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VIA E-MAIL AND U.S. MAIL

Saint Paul City Council Members
c/o Office of the City Council
310 City Hall
15 Kellogg Blvd. West
Saint Paul, MN 55102
Contact-Council@ci.stpaul.mn.us

Re: City Council Hearing on May 4, 2022, at 3:00 PM, on Emergency Ordinance 20-36

Dear Saint Paul City Council Members,

I represent residents and businesses from the West Seventh Street neighborhood in the City of St. Paul—West Seventh Street Partners, LLC; Art Farm Advertising, Inc.; 262 Fort Road, LLC; T.D. Wright, Inc.; Susan Adair; WWII, Inc.; and Portafolio LLC (“Plaintiffs”), all of whom are the plaintiffs in the lawsuit against the City that has prompted your May 4, 2022, hearing to consider “readopting” Emergency Ordinance 20-36. On behalf of my clients, I write to bring to your attention three points that you must consider in casting your vote at the May 4 hearing.

- 1. The Ramsey County District Court held that Emergency Ordinance 20-36 is invalid because the City Council failed to follow the mandatory procedures to pass it, and the City Council is now contemplating making procedural mistakes for a second time.**

As you are no doubt aware, on March 23, 2022, the Ramsey County District Court entered a temporary restraining order vacating the City’s Emergency Ordinance 20-36 because the City Council likely failed to follow the procedural requirements set forth in Minnesota Statute § 462.357, subdivision 3. A copy of the Court’s order is attached hereto as Exhibit A. In summary, the City failed to provide the required notice to the general public of its proposed ordinance, as well as failed to mail notice to owners of property within 350 feet of the Freedom House currently located at 296 West Seventh Street. The Court ultimately stayed the effective date of its order until May 7, 2022, to provide the City a chance to remedy these deficiencies.

The City has again failed to take the required procedural steps to consider—as it proposes to do on May 4—“readopting” Emergency Ordinance 20-36. Among other things, I have been informed that the City Council has failed to mail notice of the proposed zoning amendments to all property owners within 350 feet of the Freedom House. It is inconceivable that the City, which maintains records of all such owners, has *again* failed to provide this mandatory notice.

Furthermore, the City has failed to follow *its own procedures* mandated in the City Charter, which the City is required to follow. Section 6.06 provides: “An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally” St. Paul City Charter § 6.06 (emphasis added) (copy of Chapter 6 of City Charter attached as Exhibit B). Section 6.04 sets forth the form of all ordinances and provides: “Each ordinance or resolution shall relate to a single subject which shall be expressed clearly in its title. The enacting clause of each ordinance shall be ‘The Council of the City of Saint Paul does ordain.’” Section 6.05 sets forth the *manner* of introducing all ordinances and provides in relevant part:

Every proposed ordinance shall be read again by title *at two (2) separate meetings held not less than a week after the meeting at which it is first presented*. After a proposed ordinance is complete in the form in which it is to be finally passed, *it shall remain on file in the office of the city clerk for public inspection for at least one week before final adoption*.

St. Paul City Charter, § 6.05 (emphasis added). In short, the City Council must read by title any and all proposed ordinances, emergency or not, over the course of three successive meetings, two of which must be held one week or more after the first, and final drafts must remain on file for public inspection for at least one week before they are finally adopted by the City Council (and subsequently approved by the Mayor).

The City’s hearing notice for the May 4, 2022, hearing suggests by its terms that the City Council will be considering a vote to “readopt” Emergency Ordinance 20-36 to “cur[e] potential procedural issues found in the original enactment of Emergency Ordinance 20-36.” (Exhibit C.) However, the City Council may *not* readopt any such ordinance unless and until it reads by title the proposed “readoption” at two additional separate meetings and permits public inspection of the final language of the “readoption” for at least one week.

It is telling that these steps could have been accomplished by the deadline of May 7, 2022, in the Court’s order had the City acted diligently in response to that order. But the City delayed considering “readopting” Emergency Ordinance 20-36 until a hearing on May 4—shortly before the Court’s deadline for the City to do so. This neglect is inexplicable and inexcusable.

Finally, it is concerning that the City’s hearing notice to surrounding property owners was mailed on April 21, 2022—the *very same day* by which those same property owners were apparently required to submit written comments per the notice. (See Exhibit C.) It was impossible for property owners to provide written comments by the deadline in the mailed notices because the mailed notices could not have been received—let alone responded to—by that date. Property owners who are unable to attend the May 4, 2022, hearing in person have been deprived of the full and equal opportunity to provide public comments. This additional procedural infirmity calls into serious doubt whether the City has complied with the due process rights of surrounding property owners and, subsequently, whether any proposed “readoption” could possibly be valid.

The City Council should not repeat the mistakes of the past by “readopting” a procedurally deficient emergency ordinance—through what is effectively a second, procedurally deficient

emergency ordinance. Repeating procedural failures for a second time adds insult to my clients' compounding injuries caused by the City's unlawful adoption of Emergency Ordinance 20-36 in the first place.

2. No "sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that require[d] immediate council action" ever existed to warrant adopting Emergency Ordinance 20-36 in the first place.

In addition to Emergency Ordinance 20-36's procedural deficiencies, the ordinance always has lacked factual support. No one doubts that COVID-19 created a public health emergency. But that is not the issue sought to be addressed by Emergency Ordinance 20-36. Rather, the City Council sought to address "the approaching weather season," under which it anticipated "that the City's unsheltered population [would] lack reasonable access to facilities in which basic services [could] be provided and in which the unsheltered can find safety from winter weather conditions when some overnight shelters are not accessible." (Exhibit D.) The City Council also sought to utilize "an underutilized City-owned facility which [could] be reasonably reconfigured to provide the unsheltered with basic services and safety from winter weather conditions." (*Id.*) Thus, the City Council "temporarily" suspended the T2 zoning regulations that applied to the Freedom House property so that it could be "used and operated as a *day-use* civic facility in which to provide basic services and weather safety to unsheltered during the winter months." (*Id.* (emphasis added).) The only stated connection between these interests and COVID-19 was the statement that "the city's unsheltered population . . . has grown due to the COVID 10 [sic.] Pandemic." (*Id.*, § 1.)

Section 6.06 of the City Charter provides that the Council may adopt an emergency ordinance when "sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action." But winter weather, homelessness, and the underutilization of a longtime City-owned property are (unfortunately) not sudden or unforeseen circumstances, nor are they circumstances that require *immediate* Council action. And even if COVID-19 was somehow connected, the City Council did not act until November 2020, many months after the federal public health declaration in January 2020 and Governor Walz's and Mayor Carter's declarations in March 2020. In adopting Emergency Ordinance 20-36 in November 2020, the City was neither responding to a sudden or unforeseen situation, nor was it faced with a situation requiring immediate council action at that time so many months after COVID-19's onset.

Again, the City Council should not repeat the same mistake it made in November 2020 by readopting what was both a procedurally *and substantively* deficient ordinance. On May 4, the City Council will be presented with a true test of conscience—whether to double down on its prior mistake, or to do right by residents and businesses in the West Seventh Street neighborhood.

3. No emergency exists today that could justify "readopting" Ordinance 20-36, thereby imposing police powers upon City residents and businesses for no legitimate reason.

The City Council also must choose whether to acknowledge that, even if it thinks an "emergency" might have justified Ordinance 20-36 back in November 2020, no such situation currently exists today that could justify "readopting" the ordinance. Again, the City must be faced with a "sudden

or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action” to adopt an emergency ordinance. St. Paul City Charter § 6.06. Governor Walz’s and Mayor Carter’s COVID-19 declarations have been lifted; no COVID-19 emergency currently exists in Minnesota. Moreover, the City has not acted to “immediately” respond to the Court’s order, instead preferring to delay its consideration and wait until mere days before the May 7 deadline to hold a hearing. But perhaps most importantly, **the Freedom House itself has announced it will be closing its doors on May 8 (Exhibit E)**, so there is no practical reason that could justify a pretextual assertion of an “emergency” to “readopt” Emergency Ordinance 20-36 so that the Freedom House may finish out the term of its existing lease.

If there is a current emergency facing the City, it is the constant and daily harassment, disorderly conduct, vandalism, drug use, and other crimes perpetrated on residents and businesses who live in the West Seventh Street neighborhood. There have been hundreds of harmful and unacceptable incidents involving persons attracted to the Freedom House. There certainly is a public health and safety crisis facing the City—and that is the City’s failure to adequately address homelessness, while at the same time protect its residents and businesses. The City must do better. The proposed “readoption” of a procedurally and substantively deficient ordinance will not improve anything.

Rather than discuss whether to adopt a procedurally and substantively deficient ordinance as a short-term gap filler, the City Council should—at the very least—dedicate its time and resources to exercising oversight and control over shelters at City-owned property like the Freedom House. But the City has utterly and completely shirked this responsibility. In fact, the Freedom House has admitted that: “Defendant City of St. Paul (‘City’) does *not* exercise direct oversight or control over Defendant’s [Freedom House’s] operations of the day shelter at 296 West Seventh Street, St. Paul.” (Exhibit F at 8 (emphasis added).) The City Council must remedy its past and continuing derelictions of duty in any “readoption” of Emergency Ordinance 20-36.

In its order, the Court provided that, instead of attempting to “readopt” Emergency Ordinance 20-36, the City could “relocate Freedom House” or “fashion other equivalent assistance to the unsheltered.” (Exhibit A at 43.) The City declined to do either, which would more meaningfully address the problems facing the West Seventh Street neighborhood and homeless persons alike.

The City’s failure to meaningfully address the issues facing the West Seventh Street neighborhood and instead attempt to “readopt” a procedurally and substantively deficient emergency ordinance impermissibly infringes on property owners’ rights. As the Minnesota Supreme Court explained in a case decided just last year, zoning procedures protect property and due process interests:

Zoning laws interfere with the property rights of owners, and because of this concern, a variety of protective doctrines apply, including the nonconforming-use doctrine, vested-rights doctrine, and discretionary variances. . . .

Allowing cities to implement zoning regulations without following statutory zoning procedures bypasses these protections, which raises serious questions about constitutional and statutory due process. . . .

Many courts and commentators share our concern with bypassing zoning law requirements by relying on another source of authority [such as general police powers (see citations and accompanying parentheticals)]

City of Waconia v. Dock, 961 N.W.2d 222, 236–38 (Minn. 2021) (emphasis added) (citations omitted). This is precisely why the Minnesota Supreme Court has declared null and invalid zoning ordinances whenever the municipality at issue failed to follow the necessary procedures. *See, e.g., id.* at 237-38; *Glen Paul Ct. Neighborhood Ass’n v. Paster*, 437 N.W.2d 52, 57 (Minn. 1989); *Pilgrim v. City of Winona*, 256 N.W.2d 266, 270-71 (Minn. 1977).

Please dedicate careful attention to the above points. In view of the foregoing, my clients respectfully request the City Council not “readopt” Emergency Ordinance 20-36.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

s/Aimée D. Dayhoff

Aimée D. Dayhoff

Enclosures (6)

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The Honorable Patrick C. Diamond, 2ndJudgeDiamondChambers@courts.state.mn.us

Exhibit A

STATE OF MINNESOTA

COUNTY OF RAMSEY

CASE TYPE: Other Civil
DISTRICT COURT

SECOND JUDICIAL DISTRICT

File No.: 62-CV-21-5891

West Seventh Street Partners, LLC; Art Farm Advertising, Inc.; 262 Fort Road, LLC; T.D. Wright, Inc.; Susan Adair; WWII, Inc.; and Portafolio, LLC,

Plaintiffs,

vs.

City of St. Paul, a municipal Corporation,
and Listening House of St. Paul,
Incorporated d/b/a Freedom House,

Defendants.

**ORDER GRANTING AND
STAYING TEMPORARY
RESTRAINING ORDER**

This matter comes before the Court on Plaintiffs' motion for a temporary restraining order. Plaintiffs were represented by Aimee Dayhoff, John Holper, and Kyle Kroll of the law firm of Winthrop & Weinstine, P.A. Defendant City of St. Paul was represented by Assistant City Attorneys Kyle Citta and Anissa Mediger and by Theodore Waldeck of the law firm of Waldeck & Woodrow, P.A. Defendant Listening House of St. Paul d/b/a Freedom House was represented by Kristin Kingsbury, Jonathon Norrie, and James Kovac of the law firm of Bassford Remele, P.A., and by Karl Yeager of the law firm of Meagher & Geer, PLLP.

On November 5, 2021, Plaintiffs filed a complaint. On November 9, 2021, Plaintiffs filed a motion for a temporary restraining order with a memorandum and four supporting affidavits. The parties thereafter met and attempted, unsuccessfully, to resolve the matter. On November 30, 2021, Plaintiffs filed an amended complaint. On December 14, 2021, the City filed an answer. On December 20, 2021, Plaintiffs filed eighteen additional affidavits in support of

their motion for a TRO. On December 23, 2021, the City filed a memorandum in opposition to the motion for a TRO with three supporting affidavits. On December 23, 2021, Freedom House filed a memorandum in opposition to the motion for a TRO with nine affidavits. On December 28, 2021, the Court held a hearing and listened to arguments, taking the matter under advisement. On March 4, 2022, the Court requested additional letter briefing. On March 9, 2022, Plaintiffs and the City filed letter briefs in response. The City included three attachments with its letter brief. Listening House filed a letter joining in the City's response. Based upon the pleadings, filings, records, and arguments in this matter, the Court makes the following ruling.

FINDINGS

Minnesota Rule of Civil Procedure 65.02(b) provides "a temporary injunction shall be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor." *See also Crowley Co. Inc. v. Metropolitan Airports Com'n*, 394 N.W.2d 542, 544-45 (Minn. App. 1986) (reversing denial for lack of factual findings).

In the late fall of 2020, the City began to consider a plan to assist the unsheltered whose numbers had increased due to the Covid-19 pandemic. On November 5, an article appeared in an online version of the St. Paul Pioneer Press stating in its entirety,

With record numbers of individuals experiencing homelessness during the pandemic, the city of St. Paul plans to take a vacant fire house on West Seventh Street and turn it into a winter day shelter.

The goal is to get homeless residents out of the elements and connect them to bathrooms and one-on-one social services. The former Engine House 1 building at 296 West Seventh St. would be open from 8 a.m. to 8 p.m.

The West Seventh Street-Fort Road Federation and St. Paul City Council Member Rebecca Noecker will host an online presentation from 5 to 6:30 p.m. Nov. 10. There will be opportunity to asks (sic) questions and provide feedback.

To register to view or participate, visit tinyurl.com/W7Homless.

See Melo, St. Paul plans day shelter for the homeless at West Seventh Street fire station, <https://twincities.com/2020/11/05/st-paul-plans-day-shelter-for-the-homeless-at-west-seventh-street-fire-station/> (Nov. 5, 2020 at 6:55 p.m.), attached to Letter of the City of St. Paul filed March 9, 2022.

On November 9, 2020, a similar, but longer, article ran in the online edition of the Minneapolis Star Tribune. That article said, “A St. Paul fire station in the West 7th neighborhood is slated to become a day shelter for people experiencing homelessness.” The article cites St. Paul City Council member Rebecca Neocker as saying, “the city and county are preparing to announce multiple new shelter spaces after considering more than 40 properties in recent months. St. Paul-based Listening House will run the day shelter, which will operate from 8 a.m. to 8 p.m. Officials are planning to keep the space open for 18 months.” Additionally, the article says, “A virtual meeting on the proposed day shelter is scheduled for Tuesday. For more information, visit bit.ly/3mVZGRR (<https://bit.ly/3mVZGRR>).”¹ See Nelson, St. Paul to open day shelter in W. 7th neighborhood at <https://www.startribune.com/emma-nelson/6134699> (Nov. 9, 2020, 1:10 p.m.).

There is nothing currently in the record indicating any of the Plaintiffs saw either of the above articles, received notice of the November 10, 2020, meeting, or attended it. The articles do not mention any proposed St. Paul Ordinance, emergency or otherwise. The articles do not mention zoning at all, much less any proposal to change the St. Paul zoning code or the zoning applicable to 296 West Seventh Street. Moreover, the meeting mentioned in the article is not a meeting of a governmental body. As the City says, the West Seventh Street-Fort Road Federation

¹ The link in the article takes one to a single-page web posting of the City of St. Paul Department of Safety and Inspections announcing the West 7th Street-Fort Road Federation hosted meeting from 5:00-6:30 p.m. online. The posting says that “Members of the public are invited to hear a presentation and ask question or share reactions at an online meeting using Teams Live.” The posting provides a link to register for the event.

is a “long-standing consortium of business owners along West Seventh Street.” Attendance of a single St. Paul City Council member does not transform a meeting of the Fort Road Federation into one of a governmental body capable of taking action on an undisclosed zoning amendment.

According to the City, Council meetings are held weekly and the agenda for each meeting is posted a week prior. City Letter of March 9, 2022 at 2. The City alleges the agenda for the November 18, 2020, City Council meeting was posted on November 12, 2020, with instructions on how to attend and how to submit comments or other materials. *Id.* The Court understands the phrase “posted” in this context to mean that the City Council agenda appeared somewhere on the City’s web site. The City’s web site is not the official newspaper of the City. Plaintiffs allege, and the Court accepts, that the official newspaper of the City is the St. Paul Legal Ledger, published by Minnesota Lawyer. *See* Plaintiffs’ letter of March 9, 2022, at 3. Plaintiffs also allege, and the Court accepts, that no notice relating to the emergency ordinance at issue in this case (emergency ordinance 20-36) was published in the St. Paul Legal Ledger. *See Id.*

The agenda the City posted for its November 18, 2020, meeting included a brief description of emergency ordinance 20-36 and a web-link to its full text. The November 18, 2020, agenda has headings for “Communications & Receive/File,” “Consent Agenda,” “For Discussion,” “Ordinances,” “Public Hearings,” “Legislative Hearing Items,” and “Adjournment.” City Letter of March 9, 2022 Agenda Attachment. Below the “Ordinances” portion of the agenda is a statement that says, “An ordinance is a city law enacted by the City Council. It is read at four separate council meetings and becomes effective after passage by the Council and 30 days after publication in the St. Paul Legal Ledger. Public hearing on ordinances are held at the third reading.” *Id.* The Ordinances portion of the agenda has subheadings entitled “Final Adoption,” “Second Reading,” and “First Reading.” *Id.* Emergency ordinance 20-36 appears

with one other item under the heading of “First Reading.” *Id.* A summary of the emergency ordinance 20-36 item states: “Approving an emergency ordinance pursuant to City Charter 6.06 temporarily suspending T2 Zoning for City-owned property at 296 Seventh Street West, the site of former fire station 51 and now known as ‘Freedom House,’ to allow temporary reuse as a facility to provide services to the City’s unsheltered population due to the COVID-19 pandemic.” *Id.* The summary does not indicate a public hearing would be held with opportunity to participate and make comment, and section 6.06 of the City Charter imposes no public hearing requirement. The agenda also does not include emergency ordinance 20-36 under the portion of the agenda labeled “Public hearing.” The agenda would lead a reasonable person to conclude no public hearing on the ordinance would occur.

The record contains no evidence the City ever attempted to mail a notice of its November 18, 2020, meeting agenda to any owner of property situated wholly or partly within 350 feet of 296 West Seventh Street. The record contains no evidence any property owner actually received such mailed notice. Plaintiffs allege they never received any such mailed notice. See Plaintiffs’ Letter of March 9, 2022.

On November 18, 2020, the City Council took up emergency ordinance 20-36 at its regularly scheduled meeting. Emergency ordinance 20-36 passed by unanimous vote of the City Council. *See* Mediger Affidavit attachment A. On November 19, 2020, Mayor Carter signed emergency ordinance 20-36. *Id.*

Section 6.06 of the City Charter says that “to meet a public emergency, to wit, a sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action, the City Council may adopt one or more emergency ordinances.” Procedurally, “an emergency ordinance shall be introduced in the form and manner prescribed for

ordinances generally except that it shall plainly be designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists, and describing it in clear and specific terms.” Id. The ordinance need not go through any subcommittee or notice and hearing process, but “may be passed with or without amendment or it may be rejected at the meeting at which it is introduced.” Id. Passage of an emergency ordinance requires “the unanimous affirmative vote of all members of the council.” Id.

Emergency ordinance 20-36 declares that “an emergency, created by the Covid 19 pandemic, exists for the City’s unsheltered population which has grown due to the COVID 10 (sic) Pandemic and who lack access to facilities in which services and weather safety can be provided during the day and that City officials have identified a city owned facility in which services and weather safety for the unsheltered can be provided but are presently prevented from doing so due to current zoning regulations and the zoning classification applicable to the facility.” Id. at p. 2-3. The facility referred to in the emergency ordinance was a 17,000 square foot shuttered and vacant City-owned former fire station located at 296 West Seventh Street in St. Paul. The location was zoned T2 and is in a T2 district.² The emergency ordinance suspended the T2 zoning classification for the 296 West Seventh property and for no other property.

The emergency ordinance authorized city officials to arrange for the use of the facility “as a temporary day-use service facility and winter weather sheltering facility for the unsheltered.” The emergency ordinance also authorized city officials to “enter into a real estate lease or license

² Allowed uses in a T2 area include hospitals, veterinary clinic, general retail, grocery, bakery, liquor store, laundromat and dry cleaning, funeral home, service business with showroom or workshop, tattoo shop, tobacco products shop, restaurant, catering, hotel, inn, health club, theater, assembly hall, convenience market, service station, limited production and processing, printing and publishing. See Summary of Uses Allowed in St. Paul Traditional Neighborhood Zoning Districts at www.stpaul.gov/sites/default/files/Media%20Root/Planning%20%26%20Economic%20Development/Zoning%20Basics.pdf#:~:text=All%20T2%20uses%20except%20drive-through%20sales%2Fservices%20Parking%20facility%2C,Use%20Permit%20%28CUP%29%20granted%20by%20the%20Planning%20Commission.

agreement which will facilitate the timely operation [of the facility] as a day-use civic facility in which daytime services and weather safety can be provided to the City's unsheltered population during the current Covid 19 pandemic and beyond if deemed necessary, upon such terms that are deemed prudent or as necessary by law." Emergency Ordinance 20-36 §1 (emphasis added). The execution date of the license or lease authorized by the emergency ordinance was to be within thirty days of the effective date of the emergency ordinance and the lease or license authorized was not to exceed 18 months from the date the lease or license agreement was executed. Id. at §3.

The emergency ordinance said the authorized facility could be used as an overnight shelter only if, in the opinion of the Director of the Department of Emergency Management, there is an identified shortage of beds in the City's overnight shelters "for women, their children or children in their care and custody." Id. at §4. In that event, overnight use was limited to women, their children and children in their care and custody and such use was exempt from the separation requirements for overnight shelters otherwise applicable under the City code. Id. Finally, the emergency ordinance directed the Director of the Department of Safety and Inspections "to assume responsibility for ensuring that the operation and programming provided at [the facility] is consistent with the terms of the license or lease entered into and to keep the Mayor and City Council apprised of the operations and programming provided at the facility." Id. at §5.

On November 24, 2020, the City signed a lease with Listening House to operate the facility as described in the emergency ordinance. Mediger Affidavit Exhibit D. The lease was for a term of 180 days commencing December 1, 2020. Id. The lease was renewable for up to two additional 180-day terms. Id. The lease provides the facility will be used as a "space where people who are homeless, disadvantaged or lonely can find sanctuary from the streets and practical assistance." Id. The lease described the permitted use as including "providing snacks

and beverages, facilities for showering, sleeping, laundry, and lounging, dispensing clothes and hygiene supplies, and providing meeting space for social workers and other professionals from other organizations to provide services to guests, including housing and job services.” Id.

Listening House opened its doors, in January of 2021, operating under the name Freedom House.

The City’s brief indicates Freedom house serves 100 people each day. At the hearing on this matter, Defendants told the Court that the stated capacity of the facility is 175 persons and that people come and go from the facility throughout the day. The executive director of Listening House, which operates Freedom House, filed an affidavit saying Freedom House provided services to an average of 175 guests per day, more than 5,000 guests per month, and more than 60,000 guests per year. Affidavit of Molly Jalma at ¶6. The record is silent as to the number of times or days the facility has been used as an overnight shelter for women and children and as to the number of women and children so sheltered.

Molly Jalma, executive director of Listening House, which operates Freedom House filed an affidavit detailing the services Freedom House provides to the unsheltered. These include “providing guests with gender inclusive restrooms; address and mail pick-up services; assistance in tracking down/obtaining birth certificates and identification cards; community medical care; public Wi-Fi, phone and charging stations, private area to connect with outreach workers; access to snacks and light meals, coffee, tea, juice and water; clothing; shoes and boots; personal hygiene items; backpacks and tote bags; bus tokens; and opportunities to work for gift cards ... hot showers, laundry facilities, and quiet semi-private rooms with beds for guests to rest.” Jalma affidavit at ¶3. The record contains no indication Freedom House has any authority to retain anybody in its custody, itself offers medical or psychiatric services, or has any practice of holding

persons in custody. There is no indication Freedom House makes any kind of decisions to release people into the community. Those Freedom House serves come and go of their own volition.

Listening House submitted a document entitled “Freedom House Restriction Chart.” *See* Affidavit of Karl Yeager Exhibit B. At the top of the chart, just below the title, appears the statement “(Just a guideline, Program Manager will review and make changes as needed.” *Id.* (closing parenthesis missing in original). The document is not dated, and the record does not indicate when or how it may have been adopted. The document sets forth behaviors and the length of “restriction” that may attach to the behavior. For example, “Failure to turn in Weapons – (Knives, sticks, bats, tools, etc.)” is listed as an offense. The restriction suggested for the first offense is “Verbal Warning/reminder” while the suggestion for a second offense is “2wks – 1 month (Depends on Weapons).” “Suspicion of ‘intent to sell’ illegal substances – Witnessed exchange of illegal substance” carries a suggested restriction of “Verbal Warning” for the first offense, “3months” for the second offense, and “Witnessed: 1 year.”³ The Court understands the term “restriction” in the document means the person restricted may not be at the Freedom House facility. Defendants offered no evidence the policy was ever enforced and did not offer documents that would necessarily be kept in order to determine who was warned or restricted in the past, for how long, and for what.

Plaintiffs’ amended complaint set forth 105 incidents “detailed by concerned community members.” Amended Complaint at ¶35. The complaint alleges the incidents “continue on a daily basis” and were “caused by Freedom House guests.” *Id.* The complaint alleges that the Freedom House guests “threaten the well-being and safety of neighborhood members.” *Id.*

³ The document is loaded with typographical errors, leading the Court to wonder how much thought and care went into crafting it and the policy it supposedly memorializes.

Plaintiffs also offered 22 affidavits in support of their motion.⁴ Nine of the affidavits are from residents of Irvine Park Towers, located at 291 West Seventh Street, across the street from Freedom House. *See* Affidavits of Brown, Christie, Foss, L. Christensen, M. Christensen, Peterson, Richardson, Schoep, and Warren. One of the affidavits is from a person who works near Freedom House and whose office window faces Freedom House. *See* Koose Affidavit. Another is from a neighborhood resident who lives near Freedom House. *See* Martin Affidavit.

Many of the resident affidavits say that, since Freedom House opened, they have felt a loss of safety. *See, e.g.*, Braun Affidavit at ¶3 (“I feel that my home is no longer a safe place because of Freedom House and the activities associated with its operation.”). For example, one says, “a Freedom House guest made it into the Irvine Park Towers building and knocked on my door. She asked to use my restroom and I said no. I was afraid for my safety and what might happen if she was allowed in my unit.” Warren Affidavit at ¶11. Another common theme in the resident affidavits has to do with shopping carts and trash. *See, e.g.*, Christies Affidavit at ¶5 (“I have witnessed the large amounts of trash Freedom House guests leave. They leave trash around bus stops. There are shopping carts everywhere and I have witnessed Freedom House guests sleep in the bus stops.”). The residents also note signs of drug use and other bad behavior. *See, e.g.*, L. Christensen Affidavit at ¶10 (“some of the people who are guests of the Freedom House are engaging in drug use, sex, sleeping in tents and the bus shelters, harassing people as they walk by and simply being a general public nuisance.”).

With a few limited exceptions, resident affiants allege they actually witnessed the events they described, but offer limited information in terms of date, time, and location of those events. The resident affiants do not say how they identified a person as a Freedom House guest. That is to

⁴ Plaintiffs offered three affidavits from one affiant and two from another. All total, plaintiff’s offered affidavits from 18 distinct affiants.

say, the resident affidavits do not say whether they believed the person was or would be connected with Freedom House because, for example, they saw the person on Freedom House property within the past hour, day, week, or ever, or for some other reason.

Plaintiffs also offered affidavits from four businesses in the area. Pat Boemer is an affiant who is the owner of Patrick McGovern's Pub at 225 Seventh Street West. Stacy Miller is an affiant who is employed at Nath Companies, which operates condos and apartments at Irvine Park Towers at 291 West Seventh Street. Patricia Salkowicz is the owner of Art Farm Advertising at 310 Sherman Street which shares a property boundary with Freedom House. Tom Reid is an owner, and Kathy Gosiger is a general manager of Tom Reid's Hockey Pub at 258 West Seventh Street.

Mr. Boemer writes that he "personally witnessed" Freedom House guests come into McGovern's to beg, harass customers, and to "utilize McGovern's as a place to stay for period of time even though they are not there to buy anything or support our restaurant." Boemer Affidavit at ¶6. Mr. Boemer also says, "I have seen the Freedom House guests come into my establishment, sit in my tables without ordering and use our restrooms for legal and illegal activities." *Id.* Mr. Boemer alleges that since Freedom House opened, McGovern's parking lot has been subject to weekly car break-ins of customer's cars and individuals from Freedom House have walked the parking lot looking into car windows and breaking in if they see something valuable. *Id.* at ¶7. Mr. Boemer says he has "seen an increase in neighborhood destruction since Freedom House started occupying space at 296 West Seventh Street." *Id.* at ¶11.

Patricia Salkowicz submitted multiple separate affidavits. The second Salkowicz affidavit is notable for its specificity. For example, the affidavit alleges that on December 21, 2021, three Freedom House guests appeared to be using drugs in the back of the Art Farm parking

lot. The police were called and “ultimately the individuals returned to the Freedom House.” The affidavit also alleges later that same day three people from Freedom House started to go into the Art Farm parking lot. Art Farm staff “yelled at them from our back door explaining that this was private property and they were trespassing.” A female in the group threatened to come back and to burn the building down. Salkowicz Second Declaration at ¶5. The descriptions of these events are notable in that they provide a time and location for the encounters and a reason why the affiants believe the individuals involved were connected with Freedom House.

In contrast, allegations in paragraph 105 of the amended complaint and the allegations in the first affidavits of Patricia Salkowicz, Kathy Gosiger, and of the sole affidavit of Tom Reid are mostly silent as to time, location, and how the incident relates to Freedom House. The affidavits are also quite vague and imprecise as to the source of the information relating to the incidents. For example, the Reid affidavit says that he is present “almost every day” at his establishment and that “[s]ince Freedom House opened . . . there have been over 100 specific dangerous incidents caused by Freedom House guests that threaten the well-being and safety of neighborhood members.” The affiant says, “Each of these incidents have been witnessed by me and/or neighboring business owners or customers and immediately reported to me.” Id. at ¶5.⁵ The affiant lists a summary of 121 incidents. Id. The affiant does not indicate which incidents were personally witnessed, which were reported by neighboring business owners (or who those business owners were), and which were reported by customers (or who those customers were). The Reid, first Gosiger, and first Salkowicz affidavits appear to tell significantly overlapping stories without acknowledging as

⁵ The first Salkowicz affidavit lists 107 alleged incidents “caused by Freedom House guests.” Salkowicz affidavit at ¶4. The affidavit alleges, “each of these incidents have been witnessed by me and/or neighboring business owners and immediately reported to me.” Id. The first Gosiger affidavit lists 145 incidents “caused by Freedom House guests.” First Gosiger affidavit at ¶5. The first Gosiger affidavit alleges “each of these incidents have been witnessed by me and/or neighboring business owners and immediately reported to me.”

much. Such crowd-sourced stories are not typically admissible, and the Court cannot accord them significant weight. See Minn. R. Evid. 801(c) (“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”); Minn. R. Evid. 802 (“Hearsay is not admissible.”). Notwithstanding their evidentiary shortfalls and even allowing for substantial duplication, the incidents described in the affidavits are disturbing and would undoubtedly leave a person witnessing such incidents feeling unsafe, anxious, and most certainly disinclined to live, work in, visit, or patronize a business in the area. Moreover, the cumulative impact of the incidents would be far greater than the effects of the incidents separately.

Although the affidavits alleged all of the incidents were “caused by Freedom House guests,” information in the affidavits as to how the affiant knows or came to believe those involved were connected with Freedom House is practically nonexistent.⁶ For example, the Reid affidavit does not reveal why the affiant believes the tent at Shepard Road and Eagle Street, the bicycle left on business property, or the new graffiti by a business patio was caused by one or more Freedom House guests. *See* Reid affidavit ¶5(88), (105), (71).⁷ Other incidents raise the same concern. For example:

5. Feces and urine odors;
6. Unconscious man in parking lot;
23. Multiple broken windows at business;
29. Woman trespassed onto business;
30. Damage and vandalism reported at business;
39. Trash left behind business and home;
43. Man screamed and broke pint glasses when refused service without payment;
48. Inebriated man walks into traffic;
49. Vandalism in front of business;
54. Man using illegal substance at park gazebo;

⁶ 15 of the 121 incidents set forth in the Reid affidavit actually name Freedom House. One of those, incident 27, alleges it occurred “during Freedom House open hours” as if that were a significant connection.

⁷ The affidavits allege these incidents occurred after Freedom House opened. Yet, tents, bicycles, and graffiti are not new to St. Paul or to the West Seventh area.

- 55. Man asleep in park gazebo;
- 56. Individuals bathed in park fountain;
- 57. Multiple individuals asleep or unconscious in park;
- 58. Man showed gun to neighbor in park;
- 71. New graffiti by business patio;
- 75. Outlet broke at business;
- 78. Food containers and trash left in business parking lot;
- 81. Individuals camped out in front of historical building;
- 85. New graffiti on street light and a several locations at business;
- 88. Large tent or multiple tents located at Shepard Rd. and Eagle St.;
- 89. Homeless man arrested in front of business;
- 97 and 98. Trash, clothing, and personal belongings left in park;
- 101. Two bicycle frames and partial bottle of motor oil found outside business;
- 103. Trash, personal belongs, and other items left in park gazebo and found by neighbor;
- 104. Luggage and clothing left on business property;
- 105. Bicycle left on business property;
- 112. Have been told personally by my friends, they won't come to St. Paul;
- 113. Have friends who have canceled season tickets with the Wild due to safety issues;
- 119. No response from our sent emails left for our council woman;
- 120. At a Fort Road Business neighborhood meeting, deputy mayor showed up late, didn't address crowd as advertised, brought her children.

Reid Affidavit at ¶5. At best, one might conclude some of these events did not happen before Freedom House opened and did occur after it opened. That conclusion does not, however, establish a proximate causal connection between Freedom House and a specific listed event.

Moreover, even if the Court were to find that someone with some connection to Freedom House was connected to an incident, the incident lists do not connect the event noted with some act or omission by the City as landlord or by Listening House that caused the person described in the incident to so act. For example, the Court finds no alleged act or omission by the City as landlord or by Listening House that is somehow connected to incident number 48 of the Reid affidavit—"Man asleep in park gazebo—or to incident 48—Inebriated man walks into traffic. Even if the Court were to conclude that the sleeping man or the inebriated man had just left Freedom House, the record does not support a finding that something the City did as landlord or

Listening House did in operating Freedom House was related in some way to the man sleeping in the gazebo or the inebriated man walking into traffic.

The Reid affidavit also makes a number of allegations relating to illegal drug use. For example:

- 4. Open drug use in front of businesses;
- 11. Intoxicated individuals trespassed on 7th Street property;
- 20. Syringes left outside business;
- 34. Syringes left behind business's dumpster;
- 53. Two men loitered at business back door and used illegal substance for more than 30 minutes;
- 54. Man using illegal substance at park gazebo;
- 61. Neighbor reported sleeping man with syringe in park gazebo;
- 62. Men using illegal substances at back door of business'
- 64. Two men used illegal substances near business parking lot;
- 96. Man trespassed into business and was observed selling small bags to individuals on sidewalks;

Reid Affidavit at ¶5.

The Reid affidavit also describes a number of incidents relating to shopping carts:

- 2. Shopping carts left at entrance to business parking lot;
- 8. Shopping carts left in business's parking lot;
- 28. Overflowing shopping carts left at business;
- 50. Trash and shopping cart left in front of historical building;
- 73. Shopping carts left behind dumpsters at historical building;
- 92. Two shopping carts left in Freedom House dumpster and a shopping cart filled with trash left in parking lot;
- 95. Two individuals entered business' parking lot and left a grocery cart full of belongings and trash. Later in the day the individuals returned and dug through business' dumpster;
- 102. Shopping cart filled with trash, gas container, personal belongings, etc. left in business parking lot;

Reid Affidavit at ¶5.

Finally, the Reid affidavit alleges incidents relating to sanitary and hygiene practices and conditions. For example:

- 3. Overflowing trash cans in front of businesses and on streets;
- 5. Feces and urine odors;

- 7. Piles of food, clothing, food containers, and bags of rocks in business's front lawn;
- 9. Two piles of human feces found outside business;
- 10. Trash and clothing in business's parking lot;
- 19. Human vomit covering business's windows;
- 21. Human feces and clothes used to wipe feces left behind business's dumpsters;
- 22. Food containers and half eaten food left behind dumpsters;
- 24. Trash and food containers spread from Freedom House to Exchange Street;
- 25. Multiple men urinated and defecated outside business, business parking lot, and dumpster at Freedom House;
- 31. Homeowners reported that individuals knocked on their doors asking to shower and were sleeping in their yards;
- 33. Human feces left behind business's dumpster;
- 36. Upon arriving at business, owner was approached by man from Freedom House who began to urinate. Upon being asked to leave he began to swear and yell at the owners;
- 39. Trash left behind business and home;
- 56. Individuals bathed at park fountain;
- 76. Trash strewn from Freedom House to neighboring business;
- 77. Three piles of human feces in business parking lot;
- 78. Food containers and trash left in business parking lot;
- 90. Trash strewn including empty bottle of liquor, food containers, masks, and personal belongings;
- 99. Individual defecated on business property and attempted to charge phone on exterior outlet leaving behind toilet paper and belongings;
- 107. Daily cleanup of human feces on my properties;
- 114. Watched a Freedom House individual urinate on wall as police officer watched;
- 117. Women in bus shelter with three children as a man came in and proceeded to urinate;

Reid Affidavit at ¶5.

In sum, for purposes of this motion, the affidavits Plaintiffs submitted show that an additional 5,000 unsheltered people per month in the West Seventh area resulted in an increase in issues relating to illegal drug use, shopping carts, sanitation and hygiene, and crime. What is absent from the record before the Court, however, is evidence demonstrating that the persons committing those acts did so because of specific acts of the City acting as owner and landlord or Listening House as the provider of services to the unsheltered.

CONCLUSIONS

Minnesota Rule of Civil Procedure 65.01(b) provides a temporary injunction “may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.” See *Central Lakes Education Ass’n v. Ind. School District 743*, 411 N.W. 2d 875, 878 (Minn. 1987). A temporary injunction is an extraordinary equitable remedy and is granted only when the rights of a party will be irreparably injured before a trial may be held or when the relief sought will become ineffectual or impossible to grant. See *DSCC v. Simon*, 950 N.W.2d 280, 286 (Minn. 2020); *Pickerign v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 564 (1975). “Injunctive relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great irreparable injury.” *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). As the moving parties, Plaintiffs bear the burden of proving temporary injunctive relief is appropriate. *Id.*

In assessing the irreparability of the harm on which the appropriateness of injunctive relief rests, trial courts are instructed to consider five factors: (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief; (2) the harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and (5) the administrative burdens involved in judicial supervision and enforcement of the temporary

decree. See *DSCC v. Simon*, 950 N.W.2d 280, 286–87 (Minn. 2020); citing *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321–22 (Minn. 1965).⁸

1. Relationship of the Parties

Plaintiffs Tom Reid’s, Art Farm Advertising, Fort Road, T.D. Wright, and Portafolio are businesses located in or around the 200 block of West Seventh Street. Plaintiff WWII is a dry-cleaning business located at 505 Selby Avenue. Plaintiff Susan Adair resides at 505 Selby, which is located slightly more than a mile away from the 200 block of West Seventh Street. Plaintiff’s amended complaint alleges West Seventh Street Partners, LLC, owns and operates Tom Reid’s and has operated in St. Paul for nearly 15 years. Amended Complaint at ¶1. All Plaintiffs claim to have been directly and negatively impacted by the City’s decision to suspend the T2 zoning applicable to 296 West Seventh Street and by the City’s lease of the property to Freedom House. All Plaintiffs also claim to have been directly and negatively impacted by the City’s conduct as landlord of the property and by Freedom House’s conduct as tenant.⁹

Plaintiffs’ amended complaint seeks relief from the City acting in two roles. First, the amended complaint challenges the City’s suspension of T2 zoning status for 296 West Seventh Street. See Amended Complaint at Counts I-IV. Second, the amended complaint seeks damages from the City as owner and landlord of the property. See Amended Complaint at Counts VI and

⁸ The City cites *State by Ulland v. International Ass’n of Entrepreneurs of America*, 527 N.W.2d 133 (Minn. App. 1995) for the proposition that a plaintiff must satisfy each of the *Dahlberg* factors. See Memorandum of City Opposing Plaintiff’s motion for a TRO at 12. *Ulland* involved an action by the Commissioner of Commerce for an injunction authorized by statute (Minn. Stat. §45.027). The Court of Appeals, citing *Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 389 (Minn. App. 1992), held that where an injunction is predicated on the applicability or inapplicability of a statute authorizing an injunction, the *Dahlberg* factors may still apply to guide a court’s discretion in deciding whether to issue an injunction a statute otherwise authorizes. *Id.* *Ulland* does not stand for the proposition that the Plaintiff must prove each *Dahlberg* factor. Such a rule would be at odds with statements in *Dahlberg*, and the multitude of cases following it, that the five factors are an overall guide to district courts in considering irreparable harm and entitlement to equitable relief.

⁹ Other than the bald allegation, nothing in the record indicates that the area around 505 Selby was affected by Freedom House or those it serves any more than any other area of St. Paul.

VIII. Plaintiffs' amended complaint seeks relief from Listening House in its role as tenant and operator of Freedom House. *See* Amended Complaint at Counts VII and VIII.

Counts IV and V of the amended complaint set forth Plaintiffs' requests for injunctive relief. They seek to enjoin the City from allowing Listening House to provide daytime shelter services at 296 West Seventh Street unless Listening House obtains a proper variance from the zoning code and is subject to proper oversight from the City. The counts also seek to enjoin Listening House from providing daytime shelter services at 296 West Seventh Street without obtaining a proper zoning variance and without establishing and actively enforcing rules withholding services to guests who commit criminal or other wrongful acts in the vicinity of Freedom House. *See* Amended Complaint at Count V.

Plaintiffs allege current and ongoing harm and seek temporary relief from the harm pending the litigation. In this sense, the temporary injunction Plaintiffs seek is in aid of the ultimate relief they seek in the litigation. The City passed the challenged emergency ordinance on November 18, 2020, and entered into a lease with Listening House on November 24, 2020. Freedom House began operating in January of 2021 and has been in operation since. An injunction would upset the status quo. Balancing these considerations, the Court finds the relationship of the parties factor weighs slightly in favor of the Plaintiffs.

2. Likelihood of Success on the Merits

a. Counts I-V Emergency Ordinance 20-36

Counts I-V of the amended complaint turn upon the validity of emergency ordinance 20-36. "A municipality's power to regulate land use by zoning exists by virtue of authority delegated to it by the state through legislation." *See Denney v. City of Duluth*, 202 N.W.2d 892, 894 (Minn. 1972); *Alexander v. City of Minneapolis*, 125 N.W.2d 583, 158 (Minn. 1963).

Minnesota Statutes section 462.357 subdivision 1 authorizes a municipality to regulate “by ordinance” the “uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes.” The regulation passed by ordinance must be “for the purpose of promoting the public health, safety, morals, and general welfare.” Minn. Stat. § 462.357 subd. 1.

The St. Paul City Charter says how ordinances may be passed. The City Charter authorizes legislative ordinances which define, regulate, suppress, prevent or prohibit acts, businesses, persons, or grant or modify franchises or are “in any way an exercise of legislative powers.” St. Paul City Charter §6.03.1. Such ordinances require an affirmative vote of four members of the City Council. *Id.* Such ordinances must be read in full at the meeting at which presented, unless the requirement is waived, and must be read again by title at two City Council meetings held not less than a week after the first presentation. *Id.* §6.05

Section 6.06 of the St. Paul City Charter sets out an emergency ordinance process. Section 6.06 says that “to meet a public emergency, to wit, a sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action the City Council may adopt one or more emergency ordinances.” Procedurally, “an emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally except that it shall plainly be designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists, and describing it in clear and specific terms.” *Id.* The ordinance “may be passed with or without amendment or it may be rejected at the meeting at which it is introduced.” That is, there are no waiting periods, pre-meeting processes, or “reading” requirements that apply to emergency ordinances. Instead, they may be passed or rejected at the meeting at which they are introduced. *Id.* Additionally, passage

of an emergency ordinance requires “the unanimous affirmative vote of all members of the council.” *Id.*

Plaintiffs’ amended complaint challenges the City’s authority to pass emergency ordinance 20-36. *See* Plaintiffs’ Memorandum in Support of TRO at p. 15 (“the City has no legitimate basis to allow an extended and indefinite ‘temporary’ and ‘emergency’ suspension of all zoning oversight related to a single and specific property.”). Plaintiffs argue the pandemic emergency declarations of the Governor and the Mayor are either no longer in effect or are unsupportable. Plaintiffs’ amended complaint also contends that the connection between the purpose of the ordinance—to suspend the T2 zoning designation of 296 West Seventh Street in order to allow the property to be used as a temporary day-use service facility and winter weather sheltering—is insufficiently related to the pandemic to support the emergency designation.

The Court views the emergency ordinance authority in the City Charter as entirely procedural. That is, section 6.06 of the City Charter neither expands nor contracts the City’s authority to legislate or regulate. In this sense, the emergency declarations of the Governor and the Mayor are simply not relevant to this proceeding. The legislature delegated to municipalities the authority to regulate the “uses of buildings and structures” by ordinance. Section 6.06 of the St. Paul City Charter authorizes ordinances to be adopted on an emergency basis. The City Charter provides a standard for City Council members to consider in determining whether an emergency exists. *See* St. Paul City Charter §6.06 (an emergency is a “sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action.”). The City Charter also requires a unanimous vote of the City Council to adopt an emergency ordinance. Other than the Mayor deciding whether to sign the emergency ordinance, the Governor’s or the Mayor’s views or proclamations as to an emergency, for

whatever reason, are of no import in determining whether the City Council could use the procedure described in section 6.06 of the City Charter or possessed the substantive authority to pass an ordinance. Similarly, it is not this Court's role to substitute its judgment for the collective and representative City Council's judgment as to the existence of an emergency.

Alternatively, Plaintiffs contend the emergency ordinance is not an exercise of the City's zoning authority at all, but represents a de facto variance that must be approved, not by the City Council, but either by the Board of Zoning Appeals or the Planning Commission. Under Minnesota Statutes section 462.357 subdivision 6, variances may be granted by boards of zoning appeals "when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan." Minn. Stat. §462.357 subd. 6(2). The applicant for a variance must establish there are "practical difficulties" in complying with the zoning ordinance. *Id.* Practical difficulties "means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality." *Id.*

In this case, the City, as landowner, made no attempt to show or argue that the use of 296 West Seventh Street it intended was reasonable, nor did it argue or show that its plight was due to circumstances unique to the property that were not of its own creation. The City acted legislatively, not quasi-judicially, and it did so not by seeking a variance from the requirements of its zoning code. The City instead amended its zoning code to essentially remove 296 West Seventh Street from the T2 zoning district. *See* emergency ordinance 20-36 at §2 ("the T2 zoning classification for Freedom House, as depicted on the Zoning Map of Saint Paul under Leg. Code §60.303, is hereby suspended."). Emergency ordinance 20-36 does not purport to

allow a use that is in conformity with any other zoning classification, nor does it exempt the property from compliance with only certain requirements of the T2 zoning district in which it was located. Instead, emergency ordinance 20-36 suspends the requirements of the T2 zoning district from 296 West Seventh Street altogether and completely. It is not a variance.¹⁰

Nevertheless, the fact that the City Council may use emergency authority under section 6.06 of the City Charter to pass emergency ordinance 20-36 does not end the matter. Minnesota Statutes section 462.357 subdivision 3 sets forth procedural requirements municipalities, including those with City Charters, must meet. Section 462.357 subdivision 3 says, “No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or governing body.” The subdivision further requires that “A notice of the time, place, and purpose of the hearing, shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing.”

In addition to this ten-day notice and public hearing requirement, subdivision 3 says that “When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates.” *Id.* The final sentence of subdivision 3 provides, “The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.” *Id.*

¹⁰ Despite its insistence that emergency ordinance 20-36 is not a variance, the City urges that the Court lacks jurisdiction because Plaintiffs have not exhausted administrative remedies as required under Minn. Stat. §462.36 subd. 2. The subdivision provides a defense to a municipality if the complaining party “has not attempted to remedy the grievance by use of procedures available for that purpose under ordinance or charter, or under sections 462.351 to 462.364.” In other words, the City asks the Court to require that Plaintiffs pursue administrative remedies applicable to a challenge to the outcome of a variance proceeding while maintaining that emergency ordinance 20-36 is not, in fact, a variance. In any event, the last sentence of subdivision 2 authorizes a court to exempt a party from the requirement of exhausting its administrative remedies if it finds “the use of such remedies would serve no useful purpose under the circumstances of the case.” The Court so finds.

Although the parties can, and may well, conduct additional discovery on the matter, Plaintiffs are likely to succeed at trial in showing the City did not comply with the notice and hearing requirements of section 462.357 subdivision 3. The notices in the online editions of the Pioneer Press and the Star Tribune of the November 10, 2020, Fort Road Federation meeting do not comply with subdivision 3. First, they do not give notice of any meeting of the City Council (the governing body) or of a planning agency. The term “planning agency” is defined in Minnesota Statutes section 462.352 subdivision 3 as “the planning commission or the planning department of a municipality.” The Fort Road Federation is neither a planning commission nor planning department of the City. Second, neither the Pioneer Press nor the Star Tribune is “the official newspaper” of the City. The official newspaper of the City is the St. Paul Legal Ledger, and no notice of a public hearing on emergency ordinance 20-36 appeared in that publication. Third, neither newspaper article discloses the City intended to amend its zoning code. The statute says, “no zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon.” The word “thereon” in this context refers to the zoning ordinance or amendment; it does not refer to the municipality’s overall plans, hopes, or aspirations.

Additionally, the notice must disclose “the time, place and purpose of the hearing.” The hearing referred to is the hearing on the zoning ordinance or amendment. Here, the articles cannot meet the notice requirements of subdivision 3 because they do not mention any zoning ordinance or amendment at all. Finally, neither notice was published ten days in advance of the disclosed November 10, 2020, meeting: the Pioneer Press article was published five days in advance and the Star Tribune article was published one day in advance. Therefore, Plaintiffs are likely to succeed in showing that the articles do not meet any of the requirements of subdivision 3 relating to publication of notice.

With respect to the November 12, 2020, posting of the agenda for the November 18, 2020, City Council meeting, Plaintiffs are likely to succeed in showing the posting falls short as well. First, although the posting accurately states the time and place of the City Council meeting, it was posted only six days in advance, not 10 days in advance, as subdivision 3 requires. Second, the notice was not published in the official newspaper of the City. Third, and most importantly, the posting does not disclose any intent by the City to hold a public hearing on emergency ordinance 20-36. To the contrary, the posting does not include the ordinance under the portion of the agenda labeled “Public Hearing.” In addition, the posting lists emergency ordinance 20-36 under the “Ordinances” portion of the agenda. The agenda indicates that “public hearing on ordinances are held at the third reading” and emergency ordinance 20-36 is listed under the heading “First Reading.” If it was the City Council’s intention to hold a public hearing and to vote on passage of the ordinance at the November 18, 2020, meeting, it could have placed the ordinance on the portion of the agenda entitled “Public Hearing” or, at the very least, under the “Final Adoption” portion of the agenda relating to ordinances. As drafted, the agenda created the false impression that a public hearing would be held later, if at all.

Section 462.357 subdivision 3 also says, “When an amendment involves changes in district boundaries affecting an area of five acres or less a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated whole or partly within 350 feet of the property to which the amendment relates.” The City contends ordinance 20-36 did not formally change a district boundary. Therefore the mailed notice requirement does not apply. See City Letter of March 9, 2022, at n. 1. The Court disagrees.

Section 2 of emergency ordinance 20-36 says that “For the purpose of establishing a daytime service and weather shelter facility for the unsheltered at 296 West Seventh Street (hereinafter ‘Freedom House’) and for that exclusive purpose only, the T2 zoning classification for Freedom House, as depicted on the Zoning Map of Saint Paul under Leg. Code §60.303, is hereby suspended the effect of which shall continue as provided under Section 3 of this Emergency Ordinance.”¹¹ The change the City wrought was to remove 296 West Seventh from the T2 district. Uses formerly permitted in a T2 district are no longer permitted at 296 West Seventh and a use not permitted in the West Seventh Street T2 district is now permitted. One might argue whether a zoning amendment allowing some T2 uses while disallowing others changes the boundaries of the existing T2 district. But that is not what emergency ordinance 20-36 did. The ordinance does not permit any previously permissible T2 uses. Instead, it effectively removes 296 West Seventh from a previously designated T2 area.

Indeed, at a February 17, 2022, hearing on the City’s motion to dismiss this matter, in response to questioning from the Court about the narrow nature of the zoning change and the “spot zoning” appearance of emergency ordinance 20-36, the City described what the ordinance did by noting 296 West Seventh was in a T2 district and “ordinance 20-36 takes Freedom House out of that district.” The Court then inquired, “Are you telling me Freedom House is in its own zoning district now?” The City responded, “I am saying it’s zoned individually, yes.” Still later in the discussion, the City said,

[T]here is no limiting language in the statute to say what a zoning district needs to be. The City’s solution here in terms of Freedom House, though they could have suspended T2 zoning for the entirety of the West Seventh Street Neighborhood, that would have

¹¹ The City refers to emergency ordinance 20-36 as temporary. Yet, nothing in section 6.06 of the City Charter or in ordinance 20-36 limits the zoning suspension to the duration of the emergency noted in its passage or to any other duration. For all practical purposes, the zoning amendment, like any other zoning amendment, will last until the City decides to change it. In addition, Section 3 authorizes city officials to enter into a lease facilitating the operation of Freedom House “during the current Covid 19 pandemic and beyond if deemed necessary.”

been an overly broad solution to a very particular problem which they solved with a scalpel rather than a saw. It's not outside of the authority that's granted to them in the statute because there's no particularized authority that limits them to a certain size of district or a certain method of zoning.

The City has expressed that it altered the boundaries of the West Seventh Street T2 district by suspending T2 zoning at 296 West Seventh.

The Minnesota Supreme Court, in the context of determining whether a measure adopted by a city is a police power regulation or a zoning measure, noted that section 462.357 “permits cities to divide land into ‘districts or zones with uniform regulations.’” *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). *Dock* continues, “zoning ordinances typically divide a geographic area into multiple zones or districts. Within the districts or zones certain uses are typically allowed as of right and certain uses are prohibited by virtue of not being included in the list of permissive uses for a district.” *Id.* quoting 8 Eugene McQuillan, the Law of Municipal Corporations §25:59 (3d ed. 2020). In other words, if a use permitted on land in a district or zone is no longer permitted, the change in permitted use changes the boundaries of the district.¹²

Moreover, in *Glen Paul Court Neighborhood Ass'n v. Paster*, 437 N.W.2d 52, 56 (Minn. 1989), the Minnesota Supreme Court found a request to rezone 2.77 acres from office designation to R-3 required mailed notice. The Court noted the purpose of mailed notice saying,

To hold that mailed notice was required would fulfill the legislative purpose of individual notice, protecting nearby property owners from arbitrary or detrimental “spot zoning” by advising them of proposed changes to small parcels of land. When larger areas of land are rezoned, property owners are expected to determine for themselves, after published notice, whether nearby properties will be affected.

¹² The fact that the parcel upon which a use is no longer permitted is not located on the outer border of the district or zone cannot be determinative or cities could effectively amend the zoning of an entire district without notifying adjacent landowners by simply changing the permitted use incrementally from the center of a district to the outer edges.

Id. The zoning amendment in this case falls squarely within the legislative purpose of mailed notice as *Glen Paul* describes it. In sum, emergency ordinance 20-36 changes the boundaries of the T2 district in which it was located. Consequently, the City was required to comply with the mailed notice provisions of section 462.357 subdivision 3. The City, however, has identified no attempts to comply with the mailed notice provisions.

The final sentence of section 462.357 subdivision 3 provides that defects in providing the required notice shall not invalidate the proceedings, “provided a bona fide attempt to comply with this subdivision has been made.” The Minnesota Supreme Court has interpreted this provision to presume that notice of a public hearing has been given, that the hearing has been held, and that “the only problem is some defect in the notice.” *Pilgrim v. City of Waconia*, 256 N.W.2d 266, 2270 (Minn. 1977). The Court gives as examples of such excusable defect, such as “if the notice were posted 9 days prior to the meeting instead of the specified 10” or “the notice omitted to specify ‘place’ when public hearings were always held in the same hall.” Id. In this case, published notice was in a non-official newspaper, was to a non-governmental meeting, was untimely, and did not identify that a zoning change was being proposed. The City Council agenda was not published, was not timely, and suggested the zoning amendment would only be introduced and not debated or discussed. Mailed notice was not attempted. These actions do not qualify as a bona fide attempt to comply with 462.357 subdivision 3. Therefore, Plaintiffs are likely to succeed on their claim that emergency ordinance 20-36 is invalid and a nullity.¹³

¹³ In the context of this motion for a temporary injunction, the Court need not and does not rule on the question as to the consequence of finding emergency ordinance 20-36 invalid. The Court notes that Minn. Stat. §462.357 subd. 1(e) provides generally that except as otherwise provided by law, “any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under [chapter 462] may be continued” subject to certain exceptions. The parties have also brought to the Court’s attention City Ordinance 21-33 passed November 10, 2021. The City alleges that “the effect of this new ordinance is that after the City’s emergency Ordinance 20-36 expires on May 22, 2022, Freedom House would need a CUP [Conditional Use Permit] from the City to continue operating. See City’s Memorandum Opposing Motion for a Temporary Restraining Order at 10.

In sum, the Court finds Plaintiffs are likely to succeed in challenging the validity of emergency ordinance 20-36.

b. Immunity

Counts VI-VIII of the amended complaint challenge the City's conduct as owner of 296 West Seventh and Listening House's conduct as tenant and operator. As relates to Counts VI and VIII against the City, there are substantial claims of immunity Plaintiffs must overcome. Minnesota Statutes section 466.02 provides that, subject to some limitations, "every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function." Section 466.02 "abrogated the longstanding doctrine of sovereign immunity for local governments and created a default rule that municipalities are subject to tort liability." *See e.g., Jepson as Trustee for Dean v. County of Pope*, 966 N.W.2d 472, 488 (Minn. 2021).

Minnesota Statutes section 466.03 subdivision 1 provides immunity in certain specified situations from the liability that would otherwise exist under 466.02. The immunity applies whether the municipality's liability would have arisen out of a governmental or proprietary function. Relevant to this matter, section 466.03 subdivision 6 provides immunity for "any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused." Subdivision 6 distinguishes between decisions made at the planning and policy-making level and those made at the operational level. *See, e.g., Jepson*, 966 N.W.2d at 489. The immunity is designed to "assure that courts do not pass judgment on policy decisions entrusted to coordinate branches of government." *See Holmquist v. State*, 425 N.W.2d 230, 231 (Minn. 1988). Policy in this context includes "the financial, political, economic, and social effects of a given plan or policy." *Id.* In contrast, operational decisions

relate to the “ordinary day-to-day operations of the government” and do not involve a balancing of objectives.” *Jepsen*, 966 N.W.2d at 489.

Count VI of Plaintiffs’ amended complaint states two theories of negligence by the City. The first is that the City breached a duty of care to Plaintiffs “in the exercise of its proper administration of zoning and land use authority.” Yet, the Court is hard-pressed to conceive of actions by a municipality that could be more policy laden than the exercise of its zoning and land use authority. Moreover, a purpose of discretionary immunity is to assure courts do not pass judgments on decisions made at the planning and policy level. *See Holmquist*, 425 N.W.2d at 231. Accordingly, the Court will decline Plaintiffs’ invitation to pass upon the wisdom of the City’s land use planning decisions.

Count VI also alleges the City breached a duty to Plaintiffs’ by “allowing the Property to be operated in a manner that impacts the safety and well-being of Plaintiffs and other persons and businesses in the surrounding neighborhood.” Amended Complaint at ¶109. More specifically, Plaintiffs allege the City “entered into a lease with Listening House which fails to provide any oversight into Listening House’s processes, procedures or actions, leaving zero capability for the City to ensure the safety of Listening House’s guests and community members.” Amended Complaint at ¶113. The basis for the Count VI liability is the City’s failure to seek and obtain such lease provisions giving the City oversight of Listening House’s process, procedures, or actions.

The emergency ordinance authorized city officials to “enter into a real estate lease or license agreement which will facilitate the timely operation [of the facility] as a day-use civic facility in which daytime services and weather safety can be provided to the City’s unsheltered population during the current Covid 19 pandemic and beyond if deemed necessary, upon such

terms that are deemed prudent or as necessary by law.” Emergency Ordinance 20-36 at §2. Negotiation of the lease contemplated by the emergency ordinance was both an exercise of discretion by the City staff who negotiated it and was also an exercise of the discretion delegated by the City Council. It involved policy making and planning, as opposed to operations. In sum, the City’s statutory immunity renders Plaintiffs unlikely to prevail on Count VI of the amended complaint.

Similarly, as it relates to the City, Count VIII alleges that “as the owner and landlord of the Property, the City is obligated to ensure that the Property is used and operated in a manner that is lawful, does not create health and safety issues to its neighbors, including Plaintiffs, and does not obstruct and interfere with Plaintiffs’ use and enjoyment of their properties.” Amended Complaint at ¶122. This allegation is not appreciably different from that of Count VI, as it is predicated on the City’s decisions to negotiate certain lease provisions or not. As a result, discretionary or official immunity will likely apply. Therefore, Plaintiffs are unlikely to succeed against the City on the merits of Count VIII.

c. Count VII Negligence – Listening House

With respect to Counts VII and VIII against Listening House, immunity defenses do not apply. Count VII alleges Listening House was negligent. Amended Complaint at ¶117 (“Listening House has a duty to use due care in its interactions with its invited guests, including providing adequate services and maintenance of its facility to properly serve its 100+ daily invited guests, preventing invited guests from causing property damage and committing crimes against neighbors and businesses to the detriment of the rights of nearby property owners.”). “To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2)

breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury.” See, e.g., *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014).

Minnesota follows the common law general rule that a person does not owe a duty of care to another person if the harm is caused by a third person’s conduct. *Id.* citing *Delgado v. Lohmar*, 289 N.W.2d 479, 483 (Minn. 1979). To put it another way, “generally, the law imposes no duty on people to protect strangers from others.” *Delgado v. Lohmar*, 289 N.W.2d 479, 483 (Minn. 1979). There are two recognized exceptions to this general rule. The first applies when “there is a special relationship between a plaintiff and a defendant and the harm to the plaintiff is foreseeable.” *Id.* at 178 citing *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). The second applies when “the defendant’s own conduct creates a foreseeable risk of injury to a foreseeable plaintiff.” See, *Domagala*, 805 N.W.2d at 23; *Doe 169*, 845 N.W.2d at 178. This second exception requires defendant conduct that is “active misconduct working positive injury to others.” See *Doe 169*, 845 N.W.2d at 178 citing Keeton et al., *Prosser and Keeton on the Law of Torts* §56 (5th ed. 1984). “Passive inaction or a failure to take steps to protect [others] from harm is not enough.” *Doe 169*, 845 N.W.2d at 178 citing *Delgado*, 289 N.W.2d at 483. The Defendant’s own conduct (as opposed to that of the third person) must create a foreseeable risk of injury to a foreseeable plaintiff. *Doe 169*, 845 N.W.2d at 179.

As to the first exception, Plaintiffs are unlikely to prove the existence of a special relationship between Listening House and the persons they serve. The Minnesota Supreme Court has cited the Restatement (Second) of Torts §319 for the proposition that “One who takes charge of a third person who he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.” See, e.g., *Johnson v. State*, 553 N.W.2d 40, 49 (Minn.

1996). A key consideration in determining whether a special relationship exists is whether the Defendant took charge of the third-party actor. Taking charge involves considerations of custody and control. *Id.* As to custody, Listening House operates from 8:00 a.m. to 8:00 p.m., except in those limited instances when it operates as a cold weather shelter. Attendance at Listening House is entirely voluntary. Those Listening House serves are free to come and go as they wish.

Listening House submitted a document entitled “Freedom House Restriction Chart.” *See* Affidavit of Karl Yeager Exhibit B. The document sets forth behaviors and the length of “restriction” that may attach to the behavior. For example, “Failure to turn in Weapons – (Knives, sticks, bats, tools, etc.)” is listed as an offense. The guideline restriction suggestion for the first offense is “Verbal Warning/reminder” while the suggestion for second offense is “2wks—1 month (Depends on Weapons).” “Suspicion of ‘intent to sell’ illegal substances— Witnessed exchange of illegal substance” carries a suggested restriction of “Verbal Warning” for the first offense, “3 months” for the second offense, and “Witnessed: 1 year.” Importantly, although the document uses the word “restriction,” the sanction involves being barred from Freedom House. Restriction in this instance means removal from Freedom House property with freedom to roam the community at will. This is not custody, but the opposite of custody.

Equally important, Freedom House is, by design, a place of respite and a link to other services such as housing assistance, food assistance, recovery services, and physical and mental health services. Listening House does not claim and does not have expertise in the control or treatment of addiction or anti-social behavior and has no authority to hold people in order to deliver such services. It is neither designed to nor functions as a control on the behavior of the unsheltered.

As to control, Plaintiffs amended complaint alleges Listening House “allowed its invited guests to engage in the continued commission of violent crimes and quality of life crimes in the neighborhood.” Amended Complaint at ¶118. The phrase suggests Freedom House had some ability to control the conduct of those Freedom House served while they are off Freedom House’s premises. The amended complaint also suggests failure to control resulting from inadequate services and maintenance of the facility. Id. at ¶117. What the amended complaint does not allege, however, is either the assumption of the duty to control or the ability to control the behavior of those it served. See *Lundgren v. Fultz*, 354 N.W.2d 25, 27 (Minn. 1984) (“implicit in the duty to control, is the ability to control.”).

The view that an unlocked homeless shelter lacks the requisite control over those it serves to impose a duty of care to others is also supported by cases in other jurisdictions which, although not binding on this Court, are persuasive. See *Rivera v. New York City Health & Hospitals Corp.*, 191 F.Supp. 412, 423 (S.D.N.Y. 2002); *Henry v. Bi-District Bd. Of Ministry, Inc.* 54 S.W.3d 287 (Tenn. App. 2001); *Metropolitan Dade Co. v. Dubon*, 780 So.2d 328, 330 (Dist. Ct. App. Fla. 2001); *Pilgrim v. Our Lady of Victories Church*, 83 Mass. App. Ct. 1126 (2013). In sum, Plaintiffs are unlikely to establish a special relationship supporting an exception to the general rule that Freedom House owes no duty of care to others person arising out of the conduct of those it serves.

As to the second exception to the general rule, it is important to identify Freedom House’s specific conduct of which Plaintiffs complain. Plaintiffs’ amended complaint alleges Listening House “failed to provide adequate services and facilities to its guests” and allowed its invited guests to engage in the continued commission of violent crimes as well as quality of life crimes. Amended Complaint at ¶118. The many affidavits Plaintiffs submitted in support of

their motion allege obnoxious acts, quality of life crimes, and even violent crimes occurred in the West Seventh neighborhood. The affidavits are far less persuasive in connecting those acts with persons Freedom House either had served or would serve in the future. For example, the Reid affidavit alleges, “Large tent or multiple tents located at Shepard Rd. and Eagle St.” Reid Affidavit at ¶5(88). Freedom House does not, by virtue of its operation, become responsible for the past and future acts of all, or even a portion, of the unsheltered in St. Paul.

Moreover, even if Plaintiffs could establish a connection between a person Freedom House served in the past or would serve in the future, it must still establish some aspect of that service that created a foreseeable risk to a foreseeable plaintiff. For example, the Reid affidavit alleges, “Man from Freedom House hit business window and trashed flower beds outside business.” *See* Reid Affidavit at ¶67. The affidavit does not, however, describe any act by Freedom House relating to the “Man from Freedom House” that created a foreseeable risk of harm to a foreseeable plaintiff.¹⁴ In short, the record before the Court does not establish Plaintiffs would likely succeed at trial under an exception to the general rule of non-liability for the acts of third parties by proving that Freedom House’s acts created a foreseeable risk to a foreseeable plaintiff.¹⁵ The second exception to the general rule that a person owes no duty of care to others for the acts of third parties does not apply.

¹⁴ The closest Plaintiffs have come in this regard is the allegation that Freedom House did not properly maintain its facilities. Plaintiffs do not allege the Freedom House restroom and shower facilities are inadequate. As the Court noted, *supra*, Plaintiffs’ affidavits are replete with allegations of sanitary and hygiene related bad acts and quality of life crimes. Yet even in this respect, the record is insufficient for the Court to conclude that the sanitary and hygiene facilities at Freedom House are substandard.

¹⁵ To be clear, Plaintiffs allege harms that are foreseeable in the sense that 5000 chronically unsheltered individuals drawn to a property in a high-density residential area with restaurants, bars, entertainment, and small business in a month are likely to have an impact. As a group, Plaintiffs’ affidavits allege behaviors common among individuals suffering from addiction and mental health challenges. Plaintiffs’ affidavits also allege issues relating to unattended shopping carts, trash and debris, and sanitary and hygiene issues. Whether these behaviors and issues are foreseeable under the circumstances is a different question than whether Listening House owes and breached a duty to Plaintiffs. The duty and breach questions turn on whether Listening House owed a duty to a third party (Plaintiffs) to protect them in some fashion from the conduct of individuals who were connected in some way with Freedom

In sum, neither of the exceptions to the general rule that a person owes no duty of care to others for the acts of third parties applies. Plaintiffs have not shown a likelihood of success on count VII of their amended complaint.

d. Count VIII - Nuisance

Count VIII of the amended complaint alleges a cause of action against Listening House and the City sounding in nuisance. For purposes of this motion, the Court construes count VIII as alleging both a public and private nuisance. *See* Amended Complaint at ¶126 (“The City’s and Listening House’s conduct in connection with the operation of Freedom House at the Property has created, and constitutes, a public nuisance.”); Amended Complaint at ¶123-124 (“conduct has obstructed and interfered with Plaintiffs’ use and enjoyment of their properties.”).

Minnesota law defines two types of public nuisances. The first, is codified at Minnesota Statutes section 609.74. The section says that “whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor.” The prohibited acts are: “(1) maintains or permits a condition which unreasonably annoys, injures or endangers the safety health, morals, comfort or repose of any considerable number of members of the public; or (2) interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or (3) is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.” Minn. Stat. §609.74. As a misdemeanor offense, the action cannot be pursued by a private plaintiff, but must instead be brought by the appropriate public prosecutorial authority. *See State ex rel. Wild v. Otis*, 257 N.W.2d 361 (Minn. 1977).

House and, if so, whether Listening House breached that duty. If there is a duty and breach of that duty, then, and only then, would foreseeability become an issue.

The second is found at Minnesota Statutes sections 617.80-87. The statutes define a nuisance in terms of various acts committed within a building. *See* Minn. Stat. §617.81 subd. 2.¹⁶ Only a “prosecuting authority” may maintain an action to abate or enjoin a public nuisance under section 617.81. *See* Minn. Stat. §617.81 subd. 4; Minn. Stat. §617.82 (prosecuting authority may seek abatement); Minn. Stat. §617.83 (prosecuting authority may seek injunction). Prosecuting authority means the attorney general, county attorney, city attorney, or attorney serving the jurisdiction where the nuisance is located. *See* Minn. Stat. §617.80 subd. 9. Plaintiffs are not a prosecuting authority and therefore cannot bring a statutory public nuisance action under section 617.80-87.

Precluded from bringing a statutory public nuisance claim, there remains a question whether the common law might support such a claim. Common law public nuisance claims involve conduct that interferes with a community interest. *See* Restatement (Second of Torts) §812(B); William L. Prosser, *Handbook of the Law of Torts* §86 at p. 586 (“At common law, a public nuisance was always a crime, and punishable as such.”). Minnesota, however, abolished common law crimes in 1885 and, in 1886, instead established the statutory crime of public nuisance. *See* Minn. Stat. §609.74 advisory committee comment (1963). Thus, Plaintiffs are unlikely to succeed on a common law claim of public nuisance because such a claim does not likely exist in Minnesota. *See Swanson v. Mississippi & Rum River Boom Co.*, 44 N.W. 986, 987 (Minn. 1892) (“An individual cannot maintain a private action for a public nuisance by reason of an injury which he suffers in common with the public.”).

With respect to private nuisance, Minnesota Statutes section 561.01 provides:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment

¹⁶ There is overlap between the two statutes in that section 617.81 subdivision 2(a)(iii) includes in its definition of nuisance violations of section 609.74(1) and (3).

of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Interpreting the statute, courts have found a person may maintain a private civil action for injury to the use or enjoyment of the person's property. *See, e.g., Johnson v. Paynesville Farmers Union Co-op Oil Co.*, 817 N.W.2d 693, 706 (Minn. 2012). The injury complained of must be to an interest in real property. *See, e.g., Anderson v. State of Minnesota, Department of Natural Resources*, 693 N.W.2d 181 (Minn. 2005) (injury to plaintiff's bees was insufficient).

The Minnesota Supreme Court has said that the "statute defines a nuisance in terms of the resultant harm rather than in terms of the kind of conduct by a defendant which causes the harm." *See Highview North Apartments v. Ramsey County*, 323 N.W.2d 65, 74 (Minn. 1982).

Therefore, "there may be instances where a nuisance is created or exists without negligence as its primary cause." *See Randall v. Village of Excelsior*, 103 N.W.2d 131, 134 (Minn. 1960).

Although the distinction may be fine and somewhat arbitrary, "negligence is some act or omission in violation of a duty prescribed by law, while a nuisance is a dangerous, unsafe or offensive condition resulting from some act or omission." *Id.* at 135. Thus, the nuisance action Plaintiffs assert does not suffer from the lack of duty that plagues Plaintiffs' negligence action.

See Supra.

Be that as it may, Plaintiffs' still must prove some act by Listening House related to the use of its property giving rise to the unsafe and offensive conditions they allege. Yet, based on the record before it, the Court cannot conclude Plaintiffs are likely to succeed in establishing what those acts were. For these reasons, the Court finds Plaintiffs are unlikely to succeed on count VIII of the amended complaint, the nuisance claims.

In sum, Plaintiffs are likely to succeed on counts I – V of the amended complaint, and Plaintiffs are likely to succeed in challenging the validity of emergency ordinance 20-36. However, Plaintiffs are unlikely to succeed against the City on the remaining counts of the amended complaint because the City is likely immune. Plaintiffs are also unlikely to succeed on count VI against the City and count VII against Listening House because they are unlikely to establish a duty the City or Listening House owes to them to protect them from harm caused by third parties who were in some way connected to or served by Freedom House. Finally, Plaintiffs are unlikely to succeed against Listening House on count VIII of the amended complaint because they cannot properly bring a public nuisance action and because they are unlikely to establish wrongful acts or omissions by Listening House sufficient to support a private nuisance. Therefore, the Court finds this factor weighs in favor of granting a temporary injunction.

3. Relative Irreparable Harms

Temporary injunctive relief is equitable in nature seeking, as best possible, to preserve the status quo pending resolution on the merits. *See, e.g., Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Plaintiffs seek an end to occurrences of the type outlined in their amended complaint and affidavits through an injunction. The injunction Plaintiffs seek would prohibit the City from allowing Listening House to provide daytime shelter services at 296 West Seventh under emergency ordinance 20-36 and would prohibit the City from allowing Listening House to provide daytime shelter services at 296 West Seventh until a public hearing is held and Listening House receives appropriate zoning approval in the form of a conditional use permit, variance, or other approval. See Amended Complaint at ¶102. Plaintiffs also seek money damages for lost business and diminution in the value of their businesses and property.

Harm that may be adequately compensated by money damages is not irreparable and will not support a temporary injunction. *See, e.g., Cherne Indus., Inc., v. Grounds and Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Plaintiffs' claims for lost business and diminution in value provide, at best, a weak basis for injunctive relief, as they are compensable in money damages.

In balancing relative harms, the Court finds some guidance in cases discussing appropriate injunctive relief under the Minnesota private nuisance statute.¹⁷ The statute directs the Court, if the nuisance is proven, to fashion a remedy such that “by the judgment the nuisance may be enjoined or abated, as well as damages recovered.” Applying the statute and recognizing its equitable roots, courts have identified a number of equitable principles that apply. *See, e.g., Robinson v. Westman*, 29 N.W.2d 1, 7 (Minn. 1947). For example, as a general matter, “a lawful business should not be destroyed or unreasonably hampered except to the extent necessary for the reasonable protection of the personal or property rights of another.” *Id.* In addition, weight should be given to the nature of the business involved and whether it must be conducted at a fixed place or could easily relocate to a more suitable location. *Id.* Finally, “rights of habitation in residential districts ordinarily are superior to the rights of trade or business.” *Id.*

Importantly, caselaw also suggests defendants “should be allowed a reasonable time to acquire a new location.” *Id.* This latter principle suggests to the Court that it should exercise care and restraint in abruptly prohibiting all activity, even on a temporary basis. Such care and restraint may take the form of a stayed injunction, allowing Listening House and the City time to remedy the likely procedural flaws in adopting emergency ordinance 20-36, to relocate Freedom House, or to fashion other equivalent assistance to the unsheltered.

¹⁷ The Court has found Plaintiffs are unlikely to succeed on the merits of the private nuisance action, but the discussion in the private nuisance cases relating to application of the equitable statutory injunction the private nuisance action provides remains instructive.

The harm to Defendants, and more importantly, to the unsheltered people Defendants are serving through Freedom House, would be great and irreparable. Freedom House is unlike a riding stable or a gun range whose patrons likely have the ability to continue as patrons at a new location or to simply make do without. *Cf. Robinson*, 29 N.W.2d at 2-4 (riding lessons); *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796 (Minn. App. 2001) (trap shooting). Services for the unsheltered in St. Paul are limited and insufficient to meet the need. If Freedom House were to be immediately closed, those it serves will not be able to simply switch to an alternative provider.¹⁸ Some of the services Freedom House offers fill immediate and critical needs, such as food and overnight cold weather shelter to women and children. Doing without is not an option.

Finally, the number of unsheltered, the needs of the unsheltered, and whatever challenges and issues surround meeting those needs, will not simply disappear with a temporary injunction. The man sleeping in the Irvine Park gazebo, the tents at Shepard Road and Eagle Street, and the individuals camped in front of a historic building, will not disappear with a temporary injunction. *Cf. Reid Affidavit* at ¶5 (55), (81), (88). The balance of irreparable harms in this matter favors the City and Listening House and weighs against entering a temporary injunction. The balance of irreparable harms also weighs strongly against immediate closure.

¹⁸ A church in Woodbury has indicated that, although it supports Freedom House in this litigation, they “do not have the additional space at our shelter to accommodate the unsheltered community members served by Freedom House.” *See Affidavit of Suzanne Bernet* at ¶3. Parishioners of a church in White Bear Lake also provided an affidavit in support of Freedom House that recognizes how critically important Freedom House’s services are to “our poor and vulnerable brothers and sisters.” *Affidavit of Cathy and John Evans* at ¶3. Yet, taking care of our vulnerable brothers and sisters, apparently does not mean extending hospitality in White Bear Lake. The affidavit notes that past support has involved delivery to Freedom House of “vanloads of clean, usable items ... multiple times.” *Id.* (emphasis in original).

4. Public Policy as Articulated in Statutes and Ordinances

Public policy articulated in statutes and ordinances relating to the temporary injunction is found in emergency ordinance 20-36. Section 1 of the ordinance declares an emergency exists “for the City’s unsheltered population which has grown due to COVID 19 Pandemic.” Section 1 says the unsheltered “lack access to facilities in which services and weather safety can be provided during the day.” *Id.* This public policy weighs in favor of Defendants and against granting the temporary injunction.

5. Administrative Burdens

The final factor is the administrative burden imposed on the court if it issues the injunction. Were the Court to issue the temporary restraining order Plaintiffs seek, the administrative burden would not be great. This factor is neutral.

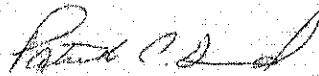
With respect to the *Dahlberg* factors, the Court finds the first factor, the relationship of the parties, to weigh slightly in favor of issuing the TRO. The second factor, the likelihood of success on the merits weighs in favor of issuing the TRO. The third factor, the relative harms, weighs in favor of staying a TRO for a period of time sufficient to allow Listening House and the City time to remedy the likely procedural shortcomings that occurred in adopting emergency ordinance 20-36, to relocate Freedom House, or to fashion other equivalent assistance to the unsheltered. The fourth factor, public policy, weighs against issuing the TRO. The fifth factor, administrative burden, is neutral, weighing neither for nor against issuing the TRO. Considering all of the factors, the greater weight is in favor of issuing the TRO.

ORDER

1. Plaintiffs’ motion for a temporary restraining order is GRANTED.

2. This Order is stayed for a period of 45 days in order to allow the City time to remedy the procedural flaws in adopting emergency ordinance 20-36 by noticing and holding a public hearing in accordance with the requirements of Minnesota Statutes section 462.357 subdivision 3, to relocate Freedom House, or to fashion other equivalent assistance to the unsheltered.
3. After 45 days, unless the City Council has held a properly noticed hearing and repassed an appropriate amendment to its zoning code, the Court will lift the stay.
4. The matter shall be set for a status conference on May 9, 2022.

BY THE COURT:



Diamond, Patrick (Judge)
Mar 23 2022 9:46 AM

Dated: _____

Patrick C. Diamond
Judge of District Court

Exhibit B

CHAPTER 6. - LEGISLATIVE PROCEDURES

Sec. 6.01. - Actions of the council.

All acts of the council shall be by ordinance or resolution as defined in this Chapter. All ordinances and resolutions shall be offered in writing. The names of all persons voting for or against ordinances, resolutions and motions shall be recorded in the journal. Unless required by the provisions of Section 17.04 of this Chapter, by law or by ordinance to abstain from voting, any member present who fails to vote shall be recorded as voting in the negative.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.02. - Actions requiring notice.

Where a published notice or other notice is required to effectuate an action of the council, provisions for notice shall be made by administrative ordinance.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.03. - Ordinances and resolutions—Defined; vote required.

Sec. 6.03.1. - Legislative ordinances.

Every act of the council which defines, licenses, regulates, suppresses, prevents or prohibits any act, business or person, grants or modifies any franchise, or is in any way an exercise of legislative powers, shall be done by legislative ordinance. Except as otherwise provided in this Charter, such ordinances shall require an affirmative vote of at least four (4) members of the council.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.03.2. - Administrative ordinances.

Every act of the council which establishes, alters, or abolishes any department, office or agency or the procedure for the performance of any administrative act or which promulgates any rule or regulation for the conduct of the city government or which this Charter requires to be done by ordinance other than a legislative ordinance shall be by administrative ordinance. Except as otherwise provided in this Chapter, such ordinances shall require an affirmative vote of at least four (4) members of the council.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.03.3. - Resolutions.

All other acts of the council shall be by resolution, including but not limited to, the following:

- (1) Adoption and revision of the budget, except as otherwise provided in Chapter 10;
- (2) Certification of the tax levy;
- (3) Emergency appropriations;
- (4) Declaration of intent of the council;
- (5) Approval of collective bargaining agreements, setting of wages and salaries, and setting of other terms and conditions of employment; provided, that such approval or amendment by resolution shall receive two (2) readings by the council and that such readings be at least one week apart; and
- (6) Approval or amendment of the Civil Service Rules as established by Section 12.06 of this Charter and pursuant to the procedure set forth therein; provided, that such approval or amendment by resolution shall receive two (2) readings by the council and that such readings be at least one week apart.

Except as otherwise provided in this Charter, resolutions shall require an affirmative vote of at least four (4) members.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.03.4. - Saving clause.

No action of the council shall be invalid because a legislative ordinance is used when an administrative ordinance is indicated in this Charter, or an administrative ordinance is used when a legislative ordinance is indicated, if the requirements for taking the action indicated have been met.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.03.5. - Abstentions.

When a member of the council is required to abstain from voting, by any provision of this Charter, by law or ordinance, the number of votes required to pass an ordinance or resolution under this section 6.03 shall be a simple majority of those present. If another provision of this Charter, or of any law over which this Charter takes precedence, requires either 5, 6 or 7 affirmative votes for the passage of any ordinance, resolution or other proposition, the said number of required affirmative votes deemed necessary for passage shall be reduced by the same number as the number of those council members who are required to abstain from voting.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.04. - Ordinances and resolutions—Form.

Each ordinance or resolution shall relate to a single subject which shall be expressed clearly in its title. The enacting clause of each ordinance shall be "The Council of the City of Saint Paul does ordain."

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.05. - Ordinances—Procedures.

Every proposed ordinance shall be read in full at the meeting at which it is presented; provided, that full reading may be waived if a copy of the ordinance is supplied each member of the council prior to its introduction. Every proposed ordinance shall be read again by title at two (2) separate meetings held not less than a week after the meeting at which it is first presented. After a proposed ordinance is complete in the form in which it is to be finally passed, it shall remain on file in the office of the city clerk for public inspection for at least one week before final adoption.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.06. - Emergency ordinances.

To meet a public emergency, to wit, a sudden or unforeseen situation affecting life, health, property, or the public peace or welfare that requires immediate council action, the council may adopt one or more emergency ordinances. An emergency ordinance may not levy taxes, authorize the issuance of bonds, grant, renew, or extend a franchise or regulate the rate charged by any public utility for its services; provided, however, that nothing herein contained is intended to prevent the city from issuing its emergency notes and making any necessary tax levies therefor as provided in Section 10.07.2 of this Charter. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally except that it shall plainly be designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists, and describing it in clear and specific terms. An emergency ordinance may be passed with or without amendment or it may be rejected at the meeting at which it is introduced. The unanimous affirmative vote of all members of the council shall be required for the passage of an emergency ordinance.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.07. - Resolutions—Procedure; effective date.

Every resolution shall be presented in writing and read in full before a vote is taken unless the reading of the resolution is dispensed with by unanimous consent. Unless otherwise required by law, resolutions shall become effective upon passage by the council and approval by the mayor or council override of a mayoral veto.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.08. - Adoption of ordinances and resolutions, presentation to mayor for approval or veto.

Every ordinance or resolution adopted by the council shall be presented to the mayor no later than five (5) business days after its passage with a written or electronic communication that the measure is available for the mayor's approval or veto. Within five (5) business days after presentation, the mayor shall either approve the measure or veto it and send a written or electronic communication to the council stating the reason(s) for the veto. If the mayor neither signs nor vetoes the measure within five (5) business days, it shall be deemed approved.

(C.F. No. 98-374, § 1, 11-25-98; Ord 13-48, § 2, 9-11-13)

Sec. 6.09. - Item veto.

Any ordinance or resolution shall be approved or vetoed by the mayor in its entirety, except that any item in a measure appropriating money may be approved or vetoed.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.10. - Reconsideration and overriding veto.

Any ordinance or resolution or any part of an appropriation measure which has been vetoed may be reconsidered by the council and shall become law if passed by an affirmative vote of at least five (5) members within thirty (30) days of the veto. Any such ordinance or resolution or any part of an appropriation measure which has been reconsidered by the council and repassed shall be deemed approved.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.11. - Effective date of ordinance.

Emergency ordinances shall be effective upon passage, approval and publication once in any legal newspaper, unless a later date is specified in the ordinance. All ordinances other than emergency ordinances shall become effective thirty (30) days after passage, approval and publication once in the official newspaper of the city unless a later date is specified therein.

(C.F. No. 98-374, § 1, 11-25-98; C.F. No. 06-1025, § 2, 12-13-06)

Sec. 6.12. - Codification.

The council shall provide for the compilation of legislative ordinances in a legislative code and administrative ordinances in an administrative code.

(C.F. No. 98-374, § 1, 11-25-98)

Sec. 6.13. - Prima facie evidence.

Any codification or compilation of the ordinances or resolutions of the city prepared under the direction of the council or any copy of any ordinance or resolution certified by the city clerk shall be prima facie evidence of its contents and of the regularity and legality of its adoption and shall be admitted as evidence in any court without further proof.

(C.F. No. 98-374, § 1, 11-25-98)

Exhibit C



SAINT PAUL
MINNESOTA

City Council Hearing Notice

File Name: Emergency Ordinance No. 20-36: Temporary Suspension of T2 Zoning to facilitate the establishment of a day-use service facility to provide services to the City's unsheltered population during the Covid-19 pandemic emergency at the site of former Fire Station 51, commonly known as 296 West Seventh Street.

Purpose: Readopt Emergency Ordinance No. 20-36 for the specific purpose of curing potential procedural issues found in the original enactment of Emergency Ordinance 20-36 on November 18, 2020, but in no event shall the readoption of this Ordinance affect the original terms of the lease-agreement at 296 West Seventh Street, whose term concludes on May 24, 2022.

Property Address: 296 West Seventh Street

Hearing Date: Wednesday, May 4, 2022

Location: 3:30 p.m., City Council Chambers, City Hall, Room 300 15 West Kellogg Boulevard, Saint Paul

All In-person comments concerning the Readoption of Emergency Ordinance No. 20-36 will be accepted. There will also be an option to participate in the public hearing and present live testimony online, per instructions included in the "public hearings" portion of the meeting agenda to be posted at <https://stpaul.legistar.com/Calendar.aspx>.

More on City Council meeting protocol can be found at <https://www.stpaul.gov/departments/city-council#city-council-meetings>

Comments submitted in writing should be addressed to:
Office of the City Council
310 City Hall
15 Kellogg Blvd. West
Saint Paul, MN 55102
Or to Contact-Council@ci.stpaul.mn.us.

Mailed by: Thursday, April 21, 2022

Exhibit D



City of Saint Paul

City Hall and Court House
15 West Kellogg Boulevard
Phone: 651-266-8560

Legislation Details (With Text)

File #: Ord 20-36 **Version:** 1

Type: Ordinance **Status:** Passed

In control: City Council

Final action: 11/18/2020

Title: Approving an emergency ordinance pursuant to City Charter 6.06 temporarily suspending T2 Zoning for City-owned property at 296 Seventh Street West, the site of former fire station 51 and now known as "Freedom House," to allow temporary reuse as a facility to provide services to the City's unsheltered population due to the COVID-19 pandemic.

Sponsors: Amy Brendmoen

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
11/19/2020	1	Mayor's Office	Signed	
11/18/2020	1	City Council	Adopted	Pass

Approving an emergency ordinance pursuant to City Charter 6.06 temporarily suspending T2 Zoning for City-owned property at 296 Seventh Street West, the site of former fire station 51 and now known as "Freedom House," to allow temporary reuse as a facility to provide services to the City's unsheltered population due to the COVID-19 pandemic.

Statement of legislative intent and findings of the City Council.

WHEREAS, the Council of the City of Saint Paul hereby finds that the Covid 19 emergency, as declared under Governor Walz's Executive Order 20-10 dated March 13, 2020 and Mayor Carter's Emergency Declaration dated March 15, 2020, continues; and

WHEREAS, the Council finds, with the approaching winter weather season, that the City's unsheltered population will lack reasonable access to facilities in which basic services can be provided and in which the unsheltered can find safety from winter weather conditions when some overnight shelters are not accessible or available; and

WHEREAS, the Council finds, upon the advice of the Director of the department of safety and inspections, the Director of the department of planning and economic development and the Fire Chief, that former Fire Station 51, now known as "Freedom House," is an underutilized City-owned facility which can be reasonably reconfigured to provide the unsheltered with basic services and safety from winter weather conditions; and

WHEREAS, the Council is informed that the Directors of the departments of safety and inspections and planning and economic development, in consultation with the Ramsey County Interim Manager of Housing Stability, have identified a non-profit organization that could operate Freedom House during the day as a site where basic services and weather safety can be provided to the City's unsheltered population; and

WHEREAS, the Council finds, upon the advice of the City's Zoning and Planning Administrators, that current

zoning regulations under Leg. Code § 65.200 lack provisions which could allow Freedom House to be used and operated as a day-use civic facility in which to provide basic services and weather safety to the unsheltered during the winter months; and

WHEREAS, the Council finds, upon the advice of the City's Zoning and Planning Administrators, that the City's current zoning regulations specifying uses permitted in T2 districts under Leg. Code § 66.321 are similarly lacking as a day-use service and weather shelter facility for the unsheltered is a use that neither specifically fits within nor is substantially similar to a listed permitted or conditional use in a T2 district; and

WHEREAS, the Council recognizes that Mayor Carter's March 15, 2020 Emergency Declaration directed City departments to review ordinance and regulatory requirements that can and should be adjusted or suspended, or to enact emergency regulations to support the City's residents during the COVID-19 pandemic; and

WHEREAS, the Council finds, upon the advice of the Zoning and Planning Administrators, that the processes necessary to rezone Freedom House to a zone classification that would permit a day-use service and weather shelter facility for the unsheltered, or to amend the current T2 zoning regulations to permit a day-use service and weather shelter facility for the unsheltered, cannot be accomplished in a timely fashion before the onset of winter weather conditions; and

WHEREAS, the Council recognizes that the Zoning and Planning Administrators and the Directors of the departments of safety and inspections and planning and economic development have advised and recommended that the Council take steps to allow Freedom House to be operated as a day-use civic facility in which services and weather safety can be provided to the City's unsheltered population during the winter months; and

WHEREAS, the Council finds that the Covid 19 emergency may extend beyond the coming winter weather season and, under such circumstances, a day-use service facility is a reasonably foreseeable need for the provision of services for the unsheltered in the event the Covid 19 emergency continues into the warm weather season; and

WHEREAS, the Council also finds that it is reasonably foreseeable that the impact of the Covid 19 emergency on the City's unsheltered population may extend beyond the time of the emergency condition prompting Governor Walz's Executive Order and Mayor Carter's Emergency Declaration; and

WHEREAS, the Council therefore finds it reasonable and necessary to enact temporary legislation in the form of the following emergency ordinance to facilitate the establishment of a day-use service facility in the City owned Freedom house in which to provide services for the City's unsheltered population during the Covid 19 pandemic emergency and, potentially if deemed necessary, for a period of time beyond the end of the Covid 19 pandemic emergency, in order to protect the health, welfare, and safety of the City's unsheltered population; Now, therefore

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

Section 1.

Declaration of an existing emergency. For the reasons set forth in the foregoing *Statement of legislative intent, purpose and findings of the City Council*, which are incorporated into this Emergency Ordinance by reference, and as required by City Charter § 6.06, the Council of the City of Saint Paul hereby declares that an emergency, created by the Covid 19 pandemic, exists for the City's unsheltered population which has grown due to the COVID 10 Pandemic and who lack access to facilities in which services and weather safety can be provided during the day and that City officials have identified a city owned facility in which services

and weather safety for the unsheltered can be provided but are presently prevented from doing so due to current zoning regulations and the zoning classification applicable to the facility.

Section 2.

T2 zoning for 296 West Seventh Street suspended temporarily. For the purpose of establishing a daytime service and weather shelter facility for the unsheltered at 296 West Seventh Street (hereinafter, "Freedom House") and for that exclusive purpose only, the T2 zoning classification for Freedom House, as depicted on the Zoning Map of Saint Paul under Leg. Code § 60.303, is hereby suspended the effect of which shall continue as provided under Section 3 of this Emergency Ordinance.

Section 3.

City officials authorized to arrange for the use of Freedom House as a temporary day-use service facility and winter weather sheltering facility for the unsheltered. The appropriate city officials are hereby authorized and directed to take steps necessary to enter into a real estate lease or license agreement which will facilitate the timely operation of Freedom House as a day-use civic facility in which daytime services and weather safety can be provided to the City's unsheltered population during the current Covid 19 pandemic and beyond if deemed necessary, upon such terms that are deemed prudent or as necessary by law; provided, in no event shall the effective term of such lease or license be greater than eighteen months from the date the agreement is executed. The execution date of the real estate agreement shall take place within thirty days of the effective date of this Emergency Ordinance.

Section 4.

Overnight Shelter, limited use permitted, no additional authorization required, certain zoning regulations and licensing fees waived. As provided under this section, if in the opinion of the Director of the department of emergency management there is an identified shortage of beds in the City's overnight shelters for women, their children or children in their care and custody, Freedom House may be used during the Covid 19 pandemic emergency as an overnight shelter for women, their children or children in their care and custody. Under such circumstances, use of Freedom House as an overnight shelter is exempt from the separation requirements for overnight shelters under Leg. Code § 65.157 and, as a civic facility, is exempt from paying any City license fee imposed upon overnight shelters under Leg. Code § 310.09(b). The operator of Freedom House shall otherwise obtain and abide by all licenses required to operate an overnight shelter. For the purpose of this section, the term emergency shelter shall have the meaning defined under Leg. Code § 65.157.

Section 5.

Responsibility. The Director of the department of safety and inspections shall be responsible for ensuring that the operation and programming provided at Freedom House, pursuant to the real estate lease or license authorized under section 3 of this Emergency Ordinance, is consistent with the terms of such lease or license. The Director shall keep the Mayor and the City Council apprised of the operations and programming provided at Freedom House on a regular basis or as requested by the Mayor or the City Council.

Section 5

Effective date. This emergency ordinance shall take immediate effect after its passage, approval and publication as provided in Saint Paul City Charter § 6.11.

Exhibit E



Search first and last name



Press Release: Freedom House Closure



Listening House

Published Apr 27, 2022

+ Follow

Contact: Molly Jalma, Executive Director

The Listening House

651-789-9688 | Molly@ListeningHouse.org

Saint Paul, MN ~ April 19, 2022 ~ As Saint Paul’s homeless day shelter Freedom House closes

Sunday, May 8, Listening House announces plans to redirect and consolidate services.

“Our number one priority is to ensure continuity of services for Saint Paul,” says Molly Jalma, Executive Director of Listening House, the nonprofit organization that operated Freedom House. As area emergency shelters close during the day, day shelters provide comfort, security, basic needs, and practical resources for people in deep poverty to manage their everyday lives and bridge out of homelessness. Giving people purpose and a daily destination also prevents public health and safety issues that come anytime residents don’t have places to go or things to do.



The project was a practical response as pandemic closures and public health guidelines pushed homelessness and the issues of deep poverty to the forefront of downtown. Funding was provided through the federal Coronavirus Aid Relief, and Economic Security (CARES) Act.

As Saint Paul ends its COVID-19 state of emergency, homelessness continues to impact the city. On average, Freedom House provided essential life services for 200+ people daily. The closure creates a gap homeless agencies are working to fill as public funding and capacity constricts.

“Listening House is working with guests, letting them know where and how to access services at our other site location on Maria Avenue inside First Lutheran Church in Dayton’s Bluff,” says Jalma. Work with other homeless service providers is also being done to absorb the need and redirect homeless residents. Current work focuses on increasing the collaboration of resources among providers and communication with homeless communities. However, Jalma knows Saint Paul needs a more permanent, sustainable solution.

“To be an effective, prosperous Saint Paul, Listening House must rise to the challenge of meeting the needs of those experiencing deep poverty,” says Jalma. “We continue to be grateful for all of our public and private partners who support us through this transition and who remain committed to creating positive, long-term solutions for our city and all of its residents.”

#####

Listening House is St. Paul’s nonprofit day shelter that provides comfort, security, basic needs, and practical resources for people in deep poverty to manage their



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connection hub and lifeline for 200+ people daily.

Guests are welcome Monday-Friday 8am-5pm.

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Exhibit F

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Case Type: Other Civil

West Seventh Street Partners, LLC; Art Farm
Advertising, Inc.; 262 Ford Road, LLC; T.D.
Wright, Inc; Susan Adair; WWII, Inc.; and
Portafolio, LLC;

Court File No. 62-CV-21-5891

Judge Patrick Diamond

Plaintiffs,

v.

City of St. Paul, a municipal Corporation and
Listening House of St. Paul, Incorporated
d/b/a Freedom House

**DEFENDANT LISTENING HOUSE OF
ST. PAUL D/B/A FREEDOM HOUSE'S
SUPPLEMENTAL ANSWERS TO
PLAINTIFFS' FIRST SET OF
DISCOVERY REQUESTS**

Defendants.

COMES NOW Defendant Listening House of St. Paul Incorporated d/b/a Freedom House
("Freedom House") and for its Supplemental Answers to Plaintiffs' First Set of Discovery
Requests, states as follows:

GENERAL OBJECTIONS

1. Freedom House objects to each and every interrogatory to the extent that it seeks information or the identification or production of documents that are neither relevant to the issues involved in this action, nor reasonably calculated to lead to the discovery of admissible evidence.

2. Freedom House objects to each and every interrogatory to the extent that it seeks information or the identification or production of documents reflecting confidential and privileged communications between Plaintiffs and counsel, on the grounds that such information is protected by the attorney-client privilege and are outside the scope of discovery.

3. Freedom House objects to each and every interrogatory to the extent that the

interrogatory calls for the disclosure of information, or the identification or production of documents, that was prepared in anticipation of litigation or for trial by Plaintiffs and its representatives, the requisite showing under the Minnesota Rules of Civil Procedure not having been made.

4. Freedom House objects to each and every interrogatory to the extent that the interrogatory seeks information or calls for the identification or production of documents reflecting the mental impressions, conclusions, opinions, or legal theories of Plaintiffs' attorneys or other representatives concerning the litigation, on the grounds that the information is protected by the work-product doctrine and is outside the scope of discovery.

5. Freedom House objects to each and every interrogatory to the extent that it seeks to discover information protected by the work-product doctrine or privilege, as defined by statute, rule, or common law.

6. Freedom House objects to each and every interrogatory to the extent that it refers to information or documents not now Plaintiffs' possession, custody, or control.

7. Freedom House objects to each and every interrogatory to the extent that it is repetitious, redundant and/or seeks information that is already in the Defendants' possession.

8. Freedom House objects to each and every interrogatory to the extent it explicitly or implicitly refers to the definitions and instructions provided in Defendant Landing at Jefferson Lakes HOA Interrogatories to Plaintiffs and to the extent those definitions and instructions are vague, ambiguous, overly broad in scope, compound, or exceed the obligations imposed by the Minnesota Rules of Civil Procedure.

9. Freedom House does not waive any general or particular objection in the event that it provides any information within the scope of such objection.

10. Freedom House's investigation into this matter is ongoing. Therefore, Freedom House reserves the right to modify and/or supplement its responses as additional information is obtained.

Subject to and without waiver of these general objections, Freedom House now responds with specific objections in response to Plaintiffs' discovery requests as set out below. All answers are subject to both the aforementioned general objections and specific objections set out in the individual responses.

RESPONSE TO REQUEST FOR DOCUMENTS

1. Documents you identified, reviewed, or relied upon in connection with your answering Plaintiffs' discovery requests herein and hereafter.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome, especially as it relates to demands re metadata fields and .TXT files. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Without waiving the above objections, Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021.

2. Documents identified in your Rule 26 Initial Disclosures.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, see attached FH000001-0000072.

3. Documents related to the City of St. Paul Ordinances 20-36.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, see attached FH000001-0000072.

4. Documents related to the City of St. Paul Ordinance 21-33.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, see attached FH000001-0000072.

5. Documents related to your lease for the premises located at 296 West Seventh Street, St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, see attached FH000001-0000014.

6. Documents related to your past, present, and planned policies and procedures for operating the Freedom House at 296 West Seventh Street, St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Without waiving the above objections, Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Discovery is continuing.

7. Documents related to the commencement and prosecution of this action, including but not limited to communications and call records with third parties who are not parties to this action.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Without waiving the above objections, Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021.

8. Documents related to police calls and presence at and around the Freedom House located at 296 West Seventh Street, St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Without waiving the above objections, Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021.

9. Documents related to guest, visitor, and client activity at and around the Freedom House located at 296 West Seventh Street, St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Without waiving the above objections, Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021.

10. Documents related to any common interest, joint defense, joint prosecution, or similar agreement between you and Defendant City of St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Defendant further objects that any such joint defense agreement is protected from production under the common interest/joint defense privilege.

11. Documents related to permits for which you have applied since January 1, 2022, for a premises located in St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, state "none".

12. Communications with Defendant City of St. Paul related to the Freedom House located at 296 West Seventh Street, St. Paul.

RESPONSE: Freedom House objects to this request to the extent that it is vague, ambiguous, overly broad, and unduly burdensome. Freedom House also objects to this request to the extent it seeks information that is protected by the attorney client privilege and/or the work product doctrine, or is otherwise beyond the scope of permissible discovery as defined by the Minnesota Rules of Civil Procedure. Without waiving said objections, and subject thereto, Plaintiffs state that they will make responsive documents in their possession available in a mutually agreeable format and at a mutually time and location for review.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021. Without waiving the above objections, see attached FH000001-0000072. Discovery is continuing.

ANSWERS TO INTERROGATORIES

1. If your answer to any of Plaintiffs' requests for admission is anything other than a categorical admission, identify and describe in detail all facts and documents for each answer that is not a categorical admission.

ANSWER: See Responses to Requests for Admission.

SUPPLEMENTAL ANSWER: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14, 2021.

2. Describe in detail the oversight and control Defendant City of St. Paul exercises over your operation of the Freedom House day shelter located at 296 West Seventh Street, St. Paul.

ANSWER: Freedom House objects to this Interrogatory to the extent that it is vague as to the meaning and scope of "control", and to the extent it is ambiguous, overly broad, and unduly burdensome. Without waiving those objections, the City of St. Paul exercises that degree of oversight and control that a commercial landlord in the St. Paul metropolitan area can be expected to exercise over its commercial tenants in a similarly-situated situation.

SUPPLEMENTAL ANSWER: Defendant incorporates by reference counsel's further objections and response in its April 21, 2022 letter to Plaintiffs' counsel's letter of April 14,

2021. Without waiving any objections, Defendant further states that Defendant City of St. Paul (“City”) does not exercise direct oversight or control over Defendant’s operation of the day shelter at 296 West Seventh Street, St. Paul, but acknowledges that City exercised control by making certain improvements to the Leased Premises, limiting the Tenant’s use of the Leased Premises, providing certain utilities, reserving rights to enter the Lease Premises during emergencies, obtaining and requiring Tenant to maintain certain insurance coverages, retaining and defining respective termination rights under the Lease, limiting rights to assign the Lease, identifying the parties’ respective maintenance obligations, imposing indemnity obligations, restricting use of the Leased Premises to minimize pollution and contaminants, identifying defaults under the Lease and imposing remedies, requiring Tenant to comply with applicable laws, dictating non-discrimination in Tenant’s operation, preventing imposition of liens, and restricting alterations, all as more particularly described in the Lease and not in contravention thereto.

3. Identify all sources of industry standards for operating day shelters, like the Freedom House located at 296 West Seventh Street, St. Paul.

ANSWER: Freedom House objects to this Interrogatory to the extent that it is vague as to the meaning and scope of “sources”, and to the extent it is ambiguous, overly broad, and unduly burdensome. Discovery is continuing.

SUPPLEMENTAL ANSWER: Defendant incorporates by reference counsel’s further objections and response in its April 21, 2022 letter to Plaintiffs’ counsel’s letter of April 14, 2021. Without waiving said objections, Defendant states that is not aware that day shelters are considered an industry or of particular standards that apply to day shelters.

4. Identify and describe your plans for opening and/or operating shelters within the territorial boundaries of the City of St. Paul, Minnesota in 2022.

ANSWER: Freedom House objects to this Interrogatory to the extent that it is vague as to the meaning and scope of “plans”, “shelters”, and “territorial boundaries” and further to the extent it is ambiguous, overly broad, and unduly burdensome. Freedom House further objects that the Interrogatory assumes facts not in evidence, i.e., that Freedom House has “plans” to operate “shelters” within the “territorial boundaries” of the City of St. Paul. Discovery is continuing.

SUPPLEMENTAL ANSWER: Defendant incorporates by reference counsel’s further objections and response in its April 21, 2022 letter to Plaintiffs’ counsel’s letter of April 14, 2021.

5. Identify and describe your plans for opening and/or operating shelters within the territorial boundaries of the City of St. Paul, Minnesota in 2023.

ANSWER: Freedom House objects to this Interrogatory to the extent that it is vague as to the meaning and scope of “plans”, “shelters”, and “territorial boundaries” and further to the extent it

is ambiguous, overly broad, and unduly burdensome. Freedom House further objects that the Interrogatory assumes facts not in evidence, i.e., that Freedom House has “plans” to operate “shelters” within the “territorial boundaries” of the City of St. Paul. Discovery is continuing.

SUPPLEMENTAL ANSWER: Defendant incorporates by reference counsel’s further objections and response in its April 21, 2022 letter to Plaintiffs’ counsel’s letter of April 14, 2021 and Defendant further objects that this Interrogatory is irrelevant and not calculated to lead to discoverable evidence. Without waiving said objections, Defendant states that its plan for operating a day shelter in 2023 does not include operation of a facility such as Freedom House in the West Seventh neighborhood of St. Paul.

RESPONSE TO REQUESTS FOR ADMISSION

1. Admit that you will vacate the premises located at 296 West Seventh Street, St. Paul, before, on or shortly after May 22, 2022.

RESPONSE: Defendant objects to this request as it calls for conjecture or speculation, based upon hypotheticals of future actions and intentions, rather than admission or denial of a fact, and is therefore beyond the scope of permissible discovery.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel’s further objections and response in its April 21, 2022 letter to Plaintiffs’ counsel’s letter of April 14, 2021. Without waiving said objections, Defendant admits only that it intends to vacate the premises on or shortly after May 22, 2022.

2. Admit that you will not open or operate a shelter in the West Seventh Street Neighborhood of St. Paul after May 22, 2022 for at least one year.

RESPONSE: Defendant objects to this request as it is vague to the extent “West Seventh Street Neighborhood” is undefined. Defendant further objects that it calls for conjecture or speculation, based upon hypotheticals of future actions and intentions, rather than admission or denial of a fact, and is therefore beyond the scope of permissible discovery.

SUPPLEMENTAL RESPONSE: Defendant incorporates by reference counsel’s further objections and response in its April 21, 2022 letter to Plaintiffs’ counsel’s letter of April 14, 2021. Without waiving said objections, Defendant admits only that it does not intend to open or operate a shelter in the West Seventh Street Neighborhood of St. Paul after May 22, 2022 for at least a year.

AS TO INTERROGATORY ANSWERS:

Listening House of St. Paul, Incorporated

By: _____

Its: _____

Subscribed and sworn to before me this
____ day of April, 2022.

Notary Public

AS TO FORM AND OBJECTIONS:

Dated: April 21, 2022

s/ Karl J. Yeager
Karl J. Yeager (#179115)
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