

CAUSE NO. \_\_\_\_\_

<b>TAXPAYERS AGAINST GIVEAWAYS,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>SAVE OUR SPRINGS ALLIANCE,</b>	§	
<b>GONZALO BARRIENTOS, ORA HOUSTON,</b>	§	
<b>And FAYE HOLLAND,</b>	§	
<i>Plaintiffs,</i>	§	
	§	
<b>v.</b>	§	<b>TRAVIS COUNTY</b>
	§	
<b>CITY OF AUSTIN MAYOR KIRK WATSON,</b>	§	
<b>COUNCIL MEMBERS NATASHA HARPER-</b>	§	
<b>MADISON, VANESSA FUENTES,</b>	§	
<b>JOSE VELASQUEZ, JOSE “CHITO” VELA,</b>	§	
<b>RYAN ALTER, MACKENZIE KELLY,</b>	§	
<b>LESLIE POOL, PAIGE ELLIS,</b>	§	126TH, DISTRICT COURT
<b>ZOHAIB “ZO” QADRI, ALISON ALTER, And</b>	§	
<b>INTERIM CITY MANAGER JESUS GARZA,</b>	§	
<b>ALL IN THEIR OFFICIAL CAPACITIES,</b>	§	
<i>Defendants.</i>	§	_____ <b>JUDICIAL DISTRICT</b>

**PLAINTIFFS’ ORIGINAL PETITION FOR INJUNCTIVE RELIEF**

Plaintiffs, each a City of Austin property-tax taxpayer or an association with property taxpayer members, bring suit against the Defendant Austin Officials, in their official capacities, to stop the illegal expenditure of property taxes for the South-Central Waterfront Tax Increment Reinvestment Zone No. 19 (SCWF-TIRZ) and would show the Court as follows:

**A. NATURE OF THE CASE AND DISCOVERY CONTROL PLAN**

***“ALL OTHER PROPERTY WOULD HAVE 100% OF ITS VALUE TAXED TO MEET THE ORDINARY NEEDS OF THE CITY, BUT [TIRZ] DISTRICT PROPERTY WOULD HAVE ONLY A PART OF ITS VALUE TAXED FOR THAT PURPOSE, CAUSING AN UNEQUAL DISTRIBUTION OF THE AD VALOREM TAX BURDEN.”***<sup>1</sup>

<sup>1</sup> Tex. Att’y Gen. Op. No. MW-337 AT \*5 (1981)

1. In December 2021 and December 2022, a majority of the Austin City Council established the SCWF-TIRZ, a tax-increment financing zone that will redirect an estimated \$354 million dollars of future City property tax revenue away from the City's general fund and into a fund that will solely support private development within this designated zone. The Council's action was illegal because Texas Tax Code Chapter 311 restricts creation of such a zone to areas that are "unproductive, underdeveloped, or blighted" and, most importantly, to areas that would not otherwise develop on their own "but for" the redirected taxpayer support. By ignoring the Tax Code restrictions, the Council members exceeded their authority to create such a tax zone. As a result, the redirected tax funds will be illegally spent on the SCWF-TIRZ property, while the rest of Austin property taxpayers, including Plaintiffs, have to pay an unequal and uniform share of taxes for the City's operation.

2. The SCWF-TIRZ incorporates 118 acres of land in Central Austin, along the south shore of Lady Bird Lake. This land is perhaps the most developable, high-value land in all of Texas. Development in central Austin is sprouting everywhere, almost none of it supported by taxpayer subsidies. Indeed, the City Council redrew the boundaries of the SCWF TIRZ in its December 2022 action to remove a substantial, new development, nicknamed the "Snoopy PUD," recently completed without taxpayer support. With the city council generously granting zoning changes allowing downtown-style skyscraper development to jump across

Austin’s iconic lake, the City itself projects \$8 billion or more of ultra-luxury development will take place in the designated zone in the years ahead without the use of a TIRZ. In an example of an abuse of their power, the then-Mayor Steve Adler and other Council Members openly admitted that the area is “undoubtedly going to develop on the south waterfront.”

3. The issue isn’t whether the SCWF TRIZ development might be a nice addition to the City, but whether the City has complied with the state law’s restrictions, satisfied the mandatory findings of facts, and applied the correct legal standards for spending public funds for private development. As shown below, the City clearly has not. The Defendants’ *ultra vires* decision to spend City property taxes on the SCWF TIRZ should be declared illegal and enjoined by the Court.

4. The City Council approved the 2021 and 2022 SCWF TIRZ ordinances. The TIRZ plans and public hearing records when the Council considered the proposed TIRZ ordinances are the official City record that the Court judicially reviews to determine if Defendants sufficiently complied with state law. Therefore, no, or limited, discovery appears needed. If there is any discovery needed, it should be conducted under Texas Civil Procedure Rule 190.3, Level 2.

## **B. CLAIM FOR RELIEF**

5. Plaintiffs seek only equitable nonmonetary relief. TRCP 47(c)(2).

## C. PARTIES

6. a. **Plaintiffs are:**

(1). Taxpayers Against Giveaways is a Texas nonprofit corporation (filing No. 804416865) organized “primarily to further the common good and general welfare of residents of Austin, Texas” and includes, among its officials, property owners who pay property taxes to the City of Austin. This Plaintiff may be served via its attorney of record in this case.

(2). Save Our Springs Alliance, Inc. (S.O.S.) is a Texas nonprofit corporation established in 1992 (filing No. 125108901) with members who are property taxpayers of the City of Austin and whose mission is to protect the natural and cultural heritage of Central Texas and to promote transparency and accountability in the administration of government. Members of S.O.S. testified against the SCWF-TIRZ and warned the City Council that its creation would result in this litigation. SOS members enjoy the Lady Bird Lake shore line and trail within and adjacent to the SCWF-TIRZ and their conservation and recreation interests will be harmed by the park, lakeshore concession, and private facilities proposed for funding by the SCWF-TIRZ. This Plaintiff may be served via its attorney of record in this case.

(3). Gonzalo Barrientos is a resident and taxpayer of Austin and owner of property on the City’s tax appraisal roll as Property ID. No 307309 in south

central Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 020 and SocSec 295. This Plaintiff may be served via his attorney of record in this case.

(4). Ora Houston is a resident and taxpayer of Austin and owner of property on the City's tax appraisal roll as Property ID. No 203984 in east Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 525 and SocSec 909. This Plaintiff may be served via her attorney of record in this case.

(5). Faye Holland is a resident and taxpayer of Austin and owner of property on the City's tax appraisal roll as Property ID. No 126196 in the Allandale neighborhood of Austin. The information required by Tex. Civ. Prac. & Rem. Code Sec. 30.014 is DL 234 and SocSec 055. This Plaintiff may be served via her attorney of record in this case.

b. **Defendants are sued in their official capacity:**

(1). Austin Mayor Kirk Watson can be served at the Mayor's office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(2). Council Member, District 1, Natasha Harper-Madison can be served at the City Council District 1 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(3). Council Member, District 2, Vanessa Fuentes can be served at the City Council District 2 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(4). Council Member, District 3, Jose Velasquez can be served at the City

Council District 3 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(5). Council Member, District 4, Chito Vela can be served at the City Council District 4 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(6). Council Member, District 5, Ryan Alter can be served at the City Council District 5 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(7). Council Member, District 6, Mackenzie Kelly can be served at the City Council District 6 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(8). Council Member, District 7, Leslie Pool can be served at the City Council District 7 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(9). Council Member, District 8, Paige Ellis can be served at the City Council District 8 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(10). Council Member, District 9, Zahaib “Zo” Qadri can be served at the City Council District 9 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(11). Council Member, District 10, Alison Alter can be served at the City Council District 10 office located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

(12) Interim City Manager Jesus Garza can be served at his office at Austin City Hall located at 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701.

#### **D. JURISDICTION**

7. This Court has jurisdiction to issue the requested writ of injunction under Article 5, § 8 of the Texas Constitution and Tex. Gov’t Code §§ 24.007 and

24.008 and Tex. Civ. Prac. & Rem. Code Chapter 65. Venue is required in the Travis County District Court under Tex. Civ. Prac. & Rem. Code § 65.023 and § 15.002, because the City of Austin defendants reside in Travis County where the events giving rise to the claims occurred. Plaintiffs have taxpayer standing to bring their *ultra vires* claims for injunctive relief against the illegal expenditure of property taxes on the SCWF TIRZ by the City officials.

## **E. FACTS**

### **INTRODUCTION**

8. The facts stated in Paragraphs 1-4 are incorporated here as well. The South-Central Waterfront area (“SCWF”) contains 118 acres of extremely valuable real estate on the south shore of Lady Bird Lake across from the Central Business District. The City envisions the area as the City’s “Second Downtown.” The area has been and is rapidly developing without public subsidies. It is the antithesis of blighted land. Nonetheless, the Defendants established the SCWF TIRZ and are diverting from City general revenue an estimated \$354 million in property taxes over nineteen years to pay for the private infrastructure for a projected \$8 billion in luxury private development. Smaller portions of the projected \$354 million zone funding would support affordable housing and, separately, park private concession, and infrastructure facilities that would harm lake shore wildlife habitats, destroy trees, pollute Lady Bird Lake, and threaten Austin’s one-of-a-kind urban bat colony. This

development is taking place primarily pursuant to individually tailored “Planned Unit Development” zoning cases for each separately owned parcel and without any coherent development plan for the properties within the designated SCWF TIRZ boundaries.

9. Texas law requires cities to take special procedural steps, adopt a detailed written TIRZ plan, and make specific factual findings to establish a TIRZ. Texas Tax Code, Chapter 311. The Legislature requires localities to take these extra procedural and substantive steps because of TIRZ constitutional concerns of unequal, unfair, and un-uniform taxation and of public funds being used for private purposes. Tex. Const. Art. VIII, Sec. 1-g; Art. 3, Sec. 52. These legislative protections are designed to safeguard property taxpayers in Texas from the well-documented history of wasteful tax giveaways with TIRZs and other lawful tools designed to help the poor and lower-income areas within our state.

10. Chapter 311 mandates that Texas cities must satisfy, inter alia, three key factual findings before they may establish a TIRZ and spend property tax funds: 1) the area is essentially blighted (Tex. Tax Code, Sec. 311.005 (a)); 2) the public investment will increase the value of the property and generally benefit the community (Tex. Tax Code, Sec. 311.004 (a)(7)(A)); and 3) development in the designated area would not occur solely through private investment in the reasonably foreseeable future (known as the but-for test) (Tex. Tax Code, Sec. 311.003(a)). The



but-for test requires cities to show that the private development would not occur but solely for the public funds. The purpose of the but-for test is to prevent cities from publicly subsidizing private redevelopment that would have occurred anyway without a TIRZ. In short, the but-for test is designed to prevent unjustified, wasteful tax giveaways to private developers—which is exactly what has occurred with the SCWF-TIRZ.

### **SCWF-TIRZ BACKGROUND**

11. For a number of years, the City of Austin has envisioned and discussed the redevelopment of the South-Central Waterfront along the iconic south shore of Lady Bird Lake. In September 2014, the City Council approved funds to hire consultants to assist with creating a framework for a South-Central Waterfront plan. On June 16, 2016, the City adopted the South-Central Waterfront Vision Framework Plan (“2016 Vision Plan”). Five years later, the 2016 Vision Plan was incorporated into the City’s official 2021 SCWF TIRZ plan (“2021 TIRZ plan”) and, a year after that, into its official amended 2022 SCWF TIRZ plan (“2022 TIRZ plan”).

12. The 2021 TIRZ Ordinance and Plan. On December 9 and 20, 2021, the Austin City Council held public hearings and approved on the latter date an ordinance and preliminary plan to immediately establish the South-Central Waterfront Tax Increment Reinvestment Zone District No. 19. City of Austin Ordinance No. 20211220-002 (December 20, 2021) (“2021 Ordinance”). The 2021

TIRZ ordinance and plan projects costs of \$278.1 million in property taxpayer-funded private infrastructure, consisting of streets, sidewalks, parks, utilities, and other project costs. The plan provides no project or cost details other than ballpark estimates in eight broad infrastructure categories.

13. The 2021 Ordinance fixed the TIRZ's property base valuation at its 2021's appraised value of \$824 million. But in an unprecedented action, the City Council set the zone's tax capture rate at zero. As a result, at that time none of the zone's additional property taxes, from increased district property values above the 2021 base values, were diverted from City general revenue to the TIRZ.

#### **THE 2022 AMENDED TIRZ ORDINANCE AND PLAN**

14. Although Council promised to finalize its 2021 TIRZ plan and its infrastructure cost details by spring 2022, it did not do so. Months later, on December 1, 2022, the Council finally held a public hearing and passed an amended SCWF TIRZ ordinance and preliminary plan, again with no project cost details. City of Austin Ordinance No. 20221201-054 (December 1, 2022)("2022 Ordinance"). The 2021 and 2022 ordinances and preliminary plans are essentially the same, except that the 2022 version set a 46% tax increment capture rate, added without explanation \$76.5 million in additional projected infrastructure costs, provided for an unspecified amount of "affordable housing," and removed from the zone a parcel

that recently developed into a major mixed-use project without receiving taxpayer subsidies.

15. The Council made the 46% tax capture rate effective immediately on December 1, 2022. Since that date, City property taxes, which are regularly collected and remitted by the Travis County Tax Assessor-Collector's Office to the City, have been partially diverted by the City to the SCWF TIRZ. The 46% tax capture rate means that 46% of all property taxes from increased property valuations in the SCWF TIRZ (the tax increment increase from the 2021 property value base) will go for nineteen years from City coffers to the TIRZ. The 2022 plan projects that these property taxes will pay for \$354, 614, 211 in mostly private TIRZ infrastructure—an unexplained \$76, 514, 211 increase in projected costs from less than a year before.

#### **THE CITY'S OFFICIAL TIRZ RECORD FOR JUDICIAL REVIEW**

16. The official city record for the Court's review consists of four documents: the 2021 TIRZ Ordinance and Plan and the Amended 2022 TIRZ Ordinance and Plan. It also includes recordings of three official public hearings held on the two ordinances and publicly posted backup documents. An analysis of these records shows that the City Council did not have legally sufficient evidence to support the three key mandatory state findings required to establish a TIRZ.

**THE 2021 AND 2022 TIRZ ORDINANCES DO NOT CONTAIN LEGALLY SUFFICIENT FACTS IN SUPPORT OF THE REQUIRED STATUTORY FINDINGS**

17. The two ordinances contain essentially the same content regarding the SCWF TIRZ. Both ordinances simply copy verbatim the statutory language without citing any supportive facts. In short, the ordinances contain no findings of fact, but simply perfunctory conclusory statements. This constitutes no evidentiary support for the three key findings for establishing the SCWF TIRZ.

**THE CITY'S 2021 AND 2022 TIRZ PLANS DOES NOT CONTAIN LEGALLY SUFFICIENT EVIDENCE IN SUPPORT OF THE REQUIRED STATUTORY FINDINGS**

18. The two TIRZ plans are essentially identical (except as noted below) and will be discussed collectively. Both plans contain three parts: a short plan narrative; the 2016 City Vision Plan; and the 2021 feasibility study. Individually, and collectively, these documents contain no or legally insufficient probative evidence to establish the SCWF TIRZ.

**THE SHORT NARRATIVES DO NOT CONTAIN LEGALLY SUFFICIENT SUPPORTIVE FINDINGS OR EVIDENCE.**

19. The City's routine TIRZ narratives consist of nine pages with several exhibits (zone map, list of parcels, and ballpark costs). The narratives repeat the same conclusory language-- without citing any evidentiary support-- as was in the

ordinances. There are no factual findings, or any evidence cited, showing that the area will not redevelop without \$354 million in publicly funded infrastructure. Nor are there any facts showing the area is blighted, or how the area's streets and sidewalks are inadequate and will impede the development of the SCWF.

**THE CITY'S 2016 VISION PLAN ACTUALLY UNDERMINES THE CITY'S POSITION, BY EVIDENCING THAT THE AREA IS RAPIDLY REDEVELOPING ON ITS OWN.**

20. The 2016 Vision Plan recognizes that “the South-Central Waterfront is experiencing tremendous and increasing market pressures to redevelop” and is ‘reaching an economic tipping point.’ It observes that “[i]n fact, change is rapidly underway.”

21. The 2016 Vision Plan lays out two development scenarios for the SCWF, which show that property tax dollars are not needed for the SCWF TIRZ to massively redevelop in the reasonably foreseeable future. The two development scenarios are: 1) a feasible baseline development financial projection based on the then existing zoning and regulatory restrictions; and 2) a test development financial projection based on substantial increases in zoning entitlements that allow for greater building height and bulk. Even under the Vision Plan's baseline financial projection based on 2016's existing market conditions and restrictive zoning laws, the SCWF is clearly not blighted and is projected to add “2.2 million square feet of new development...”

22. Under the Vision Plan’s test financial projection, based on the City granting large increases in building height and bulk, the SCWF will massively redevelop with “8.5 million square feet of total space in the district... .” This constitutes a projected 5.4 million more square feet of development than existed in the district in 2016. The test projection forecasts a “higher density district” with large increases in zoning entitlements and implementation of the vision plan. This increased development results from the massive zoning entitlement increases in building height and bulk.

**THE CITY IS PLANNING TO GRANT SCWF PROPERTIES MUCH GREATER ADDITIONAL HEIGHT AND BULK ENTITLEMENTS THAN THOSE ENVISIONED IN THE 2016 VISION PLAN’S TEST PROJECTIONS.**

23. For example, for the 305 South Congress PUD’s 18.8 acres (the former site of the Austin American-Statesman, adjacent to Austin’s world-famous bat bridge) the 2016 test projection envisioned its separate parcels developing five buildings from 8 to 26 stories, with a total allowed square footage of 2,142,900. However, the Council approved on December 1, 2022 (the same day as it approved the Amended TIRZ Plan) PUD building heights from 250 feet (approximately 25 stories) to 525 feet (52 stories) with a total square footage of 3.5 million square feet. 305 South Congress PUD Ordinance, No 20221201-084. The City granted the PUD 1,357,100 more square feet of zoning entitlements than the 2016 test projections found was needed to feasibly develop the PUD’s property. This means the PUD’s

property will likely be even more profitable than projected in 2016.

**THE 2016 TEST FINANCIAL PROJECTIONS ALSO FOUND THAT THE SCWF'S MASSIVE REDEVELOPMENT WOULD BE FEASIBLE WITHOUT PROPERTY TAXPAYERS PAYING FOR THE DISTRICT'S INFRASTRUCTURE OR FOR 527 AFFORDABLE HOUSING UNITS.**

24. The 2016 test financial projections also found that the SCWF's massive redevelopment would be feasible without property taxpayers paying for the district's infrastructure or for 527 affordable housing units. The 2016 Vision Plan appendices lay out in detail the test projection's costs and analysis. They envision the public improvements would cost \$73.356 million, which is 1/5th of the ballpark projected cost estimate (with no detail) presented six years later. The City provided no explanation for this monumental cost increase in the City's 2022 TIRZ plan.

**THE 2016 TEST PROJECTION ENVISIONS THAT THE AREA'S PRIVATE OWNERS WILL PAY FOR ITS INFRASTRUCTURE THROUGH A PUBLIC IMPROVEMENT DISTRICT (PID)-- WITHOUT THE NEED FOR PROPERTY TAXPAYER DOLLARS BEING SPENT THROUGH A TIRZ.**

25. The test projection assumes that "[e]ach of the parcels includes an assumed cost associated with a Public Improvement District (PID) that's assessed [upon the property owners] at \$10 per square of gross development." Since total additional square footage for the entire district is projected to be 6,268,088, a PID at \$10 a square foot would yield approximately \$63 million. The 2016 plan clearly contemplates, even with its more limited projected increases in zoning entitlements than envisioned today, that the SCWF does not need taxpayer dollars to fully

develop: “The Test Scenario is a “what if” financial model to calibrate the additional development needed beyond existing entitlements to incentivize private properties to participate in the Vision.... Under the Test Scenario, private properties ultimately pay for the whole public realm vision through on-site improvements and the recommended Funding Toolkit on page 97[the PID].” (emphasis added).

26. According to the City’s 2016 Vision Plan, which is officially incorporated into its approved TIRZ plans, the SCWF will massively redevelop without public funding of the SCWF’s private infrastructure. The City’s own Vision Plan shows that the SCWF TIRZ does not meet the but-for findings required in Texas Tax Code, Sec. 311.003(a). The City’s own financial analysis does not support, indeed refutes, that the “redevelopment would not occur solely through private investment in the reasonably foreseeable future.”

27. The 2016 Vision Plan also provides no facts supporting the required statutory finding of a “general benefit” to the community. In fact, the plan harms the Austin community, because the TIRZ’s \$354 million in unnecessary tax expenditures could have gone to city general revenues to fund public needs rather than private interests. Last, the area is clearly not blighted in any meaningful sense. This prime waterfront property has been rapidly redeveloping on its own, and with the City’s larger zoning entitlements, it is projected to add 5.4 million square feet of luxury skyscraper, condominium towers, and commercial space.



## **THE 2021 SCWF FEASIBILITY STUDY.**

28. The last component of the SCWF TIRZ plan is the 2021 SCWF economic feasibility study by the city's hired consultant, Capitol Market Research (hereafter "SCWF feasibility study"). A feasibility study, however, is not a but-for TIRZ study, and it provides no factual support for the statutorily required but-for finding.

29. The plans' narratives describe the report as an "economic feasibility study." The report describes itself as a "market/feasibility report." The report is essentially a detailed local market absorption study that projects that the Austin market could profitably absorb over the next twenty years an additional 6 million plus square feet of very high-end office, apartment, and condominium space in the SCWF area. It shows only that the Austin market can profitably absorb the SCWF's proposed redevelopment. It does not address whether public funds are needed for the district to feasibly develop. For the latter finding, but-for studies are required, which specifically analyze whether the development would not occur solely with private funds in the reasonably foreseeable future. The City's plan lacks such a but-for study or any related supportive findings of fact. The 2021 SCWF feasibility study is not probative of the but-for test and the other mandatory findings.

**THE SCWF TIRZ IS ILLEGAL BECAUSE THE CITY APPLIED THE WRONG LEGAL STANDARD.**

30. The City also used the wrong legal standard for establishing the SCWF TIRZ. The City's plan contends that the SCWF TIRZ is legally authorized because the City asserts the \$354 million in tax subsidies would result in a more "effective," "more pleasing," and "faster" development than an unsubsidized private development in the area. Texas Tax Code Section 311.003(a), however, does not contain this vague, subjective language. Chapter 311 only states that the City must "determine that development or redevelopment [of the land within the zone] would not occur solely through private investment in the reasonably foreseeable future." There is no statutory text qualifying the nature of the redevelopment. The Legislature has not authorized the city to rewrite state TIRZ law and expend \$354 million in property taxes when the area already is rapidly redeveloping (by the City's own admission) because the City asserts it will provide a more "effective" or "desirable" development than the private marketplace. The City's illegal grafting of its subjective private development choices on to state TIRZ law render Chapter 311's taxpayer safeguards meaningless. The City's unauthorized added modifiers eviscerate state law and would allow the City to spend taxpayer money wastefully and illegally on TIRZs that are unnecessary for economic development. Not only does the City's legal standard violate the statute, but it is unconstitutional because

the City is not authorized in these situations to tax unequally or provide public funds to private parties.

## **F. CLAIMS**

### **COUNT 1: THE SCWD TIRZ FAILS THE “BUT FOR” TEST**

**THE COUNCIL LACKS AUTHORITY TO CREATE THE SCWF TIRZ BECAUSE NO GOOD-FAITH DETERMINATION COULD BE MADE THAT DEVELOPMENT OR REDEVELOPMENT OF THE TIRZ AREA “WOULD NOT OCCUR SOLELY THROUGH PRIVATE INVESTMENT IN THE REASONABLY FORESEEABLE FUTURE” AS REQUIRED BY TEX. TAX CODE § 311.003(A)**

31. Use of the TIRZ redirected tax-funding method for development is restricted by Tex. Tax Code § 311.003(a) and Tex. Const., Art. VIII, § 1-g to “blighted” or “unproductive” areas that are stagnated and will not develop “but for” the use of a TIRZ. Contrary to the Austin Council’s use of TIRZ, it is not available to modify, enhance, or give bonus money to developments in areas that are going to develop anyway. There is no evidence in the City’s official record, which consists of the approved SCWF TIRZ ordinances and plans, that the area is blighted, serves a general community benefit, or that public subsidies are necessary for the area to redevelop in the reasonably foreseeable future. The area, however, has been rapidly developing for years on its own and the City’s own financial projections state that the SCWF area can profitably add over 8 million square feet of high-end, high-density development without public subsidies.

32. In addition, the City applies the wrong legal standard, contending that the SCWF TIRZ is justified because, in the city’s opinion, it would result in a more “effective,” “faster,” and “aesthetically pleasing” development than unsubsidized private development on the property. Texas Tax Code, Section 311.003(a), however, does not contain these undefined city modifiers: the statute states only that the City must “determine that development or redevelopment [of the land within the zone] would not occur solely through private investment in the reasonably foreseeable future.” By the city’s own admission, the area does not meet this standard because it has been rapidly redeveloping and will be in the reasonably foreseeable future without public subsidies. The City has no authority to rewrite state law by adding language of its own choosing in an attempt to eviscerate state legal requirements for TIRZs. The City’s illegally grafted text would allow it to spend property tax dollars on private TIRZ developments with essentially no statutory limitations and in violation of the Texas Constitution.

33. By ignoring the Tax Code restrictions on their authority to create the SCWF TIRZ, the Council Defendants committed an *ultra vires* act creating the TIRZ. Therefore, the redirection of the TIRZ property taxes from the City’s General Fund to use in the TIRZ is illegal. As property taxpayers, Plaintiffs seek to enjoin implementation of City of Austin Ordinance No. 20211220-002 (December 20, 2021) and Ordinance No. 20221201-054 (December 1, 2022) that purport to

authorize the illegal use of property taxes whether the illegal expenditures are for direct expenditures to implement or operate the TIRZ or to retire bonds issued for activity in the SCWF TIRZ.

**COUNT 2: THE REDIRECTED PROPERTY TAX FOR SCWF TIRZ PROPERTY OWNERS CONSTITUTES AN ILLEGAL GIFT OF PUBLIC FUNDS PROHIBITED BY TEX. CONST. ART. III, § 52.**

34. Because, as explained in Count 1, the city failed to provide legally sufficient factual support that the SCWF TIRZ would not develop without public investments or the other TIRZ mandatory findings, redirection of the property taxes back to the SCWF-TIRZ property owners' private benefit is not authorized by law and spending the redirected property tax in that manner is an illegal gift of public funds. As property taxpayers, Plaintiffs seek to enjoin the illegal use of property taxes as a gift to the SCWF-TIRZ property owners.

**COUNT 3: IN CREATING THE SCWF-TIRZ, THE COUNCIL FAILED TO COMPLY WITH THE STANDARDS REQUIRED BY TEX. TAX CODE § 311.005 TO MAKE FINDINGS OF FACT SUPPORTED BY EVIDENCE.**

35. The City's official 2021 and 2022 SCWF-TIRZ ordinances and plans are required under Chapter 311 to satisfy state-mandated legal standards and *factual* findings. Defendants, however, have acted without legal authority by failing to provide any, or insufficient, factual support for the statutorily required findings for establishing a TIRZ. Texas statutory and constitutional laws restrict cities to only

using tax increment financing for subsidizing private development when cities show—with evidence-supported findings—that the area is blighted, and the community would generally benefit from the development. The Council’s stated basis on which it purported to find the SCWF TIRZ area as blighted does not comply with the requirement of Tex. Tax Code, § 311.005 (a) or Tex. Const Art. IX, Sec 1-g. The Council Members committed an *ultra vires* act when they proceeded to create the SCWF-TIRZ without the requisite findings, rendering illegal any expenditure of the diverted property tax revenue to implement the TIRZ. Plaintiffs as property taxpayers seek to enjoin such illegal use of property taxes.

### **G. EQUITABLE RELIEF**

36. As explained in Count 1, 2, and 3 above, Plaintiffs, as property taxpayers, seek a permanent injunction, based on their taxpayer standing, for their cause of action to enjoin the illegal expenditures of property taxes. Plaintiffs have a probable right to relief and a probable injury that is imminent and irreparable, because once the illegal expenditures are made, Plaintiffs lack standing to recover the spent funds. Plaintiffs have no other adequate remedy at law but the relief pled for in this case.

### **H. CONDITIONS PRECEDENT**

37. All conditions precedent to plaintiffs’ claims for relief have been performed or have occurred.

## PRAYER

For these reasons, Plaintiffs ask the Court to:

1. Grant permanent injunctive relief prohibiting Defendants from diverting property tax payments made by SCWF-TIRZ property taxpayers from the General Fund for the implementation, operation, costs, debt, or other expenditures related to the SCWF-TIRZ
2. Award Plaintiffs costs and grant Plaintiffs all other relief to which they may be entitled.

Respectfully submitted,

*Bill Bunch*

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