

MAR 18 2020 JG

At 4:58 P.M.
Velva L. Price, District Clerk

CAUSE No. D-1-GN-19-008617

FRANCISCA ACUNA, et al.,
Plaintiffs

v.

THE CITY OF AUSTIN, TEXAS, et al.
Defendants

§ IN THE DISTRICT COURT
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 201st JUDICIAL DISTRICT

FINAL JUDGMENT

On March 11, 2020, this case was called for trial. Plaintiffs, Francisca Acuña, Susana Almanza, Jeffery L. Bowen, William Burkhardt, Alecia M. Cooper, Roger Falk, Seth O. Fowler, Randy Howard, Mary Ingle, Patricia King, Fred I. Lewis, Barbara McArthur, Allan E. McMurtry, Laurence Miller, Gilbert Rivera, Jane Rivera, John Umphress, James Valadez, and Ed Wendler, Jr., appeared through their counsel of record, Douglas M. Becker and Monte L. Swearengen, and announced ready for trial. Defendants, the City of Austin, the City Council of Austin, the Honorable Austin Mayor Steve Adler, in his official capacity, the Honorable Austin City Council Members Natasha Harper-Madison, Delia Garza, Sabino Renteria, Gregorio Casar, Ann Kitchen, Jimmy Flannigan, Leslie Pool, Paige Ellis, Kathie Tovo, and Alison Alter, in their official capacities, and the Honorable Austin City Manager, Spencer Cronk, in his official capacity, appeared through their counsel of record, Jane Webre and Mary Byars, and announced ready for trial.

All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court received the evidence and heard the arguments of counsel. Michelle Williamson, Court Reporter for the 345th District Court, made a record of the proceedings.

Declaratory Relief

The Court FINDS:

1. Defendants violated Sections 211.006 and 211.007 of the Texas Local Government Code in their attempt to adopt a comprehensive revised Land Development Code by (a) failing to provide statutorily-required notice of the Planning Commission's public hearing to Plaintiffs as to the changes in zoning of Plaintiffs' property and nearby property in the City of Austin; and (b) failing to recognize Plaintiffs' protest rights.

2. Defendants' actions described above constitute *ultra vires* acts that contravene state law, entitling Plaintiffs to relief against Defendants.

The Court DECLARES:

1. Defendant City of Austin must send written notice to all property owners whose property is having its zoning changed, and to property owners within 200 feet of such property at least 10 days before the Planning Commission's public hearing to change the zoning of their property or nearby properties; or the City of Austin, upon a two-thirds vote of the City Council, may prescribe alternative notice of the time and place of a public hearing held jointly by the Austin City Council and the Austin Planning Commission pursuant to Texas Local Government Code 211.007(d).

2. The City Council's votes on first and second reading of the revised Land Development Code are void for failure to give the required statutory notice of the Planning Commission's public hearing.

3. Plaintiffs have protest rights pursuant to § 211.006(d) of the Texas Local Government Code as to any change in the zoning regulations or zoning district boundaries as to their property and any property within 200 feet of their property;

4. Defendants must not tell property owners that protest rights are not applicable to their property because of the Land Development Code revision; and

5. Defendants must affirmatively inform property owners and surrounding property owners of their protest rights.

Injunctive Relief

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants be, and hereby are, commanded to send written notice to all property owners in the City of Austin, and surrounding property owners within 200 feet, whose zoning regulations or zoning district boundaries are being changed, at least 10 days before the Planning Commission's public hearing on those zoning changes, pursuant to § 211.007(c); or in the alternative, Defendants may provide the alternative notice by following § 211.007(d).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants be, and hereby are, commanded to desist and refrain from:

1. Refusing to recognize and accept Plaintiffs' protest rights pursuant to Texas Local Government Code § 211.006(d) as to any change in the zoning regulations or zoning district boundaries of Plaintiffs' property or any property within 200 feet of Plaintiffs' property; and


2. Refusing to require a three-fourths majority vote of all City Council Members to adopt any zoning change for any property that has been protested by the owners of at least 20% of the relevant property, pursuant to Texas Local Government Code § 211.006(d), in order for such change to be effective.

The Clerk shall forthwith, when so requested by Plaintiffs, issue a writ of injunction in conformity with the law and the terms of this judgment.

All relief sought by any party but not herein expressly given is denied.

This Final Judgment disposes of all issues and claims between the parties and is intended to be a final and appealable judgment.

SIGNED on March 18, 2020.



Jan Soifer, Judge Presiding