

LAW OFFICES OF QUINTANILLA & ASSOCIATES
Michael R. Cobden, Deputy City Attorney (SBN 262087)
Steven B. Quintanilla, City Attorney (SBN 161578)
Lisa Weaver-Nowak, Deputy City Attorney (SBN 320204)
Gulan Tahir, Deputy City Attorney (SBN 328614)
777 E. Tahquitz Canyon Way, Suite 200-41
Palm Springs, California 92262
Telephone: (760) 993-3702
MichaelCobden@QALawyers.com

Attorneys for Respondent
CITY OF RANCHO MIRAGE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
PALM SPRINGS

ALLICIA LOUISA DAVIS, an individual,	CASE NO. CVPS2301620
Appellant,	CITY OF RANCHO MIRAGE’S
vs.	RESPONSE TO APPEAL OF
CITY OF RANCHO MIRAGE; AND DOE 1	ADMINISTRATIVE CITATION
through DOE 10, inclusive	DATE: June 15, 2023
Respondents.	TIME: 1:30 pm
	DEPT: PS4
	JUDGE: Hon. Arthur Hester

1 **I. INTRODUCTION**

2 The instant Appeal challenges a decision by a Hearing Officer upholding Administrative
3 Citation No. CE23-009 (“Citation”) issued to Appellant for violation of the Rancho Mirage
4 Municipal Code (“RMMC”) section 17.30.270(B) which prohibits advertisement of residential
5 property for rental for 27 days or less. (Local Agency File (“LAF”) at AR0002-AR0006.) The
6 Citation was issued on January 17, 2023, for advertising and operating real property as a Short-Term
7 Rental (“STR”). (LAF at AR0034-AR0036.) Appellant sought an administrative appeal, which was
8 received by the City on January 26, 2023 (Administrative Appeal Letter). The City held a hearing
9 before a Hearing Officer on March 7, 2023. Following that hearing, the Hearing Officer upheld the
10 citation:

11 “It was noted that the City would no longer provide STR certificates for 2023 and
12 those that had them in 2022 would expire on December 31, 2022. Sufficient notice
13 was provided to those who had STR certificates. In this case, the appellant took
14 steps to remove the STR advertisement from various platforms by using a service
15 to perform this operation. Per the Officers testimony the STR listing was still live
16 on 1/17/2023. It is ultimately the property owners responsibility to abide by the
17 rules set forth by the City in the Municipal Code as it pertains to rental property. It
18 has been determined that the action of the Officer was appropriate and the
19 circumstances presented failed to establish sufficient cause for the dismissal of this
20 citation. This decision is final.”

21 (See Decision dated March 9, 2023 in LAF at AR0060.)

22 Appellant does not contest that she advertised her property for STR in violation of the RMMC.
23 (LAF at AR0083) The Appeal itself affirms that Appellant was operating an STR by offering her
24 property for rent on Airbnb.com for four (4) nights knowing that STRs are prohibited in every zone
25 of Rancho Mirage. (LAF at AR0039.) This evidence, admitted by Appellant, demonstrates that the
26 Hearing Officer was correct in upholding the Citation.

27 Instead, Appellant argues that she was not provided notice of the violation or an opportunity to
28 remove the advertisement before the citation was issued. (LAF at AR0080.) However, the notice

1 and cure requirements she cites in her Appeal are inapplicable to violations unrelated to structural
2 land use laws. Even if this Court decides that the cited statute does apply, Appellant had ample
3 notice that the advertisement was illegal, and admits as much in her Appeal. (LAF at AR0041.) The
4 ordinance which prohibits operation of short-term rentals was adopted one year before the Citation
5 was issued. (LAF at AR0032.) Appellant herself¹ has unsuccessfully challenged that law in two
6 separate legal actions, and although she has asked for an injunction in both cases to prohibit
7 enforcement of Ordinance 1189, no such injunction has been granted.

8 Appellant brazenly attempts to mislead this Court by attaching two orders from the Superior
9 Court in Case Number CVRI2100368 from 2021 which have since been superseded by orders from
10 that same Court that expressly state that the City may enforce Ordinance 1189. (See, Request for
11 Judicial Notice (“RJN”) Exh. A at p. 2 [“On August 31, 2022, the Court issued an order dissolving
12 ‘any and all existing orders that prevent city from enforcing ordinance 1189 as against the remaining
13 petitioners in this case.’ The purpose of the order was to dissolve an earlier sua sponte order issued
14 on December 21, 2021, which granted additional injunctive relief to Petitioners .. .”].) Appellant
15 presents this Court with the December 21, 2021 Order as if it were operable, knowing full well that
16 it was expressly dissolved on August 31, 2022. The Court should, at a minimum, treat all of
17 Appellant’s allegations with significant skepticism.

18 Even in the Administrative Appeal Letter, Appellant admits that she was aware the
19 advertisement needed to be taken down and explains that she took steps to remove the STR
20 advertisement from some online platforms. (LAF at AR0039-AR0040.) Specifically, Appellant
21 stated “The city did not issue me a 2023 permit due to Ordinance 1189 . . . Because I do not have a
22 2023 permit I now can only rent for 28 days or more. I engaged Louisa Davis Properties to manage
23 my property so it was their responsibility to change the minimum night stay to 28 days for Desert
24 Sun in their software system, Escapia. They told me that they did this prior to December 31, 2022 .

25
26 ¹ The first of the two cases, Vacation Rental Owners and Neighbors of Rancho Mirage et al. v.
27 City of Rancho Mirage (Case No. CVRI2100368) lists as one of the Petitioners Allicia Louisa
28 Davis. The second case, Vacation Rental Owners and Neighbors of Rancho Mirage v. City of
Rancho Mirage (Case No. CVPS2200167) lists no individual Petitioners, but the same Attorney,
Melinda Luthin, represents VRON and its members, and represents Appellant here.

1 . ." (See Administrative Appeal Letter, at AR0039.). Thus, Appellant was fully aware that
2 advertising the property for STR purposes was illegal prior to the citation being issued, and had an
3 opportunity to cure the violation. The facts of the violation are admitted, and the citation should be
4 upheld.

5 6 **II. STANDARD OF REVIEW**

7 Government Code section 53069.4 authorizes Judicial review of a final decision on an
8 administrative citation under a limited de novo appeal. The superior court receives into evidence the
9 City's file as prima facie evidence of the facts contained therein. (Gov. Code § 53069.4, subs.
10 (b)(1).)

11 12 **III. THE APPEAL FAILS TO DEMONSTRATE A BASIS FOR REVERSING THE** 13 **HEARING OFFICER'S DECISION.**

14 The Appeal has not sufficiently established any basis to reverse the Hearing Officer's decision
15 because the Appeal itself alleges sufficient facts to support the Citation for advertising a short-term
16 rental. In her Administrative Appeal Letter, Appellant admits that she posted an online
17 advertisement for the rental of her property but now argues that she should have been provided
18 reasonable notice and an opportunity to cure the violation. The record in this case demonstrates that
19 Appellant violated the RMMC, knew of the violation in advance of the citation, and nonetheless
20 failed to remedy that violation. The Hearing Officer concluded as much, and that decision should
21 be upheld.

22 **A. Rancho Mirage Municipal Code Section 17.30.270 Prohibits Operation of Short-** 23 **Term Rentals in Every Zone of the City**

24 STRs are defined and regulated in RMMC section 17.30.270. RMMC section 17.30.270(B),
25 which was added to the Code by Ordinance No. 1189, prohibits the operation of short-term rentals
26 in every zone of the City. RMMC section 17.30.270(B) defines "operation of a short-term rental"
27 as "**advertising**, offering for rent, or agreeing to rent, a short-term rental, regardless of whether a
28 person actually occupies the short-term rental. . ." (Emphasis added.) In furtherance of this and

1 pursuant to RMMC section 17.30.270(D), the City has the authority “to issue an administrative
2 citation to any occupant, responsible party, owner(s), or the owner’s authorized agent or
3 representative, pursuant to RMMC Chapter 14.80 (Administrative Citation and Appeal Procedures)
4 for *any violation* of this section committed, caused or maintained by any of the above parties.” The
5 only exception to the prohibition of STRs applies to STR certificates issued for 2021 which did not
6 expire until June 30, 2022. Thus, since at least June 30 of last year, all persons in the City were on
7 notice that advertising STRs in the City was unlawful. However, Appellant herself has had more
8 notice of this law than the average resident by virtue of her extensive involvement in litigation over
9 Ordinance 1189.

10 **B. The City Had No Obligation to Provide Further Notice or an Opportunity to Cure**
11 **Prior to Issuing a Citation.**

12 Appellant argues that RMMC sections 14.70.020, 14.80.030, and 14.120.030 and
13 Government Code section 53069.4(a)(2)(A) entitled her to reasonable notice and an opportunity to
14 “cure” the violation. However, this statute, like the related Municipal Code sections, addresses
15 structural violations, not ongoing land use violations based on illegal commercial activity.

16 Government Code section 53069.4 authorizes the City to “make any violation of any
17 ordinance enacted by the local agency subject to an administrative fine or penalty.” (*Id.*, Subsection
18 (a)(1).) “[W]hen the violation pertains to building, plumbing, electrical, **or other similar** structural
19 or zoning issues ...” the City must “provide for a reasonable period of time ... for a person
20 responsible for a continuing violation to correct or otherwise remedy the violation prior to the
21 imposition of administrative fines or penalties ...” (Gov. Code § 53069.4 (a)(2)(A) emphasis added.)
22 RMMC sections 14.80.030 and 14.120.030 use the same language, and only apply to “violations
23 pertaining to building, plumbing, electrical, **or other similar** structural or zoning issues.” “Similar
24 structural or zoning issues” must be read as a whole, such that the requirement for an opportunity to
25 cure a violation expressly applies to structural or zoning issues as they relate to the *physical*
26 conditions of real property. It does not apply to advertising an illegal business online.

27 Appellant cites RMMC section 14.70.020 which pertains to the contents of a notice of
28 violation that precedes an actual citation, but conveniently omits section 14.70.010 which provides

1 that a code compliance officer “may” issue a notice prior to issuing a citation, and specifically states
2 “[n]othing in this Title 14 shall be construed or interpreted to require the issuance of a notice of
3 violation as a prerequisite to the issuance of a field citation, [or] an administrative citation”
4 Appellant’s selective presentation of law, like her selective presentation of judicial orders, misleads
5 the Court here.

6 Appellant’s interpretation of these statutes, that a person advertising an illegal business
7 online must be given an opportunity to remove the advertisement before a citation could issue,
8 would undermine the City’s Code enforcement efforts and jeopardize the City’s authority to remedy
9 violations. If the notice and opportunity to cure provision applied here, Appellant could simply re-
10 post her advertisement the day after taking it down, because that would technically be a new
11 violation for which a new notice would be required. The City could never cite someone for any
12 similar illegal activity upon witnessing the violation. No case has held that a Code Enforcement
13 officer cannot issue a citation to a person who is violating the Noise Ordinance, for instance, merely
14 because the officer has not first asked the person to stop making noise.

15 Moreover, Appellant cannot claim that she did not know full well that what she was doing
16 was illegal. The Citation was issued on January 17, 2023, at least six (6) months after the expiration
17 of any exemption and at least one year after the adoption of Ordinance 1189. More importantly,
18 Appellant herself challenged Ordinance 1174 (the prior STR law) and Ordinance 1189 (which
19 currently prohibits STRs) in Riverside Superior Court. (See *Vacation Rental Owners And Neighbors*
20 *Of Rancho Mirage vs City Of Rancho Mirage* Case No. CVRI2100368; *Vacation Rental Owners*
21 *And Neighbors Of Rancho Mirage, A California Non-Profit Organization vs City Of Rancho Mirage*
22 *Case No. CVPS2200167*.) Appellant and her current attorney sought an injunction from both courts
23 to prevent the City from enforcing Ordinance 1189 many months ago. Both attempts to enjoin
24 Ordinance 1189 failed, and Appellant was served through her attorney, Melinda Luthin, those
25 decisions several months prior to the issuance of this citation. (See, Request for Judicial Notice
26 “RJN” Exh. A [Ruling in CVRI2100368 on VRON Motion For Order Confirming Stay] at p. 2 and
27 B [Ruling in CVRI2100368 on VRON Motion for Preliminary Injunction Prohibiting Enforcement
28 of Ordinance 1189] on p. 8.) As noted above, these orders confirm that no injunction existed as of

1 August 31, 2022 to prevent the City from issuing citations under Ordinance 1189, nor does any exist
2 now. Appellant's inclusion of misleading orders from 2021 is an unconscionable effort to mislead
3 this Court. Further, the verified pleading in this case alleges that "there now exist, two court orders
4 enjoining the City and its employees and agents from issuing Appellant any citation for renting or
5 advertising the Property as an STR." (Appeal of Final Decision of the Local Agency filed on April
6 13, 2023, at ¶ 29.) Appellant's other statements to this Court should be afforded no credibility at all.

7 Sufficient notice was also provided to those who previously held STR certificates, which
8 included Appellant, when they applied for a new STR Certificate, and the application was denied.
9 As mentioned above, Appellant expressly admits that she was aware that her STR permit had
10 expired on December 31, 2022 due to Ordinance 1189 and that she needed to take down her
11 advertisements by that date. (See Administrative Appeal Letter, at AR0039) Appellant states that
12 she took steps to remove the STR advertisement from various platforms by using a service. (Hearing
13 Transcript at p. 11 [description of attempts on 12/31/2022 to remove advertisement "to be within
14 compliance of the city regulation"].) Therefore, Appellant cannot claim that she did not know
15 advertising STR use of her property was not a violation of the City's Code. (See Administrative
16 Appeal Letter, at AR0039.)

17 **C. Appeal of the Hearing Officer's Decision is Time-Barred.**

18 Pursuant to Government Code Section 53069.4(b), this Appeal of the Hearing Officer's decision
19 is time-barred. The Hearing Officer's decision was served on Appellants on March 9, 2023. The 20-
20 day deadline to appeal fell on Wednesday, March 29, 2023. According to the Court's Docket, only
21 the Notice of Appeal was filed on March 29, 2023. However, the Appeal itself was not filed until
22 April 13, 2023. The Appeal was therefore not filed within the period prescribed by Government
23 Code Section 53069.4, and the Hearing Officer's decision "shall be deemed confirmed." (Gov. Code
24 § 53069.4(c).) The statute therefore requires confirming the underlying citations for this additional
25 reason.

26 **IV. CONCLUSION**

27 As stated above, the Appellant acknowledges that she operated a short-term rental in violation
28 of RMMC. This advertisement resulted in the Citation, and the evidence of the violation presented

1 to the Hearing Officer was substantial. Additionally, the Appeal is time-barred under the statute
2 governing such administrative decision appeals. Based on the foregoing, the Hearing Officer's
3 decision must be deemed confirmed and final.

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5 DATED: June 1, 2023

LAW OFFICES OF QUINTANILLA & ASSOCIATES
Steven B. Quintanilla, Attorney for Petitioner

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7
8 By: *Gulan Tahir*
GULAN TAHIR
9 Attorney for Respondent CITY OF RANCHO
MIRAGE
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