994) 511 U.S. 93, 98) "The primary purpose of the dormant Commerce Clause is to prohibit 'statutes that discriminate against interstate commerce' by providing benefits to 'in-state economic interests' while 'burdening out-of-state competitors.'" (*Ass'n des Eleveurs de Canards et d'Oies du Quebec, supra* 729 F.3d at 947 (quoting *Nat'l Ass'n of Optometrists & Opticians, supra,* 682 F.3d at 1148.))

The dormant, or negative, Commerce Clause prohibits local laws that discriminate against interstate commerce by favoring in-state economic interests over out-of-state interests. (*National Pork Producers Council v. Ross* (2023) 598 U.S. 356, 369; *Pacific Merchant Shipping Assn. v. Voss* (1995) 12 Cal.4th 503, 517.) A law is discriminatory where it mandates differential treatment of similarly situated in-state and out-of-state economic actors. (*Voss, supra,* 12 Cal.4th at p. 517.) Not every residency linked regulation, however, violates the dormant Commerce Clause, and the central question is whether the ordinance effectively forecloses non-resident owners from participating in the relevant market on equal terms.

Courts, when reviewing a challenge to a local regulation under the Dormant Commerce Clause, follow a "two-tiered approach:"

> "[1] When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. [2] When, however, a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits."

(*Rosenblatt, supra,* 940 F.3d at 444 (alterations in original) (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.* (1986) 476 U.S. 573, 579.)

The first-tier level of review applies where a law discriminates against interstate commerce either facially, in purpose, or in practical effect. Discriminatory laws are subject to a "virtually per se rule of invalidity" and survive only if the government demonstrates the law

advances a legitimate local purpose and cannot adequately be served through reasonable nondiscriminatory alternatives. (*Oregon Waste Systems, Inc. v. Dept. of Environmental Quality* (1994) 511 U.S. 93, 101.)

The second-tier level of review applies where a law regulates evenhandedly and only incidentally affects interstate commerce. In that circumstance, courts apply the *Pike* balancing, under which the law is upheld unless the burden imposed on interstate commerce is "clearly excessive in relation to the putative local benefits." (*Pike*, *supra*, 397 U.S. at 142.)

There are a limited number of federal and state cases that address whether STR regulations violate the Dormant Commerce clause. The parties have cited to five[4] cases in particular:

(a) South Lake Tahoe Property Owners Group v. City of South Lake Tahoe (2023) 92 Cal.App.5th 735 ("*South Lake Tahoe*"), a case out of the Third District Court of Appeal, where out of state property owners challenged an ordinance that prohibited short term or vacation rentals in the residential zones and barred the city from issuing any new permits for vacation home rentals except for those in permanent residents' dwellings. The court concluded that the regulation violated the Dormant Commerce Clause. Monterey County's ordinance does not completely prohibit out-of-county property owners from short-term rental of their properties, though they are limited in the extent that they can do so.

(b) Hignell-Stark v. City of New Orleans (5th Cir. 2022) 46 F.4th 317 ("*Hignell-Stark*"), a Fifth Circuit case challenging a licensing program for STR in New Orleans that required the property be the "owner's primary residence." The court concluded that the regulation violated the Dormant Commerce Clause.

Unlike the ordinances in *South Lake Tahoe* and *Hignell-Stark*, Monterey County's ordinances do not completely prohibit out-of-county property owners from short-term rental of their properties, but they are limited in the extent to which they can do so.

(c) Rosenblatt v. City of Santa Monica (9th Cir. 2019) 940 F.3d 439, 450 ("*Rosenblatt*") challenging a city regulation prohibiting property rentals for thirty days or less with an exception for homeshares "if 'at least one of the dwelling unit's primary residents lives on-site, in the dwelling unit, throughout the visitors' stay.'" The court concluded that although there was a residency requirement, it did not prohibit out of state property owners from home share in their out of state homes nor does it prohibit them from allowing home sharing in their Santa

[4] A sixth case, the U.S. District Federal Court case of *Homeaway Inc. v. City and County of San Francisco* 2015 WL 367121 (2015 N.D. California), cited by County, is not of assistance in resolving the Commerce Clause issue. Though an argument was made that the challenged ordinance's STR eligibility requirement of residency in San Francisco violated the Commerce Clause, the Court found that the P (an advertising platform for STRs) lacked standing to challenge the ordinance. However, the case does demonstrate the issue of 'hotelization' of residences and resultant impact on available long-term housing for a locality's residents is not uncommon.

Monica properties. While non-resident property owners cannot personally serve as the primary resident whose presence is required during the home share, "they are not similarly situated to the Santa Monica residents who can." (*Id.* at p. 451.)

Unlike the ordinance in *Rosenblatt,* Monterey County's ordinance as written does not allow anyone than the owner (which must be a natural person or a trust) to qualify as a Homestay STR.

(d) Hause v. City of Fayetteville (2025) 805 F. Supp.3d 963 ("*Hause*"), which expressly disagreed with *Hignell-Stark* and upheld against a commerce clause challenge to an STR ordinance requiring a conditional use permit for such rentals in a residential zoning district unless the owner or owner's long-term tenant used the property as a principal dwelling for at least nine months of the year.

Similar to the ordinance in *Rosenblatt,* the ordinance in *Hause* allowed a long-term tenancy (9 months of the year or more) to qualify as a primary residence for purposes of the less burdensome STR licensure/permitting requirements.

(e) MKDC, LLC v. City of Kansas City, 2023 WL 6406403 (W.D. Mo. Oct. 2, 2023), upholding against a Commerce Clause challenge an ordinance which allowed only residents to operate STRs in residential zones. As in *Hause*, an owner of long-term tenant could qualify, so long as living in the dwelling for at least 270 days per year. The Court did find the fact that a long-term renter could also qualify to operate an STR an important factor.

Thus, *MKDC* also involved an STR which allowed a long-term tenant to operate the property as an STR.

Discussion.

What level of review applies to the Monterey County Ordinances? Are they facially discriminatory?

The issue of primary residency requirements for STRs is an issue which appears to be relatively recent, and courts have probably not heard the last of it. To date, there are roughly four published decisions which have addressed Commerce Clause challenges to short-term rental regulations.[5] The only published California state court decision dealing with such a regulation is *South Lake Tahoe, supra*. However, unlike the ordinance in *South Lake Tahoe* and *Hignell-Stark*,

[5] The published cases include: *Rosenblatt, supra*; *Hignell-Stark, supra*; *South Lake Tahoe, supra*; and *Hause, supra.*,

Further there are at least two additional unpublished federal district court decisions: *Panabaker v. City of Hood River* (D. Or. July 18, 2022, No. 3:21-cv-01327-IM) 2022 WL 2809133; and *MDKC, LLC , supra,* 2022 WL 4486075 (W.D. Mo. Sept. 27, 2022, No. 4:21-cv-00060-DGK).

the Monterey County Ordinances do not completely prohibit STR ownership or rental by out of county (and hence, out of state) economic interests. The Monterey County ordinances do create a distinction based upon County resident-occupied STRs, but that classification is not directed at out-of-state economic interests. It also excludes Monterey County property owners who reside in 57 other counties in California.

The precise issue presented by the Monterey County ordinances does not appear to have been addressed by these decisions. The decision in *Hause* did rule that since the ordinance there (requiring a use permit for an STR) applied not only to out-of-state owners but also owners in-state who lived in the same county, the primary residence and non-primary residence owners "are not similarly situated … for purposes of the Commerce Clause. … Instead, both in-state and -out-of-state owners who wish to operate [without a use permit] must jump through the same hoop: acquiring a full-time resident." (*Hause, supra,* 803 F.Supp.3d at p.972.)

Here, the Monterey County Ordinances are a little different from those upheld in *Rosenblatt, Hause* and *MKDC, LLC*. A long-term tenant will not suffice to meet the 'primary residence' requirement for a Monterey County 'Homestay' STR – the property must be the owner's[6] primary residence.

If one looks to the actual language of the United States Supreme Court and California Supreme Court, a law is facially discriminatory when it gives an advantage to in-state economic interests over out-of-state economic interests. And under the holdings of those cases, it does not matter whether a significant number of in-state economic interests are also affected by the challenged regulation, so long as out-of-state interests are included within that classification.

But the only cases of the U.S. Supreme Court to which this Court has been directed by the parties did not involve regulation of real property use at a local level. *Dean Milk* involved a requirement for pasteurizing milk within 5 miles of a City; *Carbone* involved a local ordinance requiring all solid waste be processed at a local transfer station. Either of these items could be transported to or from other areas outside the locality. But as a practical matter, can real property be regulated anywhere other than in the state where it is located? Does that matter when assessing whether a regulation is discriminatory on its face, in purpose, or in its effect - for purposes of determining the standard of review?

Pacific Merchant Shipping Assn. v. Voss (1995) 12 Cal.4th 503, 517-518, stated:

> "In this context ' "discrimination" simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.' (*Oregon Waste, supra,* 511 U.S. 93, __ [128 L.Ed.2d 13, 21, 114 S.Ct. 1345, 1350]. Such discrimination make take any of three forms: first, the state statute may facially discriminate against interstate or foreign commerce; second, it may be facially neutral but have a discriminatory purpose; third, it may be facially neutral but have a discriminatory effect. (*Chemical Waste Management, Inc. v. Hunt* (1992)

[6] And the owner must be an individual or a trust. That is discussed further below.

504 U.S. 334, 344, fn. 6 [119 L.Ed.2d 121, 133, 112 S.Ct. 2009] (*Chemical Waste*) [statute may be discriminatory either in purpose or effect]; *Hughes v. Oklahoma, supra*, 441 U.S. 322, 336 [60 L.Ed.2d 250, 261] [state statute may discriminate 'either on its face or in practical effect"]; *SDDS, Inc. v. State of S.D.* (8th Cir. 1995) 47 F.3d 263, 267 [listing the three types pf discrimination and citing cases illustrating each].)."

"In determining whether a state statute is *facially* discriminatory, the following matters are irrelevant: the justification that the state offers for the discrimination, the legitimacy of the state interests that the statute is designed to protect, the degree and scope of the discrimination, and the volume of commerce affected. (*Oregon Waste, supra*, 511 U.S. 93, ___ [128 L.Ed.2d 13, 22, 114 S.Ct. 1345, 1350] ["the purpose of, or justification for, a law has no bearing on whether it is facially discriminatory"]; *Kraft General Foods, Inc. v. Iowa Dept. of Revenue and Finance* (1992) 505 U.S. 71, 81 [120 L.Ed.2d 59, 69, 112 S.Ct. 2365] (*Kraft General Foods*) ["a State may not advance its legitimate goals by means that facially discriminate against foreign commerce"]; *Chemical Waste, supra*, 504 U.S. 334, 341-342 [119 L.Ed.2d 121, 131-132] [listing high court decisions invalidating state statutes attempting to further '" presumably legitimate goal" ' through illegitimate discriminatory means]; *Wyoming v. Oklahoma, supra*, 502 U.S. 437, 455 [117 L.Ed.2d 1, 23] ["The volume of commerce affected measures only the *extent* of the discrimination; it is of no relevance to the determination whether a State has discriminated …."]; *SDDS, Inc. v. State of S.D., supra*, 47 F.3d 263, 271, fn.12 [degree and scope of discrimination irrelevant.]"

Under the Monterey County Ordinances, Homestay STRs have no limit on the number of times per 12-month period they can be rented and do not require a use permit, but they must be the owner's primary residence and must be owner-occupied during the rental. Limited STRs do not require the owner to occupy the premises during the rental and need not be the primary residence of the owner, but they can only be rented up to three times per year in any 12 month period; like the Homestay rentals, they do not require a use permit. Commercial STRs have no limit on the number of times per year they may be rented, do not require owner occupancy during the rentals, and are not prohibited to have more than one rental during a seven day period; but they do in return require a use permit, must meet certain requirements which on their face appear to be related to general health, safety and welfare, and are not allowed in certain areas of the County. Only a permanent resident owner can qualify for Homestay STR treatment – which distinguishes it from the three-times-per-year STR limit imposed on Limited Vacation Rental STRs.

Consequently, it does appear to the Court that even though the Monterey County Ordinances do not outright prohibit STRs to non-residents of the County like the ordinances in *South Lake Tahoe* and *Hignell-Stark*, under the principles set forth in above-referenced published decisions to date, there is a facially discriminatory difference between permanent resident

owners and non-resident owners. And to that extent they are 'substantially similar' entities. (See, *Hause*, 805 F. Supp.3d 969-970, citing *Gen. Motors Corp. v. Tracy* 519 U.S. 278, 298, 117 S.Ct. 811, 136 L.Ed.2d 761 (1997).)

The Monterey County Ordinances can only survive if they legitimately advance a legitimate local purpose that cannot be adequately served by reasonable non-discriminatory alternatives." (*Hause*, 805 F.Supp.3d at p. 970, citing *Dep't. of Revenue v. Davis,* 553 U.S. 328, 338, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008).) No persuasive reason has been proffered by County why it could not, by including a long-term tenant of the non-resident's property, or out-of-county owner who inhabits the dwelling while it is also rented out as a STR, have achieved the same goals as those which would be achieved by an owner-primary-resident.

In view of existing higher Court authority, the Court feels it is compelled to find that as enacted, the Ordinances run afoul of the dormant Commerce Clause. But that does not mean they must fail in entirety. The offending portions can and will be severed, as discussed further below.

Equal Protection Challenges.

Petitioner's contentions – Equal Protection

Petitioner maintains the Ordinances violate the Equal Protection Clauses of the US and California Constitutions. This argument is directed at MCC section 7.120.040 (W), which provides that the Owner of a Vacation Rental must be an "Individual"[7] or a Trust. Petitioner maintains that the County allows only natural persons to obtain short-term rental licenses, forbidding property owners from operating short-term rentals through business entities like LLCs, which can be beneficial for insurance, tax, estate-planning, liability, privacy and other legitimate reasons. Petitioner argues that the discrimination between natural persons and business entities is not rationally related to any government interest and, therefore, violates equal protection. (*Id.* at p. 15.)

Petitioner contends the distinction bears no rational relationship to neighborhood impacts because the operational effects of STRs depend on property use rather than ownership structure. In doing so, Petitioner relies heavily on the *Hignell-Stark* case, which held a materially similar entity restriction was "so attenuated" from livability concerns "as to render the distinction arbitrary." (*Hignell-Stark, supra,* 46 F.4th 317, 356; OB at pp. 8-9.)

County's Contentions - Equal Protection

As to the equal protection clause arguments, the County asserts the Ordinances' natural-person ownership requirement survives rational basis review because it furthers legitimate

[7] "Individual" is defined in MCC 7.120.040 (L) as "a natural person." Somewhat incongruously, "Owner" is defined at MCC section 7.120.020 R as "the person or persons who hold fee title to the property upon which the Vacation Rental is located," and "Person" is defined MCC section 7.120.020 (U) as "any individual, corporation, partnership, firm, business or similar entity, public or private agency, municipality, city, state or federal agency."

governmental interests involving accountability, neighborhood preservation, and prevention of speculative commercialization of residential neighborhoods. (RB at pp. 19-24.)

The County first contends business entities are not entirely excluded from participation in the STR market because entities may still operate through arrangements involving individual owners or operators. (RB at pp. 19-20.) The County further emphasizes that rational basis review governs because no suspect classification or fundamental right is implicated. (RB at pp. 20-21, citing *City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440, *FCC v. Beach Communications, Inc.* (1993) 508 U.S. 307, 313-315, and *Boardman v. Inslee* (9th Cir. 2020) 978 F.3d 1092, 1117-1118.))

The County further maintains natural persons and business entities are not "similarly situated" because entity ownership allegedly facilitates portfolio ownership, diminishes accountability, and contributes to commercialization of residential areas. (RB at pp. 21-23.) The County also relies on traditional police-power authorities such as *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 131-133, *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1597-1598, and *Hobbs v. City of Pacific Grove* (2022) 85 Cal.App.5th 311, 324-325 to emphasize local authority to regulate residential uses and neighborhood preservation. (RB at pp. 21-23.)

Discussion – Equal Protection.

To establish an equal protection claim, the moving party must first prove that "similarly situated individuals were treated differently." (*Hines v. Quillivan* (5th Cir. 982 F.3d 266, 272.) "Because the equal protection clause's protection reaches only dissimilar treatment among similar people, if the challenged governmental action does not appear to classify or distinguish between wo or more relevant persons or groups, then the action does not deny equal protection of the laws." (*Id.* at pp. 272-73.) To determine whether disparately treated groups are similar situated, a court must consider "the full variety of factors that an objectively reasonable…decisionmaker would have found relevant" when making the classification. (*Stratta v. Roe* (5th Cir. 2020) 961 F.3d 349, 360.) In addition, the "plaintiff's and comparators' relationship with the ordinance at issue will generally be a relevant characteristic for purposes of the similarly situated analysis." (*Ibid.*) Under federal and California law, natural persons and business entities are equated for purposes of the Equal Protection Clause.[8]

A business ban can only be upheld if "there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." (*Greater Houston Small Taxicab Co. Owners' Ass'n v. City of Houston* (5th Cir. 2011) 660 F.3d 235, 239.) That said, a

[8] The term "person" includes "corporations, companies, associations, firms, partnerships, societies and joint stock companies, as well as individuals." (1 U.S.C. sec. 1) California courts have also long held that corporations are "persons" entitled to equal protection under the Fourteenth Amendment. The California Supreme Court established this principle in 1899, stating that "the word 'person' within the meaning of the Fourteenth Amendment to the constitution of the United States, applies to a corporation." (*Johnson v. Goodyear Min. Co.* (1899) 127 Cal. 4, 8; see also, *National General Corp. v. Dutch Inns of America, Inc.* (1971) 15 Cal.App.3d 490, fn. 3 (stating that "a corporation is a 'person' within the meaning of the Fourteenth Amendment, and hence is entitled to equal protection of the laws".)

"necessary corollary to and implication of rationality as a test is that there will be situations where proffered reasons are not rational." (*Ibid.*) For example, "the relationship of the classification to its goal [may be] so attenuated as to render the distinction arbitrary or irrational." (*Stefanoff v. Hays County* (5th Cir. 1998) 154 F.2d 523, 526.) "[W]e have made clear that 'rational' still must be actually rational, not a matter of fiction." (*Hines*, 982 F.3d at 273.)

To that end, "we will examine the State['s] rationale informed by the setting and history of the challenged rule." (*St. Joseph Abbey v. Castille* (5th Cir. 2013) 712 F.3d 215, 223.) While the government bears no burden under rational-basis review, there must be something to suggest that the business ban is rationally related to the government's legitimate interests or to allow the court to create a rational post hoc justification for the regulation. (See *Miseka v. City of Galveston* (5th Cir. 2006) 451 F.3d 376, 381.)

Here, the rational basis standard of review should govern because the Ordinances neither burden a fundamental right nor employ a suspect classification. (See *City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440.) As noted above, under a rational basis review, the court does not weigh policy wisdom but asks whether the challenged classification bears a rational relationship to legitimate governmental objectives.

The County identifies several legitimate interests, including preserving the neighborhood character, preventing nuisance activity, protecting housing supply, improving accountability, and facilitating enforcement against STR operators who pose problems.[9] (AR 1265, 1638, 6837, 12625-12631.) These may be legitimate exercises of local police power. (See *Hobbs v. City of Pacific Grove* (2022) 85 Cal.App.5th 311, 324-325.) The challenge with the County's position, however, is not the identification of legitimate goals, but rather establishing a rational relationship between those goals and the specific distinction drawn between natural person ownership and entity or corporate ownership.

The Ordinances already impose extensive operational regulations applicable to all STRs regardless of ownership structure, including licensing requirements and annual renewal obligations (AR 307-307), business license requirements (*ibid.*), occupancy restrictions (AR 301-391), nuisance and operational standards (AR 307), property manager requirements (AR 270, 304-305), neighbor notification requirements (AR 306-307), enforcement procedures and administrative oversight mechanisms (AR 2357, 3805, 6584, 6854), administrative penalties (AR 301-319), and land-use permit limitations governing Homestays, Limited Vacation Rentals, and Commercial Vacation Rentals (AR 269-271, 6873.)

These restrictions regulate the actual conduct generating the County's stated concerns regarding noise, parking, parties, safety issues, septic overuse, and neighborhood disruption. The record contains substantial evidence regarding those operational concerns. (AR 1265, 3805, 5824, 12624-12631.) The record, however, appears to contain little evidence demonstrating that

[9] Indeed, the Administrative Record reflects substantial County concern regarding commercialization of residential neighborhoods, absentee ownership, speculative investment, and lack of local stewardship associated with certain STR operations. (AR at 7537, 1264-1265, 1278-1279.)

those impacts materially differ depending upon whether title is held individually or through an LLC or corporation.

Indeed, the Ordinances define "Operator" separately from "Owner," and the operational obligations fall primarily on the operator and property manager responsible for day to day compliance. (See AR 306.) Thus, a property owned through an LLC or other corporate structure remains subject to the same operational restrictions, inspections, nuisance enforcement, permit conditions, and administrative oversight as property owned by an individual.

In addition, although not controlling authority, the Fifth Circuit recently addressed this issue in *Hignell-Stark v. City of New Orleans* (5th Cir. 2025) 154 F.4th 345 ("*Hignell-Stark II*"). In *Hignell-Stark II*, the court concluded that the distinction between entity ownership and natural person ownership was "so attenuated" from the city's asserted livability concerns "as to render the distinction arbitrary." (*Id.* at p. 356.)

The same concern appears to exist in this instance. The County's asserted harms arise from STR use, not from the legal identity of the STR titleholder. In addition, and while not dispositive, the County's own December 12, 2025 memorandum suspending enforcement of the challenged natural-person requirement pending judicial review undermines to some extent the County's assertion that the restriction is indispensable to enforcement or neighborhood protection.

The court, therefore, concludes that Petitioner has demonstrated the natural person ownership requirement violates the Equal Protection Clauses of the federal and California Constitutions because the distinction between natural-person ownership and entity ownership is insufficiently connected to the potential harms identified in the record and which the ordinances seek to prevent.

Again, however, the offending provisions can be severed leaving the otherwise legitimate goals of the ordinances protected by legitimate means.

Preeemption.

Petitioner's contentions – Preemption by California Statutes.

Petitioner contends the Ordinances are preempted by California statute, in two particulars. Petitioner notes that the Legislature has specifically enacted residential occupancy limits and maximum fines that can be applied to violations of STR rental ordinances. The County, however, has purported to enact short term rental occupancy limits and fines that are far stricter than those allowed by state law, Petitioner argues, because Monterey imposes flat occupancy caps untethered to room size. (OB at pp. 26-28.) Petitioner relies on Health and Safety Code section 17922 and *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378, arguing local deviations from statewide occupancy standards require findings based on local climatic, geological, or topographical conditions, which the County allegedly failed to adopt. (*Briseno*, supra, 6 Cal.App.4th at p. 1383; OB at p. 9.)

Petitioner maintains that the County has not articulated a permissible reason for departing from state law, and the Ordinances' occupancy restrictions are preempted by state law and are void and unenforceable. (*Ibid.*)

Petitioner also contends the Ordinances' administrative penalties conflict with Government Code section 25132(e)(1), which establishes maximum STR administrative fines of $1,500 for a first violation, $3,000 for a second violation, and $5,000 for subsequent violations. (OB at pp. 9, 28-29.) Petitioner contends the County's formula authorizing penalties equal to 175% of the nightly rental rate per violation may exceed those statutory caps for higher-value properties. (OB at p. 13.)

County's Contentions - State Law Preemption

The County argues neither the occupancy limitations nor the penalty provisions are preempted by state law. (RB at pp. 24-27.) With regard to occupancy limits, the County maintains the Ordinances regulate transient visitor-serving commercial activity rather than ordinary residential occupancy governed by statewide housing codes. (RB at pp. 24-25.) The County argues local governments retain broad authority to regulate transient lodging uses under their police powers. (RB at pp. 24-25, citing Health and Safety Code § 17922; *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378, 1382-1383; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 684-688, and *Ewing v. City of Carmel-by-the-Sea*, supra, 234 Cal.App.3d at pp. 1597-1598.)

As to penalties, the County argues Government Code section 25132, subd. (e)(1) authorizes flexible administrative penalties and that the ordinances merely establish maximum formulas while leaving enforcement personnel discretion to impose lesser penalties consistent with statutory caps. (RB at pp. 25-27.)

Discussion – Preemption.

1. *Occupancy Limits*

Petitioner argues Monterey's occupancy caps are preempted because California's housing laws and Uniform Housing Code tie permissible occupancy to room size rather than flat numerical caps as in the Ordinances. (OB at pp. 27-28.) Petitioner relies on Health and Safety Code section 17922 and Uniform Housing Code section 503.2.

The challenged Ordinances, however, do not regulate ordinary residential occupancy generally. Instead, they appear to regulate transient visitor-serving commercial activity occurring through STR operations. California law recognizes broad local authority to regulate land use and transient lodging activity pursuant to local police powers. (See *Ewing v. City of Carmel by the Sea* (1991) 234 Cal.App.3d 1579, 1597-1598.) Nothing in Health and Safety Code section 17922 appears to expressly exclude local governments from imposing operational occupancy limits as part of a broader STR regulatory scheme.

Moreover, the occupancy provisions appear directed toward mitigating impacts uniquely associated with transient rentals, including parking congestion, septic-system limitations, noise, emergency access concerns, and intensity of commercial use. The Administrative Record appears to contain substantial evidence relating to those concerns. (AR 1265, 12625-12631.)

The County also regulates occupancy in conjunction with licensing, enforcement, and transient use restrictions specific to STR operations rather than ordinary residential habitation. Thus, the occupancy caps function as operational limitations on a commercialized transient use, not as generalized residential occupancy standards conflicting directly with the Uniform Housing Code.

Petitioner has not identified any express statutory prohibition preventing local governments from imposing stricter operational occupancy standards to fully occupy the field of transient lodging regulation.

Accordingly, the court finds that Petitioner has not established that the occupancy provisions are preempted by state law.

2. *Administrative Penalties*

With regard to the administrative penalties, however, Government Code section 25132(e)(1) establishes maximum administrative penalties for violations of short-term rental obligations, including $1,500 for a first violation; $3,000 for a second violation within 24 months; and $5,000 for additional violations. The Ordinances, however, authorize penalties up to 175% of the "Advertised Rental Rate" per violation per day. (AR 318.) Depending upon the advertised nightly rate, the formula may produce penalties substantially exceeding the statutory cap provided in Government Code section 25132(e)(1).

The County argues that the Ordinances merely authorize a maximum penalty and that enforcement personnel retain the discretion to impose lower amounts within the statutory range. (RB at pp. 25-27.) The issue presented to the court, however, is inconsistency with state law, not a hypothetical discretionary restraint in future enforcement.

The Administrative Record supports the County's conclusion that effective STR regulation requires meaningful enforcement mechanisms and penalties. (See AR 1257-1258, 1270-1271, 12605.) Nevertheless, where a local ordinance authorizes conduct prohibited by state law, or imposes penalties exceeding statutory limits established by the Legislature, the ordinance is preempted to the extent of the conflict. (See *College Area Renters & Landor Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 685-688.)

In this instance, the County's penalty structure expressly authorizes penalties above the maximum amounts permitted under Government Code section 25132, subd. (e)(1). The conflict is, therefore, direct and facial. The County cannot avoid preemption by asserting enforcement officials may elect to impose lower penalties in practice.[10]

[10] In fact, counsel for both sides acknowledged their awareness of another case currently pending before this Court in which the County assessed fines exceeding over one-half million dollars in connection with violation of the STR

In addition, the Ordinances do not clearly define whether multi-day rentals constitute a single or multiple violations, creating the potential for compounding penalties substantially exceeding the legislative limits. The Legislature's enactment of explicit penalty caps reflects an intent to establish statewide limitations on administrative STR penalties.

As a result, the court finds that the Ordinances' administrative penalty provisions are preempted to the extent that they authorize penalties in excess of the statutory limits set forth in Government Code section 25132, subd. (e)(1).

Severability

Each of the ordinances here contains a severability clause with the following identical language: "If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared invalid."

The County points to its December 12, 2025 memorandum suspending enforcement of the challenged residency and natural-person provisions as evidence the ordinances remain workable without those requirements. The County contends any unconstitutional provisions may be excised while preserving the balance of the regulatory scheme relies on severability authorities, citing *Calfarm Insurance Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821 ("*Calfarm*"); *Aguirre v. Amscan Holdings, Inc*. (2015) 234 Cal.App.4th 1290, 1303, and *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761.

Additionally, Carmel Valley Association, Inc., ("CVA") filed a persuasive amicus brief in support of, *inter alia*, severability of the provisions which exceed the permissible limits of Constitutional and statutory law.[11]

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ordinance. The potential for excessive fines is not merely hypothetical. The Court judicially notices that case, *Miralles v. McLaren Automotive*, Monterey Superior Court case number 25CV005661.

[11] CVA also points out shortcomings in Petitioner's use of the administrative record. CVA argues Petitioner's opening brief is "nearly bereft" of sufficiently precise citations to the record and frequently cites only exhibit cover pages or Bates ranges without directing the Court to the actual evidence supporting Petitioner's factual assertions. (Amicus Brief at pp. 5-6.)

For example, CVA contends Petitioner cites "AR Doc. 378; Bates 13313" for the proposition that STRs comprise only 1.3% of housing units and that banning vacation rentals may not increase long-term housing availability, but CVA notes that the cited Bates number refers merely to the cover page of the Draft EIR and not to substantive evidence. (Amicus Brief at p. 5.) Similarly, CVA argues petitioner cites "AR Doc. 103; Bates 04030" for nuisance statistics, but according to CVA, the cited material does not support the factual assertions attributed to it. (Amicus Brief at p. 6.)

CVA contrasts Petitioner's presentation with evidence in the administrative record allegedly supporting the County's concerns regarding STR impacts. The brief cites examples of residents describing noise, traffic, parking

Invalid provisions of a statute should be severed whenever possible to preserve the validity of the remainder of the statute. (*Hollywood Park Land Co., LLC v. Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 941.) "In determining whether the invalid provisions of a statute can be severed, we look first to any severability clause. The presence of such a clause establishes a presumption in favor of severance. (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331 … .)" (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 270 ("*California Redevelopment*").)

" 'Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable…. The final determination depends on whether the remainder … is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute … or constitutes a completely operative expression of the legislative intent. … [and is not] so connected with the rest of the statute as to be inseparable." " (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805. 821… ; see also Santa Barbara Sch. Dist. v. Superior Court (1975) 13 Cal.3d 315, 330 … ["the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion unconstitutional in part.' "].)" *Rental Housing Association of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 770.

Calfarm sets forth the basic principles for severability, reiterated in *California Redevelopment*:

> "We will, however, consider three additional criteria: '[T]he invalid provisions must be grammatically, functionally and volitionally separable.' (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821 …) Grammatical separability, also known as mechanical separability, depends on whether the invalid parts 'can be removed as a whole without affecting the wording' or coherence of what remains. (Id. At p. 822; see also *Santa Barbara*, at pp. 330-331.) Functional separability depends on whether 'the remainder " ' would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute.' " (*Santa Barbara*, at p. 331; accord, *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714 …)"

(*California Redevelopment, supra*, 53 Cal.4th at pp. 270-271.)

Here, there is a severability clause. The language of the severability clause leaves no doubt that the Board of Supervisors wished the ordinances to function even in the event a portion or portions were here found invalid, and it expressly recites that the Board would have enacted

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problems, nuisance activity, and disruptions caused by nearby STRs. (Amicus Brief at pp. 6-7.) CVA references testimony that some neighborhoods contained multiple STRs generating increased nighttime noise and congestion, and it argues the record supports the County's concerns regarding neighborhood character and quality-of-life impacts. (Amicus Brief at pp. 6-7.)

However, in view of the fact that the challenge here is largely to the face of the ordinances, and the underlying facts and findings of County in support of its enactment are not seriously in issue, these problems are not fatal to Petitioner's challenges.

the surviving portions of the ordinances even without the offending clauses. When considered with the fact that suspension of enforcement of the offending provisions demonstrates that the Ordinances can operate without those parts, and the relatively straightforward process of excising the invalid portions set forth below, the Ordinances will remain grammatically, functionally, and volitionally separable.

Portions severed by this ruling.

Ordinance 5422 contains the challenged definition of a "Homestay." Only the second sentence of that definition, which states that "The Vacation Rental must be the Owner's Primary Residence" is severed and stricken. (AR 306, MCC §7.120.020 (J)) The remainder of the definition is valid – i.e., that the Owner must occupy at least one bedroom within the Vacation Rental while it is being rented as a vacation rental. That sentence is not discriminatory. Local and out-of-county property owners alike must reside in the property while it is rented for short term in order to qualify for Homestay STR status.

Likewise, the definition provision of MCC section 7.120.040(W), which states that the owner of a vacation rental must be an individual or a trust (which the Court finds violates the equal protection clauses of the U. S. and California Constitutions) is severed and stricken. Consequently, individual and entity owners alike may avail themselves of Homestay STR status.

Ordinance 5422 contains the language adding as part of Section 21.64.290(B) , "Definitions", similar language appears in the definition of "Homestay" in subsection B4 that "The Vacation Rental must be the owner's Primary Residence." (AR 269) That sentence is severed and stricken. The balance of the definition is valid. Subsection (B) (9), which defines "Owner's Primary Residence" (AR 270) then simply becomes irrelevant but need not be stricken for the regulation to be valid and functional.

The net result is that the properties of nonresident property owners can function as Homestays, subject to the same requirements and restrictions as resident owners. If they wish to conduct non-hosted short -term rentals, they will need to function as Limited Vacation Rentals just as local permanent residents would; if they wish to function as a non-hosted STR more than three times in a 12-month period, they can seek the use permit required – just as local residents would.

Likewise, the penalty provision of section 7.120.160 D is stricken to the extent that it authorizes the imposition of penalties in excess of that permitted by Government Code section 25132(e)(1), with which it would otherwise conflict. Only penalties not exceeding the limits of Government Code section 25132(e)(1) remain intact.

Request for Judicial Notice.

The County asks the Court to take judicial notice pursuant to Evidence Code section 452(c) of a December 12, 2025 Memorandum issued by the Monterey County Housing and Community Development announcing the temporary suspension of enforcement of certain STR ordinance provisions challenged in this litigation. (RJN at pp. 1-3.) The Memorandum is an

official act of the County and is attached to the Declaration of Stephanie L. Cooke who attests that it is a true and correct copy of the Memorandum. The Request for Judicial Notice pursuant to Evidence Code section 452(c) is **GRANTED.**

Conclusion.

Accordingly, for the reasons stated above, the provisions of the Ordinances which violate the Federal and State Constitutions are severed, as are the penalty provisions to the extent they purport to authorize penalties in excess of the amounts authorized by Government Code section 25132(e)(1). As so severed, the Ordinances remain a coherent and valid enforcement mechanism. The writ petition is therefore denied. Respondent to prepare judgment accordingly.

Dated: June 3, 2026

Thomas W. Wills
Judge of the Superior Court

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I served the **Tentative Ruling on Merits for Writ of Mandate** on the interested parties in said action to the addresses indicated below:

Michael George Colantuono — Electronically Served CCP1013(g)
mcolantuono@chwlaw.us

Shaun Michael Murphy — Electronically Served CCP1013(g)
murphy@sbelawyers.com

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: June 3, 2026

Katy Grant, Clerk of the Court

By: P. Conder
P Conder, Deputy Clerk

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