

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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BARBARA HOEKSTRA and BRUCE HOEKSTRA,  
CHERYL HENRY, AND GLEN HENRY

Plaintiffs,

vs.

Case No.: 11-CV-650

CITY OF BAYFIELD, WISCONSIN

Defendant.

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**CITY OF BAYFIELD'S ANSWER AND AFFIRMATIVE DEFENSES**

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City the Bayfield, by its attorneys, Crivello Carlson, S.C., submit the following Answer to Plaintiffs' First Amended Complaint:

1. Answering ¶ 1, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.
2. Answering ¶ 2, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.
3. Answering ¶ 3, admit that the City of Bayfield is a municipal entity organized and existing pursuant to Wisconsin law at the location described.
4. Answering ¶ 4, admit that this Court has federal question jurisdiction over constitutional claims but deny that the plaintiffs' rights were violated or infringed upon by this answering defendant; as further answer deny.

5. Answering ¶ 5, admit that events occurred within the Western District of Wisconsin; as further answer, deny.

6. Answering ¶ 6, admit that this action raises constitutional claims but deny and affirmatively allege that the Plaintiffs' rights were not violated or infringed upon by these answering defendants.

7. Answering ¶ 7, admit

8. Answering ¶ 8, deny Plaintiffs' description is either complete or correct.

9. Answering ¶ 9, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.

10. Answering ¶ 10, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.

11. Answering ¶ 11, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.

12. Answering ¶ 12, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same putting the Plaintiffs specifically to their proof thereon.

13. Answering ¶ 13, admit that Wisconsin Statutes and Administrative Code contain regulations relating to Bed and Breakfasts; as further answer, deny that Plaintiffs' description is a full, complete or correct citation or explanation as to the content or effect of those regulations.

14. Answering ¶14, admit that the City of Bayfield has an ordinance relating to Bed and Breakfast and that Plaintiffs have cited to a portion of said ordinance, but deny that the Plaintiffs' citation is a full, complete and correct citation or explanation of as to the content or effect of the City ordinances; as further answer, admit that Plaintiffs attached as Exhibit 8 to the Amended Complaint a copy of Chapter 500 of the Bayfield ordinances, Section 500-108, as it existed prior to June 6, 2011.

15. Answering ¶ 15, deny Plaintiffs' description is either complete or correct; as further answer, admit that Plaintiffs have attached to the Amended Complaint as Exhibit B Ordinance 356.

16. Answering ¶ 16, deny Plaintiffs' description is either complete or correct.

17. Answering ¶ 17, deny Plaintiffs' description is either complete or correct.

18. Answering ¶ 18, deny Plaintiffs' description is either complete or correct.

19. Answering ¶ 19, deny that Plaintiffs' description is a full, complete and correct citation or explanation as to the content or effect of Ordinance 356.

20. Answering ¶ 20, deny Plaintiffs' description is either complete or correct.

21. Answering ¶ 21, deny Plaintiffs' description is either complete or correct.

22. Answering ¶ 22, deny Plaintiffs' description is either complete or correct.

23. Answering ¶ 23, deny Plaintiffs' description is either complete or correct; as further answer, deny.

24. Answering ¶ 24, deny Plaintiffs' description is either complete or correct; as further answer, deny.

25. Answering ¶ 25, deny Plaintiffs' description is a full complete and correct citation or explanation as to the content or effect of the ordinance; as further answer, deny.

26. Answering ¶ 26, deny Plaintiffs' description is a full complete and correct citation or explanation as to the content or effect of the ordinance; as further answer, deny.

**FIRST CAUSE OF ACTION – COMMERCE CLAUSE**

27. Answering ¶ 27, repeat, reallege and reincorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

28. Answering ¶ 28, deny Plaintiffs' description of the Commerce Clause or the Dormant Clause is a full, complete and correct citation or explanation; as further answer, deny the Plaintiffs' constitutional rights were violated or infringed upon by this answering Defendant.

29. Answering ¶ 29, deny Plaintiffs' description is either complete or correct.

30. Answering ¶ 30, deny Plaintiffs' description is either complete or correct, as further answer, deny.

31. Answering ¶ 31, deny Plaintiffs' description is either complete or correct.

32. Answering ¶ 32, admit.

33. Answering ¶ 33, deny.

34. Answering ¶ 34, deny.

35. Answering ¶ 35, deny.

36. Answering ¶ 36, deny.

**SECOND CAUSE OF ACTION – PRIVILEGES AND IMMUNITIES CLAUSE**

37. Answering ¶ 37, repeat, reallege and reincorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

38. Answering ¶ 38, admit.

39. Answering ¶ 39, deny Plaintiffs' description is either complete or correct.

40. Answering ¶ 40, deny Plaintiffs' description is either complete or correct.

41. Answering ¶ 41, deny.

42. Answering ¶ 42, deny.

43. Answering ¶ 43, deny.

44. Answering ¶ 44, deny.

**THIRD CAUSE OF ACTION – EQUAL PROTECTION CLAUSE**

45. Answering ¶ 45, repeat, reallege and reincorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

46. Answering ¶ 46, deny Plaintiffs' description is either complete or correct.

47. Answering ¶ 47, deny Plaintiffs' description is either complete or correct.

48. Answering ¶ 48, deny Plaintiffs' description is either complete or correct.

49. Answering ¶ 49, deny Plaintiffs' description is either complete or correct.

50. Answering ¶ 50, deny Plaintiffs' description is either complete or correct.

51. Answering ¶ 51, deny.

52. Answering ¶ 52, deny.

53. Answering ¶ 53, deny.

54. Answering ¶ 54, this paragraph contains no allegations and was left blank.

55. Answering ¶ 55, deny.

**FOURTH CAUSE OF ACTION –RIGHT TO VOTE**

56. Answering ¶ 56, repeat, reallege and reincorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

57. Answering ¶ 57, deny Plaintiffs’ description is either complete or correct.

58. Answering ¶ 58, deny Plaintiffs’ description is either complete or correct.

59. Answering ¶ 59, deny.

60. Answering ¶ 60, deny.

61. Answering ¶ 61, deny.

62. Answering ¶ 62, deny.

**FIFTH CAUSE OF ACTION – SUBSTANTIVE DUE PROCESS**

63. Answering ¶ 63, repeat, reallege and reincorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the text of this responsive pleading.

64. Answering ¶ 64, deny Plaintiffs’ description is either complete or correct.

65. Answering ¶ 65, deny Plaintiffs’ description is either complete or correct.

66. Answering ¶ 66, deny.

67. Answering ¶ 67, deny.

68. Answering ¶ 68, deny.

69. Answering ¶ 69, deny.

**AFFIRMATIVE DEFENSES**

As and for affirmative defenses to the plaintiffs’ Amended Complaint, the City of Bayfield submits the following:

- a. the injuries and damages sustained by the Plaintiffs, if any, were caused in whole by their own acts or omissions and/or failure to mitigate;
- b. the injuries and damages sustained by the Plaintiffs, if any, were caused in whole or in part by the acts or omissions of persons other than this answering Defendant;
- c. the Plaintiffs' amended complaint contains claims which fail to state a claim upon which relief may be granted as against this answering Defendant;
- d. Plaintiffs may have failed to exhaust avenues for relief in forums other than in United States Federal District Court;
- e. the Plaintiffs are not entitled to equitable or declaratory relief because it may not meet the requirements including that there is no substantial and immediate irreparable injury nor a justifiable controversy and there may be an adequate remedy at law;
- f. Plaintiffs' claims are subject to immunities as contained in State and Federal law; and
- h. Plaintiffs' are not members of a class sufficient to pursue their claims nor do they have standing on all claims.

WHEREFORE, the City of Bayfield respectfully request judgment as follows:

1. for a dismissal of the plaintiffs' Amended Complaint upon its merits;
2. for the costs and disbursements of this action; and
3. for such other relief as this court deems just and equitable.

**PLEASE TAKE NOTICE THAT THE DEFENDANTS DEMAND A TRIAL BY A JURY.**

Dated this 20<sup>th</sup> day of October, 2011.

CRIVELLO CARLSON, S.C.  
Attorneys for defendant, City of Bayfield

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